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*****I**

REPORT

on the proposal for a directive of the European Parliament and of the Council on
services in the internal market
(COM(2004)0002 – C5-0069/2004 – 2004/0001(COD))

Committee on the Internal Market and Consumer Protection

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Affairs

(*) Enhanced cooperation between committees – Rule 47 of the Rules of
Procedure

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 proposal for a directive of the European Parliament and of the Council on services in the internal market
(COM(2004)0002 – C5-0069/2004 – 2004/0001(COD))**

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2004)0002)¹,
 - having regard to Article 251(2) and Articles 47(2), 55, 71 and 80(2) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C5-0069/2004),
 - having regard to Rule 51 of its Rules of Procedure,
 - having regard to the report of the Committee on the Internal Market and Consumer Protection and the opinions of the Committee on Budgetary Control, the Committee on Economic and Monetary Affairs, the Committee on Employment and Social Affairs, the Committee on the Environment, Public Health and Food Safety, the Committee on Industry, Research and Energy, the Committee on Culture and Education, the Committee on Legal Affairs, Committee on Women's Rights and Gender Equality and the Committee on Petitions (A6-0409/2005);
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission

Amendments by Parliament

Amendment 1 Recital 1

(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

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¹ Not yet published in OJ.

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.

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.***

Justification

It is important that trade liberalisation not be seen as an end in itself, or as a benefit to be pursued at the cost of other fundamental tasks of the Union.

Amendment 2 Recital 1 a (new)

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

Amendment 3
Recital 3

(3) Since services constitute the engine of economic growth and account for 70% of GDP and employment in the majority of Member States, this fragmentation of the internal market has a negative impact on the entire European economy, in particular on the competitiveness of SMEs, and prevents consumers from gaining access to a greater variety of competitively priced 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 making the European Union the most competitive and dynamic knowledge-based economy in the world by 2010. Removing those barriers is *essential in order to revive* the European economy, particularly in terms of employment and investment.

(3) Since services constitute the engine of economic growth and account for 70% of GDP and employment in the majority of Member States, this fragmentation of the internal market has a negative impact on the entire European economy, in particular on the competitiveness of SMEs *and the movement of workers*, and prevents consumers from gaining access to a greater variety of competitively priced services. *It is important to point out that the services sector is a key employment sector for women in particular, and that they therefore stand to benefit greatly from new opportunities offered by the completion of the internal market for services.* The European Parliament and the Council have emphasised that the removal of legal barriers to the establishment of a genuine internal market is a matter of priority for achieving the goal set by the Lisbon European Council of *improving employment and social cohesion and achieving sustainable economic growth so as to make* the European Union the most competitive and dynamic knowledge-based, *employment-boosting* economy in the world by 2010. Removing those barriers, *while ensuring an advanced European social model, is thus a basic condition for overcoming the difficulties encountered in implementing the Lisbon Strategy and for reviving* the European economy, particularly in terms of employment and investment. *It is therefore important to achieve a single market in services, with a balance between market*

opening, public services and social and consumer rights.

Justification

The Commission failed to mention all the Lisbon objectives.

Amendment 4
Recital 3a (new)

(3a) Particularly after the accession of ten new Member States, entrepreneurs wishing to provide services in another Member State are faced with obvious barriers.

Amendment 5
Recital 4

(4) 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 ***providers and recipients*** 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.

(4) 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.

Justification

The emphasis should be placed on recipients of services, who, unlike service providers, are unfamiliar with how things work in this area.

Amendment 6

Recital 6

(6) This Directive establishes a general legal framework which benefits a wide variety of services while taking into account the distinctive features of each type of activity or profession and its system of regulation. That framework is based on a dynamic and selective approach consisting in the removal, as a matter of priority, of barriers which may be dismantled quickly and, for the others, the launching of a process of evaluation, consultation and complementary harmonisation of specific issues, which will make possible the progressive and coordinated modernisation of national regulatory systems for service activities which is vital in order to achieve a genuine internal market for services by 2010. Provision should be made for a balanced mix of measures involving targeted harmonisation, administrative cooperation, the **country of origin principle** 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 **of consumer** protection, which is vital in order to establish mutual trust between Member States.

(6) This Directive establishes a general legal framework which benefits a wide variety of services while taking into account the distinctive features of each type of activity or profession and its system of regulation. That framework is based on a dynamic and selective approach consisting in the removal, as a matter of priority, of barriers which may be dismantled quickly and, for the others, the launching of a process of evaluation, consultation and complementary harmonisation of specific issues, which will make possible the progressive and coordinated modernisation of national regulatory systems for service activities which is vital in order to achieve a genuine internal market for services by 2010. Provision should be made for a balanced mix of measures involving targeted harmonisation, administrative cooperation, the **rules of the country of origin** 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.

(All references to the country of origin principle in the Commission's text should be deleted, in accordance with the amendment to Article 16)

Justification

Brings the text into line with Article 16.

Amendment 7
Recital 6 b (new)

(6b) 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.

Justification

The directive's scope needs to be set out more clearly.

Amendment 8
Recital 6 c (new)

(6c) 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.

Justification

This Directive should be without prejudice to Community objectives and action in the social policy sphere.

Amendment 9
Recital 6 d (new)

(6d) 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.

Justification

This Directive should be without prejudice to Community objectives and action in the social policy sphere.

Amendment 10
Recital 6 e (new)

(6e) 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.

Amendment 11
Recital 6 f (new)

(6f) 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.

Justification

Explanation of Article 1

Amendment 12
Recital 7

(7) It is necessary to recognise the importance of the roles of professional bodies **and** professional associations in the regulation of service activities and the development of professional rules.

(7) 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.

Justification

Professional bodies and organisations play a significant role in the creation of effective self-regulation, which forms the framework for the provision of services in the individual sectors. However, it must be ensured that the self-regulation function serves to uphold the integrity and competitiveness of the profession, and that it cannot be misused to maintain or erect obstacles to access to certain markets.

The social partners should be given their proper place in the process, with it being ensured that they are duly informed and are also able to take part in the drafting of rules.

Amendment 13
Recital 8 a (new)

(8a) This Directive does 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 the aids granted by the Member States, in particular in the social field, in accordance with Title VI, Chapter I of the Treaty.

Amendment 14
Recital 8 b (new)

(8b) The exclusions from the scope of application 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.

Justification

Clarification that the provisions of the directive do not even apply when those directives include derogations for Member states, e.g. for maintaining cultural diversity.

Amendment 15
Recital 9

(9) 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. ***Financial services are defined in Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC¹. That Directive defines a financial service as any service of a banking, credit, insurance, personal pension, investment or payment nature.***

(9) 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 relating to the taking up and pursuit of the business of credit institutions.***

Amendment 16
Recital 10 a (new)

(10a) Audiovisual services, whatever their mode of transmission, in particular television broadcasting services as defined

¹ OJ L 271, 9.10.2002, p. 16.

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 .

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).

Justification

In keeping with the amendment to Article 2 seeking to ensure that audiovisual services [and services of intellectual property rights collective management societies] are not covered by the directive.

Amendment 17
Recital 10 b (new)

(10b) 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.

Justification

Amendment linked to the amendment to Article 2 seeking to ensure that gambling activities are not covered by the directive. Gambling activities are intrinsically linked to public order and consumer protection issues and therefore lie outside the sphere of competence of the Community institutions and must remain a sector which the Member States are free to regulate as they see fit. Attention should therefore be drawn to the fact that they are a special case.

Amendment 18 Recital 10 c (new)

(10c) 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.

Justification

The Directive should not apply to activities that are permanently or temporarily connected to the exercise of official authority.

Clarification of the exception on the basis of Articles 39 and 45 of the Treaty.

Amendment 19

Recital 11

(11) In view of the fact that the Treaty provides specific legal bases for taxation matters and for the Community instruments already adopted in that field, it is necessary to exclude the field of taxation from the scope of this Directive, ***with the exception, however, of the provisions concerning prohibited requirements and the free movement of services. Harmonisation in the field of taxation has been achieved notably through Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment, Council Directive 90/434/EEC of 23 July 1990 on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States, Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States and Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States⁴. The present Directive does not aim to introduce specific new rules or systems in the field of taxation. Its sole objective is to remove restrictions, certain of which are fiscal in nature, and in particular those which are discriminatory, on freedom of***

(11) In view of the fact that the Treaty provides specific legal bases for taxation matters and for the Community instruments already adopted in that field, it is necessary to exclude the field of taxation from the scope of this Directive.

establishment and the free movement of services, in accordance with the case-law of the Court of Justice of the European Communities, hereinafter “the Court of Justice”, with respect to Articles 43 and 49 of the Treaty. The field of value added tax (VAT) is the subject of harmonisation at Community level, in accordance with which service providers carrying out cross-border activities may be subject to obligations other than those of the country in which they are established. It is nevertheless desirable to establish a system of “one-stop shops” for service providers, in order to enable all their obligations to be fulfilled by means of a single electronic portal to the tax authorities in their home Member State.

Justification

Taxation should be completely excluded from the scope of this directive.

Amendment 20

Recital 12

(12) Since transport services are already covered by a set of Community instruments specific to that field, they should be excluded from the scope of this Directive to the extent that they are regulated by other Community instruments adopted under Articles 71 and 80(2) of the Treaty. However, this Directive applies to services that are not regulated by specific instruments concerning transport such as cash in transit or the transport of deceased persons.

(12) 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 deceased persons are included in the scope of this Directive given that internal market problems have been identified in these fields.

Amendment 21

Recital 13

(13) There is already a considerable body of Community law on service activities, especially the regulated professions, postal

(13) This Directive shall apply only when there are no specific provisions of Community law governing specific aspects

services, television broadcasting, information society services and services relating to travel, holidays and package tours. Service activities are also covered by other instruments which do not deal with a specific category of services, such as those relating to consumer protection. This Directive builds on, and thus complements, the Community acquis. Where a service activity is already covered by one or more Community instruments, this Directive and those instruments will all apply, the requirements laid down by one adding to those laid down by the others. Accordingly, appropriate provisions should be laid down, including provision for derogations, in order to prevent incompatibilities and to ensure consistency as between all those Community instruments.

of access to and the exercise of a service activity in specific sectors or for specific professions.

Amendment 22

Recital 14

(14) The concept of service covers a wide variety of ever-changing activities, including business services such as management consultancy, certification and testing; facilities management, including office maintenance and security; advertising; recruitment services, including employment agencies; and the services of commercial agents. That concept also covers services provided both to businesses and to consumers, such as legal or fiscal advice; real estate services such as estate agencies; construction, including the services of architects; transport; distributive trades; the organisation of trade fairs; car rental; travel agencies; and security services. It also covers consumer services, such as those in the field of tourism, including tour guides; audio-visual services; leisure services, sports centres and amusement parks; health and health care services; and household support services, such as help for the

deleted

elderly. Those activities may involve services requiring the proximity of provider and recipient, services requiring travel by the recipient or the provider and services which may be provided at a distance, including via the Internet.

Justification

Unnecessary list.

Amendment 23

Recital 15

(15) As the Court of Justice has consistently held with regard to Articles 49 *et seq* 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 received in return, by way of consideration. Any service whereby a provider participates in the economy, irrespective of his legal status or aims, or the field of action concerned, thus constitutes a service.***

(15) 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. ***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.***

Justification

Brings the text into line with the definition of 'service'.

Amendment 24

Recital 16

(16) The characteristic of remuneration is absent in the case of activities performed, for no consideration, by the State ***in fulfilment of its social, cultural, educational and legal obligations.*** 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.

(16) ***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.

Justification

The clarification of the scope of Services Directive in the field of these activities is necessary. The case law of the European Court of Justice, including the case Humbel, provides the base for the clarification.

Amendment 25 Recital 18 a (new)

(18a) The place at which a service provider is established should be determined in conformity with the case law of the Court of Justice according to which the concept of establishment involves the actual pursuit of an economic activity through a fixed establishment for an indefinite period; this requirement 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.

Justification

In order to avoid that a mere letter box company could constitute an establishment, it needs to be

clarified that the business of providing a service only constitutes an establishment in a Member State provided that it is effectively carried out in that Member State.

Amendment 26
Recital 21

(21) The concept of the coordinated field covers all requirements applicable to access to service activities and to the exercise thereof, in particular those laid down by the laws, regulations and administrative provisions of each Member State, whether or not they fall within an area harmonised at Community level or are general or specific in nature and regardless of the legal field to which they belong under national law. ***deleted***

Justification

Brings the text into line with the amendments to Articles 4(9) and 16.

Amendment 27
Recital 21 a (new)

(21a) The rules relating to administrative procedures do not aim at harmonising administrative procedures but at removing overly burdensome authorisation schemes, procedures and formalities that hinder the freedom of establishment and the creation of new services undertakings resulting therefrom.

Justification

It should be stressed that administrative procedures are not harmonised.

Amendment 28
Recital 22

(22) One of the fundamental difficulties faced, in particular by SMEs, in accessing

(22) One of the fundamental difficulties faced, in particular by SMEs, in accessing

service activities and exercising them is the complexity, length and legal uncertainty of administrative procedures. For this reason, following the example of certain modernising and good administrative practice initiatives undertaken at Community and national level, it is necessary to establish principles of administrative simplification, inter alia through the introduction, coordinated at Community level, of a system of single points of contact, limitation of the obligation of prior authorisation to cases in which it is essential ***and the introduction of the principle of tacit authorisation by the competent authorities after a certain period of time has elapsed.*** Such modernising action, while maintaining the requirements on transparency and the updating of information relating to operators, is intended to eliminate the delays, costs and dissuasive effects which arise, for example, from unnecessary or excessively complex and burdensome procedures, the duplication of procedures, the red tape involved in submitting documents, the use of 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.

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 single points of contact, 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.

Justification

Brings the text into line with the amendment to Article 13(4).

Amendment 29
Recital 22 a (new)

(22a) 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.

Amendment 30
Recital 24

(24) With the aim of administrative simplification, general formal requirements, such as a certified translation, *must* not be imposed, except where objectively justified by an overriding reason relating to the public interest, such as the protection of workers. 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, is objectively justified by an overriding reason relating to the public interest, ***such as protection of the urban environment.***

(24) With the aim of administrative simplification, general formal requirements, such as ***presentation of original documents, certified copies or*** a certified translation, *should* not be imposed, except where objectively justified by an overriding reason relating to the public interest, such as the protection of workers, ***public health, the protection of the environment, 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.

Amendment 31
Recital 25 a (new)

(25a) 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.

Amendment 32
Recital 26

(26) The setting up, in the reasonably near future, of electronic means of completing procedures and formalities will be vital for administrative simplification in the field of service activities, for the benefit of providers, recipients and competent authorities. In order to meet that obligation as to results, national laws and other rules applicable to services may need to be adapted. 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.

(26) 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.

Justification

The use of languages in the administrative cooperation should respect Member states legislation in this field.

Amendment 33
Recital 26 a (new)

(26a) 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.

Justification

The directive's aim is to cut red tape and ensure swift and easy access to information. This amendment seeks to clarify the type of information to which the public must be given unfettered access.

Amendment 34
Recital 27 a (new)

(27a) 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.

Justification

Clarification.

Amendment 35
Recital 27 b (new)

(27b) 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.

Justification

This Directive is without prejudice to the rules on public procurement.

Amendment 36
Recital 27 c (new)

(27c) 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.

Amendment 37
Recital 27 d (new)

(27d) 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.

Amendment 38
Recital 28

(28) In cases where the number of authorisations available for an activity is limited because of scarcity of natural resources or technical capacity, *as may be the position, for example, with regard to the award of analogue radio frequencies or the exploitation of hydro-electric plant*, a procedure for selection from among several potential candidates must be adopted, with the aim of developing through open competition the quality and conditions for supply of services available to users. Such a procedure must provide guarantees of transparency and impartiality and the authorisation thus granted must not have an excessive duration, or be subject to automatic renewal, or confer any advantage on the successful provider. In particular, the duration of the authorisation granted must be fixed in such a way that it does not restrict or limit free competition beyond what is necessary to enable the provider to recoup the cost of investment and to make a fair return on the capital invested. **Cases where the number of authorisations is limited** for reasons other than scarcity of natural resources or technical capacity. **They** remain in any case subject to the other provisions of this Directive relating to authorisation schemes.

(28) 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.

Justification

Explanation of Article 12 para. 2.

Amendment 39
Recital 29

(29) The overriding reasons relating to the public interest to which reference is made in certain **harmonisation** provisions of this Directive **are those recognised** by the Court of Justice in relation to Articles 43 and 49 of the Treaty, **notably the protection of**

(24a) 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

consumers, recipients of services, workers and the urban environment.

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.

(If this amendment is adopted, it shall be placed as Recital 24 a (new))

Justification

The amendment is justified by the fact that the notion of overriding reasons relating to the public interest is essentially an open notion and should not be interpreted restrictively. The list included in this recital is a non-exhaustive list of grounds of justification.

Amendment 40

Recital 31

(31) The Court of Justice has consistently held that the freedom of establishment is

(31) The Court of Justice has consistently held that the freedom of establishment is

predicated, in particular, upon the principle of equal treatment, which entails the prohibition not only of any discrimination on grounds of nationality but also of any indirect discrimination based on other grounds but capable of producing the same result. Thus, access to a service activity or the exercise thereof in a Member State, either as a principal or secondary activity, may not be made subject to criteria such as place of establishment, residence, domicile or principal provision of the service activity. 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.

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.

Justification

Article 14(1)(b) makes residence requirements generally inadmissible. In so far as this covers direct formal requirements for the granting of permits, it is acceptable. However, in the case of certain services which depend on particular personal responsibility of the service provider, a requirement that the service provider be present at the place of establishment is justified for compelling public-interest reasons. Presence requirements that do not necessarily compel the service provider to have his place of residence in the Member State of establishment should not be covered by Article 14(1)(b).

Amendment 41 Recital 32

(32) The prohibition of economic tests as a

(32) The prohibition of economic tests as a

prerequisite for the grant of authorisation covers economic tests as such, but not requirements which are objectively justified by overriding reasons relating to the public interest, such as protection of the urban environment. That prohibition does not affect the exercise of the powers of the authorities responsible for applying competition law.

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.***

Justification

Clarification..

Amendment 42
Recital 33 a (new)

(33a) 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.

Justification

Certain restriction (i.e. according to population) should be further allowed in sparsely populated areas in order to ensure high protection of public health and social policy objectives.

Amendment 43

Recital 34

(34) The restrictions to be examined include national rules which, on grounds other than those relating to professional qualifications, reserve access to activities ***such as games of chance*** to particular providers. ***Similarly, among the requirements to be examined are "must carry" rules applicable to cable operators which, by imposing an obligation on an intermediary service provider to give access to certain services delivered by specific service providers, affect his freedom of choice, access to programmes and the choice of the recipients.***

(34) 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.

Amendment 44

Recital 35

(35) It is appropriate that the provisions of this Directive concerning freedom of establishment should apply only to the extent that the activities in question are open to competition, so that they do not oblige Member States to abolish existing monopolies, ***notably those of lotteries, or to privatise certain sectors.***

(6a) 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.***

(If this amendment is adopted, it shall be placed as Recital 6 a (new))

Justification

The Directive should not cover successfully operating and non-discriminatory monopolies which

Member States have set up to protect public health or to maintain public order.

The directive should not affect the continued existence of monopolies already providing services.

Amendment 45

Recital 37

(37) In order to secure effective implementation of the free movement of services and to ensure that recipients and providers can benefit from and supply services throughout the Community regardless of frontiers, it is necessary ***to establish the principle that a provider may be subject only to the law of the Member State in which he is established. The principle is essential in order to enable providers, especially SMEs, to avail themselves with full legal certainty of the opportunities offered by the internal market. By thus facilitating the free movement services between Member States, that principle, together with harmonisation and mutual assistance measures, also enables recipients to gain access to a wider choice of high quality services from other Member States. That principle should be complemented by an assistance mechanism enabling the recipient, in particular, to be informed about the laws of the other Member States, and by the harmonisation of rules on the transparency of service activities.***

(37) In order to secure effective implementation of the free movement of services and to ensure that recipients and providers can benefit from and supply services throughout the Community regardless of frontiers, it is necessary ***to clarify to 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.***

Amendment 46

Recital 38

(38) ***It is also necessary to ensure that supervision of service activities is carried out at source, that is to say, by the competent authorities of the Member State in which the provider is established. The competent authorities of the country of origin are best placed to ensure the effectiveness and continuity of supervision of the provider and to provide protection***

deleted

for recipients not only in their own Member State but also elsewhere in the Community. In order to establish mutual trust between Member States in the regulation of service activities, it should be clearly laid down that responsibility under Community law for supervision of the activities of providers, regardless of the place where the service is provided, lies with the Member State of origin. Determination of judicial jurisdiction does not fall within the scope of this Directive. but within that of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, or other Community instruments such as 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 services.

Amendment 47
Recital 39

(39) As a corollary to the principle that the law of the country of origin should apply and that the country of origin should be responsible for supervision, it is necessary to lay down the principle that Member States may not restrict services coming from another Member State.

deleted

Amendment 48
Recital 40 a (new)

(40a) The rules of the country of origin do 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.

Amendment 49
Recital 41

(41) 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 **Member State of posting** 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.

(41) 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.

Justification

Brings the text into line with the deletion of Articles 24 and 25

Amendment 50
Recital 41 a (new)

(41a) This Directive should not affect terms and conditions of employment which, pursuant to Directive 96/71/EC, apply to workers posted to provide a service in the territory of another Member State. In such cases, Directive 96/71/EC stipulates that service providers have to comply with terms and conditions of employment in a listed number of areas applicable in the Member State where the service is provided. These are: maximum work periods and minimum rest periods, minimum paid annual holidays, minimum rates of pay, including overtime rates, the conditions of hiring-out of workers, in particular the 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 enlisted in Directive 96/71/EC on the grounds of public policy provisions.

Justification

This new recital clarifies what are the matters covered by Directive 96/71/EC as well as the matters for which Directive 96/71/EC explicitly leaves the possibility to Member States of adopting more protective measures at national level.

Amendment 51 Recital 41 b (new)

(41b) This Directive should neither affect terms and conditions of employment in cases where the worker employed for the provision of a cross-border service is recruited in the Member State where the service is provided. 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.

Justification

This new recital clarifies what are the matters covered by Directive 96/71/EC as well as the matters for which Directive 96/71/EC explicitly leaves the possibility to Member States of adopting more protective measures at national level.

Amendment 52
Recital 41 c (new)

(41c) As the terms and conditions applying to temporary workers are covered by Article 3(9) of Directive 96/71/EC, they are exempt from the application of the rules of the country of origin as provided for in this Directive. Further, the conditions concerning the hiring-out of workers, including the conditions regarding supply of workers by temporary employment agencies, are exempt, meaning that the restrictions or prohibitions laid down by the Member State of destination apply as regards, inter alia, the use of hired-out workers, limitations as to the maximum duration of temporary employment, and so on.

Justification

This recital clarifies the scope of the provisions concerning the posting of workers. The services directive must provide possibilities for preventative measures, in order to prevent abuse in the area of temporary employment. A certain level of market regulation in the temporary employment sector may be considered advisable in order to prevent abuse in the area of temporary employment.

Amendment 53
Recital 45

(45) A number of Directives concerning contracts concluded by consumers have already been adopted at Community level.

(45) Contractual relations between the service provider and the client as well as between employer and employee shall not

However, the approach followed by those Directives is one of minimal harmonisation. In order to limit as far as possible divergences between consumer protection rules across the Community that fragment the internal market to the detriment of consumers and enterprises, the Commission stated in its Communication on consumer policy strategy 2002-2006 that one of its key priorities would be full harmonisation. Furthermore, the Commission stressed in its Action Plan on "A more coherent European contract law" the need for greater coherence in European consumer law which would entail, in particular, a review of the existing law on contracts concluded with consumers in order to remedy residual inconsistencies, to fill gaps and to simplify legislation.

be subject to this Directive. The determination of the applicable contractual and extra-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.

Justification

Consequence of excluding International Private Law.

Amendment 54
Recital 46

(46) It is appropriate to apply the country of origin principle to the field of contracts concluded by consumers for the supply of services only to the extent that Community Directives provide for full harmonisation, because in such cases the levels of consumer protection are equivalent. The derogation from the country of origin principle relating to the non-contractual liability of a provider in the case of an accident involving a person and occurring as a consequence of the service provider's activities in the Member State into which he has moved temporarily concerns physical or material damage suffered by a person in the accident.

deleted

Justification

Brings the text into line with the amendments to Articles 16 and 17.

Amendment 55
Recital 50

(50) If an internal area without frontiers is to be effectively achieved, Community citizens must neither be prevented from benefiting from a service which is technically accessible on the market, nor be made subject to different conditions and tariffs, by reason of their nationality or place of residence. The persistence of such discrimination with respect to the recipients of services highlights, for the Community citizen, the absence of a genuine internal market in services and, in a more general sense, compromises the integration of the peoples of Europe. The principle of non-discrimination within the internal market means that access by a recipient, and especially by a consumer, to a service on offer to the public may not be denied or hampered by application of a criterion, included in general conditions made available to the public, relating to the recipient's nationality or place of residence. It does not follow that 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 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, or extra risks linked to rules differing from those of the Member State of origin.

(50) ***Whilst this Directive is not intended to harmonise artificially prices across the European Union, in particular where market conditions vary from country to country***, if an internal area without frontiers is to be effectively achieved, ***the principle of non-discrimination imposes that*** Community citizens must neither be prevented from benefiting from a service which is technically accessible on the market, nor be made subject to different conditions and tariffs ***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 it will be unlawful discrimination if provision were made in such general conditions for different tariffs and conditions to apply to the provision of a service, where those tariffs and conditions are justified for objective reasons ***that can vary from country to country***, such as additional costs effectively incurred because of the distance involved or the technical characteristics of the provision of the service, or different market conditions, ***such as higher or lower demand influenced by seasonality, different vacation periods in the Member States and pricing by different competitors***, or extra risks linked to rules differing from those of the Member State of

origin.

Justification

Recital 50 contains ambiguities which could have far-reaching consequences that would contradict the Directive's aim of, inter alia, fostering competition in the provisions of services to the benefit of Community citizens. Whilst the Directive attempts to tackle – quite rightly – any form of discrimination, including on price, it clearly is not the objective of the Directive to ban differentiation where this is rooted in the normal functioning of markets, or to artificially harmonise prices.

Amendment 56
Recital 51

(51) In accordance with the principles established by the Court of Justice with regard to the freedom to provide services, and without endangering the financial balance of Member States' social security systems, greater legal certainty as regards the reimbursement of health costs should be provided for patients, who benefit as recipients from the free movement of services, and for health professionals and managers of social security systems. ***deleted***

Justification

The deletion of recitals 51-57 is consistent with the deletion of Article 23.

Amendment 57
Recital 52

(52) 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 to members of their families moving within the Community and, in particular, its provisions regarding affiliation to a system of social security, fully applies to employed and self-employed workers who provide or take part in the supply of a service. ***deleted***

Justification

The deletion of recitals 51-57 is consistent with the deletion of Article 23.

Amendment 58
Recital 53

(53) Article 22 of Regulation (EEC) No 1408/71, which concerns authorisation for assuming the costs of health care provided in another Member State, contributes, as the Court of Justice has emphasised, to facilitating the free movement of patients and the provision of cross-border medical services. The purpose of that provision is to ensure that insured persons possessing an authorisation have access to health care in another Member State under conditions which, as regards the assumption of costs, are as favourable as those applying to insured persons in that Member State. It thus confers on insured persons rights they would not otherwise have and facilitates the free movement of services. On the other hand, that provision does not seek to regulate, nor in any way to prevent, reimbursement, at the rates applicable in the Member State of affiliation, of the costs of health care provided in another Member State, even in the absence of a prior authorisation. ***deleted***

Justification

The deletion of recitals 51-57 is consistent with the deletion of Article 23.

Amendment 59
Recital 54

(54) In the light of the case-law developed by the Court of Justice on the free movement of services, it is necessary to abolish the requirement of prior authorisation for reimbursement by the social security system of a Member State for non-hospital care provided in another Member State, and Member States must amend their legislation accordingly. In so far as the reimbursement of such care remains within the limits of the cover ***deleted***

guaranteed by the sickness insurance scheme of the Member State of affiliation, abolition of the prior authorisation requirement is not likely seriously to disrupt the financial equilibrium of social security systems. As the Court of Justice has consistently held, the conditions under which Member States grant non-hospital care on their own territory remain applicable in the case of care provided in a Member State other than that of affiliation in so far as those conditions are compatible with Community law. By the same token, authorisation schemes for the assumption of costs of care in another Member State must comply with this Directive as regards the conditions for granting authorisation and the related procedures.

Justification

The deletion of recitals 51-57 is consistent with the deletion of Article 23.

Amendment 60

Recital 55

(55) As the Court of Justice has consistently held with regard to the free movement of services, a system of prior authorisation for the reimbursement of hospital care provided in another Member State appears justified by the need to plan the number of hospital infrastructures, their geographical distribution, the mode of their organisation, the equipment with which they are provided and even the nature of the medical services which they are able to offer. The aims of such planning are to ensure, within each Member State, sufficient permanent access to a balanced range of quality hospital care, to secure efficient cost management and, so far as is possible, to avoid wastage of financial, technical or human resources. In accordance with the case-law of the Court of Justice, the concept of hospital care must be objectively defined and a

deleted

system of prior authorisation must be proportionate to the general interest objective pursued.

Justification

The deletion of recitals 51-57 is consistent with the deletion of Article 23.

Amendment 61
Recital 56

(56) Article 22 of Council Regulation (EEC) No 1408/71 specifies the circumstances in which the competent national institution may not refuse an authorisation sought on the basis of that provision. Member States may not refuse authorisation in cases where the hospital care in question, when provided in their territory, is covered by their social security system, and treatment which is identical or equally effective cannot be obtained in time in their territory under the conditions laid down by their social security system. The Court of Justice has consistently held that the condition relating to acceptable delay must be considered together with all the circumstances of each case, taking due account not only of the medical condition of the patient at the time when authorisation is requested, but also his medical history and the probable evolution of his illness. ***deleted***

Justification

The deletion of recitals 51-57 is consistent with the deletion of Article 23.

Amendment 62
Recital 57

(57) The assumption of costs, by the social security systems of the Member States, in respect of health care provided in another Member State must not be lower than that provided for by their own social security system for health care provided in their ***deleted***

territory. As the Court has consistently pointed out with regard to the free movement of services, in the absence of authorisation, the reimbursement of non-hospital care in accordance with the scales of the Member State of affiliation would not have a significant effect on the financing of its social security system. In cases where authorisation has been granted, in the framework of Article 22 of Regulation (EEC) No 1408/71, the assumption of costs is made in accordance with the rates applicable in the Member State in which the health care is provided. However, if the level of coverage is lower than that to which the patient would have been entitled if he had received the same care in the Member State of affiliation, the latter must assume the remaining costs up to the level which would have applied.

Justification

The deletion of recitals 51-57 is consistent with the deletion of Article 23.

Amendment 63
Recital 58

(58) As regards the posting of workers in the context of the provision of services in a Member State other than the Member State of origin, it is necessary to clarify the division of roles and tasks between the Member State of origin and the Member State of posting, in order to facilitate the free movement of services. The present Directive does not aim to address issues of labour law as such. The division of tasks and the specifying of the forms of cooperation between the Member State of origin and the Member State of posting facilitates the free movement of services, especially by abolishing certain disproportionate administrative procedures, while also improving the monitoring of compliance with employment and working conditions in accordance with Directive

deleted

96/71/EC.

Justification

The deletion of recitals 58-61 is consistent with the deletion of Articles 24-25.

Amendment 64
Recital 59

(59) In order to avoid discriminatory or disproportionate administrative formalities, which would be a disincentive to SMEs in particular, it is necessary to preclude the Member State of posting from making postings subject to compliance with requirements such as an obligation to request authorisation from the authorities. The obligation to make a declaration to the authorities of the Member State of posting should also be prohibited. However, it should be possible to maintain such an obligation until 31 December 2008 in the field of building work in accordance with the Annex to Directive 96/71/EC. In that connection, a group of Member State experts on the application of that Directive are studying ways to improve administrative cooperation between Member States in order to facilitate supervision. Furthermore, as regards employment and working conditions other than those laid down in Directive 96/71/EC, it should not be possible for the Member State of posting to take restrictive measures against a provider established in another Member State. *deleted*

Justification

The deletion of recitals 58-61 is consistent with the deletion of Articles 24-25.

Amendment 65
Recital 60

(60) By virtue of the free movement of services, a service provider is entitled to post workers even if they are not *deleted*

Community citizens but third country nationals, provided that they are legally present and lawfully employed in the Member State of origin. It is appropriate to place the Member State of origin under an obligation to ensure that any posted worker who is a third country national fulfils the conditions for residence and lawful employment laid down in its legislation, including with regard to social security. It is also appropriate to preclude the host Member State from imposing on the worker or the provider any preventative controls, especially as regards right of entry or residence permits, except in certain cases. Nor should it be possible for the host Member State to impose any obligations such as possession of an employment contract of indefinite duration or a record of previous employment in the Member State of origin of the provider.

Justification

The deletion of recitals 58-61 is consistent with the deletion of Articles 24-25.

Amendment 66

Recital 61

<i>(61) Following the adoption of Council Regulation (EC) No 859/2003 of 14 May 2003 extending the provisions of Regulation (EEC) No 1408/71 and Regulation (EEC) No 574/72 to nationals of third countries who are not already covered by those provisions solely on the ground of their nationality, third country nationals are covered by a system of cooperation on the application of social security schemes to employed persons and to members of their families moving within the Community, established by Regulation (EEC) No 1408/71, under which the rules of the country under whose social security scheme the worker is insured are to apply.</i>	<i>deleted</i>
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Justification

The deletion of recitals 58-61 is consistent with the deletion of Articles 24-25.

Amendment 67
Recital 63 a (new)

(63a) The 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.

Justification

In keeping with the new arrangements set out in Article 27 of the directive.

Amendment 68
Recital 66 a (new)

(66a) 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.

Justification

The Commission proposal is based on the assumption that only the Member State of origin should be responsible for controlling the service provider. This does not meet the necessities of administrative control. Therefore it seems to be necessary to establish a system of administrative cooperation in Articles 34 to 37 defining the tasks of the Member State of origin and the Member State of destination as well as the mechanism for efficient administrative cooperation. There should be a regular evaluation of the Member States' activities in this field and an obligation for the Commission to bring those Member States who do not comply with these provisions to the Court of Justice.

Amendment 69
Recital 66 b (new)

(66b) 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.

Justification

The Commission proposal is based on the assumption that only the Member State of origin should be responsible for controlling the service provider. This does not meet the necessities of administrative control. Therefore it seems to be necessary to establish a system of administrative cooperation in Articles 34 to 37 defining the tasks of the Member State of origin and the Member State of destination as well as the mechanism for efficient administrative cooperation. There should be a regular evaluation of the Member States' activities in this field and an obligation for the Commission to bring those Member States who do not comply with these provisions to the Court of Justice.

Amendment 70
Recital 67

(67) It is necessary to provide that the Member States, in cooperation with the Commission, are to encourage interested parties to draw up codes of conduct at Community level aimed in particular at promoting the quality of services and taking into account the specific nature of each profession. Those codes of conduct should comply with Community law, especially competition law.

(67) It is necessary to provide that the Member States, in cooperation with the Commission, are to encourage interested parties to draw up codes of conduct at Community level aimed in particular at promoting the quality of services and taking into account the specific nature of each profession. Those codes of conduct should comply with Community law, especially competition law. ***They may not be incompatible with legally binding rules governing professional ethics and conduct in the Member States.***

Justification

It must be made clear that in some Member States some of the rules governing professional ethics and conduct are regulated by law and that the codes of conduct may not replace or take precedence over these rules.

Amendment 71

Recital 67 a (new)

(67a) Member States should encourage the setting up of codes of conduct particularly by professional bodies, organisations and associations at Community level. These codes of conduct should include, as appropriate to the specific nature of each profession, rules for commercial communications relating to regulated professions, and rules of professional ethics and conduct of the regulated professions which aim in particular at ensuring independence, impartiality and professional secrecy. In addition, the conditions to which the activities of estate agents are subject should be included in such codes of conduct. Member States should take accompanying measures to encourage professional bodies, organisations and associations to implement at national level the codes of conduct adopted at Community level.

(See amendment to Article 39)

Amendment 72

Article 1

This Directive establishes general provisions facilitating exercise of the freedom of establishment for service providers and the free movement of services.

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 shall not apply to the liberalisation of services of general economic interest, or to the privatisation of public entities providing such services. It shall also be without prejudice to provisions

of Community law on competition and aid.

3. This Directive shall not affect measures taken at Community or national level to protect or promote cultural or linguistic diversity or media pluralism.

4. This Directive shall be without prejudice to labour law, and, in particular, to any provisions on relations between the social partners, including the right to take industrial action and the right to collective agreements. This Directive shall not affect national social security legislation in the Member States.

Amendment 73

Article 2, paragraph 2, point -(a) (new)

(-a) services of general interest as defined by the Member States;

Amendment 74

Article 2, paragraph 2, point (a)

(a) financial services as defined in Article 2(b) of Directive 2002/65/EC;

(a) services of a banking, credit, insurance, occupational or personal pension, investment or payment nature and, more generally, services listed in Annex I of 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;

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).

Amendment 75

Article 2, paragraph 2, point (b)

(b) electronic communications services and networks, and associated facilities and

(b) electronic communications services and networks, and associated facilities and

services, with respect to matters covered by Directives 2002/19/EC, 2002/20/EC, 2002/21/EC, 2002/22/EC and 2002/58/EC of the European Parliament and of the Council;

services, with respect to matters covered by ***or referred to in*** Directives 2002/19/EC, 2002/20/EC, 2002/21/EC, 2002/22/EC and 2002/58/EC of the European Parliament and of the Council;

Amendment 76

Article 2, paragraph 2, point (c)

(c) transport services to the extent that they are governed by other Community instruments the legal basis of which is Article 71 or Article 80(2) of the Treaty.

(c) transport services to the extent that they are governed by other Community instruments the legal basis of which is Article 71 or Article 80(2) of the *Treaty*, ***with the exception of cash in transit and the transport of mortal remains;***

Amendment 77

Article 2, paragraph 2, point (c a) (new)

(ca) 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.

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.

Justification

To ensure the existing EU lawyers' acquis applies and is not affected by conflicting provisions of this directive.

Amendment 78

Article 2, paragraph 2, point (c b) (new)

(cb) 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;

Amendment 79

Article 2, paragraph 2, point (c c) (new)

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

Amendment 80

Article 2, paragraph 2, point (c d) (new)

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

Amendment 81

Article 2, paragraph 2, point (c e) (new)

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

Amendment 82

Article 2, paragraph 3

3. This Directive does not apply to the field of taxation, ***with the exception of Articles 14***

3. This Directive does not apply to the field

and 16 to the extent that the restrictions identified therein are not covered by a Community instrument on tax harmonisation.

of taxation.

Amendment 83
Article 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.

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 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;

(b) Council Regulation (EC) 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 Community²;

(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 activities³;

(d) Directive .../.../EC of the European Parliament and of the Council concerning the recognition of professional qualifications.

Application of this Directive shall not prevent the application of provisions of other Community instruments as regards the services governed by those provisions.

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).

¹ OJ L 18, 21.1.1997, p. 1.

² 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).

³ *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).*

Amendment 84
Article 4, point 1

(1) "service" means any self-employed economic activity, as referred to in Article 50 of the Treaty, ***consisting in the provision of a service for consideration;***

(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.***

Amendment 85
Article 4, point 1 a (new)

(1a) "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;

Amendment 86
Article 4, point 1 b (new)

(1b) "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;

Amendment 87
Article 4, point 2

(2) "provider" means any natural person who is a national of a Member State, or any legal person, who offers or provides a service.

(2) "provider" means any natural person who is national of a Member State, or any legal person, ***established in accordance with the law of that Member State***, who offers or provides a service;

Amendment 88
Article 4, point 3

(3) "recipient" means any natural or legal person who, for professional or non-professional purposes, uses, or wishes to use, a service;

(3) "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;

Amendment 89
Article 4, point 5

(5) "establishment" means the actual pursuit of an economic activity, as referred to in Article 43 of the Treaty, ***through a fixed establishment of the provider for an indefinite period***;

(5) "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***;

Amendment 90
Article 4, point 7

(7) "requirement" means any obligation, prohibition, condition or limit provided for in the laws, regulations or administrative provisions of the Member States or in consequence of case-law, administrative practice 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;

(7) "requirement" means any obligation, prohibition, condition or limit provided for in the laws, regulations or administrative provisions of the Member States or in consequence of case-law, administrative practice, the rules of professional bodies or the collective rules of professional associations or other professional organisations, adopted in the exercise of their legal autonomy; ***rules laid down by collective agreements shall not be seen as requirements within the meaning of this Directive***;

Amendment 91
Article 4, point 7 a (new)

(7a) “overriding reasons relating to the public interest” refers inter alia to the following reasons: the protection of public policy, public security, public safety, public health, the protection of consumers, recipients of services, workers and the environment including the urban environment, the health of animals, intellectual property, the conservation of the national historic and artistic heritage, social policy objectives and cultural policy objectives;

Amendment 92
Article 4, point 8

(8) "competent authority" means any body or authority which has a supervisory or regulatory role in a Member State in relation to service activities, including, in particular, administrative authorities, professional bodies, and those professional associations or other professional organisations which, in the exercise of their legal autonomy, regulate in a collective manner access to service activities or the exercise thereof;

(8) "competent authority" means any body or authority which has a supervisory or regulatory role in a Member State in relation to service activities, including, in particular, administrative authorities, ***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;

Amendment 93
Article 4, point 9

(9) "coordinated field" means any requirement applicable to access to service activities or to the exercise thereof;

deleted

Amendment 94
Article 4, point 10

(10) “hospital care” means medical care which can be provided only within a medical infrastructure and which normally requires the accommodation therein of the

deleted

person receiving the care, the name, organisation and financing of that infrastructure being irrelevant for the purposes of classifying such care as hospital care;

Amendment 95
Article 4, point 11

(11) ***“Member State of posting”*** means the Member State *in whose territory a provider posts a worker in order to provide services there;*

(11) ***“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;*

Amendment 96
Article 4, point 11 a (new)

(11a) “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;

Justification

The introduction of a definition of worker is justified by the fact that it should be the country on whose territory the work is being done that should determine who is to be regarded as a worker.

Amendment 97
Article 4, point 12

(12) ***“lawful employment” means the*** ~~*salaried activity of a worker, performed in accordance with the national law of the Member State of origin of the provider;*~~ ***deleted***

Justification

The removal of the definitions included in Article 4(10), (11) and (12) is consistent with the deletion of Articles 23, 24 and 25 of this Directive.

Amendment 98
Article 4, point 13

(13) “regulated profession” means a professional activity or a group of professional activities *access to which or pursuit of which, or one of the modes of pursuing which, is conditional, directly or indirectly, upon possession of specific professional qualifications, pursuant to laws, regulations or administrative provisions*;

(13) “regulated profession” means a professional activity or a group of professional activities *as referred to in Article 3(1)(a) of Directive ../../EC of the European Parliament and of the Council on the recognition of professional qualifications*;

Amendment 99
Chapter II, title and section I, title

Chapter II

Freedom of establishment for service providers

Section 1

Administrative simplification

Chapter II

Administrative simplification

Justification

(Administrative simplification must be applied not only to the freedom of establishment for service providers but also to the freedom to provide services. This is why the structure of the Commission proposal has been modified in order to apply Articles 5-8 to the two fundamental freedoms.)

Amendment 100
Article 5

1. Member States shall *simplify* the procedures and formalities applicable to access to a service activity and to the exercise thereof.

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*.

1a. The provisions of this Chapter shall apply to cross-border activities only.

1b. 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.

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

3. Paragraph 2 shall not apply to the documents referred to in ***Article 46*** of Directive/EC of the European Parliament and of the Council ***or*** in Article 45(3) of ***Directive/EC*** of the European Parliament and of the Council.

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

3. Paragraph 2 shall not apply to the documents referred to in ***Article 50*** of Directive/EC of the European Parliament and of the Council ***on the recognition of professional qualifications***, 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 contracts¹***, in ***Article 3(2) of 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, 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 companies³ 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 State⁴.

¹*OJ L 134, 30.4.2004, p. 114.*

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

³*OJ L 221, 4.9.2003, p. 13.*

⁴*OJ L 395, 30.12.1986, p. 36.*

Amendment 101
Article 6, introductory part

Member States shall ensure that, by **31 December 2008** at the latest, it is possible for a service provider to complete the following procedures and formalities at a contact point known as a ‘single point of contact’:

1. 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 provision of this Chapter and Chapter II a* at a contact point known as a ‘single point of contact’:

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

Amendment 102
Article 6, paragraph 1 a (new)

1a. *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 single point of 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.

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

Amendment 103
Article 6, paragraph 1 b (new)

1b. The Commission shall coordinate the single points of contact by establishing a European single point of contact.

Amendment 104
Article 6, paragraph 1 c (new)

1c. The establishment of the single point of contact shall be without prejudice to the allocation of functions and powers among the authorities within national systems.

Amendment 105
Article 7, paragraph 1, point (d)

(d) the means of redress 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;

(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;

Amendment 106
Article 7, paragraph 2

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.

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.***

Amendment 107
Article 7, paragraph 3

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

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.

Amendment 108
Article 7, paragraph 5

5. Member States shall implement paragraphs 1 to 4 by **31 December 2008** at the latest.

5. Member States shall implement paragraphs 1 to 4 by ... * at the latest.

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

Amendment 109
Article 7, paragraph 6

6. Member States and the Commission shall **take accompanying measures in order to** encourage single points of contact to make the information provided for in **paragraphs 1 and 2** available in other Community languages.

6. Member States and the Commission shall encourage single points of 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.**

Amendment 110
Article 7, paragraph 6 a (new)

6a. 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.

Amendment 111
Article 8

1. Member States shall ensure that, by

1. Member States shall ensure that, by ... * at

31 December 2008 at the latest, all procedures and formalities relating to access to a service activity and to the exercise thereof may be easily completed, at a distance and by electronic means, at the relevant single point of contact and with the relevant competent authorities.

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

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

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 single point of 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*** the interoperability of information systems and use of procedures by electronic means between Member States. ***The procedure referred to in Article 42(2) shall apply.***

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

Amendment 112
Chapter II a (new)

Chapter IIa

Freedom of establishment for service providers

Justification

Brings the text into line with the amendment to Chapter II. Articles 5-8 should apply to both fundamental freedoms. The chapter on the freedom of establishment for service providers thus only covers authorisation schemes (Articles 9-13), which become Section 1, and requirements that are prohibited or subject to evaluation (Articles 14-15), which become Section 2.

Amendment 113
Section 2, title

Section 2

Section 1

Justification

(Brings the text into line with the amendment to Chapter II. Articles 5-8 should apply to both fundamental freedoms. The chapter on the freedom of establishment for service providers thus only covers authorisation schemes (Articles 9-13), which become Section 1, and requirements that are prohibited or subject to evaluation (Articles 14-15), which become Section 2.)

Amendment 114
Article 9, paragraph 1, introductory part

1. Member States ***shall not*** make access to a service activity or the exercise thereof subject to an authorisation scheme ***unless*** the following conditions are satisfied:

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:

Amendment 115
Article 9, paragraph 1, point (b)

(b) the need for an authorisation scheme is ***objectively*** justified by an overriding reason relating to the public interest;

(b) the need for an authorisation scheme is justified by an overriding reason relating to the public interest;

Amendment 116
Article 9, paragraph 2

2. In the report referred to in Article 41, Member States shall identify their authorisation schemes and give reasons showing their compatibility with paragraph 1.

deleted

Amendment 117
Article 9, paragraph 3

3. ***This Section*** shall not apply to authorisation schemes which are either imposed or permitted by other Community instruments.

3. ***Paragraph 1*** shall not apply to authorisation schemes which are either imposed or permitted by other Community instruments.

This paragraph shall not apply to aspects of authorisation schemes that are subject to harmonisation under other Community instruments.

Amendment 118
Article 10, paragraph 2, point (b)

(b) ***objectively*** justified by an overriding reason relating to the public interest;

(b) justified by an overriding reason relating to the public interest;

Amendment 119
Article 10, paragraph 2, point (f a) (new)

(fa) transparent and accessible.

Amendment 120
Article 10, paragraph 3

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 35 and the provider shall assist the competent authority by providing any necessary information on those requirements.

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 35 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.***

Amendment 121
Article 10, paragraph 4

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 is ***objectively*** justified by an

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***

overriding reason relating to the public interest.

restricted to a specific part of the national territory is justified by an overriding reason relating to the public interest.

Amendment 122
Article 10, paragraph 6

6. Any ***refusal or*** other response from the competent authorities, including 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.

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.

Amendment 123
Article 10, paragraph 6 a (new)

6a. 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.

Amendment 124
Article 11, paragraph 1, point (a)

(a) the authorisation is being automatically renewed;

(a) the authorisation is being automatically renewed ***or is subject only to the continued fulfilment of requirements;***

Amendment 125
Article 11, paragraph 1, point (b)

(b) the number of available authorisations is limited;

(b) the number of available authorisations is limited ***by an overriding reason relating to the public interest.***

Amendment 126
Article 11, paragraph 1, point (c)

(c) a limited authorisation period can be ***objectively*** justified 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.

Amendment 127
Article 11, paragraph 3

3. Member States shall require ***the*** provider to inform the relevant single point of contact provided for in Article 6 of ***any change in his situation which is likely to affect the efficiency of supervision by the competent authority, including, in particular,*** the creation of subsidiaries whose activities fall within the scope of the authorisation system, ***or*** which result in the conditions for authorisation no longer being met, ***or which affect the accuracy of information available to a recipient.***

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

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

Amendment 128
Article 11, paragraph 3 a (new)

3a. This Article shall be without prejudice to Member States' ability to revoke authorisations, especially when the conditions for authorisation are no longer met.

Amendment 129
Article 12, paragraph 1

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.

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.***

Amendment 130
Article 12, paragraph 2 a (new)

2a. 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.

Justification

Where the provision of a service may have implications for public health, health and safety in the workplace, the environment, a Member State's cultural heritage or any other vital consideration which falls outside the purely commercial, it is reasonable for Member States to apply non-commercial criteria as an aspect of their selection procedure, provided in all cases that these are non-discriminatory and in keeping with the Treaty.

Amendment 131
Article 13, paragraph 1

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

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.

Amendment 132
Article 13, paragraph 2

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.

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.***

Amendment 133
Article 13, paragraph 3

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.

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.***

Amendment 134
Article 13, paragraph 4

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

4. ***Member States shall ensure that applicants receive*** a response within the time period set in accordance with paragraph 3.

Amendment 135
Article 13, paragraph 5

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

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.

(a) the period for response referred to in paragraph 3;

(b) ***the available means of redress***;

(c) ***where applicable, a statement that in the absence of a response within the period specified, the authorisation shall be deemed to have been granted.***

Amendment 136
Article 13, paragraph 6

6. In the case of an incomplete application ***or where an application is rejected on the grounds that it fails to comply with the***

6. In the case of an incomplete application, the persons having an interest in the matter must be informed as quickly as possible of

required procedures or formalities, the persons having an interest in the matter must be informed as quickly as possible of the need to supply any additional documentation.

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.***

Amendment 137
Article 13, paragraph 6 a (new)

6a. 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.

Amendment 138
Section 3, title

Section 3

Section 2

Justification

(Brings the text into line with the amendment to Chapter II. Articles 5-8 should apply to both fundamental freedoms. The chapter on the freedom of establishment for service providers thus only covers authorisation schemes (Articles 9-13), which become Section 1, and requirements that are prohibited or subject to evaluation (Articles 14-15), which become Section 2.)

Amendment 139
Article 14, paragraph 2

(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;

Does not affect English text.

Justification

Does not affect English text.

Amendment 140
Article 14, paragraph 5

(5) the case-by-case application of an economic test making the granting of authorisation subject to proof of the

(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;

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;

Amendment 141
Article 14, paragraph 6

(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;

(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;***

Justification

Consultation of chambers of commerce or social partners are in many cases necessary instruments in order to organise efficient services provision

Amendment 142
Article 14, paragraph 7

(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;

(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 27(3), 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;

Justification

To permit certain existing compensation or guarantee funds and schemes for professional indemnity insurance that are operated by professional bodies or organisations or under special rights granted by the state, and that comply with the requirements of Article 27, to continue to operate.

Amendment 143
Article 14, paragraph 8

(8) an obligation to have been ***entered, for a given period*** in the registers held in their territory or to have exercised the activity ***for a given period*** in their territory.

(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.

Justification

The right for Member states to require registration should remain.

Amendment 144
Article 15, paragraph 2, point (b)

(b) an obligation on a provider to take a specific legal form, ***in particular to be a legal person, to be a company with individual ownership, to be a non-profit making organisation or a company owned exclusively by natural persons;***

(b) an obligation on a provider to take a specific legal form,

Amendment 145
Article 15, paragraph 2, point (c)

(c) requirements which relate to the shareholding of a company, ***in particular an obligation to hold a minimum amount of capital for certain service activities or to have a specific professional qualification in***

(c) requirements which relate to the shareholding of a company;

order to hold capital in or to manage certain companies;

Amendment 146
Article 15, paragraph 2, point (d)

(d) requirements, other than those concerning professional qualifications or provided for in other Community instruments, which reserve access to the service activity in question to particular providers by virtue of the specific nature of the activity;

(d) requirements, other than those concerning *matters covered by Title II of Directive .../EC on the recognition of* professional qualifications or provided for in other Community instruments, which reserve access to the service activity in question to particular providers by virtue of the specific nature of the activity;

Amendment 147
Article 15, paragraph 2, point (h)

(h) prohibitions and obligations with regard to selling below cost and to sales;

deleted

Amendment 148
Article 15, paragraph 2, point (i)

(i) requirements that an intermediary provider must allow access to certain specific services provided by other service-providers;

deleted

Amendment 149
Article 15, paragraph 3, point (b)

(b) necessity: requirements must be *objectively* justified by an overriding reason relating to the public interest;

(b) necessity: requirements must be justified by an overriding reason relating to the public interest;

Amendment 150
Article 15, paragraph 5

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

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.

Amendment 151
Article 15, paragraph 6

<i>(6) Member States shall notify to the Commission any new laws, regulations or administrative provisions which set requirements as referred to in paragraph 5, together with the reasons for those requirements. The Commission shall communicate the provisions concerned to the other Member States. Such notification shall not prevent the adoption by Member States of the provisions in question. Within a period of 3 months from the date of notification, the Commission shall examine the compatibility of any new requirements with Community law and, as the case may be, shall adopt a decision requesting the Member State in question to refrain from adopting them or to abolish them.</i>	<i>deleted</i>
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Amendment 152
Chapter III, section 1, title

Country of Origin Principle and
derogations

Freedom to provide services and
derogations

(See amendment to Chapter V)

Amendment 153
Article 16, title

Article 16

Country of origin principle

Article 16

Freedom to provide services

(The words "Country of origin principle" shall be deleted throughout the Commission's text)

Amendment 154
Article 16, paragraph 1

(1) Member States shall ensure that providers are subject only to the national

1. Member States shall respect service providers' rights to provide a service in

provisions of their Member State of origin which fall within the coordinated field.

another Member State than that where they are established. When providing a service, they are subject only to the provisions of the Member State of establishment relating to access to a service activity and to the exercise of a service activity, in particular the requirements governing the establishment and operation of the service provider, his behaviour, the quality or content of the service, standards and certifications.

Paragraph 1 shall cover national provisions relating to access to and the exercise of a service activity, in particular those requirements governing the behaviour of the provider, the quality or content of the service, advertising, contracts and the provider's liability.

Amendment 155
Article 16, paragraph 2

(2) The Member State of origin shall be responsible for supervising the provider and the services provided by him, including services provided by him in another Member State.

2. This does not prevent the Member State into which the service provider moves from enforcing its specific requirements with regard to the exercise of a service activity that are indispensable for reasons of public policy or public security or for the protection of the health or the environment in order to prevent particular risks at the place where the service is provided.

Amendment 156
Article 16, paragraph 3, introductory part

(3) Member States may not, for reasons falling within the coordinated field, 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:

3. 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:

Amendment 157
Article 16, paragraph 3, point (b)

(b) an obligation on the provider to make a

(b) an obligation on the provider to make a

declaration or notification to, or to obtain an authorisation from, their competent authorities, including entry in a register or registration with a professional body or association in their territory;

declaration or notification to, or 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 in cases provided for in this Directive or other Community legislation;***

Amendment 158
Article 16, paragraph 3 a (new)

3a. The Member State of destination shall be entitled to take supervisory measures in accordance with Section 1 concerning the execution of the service in the cases provided for in Articles 17 and 19.

Amendment 159
Article 17, title, introductory part and points 1 to 4

Article 17

General derogations ***from the country of origin principle***

Article 16 shall not apply to:

(1) postal services ***within the meaning of point (1) of Article 2 of*** Directive 97/67/EC of the European parliament and of the Council;

(2) electricity distribution services within the meaning of point (5) of Article 2 of Directive 2003/54/EC of the European Parliament and of the Council ;

(3) gas distribution services within the meaning of point (5) of Article 2 of Directive 2003/55/EC of the European Parliament and of the Council ;

(4) water distribution;

Article 17

General derogations

Article 16 shall not apply to:

(1) Services of general economic interest which are provided in another Member State:

(a) postal services ***covered by*** Directive 97/67/EC of the European Parliament and of the Council;

(b) electricity ***transmission, distribution and supply*** services within the meaning of point (5) of Article 2 of Directive 2003/54/EC of the European Parliament and of the Council;

(c) gas ***transmission, distribution, supply and storage*** services within the meaning of point (5) of Article 2 of Directive 2003/55/EC of the European Parliament and of the Council;

(d) water distribution ***and supply services and waste water services;***

(e) treatment of waste.

Amendment 160
Article 17, point 7

(7) matters covered by Council Directive 77/249/EEC; ***deleted***

Justification

Brings the text into line with exclusions from the scope in Article 2.

Amendment 161
Article 17, point 7 a (new)

(7a) the activity of judicial recovery of debts;

Justification

The transitional derogation for the activity of judicial recovery of debts would be moved from Article 18 to a permanent derogation, notwithstanding the request for further harmonisation as stipulated in Article 40.

Amendment 162
Article 17, point 8

(8) the provisions of Article [...] of Directive .../.../EC on the recognition of professional qualification;

(8) as regards professional qualifications, matters covered by Title II of Directive .../.../EC on the recognition of professional qualifications, including requirements in the Member States where the service is provided which reserve an activity to a particular profession;

Justification

Member States shall continue to apply those rules which reserve certain activities to particular professions, e.g. the legal counselling monopoly of lawyers, animal testing and veterinarians.

Amendment 163
Article 17, point 10

(10) the provisions of Directive/.../EC of the European Parliament and the Council on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, amending Regulation (EEC) 1612/68 and repealing Directives 64/221/EEC,

(10) 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

68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC that lay down the administrative formalities that beneficiaries must undertake before the competent authorities of the *host* Member *States*;

freely within the territory of the Member *States*¹ that lay down the administrative formalities that beneficiaries must undertake before the competent authorities of the Member *State of destination*;

¹ OJ L 158, 30.4.2004, p. 77.

Amendment 164
Article 17, point 11

(11) *in the case of posting* third country nationals *the requirement for a short stay visa imposed by the Member State of posting, subject to the conditions set out* in Article 25(2);

(11) *as regards* third country nationals *who move to another Member State in the context of the provision of a service referred to* in Article 25(2);

Amendment 165
Article 17, point 12

(12) the authorisation regime provided for in Articles 3 and 4 of Council Regulation (EEC) No 259/93;

(12) *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 Community*¹;

¹ 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).

Amendment 166
Article 17, point 14

(14) *acts requiring by law the involvement of a notary*;

deleted

Justification

Many services provided by notaries are provided on a binding legal basis and hence cannot be considered as provided on a competitive market.

Amendment 167
Article 17, point 16

(16) services which, in the Member State to which the provider moves ***temporarily*** in order to provide his service, are ***covered by a total prohibition which*** is justified by reasons relating to public policy, public security or public health;

(16) 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;

Amendment 168
Article 17, point 17

(17) 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 and with which compliance is indispensable for reasons of public policy or public security or for the protection of public health or the environment;

(17) 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;

Justification

The amendment to Article 17, point 17 is justified by the fact the derogation should be without prejudice to national requirements that are directly related to the particular risk of the place where the service is provided as well as to health and safety at the work place for workers, self-employed persons and the public. Matters of health, safety and hygiene at work for workers are included in Directive 96/71/EC, however this is not the case for the self-employed persons and for the public.

Amendment 169
Article 17, point 18

(18) the authorisation system applicable to the reimbursement of hospital care; ***deleted***

Justification

Brings the text into line with the exclusion from the scope of healthcare and with the deletion of Article 23.

Amendment 170
Article 17, point 20

(20) the freedom of parties to choose the law applicable to their contract;

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

Justification

Contractual relations between the service provider and the client should not be subject of the directive. The Services directive is aiming at opening up markets, civil law is aiming at a fair settlement of disputes between two parties. The application of the principle of country of origin, provided for in the directive, would create legal uncertainty for consumers and businesses. A clear system for determining the civil law applicable to contracts is provided by international private law. The solution is to apply the consumer's national legislation to contracts involving a consumer and, in case of B2B contracts leave the choice of law to the contracting parties. In the latter case, legal security could also be provided by means of a subsidiary initial clause that stipulates that, in the absence of an explicit choice, the law of the country of origin applies.

Non-contractual liability should also be subject to the general provisions of international private law. However, to some extent of the country of origin should apply with regard to advertising law and unfair competition. An internal market in services can only be achieved if providers are not required to comply with 25 sets of rules concerning service and business information, based on similar decisions but widely differing with regard to details. (Since it was not possible to extend the recently adopted unfair business practices directive, to the (B2B) commercial sector, action must be taken to expedite adoption of the regulation concerning sales promotion in the internal market, with a view to harmonising the relevant legal provisions.)

Amendment 171
Article 17, point 21

(21) contracts for the provision of services concluded by consumers to the extent that the provisions governing them are not completely harmonised at Community level;

deleted

Justification

Contractual relations between the service provider and the client should not be subject of the directive. The Services directive is aiming at opening up markets, civil law is aiming at a fair settlement of disputes between two parties. The application of the principle of country of origin, provided for in the directive, would create legal uncertainty for consumers and businesses. A clear system for determining the civil law applicable to contracts is provided by international private law. The solution is to apply the consumer's national legislation to contracts involving a

consumer and, in case of B2B contracts leave the choice of law to the contracting parties. In the latter case, legal security could also be provided by means of a subsidiary initial clause that stipulates that, in the absence of an explicit choice, the law of the country of origin applies.

Amendment 172
Article 17, point 22

(22) the formal validity of contracts **deleted**
creating or transferring rights in
immovable property, where contracts are
subject, under the law of the Member State
in which the property is located, to
imperative formal requirements;

Justification

Contractual relations between the service provider and the client should not be subject of the directive. The Services directive is aiming at opening up markets, civil law is aiming at a fair settlement of disputes between two parties. The application of the principle of country of origin, provided for in the directive, would create legal uncertainty for consumers and businesses. A clear system for determining the civil law applicable to contracts is provided by international private law. The solution is to apply the consumer's national legislation to contracts involving a consumer and, in case of B2B contracts leave the choice of law to the contracting parties. In the latter case, legal security could also be provided by means of a subsidiary initial clause that stipulates that, in the absence of an explicit choice, the law of the country of origin applies.

Amendment 173
Article 17, point 23

(23) the non-contractual liability of a **deleted**
provider in the case of an accident
involving a person and occurring as a
consequence of the service provider's
activities in the Member State to which he
has moved temporarily.

Justification

Non-contractual liability should also be subject to the general provisions of international private law. However, to some extent of the country of origin should apply with regard to advertising law and unfair competition. An internal market in services can only be achieved if providers are not required to comply with 25 sets of rules concerning service and business information, based on similar decisions but widely differing with regard to details. (Since it was not possible to extend the recently adopted unfair business practices directive, to the (B2B) commercial sector, action must be taken to expedite adoption of the regulation concerning sales promotion in the internal market, with a view to harmonising the relevant legal provisions.)

Amendment 174
Article 18

Article 18

deleted

***Transitional derogations from the country
of origin principle***

***1. Article 16 shall not apply for a
transitional period to the following:***

***(a) the way in which cash-in-transit
services are exercised;***

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

***(c) access to the activity of judicial
recovery of debts.***

***2. The derogations referred to in points
(a) and (c) of paragraph 1 of this Article
shall not apply after the date of
application of the harmonisation
instruments referred to in Article 40(1) or
in any case after 1 January 2010.***

***3. The derogation referred to in point (b)
of paragraph 1 of this Article shall not
apply after the date of application of the
harmonisation instrument referred to in
Article 40(1)(b).***

Justification

Brings the text into line with the amendment to Article 16.

Amendment 175
Article 19, title

Case-by-case derogations ***from the country
of origin principle***

Case-by-case derogations

Amendment 176
Article 19, paragraph 2

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

- (a) the national provisions in accordance with which the measure is taken have not been subject to Community harmonisation in the 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 37(2)*;
- (d) the measures are proportionate.

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 36(2)*;
- (d) the measures are proportionate.

Justification

Brings the text into line with the amendment to Article 37.

Amendment 177
Article 21

1. Member States shall ensure that the recipient is not made subject to discriminatory requirements based on his nationality or place of residence.

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

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.

Justification

Article 21 contains ambiguities which could have far-reaching consequences that would contradict the Directive's aim of, inter alia, fostering competition in the provision of services for the benefit of Community citizens. Whilst the Directive attempts to tackle – quite rightly – any form of discrimination, including on price, it clearly is not the objective of the Directive to ban differentiation where this is rooted in the normal functioning of markets, or artificially to harmonise prices.

Amendment 178 Article 22, paragraph 1

1. Member States shall ensure that recipients can obtain, ***in their Member State of residence, the following information:***

- (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) information on the means of redress available in the case of a dispute between a provider and a recipient;
- (c) the contact details of associations or organisations, ***including Euroguichets and the contact points of the European extra-judicial network (EEJ-net)***, from which providers or recipients may obtain practical assistance.

1. Member States shall ensure that recipients can obtain ***via the single points of 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.

Amendment 179 Article 22 a (new)

Article 22 a ***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
single point of contact.*

2. Articles 6 to 8 shall apply accordingly.

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

Amendment 180
Article 23

Article 23

deleted

Assumption of health care costs

*1. Member States may not make
assumption of the costs of non-hospital
care in another Member State subject to the
granting of an authorisation, where the
cost of that care, if it had been provided in
their territory, would have been assumed by
their social security system.*

*The conditions and formalities to which the
receipt of non-hospital care in their
territory is made subject by Member States,
such as the requirement that a general
practitioner be consulted prior to
consultation of a specialist, or the terms
and conditions relating to the assumption
of the costs of certain types of dental care,
may be imposed on a patient who has
received non-hospital care in another
Member State.*

*2. Member States shall ensure that
authorisation for assumption by their social
security system of the cost of hospital care
provided in another Member State is not
refused where the treatment in question is
among the benefits provided for by the
legislation of the Member State of
affiliation and where such treatment
cannot be given to the patient within a time*

frame which is medically acceptable in the light of the patient's current state of health and the probable course of the illness.

3. Member States shall ensure that the level of assumption by their social security system of the costs of health care provided in another Member State is not lower than that provided for by their social security system in respect of similar health care provided in their territory.

4. Member States shall ensure that their authorisation systems for the assumption of the costs of health care provided in another Member State are in conformity with Articles 9, 10, 11 and 13.

Justification

As regards the assumption of health care costs, provisions aiming at transposing into law the case-law on patient mobility established by the European Court of Justice should not be covered by this Directive, which, when amended, will not deal with health services. The fact that certain Member States do not comply with the case-law on patient mobility, as was indicated by the Commission, should be addressed in the framework of Regulation (EEC)1408/71 and/or within a separate and more appropriate secondary legislation based on the outcome of the high level reflection process on patient mobility and health care developments in the European Union. Any such legal instrument should clearly determine where prior authorisation is required, and thus provide a clear definition of hospital and non-hospital care.

Amendment 181
Section 3, title

Section 3
Posting of workers

deleted

Amendment 182
Article 24

Article 24

deleted

**Specific provisions on the posting of
workers**

1. Where a provider posts a worker to another Member State in order to provide a service, the Member State of posting shall carry out in its territory the checks, inspections and investigations necessary to

ensure compliance with the employment and working conditions applicable under Directive 96/71/EC and shall take, in accordance with Community law, measures in respect of a service provider who fails to comply with those conditions.

However, the Member State of posting may not make the provider or the posted worker subject to any of the following obligations, as regards the matters referred to in point (5) of Article 17:

- (a) to obtain authorisation from, or to be registered with, its own competent authorities, or to satisfy any other equivalent requirement;*
- (b) to make a declaration, other than declarations relating to an activity referred to in the Annex to Directive 96/71/EC which may be maintained until 31 December 2008;*
- (c) to have a representative in its territory;*
- (d) to hold and keep employment documents in its territory or in accordance with the conditions applicable in its territory.*

2. In the circumstances referred to in paragraph 1, the Member State of origin shall ensure that the provider takes all measures necessary to be able to communicate the following information, both to its competent authorities and to those of the Member State of posting, within two years of the end of the posting:

- (a) the identity of the posted worker;*
- (b) his position and the nature of the tasks attributed to him,*
- (c) the contact details of the recipient,*
- (d) the place of posting,*
- (e) the start and end dates for the posting,*
- (f) the employment and working conditions applied to the posted worker;*

In the circumstances referred to in

paragraph 1, the Member State of origin shall assist the Member State of posting to ensure compliance with the employment and working conditions applicable under Directive 96/71/EC and shall, on its own initiative, communicate to the Member State of posting the information specified in the first subparagraph where the Member State of origin is aware of specific facts which indicate possible irregularities on the part of the provider in relation to employment and working conditions.

Justification

For reasons of legal certainty and consistency, any clarification in the field of posting of workers should be dealt with under existing Directive 96/71/EC (on posting of workers). In any case, Article 24 and 25 are counterproductive. Article 24 prohibits Member States where the service is provided from making service providers subject to obligations that are essential for the inspection services of these Member States. In doing so, this Directive substantially reduces the effectiveness of labour inspections conducted by these Member States. Labour law provisions can only be effectively enforced in the Member State where the work is performed. In its current wordings, the system of administrative cooperation proposed by the Commission lacks the necessary safeguards to serve labour law enforcement.

Amendment 183 Article 25

Article 25

deleted

Posting of third country nationals

1. Subject to the possibility of derogation as referred to in paragraph 2, where a provider posts a worker who is a national of a third country to the territory of another Member State in order to provide a service there, the Member State of posting may not require the provider or the worker posted by the latter to hold an entry, exit, residence or work permit, or to satisfy other equivalent conditions.

2. Paragraph 1 does not prejudice the possibility for Member States to require a short-term visa for third country nationals who are not covered by the mutual recognition regime provided for in Article 21 of the Convention implementing the

Schengen Agreement.

3. In the circumstances referred to in paragraph 1, the Member State of origin shall ensure that a provider posts only a worker who is resident in its territory in accordance with its own national rules and who is lawfully employed in its territory.

The Member State of origin shall not regard a posting made in order to provide a service in another Member State as interrupting the residence or activity of the posted worker and shall not refuse to readmit the posted worker to its territory on the basis of its national rules.

The Member State of origin shall communicate to the Member State of posting, upon its request and in the shortest possible time, information and guarantees regarding compliance with the first subparagraph and shall impose the appropriate penalties in cases of non-compliance.

Justification

For reasons of legal certainty and consistency, any clarification in the field of posting of workers should be dealt with under existing Directive 96/71/EC (on posting of workers). In any case, Article 24 and 25 are counterproductive. Article 24 prohibits Member States where the service is provided from making service providers subject to obligations that are essential for the inspection services of these Member States. In doing so, this Directive substantially reduces the effectiveness of labour inspections conducted by these Member States. Labour law provisions can only be effectively enforced in the Member State where the work is performed. In its current wordings, the system of administrative cooperation proposed by the Commission lacks the necessary safeguards to serve labour law enforcement.

Amendment 184

Article 26, paragraph 1, introductory part

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

1. ***The Commission and the*** Member States shall ensure that providers make the following information available to the recipient, ***to the European single point of contact and to the single points of contact in the host Member States:***

Amendment 185
Article 26, paragraph 1, point (a)

(a) the name of the service provider, 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;

(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;

Amendment 186
Article 26, paragraph 1, point (g a) (new)

(ga) where professional liability insurance or an equivalent guarantee is compulsory, the details referred to in Article 27(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.

Amendment 187
Article 27, paragraph 1

1. Member States ***shall ensure*** that providers whose services present a particular risk to the health or safety of the recipient, or ***a particular*** financial ***risk*** to the recipient, are ***covered by*** professional indemnity insurance ***appropriate*** to the nature and extent of the risk, or ***by any*** other guarantee ***or compensatory provision*** which is equivalent or essentially comparable as regards its purpose.

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.***

Amendment 188
Article 27, paragraph 1 a (new)

1a. 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 host Member State 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.

Justification

For European legislation to be consistent, it is preferable to lay down the same provisions as those proposed by the European Parliament and by the Council in its common position on the recognition of professional qualifications (2002/0061 (COD)).

Amendment 189
Article 27, paragraph 2

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

2. 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.

Amendment 190
Article 27, paragraph 3

3. When a provider establishes himself in their territory, 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.

3. 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.

Amendment 191
Article 28, paragraph 2

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

Amendment 192
Article 28, paragraph 3

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

Amendment 193
Article 30, paragraph 4

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

Justification

Such an evaluation report would entail an immense bureaucratic effort for the Member States, which would not be justified by a corresponding benefit. It is unrealistic to expect all 25 Member States to evaluate all 25 reports. Furthermore the all-embracing requirement to give reasons, pursuant to Article 15(4)(a), renders a large part of national legislation effectively beholden to the Commission, which is unacceptable in the light of subsidiarity and the allocation of competences.

Amendment 194
Article 31, paragraph 5

5. Member States *and* the Commission shall encourage the development of voluntary

5. Member States, *in cooperation with* the Commission, shall encourage the

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.

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.

Justification

These actions should be put into practice as of now at national level, and the professional organisations should encourage their members to assess their services. Numerous organisations in several Member States have begun to do so, but the first tangible results will not be known until some years from now.

Amendment 195 Article 32, paragraph 1

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

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.**

Amendment 196 Article 32, paragraph 2

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 **appropriate** solutions.

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.

Amendment 197 Article 33, paragraph 1

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

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 ***liable to bring into question either his ability to conduct his business or his*** professional reliability.

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.

Amendment 198
Article 33, paragraph 3

3. Implementation of ***paragraph 1*** must comply with the rights guaranteed to persons found guilty or penalised in the Member States concerned, ***especially as regards the protection of personal data.***

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.***

Amendment 199
Chapter V

Chapter V
Supervision

Chapter III, Section -1
Administrative cooperation

(See amendment to Chapter III, Section 1 (before Article 16))

Justification

If this amendment is adopted, Articles 34 to 38, as amended, shall be placed in a new section of Chapter III; Chapters VI and VII will therefore need to be renumbered.

Amendment 200
Article 34

1. Member States shall ensure that the powers of monitoring and supervision provided for in national law in respect of the provider ***and the activities concerned*** are also exercised where a service is provided in

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.

another Member State.

2. Member States shall ensure that providers supply their competent authorities with all the information necessary for monitoring their activities.

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.

2a. 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.

(See amendment to Chapter V. If this amendment is adopted, Chapter V, Articles 34 to 38, as amended, shall be placed before Article 16 under Section -1)

Amendment 201
Article 35

1. In accordance with Article 16, Member States shall give each other mutual assistance and shall put in place all possible measures for effective cooperation with one another in order to ensure the supervision of providers and the services they provide.

2. For the purposes of paragraph 1, Member States shall designate one or more points of contact, the contact details of which shall be communicated to the other Member States and the Commission.

3. 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.

Upon becoming aware of any unlawful conduct by a provider, or of specific acts, that are likely to cause serious damage in a Member State, Member States shall inform the Member State of origin, within the shortest possible period of time.

Upon becoming aware of any unlawful

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 16(2) and (3a) apply:

– shall carry out the checks, inspections

conduct by a provider who is likely to provide services in other Member States, or of specific acts, that could cause serious damage to the health or safety of persons, Member States shall inform all other Member States and the Commission within the shortest possible period of time.

4. The Member State of origin shall supply information on providers established in its territory when requested to do so by another Member State and in particular confirmation that a service provider is established in its territory and exercising his activities in a lawful manner;

The Member State of origin 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.

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

6. 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.

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 oblige the service provider to deposit a security, or impose interim measures on the service provider.

(See amendment to Chapter V. If amendment 199 is adopted, Chapter V, Articles 34 to 38, as amended, shall be placed before Article 16 under Section -1)

Amendment 202
Article 36

1. In respect of the matters covered by Article 16, where a provider moves

1. The Member State of primary establishment is responsible for the

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 paragraph 2.

2. At the request of the Member State of origin, the competent authorities referred to in paragraph 1 shall carry out any checks, inspections and investigations necessary for ensuring effective supervision by the Member State of origin. In so doing, the competent authorities shall act to the extent permitted by the powers vested in them in their Member State.

On their own initiative, those competent authorities may conduct checks, inspections and investigations on the spot, provided that those checks, inspections or investigations meet the following conditions:

(a) they consist exclusively in the establishment of facts and do not give rise to any other measure against the provider, subject to the possibility of case-by-case derogations as provided for in Article 19;

(b) they are not discriminatory and are not motivated by the fact that the provider is established in another Member State;

(c) they are objectively justified by an overriding reason relating to the public interest and are proportionate to the objective pursued.

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.

2a. 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.

(See amendment to Chapter V. If amendment 199 is adopted, Chapter V, Articles 34 to 38, as amended, shall be placed before Article 16 under Section -1)

Amendment 203

Article 37

Article 37

Mutual assistance in the event of case-by-case derogations from the country of origin principle

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

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

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

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

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

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

Article 37

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 42(2), guidelines concerning the management of the network referred to in paragraph 2.

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

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

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

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

(See amendment to Chapter V. If amendment 199 is adopted, Chapter V, Articles 34 to 38, as amended, shall be placed before Article 16 under Section -1)

Amendment 204
Article 38

In accordance with the procedure referred to in Article 42(2), the Commission shall adopt the implementing measures necessary for the implementation of **this Chapter, specifying the time-limits provided for in Articles 35 and 37** and the practical arrangements for the exchange of information by electronic means between the **single points of contact**, and in particular the interoperability provisions for information systems.

In accordance with the procedure referred to in Article 42(2), the Commission shall adopt the implementing measures necessary for the implementation of **Article 35** 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.

Justification

Brings the text into line with the amendment to Article 37.

Amendment 205

Article 39

1. Member States shall, in cooperation with the Commission, take accompanying measures to encourage the drawing up **of codes of conduct** at Community level, in conformity with Community law, **in particular in the following areas:**

(a) the content of and detailed rules for commercial communications relating to regulated professions, as appropriate to the specific nature of each profession;

(b) the rules of professional ethics and conduct of the regulated professions which aim in particular at ensuring, as appropriate to the specific nature of each profession, independence, impartiality and professional secrecy;

(c) the conditions to which the activities of estate agents are subject.

2. Member States shall ensure that the codes of conduct referred to in paragraph 1 are accessible at a distance, by electronic means **and transmitted to the Commission.**

3. Member States shall ensure that providers indicate, at the recipient's request, or in any information documents which present their services in detail, any codes of conduct to which they are subject and the address at which these codes may be consulted by electronic means, specifying the language versions available.

4. Member States shall take accompanying measures to encourage professional bodies,

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.

organisations and associations to implement at national level the codes of conduct adopted at Community level.

(Points a, b, c and Paragraph 4 of Article 39 have been placed as Recital 66 c (new))

Amendment 206
Article 40, paragraph 1, point (b)

(b) gambling activities which involve wagering a stake with pecuniary value in games of chance, including lotteries and betting transactions, in the light of a report by the Commission and a wide consultation of interested parties;

Justification

Brings the text into line with the exclusion of gambling activities from the scope.

Amendment 207
Article 40, paragraph 1, point (c a)(new)

(ca) security services;

Justification

The harmonisation of security services seems to be necessary to enhance the cross border provision of such services.

Amendment 208
Article 40, paragraph 2

2. In order to ensure the proper functioning of the internal market for services, the Commission shall assess the need to take additional initiatives or to present proposals for legislative instruments, particularly in relation to the following: *deleted*

(a) matters which, having been the subject of case-by-case derogations, have indicated the need for harmonisation at Community level;

(b) matters covered by Article 39 for which it has not been possible to finalise codes of conduct before the date of transposition or

for which such codes are insufficient to ensure the proper functioning of the internal market;

(c) matters identified through the mutual evaluation procedure laid down in Article 41;

(d) consumer protection and cross-border contracts.

Justification

As with the justification for the amendment to Article 39 and in line with the principle of subsidiarity, Community-level codes should apply only to issues relating to the cross-border provision of services. There is no legal basis for the development of Community-level codes to apply in purely domestic situations - this could create conflicts with existing local codes of conduct. Therefore the same logic should apply to action taken by the Commission in terms of its ability to legislate under Article 40.

Amendment 209

Article 41, paragraph 1, point (a)

(a) Article 9(2), on authorisation systems; *deleted*

Justification

Brings the text into line with the deletion of Article 9, Paragraph 2

Amendment 210

Article 41, paragraph 1, point (c)

(c) Article 30(4), on multidisciplinary activities. *deleted*

Justification

Brings the text into line with the deletion of Article 30, Paragraph 4.

Amendment 211

Article 41, paragraph 4

4. In the light of the observations provided for in paragraphs 2 and 3, the Commission shall, by **31 December 2008** at the latest, present a summary report to the European Parliament and to the Council, accompanied where appropriate by proposals for

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.

additional initiatives.

*** One year after the date referred to in Article 45(1).**

Justification

For the sake of coherence with the amendment to Article 45, which establishes a three-year deadline for the transposition of this Directive.

Amendment 212
Article 43

Article 43

Report

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

Article 43

Review clause

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

Amendment 213
Article 45, paragraph 1, subparagraph 1

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [2 years after the entry into force] 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.

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.

*** 3 years** after the entry into force.

Justification

Brings the text into line with the amendment regarding the transposition date throughout the text

26.5.2005

OPINION OF THE COMMITTEE ON BUDGETARY CONTROL

for the Committee on the Internal Market and Consumer Protection

on the proposal for a directive of the European Parliament and of the Council on services in the internal market

(COM(2004)0002 – C5-0069/2004 – 2004/0001(COD))

Draftsman: Christopher Heaton-Harris

SHORT JUSTIFICATION

It is possible that the provisions of the proposed services directive could harm Member States' ability to manage their own domestic tax systems, and fight tax avoidance and fraud. This could have a detrimental impact on own resources and the Community's financial interests.

Concerns about a possible reduction in the Member States' ability to manage their own domestic tax systems have prompted this committee to seek the opinion of the legal committee on the legal base of the proposed directive in the field of taxation. Draft article 2(3) states that the directive applies to tax restrictions not covered by a Community instrument on tax harmonisation. The legal base of the directive as proposed would thus allow the application of qualified majority voting in these areas of taxation. This is unacceptable. Any measures on taxation, including the taxation of service providers, must be decided on by unanimity, in line with articles 93 and 94 of the Treaty.

However even if unanimity in the field of taxation is (re)established, the directive as it stands could still have detrimental consequences for the Community's financial interests. For example, it could be difficult to ensure compliance with indirect tax regimes if businesses are not established and no longer required to register with the tax authorities in the Member States in which they provide services. This would increase opportunities for tax avoidance and tax fraud, leading to a possible loss of own resources. Weakening of the establishment rules could also lead to greater manipulation of VAT grouping rules, which allow VAT-free trading between businesses within a group, again increasing the scope for tax avoidance and a possible loss of own resources.

Member States are already required to ensure that their tax systems are compatible with Community law. So there is no need to extend the scope of this directive to taxation. Your

draftsman therefore feels that taxation should be removed completely from the scope of this directive.

AMENDMENTS

The Committee on Budgetary Control calls on the Committee on the Internal Market and Consumer Protection, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission

Amendments by Parliament

Amendment 1

Recital 11

(11) In view of the fact that the Treaty provides specific legal bases for taxation matters and for the Community instruments already adopted in that field, it is necessary to exclude the field of taxation from the scope of this Directive, ***with the exception, however, of the provisions concerning prohibited requirements and the free movement of services. Harmonisation in the field of taxation has been achieved notably through Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment¹, Council Directive 90/434/EEC of 23 July 1990 on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States², Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States³ and Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated***

(11) In view of the fact that the Treaty provides specific legal bases for taxation matters and for the Community instruments already adopted in that field, it is necessary to exclude the field of taxation from the scope of this Directive.

¹ OJ L 145, 13.6.1977, p. 1. Directive as last amended by Directive 2003/92/EC (OJ L 260, 11.10.2003, p. 8).

² OJ L 225, 20.8.1990, p. 1.

³ OJ L 225, 20.8.1990 p. 6.

companies of different Member States¹. The present Directive does not aim to introduce specific new rules or systems in the field of taxation. Its sole objective is to remove restrictions, certain of which are fiscal in nature, and in particular those which are discriminatory, on freedom of establishment and the free movement of services, in accordance with the case-law of the Court of Justice of the European Communities, hereinafter “the Court of Justice”, with respect to Articles 43 and 49 of the Treaty. The field of value added tax (VAT) is the subject of harmonisation at Community level, in accordance with which service providers carrying out cross-border activities may be subject to obligations other than those of the country in which they are established. It is nevertheless desirable to establish a system of “one-stop shops” for service providers, in order to enable all their obligations to be fulfilled by means of a single electronic portal to the tax authorities in their home Member State.

Justification

Taxation should be completely excluded from the scope of this directive.

Amendment 2
Article 2, paragraph 3

3. This Directive does not apply in the field of taxation, ***with the exception of Articles 14 and 16 to the extent that the restrictions identified therein are not covered by a Community instrument on tax harmonisation.***

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

Justification

Taxation should be completely excluded from the scope of this directive.

¹ *OJL 157, 26.6.2003 p. 49.*

Amendment 3
Article 20

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.***

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

- (a) an obligation to obtain authorisation from or to make a declaration to their competent authorities;
- (b) limits on the grant of financial assistance by reason of the fact that the provider is established in another Member State or by reason of the location of the place at which the service is provided.

Justification

Taxation should be completely excluded from the scope of this directive.

PROCEDURE

Title	Proposal for a directive of the European Parliament and of the Council on services in the internal market
References	COM(2004)0002 - C5-0069/2004 - 2004/0001(COD)
Committee responsible	IMCO
Committee asked for its opinion Date announced in plenary	CONT 27.1.2005
Enhanced cooperation	No
Draftsman Date appointed	Christopher Heaton-Harris 18.1.2005
Discussed in committee	15.3.2005 20.4.2005
Date amendments adopted	23.5.2005
Result of final vote	for: 10 against: 0 abstentions: 1
Members present for the final vote	Herbert Bösch, Petr Duchoň, Szabolcs Fazakas, Ona Juknevičienė, Nils Lundgren, Jan Mulder, José Javier Pomés Ruiz, Margarita Starkevičiūtė, Jeffrey Titford
Substitutes present for the final vote	Christopher Heaton-Harris, Ashley Mote

15.9.2005

OPINION OF THE COMMITTEE ON ECONOMIC AND MONETARY AFFAIRS

for the Committee on the Internal Market and Consumer Protection

on the proposal for a directive of the European Parliament and of the Council on services in the internal market

(COM(2004)0002 – C5-0069/2004 – 2004/0001(COD))

Chairwoman Pervenche Berès

AMENDMENTS

The Committee on Economic and Monetary Affairs calls on the Committee on the Internal Market and Consumer Protection, as the committee responsible to incorporate the following amendments in its report:

Text proposed by the Commission¹

Amendments by Parliament

Amendment 1
Recital 1a (new)

(1a) A competitive market in services is of crucial importance for economic growth and employment in the EU. At present many service undertakings, especially SMEs, are hindered by a multitude of internal market barriers from expanding across national borders and benefiting fully from the internal market. This detracts from the overall competitiveness not only of service providers in the EU but also of the

¹ Not yet published in OJ.

manufacturing sector, which is increasingly dependent on high quality services.

Justification

The development of an internal market in services is essential to promote growth in the EU.

Amendment 2
Recital 2

(2) The report from the Commission on "The State of the Internal Market for Services" 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 small and medium-sized enterprises (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.

(2) The report from the Commission on "The State of the Internal Market for Services" 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 small and medium-sized enterprises (SMEs), which are predominant in the field of services, ***and by enterprises with greater job creation potential.*** 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.

Justification

The main beneficiary of the completion of a single market will be the small and medium-sized enterprises which will be able to emerge and extend their activities as a result of lower costs.

Amendment 3
Recital 3

(3) Since services constitute the engine of

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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 prevents consumers from gaining access to a greater variety of **competitively priced** 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 making the European Union the most competitive and dynamic knowledge-based economy in the world by 2010. **Removing** those barriers is essential in order to revive the European economy, particularly in terms of employment and investment.

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 capacity for innovation, job creation and increased productivity** and the competitiveness of SMEs, and prevents consumers from gaining access to a greater variety of **cheaper** services. **Fragmentation and lack of competition are hampering the development of a market in services, with new services and new jobs. This also holds back demand and thus limits the scale and development of the service sector. Studies show that enhanced cross-border cooperation will lead to a significant growth of the service sector and thus the growth of the EU. It is clear that this will lead not only to many new jobs but also to higher tax revenue in the Member States.** 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 making the European Union the most competitive and dynamic knowledge-based economy in the world by 2010. **Without enhanced competition within the service sector it is hard to see how the EU can develop into the most competitive knowledge-based economy in the world. In the context of globalisation removing** those barriers is essential in order to revive the European economy, particularly in terms of employment and investment. **This is particularly clear in the light of studies which estimate that 600 000 new jobs may be created if the Services Directive is adopted in its present form.**

Amendment 4
Recital 4 a (new)

(4a) Liberalisation of the services market may be effective in promoting the creation

of new enterprises, encouraging those which have proved innovatory and effective in meeting consumer demands to enter the markets, something which is essential in order to replace other types of activities which experience difficulty in adjusting to economic globalisation.

Justification

The increase in competition in the market for services will stimulate growth through the creation of new enterprises which will benefit from lower costs..

Amendment 5

Recital 7

(7) It is necessary to recognise the importance of the roles of professional bodies and professional associations in the regulation of service activities and the development of professional rules.

(7) It is necessary to recognise the importance of the roles of professional bodies and professional associations in the regulation of service activities and the development of professional rules, ***though they should not represent an obstacle to enhanced competition among several actors.***

Justification

Professional associations and similar organisations should be recognised. The tendency inherent in these organisations towards the partitioning of markets, however, must be curbed.

Amendment 6

Recital 7 a (new)

(7a) The provisions of this Directive relating to freedom of establishment apply only in so far as the activities in question are open to competition, and do not require the Member States to liberalise services of general economic interest, privatise existing public bodies or abolish existing monopolies on other activities, e.g. lotteries or certain distribution services. Equally, the Directive does not affect the funding of services of general economic interest and does not cover the Member States' aid rules covered by Title VI, Chapter 1 of the EC

Treaty on competition rules.

Justification

The Directive does not affect the right of the Member States, under Community law, to define and organise the provision of services of general economic interest. Neither does it affect the funding of such services nor the Member States' aid rules.

Amendment 7

Recital 8

(8) This Directive is consistent with other ~~deleted~~ 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.

Justification

Modified through Amendment on Recital 13 d (new).

Amendment 8

Recital 8 a (new)

¹ COM(2003)0313; OJ C 299, 10.12.2003, p. 1.

² COM(2002)0585.

³ COM(2003)0356.

⁴ COM(2003)0443.

(8a) The exclusions from the scope of application apply not only to questions specifically dealt with in these Directives but also to matters for which the Directives explicitly leave the possibility to Member States of adopting certain measures at national level.

Justification

Clarification that the provisions of the directive do not even apply when those directives include derogations for Member states, e.g. for maintaining cultural diversity or for pension funds.

Amendment 9

Recital 9

(9) 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. ***Financial services are defined in Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC¹⁰. That Directive defines a financial service as any service of a banking, credit, insurance, personal pension, investment or payment nature.***

(9) 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 concerns any service of a banking, credit, insurance, occupational or personal pension, investment or payment nature, including reinsurance, currency exchange, clearing and settlement systems, securities custodianship and investment advice and services listed in Annex 1 of Directive 2000/12/EC."***

Justification

Further clarification to exclude services which are subject to other Community instruments.

Amendment 10

Recital 11

(11) In view of the fact that the Treaty provides specific legal bases for taxation matters and for the Community instruments already adopted in that field, it is necessary to exclude the field of taxation

(11) This Directive applies only to fiscal discrimination which is incompatible with the freedom of establishment and the free movement of services. All other areas in the field of taxation are excluded from the

from the scope of this Directive, with the exception, however, of the provisions concerning prohibited requirements and the free movement of services.

Harmonisation in the field of taxation has been achieved notably through Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment¹, Council Directive 90/434/EEC of 23 July 1990 on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States², Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States³ and Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States⁴. The present Directive does not aim to introduce specific new rules or systems in the field of taxation. Its sole objective is to remove restrictions, certain of which are fiscal in nature, and in particular those which are discriminatory, on freedom of establishment and the free movement of services, in accordance with the case-law of the Court of Justice of the European Communities, hereinafter “the Court of Justice”, with respect to Articles 43 and 49 of the Treaty. The field of value added tax (VAT) is the subject of harmonisation at Community level, in accordance with which service providers carrying out cross-border activities may be subject to obligations other than those of the country in which they are established. It is nevertheless desirable to establish a system of “one-stop shops” for service providers, in order to enable all their obligations to be fulfilled by means of a single electronic portal to the tax authorities in their home

scope of this Directive.

Harmonisation in the field of taxation has been achieved notably through Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment⁵, Council Directive 90/434/EEC of 23 July 1990 on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States⁶, Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States⁷ and Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States⁸. The present Directive does not aim to introduce specific new rules or systems in the field of taxation. Its sole objective is to remove restrictions, certain of which are fiscal in nature, and in particular those which are discriminatory, on freedom of establishment and the free movement of services, in accordance with the case-law of the Court of Justice of the European Communities, hereinafter “the Court of Justice”, with respect to Articles 43 and 49 of the Treaty. The field of value added tax (VAT) is the subject of harmonisation at Community level, in accordance with which service providers carrying out cross-border activities may be subject to obligations other than those of the country in which they are established. It is nevertheless desirable to establish a system of “one-stop shops” for service providers, in order to enable all their obligations to be fulfilled by means of a single electronic portal to the tax authorities

Member State.

in their home Member State.

Justification

To clarify that the Directive does not provide for fiscal harmonisation or greater EU powers in this field. It only removes discrimination which acts as an obstacle to the freedom of establishment and free movement of services.

Amendment 11

Recital 12

(12) ***Since*** transport services are ***already covered by a set of Community instruments specific to that field, they should be*** excluded from the scope of this Directive to the extent that they are regulated by other Community instruments adopted under Articles 71 and 80(2) of the Treaty. ***However, this Directive applies to services that are not regulated by specific instruments concerning transport such as*** cash in transit or the transport of deceased persons.

(12) Transport services are excluded from the scope of this Directive to the extent that they are regulated by other Community instruments adopted under Articles 71 and 80(2) of the Treaty. ***However, urban transport, port services, taxis and ambulances are excluded, and*** cash in transit or the transport of deceased persons ***are included in the scope of this Directive given that Internal Market problems have been identified in these fields.***

Amendment 12

Recital 13 a (new)

(13a) This Directive is consistent with other current Community 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 market and those concerning consumer protection.

Justification

Technical adaption.

Amendment 13

Recital 27 a (new)

(27a) 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 health care or social services, but any such authorisation may not discriminate in terms of the applicant's country of origin and must satisfy criteria of necessity and proportionality.

Justification

Clarification of essential basis of justification for imposing restrictions by host Member State.

Amendment 14
Recital 27 b (new)

(27b) 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, the protection of the urban environment justifies the requirement to obtain an individual authorisation for each installation on the national territory. This provision does not affect the regional or local competences for the granting of authorisation within the Member States.

Justification

Clarification

Amendment 15
Recital 28 a (new)

(28a) This Directive provides that failing a response within a time period, authorisation shall be deemed to have been granted. In cases of overriding reasons relating to public interest, for example in respect of health services or for activities

which create particular risks for third parties such as private security services, an explicit authorisation may be required.

Justification

Necessary explanation of cases, where no automatic authorisation is admissible.

Amendment 16

Recital 35

(35) It is appropriate that the provisions of this Directive concerning freedom of establishment should apply only to the extent that the activities in question are open to competition, so that they do not oblige Member States to abolish existing monopolies, notably those of lotteries, or to privatise certain sectors. ***deleted***

Justification

Modified through Amendment on Recital 7 a (new).

Amendment 17

Article 1, paragraph 1 a (new)

1a. This Directive does not cover either the liberalisation of services of general economic interest or the privatisation of public bodies providing such services. Community rules on competition and aid also remain unaffected.

Justification

The Directive does not affect the right of the Member States, under Community law, to define and organise services of general economic interest. Neither does it affect the funding of such services nor the Member States' aid rules.

Amendment 18

Article 2, paragraph 2, introductory part

2. This Directive shall not apply to the

2. This Directive shall not apply to the following activities ***in so far as these***

following activities:

***activities are regulated specifically in other
Community acts:***

Justification

The scope of the directive, laid down in Article 2, should be more clearly defined and a number of exemptions could be added: Sectors that are regulated by a specific policy and other Community legislation should not be covered by the scope. This means that services regulated e.g. by the Telecommunication package, the Television Without Frontiers Directive, the financial services directives, including the Distance Marketing of Financial Services Directive and pension funds, and the transport directives and regulations are not covered by the scope of the directive. The provisions of the directive do not even apply when those directives include derogations for Member states, e.g. for maintaining cultural diversity or for pension funds.

Amendment 19
Article 2, paragraph 2, point (a)

(a) **financial services as defined in Article 2(b) of Directive 2002/65/EC**

(a) any service of a banking, credit or insurance nature, including reinsurance, personal pensions, investments, payments, investment advice and, in general, the services listed in Annex I to Directive 2000/12/EC relating to the taking up and pursuit of the business of credit institutions.

Justification

The wording of Article 2 as regards the scope of the Directive is unsatisfactory. It takes the definition of financial services from Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services. This definition does not cover all banking and financial activities, such as factoring or leasing. In order to also include such activities, reference should also be made to Directive 2000/12/EC relating to the taking up and pursuit of the business of credit institutions.

Amendment 20
Article 2, paragraph 2, point (b)

(b) electronic communications services and networks, and associated facilities and services, with respect to matters covered by Directives 2002/19/EC, 2002/20/EC, 2002/21/EC, 2002/22/EC and 2002/58/EC of the European Parliament and of the Council;

(b) electronic communications services and networks, and associated facilities and services, with respect to matters covered by ***or referred to in*** Directives 2002/19/EC, 2002/20/EC, 2002/21/EC, 2002/22/EC and 2002/58/EC of the European Parliament and of the Council;

Justification

The scope of the directive, laid down in Article 2, should be more clearly defined and a number of exemptions could be added: Sectors that are regulated by a specific policy and other Community legislation should not be covered by the scope. This means that services regulated e.g. by the Telecommunication package, the Television Without Frontiers Directive, the financial services directives, including the Distance Marketing of Financial Services Directive and pension funds, and the transport directives and regulations are not covered by the scope of the directive. The provisions of the directive do not even apply when those directives include derogations for Member states, e.g. for maintaining cultural diversity or for pension funds.

Amendment 21

Article 2, paragraph 2, point (c a) (new)

(ca) broadcasting activities as defined in Directive 89/552/EEC and radio programmes as defined in Directive 98/84/EC as well as audiovisual services directly linked to these activities;

Justification

The scope of the directive, laid down in Article 2, should be more clearly defined and a number of exemptions could be added: Sectors that are regulated by a specific policy and other Community legislation should not be covered by the scope. This means that services regulated e.g. by the Telecommunication package, the Television Without Frontiers Directive, the financial services directives, including the Distance Marketing of Financial Services Directive and pension funds, and the transport directives and regulations are not covered by the scope of the directive. The provisions of the directive do not even apply when those directives include derogations for Member states, e.g. for maintaining cultural diversity or for pension funds.

Amendment 22

Article 2, paragraph 2, point (c b) (new)

(cb) This Directive shall not affect the application of Article 39(4) and Article 45 of the Treaty to notaries in particular.

Justification

Notarial activities which are linked to the exercise of public authority are specifically excluded from the scope of the Directive. In 19 of the 25 Member States notaries perform services in the judicial field whereby they participate in the exercise of official authority within the meaning of Article 45 of the EC Treaty. As is clear in particular from the Court of Justice's judgment in

Case C-260/97 of 17 June 1999 (Unibank), in order for an instrument to be regarded as authentic, its “authenticity...should have been established by a public authority”. Notaries of the Roman-law type satisfy this requirement, because they are holders of a public office appointed by the state. Furthermore the approach needs to be consistent with the Directive on the Mutual Recognition of Professional Qualifications. In the interest of the greatest possible legal certainty, it is therefore necessary to make specific mention of the official status of notarial activities in the Directive and to exclude them from its scope.

Amendment 23
Article 2, paragraph 3

3. This Directive ***does*** not apply to the field of taxation, with the exception of ***Articles 14 and 16 to the extent that the restrictions identified therein are not covered by a Community instrument on tax harmonisation.***

3. This Directive ***shall*** not apply to the field of taxation, with the exception of ***the prohibition of discriminations provided for in Articles 14, 16 and 20.***

Justification

To clarify that the Directive does not provide for fiscal harmonisation or greater EU powers in this field. It only removes discrimination which acts as an obstacle to the freedom of establishment and free movement of services.

Amendment 24
Article 3, paragraph 2

Application of this Directive shall not prevent the application of provisions of other Community instruments as regards the services governed by those provisions.

Community rules on specific service activities shall apply without restriction and shall only be complemented, not replaced, by this Directive.

Justification

This amendment makes clear that neither the “TV without Frontiers” Directive nor the Professional Qualifications Directive are called into question by the Services Directive.

Amendment 25
Article 3, paragraph 2 a (new)

2a. Community legal acts governing the creation of freedom of establishment or freedom to provide services in specific areas or professions shall take precedence

over this Directive.

Justification

It is absolutely essential that the specific provisions of the sectorial directives should take precedence. The Services Directive must not undermine existing European legal acts, which would also create legal uncertainty.

Amendment 26
Article 17, point 1

(1) postal services *within the meaning of point (1) of Article 2 of* Directive 97/67/EC of the European Parliament and the Council;

(1) postal services *covered by* Directive 97/67/EC of the European Parliament and the Council;

Amendment 27
Article 17, point 2

(2) electricity distribution services within the meaning of point (5) of Article 2 of Directive 2003/54/EC of the European Parliament and of the Council;

(2) electricity *transmission*, distribution *and supply* services within the meaning of point (5) of Article 2 of Directive 2003/54/EC of the European Parliament and of the Council;

Amendment 28
Article 17, point 3

(3) gas distribution services within the meaning of point (5) of Article 2 of Directive 2003/55/EC of the European Parliament and of the Council;

(3) gas *transmission*, distribution, *supply and storage* services within the meaning of point (5) of Article 2 of Directive 2003/55/EC of the European Parliament and of the Council;

Amendment 29
Article 17, point 4

(4) water distribution services;

(4) water distribution, *supply and treatment* services;

Justification

Clarifies which areas are exempted from the country of origin principle.

Amendment 30 Article 23, paragraph 1

1. Member States may not make assumption of the costs *of non-hospital care* in another Member State subject to the granting of an authorisation, where the cost of that care, if it had been provided in their territory, would have been assumed by their social security system.

The conditions and formalities to which the receipt of *non-hospital* care in their territory is made subject by Member States, *such as the requirement that a general practitioner be consulted prior to consultation of a specialist, or the terms and conditions relating to the assumption of the costs of certain types of dental care*, may be imposed on a patient who has received *non-hospital* care in another Member State.

1. Member States may not make assumption of the costs *of health care received* in another Member State *and which does not require hospitalisation* subject to the granting of an authorisation, where the cost of that care, if it had been provided in their territory, would have been assumed by their social security system.

The conditions to which the receipt of this *care* in their territory is made subject by Member States, may be imposed on a patient who has received *this* care in another Member State.

Amendment 31 Article 23, paragraph 2

2. Member States shall ensure that authorisation for assumption by their social security system of the cost of hospital care provided in another Member State is not refused. where the treatment in question is among the benefits provided for by the legislation of the Member State of affiliation and where such treatment cannot be given to the patient within a time frame which is medically acceptable in the light of the patient's current state of health and the probable course of the illness.

deleted

Amendment 32
Article 23, paragraph 4

4. Member States shall ensure that their authorisation systems for the assumption of the costs of health care provided in another Member State are in conformity with Articles 9, 10, 11 and 13.

4. Member States shall ensure that their authorisation systems for the assumption of the costs of health care, ***other than that mentioned in paragraph 1***, provided in another Member State are in conformity with Articles 9, 10, 11 and 13.

PROCEDURE

Title	Proposal for a directive of the European Parliament and of the Council on services in the internal market
References	COM(2004)0002 – C5-0069/2004 – 2004/0001(COD)
Committee responsible	IMCO
Committee asked for its opinion Date announced in plenary	ECON 16.9.2004
Enhanced cooperation	No
Draftsman Date appointed	Sahra Wagenknecht Pervenche Berès 13.9.2004 13.9.2005
Discussed in committee	4.10.2004 30.11.2004 29.3.2005 9.5.2005 23.5.2005, 14.6.2005, 12.7.2005
Date amendments adopted	13.9.2005
Result of final vote	for: 29 against: 17 abstentions: 2
Members present for the final vote	Zsolt László Becsey, Pervenche Berès, Pier Luigi Bersani, Sharon Margaret Bowles, Ieke van den Burg, David Casa, Jonathan Evans, Elisa Ferreira, Jean-Paul Gauzès, Sophia in 't Veld, Benoît Hamon, Gunnar Hökmark, Karsten Friedrich Hoppenstedt, Othmar Karas, Wolf Klinz, Christoph Konrad, Guntars Krasts, Kurt Joachim Lauk, Astrid Lulling, Gay Mitchell, Cristobal Montoro Romero, John Purvis, Alexander Radwan, Dariusz Rosati, Eoin Ryan, Antolín Sánchez Presedo, dManuel António dos Santos, Peter Skinner, Margarita Starkevičiūtė, Ivo Strejček, Sahra Wagenknecht, Graham Watson, John Whittaker, Lars Wohlin.
Substitutes present for the final vote	Katerina Batzeli, Harald Ettl, Werner Langen, Thomas Mann, Diamanto Manolakou, Corien Wortmann-Kool, Jürgen Zimmerling.
Substitutes under Rule 178(2) present for the final vote	Alfonso Andria, Inés Ayala Sender, Bernadette Bourzai, Fiona Hall, Pierre Jonckheer, Karin Jöns, Heinz Kindermann.

19.7.2005

OPINION OF THE COMMITTEE ON EMPLOYMENT AND SOCIAL AFFAIRS (*)

for the Committee on the Internal Market and Consumer Protection

on the proposal for a directive of the European Parliament and of the Council on services in the internal market

(COM(2004)0002 – C5-0069/2004 – 2004/0001(COD))

Draftswoman (*): Anne Van Lancker

(*) Enhanced cooperation between committees - Rule 47 of the Rules of Procedure

SHORT JUSTIFICATION

Launched by the Commission in January 2004, the proposal for a Directive on Services in the Internal Market sets out a general legal framework to reduce barriers to cross-border provision of services within the European Union. The draftswoman shares the view that the elimination of obstacles to the provision of services between Member States is an important element in achieving the goal set by the Lisbon European Council of making the European Union the most competitive and dynamic knowledge-based economy in the world capable of sustainable economic growth with more and better jobs and greater social cohesion. However, at the same time, she shares the opinion of many experts and MEPs that many concerns need to be addressed before this Directive can enter into force.

This draft opinion is based on the findings of the public hearing¹, on the impact study² as well as on the contributions from various organisations and expert groups. In her working document³, your draftswoman set out the orientations for amendment and identified the following controversial issues: the legal basis and scope of the proposal, the implications of requirements relating to establishment, the introduction of the country of origin principle and the relationship with other Community instruments.

As Commissioner Mc Creevy has made clear in his statement before the European Parliament, the Commission does not have the intention to withdraw its proposal, but confirms its

¹ Public Hearing on the Proposal for a Directive on Services in the Internal Market, organized by IMCO and EMPL, 11 November 2004. Directorate-General for Internal Policies, Notice to Members IV/2004 – PE 350.059v02-00.

² Towards a European Directive on Services in the Internal Market: Analysing the Legal Repercussions of the Draft Services Directive and its Impact on National Services Regulations, Wouter Gekiere, Institute for European Law, Catholic University Leuven, 24 September 2004.

³ Working Document on the Draft Services Directive, 11 January 2005, Committee on Employment and Social Affairs, Rapporteur Anne Van Lancker, PE 353.364v02-00.

willingness to amend the proposal concerning sensitive issues on the basis of the first reading in European Parliament. Your draftswoman is of the opinion that at least the following concerns need to be addressed in the report in first reading of the proposal.

(1) Scope of the proposal

The proposal reflects a horizontal approach; it covers a wide variety of services ranging from purely commercial services to health care and social services. As many experts have pointed out, this proposal fails to take into account that the services covered have heterogeneous features and raise a wide variety of public policy considerations. Therefore, it is essential that professions and activities which are permanently or temporarily connected with the exercise of official authority in a Member State, services provided by temporary employment agencies and services provided by security agencies be excluded from the scope of the proposal. In order not to affect the freedom of Member States - on the basis of the principle of subsidiarity - to define what they consider to be services of general economic interest as referred to in Articles 16 and 86(2) of the Treaty and not to anticipate a framework Directive on services of general interest, the proposal should neither apply to services which the Member States and/or the Community subject to specific universal or public service obligations, by virtue of a general interest criterion.

For reasons of legal certainty and consistency with sectoral internal market directives, specific network services, transport services and audiovisual services should be excluded from the scope of this proposal. Finally, in order to avoid any misunderstanding about the subject-matter and the scope of the proposal, it is essential to state that this Directive should not deal with the field of labour law and social security law and should not interfere with the distribution of regional or local powers within each Member State.

(2) Establishment

As regards requirements relating to establishment, the current proposal will narrow down Member States' national regulatory powers to translate their duties in the social sphere into national/regional authorisation schemes. Including a number of clarifications and amendments in this draft opinion is justified by reasons of subsidiarity, proportionality, legal certainty as well as consistency with EC Treaty rules and the case-law of the European Court of Justice.

(3) Country of origin principle

In the absence of a minimum level of harmonisation at EU level or, at least, of mutual recognition on the basis of comparable rules within the Member States, the country of origin principle cannot be the basic principle governing temporary cross-border provision of services. The coordinated field to which the scope of the country of origin principle is linked covers any requirement applicable to the access to and the exercise of a service activity. However the fields actually coordinated by this Directive only relate to information on service providers, provisions on professional insurance and information of recipients on the existence of after-sale guarantees and the settlement of disputes. Therefore, the scope of the country of origin principle should be limited to the fields actually coordinated by this Directive and other Community instruments.

The competent authorities of the Member State in which the service is provided are best placed to ensure the effectiveness and the continuity of supervision and to provide protection for recipients. Even though this supervision should be complemented by an effective system of administrative cooperation between Member States, it is unacceptable that the principle according to which the Member State of origin carries the responsibility for the supervision of the service replaces the supervision by the Member State where the service is provided.

(4) Coherence with other Community instruments

There is a lack of consistency between the proposal and other Community initiatives. Many experts have raised concerns on the repercussions of this proposal on the labour law provisions of the posting Directive and the rules of conflict of laws included in Rome I and Rome II. For reasons of legal certainty and consistency, it is essential to clearly state that this proposal will respect other Community instruments as well as the adoption of any Community instrument amending or replacing these instruments. For the same reasons, any clarification in the field of the posting of workers should be dealt with under the existing legal framework of Directive 96/71/EC.

AMENDMENTS

The Committee on Employment and Social Affairs calls on the Committee on the Internal Market and Consumer Protection, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission ¹	Amendments by Parliament
<p style="text-align: center;">Amendment 1 Citation 1</p>	
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 Treaty establishing the European Community, and in particular the first and third sentence of Article 47(2) and Article 55 thereof,
<p style="text-align: center;"><i>Justification</i></p> <p><i>The deletion is consistent with the amendment to Article 2 on the scope of this Directive.</i></p>	
<p style="text-align: center;">Amendment 2 Recital 1</p>	
(1) The European Union is seeking to forge	(1) The European Union is seeking to forge

¹ OJ C ... /Not yet published in OJ.

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.**

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. ***In accordance with Articles 2 and 3 of the Treaty, the creation of an internal market of services should at the same time promote a harmonious, balanced and sustainable development of economic activities and a high level of employment and of social protection.***

Justification

It is important to stress that the elimination of obstacles to cross-border provision of services within the European Union should acknowledge and promote the other fundamental tasks of the Union.

Amendment 3 Recital 3

(3) Since services constitute the engine of economic growth and account for 70% of GDP and employment in the majority of Member States, this fragmentation of the internal market has a negative impact on the entire European economy, in particular on the competitiveness of SMEs, and prevents consumers from gaining access to a greater variety of competitively priced 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 making the European Union the most competitive and dynamic knowledge-based economy in the world **by 2010**. Removing those barriers is essential in order to revive the European economy, particularly in terms

(3) Since services constitute the engine of economic growth and account for 70% of GDP and employment in the majority of Member States, this fragmentation of the internal market has a negative impact on the entire European economy, in particular on the competitiveness of SMEs, and prevents consumers from gaining access to a greater variety of competitively priced 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 making the European Union **by 2010** the most competitive and dynamic knowledge-based economy in the world ***capable of sustainable economic growth with more and better jobs and greater social cohesion.***

of employment and investment.

Removing those barriers is essential in order to revive the European economy, particularly in terms of employment and investment.

Justification

The strategic goal set by the Lisbon European Council is to become the most competitive and dynamic knowledge-based economy in the world capable of sustainable economic growth with more and better jobs and greater social cohesion.

Amendment 4 Recital 5

(5) Those barriers cannot be removed solely by relying on direct application of Articles 43 and 49 of the Treaty, since, on the one hand, addressing them on a case-by-case basis through infringement procedures against the Member States concerned would, especially following enlargement, be extremely complicated for national and Community institutions, and, on the other hand, the lifting of many barriers requires prior coordination of national legal schemes, including the *setting up* of administrative cooperation. As the European Parliament and the Council have recognised, a Community legislative instrument makes it possible to achieve a genuine internal market for services.

(5) Those barriers cannot be removed solely by relying on direct application of Articles 43 and 49 of the Treaty, since, on the one hand, addressing them on a case-by-case basis through infringement procedures against the Member States concerned would, especially following enlargement, be extremely complicated for national and Community institutions, and, on the other hand, the lifting of many barriers requires prior coordination of national legal schemes, including the *setting-up* of administrative cooperation. As the European Parliament and the Council have recognised, a Community legislative instrument makes it possible to achieve a genuine internal market for services. ***Accordingly, to enable free movement of services to be implemented effectively, without jeopardising the European social model, provision should be made under secondary legislation to codify a list of obstacles which the Court of Justice has already recognised to be contrary to the Treaty, the unvarying case law of the Court of Justice on the principle of mutual recognition.***

Justification

The country of origin principle is at odds with the principle of equal treatment as set out in Article 50 of the Treaty and with the unvarying judicial practice as regards interpretation of the Treaty provisions on freedom to provide services.

As recommended by the Committee on Civil Law Matters, provisions relating to conflict of laws should be excluded from this directive so as to guarantee consistency with the specific Community instruments in force, as well as for reasons of legal certainty. These provisions have their own legal basis (Articles 61(c) and 65 of the EC Treaty). The provisions falling under the above-mentioned instruments (Rome I and II) are better suited to the task of maintaining a balance among the interests involved.

Prior harmonisation is a necessity.

Amendment 5
Recital 6 a (new)

(6a) 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.

Justification

This Directive should be without prejudice to Community objectives and action in the social policy sphere.

Amendment 6
Recital 6 b (new)

(6b) This Directive should not interfere with the distribution of powers at regional or local level within each Member State.

Justification

This Directive should respect the regional or local powers within each Member State.

Amendment 7
Recital 7 a (new)

(7 a) The provisions of this Directive should preserve the role of services of general economic interest, in particular in promoting social and territorial cohesion, and recognise the rights of employees in the services sector.

This Directive should not cover services of general economic interest, as referred to in Article 16 and 86(2) of the Treaty, and should not affect the freedom of Member States to define what they consider to be services of general economic interest, how these services should be organised, guaranteed or financed and what specific obligations they are subject to. This Directive should not affect the follow-up to the Commission White Paper on services of general interest and the possible future adoption of a framework Directive on services of general interest.

This Directive should not deal with the funding of services of general economic interest and should not apply to systems of aids granted by Member States, in particular health and social fields. It should not concern requirements governing the access to public funds for certain service providers. Such requirements are notably those laying down conditions under which service providers are entitled to receive public funding, including specific contractual conditions, in particular quality standards which need to be observed as a condition to receive public funds, for example for health and social services.

Amendment 8
Recital 8

(8) This Directive *is consistent with* other current Community initiatives concerning services, particularly those relating to the competitiveness of business-related services, the safety of services, *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 market, and those concerning consumer protection, such as the proposal

(8) This Directive *should not affect* other current Community initiatives concerning services, particularly those relating to the competitiveness of business-related services *and* the safety of services. It *should also be without prejudice to* 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 market, and those concerning consumer protection, such as the proposal for a Directive on unfair commercial practices and the proposal for a

for a Directive on unfair commercial practices 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").

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").

Justification

The amendment is justified by the fact that this Directive, which may have implications for other Community initiatives, may not interfere with these initiatives.

Amendment 9 Recital 9

(9) 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. ***Financial services are defined in Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC. That Directive defines a financial service as any service of a banking, credit, insurance, personal pension, investment or payment nature.***

(9) 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 should concern any service of a banking, credit, insurance, occupational or personal pension, investment or payment nature, including reinsurance, currency exchange, clearing and settlement systems, securities custodianship and investment advice.***

Amendment 10 Recital 11

(11) In view of the fact that the Treaty provides specific legal bases for taxation matters and for the Community instruments already adopted in that field, it is necessary to exclude the field of taxation from the scope of this Directive, ***with the exception,***

(11) In view of the fact that the Treaty provides specific legal bases for taxation matters and for the Community instruments already adopted in that field, it is necessary to exclude the field of taxation from the scope of this Directive. ***However, the***

however, of the provisions concerning prohibited requirements and the free movement of services. Harmonisation in the field of taxation has been achieved notably through Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment, Council Directive 90/434/EEC of 23 July 1990 on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States, Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States and Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States. The present Directive does not aim to introduce specific new rules or systems in the field of taxation. Its sole objective is to remove restrictions, certain of which are fiscal in nature, and in particular those which are discriminatory, on freedom of establishment and the free movement of services, in accordance with the case-law of the Court of Justice of the European Communities, hereinafter “the Court of Justice”, with respect to Articles 43 and 49 of the Treaty. The field of value added tax (VAT) is the subject of harmonisation at Community level, in accordance with which service providers carrying out cross-border activities may be subject to obligations other than those of the country in which they are established. It is nevertheless desirable to establish a system of “one-stop shops” for service providers, in order to enable all their obligations to be fulfilled by means of a single electronic portal to the tax authorities in their home Member State.

prohibition of discrimination provided for in this Directive should apply to fiscal discriminations which are incompatible with the freedom of establishment and the free movement of services. According to settled case-law, discrimination arises through the application of different rules to comparable situations or the application of one and the same rule to different situations.

Justification

See amendment Article 2, paragraph 3.

Amendment 11
Recital 11 a (new)

(11a) 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.

Justification

See Article 2, new paragraph 4.

Amendment 12
Recital 12

(12) Since transport services are already covered by a set of Community instruments specific to that field, they should be excluded from the scope of this Directive to the extent that they are regulated by other Community instruments adopted under Articles 71 and 80(2) of the Treaty. However, this Directive applies to services that are not regulated by specific instruments concerning transport, such as cash in transit or the transport of mortal remains.

(12) Transport services, including urban transport, taxis and ambulances, should be excluded from the scope of this Directive regardless of whether they are regulated by other Community instruments adopted under Article 71 and 80(2) of the Treaty.

Amendment 13
Recital 13

(13) There is already a considerable body of Community law on service activities, especially the regulated professions, postal services, television broadcasting, information society services and services relating to travel, holidays and package tours. Service activities are also covered by

(13) There is already a considerable body of community law on service activities, especially the regulated professions, postal services, television broadcasting, information society services and services relating to travel, holidays and package tours. Service activities are also covered by

other instruments which do not deal with a specific category of services, such as those relating to consumer protection. This Directive ***builds on, and thus complements***, the Community *acquis*. ***Where a service activity is already covered by one or more Community instruments, this Directive and those instruments will all apply, the requirements laid down by one adding to those laid down by the others. Accordingly, appropriate provisions should be laid down, including provision for derogations, in order to prevent incompatibilities and to ensure consistency as between all those Community instruments.***

other instruments which do not deal with a specific category of services, such as those relating to consumer protection. This Directive ***should be without prejudice to*** the Community *acquis*. ***It should not affect the adoption of any Community legal instrument amending or replacing the Community acquis relating to specific services.***

Justification

This Directive shall respect provisions governing specific services as well as the Community instruments amending or replacing these specific provisions.

Amendment 14 Recital 13 a (new)

(13a) This Directive should not apply to services that are guaranteed or financed, entirely or in part, by a Member State. This is particularly the case for educational, cultural and audiovisual services, health care services and social services, including placement of workers, vocational/professional training, access to employment and social housing.

Justification

See amendments Article 2.

Amendment 15 Recital 13 b (new)

(13b) Postal services should be excluded from the scope of this Directive since those services are already the subject of the provisions of Directive 97/67/EC of the European Parliament and of 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.

¹OJ L 15, 21.1.1998, p. 14.

Justification

See amendments Article 2.

Amendment 16
Recital 13 c (new)

(13c) In view of the adoption in 2003 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/EC¹, it is necessary to exclude electricity generation, transmission, distribution and supply services as defined in Article 2 of that Directive.

¹OJ L 176, 15.7.2003, p. 37.

Justification

See amendments Article 2.

Amendment 17
Recital 13 d (new)

(13d) Gas transmission, distribution, supply and storage services should be excluded from the scope of this Directive since these activities are subject to the provisions 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/EC¹.

¹OJ L 176, 15.7.2003, p. 57.

Justification

See amendments Article 2.

Amendment 18
Recital 13 e (new)

(13e) In the absence of specific minimum harmonised requirements in respect of temporary employment agencies at Community level and in view of the possible future adoption of a Directive on temporary work, services provided by a temporary employment agency should be excluded from the scope of this Directive.

Justification

See amendments Article 2.

Amendment 19
Recital 13 f (new)

(13f) In the absence of specific minimum harmonised requirements in respect of security agencies at Community level and considering the contribution of these agencies to the maintenance of public security, the services provided by these agencies should be excluded from the scope of this Directive.

Justification

See amendments Article 2.

Amendment 20
Recital 13 g (new)

(13g) Rules concerning the conflict of laws should be excluded from this Directive for reasons of legal certainty and in order to ensure coherence with specific Community instruments. In view of the future adoption of specific Community instruments, this Directive should not affect the rules on conflict of laws especially as contained in

the 1980 Rome Convention on the law applicable to contractual obligations, and Regulation (EC) No ... of the European Parliament and of the Council on the law applicable to non-contractual obligations. The rules included in these instruments represent a proper balance of interests involved, such as consumer protection, protection of the environment and worker protection.

Justification

As the Committee on Civil Law Matters recommended, rules concerning the conflict of laws should be excluded from this Directive in order to ensure coherence with the specific pending Community instruments concerning the conflict of laws and for reasons of legal certainty. Moreover, Community rules of conflict of law fall under a separate legal basis (Articles 61, point c and 65 of the Treaty). The rules included in the specific pending Community instruments (Rome I and II) are more appropriate to safeguard a balance between interests involved.

Amendment 21 Recital 13 h (new)

(13h) This Directive should be consistent with and should not affect Directive 89/552/EEC ("Television Without Frontiers" Directive), including its definition of when a broadcaster is deemed to be established in a Member State, which continues to fully apply. This Directive should not pre-empt the possible future revision of the "Television Without Frontiers" Directive.

Furthermore, it should not affect the specificity of audiovisual services in international negotiations.

Amendment 22 Recital 17

(17) 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 country of origin principle cover the requirements applicable to access to service***

(17) This Directive does not concern the application of Articles 28 to 30 of the Treaty relating to the free movement of goods, ***including the distribution of goods.***

activities or to the exercise thereof and not those applicable to goods as such.

Justification

This amendment is consistent with the amendment to Article 16.

Amendment 23
Recital 18 a (new)

(18a) The place at which a service provider is established should be determined in conformity with the case-law of the Court of Justice according to which the concept of establishment involves the actual pursuit of an economic activity through a fixed establishment for an indefinite period. This requirement 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 a 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.

Justification

In order to avoid that a mere letter box company could constitute an establishment, it needs to be clarified that the business of providing a service only constitutes an establishment in a Member State provided that it is effectively carried out in that Member State.

Amendment 24
Recital 19

(19) Where an operator travels to another Member State to exercise a service activity

(19) 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 host Member State, such as an office, chambers or consulting rooms, in so far as such infrastructure is necessary for the purposes of providing the service in question.

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.

According to the case-law of the Court of Justice the key element is the question whether the economic operator is established or not in the Member State where he provides the service concerned. If he is established in the Member State where he provides his services, he comes under the scope of application of the freedom of establishment. If by contrast the economic operator is not established in the Member State of destination of the service he is a cross-border service provider covered by the freedom to provide services.

The Court of Justice has consistently held that the temporary nature of the activities in question must be determined in the light not only of the duration of the provision of the service, but also of its regularity, periodical nature or continuity. In any case, the fact that the activity is temporary does not mean that the service provider may not equip himself with some forms of infrastructure in the host Member State, such as an office, chambers or consulting rooms, in so far as such infrastructure is necessary for the purposes of providing the service in question.

Justification

The amendment to this recital is justified by the need to clarify the difference between the freedom of establishment and the freedom to provide services in accordance with the case-law of the Court of Justice.

Amendment 25

Recital 21

(21) The concept of the coordinated field covers all requirements applicable to access to service activities and to the exercise thereof, in particular those laid down by the laws, regulations and administrative

deleted

provisions of each Member State, whether or not they fall within an area harmonised at Community level or are general or specific in nature and regardless of the legal field to which they belong under national law.

Justification

The deletion of this recital is consistent with the amendment to Article 16 and the deletion of Article 4(9).

Amendment 26 Recital 22

(22) One of the fundamental difficulties faced, in particular by SMEs, in accessing service activities and exercising them is the complexity, length and legal uncertainty of administrative procedures. For this reason, following the example of certain modernising and good administrative practice initiatives undertaken at Community and national level, it is necessary to establish principles of administrative simplification, *inter alia* through the introduction, coordinated at Community level, of a system of single points of contact, limitation of the obligation of prior authorisation to cases in which it is essential ***and the introduction of the principle of tacit authorisation by the competent authorities after a certain period of time has elapsed.*** Such modernising action, while maintaining the requirements on transparency and the updating of information relating to operators, is intended to eliminate the delays, costs and dissuasive effects which arise, for example, from unnecessary or excessively complex and burdensome procedures, the duplication of procedures, the red tape involved in submitting documents, the use of 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

(22) One of the fundamental difficulties faced, in particular by SMEs, in accessing service activities and exercising them is the complexity, length and legal uncertainty of administrative procedures. For this reason, following the example of certain modernising and good administrative practice initiatives undertaken at Community and national level, it is necessary to establish principles of administrative simplification, *inter alia* through the introduction, coordinated at Community level, of a system of single points of contact ***and the*** 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

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.

develop their activities in other Member States and require coordinated modernisation within an enlarged internal market of twenty-five Member States.

Justification

This amendment is consistent with the deletion of the principle of tacit authorisation in Article 13, paragraph 4.

Amendment 27
Recital 22 a (new)

(22 a) The Member States and the Commission should promote the creation of harmonised European forms which have equivalent status to the certificates, attestations or other documents relating to establishment, so that these are available in all Member States before this directive enters into force.

Justification

Uniform forms are a cheap and effective way of reducing bureaucracy. SMEs in particular benefit more than proportionally from standardised forms because they eliminate translation costs, etc. It would make sense for these simplified uniform forms and certificates to be available, at the latest, when the directive enters into force.

Amendment 28
Recital 27 a (new)

(27a) 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 procurements.

Justification

This Directive is without prejudice to the rules on public procurement.

Amendment 29

Recital 28

(28) In cases where the number of authorisations available for an activity is limited because of scarcity of natural resources or technical capacity, as may be the position, for example, with regard to ***the award of analogue radio frequencies*** or the exploitation of hydro-electric plant, a procedure for selection from among several potential candidates must be adopted, with the aim of developing through open competition the quality and conditions for supply of services available to users. Such a procedure must provide guarantees of transparency and impartiality and the authorisation thus granted must not have an excessive duration, or be subject to automatic renewal, or confer any advantage on the successful provider. In particular, the duration of the authorisation granted must be fixed in such a way that it does not restrict or limit free competition beyond what is necessary to enable the provider to recoup the cost of investment and to make a fair return on the capital invested. Cases where the number of authorisations is limited for reasons other than scarcity of natural resources or technical capacity remain in any case subject to the other provisions of this Directive relating to authorisation schemes.

(28) In cases where the number of authorisations available for an activity is limited because of scarcity of natural resources or technical capacity, as may be the position, for example, with regard to the exploitation of hydro-electric plant, a procedure for selection from among several potential candidates must be adopted, with the aim of developing through open competition the quality and conditions for supply of services available to users. Such a procedure must provide guarantees of transparency and impartiality and the authorisation thus granted must not have an excessive duration, or be subject to automatic renewal, or confer any advantage on the successful provider. In particular, the duration of the authorisation granted must be fixed in such a way that it does not restrict or limit free competition beyond what is necessary to enable the provider to recoup the cost of investment and to make a fair return on the capital invested. Cases where the number of authorisations is limited for reasons other than scarcity of natural resources or technical capacity remain in any case subject to the other provisions of this Directive relating to authorisation schemes.

Justification

Rules on the award of radio frequencies are already laid down in the Community legal framework for electronic communications networks and services. The telecoms package is excluded from the scope of the present directive. The same should apply to the award of radio frequencies.

Amendment 30

Recital 31

(31) The Court of Justice has consistently held that the freedom of establishment is

(31) The Court of Justice has consistently held that the freedom of establishment is

predicated, in particular, upon the principle of equal treatment, which entails the prohibition not only of any discrimination on grounds of nationality but also of any indirect discrimination based on other grounds but capable of producing the same result. Thus, access to a service activity or the exercise thereof in a Member State, either as a principal or secondary activity, may not be made subject to criteria such as place of establishment, residence, domicile or principal provision of the service activity. 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.

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. ***The obligation to provide a regular emergency service should be unaffected by this provided that it accords with other Community law.*** 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.

Justification

Universal, high-quality medical care for the population at large is one of the most social achievements of our age. In the case of health care services, in particular, such care, available everywhere and at all times, can be ensured only if service providers can be compelled to provide an emergency service. As this may entail an obligation for the service provider to be temporarily present, it should be made clear that this is not a 'prohibited requirement' as referred to in Article 14 but should be judged in accordance with the general principles of Community law.

Amendment 31 Recital 32

(32) The prohibition of economic tests as a

(32) The prohibition of economic tests as a

prerequisite for the grant of authorisation covers economic tests as such, but not requirements which are objectively justified by overriding reasons relating to the public interest, such as protection of the urban environment. That prohibition does not affect the exercise of the powers of the authorities responsible for applying competition law.

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.

Justification

The prohibition of economic tests will not prevent national authorities from establishing a high level of protection that it is justified by overriding reasons relating to the public interest, such as social policy and public health objectives.

Amendment 32 Recital 32 a (new)

(32a) The prohibition of direct or indirect involvement of competing operators having personal motivations for action in the granting of authorisations should not concern the consultation of organisations such as chambers of commerce or social partners on matters other than individual applications for authorisations. Neither should it preclude the consultation of trade organisations whose members include representatives of competitors provided that the outcome of a given consultation is not determinative of an authorisation or other decision on an individual application.

Justification

The prohibition of direct or indirect involvement of competing operators can only relate to decisions concerning individual applications for authorisations.

Amendment 33 Recital 32 b (new)

(32b) The lifting of the obligation to provide or participate in a financial guarantee or to take out insurance should not affect the possibility for Member States

to require financial guarantees or insurance nor should it affect requirements relating to the participation in a collective compensation fund, for instance for members of professional bodies or organisations. Neither should it affect the possibility for Member States to require service providers to participate in a financial guarantee to a sector-related social fund which intends to protect workers against the insolvency of their employers.

Justification

The prohibition relating to the financial guarantee/insurance should not affect the freedom of Member States to require service providers to participate in a collective compensation fund or in a sector-related fund in order to protect workers against the insolvency of their employers.

Amendment 34

Recital 33

(33) In order to coordinate the modernisation of national rules and regulations in a manner consistent with the requirements of the internal market, it is necessary to evaluate certain non-discriminatory national requirements which, by their very nature, could severely restrict or even prevent access to an activity or the exercise thereof under the freedom of establishment.

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.

(33) In order to coordinate the modernisation of national rules and regulations in a manner consistent with the requirements of the internal market, it is necessary to evaluate certain non-discriminatory national requirements which, by their very nature, could severely restrict or even prevent access to an activity or the exercise thereof under the freedom of establishment. ***This evaluation process should be limited to the compatibility of these requirements with the criteria already established by the Court of Justice on the freedom of establishment. It should not concern the application of Community competition law. Where such requirements are discriminatory or not objectively justified by an overriding reason relating to the public interest or where they are disproportionate, they should be abolished or amended. The outcome of the assessment will be different according to the nature of the activities and the public interest concerned. In particular, according to the case-law of the Court of Justice, such requirements could be fully justified when***

they pursue public health or social policy objectives. The mutual evaluation process provided for in this Directive should not affect the freedom of Member States to provide in their legislation for a high level of protection of public interests, in particular with the aim to achieve health and social policy objectives.

Justification

It is important to state that the mutual evaluation process only deals with the question whether these national requirements are compatible with the criteria already established by the Court of Justice on the freedom of establishment. It does not concern the application of Community competition law. This procedure will not prevent national authorities from establishing a high level protection of public interests, particularly to pursue health and social policy objectives.

Amendment 35

Recital 34

(34) The restrictions to be examined include national rules which, on grounds other than those relating to professional qualifications, reserve access to activities such as games of chance to particular providers. ***Similarly, among the requirements to be examined are "must carry" rules applicable to cable operators which, by imposing an obligation on an intermediary service provider to give access to certain services delivered by specific service providers, affect his freedom of choice, access to programmes and the choice of the recipients.***

(34) The restrictions to be examined include national rules which, on grounds other than those relating to professional qualifications, reserve access to activities such as games of chance to particular providers.

Justification

'Must-carry' obligations relating to relaying are already covered by Directive 2002/22/EC (universal service directive). As these provisions serve to protect cultural and media diversity, the present directive must not affect them.

Amendment 36

Recital 35

(35) It is appropriate that the provisions of this Directive concerning freedom of establishment should apply only to the extent that the activities in question are open

(35) It is appropriate that the provisions of this Directive concerning freedom of establishment should apply only to the extent that the activities in question are open

to competition, so that they do not oblige Member States to abolish existing monopolies, notably those of lotteries, or *to privatise* certain *sectors*.

to competition, so that they do not oblige Member States *to liberalise services of general economic interest nor to privatise public entities providing such services nor* to abolish existing monopolies *for other activities*, notably those of lotteries or certain *distribution services*.

Justification

Clarification.

Amendment 37 Recital 37

(37) In order to secure effective implementation of the free movement of services and to ensure that recipients and providers can benefit from and supply services throughout the Community regardless of frontiers, it is necessary to establish the principle that a provider may be subject only to the law of the Member State in which he is established. That principle is essential in order to enable providers, especially SMEs, to avail themselves with full legal certainty of the opportunities offered by the internal market. By thus facilitating the free movement of services between Member States, that principle, together with harmonisation and mutual assistance measures, also enables recipients to gain access to a wider choice of high quality services from other Member States. That principle should be complemented by an assistance mechanism enabling the recipient, in particular, to be informed about the laws of the other Member States, and by the harmonisation of rules on the transparency of service activities.

deleted

Justification

The deletion of recitals 37-39 is consistent with the proposed amendment to Article 16.

Amendment 38
Recital 37 a (new)

(37a) It is essential that the elimination of obstacles to the free movement of services goes hand in hand with coordination of the law of the Member States. For reasons falling within the fields coordinated by this Directive, Member States should ensure freedom to provide services and should not restrict the access to and the exercise of a service activity by a provider established in another Member State. The fields coordinated by this Directive relate to the information on providers and their services, professional insurance and guarantees, information on after-sales guarantees and settlement of disputes as included in Articles 26 to 28 and 32. Provided that -and to the extent that- fields are coordinated by other Community instruments, inter alia through the introduction of transparency requirements and requirements preventing unfair commercial practices, the principle that Member States may not restrict services coming from another Member State should also apply.

Justification

This new recital is consistent with the amendment to Article 16.

Amendment 39
Recital 37 b (new)

(37b) The competent authorities of the Member State in which the service is provided are best placed to ensure the effectiveness and continuity of supervision of the provider and to provide protection for recipients. This system can be improved by coordinating rules on supervision and by creating an effective system of administrative cooperation between the Member State where the service is provided and the Member State where the service provider is established. On this basis, and

in accordance with Article 35 of this Directive, Member States should give each other mutual assistance and should put in place all possible measures for effective cooperation, inter alia by designating one or more points of contact through which other Member States or the Commission can request information by electronic means.

Justification

This new recital is consistent with the amendment to Article 16.

Amendment 40
Recital 38

(38) It is also necessary to ensure that supervision of service activities is carried out at source, that is to say, by the competent authorities of the Member State in which the provider is established. The competent authorities of the country of origin are best placed to ensure the effectiveness and continuity of supervision of the provider and to provide protection for recipients not only in their own Member State but also elsewhere in the Community. In order to establish mutual trust between Member States in the regulation of service activities, it should be clearly laid down that responsibility under Community law for supervision of the activities of providers, regardless of the place where the service is provided, lies with the Member State of origin. Determination of judicial jurisdiction does not fall within the scope of this Directive but within that of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, or other Community instruments such as 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

deleted

provision of services.

Justification

The deletion of recitals 37-39 is consistent with the proposed amendment to Article 16.

Amendment 41

Recital 39

(39) As a corollary to the principle that the law of the country of origin should apply and that the country of origin should be responsible for supervision, it is necessary to lay down the principle that Member States may not restrict services coming from another Member State. ***deleted***

Justification

The deletion of recitals 37-39 is consistent with the proposed amendment to Article 16.

Amendment 42

Recital 40

(40) 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

(40) It is necessary to point out that exceptions on grounds of public policy, public security, or public health, as referred to in Article 46 of the EC Treaty, may be invoked in order to justify national regulations that are not applicable equally to service providers irrespective of their origin. Moreover, when non-discriminatory restrictions have been imposed, the case law of the Court has recognised overriding reasons relating to the general interest, including professional rules to protect service recipients, protection of intellectual property, protection of workers, consumer protection, conservation of the national historic and artistic heritage, development of archaeological, historic, and artistic assets, and the widest possible dissemination of knowledge of a country's artistic and cultural heritage.

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.

Justification

In line with the amendments replacing the country of origin principle with the principle of mutual recognition.

Amendment 43 Recital 41 a (new)

(41a) This Directive should not affect terms and conditions of employment which, pursuant to Directive 96/71/EC, apply to workers posted to provide a service in the territory of another Member State. 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 enlisted in Directive 96/71/EC in the case of public policy provisions. It should neither affect the 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'.

Justification

This new recital clarifies what are the matters covered by Directive 96/71/EC as well as the matters for which Directive 96/71/EC explicitly leaves the possibility to Member States of adopting more protective measures at national level.

Amendment 44

Recital 43

(43) ***The country of origin principle*** 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.

(43) ***This Directive*** should not ***affect the application of*** 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, ***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 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 ***including rules on the working environment or the protection of workers, self-employed persons, or the public.***

Justification

This Directive should be without prejudice to national requirements that are directly related to the particular risk of the place where the service is provided as well as to health and safety at the work place for workers, self-employed persons and the public. Matters relating to health, safety and hygiene at work for workers are included in Directive 96/71/EC, which, instead, does not cover the self-employed persons and the public.

Amendment 45

Recital 51

(51) ***In accordance with the principles established by the Court of Justice with regard to the freedom to provide services,***

deleted

and without endangering the financial balance of Member States' social security systems, greater legal certainty as regards the reimbursement of health costs should be provided for patients, who benefit as recipients from the free movement of services, and for health professionals and managers of social security systems.

Justification

The deletion of recitals 51-57 is consistent with the deletion of Article 23.

Amendment 46

Recital 52

(52) 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 to members of their families moving within the Community and, in particular, its provisions regarding affiliation to a system of social security, fully applies to employed and self-employed workers who provide or take part in the supply of a service. **deleted**

Justification

The deletion of recitals 51-57 is consistent with the deletion of Article 23.

Amendment 47

Recital 53

(53) Article 22 of Regulation (EEC) No 1408/71, which concerns authorisation for assuming the costs of health care provided in another Member State, contributes, as the Court of Justice has emphasised, to facilitating the free movement of patients and the provision of cross-border medical services. The purpose of that provision is to ensure that insured persons possessing an authorisation have access to health care in another Member State under conditions which, as regards the assumption of costs, are as favourable as those applying to **deleted**

insured persons in that Member State. It thus confers on insured persons rights they would not otherwise have and facilitates the free movement of services. On the other hand, that provision does not seek to regulate, nor in any way to prevent, reimbursement, at the rates applicable in the Member State of affiliation, of the costs of health care provided in another Member State, even in the absence of a prior authorisation.

Justification

The deletion of recitals 51-57 is consistent with the deletion of Article 23.

Amendment 48

Recital 54

<i>(54) In the light of the case-law developed by the Court of Justice on the free movement of services, it is necessary to abolish the requirement of prior authorisation for reimbursement by the social security system of a Member State for non-hospital care provided in another Member State, and Member States must amend their legislation accordingly. In so far as the reimbursement of such care remains within the limits of the cover guaranteed by the sickness insurance scheme of the Member State of affiliation, abolition of the prior authorisation requirement is not likely seriously to disrupt the financial equilibrium of social security systems. As the Court of Justice has consistently held, the conditions under which Member States grant non-hospital care on their own territory remain applicable in the case of care provided in a Member State other than that of affiliation in so far as those conditions are compatible with Community law. By the same token, authorisation schemes for the assumption of costs of care in another Member State must comply with this Directive as regards the conditions for granting authorisation</i>	<i>deleted</i>
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and the related procedures.

Justification

The deletion of recitals 51-57 is consistent with the deletion of Article 23.

Amendment 49

Recital 55

(55) As the Court of Justice has consistently held with regard to the free movement of services, a system of prior authorisation for the reimbursement of hospital care provided in another Member State appears justified by the need to plan the number of hospital infrastructures, their geographical distribution, the mode of their organisation, the equipment with which they are provided and even the nature of the medical services which they are able to offer. The aims of such planning are to ensure, within each Member State, sufficient permanent access to a balanced range of quality hospital care, to secure efficient cost management and, so far as is possible, to avoid wastage of financial, technical or human resources. In accordance with the case-law of the Court of Justice, the concept of hospital care must be objectively defined and a system of prior authorisation must be proportionate to the general interest objective pursued. *deleted*

Justification

The deletion of recitals 51-57 is consistent with the deletion of Article 23.

Amendment 50

Recital 56

(56) Article 22 of Council Regulation (EEC) No 1408/71 specifies the circumstances in which the competent national institution may not refuse an authorisation sought on the basis of that provision. Member States may not refuse *deleted*

authorisation in cases where the hospital care in question, when provided in their territory, is covered by their social security system, and treatment which is identical or equally effective cannot be obtained in time in their territory under the conditions laid down by their social security system. The Court of Justice has consistently held that the condition relating to acceptable delay must be considered together with all the circumstances of each case, taking due account not only of the medical condition of the patient at the time when authorisation is requested, but also his medical history and the probable evolution of his illness.

Justification

The deletion of recitals 51-57 is consistent with the deletion of Article 23.

Amendment 51

Recital 57

<i>(57) The assumption of costs, by the social security systems of the Member States, in respect of health care provided in another Member State must not be lower than that provided for by their own social security system for health care provided in their territory. As the Court has consistently pointed out with regard to the free movement of services, in the absence of authorisation, the reimbursement of non-hospital care in accordance with the scales of the Member State of affiliation would not have a significant effect on the financing of its social security system. In cases where authorisation has been granted, in the framework of Article 22 of Regulation (EEC) No 1408/71, the assumption of costs is made in accordance with the rates applicable in the Member State in which the health care is provided. However, if the level of coverage is lower than that to which the patient would have been entitled if he had received the same</i>	<i>deleted</i>
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care in the Member State of affiliation, the latter must assume the remaining costs up to the level which would have applied.

Justification

The deletion of recitals 51-57 is consistent with the deletion of Article 23.

Amendment 52
Recital 58

(58) As regards the posting of workers in the context of the provision of services in a Member State other than the Member State of origin, it is necessary to clarify the division of roles and tasks between the Member State of origin and the Member State of posting, in order to facilitate the free movement of services. The present Directive does not aim to address issues of labour law as such. The division of tasks and the specifying of the forms of cooperation between the Member State of origin and the Member State of posting facilitates the free movement of services, especially by abolishing certain disproportionate administrative procedures, while also improving the monitoring of compliance with employment and working conditions in accordance with Directive 96/71/EC. **deleted**

Justification

The deletion of recitals 58-61 is consistent with the deletion of Articles 24-25.

Amendment 53
Recital 59

(59) In order to avoid discriminatory or disproportionate administrative formalities, which would be a disincentive to SMEs in particular, it is necessary to preclude the Member State of posting from making postings subject to compliance with requirements such as an obligation to request authorisation from the authorities. **deleted**

The obligation to make a declaration to the authorities of the Member State of posting should also be prohibited. However, it should be possible to maintain such an obligation until 31 December 2008 in the field of building work in accordance with the Annex to Directive 96/71/EC. In that connection, a group of Member State experts on the application of that Directive are studying ways to improve administrative cooperation between Member States in order to facilitate supervision. Furthermore, as regards employment and working conditions other than those laid down in Directive 96/71/EC, it should not be possible for the Member State of posting to take restrictive measures against a provider established in another Member State.

Justification

The deletion of recitals 58-61 is consistent with the deletion of Articles 24-25.

Amendment 54

Recital 60

<i>(60) By virtue of the free movement of services, a service provider is entitled to post workers even if they are not Community citizens but third country nationals, provided that they are legally present and lawfully employed in the Member State of origin. It is appropriate to place the Member State of origin under an obligation to ensure that any posted worker who is a third country national fulfils the conditions for residence and lawful employment laid down in its legislation, including with regard to social security. It is also appropriate to preclude the host Member State from imposing on the worker or the provider any preventative controls, especially as regards right of entry or residence permits, except in certain cases. Nor should it be possible for the host Member State to impose any obligations</i>	<i>deleted</i>
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such as possession of an employment contract of indefinite duration or a record of previous employment in the Member State of origin of the provider.

Justification

The deletion of recitals 58-61 is consistent with the deletion of Articles 24-25.

Amendment 55
Recital 61

(61) Following the adoption of Council Regulation (EC) No 859/2003 of 14 May 2003 extending the provisions of Regulation (EEC) No 1408/71 and Regulation (EEC) No 574/72 to nationals of third countries who are not already covered by those provisions solely on the ground of their nationality, third country nationals are covered by a system of cooperation on the application of social security schemes to employed persons and to members of their families moving within the Community, established by Regulation (EEC) No 1408/71, under which the rules of the country under whose social security scheme the worker is insured are to apply. **deleted**

Justification

The deletion of recitals 58-61 is consistent with the deletion of Articles 24-25.

Amendment 56
Recital 64

(64) It is necessary to put an end to the total prohibitions of commercial communications by the regulated professions, not by removing bans on the content of a commercial communication but rather those which, in a general way and for a given profession, forbid one or more forms of commercial communication, such as a ban on all advertising in one or more given media. As regards the content and methods of commercial communication, it is necessary to **deleted**

encourage professionals to draw up, in accordance with Community law, codes of conduct at Community level.

Justification

A number of Member States have long considered it necessary to regulate commercial communications by certain regulated professions, as this contributes to consumer protection, the rule of law and the integrity and dignity of the professions themselves. As the more sensitive regulated professions should not be covered by the proposed Directive, this recital is superfluous.

Amendment 57

Article 1, paragraph 1 a (new)

This Directive does not affect labour relations between workers and employers.

This Directive does not apply to nor indirectly affect services of general economic interest, as defined by the Member States, including regional and local authorities.

This Directive does not deal with the abolition of monopolies providing services nor with aids granted by Member States which are covered by common rules on competition.

This Directive does not affect measures taken at Community level or national level in order to protect or promote cultural or linguistic diversity or media pluralism.

This Directive only concerns service providers established in a Member State and does not cover external aspects. It does not concern negotiations within international organisations on trade in services, in particular in the framework of GATS.

Amendment 58

Article 2, paragraph 2

2. This Directive shall not apply to the

2. This Directive shall not apply to the

following activities:

(a) *financial services as defined in Article 2(b) of Directive 2002/65/EC;*

(b) electronic communications services and networks, and associated facilities and services, with respect to matters covered by Directives 2002/19/EC, 2002/20/EC, 2002/21/EC, 2002/22/EC and 2002/58/EC of the European Parliament and of the Council;

(c) transport services *to the extent that they are governed by other Community instruments the legal basis of which is Article 71 or Article 80(2) of the Treaty.*

following activities:

(- a) services which the Member States and/or the Community subject to specific universal or public service obligations, i.e. specific requirements that are imposed by public authorities on the provider of the service in order to ensure that certain public interest objectives, such as public health, welfare, education, social policy, cultural diversity, protection of the environment and public policy, are met, by virtue of a general interest criterion;

(a) services of a banking, credit, insurance, occupational or personal pension, investment or payment nature;

(b) electronic communications services and networks, and associated facilities and services, with respect to matters covered by *or referred to in* Directives 2002/19/EC, 2002/20/EC, 2002/21/EC, 2002/22/EC and 2002/58/EC of the European Parliament and of the Council;

(c) transport services;

(ca) postal services covered by Directive 97/67/EC of the European Parliament and the Council¹;

(cb) electricity generation, transmission, distribution and supply services within the meaning of Article 2 of Directive 2003/54/EC of the European Parliament and of the Council²;

(cc) 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 Council³;

(cd) water distribution and/or supply services as well as waste water management services;

(ce) professions and activities which are permanently or temporarily connected with the exercise of official authority in a

Member State;

(cf) services provided by a temporary employment agency;

(cg) services provided by security agencies;

(ch) audiovisual services, whatever their mode of production, distribution and transmission, including sound radio broadcasting and written press publication and distribution services.

¹ *OJ L 15, 21.1.1998, p. 14.*

² *OJ L 176, 15.7.2003, p. 37.*

³ *OJ L 176, 15.7.2003, p. 57.*

Justification

- In order not to affect the follow-up to the Commission White Paper on services of general interest and the possible future adoption of a framework Directive on services of general interest, this Directive should not apply to services which the Member States and/or the Community subject to specific requirements that are imposed on the provider of the service in order to ensure that certain public interest objectives, such as public health, welfare, education, social policy, cultural diversity, protection of the environment, public policy, by virtue of a general interest criterion.*
- As the Commission stated in an explanatory note on the activities covered by the proposal, all financial services should be excluded from the scope of this Directive.*
- Transport services should be excluded from this Directive regardless of whether they are regulated by other Community instruments adopted under Article 71 and 80(2) of the Treaty. Transport services that fall outside the scope of the common transport policy (inter alia for reasons of subsidiarity), should also be excluded from the scope of this Directive.*
- For reasons of legal certainty and consistency, specific network services (see post, electricity, gas) that are already subject to sectoral internal market directives should be excluded from the scope of the Directive, including as regards the aspects that are not (yet) dealt with by these sectoral Directives. Water distribution, supply and waste water management services should also be excluded.*
- This Directive should not apply to professions and activities which are permanently or temporarily connected with the exercise of official authority in a Member State.*
- Services provided by a temporary employment agency should be excluded from the scope of the Directive because of the lack of specific minimum harmonized requirements in respect of these service providers at Community level and in order not to affect the possible future adoption of a Directive on temporary work.*
- Considering the lack of specific minimum harmonized conditions at Community level and the contribution of security agencies to the maintenance of public security, services provided by security agencies should be excluded from this Directive.*

- Given the fact that audiovisual services are already subject to specific Community legislation, namely the Television without Frontiers Directive and in order not to affect the possible future revision of this sectoral Community instrument, audiovisual services should be excluded from the scope of this Directive.

Amendment 59
Article 2, paragraph 3

3. This Directive **does** not apply to the field of taxation, **with the exception of Articles 14 and 16 to the extent that the restrictions identified therein are not covered by a Community instrument on tax harmonisation.**

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

Justification

Clarification.

Amendment 60
Article 2, paragraph 3 a (new)

3a. This Directive shall not apply to the field of labour law, including collective agreements and industrial action, and social security law.

Justification

In order to guarantee that the removal of barriers to the development of services between Member States does not affect labour law and social security law issues, the field of labour law and social security law as such should be excluded from the scope of this Directive.

Amendment 61
Article 2 a (new)

Article 2a

**Protection of labour law-related
fundamental rights**

This Directive may not be interpreted as affecting in any way the exercise of fundamental rights as recognised in Member States, including the right or freedom to strike. These rights may also include the right to take other action covered by the specific industrial relations

systems in Member States.

Justification

- This Directive deals with the provision of services and not with employees providing these services as such. It is important to state that this Directive should not be contrary to labour law related fundamental rights, such as the right to freedom of association, freedom of negotiation, to take industrial action and to conclude collective agreements. The wordings of this amendment are based on Article 2 of Regulation (EC)2679/98 on the functioning of the internal market in relation to the free movement of goods among the Member States. The amendment is justified by the fact that fundamental rights should be equally safeguarded in the internal market of goods and services.

Amendment 62
Article 2 b (new)

Article 2 b

This Directive shall not debar Member States from applying national rules provided for in their criminal law.

Amendment 63
Article 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.***

Application of this Directive shall ***not prevent the application of provisions of other Community instruments as regards the services governed by those provisions.***

1. Member States shall apply the provisions of this Directive in compliance with the rules of the Treaty.

2. The provisions of this Directive shall ***apply without prejudice to other Community instruments.***

In particular, Directive 96/71/EC on the posting of workers and Directive .../.../EC on the recognition of professional qualifications continue to fully apply.

3. This Directive does not establish nor affect any rules on the determination of the law applicable to contractual and non-contractual obligations, especially as contained in the 1980 Rome Convention on the law applicable to contractual obligations, and Regulation (EC) No ... of the European Parliament and of the Council on the law applicable to non-

contractual obligations.

Amendment 64
Article 3, paragraph 3 a (new)

3a. This Directive does not apply to matters covered by Regulation (EEC) No 1408/71, especially concerning the assumption of health care costs.

Justification

The Directive must not apply to matters already regulated in the framework of the coordination of social protection schemes within the European Union.

Amendment 65
Article 4, point 1

(1) "service" means any self employed economic activity, as referred to in Article 50 of the Treaty, ***consisting in the provision of a service for consideration;***

(1) "service" means any self employed ***commercial*** 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.***

Fees which the recipient of a service is required to pay as a contribution to the financing of a system shall not constitute consideration for the service;

Justification

A clearer definition of the concept of services in accordance with the established case-law of the Court of Justice is required in order to clarify the scope of this Directive, and in particular the distinction with services of general interest.

Amendment 66
Article 4, point 2

(2) "provider" means any natural person who is a national of a Member State, or any legal person, who offers or provides a service;

(2) "provider" means any natural person who is a national of a Member State, or any legal person ***established in accordance with the laws of a Member State***, who offers or provides a service;

Justification

This Directive only concerns service providers and recipients that are established in a Member State of the European Union.

Amendment 67 Article 4, point 3

(3) "recipient" means any natural or legal person who, for professional or non-professional purposes, uses, or wishes to use, a service;

(3) "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;

Justification

This Directive only concerns service providers and recipients that are established in a Member State of the European Union.

Amendment 68 Article 4, point 5

(5) "establishment" means the actual pursuit of an economic activity, as referred to in Article 43 of the Treaty, through a fixed establishment of the provider for an indefinite period;

(5) "establishment" means the actual pursuit of an economic activity, as referred to in Article 43 of the Treaty, through a fixed establishment of the provider for an indefinite period **in a Member State from where the business of providing services is effectively carried out**;

Justification

In order to avoid that a mere letter box company could constitute an establishment, it needs to be clarified that the business of providing a service only constitutes an establishment in a Member State provided that it is effectively carried out in that Member State.

Amendment 69 Article 4, point 8

(8) "competent authority" means any body or authority which has a supervisory or regulatory role in a Member State in relation to service activities, including, in particular, administrative authorities, professional bodies, and those professional associations or other professional organisations which, in the exercise of their legal autonomy, regulate in a collective manner access to

(8) "competent authority" means any body or authority which has a supervisory or regulatory role in a Member State in relation to service activities, including, in particular, administrative authorities, **public institutions**, professional bodies, and those professional associations or other professional organisations which, in the exercise of their legal autonomy, regulate in

service activities or the exercise thereof;

a collective manner access to service activities or the exercise thereof;

Justification

Public corporations such as the French CCIs should be explicitly considered competent authorities and hence empowered to serve in the bodies called upon to authorise companies to set up operations.

Amendment 70
Article 4, point 9

(9) "coordinated field" means any requirement applicable to access to service activities or to the exercise thereof;

(9) "fields coordinated by this Directive" means the information on providers and their services, professional insurance and guarantees, information on after-sales guarantees and settlement of disputes, as included in Articles 26 to 28 and 32 of this Directive;

Justification

The new definition of fields coordinated by this Directive is closely connected with the amendment of Article 16 of this Directive.

Amendment 71
Article 4, point 10

(10) "hospital care" means medical care which can be provided only within a medical infrastructure and which normally requires the accommodation therein of the person receiving the care, the name, organisation and financing of that infrastructure being irrelevant for the purposes of classifying such care as hospital care; ***deleted***

Justification

The removal of the definitions included in Article 4(10), (11) and (12) is consistent with the deletion of Articles 23, 24 and 25 of this Directive.

Amendment 72
Article 4, point 11

(11) "Member State of posting" means the Member State in whose territory a provider posts a worker in order to provide services there; ***deleted***

Justification

The removal of the definitions included in Article 4(10), (11) and (12) is consistent with the deletion of Articles 23, 24 and 25 of this Directive.

Amendment 73
Article 4, point 12

(12) "lawful employment" means the salaried activity of a worker, performed in accordance with the national law of the Member State of origin of the provider; ***deleted***

Justification

The removal of the definitions included in Article 4(10), (11) and (12) is consistent with the deletion of Articles 23, 24 and 25 of this Directive.

Amendment 74
Article 4, point 13

(13) "regulated profession" means a professional activity or a group of professional activities, access to which or pursuit of which, or one of the modes of pursuing which, is conditional, directly or indirectly, upon possession of specific professional qualifications, pursuant to laws, regulations or administrative provisions;

(13) "regulated profession" means a professional activity or a group of professional activities, as referred to in Article 3(1)(a) of Directive .../EC of the European Parliament and of the Council on the recognition of professional qualifications;

Justification

In order to ensure coherence with the future Directive on recognition of professional qualifications, the definition of regulated profession in the Service Directive should refer to the definition included in that Directive.

Amendment 75
Article 4, point 13 a (new)

(13a) “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;

Justification

The introduction of a definition of worker is justified by the fact that it should be the country on whose territory the work is being done that should determine who is to be regarded as a worker.

Amendment 76
Article 4, point 13 b (new)

(13b) "temporary employment agency" means any natural or legal person who, in accordance with national law and/or Community law, concludes contracts of employment or employment relationships with temporary workers in order to post them to user undertakings to work there temporarily under their supervision;

Amendment 77
Article 5, paragraph 2

2. Where Member States require a provider or recipient to supply a certificate, attestation or any other document proving that a requirement has been satisfied, they shall accept any document from another Member State which serves an equivalent purpose or from which it is clear that the requirement in question has been satisfied.

They may ***not*** require that a document from another Member State be produced in its original form, or as a certified copy or as a certified translation, ***save*** in the cases provided for in other Community instruments or where such a requirement is objectively justified by ***an overriding reason*** relating to the public interest.

2. Where Member States require a provider or recipient to supply a certificate, attestation or any other document proving that a requirement has been satisfied, they shall accept any document from another Member State which serves an equivalent purpose or from which it is clear that the requirement in question has been satisfied.

They may require that a document from another Member State be produced in its original form, or as a certified copy or as a certified translation, ***in so far as equivalent documents in their own Member State likewise require production of the original or a certified form, and also*** in the cases provided for in other Community instruments or where such a requirement is

objectively justified by **reasons** relating to the public interest.

Justification

Member States must be entitled to permit certified translations to be produced. Without that right each Member State would have to ensure that its approval and monitoring authorities were able at any time to scrutinise documents in the Union 's present 20 official languages. This would lead to an unacceptable boom in bureaucracy.

Amendment 78

Article 5, paragraph 2, subparagraph 1 a (new)

These provisions shall not affect the right of Member States to require documents in any of the languages enjoying official, secure or equal status within their constitutional order, in all or part of their territory.

Justification

Public authorities do not always have capacities to provide for translations. Furthermore, it is necessary to take into account the wide variety of languages in the EU.

Amendment 79

Article 5, paragraph 3

3. Paragraph 2 shall not apply to the documents referred to in **Article 46** of Directive ../EC of the European Parliament and of the Council **or** in Article 45(3) of **Directive ../EC** of the European Parliament and of the Council.

3. Paragraph 2 shall not apply to the documents referred to in **Article 50** of Directive ../EC of the European Parliament and of the Council **on the recognition of professional qualifications**, in Article 45(3) of **Directive 2004/18/EC** of the European Parliament and of the Council **on the coordination of procedures for the award of public works contracts, supply contracts and public service contracts¹**, in Article 3(2) of **Directive 98/5/EC of the European Parliament and of the Council 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**, in **Directive 2003/58/EC of the European Parliament and of the Council amending Council Directive 68/151/EEC, as regards disclosure requirements in**

respect of certain types of companies³ or in Council Directive 89/666/EEC concerning disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another State⁴.

¹*OJ L 134, 30.4.2004, p. 114.*

²*OJ L 77, 14.3.1998, p. 36.*

³*OJ L 221, 4.9.2003, p. 13.*

⁴*OJ L 395, 30.12.1986, p. 36.*

Justification

This amendment is justified by the fact that this Directive should be without prejudice to specific Community instruments, according to which Member States can impose requirements relating to specific documents.

Amendment 80 Article 6

Member States shall ensure that, by **31 December 2008 at the latest**, it is possible for a service provider to complete the following procedures and formalities at a contact point known as a "single point of 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. Member States shall ensure that, by *[three years from the entry into force of the Directive]*, it is possible for a service provider to complete the following procedures and formalities at a contact point known as a "single point of contact":

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

(b) any applications for authorisation needed to exercise his service activities.

2. *The creation of single points of contact shall not interfere with the allocation of functions or competences among competent authorities within each national system nor the exercise of official authority.*

Justification

A time framework of three years from the entry into force of this Directive is deemed to be reasonable for Member States to take the necessary measures to establish single points of contact.

New paragraph 1 a is consistent with the observation that this Directive should respect the regional or local competences within each Member State.

Amendment 81 Article 6 a (new)

Article 6a

Member States shall ensure that the existing contact points or authorities provided for by the directives on posting of workers and on services and those responsible for implementing social security provisions cooperate closely with one another so that only one contact point exists for service providers.

Amendment 82 Article 7, paragraph 1, introductory phrase

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

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

Justification

This amendment is consistent with the provisions proposed for Articles 5 and 6. The European Commission should be involved in the establishment of harmonised European forms and their availability through a European single point of contact.

Amendment 83 Article 7, paragraph 2

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.

2. ***The Commission and the*** 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.

Justification

This amendment is consistent with the provisions proposed for Articles 5 and 6. The European Commission should be involved in the establishment of harmonised European forms and their availability through a European single point of contact.

Amendment 84 Article 7, paragraph 3

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

3. ***The Commission and the*** 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.

Justification

This amendment is consistent with the provisions proposed for Articles 5 and 6. The European Commission should be involved in the establishment of harmonised European forms and their availability through a European single point of contact.

Amendment 85 Article 7, paragraph 4

4. Member States shall ensure that the single points of 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.

4. ***The Commission and the*** Member States shall ensure that the single points of 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.

Justification

This amendment is consistent with the provisions proposed for Articles 5 and 6. The European Commission should be involved in the establishment of harmonised European forms and their availability through a European single point of contact.

Amendment 86 Article 7, paragraph 5

5. Member States shall implement paragraphs 1 to 4 by 31 December 2008 at the latest.

5. Member States shall implement paragraphs 1 to 4 by ***[three years from the entry into force of the Directive].***

Justification

A time framework of three years from the entry into force of this Directive is deemed to be reasonable for Member States to take the necessary measures to make single points of contact operational.

Amendment 87

Article 7, paragraph 6 a (new)

(6a) The obligation for the Commission and the Member States to ensure that relevant information is easily accessible to providers and recipients can be fulfilled by rendering accessible this information through an Internet web site. 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.

Justification

Access to information can be facilitated by the establishment of an Internet website.

Amendment 88

Article 8, paragraph 1

1. Member States shall ensure that, by ***31 December 2008 at the latest***, all procedures and formalities relating to access to a service activity and to the exercise thereof may be easily completed, at a distance and by electronic means, at the relevant single point of contact and with the relevant competent authorities.

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

Justification

A time framework of three years from the entry into force of this Directive is deemed to be reasonable for Member States to take the necessary measures to put into place electronic procedures.

Amendment 89
Article 9, paragraph 1

1. Member States ***shall not*** make access to a service activity or the exercise thereof subject to an authorisation scheme ***unless*** the following conditions are satisfied:

- (a) the authorisation scheme does not discriminate against the provider in question;
- (b) the need for an authorisation scheme is objectively 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.***

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) ***non-discrimination:*** the authorisation scheme does not discriminate ***on grounds of nationality or, with regard to companies, according to the location of the registered office,*** against the provider in question;
- (b) ***necessity:*** the need for an authorisation scheme is objectively justified by an overriding reason relating to the public interest;
- (c) ***proportionality: the authorisation scheme must be suitable for securing the attainment of the objective pursued; it must not go beyond what is necessary to attain that objective; and it must not be possible to replace it with a less restrictive measure which attains the same result.***

Justification

The amendments to paragraph 1 are justified by the fact that the criteria on the basis of which the mutual evaluation procedure will take place should be the same ones in the case of Articles 9 and 15 (on requirements to be evaluated) of this Directive.

Amendment 90
Article 9, paragraph 2

2. In the report referred to in Article 41, Member States shall identify their authorisation schemes and give reasons showing their compatibility with paragraph 1. ***deleted***

Justification

Taken together, the numerous reporting requirements (Articles 9(2), 15(4), 30(4) and 41) will impose an enormous additional administrative burden on national authorities. It is to be feared that this will make it necessary to divert capacity, compelling authorities to limit the examination of essential social and other protective regulations intended for the benefit of recipients of services.

Amendment 91
Article 9, paragraph 3 a (new)

(3a) The Commission and the Member States shall establish a coordination process in order to move closer the national provisions relating to authorisation schemes.

Justification

The objectives of this Directive regarding freedom of establishment should not reduce the ambitions of the Union to a simple "free trade area" with competition between the national rules rather than between the economic actors. The true objective of the Union should be to achieve upwards harmonisation of the rules in order to build up a fair internal market.

Amendment 92
Article 10, paragraph 1

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.

1. Authorisation schemes shall be based on
criteria which preclude the competent
authorities from exercising their power of
assessment in an arbitrary manner.

Justification

Exercising their power of assessment in a reasonably discretionary manner is inherent to the power of national authorities in granting authorisations.

Amendment 93
Article 10, paragraph 2 a (new)

2a. This article shall not affect the distribution of powers at regional or local level for the granting of authorisations within each Member State.

Justification

This new paragraph is consistent with the provision that this Directive should respect the regional or local powers within each Member State.

Amendment 94
Article 11, paragraph 3

3. Member States shall require the provider to inform the relevant single point of contact provided for in Article 6 of ***any change in his situation which is likely to affect the efficiency of supervision by the competent authority, including, in particular,*** the creation of subsidiaries whose activities fall within the scope of the authorisation system, ***or which results*** in the conditions for authorisation no longer being met, or which ***affects*** the accuracy of information available to a recipient.

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

(a) the creation of subsidiaries whose activities fall within the scope of the authorisation system,

(b) ***changes in his situation which result*** in the conditions for authorisation no longer being met, or which ***affect*** the accuracy of information available to a recipient.

Amendment 95
Article 11, paragraph 3 a (new)

3a. This article shall not affect the possibility for Member States to provide for the withdrawal of authorisations, in particular in cases where the conditions for the granting of the authorisations are no longer met.

Justification

The introduction of a new paragraph is justified by the fact that Article 11, paragraph 1, according to which an authorisation shall be for a limited period, could give the (false) impression that Member States would lose the possibility to withdraw authorisations in cases where the conditions for the granting of the authorisations are no longer met.

Amendment 96
Article 13, paragraph 4

4. Failing a response within the time period set in accordance with paragraph 3, ***deleted***

authorisation shall be deemed to have been granted. Different arrangements may nevertheless be put in place in respect of certain specific activities, where objectively justified by overriding reasons relating to the public interest.

Justification

The principle of the tacit authorisation has to be deleted because it could create problems of proof and legal uncertainty and it is not necessarily beneficial to the consumer.

Amendment 97
Article 13, paragraph 5, point (c)

(c) a statement that in the absence of a response within the period specified, the authorisation shall be deemed to have been granted. ***deleted***

Justification

The principle of the tacit authorisation has to be deleted because it could create problems of proof and legal uncertainty and it is not necessarily beneficial to the consumer.

Amendment 98
Article 14, introductory phrase

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:

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 ***requirements, unless these requirements are objectively justified by an overriding reason relating to the public interest.***

Justification

The prohibition included in Article 14 should not affect the possibility for Member States to impose requirements that are justified by an overriding reason relating to the public interest.

Amendment 99
Article 14, paragraph 5

(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 ***deleted***

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;

Justification

The list of prohibited requirements is far too extensive. The Treaty only demands that discrimination based on nationality and similar discrimination are to be prohibited.

Amendment 100
Article 14, paragraph 6

(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;

(6) the direct and indirect involvement of operators ***having personal motivations for action***, including within consultative bodies, in the granting of authorisations or in the adoption of other decisions of the competent authorities ***on individual applications***, with the exception of professional bodies and associations or other organisations acting as the competent authority;

Amendment 101
Article 14, paragraph 7

(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;

(7) an obligation to take out insurance from a service-provider or body established in their territory;

Justification

The financial guarantee requirement makes sense in many fields.

Amendment 102
Article 15, paragraph 1, subparagraph 1 a (new)

The Commission and the Member States shall establish a coordination process in order to move closer the national provisions concerning requirements related to the right of establishment of service providers.

Justification

The objectives of this Directive regarding freedom of establishment should not reduce the ambitions of the Union to a simple "free trade area" with competition between the national rules rather than between the economic actors. The true objective of the Union should be to achieve upwards harmonisation of the rules in order to build up a fair internal market.

Amendment 103

Article 15, paragraph 2, point (b)

(b) an obligation on a provider to take a specific legal form, in particular to be a legal person, to be a company with individual ownership, to be a non-profit making organisation or a company owned exclusively by natural persons; ***deleted***

Justification

In many cases, prescribing a specific legal form serves to protect consumers and creditors, and such provisions should not be called into question.

Amendment 104

Article 15, paragraph 2, point (c)

(c) requirements which relate to the shareholding of a company, in particular an obligation to hold a minimum amount of capital for certain service activities or to have a specific professional qualification in order to hold capital in or to manage certain companies; ***deleted***

Justification

In many cases, prescribing a specific legal form serves to protect consumers and creditors, and such provisions should not be called into question.

Amendment 105

Article 15, paragraph 2, point (h)

(h) prohibitions and obligations with regard to selling below cost and to sales; ***deleted***

Justification

These matters should be excluded from the scope of the directive because they constitute trading practices and selling techniques entailing no restrictions on freedom of establishment and the

freedom to provide services.

Amendment 106
Article 15, paragraph 3

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 ***objectively*** 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.***

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 ***a*** 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;

Justification

The list of requirements to be evaluated is far too extensive. Most of these requirements are fully compatible with an internal market. The Treaty only demands that discrimination based on nationality and similar discrimination are to be prohibited.

Amendment 107
Article 15, paragraph 5

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

5. From the date of entry into force of this Directive, Member States shall not introduce any new requirement of a kind listed in paragraph 2, unless that requirement satisfies the conditions laid down in paragraph 3.

Justification

Article 15, paragraph 5, according to which the need for a new requirement has to arise from new circumstances constitutes a serious restriction to national governmental powers to adopt future policy initiatives serving the public interest objectives of their choice.

Amendment 108
Article 15, paragraph 6

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

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

Justification

The notification procedure of any new laws, regulations or administrative provisions, as included in paragraph 6 should be removed for reasons of subsidiarity and proportionality. It could give the Commission a right to systematically monitor national regulation, which would constitute a disproportionate interference with national regulatory competences.

Amendment 109
Section 1, title

Country of origin principle and derogations *deleted*

Amendment 110
Article 16

Country of origin principle *General provision*

(1) Member States shall ensure that *providers are subject only to the national provisions of their Member State of origin which fall within the coordinated field.*

(2) *Paragraph 1 shall cover national provisions relating to access to and the exercise of a service activity, in particular those requirements governing the behaviour of the provider, the quality or content of the service, advertising, contracts and the provider's liability.*

(3) *The Member State of origin shall be responsible for supervising the provider and the services provided by him, including services provided by him in another Member State.*

(4) *Member States may not, for reasons falling within the coordinated field, 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 make a declaration or notification to, or to obtain an authorisation from, their competent authorities, including entry in a register or registration with a professional body or association in their territory;*

(c) *an obligation on the provider to have an address or representative in their territory or to have an address for service at the address of a person authorised in that territory;*

(d) *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;*

(e) *an obligation on the provider to comply with requirements, relating to the exercise of a service activity, applicable in their*

(1) Member States shall ensure that *all services provided by a provider established on their territory comply with the legal system applicable to providers in that Member State.*

(2) *Member States shall not restrict the access to and the exercise of a service activity on their territory by a provider established in another Member State for reasons which fall within the fields coordinated by this Directive or by other Community instruments.*

territory;

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

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

(h) requirements which affect the use of equipment which is an integral part of the service provided;

(i) restrictions on the freedom to provide the services referred to in Article 20, the first subparagraph of Article 23(1) or Article 25(1).

(3) The Commission and the Member States shall establish a coordination process in order to move closer the national provisions relating to access to and the exercise of a service activity.

Justification

A precondition of the country of origin principle is a minimum level of harmonisation at EU level or, at least, the presence of comparable rules within the Member States. The coordinated field to which the scope of the COOP is linked in the Commission proposal covers any requirement applicable to the access to and the exercise of a service activity, in particular requirements governing the behaviour of the provider, the quality of the content, advertising, contracts and the provider's liability. However the fields coordinated by the proposal only relate to information on service providers, provisions on professional insurance and information of recipients on the existence of after-sale guarantees and the settlement of disputes. The scope of the country of origin principle has to be linked with the fields coordinated by this Directive and existing Community instruments. If a matter relating to the access to and exercise of the service activity does not fall within these coordinated fields, the temporary provision of the service activity should be governed by the Treaty provisions and the Court's case-law. At the same time, the Commission is invited to take further coordination measures on specific issues.

Amendment 111
Article 17, title

General derogations from the country of origin principle ***deleted***

Amendment 112
Article 17, introductory phrase

Article 16 *shall not apply to the following:*

Notwithstanding Article 16, Member States shall be entitled to restrict the access to and exercise of a service activity by a provider established in another Member State in the following cases:

Amendment 113
Article 17, paragraph -1 (new)

(-1) the working conditions and terms of employment of the service provider;

Amendment 114
Article 17, paragraph 1

(1) postal services within the meaning of point (1) of Article 2 of Directive 97/67/EC of the European Parliament and the Council; ***deleted***

Justification

The removal of this point of Article 17 is consistent with the amendments to Article 2 of this Directive.

Amendment 115
Article 17, paragraph 2

(2) electricity distribution services within the meaning of point (5) of Article 2 of Directive 2003/54/EC of the European Parliament and of the Council; ***deleted***

Justification

The removal of this point of Article 17 is consistent with the amendments to Article 2 of this Directive.

Amendment 116
Article 17, paragraph 3

(3) gas distribution services within the ***deleted***

***meaning of point (5) of Article 2 of
Directive 2003/55/EC of the European
Parliament and of the Council;***

Justification

The removal of this point of Article 17 is consistent with the amendments to Article 2 of this Directive.

Amendment 117
Article 17, paragraph 4

(4) water distribution services; deleted

Justification

The removal of this point of Article 17 is consistent with the amendments to Article 2 of this Directive.

Amendment 118
Article 17, paragraph 5

(5) matters covered by Directive 96/71/EC;

(5) as regards the terms and conditions of employment concerning workers employed for the provision of a service, matters covered by Directive 96/71/EC on the posting of workers in the framework of the provision of services, including matters for which that Directive explicitly leaves the possibility to Member States of adopting more protective measures at national level;

Amendment 119
Article 17, paragraph 8

(8) the provisions of Article [...] of Directive .../.../EC on the recognition of professional qualifications;

(8) as regards professional qualifications, matters covered by Directive .../.../EC on the recognition of professional qualification;

Amendment 120
Article 17, paragraph 9

(9) the provisions of Regulation (EEC) No 1408/71 determining the applicable legislation;

(9) as regards social security, the provisions of Regulation (EEC) No 1408/71[(EC) No 883/2004] of the European Parliament and of the Council on the coordination of social

security systems determining the applicable legislation;

Amendment 121
Article 17, paragraph 10

(10) the provisions of Directive ..././EC of the European Parliament and the Council [on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, **amending Regulation (EEC) 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC**], that lay down the administrative formalities that beneficiaries must undertake before the competent authorities of the host Member States;

(10) 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 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, that lay down the administrative formalities that beneficiaries must undertake before the competent authorities of the host Member States;

Amendment 122
Article 17, paragraph 17

(17) 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 and with which compliance is indispensable for reasons of public policy or public security or for the protection of public health or the environment;

(17) 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;

Justification

The amendment to Article 17, point 17 is justified by the fact the derogation should be without prejudice to national requirements that are directly related to the particular risk of the place where the service is provided as well as to health and safety at the work place for workers, self-employed persons and the public. Matters of health, safety and hygiene at work for workers are included in Directive 96/71/EC, however this is not the case for the self-employed persons and for the public.

Amendment 123
Article 17, paragraph 23 a (new)

***(23a) The Convention on the Law
applicable to Contractual obligations.***

Amendment 124
Article 18

***Transitional derogations from the country
of origin principle***

1. Article 16 shall not apply ***for a
transitional period*** to the following:

***(a) the way in which cash-in-transit
services are exercised;***

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

(c) access to the activity of judicial recovery
of debts.

2. The derogations referred to in ***points (a)
and (c) of*** paragraph 1 of this Article shall
not apply after the date of application of the
harmonisation instruments referred to in
Article 40(1) ***or in any case after 1 January
2010.***

***3. The derogation referred to in point (b) of
paragraph 1 of this Article shall not apply
after the date of application of the
harmonisation instrument referred to in
Article 40(1)(b).***

1. Article 16 shall not apply to the
following:

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

(c) access to the activity of judicial recovery
of debts.

2. The derogations referred to in paragraph 1
of this Article shall not apply after the date
of application of the harmonisation
instruments referred to in Article 40(1).

Justification

The general rule according to which Member States may not restrict services coming from another Member State provided that it concerns the fields coordinated by this Directive and existing Community instruments would be undermined if the derogation for the services included in paragraph 1 would not apply anymore after 1 January 2010 regardless of the application of a harmonisation instrument.

The removal of cash-in-transit services from paragraph 1 is consistent with the amendments to Article 2 on the scope of this Directive.

Article 19

deleted

Case-by-case derogations from the country of origin principle

1. By way of derogation from Article 16, and in exceptional circumstances only, a Member State may, in respect of a provider established in another Member State, take measures relating to 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 mutual assistance procedure laid down in Article 37 is complied with and all the following conditions are fulfilled:

(a) the national provisions in accordance with which the measure is taken have not been subject to Community harmonisation in the 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 37(2);

(d) the measures are proportionate.

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

Justification

The deletion of Article 19 is consistent with the amendment to Article 16.

Amendment 126
Article 21 a (new)

Article 21a

Member States where the service is provided are allowed 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 as a self-employed capacity for the purposes of Article 43 and 49 of the Treaty.

Amendment 127
Article 22

1. Member States shall ensure that recipients can obtain, *in their Member State of residence, the following information:*

(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) information on the means of redress available in the case of a dispute between a provider and a recipient;

(c) the contact details of associations or organisations, including Euroguichets and the contact points of the European extra-judicial network (EEJ-net), from which

1. Member States shall ensure that recipients can obtain, *via the single points of contact,*

- *general* information on the means of redress available in the case of a dispute between a provider and a recipient;

- contact details of associations or organisations, including Euroguichets and the contact points of the European extra-judicial network (EEJ-net), from which

providers or recipients may obtain practical assistance.

2. Member States may confer responsibility for the task referred to in paragraph 1 to single points of 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 45 at the latest, Member States shall communicate to the Commission the names and contact details of the designated bodies. The Commission shall transmit them to all Member States.

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

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

providers or recipients may obtain practical assistance.

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

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

4. The Commission shall 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.

Amendment 128
Article 23

Article 23

deleted

Assumption of health care costs

1. Member States may not make assumption of the costs of non-hospital care in another Member State subject to the granting of an authorisation, where the

cost of that care, if it had been provided in their territory, would have been assumed by their social security system.

The conditions and formalities to which the receipt of non-hospital care in their territory is made subject by Member States, such as the requirement that a general practitioner be consulted prior to consultation of a specialist, or the terms and conditions relating to the assumption of the costs of certain types of dental care, may be imposed on a patient who has received non-hospital care in another Member State.

2. Member States shall ensure that authorisation for assumption by their social security system of the cost of hospital care provided in another Member State is not refused where the treatment in question is among the benefits provided for by the legislation of the Member State of affiliation and where such treatment cannot be given to the patient within a time frame which is medically acceptable in the light of the patient's current state of health and the probable course of the illness.

3. Member States shall ensure that the level of assumption by their social security system of the costs of health care provided in another Member State is not lower than that provided for by their social security system in respect of similar health care provided in their territory.

4. Member States shall ensure that their authorisation systems for the assumption of the costs of health care provided in another Member State are in conformity with Articles 9, 10, 11 and 13.

Justification

As regards the assumption of health care costs, provisions aiming at transposing into law the case-law on patient mobility established by the European Court of Justice should not be covered by this Directive, which, when amended, will not deal with health services. The fact that certain Member States do not comply with the case-law on patient mobility, as was indicated by the

Commission, should be addressed in the framework of Regulation (EEC)1408/71 and/or within a separate and more appropriate secondary legislation based on the outcome of the high level reflection process on patient mobility and health care developments in the European Union. Any such legal instrument should clearly determine where prior authorisation is required, and thus provide a clear definition of hospital and non-hospital care.

Amendment 129
Section 3, title

Posting of workers ***deleted***

Amendment 130
Article 24

Article 24 ***deleted***

Specific provisions on the posting of workers

1. Where a provider posts a worker to another Member State in order to provide a service, the Member State of posting shall carry out in its territory the checks, inspections and investigations necessary to ensure compliance with the employment and working conditions applicable under Directive 96/71/EC and shall take, in accordance with Community law, measures in respect of a service provider who fails to comply with those conditions.

However, the Member State of posting may not make the provider or the posted worker subject to any of the following obligations, as regards the matters referred to in point (5) of Article 17:

(a) to obtain authorisation from, or to be registered with, its own competent authorities, or to satisfy any other equivalent requirement;

(b) to make a declaration, other than declarations relating to an activity referred to in the Annex to Directive 96/71/EC which may be maintained until 31 December 2008;

(c) to have a representative in its territory;

(d) to hold and keep employment

documents in its territory or in accordance with the conditions applicable in its territory.

2. In the circumstances referred to in paragraph 1, the Member State of origin shall ensure that the provider takes all measures necessary to be able to communicate the following information, both to its competent authorities and to those of the Member State of posting, within two years of the end of the posting:

- (a) the identity of the posted worker;*
- (b) his position and the nature of the tasks attributed to him,*
- (c) the contact details of the recipient,*
- (d) the place of posting,*
- (e) the start and end dates for the posting,*
- (f) the employment and working conditions applied to the posted worker;*

In the circumstances referred to in paragraph 1, the Member State of origin shall assist the Member State of posting to ensure compliance with the employment and working conditions applicable under Directive 96/71/EC and shall, on its own initiative, communicate to the Member State of posting the information specified in the first subparagraph where the Member State of origin is aware of specific facts which indicate possible irregularities on the part of the provider in relation to employment and working conditions.

Justification

For reasons of legal certainty and consistency, any clarification in the field of posting of workers should be dealt with under existing Directive 96/71/EC (on posting of workers). In any case, Article 24 and 25 are counterproductive. Article 24 prohibits Member States where the service is provided from making service providers subject to obligations that are essential for the inspection services of these Member States. In doing so, this Directive substantially reduces the effectiveness of labour inspections conducted by these Member States. Labour law provisions can only be effectively enforced in the Member State where the work is performed. In its current wordings, the system of administrative cooperation proposed by the Commission lacks the necessary safeguards to serve labour law enforcement.

Article 25

deleted

Posting of third country nationals

1. Subject to the possibility of derogation as referred to in paragraph 2, where a provider posts a worker who is a national of a third country to the territory of another Member State in order to provide a service there, the Member State of posting may not require the provider or the worker posted by the latter to hold an entry, exit, residence or work permit, or to satisfy other equivalent conditions.

2. Paragraph 1 does not prejudice the possibility for Member States to require a short-term visa for third country nationals who are not covered by the mutual recognition regime provided for in Article 21 of the Convention implementing the Schengen Agreement.

3. In the circumstances referred to in paragraph 1, the Member State of origin shall ensure that a provider posts only a worker who is resident in its territory in accordance with its own national rules and who is lawfully employed in its territory.

The Member State of origin shall not regard a posting made in order to provide a service in another Member State as interrupting the residence or activity of the posted worker and shall not refuse to readmit the posted worker to its territory on the basis of its national rules.

The Member State of origin shall communicate to the Member State of posting, upon its request and in the shortest possible time, information and guarantees regarding compliance with the first subparagraph and shall impose the appropriate penalties in cases of non-compliance.

Justification

For reasons of legal certainty and consistency, any clarification in the field of posting of workers should be dealt with under existing Directive 96/71/EC (on posting of workers). In any case, Article 24 and 25 are counterproductive. Article 24 prohibits Member States where the service is provided from making service providers subject to obligations that are essential for the inspection services of these Member States. In doing so, this Directive substantially reduces the effectiveness of labour inspections conducted by these Member States. Labour law provisions can only be effectively enforced in the Member State where the work is performed. In its current wordings, the system of administrative cooperation proposed by the Commission lacks the necessary safeguards to serve labour law enforcement.

Amendment 132

Article 26, paragraph 1, introductory phrase

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

1. ***The Commission and the*** Member States shall ensure that providers make the following information available to the recipient, ***to the European single point of contact and to the single points of contact in the host Member States:***

Justification

This amendment is consistent with the provisions proposed for Article 6.

Amendment 133

Article 27, paragraph 3

3. When a provider establishes himself in their territory, 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 equivalence is only partial, Member States may require a supplementary guarantee to cover those aspects not already covered.

3. When a provider establishes himself in their territory, 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 ***and the coverage it provides in terms of the insured risk, the insured sum or a ceiling for the financial guarantee and possible exclusions from the coverage,*** in another Member State in which the provider is already established.

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

Justification

This amendment brings more certainty concerning the coverage of the provider in terms of insurance and financial guarantee.

Amendment 134

Article 29

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

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,.

Justification

A number of Member States have long considered it necessary to regulate commercial communications by certain regulated professions, as this contributes to consumer protection, the rule of law and the integrity and dignity of the professions themselves. As the more sensitive regulated professions should not be covered by the proposed Directive, this recital is superfluous.

Amendment 135

Article 31, paragraph 5 a (new)

(5a) Voluntary action taken under the aegis of this Article shall in no way prejudice the right of Member States to establish, within the scope permitted by the Treaty, and provided these are non-discriminatory and proportionate, mandatory standards and rules protecting the public interest or pursuing any policy goal in keeping with the Treaty.

Justification

Voluntary actions should not prevent public authorities to adopt protecting rules regarding public interest or any policy goal.

Amendment 136
Article 32; paragraph 5 a (new)

(5a) Member States shall adopt the necessary measures to establish an arbitration board for extrajudicial disputes concerning services.

Amendment 137
Article 34, paragraph 1

1. Member States shall ensure that the powers of monitoring and supervision provided for in national law in respect of the provider and the activities concerned are also exercised where a service is provided in another Member State.

1. Member States shall ensure that, ***in respect of the fields coordinated by this Directive and other Community instruments***, the powers of monitoring and supervision provided for in national law in respect of the provider and the activities concerned are also exercised where a service is provided in another Member State.

Justification

This is consistent with the amendment to Article 16.

Amendment 138
Article 35, paragraph -1 a (new)

-1a. Member States shall ensure that administrative cooperation between them functions smoothly and that the implementation of the services directive is guaranteed.

Amendment 139
Article 35, paragraph 1

1. ***In accordance with Article 16***, 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.

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.

Amendment 140
Article 36

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

1. In respect of the matters covered by Article 16, 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 paragraph 2.

2. At the request of the Member State of origin, the competent authorities referred to in paragraph 1 shall carry out any checks, inspections and investigations necessary for ensuring effective supervision by the Member State of origin. In so doing, the competent authorities shall act to the extent permitted by the powers vested in them in their Member State.

On their own initiative, those competent authorities may conduct checks, inspections and investigations on the spot, provided that those checks, inspections or investigations meet the following conditions:

(a) they consist exclusively in the establishment of facts and do not give rise to any other measure against the provider, subject to the possibility of case-by-case derogations as provided for in Article 19;

(b) they are not discriminatory and are not motivated by the fact that the provider is established in another Member State;

(c) they are objectively justified by an overriding reason relating to the public interest and are proportionate to the objective pursued.

Justification

This deletion is consistent with the amendment to Article 16.

Article 37

deleted

Mutual assistance in the event of case-by-case derogations from the country of origin principle

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

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

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

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

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

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

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

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

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

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

Justification

This deletion is consistent with the deletion of Article 19.

Amendment 142
Article 38

In accordance with the procedure referred to in Article 42(2), the Commission shall adopt the implementing measures necessary for the implementation of this Chapter, specifying the time-limits provided for in **Articles 35 and 37** and the practical arrangements for the exchange of information by electronic means between the single points of contact, and in particular the interoperability provisions for information systems.

In accordance with the procedure referred to in Article 42(2), the Commission shall adopt the implementing measures necessary for the implementation of this Chapter, specifying the time-limits provided for in **Article 35** and the practical arrangements for the exchange of information by electronic means between the single points of contact, and in particular the interoperability provisions for information systems.

Justification

This amendment is consistent with the deletion of Article 37 of this Directive.

Amendment 143
Article 40, paragraph 1

1. The Commission shall assess, by [one year after the entry into force of this Directive] at the latest, the possibility of presenting proposals for harmonisation instruments on the following subjects: **deleted**

(a) the detailed rules for the exercise of cash-in-transit services;

(b) gambling activities which involve wagering a stake with pecuniary value in games of chance, including lotteries and betting transactions, in the light of a report by the Commission and a wide consultation of interested parties;

(c) access to the activity of judicial recovery of debts.

Justification

The Games of chance and lotteries are subject to tight provisions concerning the protection of consumers and youth. There is no need for European harmonisation in this field, and there is also no need for this in respect to access to the activity of juridical recovery of debts and cash in transit.

Amendment 144
Article 41, paragraph 4

4. In the light of the observations provided for in paragraphs 2 and 3, the Commission shall, by **31 December 2008 at the latest**, present a summary report to the European Parliament and to the Council, accompanied where appropriate by proposals for additional initiatives.

4. In the light of the observations provided for in paragraphs 2 and 3, the Commission shall, by **[three years from the entry into force of the Directive]**, present a summary report to the European Parliament and to the Council, accompanied where appropriate by proposals for additional initiatives.

Justification

The amendment is justified by the fact that the date of entry into force of the Directive is unknown.

PROCEDURE

Title	Proposal for a directive of the European Parliament and of the Council on services in the internal market		
References	COM(2004)0002 – C5-0069/2004 – 2004/0001(COD)		
Committee responsible	IMCO		
Committee asked for its opinion Date announced in plenary	EMPL 16.9.2004		
Enhanced cooperation	Yes		
Draftswoman Date appointed	Anne Van Lancker 28.7.2004		
Discussed in committee	24.5.2005	14.6.2005	11.7.2005
Date amendments adopted	12.7.2005		
Result of final vote	for:	32	
	against:	6	
	abstentions:	9	
Members present for the final vote	Jan Andersson, Roselyne Bachelot-Narquin, Emine Bozkurt, Philip Bushill-Matthews, Milan Cabrnach, Alejandro Cercas, Ole Christensen, Derek Roland Clark, Luigi Cocilovo, Jean Louis Cottigny, Proinsias De Rossa, Richard Falbr, Carlo Fatuzzo, Ilda Figueiredo, Joel Hasse Ferreira, Stephen Hughes, Karin Jöns, Ona Juknevičienė, Jan Jerzy Kułakowski, Sepp Kusstatscher, Jean Lambert, Raymond Langendries, Bernard Lehideux, Elizabeth Lynne, Mary Lou McDonald, Thomas Mann, Mario Mantovani, Jan Tadeusz Masiel, Jiří Maštálka, Maria Matsouka, Ria Oomen-Ruijten, Csaba Öry, Siiri Oviir, Marie Panayotopoulos-Cassiotou, Pier Antonio Panzeri, José Albino Silva Peneda, Kathy Sinnott, Jean Spautz, Anne Van Lancker		
Substitutes present for the final vote	Edit Bauer, Mihael Brejc, Udo Bullmann, Dieter-Lebrecht Koch, Dimitrios Papadimoulis, Luca Romagnoli, Leopold Józef Rutowicz, Elisabeth Schroedter, Marc Tarabella, Patrizia Toia, Anja Weisgerber, Tadeusz Zwiefka		
Substitutes under Rule 178(2) present for the final vote			

17.3.2005

OPINION OF THE COMMITTEE ON THE ENVIRONMENT, PUBLIC HEALTH AND FOOD SAFETY

for the Committee on the Internal Market and Consumer Protection

on the proposal for a directive of the European Parliament and of the Council on services in the internal market
(COM(2004)0002 – C5-0069/2004 – 2004/0001(COD))

Draftswoman: Kartika Tamara Liotard

SHORT JUSTIFICATION

Your Draftswoman shares the views of numerous organisations and expert individuals that, in the words, for example, of the British Medical Association, that "the Commission should withdraw the proposal and redraw the text." (*BMA Framework Response to the DTI Consultation on Services in the Internal market*, 2004, http://www.ephra.org/a/1388?var_recherche=BMA). This proposal violates both the principle of proportionality, introducing a number of measures which are clearly unnecessary to the achievement of a single internal market in services, and subsidiarity, denying Member States the power to take decisions affecting their own vital interests, including in cases where such decisions would in no way violate the Treaty.

With regard to the responsibilities of this Committee, the proposal as written subjects essential public services and services of general interest (including water and waste management, health services and residential care) to a largely unconditional liberalisation, thus encroaching seriously on the right of the Member States to manage such services under their own responsibility and to decide for themselves what constitutes a suitable model of ownership, whether public, private or some mix of the two. It is characteristic of the European social model that it makes a distinction between services oriented towards the general public interest and those which might reasonably be traded in the same way as most goods, with the best going to those who can afford to pay most. Where general interest services are provided under a market model, requirements are in most cases laid down for service providers (e.g. through universal service obligations) in order to safeguard the public good. This would become much more difficult under the provisions of this Directive, and in many sectors, particularly as a result of the Country of Origin principle, quite impossible.

This principle would also subject services in some Member States to unfair competition through the application of the country of origin principle, and exert downward pressure on environmental standards, instigating a sort of "race to the bottom" where Member States compete with each

other to attract investment in the worst possible way. Its vision is of an internal market encumbered as little as possible by effective regulation in the interests of the citizen, the consumer, the worker, or the socially- and environmentally responsible enterprise.

I have therefore proposed amendments which would, whilst leaving intact or improving the elements of the Directive which are genuinely necessary to encourage fair and non-discriminatory competition in the provision of those services which might reasonably be carried out through the workings of the market, enable Member States to continue to fulfil their social and environmental responsibilities. I have attempted to preserve the element of solidarity and the recognition of the limitations of the market of which this proposal takes little or no account. Though I would prefer to see the Commission withdraw the text and start again, I have tried to carve out of this proposal a measure which would facilitate an internal market in services, but not at the price of the public interest, in particular public health and environmental protection.

The draft directive contradicts not only the principles of subsidiarity, proportionality and social solidarity, but the provisions of the Treaty. Article 43 states that freedom of establishment within the EU includes the right to take up and pursue activities as self-employed persons and to set up and manage undertakings 'under the conditions laid down for its own nationals by the law of the country where such establishment is effected'. Directives implementing freedom of establishment are to be adopted by the Council 'as regards a particular activity'. With regard also to services, Article 52 of the EC Treaty provides for the adoption of directives 'in order to achieve the liberalisation of a specific service'. The Commission's horizontal proposal violates this sectoral approach, an approach which carries with it a clear recognition that the market is not in every case an appropriate model for the delivery of quality services to all who need them.

Under Article 50, 'the person providing a service may, in order to do so, temporarily pursue his activity in the State where the service is provided, under the same conditions as are imposed by that State on its own nationals'. The country of origin principle would, in other words, require an amendment of the Treaty and not a simple piece of legislation, because it would mean that service providers from other EU Member States would no longer have to operate under the same conditions as nationals.

I have largely left the question of the proposal's unconstitutionality to broader fora, however, concentrating my fire on the Country of Origin principle's threat to environmental and public health standards, the need to differentiate between different types of service, the need to make exceptions in the interests of the citizen, and the numerous violations of subsidiarity and proportionality.

AMENDMENTS

The Committee on the Environment, Public Health and Food Safety calls on the Committee on the Internal Market and Consumer Protection, as the committee responsible, to incorporate the following amendments in its report:

Draft legislative resolution

Amendment 1 Paragraph 1a (new)

1a. Considers that the adoption of this Directive must be conditional on the adoption of a framework directive on services of general interest.

Justification

There is no case for adopting a directive on the liberalisation of services in the EU unless a framework directive on services of general interest or public services has previously made it possible to define the conditions of their exercise and provision.

Proposal for a directive

Text proposed by the Commission¹

Amendments by Parliament

Amendment 2 Citation 1 a (new)

Having regard to Articles 8, 15, 21, 34 to 38, and 47 of the Charter of Fundamental Rights;

Justification

These articles of the Charter of Fundamental Rights are of relevance to the citizens' rights provisions referred to in citation 72 of the proposal for a directive. In addition, reference should be made to other rights, notably in the social and economic field, relating to social security and social assistance, health protection, access to services of general economic interest, environmental protection and consumer protection. All those articles lay down the objectives of achieving high standards of protection or improving quality, and most call for respect where possible not only for Community law but also for national law or practice.

Amendment 3 Recital 1

(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

(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

¹ OJ C ... / Not yet published in OJ.

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.

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 tasks laid down in Article 2 of the Treaty, in particular the task 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.***

Justification

It is important that trade liberalisation not be seen as an end in itself, or as a benefit to be pursued at the cost of other fundamental tasks of the Union.

Amendment 4

Recital 6

(6) This Directive establishes a general legal framework which benefits a wide variety of services while taking into account the distinctive features of each type of activity or profession and its system of regulation. That framework is based on a dynamic and selective approach consisting in the removal, as a matter of priority, of barriers which may be dismantled quickly and, for the others, the launching of a process of

(6) This Directive establishes a general legal framework which benefits a wide variety of services while taking into account the distinctive features of each type of activity or profession and its system of regulation. That framework is based on a dynamic and selective approach consisting in the removal, as a matter of priority, of barriers which may be dismantled quickly and, for the others, the launching of a process of

evaluation, consultation and complementary harmonisation of specific issues, which will make possible the progressive and coordinated modernisation of national regulatory systems for service activities which is vital in order to achieve a genuine internal market for services by 2010. Provision should be made for a balanced mix of measures involving targeted harmonisation, administrative cooperation, ***the country of origin principle*** 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 of consumer protection, which is vital in order to establish mutual trust between Member States.

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, and encouragement of the development of ***a legal framework capable of protecting the interests of consumers and citizens in the context of the single internal market, as well as, where appropriate,*** 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 of consumer protection, which is vital in order to establish mutual trust between Member States.

Justification

The point of the single internal market is to prevent discrimination between, in this case, service providers established in any part of the Community. The right of Member States to impose conditions on service providers, provided they are non-discriminatory and do not in any other way conflict with obligations derived from the Treaty, is an essential aspect of subsidiarity.

Amendment 5 Recital 6 a (new)

(6a) This Directive does not deal with the liberalisation of services of general economic interest reserved for public or private entities nor with the privatisation of public entities providing services. Furthermore, this Directive concerns only service providers established in a Member State and does not cover external aspects. It does not concern negotiations within international organisations on trade in services, in particular in the framework of GATS.

Justification

This precision is very important in order to avoid any misunderstanding on the scope of the Directive.

Amendment 6 Recital 6 b (new)

(6b) This Directive does not affect the freedom of Member States to define, in accordance 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. This Directive does not constitute a follow-up to the Commission White Paper on services of general interest.

Justification

This precision is very important in order to avoid any misunderstanding on the scope of the Directive.

Amendment 7 Recital 8

(8) This Directive is consistent with other current Community initiatives concerning services, particularly those relating to the competitiveness of business-related services, the safety of services, ***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 market, and those concerning consumer protection, such as the proposal for a Directive on unfair commercial practices 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

(8) This Directive is consistent with other current Community initiatives concerning services, particularly those relating to the competitiveness of business-related services ***and*** the safety of services. 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 market, and those concerning consumer protection, such as the proposal for a Directive on unfair commercial practices 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").

cooperation").

Justification

Health services are fundamentally distinct from other services of general interest. A horizontal framework directive of this nature is not an appropriate instrument to deal with Health services. In the interests of ensuring patient safety and mobility, and in order to maintain the highest professional standards in healthcare provision, separate vertical legislation dealing specifically with health service provision should be adopted in accordance ECJ jurisprudence, with the upcoming patient mobility review and taking into account the professional qualifications directive.

Amendment 8 Recital 14

(14) The concept of service covers a wide variety of ever-changing activities, including business services such as management consultancy, certification and testing; facilities management, including office maintenance and security; advertising; recruitment services, including employment agencies; and the services of commercial agents. That concept also covers services provided both to businesses and to consumers, such as legal or fiscal advice; real estate services such as estate agencies; construction, including the services of architects; transport; distributive trades; the organisation of trade fairs; car rental; travel agencies; and security services. It also covers consumer services, such as those in the field of tourism, including tour guides; audio-visual services; leisure services, sports centres and amusement parks; **health and health care services**; and household support services, such as help for the elderly. Those activities may involve services requiring the proximity of provider and recipient, services requiring travel by the recipient or the provider and services which may be provided at a distance, including via the Internet.

(14) The concept of service covers a wide variety of ever-changing activities, including business services such as management consultancy, certification and testing; facilities management, including office maintenance and security; advertising; recruitment services, including employment agencies; and the services of commercial agents. That concept also covers services provided both to businesses and to consumers, such as legal or fiscal advice; real estate services such as estate agencies; construction, including the services of architects; transport; distributive trades; the organisation of trade fairs; car rental; travel agencies; and security services. It also covers consumer services, such as those in the field of tourism, including tour guides; audio-visual services; leisure services, sports centres and amusement parks; and household support services, such as help for the elderly. Those activities may involve services requiring the proximity of provider and recipient, services requiring travel by the recipient or the provider and services which may be provided at a distance, including via the Internet. ***This Directive recognises that not all of these services are of equal value or importance, and that in the case of services which are vital to the wellbeing and health of human beings and their environment, priorities and principles***

may apply which are different from those considered appropriate for services which are less essential.

Justification

In the case of many services, it is the primary task of legislators in a market economy to ensure fair competition. In the single European market, this involves also protecting the right of enterprises to establish themselves or to trade in a Member State other than their country of origin. However, in the case of certain services, particularly those dealing with public health, social security, or activities which may involve environmental hazards, legislators' responsibility to the service provider becomes very much secondary to their responsibility to the citizen, the consumer, and the future of the planet.

Health services are fundamentally distinct from other services of general interest. Recognising this qualitative difference and the fact that the health sector comprises 10% of European employment and 10% of European GNP, a horizontal framework directive of this nature is not an appropriate instrument to deal with Health services.

In the interests of ensuring patient safety and mobility, and in order to maintain the highest professional standards in healthcare provision, separate vertical legislation dealing specifically with health service provision should be adopted in accordance ECJ jurisprudence, with the upcoming patient mobility review and taking into account the professional qualifications directive.

Amendment 9
Recital 14a (new)

(14a) Health services are excluded from the scope of this directive.

Justification

This amendment is in line with amendment to Article 2, paragraph 2, point (cc).

Amendment 10
Recital 16

(16) The characteristic of remuneration is absent in the case of activities performed, for no consideration, by the State in fulfilment of its social, cultural, educational and legal obligations. 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.

(16) The characteristic of remuneration is absent in the case of activities performed, for no consideration ***or where the financial compensation covers only part of the cost of the activity or service***, by the State ***or whose performance is delegated by the State*** in fulfilment of its social, ***health***, cultural, educational and legal obligations. 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.

Justification

Remuneration is not a factor serving to define a service as economic or non-economic. It is seen in some Member States, for example in the field of healthcare provision and management, as a form of regulation (the remuneration is in such cases subsequently reimbursed).

Amendment 11

Recital 24

(24) With the aim of administrative simplification, general formal requirements, such as a certified translation, must not be imposed, except where objectively justified by an overriding reason relating to the public interest, such as the protection of workers. 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, is objectively justified by an overriding reason relating to the public interest, ***such as protection of the urban environment.***

(24) With the aim of administrative simplification, general formal requirements, such as a certified translation, must 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 environment 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, is objectively justified by an overriding reason relating to the public interest.

Justification

Public health, education and the protection of the environment should be mentioned along with workers' health. These three together form arguably the major considerations which must be weighed in the balance in the Community's attempts to create conditions of fair competition in a single market. The example at the end is arbitrary and unnecessary, and could be interpreted restrictively.

Amendment 12

Recital 27

(27) The possibility of gaining access to a service activity may be made subject to authorisation by the competent authorities ***only if*** that decision satisfies the criteria of non-discrimination, necessity and proportionality. ***That means, in particular, that authorisation schemes should be permissible only where an a posteriori inspection would not be effective because of***

(27) The possibility of gaining access to a service activity may be made subject to authorisation by the competent authorities ***provided*** that decision satisfies the criteria of non-discrimination, necessity and proportionality. ***This*** Directive cannot be relied upon in order to justify authorisation schemes which are prohibited by other Community instruments such as

the impossibility of ascertaining the defects of the services concerned a posteriori, due account being taken of the risks and dangers which could arise in the absence of a prior inspection. However, the provision to that effect made by this Directive cannot be relied upon in order to justify authorisation schemes which are prohibited by other Community instruments such as Directive 1999/93/EC of the European Parliament and the Council of 13 December 1999 on a Community framework for electronic signatures [OJL 13, 19.1.2000 p.12], 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' – OJL 178 17.7.2000, p.1). 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.

Directive 1999/93/EC of the European Parliament and the Council of 13 December 1999 on a Community framework for electronic signatures [OJL 13, 19.1.2000 p.12], 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' – OJL 178 17.7.2000, p.1). 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.

Justification

Provided the national provisions of the Member State in which a service is to be offered are in keeping with the Treaty, it is reasonable to allow a Member State to impose conditions on economic activities conducted on its territory. The point of the single internal market is to prevent discrimination between, in this case, service providers established in any part of the Community. Member States have a right to impose conditions on service providers, provided these conditions are non-discriminatory and do not in any other way conflict with obligations derived from the Treaty.

Amendment 13 Recital 27a (new)

(27a) The provisions of this Directive relating to authorisation schemes concern cases where access to or the performance of service activities by an economic operator are conditional on a decision by the competent authority. They do not concern either decisions by competent authorities to set up a public or private

body to perform a particular service, or the conclusion of contracts by competent authorities, which is governed by the law on the awarding of public contracts.

Justification

There is a need to distinguish between acts by the public administration such as the granting or refusal of authorisations for private operators, and other public administration decisions such as decisions by public bodies to build a new hospital. It must be made clear that such decisions are not covered by the Directive. The provisions of the Directive concerning authorisation procedures apply only to private providers such as private hospitals, laboratories etc.

Amendment 14 Recital 28

(28) In cases where the number of authorisations available for an activity is limited because of scarcity of natural resources or technical capacity, as may be the position, for example, with regard to the award of analogue radio frequencies or the exploitation of hydro-electric plant, a procedure for selection from among several potential candidates must be adopted, with the aim of developing through open competition the quality and conditions for supply of services available to users. Such a procedure must provide guarantees of transparency and impartiality and the authorisation thus granted must not have an excessive duration, or be subject to automatic renewal, or confer any advantage on the successful provider. In particular, the duration of the authorisation granted must be fixed in such a way that it does not restrict or limit free competition beyond what is necessary to enable the provider to recoup the cost of investment and to make a fair return on the capital invested. Cases where the number of authorisations is limited for reasons other than scarcity of natural resources or technical capacity remain in any case subject to the other provisions of this Directive relating to authorisation schemes.

(28) In cases where the number of authorisations available for an activity is limited because of scarcity of natural resources or technical capacity, as may be the position, for example, with regard to the award of analogue radio frequencies or the exploitation of hydro-electric plant, a procedure for selection from among several potential candidates must be adopted, with the aim of developing through open competition the quality and conditions for supply of services available to users. Such a procedure, ***which may involve both purely commercial criteria and non-commercial criteria aimed, inter alia, at the protection of public health, health and safety in the workplace, the environment, or the preservation of the Member State's cultural heritage and the quality of education,*** 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. Cases where the number of authorisations is limited for reasons other

than scarcity of natural resources or technical capacity remain in any case subject to the other provisions of this Directive relating to authorisation schemes.

Justification

As is the case with public health, education is also very important for each Member State. It is their prerogative and competence (subsidiarity).

Amendment 15

Recital 29

(29) The overriding reasons relating to the public interest to which reference is made in certain harmonisation provisions of this Directive **are** those recognised by the Court of Justice in relation to Articles 43 and 49 of the Treaty, notably the protection of consumers, recipients of services, workers and the urban environment.

(29) The overriding reasons relating to the public interest to which reference is made in certain harmonisation provisions of this Directive **include** those recognised by the Court of Justice in relation to Articles 43 and 49 of the Treaty, notably the protection of consumers, recipients of services, workers and the urban environment, **as well as economic services which the responsible Member State or the Community subjects to specific public service obligations by virtue of a general interest criterion, those services which may involve environmental hazard, educational or health care services and residential care services for persons who, through age-related or other infirmity, or because they are children, are incapable of leading fully independent lives.**

Justification

The Commission's definition of essential services is much too narrow.

Amendment 16

Recital 32

(32) The prohibition of economic tests as a prerequisite for the grant of authorisation covers economic tests as such, but not requirements which are objectively justified by overriding reasons relating to the public

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interest, such as protection of the urban environment. That prohibition does not affect the exercise of the powers of the authorities responsible for applying competition law.

Justification

In line with Amendment 32 to Article 14(5) tabled by Mrs Liotard.

Amendment 17
Recital 33a (new)

(33a) The provisions of this Directive concerning the mutual evaluation procedure do not affect Member States' freedom to legislate for a higher level of protection in respect of certain matters relating to the public interest.

Justification

It should be explicitly stated that a high level of protection of public health may justify restrictions on freedom of establishment, e.g. by way of specific requirements regarding the legal form of service provider, which would not be justified in respect of other services.

Amendment 18
Recital 34

(34) The restrictions to be examined include national rules which, on grounds other than those relating to professional qualifications, reserve access to activities ***such as games of chance*** to particular providers. Similarly, among the requirements to be examined are "must carry" rules applicable to cable operators which, by imposing an obligation on an intermediary service provider to give access to certain services delivered by specific service providers, affect his freedom of choice, access to programmes and the choice of the recipients.

(34) The restrictions to be examined include national rules which, on grounds other than those relating to professional qualifications, reserve access to ***certain*** activities to particular providers. Similarly, among the requirements to be examined are "must carry" rules applicable to cable operators which, by imposing an obligation on an intermediary service provider to give access to certain services delivered by specific service providers, affect his freedom of choice, access to programmes and the choice of the recipients.

Justification

Gambling involves by definition questions of public health, public order and morality and is therefore, with the exception of responsibilities accorded to it under Article 152 of the Treaty, entirely outside the competence of the Community institutions and must remain a matter for the Member States to regulate as they see fit. It is therefore inappropriate to give it as an example in this recital.

Amendment 19

Recital 37

(37) In order to secure effective implementation of the free movement of services and to ensure that recipients and providers can benefit from and supply services throughout the Community regardless of frontiers, it is necessary to establish the principle that a provider may be subject only to the law of the Member State in which he is established. That principle is essential in order to enable providers, especially SMEs, to avail themselves with full legal certainty of the opportunities offered by the internal market. By thus facilitating the free movement of services between Member States, that principle, together with harmonisation and mutual assistance measures, also enables recipients to gain access to a wider choice of high quality services from other Member States. That principle should be complemented by an assistance mechanism enabling the recipient, in particular, to be informed about the laws of the other Member States, and by the harmonisation of rules on the transparency of service activities.	deleted
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Justification

The Country of Origin Principle is both disproportionate and unworkable, and can only lead to an undermining of reasonable and proportionate legal requirements designed to protect public health, the environment and other aspects of the public interest. It is also in contradiction of the clear intention of Article 43 of the Treaty, which states that freedom of establishment within the EU includes the right to take up and pursue activities as self-employed persons and to set up and manage undertakings 'under the conditions laid down for its own nationals by the law of the country where such establishment is effected.

Amendment 20
Recital 38

(38) It is also necessary to ensure that supervision of service activities is carried out at source, that is to say, by the competent authorities of the Member State in which the provider is established. The competent authorities of the country of origin are best placed to ensure the effectiveness and continuity of supervision of the provider and to provide protection for recipients not only in their own Member State but also elsewhere in the Community. In order to establish mutual trust between Member States in the regulation of service activities, it should be clearly laid down that responsibility under Community law for supervision of the activities of providers, regardless of the place where the service is provided, lies with the Member State of origin. Determination of judicial jurisdiction does not fall within the scope of this Directive but within that of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters, or other Community instruments such as 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 services. *deleted*

Justification

The authorities of another Member State cannot reasonably be expected to provide effective supervision of service providers where the service in question is provided in another Member State, and where the economic interests of the Member State in which the service provider is established may be affected. This deletion is also consistent with the deletion of Recital 37.

Amendment 21
Recital 39

(39) As a corollary to the principle that the *deleted*

law of the country of origin should apply and that the country of origin should be responsible for supervision, it is necessary to lay down the principle that Member States may not restrict services coming from another Member State.

Justification

Consistent with the deletion of the Country of Origin principle.

Amendment 22

Recital 40

(40) 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 **deleted**

integral part of the general principles of law enshrined in the Community legal order.

Justification

Consistent with removal of reference to Country of Origin Principle above.

Amendment 23

Recital 41

(41) 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 Member State of posting 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.

(41) 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. Moreover, it should be possible in the case of posted workers for the Member State of posting 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.

Justification

Consistent with removal of reference to Country of Origin Principle above.

Amendment 24

Recital 42

(42) It is appropriate to provide for derogation from the country of origin principle 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

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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.

Justification

Consistent with removal of reference to Country of Origin Principle above. Member States should have the right to monitor and control all economic activity within their jurisdiction, provided that they do so in full respect of proportionality and of their obligations under the Treaty.

Amendment 25

Recital 43

(43) The country of origin principle 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. *deleted*

Justification

Consistent with removal of reference to Country of Origin Principle above.

Amendment 26
Recital 45

(45) The exclusion from the country of origin principle 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. **deleted**

Justification

Consistent with removal of reference to Country of Origin Principle above.

Amendment 27
Recital 46

(46) It is appropriate to apply the country of origin principle to the field of contracts concluded by consumers for the supply of services only to the extent that Community Directives provide for full harmonisation, because in such cases the levels of consumer protection are equivalent. The derogation from the country of origin principle relating to the non-contractual liability of a provider in the case of an accident involving a person and occurring as a consequence of the service provider's activities in the Member State into which he has moved temporarily concerns physical or material damage suffered by a person in the accident. **deleted**

Justification

Consistent with removal of reference to Country of Origin Principle above.

Amendment 28
Recital 47

(47) It is necessary to allow Member States the possibility, exceptionally and on a case-by-case basis, of taking measures which derogate from the country of origin principle 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 access. Nor should that possibility permit the extension or limitation of derogations provided for in other Directives, such as 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 or Directive 2000/31/EC. **deleted**

Justification

Consistent with removal of reference to Country of Origin Principle above.

Amendment 29
Recital 51

(51) In accordance with the principles established by the Court of Justice with regard to the freedom to provide services, and without endangering the financial balance of Member States' social security systems, greater legal certainty as regards the reimbursement of health costs should **deleted**

be provided for patients, who benefit as recipients from the free movement of services, and for health professionals and managers of social security systems.

Justification

While the case-law developed by the European Court of Justice has already established a right for patients to gain access to medical treatment in another Member State under certain conditions (e.g. if it is not available within a reasonable time-frame in their country of residence), it is premature to legislate on the free movement of health services prior to examining the conclusions of the review of patient mobility. A horizontal framework directive of this nature is not an appropriate instrument to deal with health services. It is therefore preferable to adopt specific legislation on health services and improvement of patient mobility. In line with the amendment deleting Article 23.

Amendment 30

Recital 52

(52) 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 to members of their families moving within the Community and, in particular, its provisions regarding affiliation to a system of social security, fully applies to employed and self-employed workers who provide or take part in the supply of a service. ***deleted***

Justification

In line with the amendment deleting Article 23.

Amendment 31

Recital 53

(53) Article 22 of Regulation (EEC) No 1408/71, which concerns authorisation for assuming the costs of health care provided in another Member State, contributes, as the Court of Justice has emphasised, to facilitating the free movement of patients and the provision of cross-border medical services. The purpose of that provision is to ensure that insured persons possessing an ***deleted***

authorisation have access to health care in another Member State under conditions which, as regards the assumption of costs, are as favourable as those applying to insured persons in that Member State. It thus confers on insured persons rights they would not otherwise have and facilitates the free movement of services. On the other hand, that provision does not seek to regulate, nor in any way to prevent, reimbursement, at the rates applicable in the Member State of affiliation, of the costs of health care provided in another Member State, even in the absence of a prior authorisation.

Justification

While the case-law developed by the European Court of Justice has already established a right for patients to gain access to medical treatment in another Member State under certain conditions (e.g. if it is not available within a reasonable time-frame in their country of residence), it is premature to legislate on the free movement of health services prior to examining the conclusions of a review of patient mobility. Consequential to amendments to Recitals 14, 53, 54, 55, 56, 57 and to Articles 2.2, 4(10), 17(18), 23. A horizontal framework directive is not an appropriate instrument to deal with health services. It is therefore preferable to adopt specific legislation on health services and improvement of patient mobility. In line with the amendment deleting Article 23.

Amendment 32

Recital 54

<i>(54) In the light of the case-law developed by the Court of Justice on the free movement of services, it is necessary to abolish the requirement of prior authorisation for reimbursement by the social security system of a Member State for non-hospital care provided in another Member State, and Member States must amend their legislation accordingly. In so far as the reimbursement of such care remains within the limits of the cover guaranteed by the sickness insurance scheme of the Member State of affiliation, abolition of the prior authorisation requirement is not likely seriously to</i>	<i>deleted</i>
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disrupt the financial equilibrium of social security systems. As the Court of Justice has consistently held, the conditions under which Member States grant non-hospital care on their own territory remain applicable in the case of care provided in a Member State other than that of affiliation in so far as those conditions are compatible with Community law. By the same token, authorisation schemes for the assumption of costs of care in another Member State must comply with this Directive as regards the conditions for granting authorisation and the related procedures.

Justification

While the case-law developed by the European Court of Justice has already established a right for patients to gain access to medical treatment in another Member State under certain conditions (e.g. if it is not available within a reasonable time-frame in their country of residence), it is premature to legislate on the free movement of health services prior to examining the conclusions of a review of patient mobility. Consequential to amendments to Recitals 14, 53, 54, 55, 56, 57 and to Articles 2.2, 4(10), 17(18), 23. A horizontal framework directive is not an appropriate instrument to deal with health services. It is therefore preferable to adopt specific legislation on health services and improvement of patient mobility. In line with the amendment deleting Article 23.

Amendment 33 Recital 55

<i>(55) As the Court of Justice has consistently held with regard to the free movement of services, a system of prior authorisation for the reimbursement of hospital care provided in another Member State appears justified by the need to plan the number of hospital infrastructures, their geographical distribution, the mode of their organisation, the equipment with which they are provided and even the nature of the medical services which they are able to offer. The aims of such planning are to ensure, within each Member State, sufficient permanent access to a balanced range of quality hospital care, to secure efficient cost management</i>	<i>deleted</i>
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and, so far as is possible, to avoid wastage of financial, technical or human resources. In accordance with the case-law of the Court of Justice, the concept of hospital care must be objectively defined and a system of prior authorisation must be proportionate to the general interest objective pursued.

Justification

Consequential to amendments (to Recitals 14, 53, 54, 55, 56, 57 and to Articles 2.2, 4(10), 17(18), 23) which aim at removing health services from the scope of this legislation. A horizontal framework directive of this nature is not an appropriate instrument to deal with health services. It is therefore preferable to adopt specific legislation on health services and improvement of patient mobility. In line with the amendment deleting Article 23.

Amendment 34 Recital 56

<i>(56) Article 22 of Council Regulation (EEC) No 1408/71 specifies the circumstances in which the competent national institution may not refuse an authorisation sought on the basis of that provision. Member States may not refuse authorisation in cases where the hospital care in question, when provided in their territory, is covered by their social security system, and treatment which is identical or equally effective cannot be obtained in time in their territory under the conditions laid down by their social security system. The Court of Justice has consistently held that the condition relating to acceptable delay must be considered together with all the circumstances of each case, taking due account not only of the medical condition of the patient at the time when authorisation is requested, but also his medical history and the probable evolution of his illness.</i>	<i>deleted</i>
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Justification

Consequential to amendments (to Recitals 14, 53, 54, 55, 56, 57 and to Articles 2.2, 4(10), 17(18), 23) which aim at removing health services from the scope of this legislation. A horizontal framework directive of this nature is not an appropriate instrument to deal with health services. It is therefore preferable to adopt specific legislation on health services and improvement of patient mobility.

In line with the amendment deleting Article 23.

Amendment 35

Recital 57

(57) The assumption of costs, by the social security systems of the Member States, in respect of health care provided in another Member State must not be lower than that provided for by their own social security system for health care provided in their territory. As the Court has consistently pointed out with regard to the free movement of services, in the absence of authorisation, the reimbursement of non-hospital care in accordance with the scales of the Member State of affiliation would not have a significant effect on the financing of its social security system. In cases where authorisation has been granted, in the framework of Article 22 of Regulation (EEC) No 1408/71, the assumption of costs is made in accordance with the rates applicable in the Member State in which the health care is provided. However, if the level of coverage is lower than that to which the patient would have been entitled if he had received the same care in the Member State of affiliation, the latter must assume the remaining costs up to the level which would have applied. ***deleted***

Justification

Consequential to amendments (to Recitals 14, 53, 54, 55, 56, 57 and to Articles 2.2, 4(10), 17(18), 23) which aim at removing health services from the scope of this legislation. A horizontal framework directive of this nature is not an appropriate instrument to deal with health services. It is therefore preferable to adopt specific legislation on health services and improvement of patient mobility.

In line with the amendment deleting Article 23.

Amendment 36
Recital 64

*(64) It is necessary to put an end to the total **deleted** prohibitions of commercial communications by the regulated professions, not by removing bans on the content of a commercial communication but rather those which, in a general way and for a given profession, forbid one or more forms of commercial communication, such as a ban on all advertising in one or more given media. As regards the content and methods of commercial communication, it is necessary to encourage professionals to draw up, in accordance with Community law, codes of conduct at Community level.*

Justification

The regulation of commercial communications by certain professions has long been considered necessary by some Member States as contributing to the protection of the consumer as well as to the integrity and dignity of the professions themselves. The extent to which this is the case in any given Member State will depend on a number of factors including aspects of national culture and tradition. It is inappropriate for the Commission to attempt to establish such a broad interpretation of its responsibility to further the internal market that it begins to interfere in matters which are rightly in the exclusive competence of the Member States.

Amendment 37
Recital 68

*(68) This Directive is without prejudice to any legislative or other initiatives in the **field** of consumer protection.*

*(68) This Directive is without prejudice to any legislative or other initiatives in the **fields** of consumer protection, **environmental protection, workers' health and safety, public health and patient mobility.***

Justification

As in the case of consumer protection, it is of overriding importance that the furtherance of the single market for services not be pursued at the expense of these considerations.

Improvement of patient mobility is a high priority. Therefore, specific legislation should be adopted in order to facilitate and to improve the free movement of patients in the EU.

Amendment 38

Recital 72

(72) 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.

(72) 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, **34 to 38** and 47 thereof.

Justification

These articles of the Charter of Fundamental Rights are of relevance to the citizens' rights provisions referred to in citation 72 of the proposal for a directive. In addition, reference should be made to other rights, notably in the social and economic field, relating to social security and social assistance, health protection, access to services of general economic interest, environmental protection and consumer protection. All those articles lay down the objectives of achieving high standards of protection or improving quality, and most call for respect where possible not only for Community law but also for national law or practice.

Amendment 39

Article 1

This Directive establishes general provisions facilitating exercise of the freedom of establishment for service providers and the free movement of services.

This Directive establishes general provisions facilitating exercise of the freedom of establishment for service providers and the free movement of services. ***In so doing it seeks to contribute to the fulfilment of the tasks laid down in Article 2 of the Treaty, including the sustainable development of economic activities leading to a high level of employment and of social protection and respecting the need for a high level of protection and improvement of the quality of the environment.***

It does not require Member States to liberalise services of public interest or privatise public establishments which offer such services.

Justification

It is important that in stating the objectives of what is primarily a measure to ensure the free

movement of services, the Directive includes a reminder of the broader goals of the European Community, goals which cannot be subordinated one to another, for example by prejudicing environmental, public health or social protection through the introduction of liberalising measures which in some circumstances may be disproportionate.

It must be made clear that the Directive does not compel Member States to liberalise services of public interest or to privatise public establishments offering such services or require them to abolish existing monopolies, including lotteries. Monopolies curb the urge to gamble, on the one hand, and, on the other, bring in substantial revenue for the common good. Clarification must be provided in the body of the Directive.

Amendment 40

Article 2, paragraph 2, point (c a) (new)

(ca) services of general economic interest which the responsible Member State or the Community subjects to specific public service obligations;

Justification

Article III-6 of the Constitutional Treaty states that “...the Union and the Member States... shall take care that such services operate on the basis of principles and conditions, in particular economic and financial, which enable them to fulfil their missions. European laws shall define these principles and conditions without prejudice to the competence of Member States, in compliance with the Constitution, to provide, to commission and to fund such services.” Failure to exclude services of general interest from the provisions of this Directive would constitute such a prejudice.

Amendment 41

Article 2, paragraph 2, point (c b) (new)

(cb) social services of general interest which the responsible Member State or the Community subjects to specific public service obligations including, but not limited to, residential care services for persons who, through age-related or other infirmity, or because they are children, are incapable of leading fully independent lives;

Justification

The White Paper on Services of General Interest [COM (2004)374] states that “Social services of general interest have a specific role to play as an integral part of the European to play as an

integral part of the European model of society. Based on the principle of solidarity, social services of general interest are people-centred and ensure that citizens can effectively enjoy their fundamental rights and a high level of social protection, and they strengthen social and territorial cohesion.” The inclusion of such services in the provisions of this Directive would prejudice this role.

Amendment 42

Article 2, paragraph 2, point (c c) (new)

(cc) health services;

Justification

Consequential to amendments (to Recitals 14, 53, 54, 55, 56, 57 and to Articles 2.2, 4(10), 17(18), 23) which aim at removing health services from the scope of this legislation. A horizontal framework directive of this nature is not an appropriate instrument to deal with health services. It is therefore preferable to adopt specific legislation on health services and improvement of patient mobility.

Amendment 43

Article 2, paragraph 2, point (c d) (new)

(cd) water distribution services;

Justification

This directive must not threaten the principle that the management of water distribution services must remain within the public sector. In particular, Articles 9 to 15, concerning the authorisation procedures, need to be accompanied by specific measures for services of general interest provided by public institutions.

Amendment 44

Article 2, paragraph 2, point (c e) (new)

(ce) services which may involve environmental hazard or risks potentially prejudicial to public health, and which therefore require careful execution and close supervision;

Justification

The authorities of another Member State cannot reasonably be expected to provide effective supervision of service providers where the service in question is provided in another Member State, and where the economic interests of the Member State in which the service provider is established may be affected. Where public health is involved, a Member State should not be expected to abdicate its responsibilities in this way.

Amendment 45
Article 2, paragraph 2, point (c f) (new)

(cf) educational services the whole or part of the cost of which is paid or refundable by the state or other public authority of the Member State in which the service is provided.

Justification

Education is the foundation of national culture and is thus, with certain careful and useful exceptions, generally left to the competence of the Member States. Funding by public authority is a clear recognition of the socially useful function of an educational service and the addition of this criteria is intended to exclude commercial services which, though they have an educational content, are not recognised as worthy of such public support – e.g. private language schools or IT training services aimed at the private sector.

Amendment 46
Article 3, paragraph 2

Application of this Directive shall not prevent the application of provisions of other Community instruments as regards the services governed by those provisions.

This Directive shall apply unless otherwise provided by other Community instruments as regards the services governed by those provisions.

Justification

The provisions of the services Directive should not apply where there are requirements under Community instruments concerning the establishment and provision of environmental services (e.g. the EMAS Regulation, waste framework directive). Existing (quality) standards for the performance of the activity should not be covered by the Directive. Article 3(2) should therefore expressly refer to the applicability of other Community legal provisions concerning freedom of establishment and freedom to provide services.

Amendment 47
Article 4, point 10

(10) “hospital care” means medical care which can be provided only within a medical infrastructure and which normally requires the accommodation therein of the person receiving the care, the name, organisation and financing of that infrastructure being irrelevant for the purposes of classifying such care as ***deleted***

hospital care;

Justification

Consequential to amendments (to Recitals 14, 53, 54, 55, 56, 57 and to Articles 2.2, 4(10), 17(18), 23) which aim at removing health services from the scope of this legislation. A horizontal framework directive of this nature is not an appropriate instrument to deal with health services. It is therefore preferable to adopt specific legislation on health services and improvement of patient mobility.

Amendment 48

Article 4, point 13 a (new)

(13a) 'member of a regulated health profession' means a member of a regulated profession exercising an activity consisting of providing services for the diagnosis or treatment of illnesses, such as medical, paramedical and pharmaceutical services;

Justification

A definition of health professionals is necessary to delimit the exclusion of health services introduced in Article (2)(cc) (new).

Amendment 49

Article 5, paragraph 3

3. Paragraph 2 shall not apply to the ***documents referred to in Article 46 of Directive .../EC*** of the European Parliament and of the Council or ***in Article 45(3)*** of Directive .../EC of the European Parliament and of the Council.

3. Paragraph 2 shall not apply to the ***provisions*** of the European Parliament and of the Council or of Directive .../EC of the European Parliament and of the Council.

Justification

As other provisions of these two directives in course of adoption may apply, it is preferable to provide for reference to them as such if necessary, rather than to specific provisions.

Amendment 50

Article 7, paragraph 1, point (a a) (new)

(aa) the environmental regulations applicable to the service and the labour law

and conditions of employment which, at the minimum, apply to the service concerned, the provisions in force concerning consumer protection, and health and safety regulations;

Justification

For foreign-based service providers it is very difficult to ascertain what regulations apply in the country where the service is provided. Information about environmental regulations, conditions of employment, etc., must therefore likewise be available from the single point of contact.

Amendment 51

Article 9, paragraph 1, point (b)

(b) the need for an authorisation scheme is objectively justified by an overriding reason relating to the public interest;

(b) the need for an authorisation scheme is objectively justified by an overriding reason relating to the public interest. ***Such an overriding reason may include, but shall not be limited to, 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;***

Justification

The proposed wording of is too vague and general, leaving too much to the discretion of courts. By including a non-exhaustive list, the Directive will give guidance without becoming more restrictive.

Amendment 52

Article 9, paragraph 1, point (c)

(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.***

(c) the objective pursued cannot be attained by means of a less restrictive measure.

Justification

The proposed wording is too restrictive. Reasons other than that given may indicate that a less restrictive measure would not be effective.

Amendment 53
Article 12, paragraph 2 a (new)

2a. 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.

Justification

Where the provision of a service may have implications for public health, health and safety in the workplace, the environment, a Member State's cultural heritage or any other vital consideration which falls outside the purely commercial, it is reasonable for Member States to apply non-commercial criteria as an aspect of their selection procedure, provided in all cases that these are non-discriminatory and in keeping with the Treaty.

Amendment 54
Article 13, paragraph 3

3. Authorisation procedures and formalities shall provide interested parties with a guarantee that their application will be processed as quickly as possible and, in any event, within a reasonable period which is fixed and published in advance.

3. Authorisation procedures and formalities shall provide interested parties with a guarantee that their application will be processed as quickly as possible and, in any event, within a reasonable period which is fixed and published in advance. ***The period allowed between application and the grant or refusal of authorisation shall be sufficient for effective consultation of all parties who may be affected by the decision, taking into account any implications for 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.***

Justification

Citizens, either as interested individuals or organised as civil society, have a right to make their

views known to the authorities in cases where the authorisation or non-authorisation of the provision of a service may have implications for public or occupational health, the protection of the environment or the cultural heritage or the furtherance of other legitimate policy goals.

Amendment 55
Article 13, paragraph 4

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

Justification

Authorisation cannot be automatic if the deadline laid down in the acknowledgement of receipt for the response is not met. The authorities must be allowed the best possible conditions for the proper consideration of requests, while being aware that they are obliged to reach a decision as soon as possible.

Amendment 56
Article 13, paragraph 5, point (c)

c) a statement that in the absence of a response within the period specified, the authorisation shall be deemed to have been granted. *deleted*

Justification

In line with the amendment to Article 13(4).

Amendment 57
Article 14, point 5

(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 *deleted*

planning objectives set by the competent authority;

Justification

Effectively forbidding Member States and their public authorities from establishing and pursuing economic planning objectives in the public interest, as would this paragraph of Article 14, is neither justified nor required by the Treaty. Abuse of such activities in order to impose conditions which are in reality discriminatory or otherwise in conflict with the Treaty is already effectively prevented by the Treaty. The prohibition stipulated in this paragraph is therefore disproportionate.

Amendment 58
Article 14, point 8

(8) an obligation to have been entered, for a given period, in the registers held in their territory or to have exercised the activity for a given period in their territory. ***deleted***

Amendment 59
Article 15, paragraph 1

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.

1. Member States shall examine whether, under their legal system, any of the requirements listed in paragraph 2 are imposed and shall ***indicate whether*** any such requirements are compatible with the conditions laid down in paragraph 3.

Justification

Certain requirements relating to service liberalisation call for a step-by-step approach. Adaptation of national rules to the conditions of paragraph 3, where it is necessary, must not be carried out hastily or to the detriment of the objective of harmonisation of the legislation concerned.

Amendment 60
Article 15, paragraph 3, introductory part

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

3. Member States shall ***indicate whether*** requirements referred to in paragraph 2 satisfy the following conditions:

Justification

In line with the amendment to Article 15(1).

Amendment 61
Article 15, paragraph 3a (new)

3a. The information collected, subject to the provisions of paragraphs 1 to 3 of this Article, should make it possible to improve conditions of access and quality of service. The Member States, in cooperation with the Commission and the European Parliament, shall encourage the adoption of national measures or rules aimed at improving service quality and access within their territory.

Justification

Cf. amendment to Article 15(1).

The activity of evaluation should not have to entail the elimination of all or part of the criteria concerned, since their main function is to ensure the public interest. The information should make it possible to harmonise conditions between the Member States, and, above all, to pursue the objective of the continual improvement of services in terms of both access and quality, in order to guarantee our fellow citizens living conditions that are worthy of our societies and the European social model.

Amendment 62
Article 16

Country of origin principle

deleted

(1) Member States shall ensure that providers are subject only to the national provisions of their Member State of origin which fall within the coordinated field.

(2) Paragraph 1 shall cover national provisions relating to access to and the exercise of a service activity, in particular those requirements governing the behaviour of the provider, the quality or content of the service, advertising, contracts and the provider's liability.

(3) The Member State of origin shall be

responsible for supervising the provider and the services provided by him, including services provided by him in another Member State.

(4) Member States may not, for reasons falling within the coordinated field, 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 make a declaration or notification to, or to obtain an authorisation from, their competent authorities, including entry in a register or registration with a professional body or association in their territory;

(c) an obligation on the provider to have an address or representative in their territory or to have an address for service at the address of a person authorised in that territory;

(d) 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;

(e) an obligation on the provider to comply with requirements, relating to the exercise of a service activity, applicable in their territory;

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

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

(h) requirements which affect the use of equipment which is an integral part of the service provided;

(i) restrictions on the freedom to provide the services referred to in Article 20, the first subparagraph of Article 23(1) or Article 25(1).

Justification

The country of origin principle of this article amounts to a legal incitement to relocate to the countries with the least demanding fiscal, social and environmental standards in order to set up 'mailbox companies' which could, from their company seat, extend their reach over the EU in conditions that would defy all competition. The result would be extreme pressure on those countries whose social, fiscal and environmental standards are more protective of the general interest. The entire article should be deleted.

Amendment 63 Article 17

General derogations from the country of origin principle ~~deleted~~

Article 16 shall not apply to the following:

- (1) postal services within the meaning of point (1) of Article 2 of Directive 97/67/EC of the European Parliament and the Council;*
- (2) electricity distribution services within the meaning of point (5) of Article 2 of Directive 2003/54/EC of the European Parliament and of the Council;*
- (3) gas distribution services within the meaning of point (5) of Article 2 of Directive 2003/55/EC of the European Parliament and of the Council;*
- (4) water distribution services;*
- (5) matters covered by Directive 96/71/EC;*
- (6) matters covered by Directive 95/46/EC of the European Parliament*

and of the Council

(7) matters covered by Council

Directive 77/249/EEC

(8) the provisions of Article [...] of Directive .../EC on the recognition of professional qualifications;

(9) the provisions of Regulation (EEC) No 1408/71 determining the applicable legislation;

(10) the provisions of Directive .../EC of the European Parliament and the Council [on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, amending Regulation (EEC) 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC], that lay down the administrative formalities that beneficiaries must undertake before the competent authorities of the host Member States;

(11) in the case of the posting of third country nationals, the requirement for a short stay visa imposed by the Member State of posting, subject to the conditions set out in Article 25(2);

(12) the authorisation regime provided for in Articles 3 and 4 of Council Regulation (EEC) No 259/93 ;

(13) copyright, neighbouring rights, rights covered by Council Directive 87/54/EEC and by Directive 96/9/EC of the European Parliament and of the Council as well as industrial property rights;

(14) acts requiring by law the involvement of a notary;

(15) statutory audit;

(16) services which, in the Member State to which the provider moves temporarily in order to provide his service, are covered by a total prohibition which is justified by reasons relating to public policy, public security

or public health;

(17) 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 and with which compliance is indispensable for reasons of public policy or public security or for the protection of public health or the environment;

(18) the authorisation system applicable to the reimbursement of hospital care;

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

(20) the freedom of parties to choose the law applicable to their contract;

(21) contracts for the provision of services concluded by consumers to the extent that the provisions governing them are not completely harmonised at Community level;

(22) the formal validity of contracts creating or transferring rights in immovable property, where contracts are subject, under the law of the Member State in which the property is located, to imperative formal requirements;

(23) the non-contractual liability of a provider in the case of an accident involving a person and occurring as a consequence of the service provider's activities in the Member State to which he has moved temporarily.

Justification

The country of origin principle of this article amounts to a legal incitement to relocate to the countries with the least demanding fiscal, social and environmental standards in order to set up 'mailbox companies' which could, from their company seat, extend their reach over the EU in conditions that would defy all competition. The result would be extreme pressure on those countries whose social, fiscal and environmental standards are more protective of the general interest.

The articles referring to the country of origin principle should be deleted.

Amendment 64
Article 18

Transitional derogations from the country of origin principle ***deleted***

1. Article 16 shall not apply for a transitional period to the following:

(a) the way in which cash-in-transit services are exercised;

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

(c) access to the activity of judicial recovery of debts.

2. The derogations referred to in points (a) and (c) of paragraph 1 of this Article shall not apply after the date of application of the harmonisation instruments referred to in Article 40(1) or in any case after 1 January 2010.

3. The derogation referred to in point (b) of paragraph 1 of this Article shall not apply after the date of application of the harmonisation instrument referred to in Article 40(1)(b).

Justification

The country of origin principle of this article amounts to a legal incitement to relocate to the countries with the least demanding fiscal, social and environmental standards in order to set up 'mailbox companies' which could, from their company seat, extend their reach over the EU in conditions that would defy all competition. The result would be extreme pressure on those countries whose social, fiscal and environmental standards are more protective of the general interest.

The articles referring to the country of origin principle should be deleted.

Case-by-case derogations from the country of origin principle *deleted*

1. By way of derogation from Article 16, and in exceptional circumstances only, a Member State may, in respect of a provider established in another Member State, take measures relating to 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 mutual assistance procedure laid down in Article 37 is complied with and all the following conditions are fulfilled:

(a) the national provisions in accordance with which the measure is taken have not been subject to Community harmonisation in the 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 37(2);

(d) the measures are proportionate.

3. Paragraphs 1 and 2 shall be without prejudice to provisions, laid down in Community instruments, which guarantee

the freedom to provide services or which allow derogations therefrom.

Justification

The country of origin principle of this article amounts to a legal incitement to relocate to the countries with the least demanding fiscal, social and environmental standards in order to set up 'mailbox companies' which could, from their company seat, extend their reach over the EU in conditions that would defy all competition. The result would be extreme pressure on those countries whose social, fiscal and environmental standards are more protective of the general interest.

The articles referring to the country of origin principle should be deleted.

Amendment 66
Article 20, point (b)

(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;***

(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;

Justification

It is reasonable for Member States to use tax deductibility and financial assistance to encourage or discourage certain economic activities in, for example, areas of outstanding natural beauty or special scientific interest, disadvantaged areas and so on. Where these are in keeping with the Treaty, they should of course be recognised as valuable policy instruments.

Amendment 67
Article 21, paragraph 2a (new)

2a. Restrictive measures that are justified on grounds of law and order, public safety, environmental protection or public health shall not be considered contrary to the provisions of paragraphs 1 and 2.

Justification

The implementation of the principle of non-discrimination at the receiver end poses problems for health services. Many health systems are based on the planning of supply, not of demand (free and non-discriminatory access for all citizens). Under the new directive, an establishment which, under a contract entered into with the health system of another Member State, agreed to accept

patients from that Member State would not be able to allow the authorities of the receiving Member State to give priority of treatment to patients from its catchment area, whereas the objective of planning health care from the supply side is to meet the needs of those living within that catchment area.

Amendment 68
Article 23

Assumption of health care costs *deleted*

1. Member States may not make assumption of the costs of non-hospital care in another Member State subject to the granting of an authorisation, where the cost of that care, if it had been provided in their territory, would have been assumed by their social security system.

The conditions and formalities to which the receipt of non-hospital care in their territory is made subject by Member States, such as the requirement that a general practitioner be consulted prior to consultation of a specialist, or the terms and conditions relating to the assumption of the costs of certain types of dental care, may be imposed on a patient who has received non-hospital care in another Member State.

2. Member States shall ensure that authorisation for assumption by their social security system of the cost of hospital care provided in another Member State is not refused where the treatment in question is among the benefits provided for by the legislation of the Member State of affiliation and where such treatment cannot be given to the patient within a time frame which is medically acceptable in the light of the patient's current state of health and the probable course of the illness.

3. Member States shall ensure that the level of assumption by their social security system of the costs of health care provided in another Member State is not lower than that provided for by their social security system in respect of similar health care

provided in their territory.

4. Member States shall ensure that their authorisation systems for the assumption of the costs of health care provided in another Member State are in conformity with Articles 9, 10, 11 and 13.

Justification

Consequential to amendments (to Recitals 14, 53, 54, 55, 56, 57 and to Articles 2.2, 4(10), 17(18), 23) which aim at removing health services from the scope of this legislation. A horizontal framework directive of this nature is not an appropriate instrument to deal with health services. It is therefore preferable to adopt specific legislation on health services and improvement of patient mobility.

Amendment 69

Article 24, paragraph 1, subparagraph 2

However, the Member State of posting may not make the provider or the posted worker subject to any of the following obligations, as regards the matters referred to in point (5) of Article 17: **deleted**

(a) to obtain authorisation from, or to be registered with, its own competent authorities, or to satisfy any other equivalent requirement;

(b) to make a declaration, other than declarations relating to an activity referred to in the Annex to Directive 96/71/EC which may be maintained until 31 December 2008;

(c) to have a representative in its territory;

(d) to hold and keep employment documents in its territory or in accordance with the conditions applicable in its territory.

Justification

Provided the rules imposed conform to requirements of the Treaty, it is reasonable to allow a Member State to grant or withhold authorisations for economic activities conducted on its territory. The point of the single internal market is to prevent discrimination between, in this case, service providers established in any part of the Community. This measure is disproportionate to this goal.

Amendment 70
Article 24, paragraph 2, subparagraph 2

In the circumstances referred to in paragraph 1, the Member State of origin shall assist the Member State of posting to ensure compliance with the employment and working conditions applicable under Directive 96/71/EC and shall, on its own initiative, communicate to the Member State of posting ***the information specified in the first subparagraph where the Member State of origin is aware of*** specific facts which indicate possible irregularities on the part of the provider in relation to employment and working conditions.

In the circumstances referred to in paragraph 1, the Member State of origin shall assist the Member State of posting to ensure compliance with the employment and working conditions applicable under Directive 96/71/EC and shall, on its own initiative, communicate to the Member State of posting ***any*** specific facts which indicate possible irregularities on the part of the provider in relation to employment and working conditions.

Justification

Provided the rules imposed conform to requirements of the Treaty, it is reasonable to allow a Member State to grant or withhold authorisations for economic activities conducted on its territory. The point of the single internal market is to prevent discrimination between, in this case, service providers established in any part of the Community. This measure is disproportionate to this goal.

Amendment 71
Article 26, paragraph 3, subparagraph 1a (new)

Where the service in question is to be offered to the general public, Member States shall ensure that the information is provided in a form and in language which demands no specialised knowledge of the service to be provided and which any literate person can understand.

Justification

Information is of no use if it cannot be understood, and consumers have a right to clear information written in laypersons' terms.

Amendment 72
Article 28, paragraph 2a (new)

2a. Where the service in question is to be offered to the general public, the Member

State in which the service is to be provided shall ensure that the information referred to in paragraph 1 is provided in a form and in language which demands no specialised knowledge of the service to be provided and which any literate person can understand.

Justification

Information is of no use if it cannot be understood, and consumers have a right to clear information written in laypersons' terms.

Amendment 73
Article 29, paragraph 1

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

Justification

The regulation of commercial communications by certain professions has long been considered necessary by some Member States as contributing to the protection of the consumer as well as to the integrity and dignity of the professions themselves. The extent to which this is the case in any given Member State will depend on a number of factors including aspects of national culture and tradition. It is inappropriate for the Commission to attempt to establish such a broad interpretation of its responsibility to further the internal market that it begins to interfere in matters which are rightly in the exclusive competence of the Member States.

Amendment 74
Article 29, paragraph 2

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.

2. Member States shall ensure that, **where they are permitted**, 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.

Justification

The regulation of commercial communications by certain professions has long been considered necessary by some Member States as contributing to the protection of the consumer as well as to the integrity and dignity of the professions themselves. The extent to which this is the case in any given Member State will depend on a number of factors including aspects of national culture and tradition. It is inappropriate for the Commission to attempt to establish such a broad interpretation of its responsibility to further the internal market that it begins to interfere in matters which are rightly in the exclusive competence of the Member States.

Amendment 75 Article 31, paragraph 5

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

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

Justification

These actions should be put into practice as of now at national level, and the professional organisations should encourage their members to assess their services. Numerous organisations in several Member States have begun to do so, but the first tangible results will not be known until some years from now.

Amendment 76 Article 31, paragraph 5 a (new)

5a. Voluntary action taken under the aegis of this Article shall in no way prejudice the right of Member States to establish, within the scope permitted by the Treaty, and provided these are non-discriminatory and proportionate, mandatory standards and rules covering services. Such mandatory standards and rules may include, but are not limited to, mandatory high quality criteria for residential care for people who through age-related or other infirmity, or because they are children, are incapable of living independently, and mandatory standards and rules protecting the public

interest or pursuing any policy goal in keeping with the Treaty.

Justification

The proposed voluntary procedures are particularly inadequate for care services and the Member States' right to control the quality of such services offered on their territory should be unquestioned. In the context of this Directive, this implies the need for an additional paragraph drawing attention to this.

Amendment 77

Article 35, paragraph 6 a (new)

6a. These provisions shall supplement, and shall not prejudice, the right of a Member State to supervise and regulate, in conformity with its obligations under the Treaty and Community law, the provision of services within its territory.

Justification

Provided the national provisions of the Member State in which a service is to be provided are in keeping with the Treaty, it is reasonable to allow a Member State to impose conditions on economic activities conducted on its territory. The authorities of another Member State cannot be reasonably expected to provide effective supervision of service providers where the service in question is provided in another Member State. Co-operation of the kind prescribed would nevertheless be most useful as a supplement to effective legislation and supervision.

Amendment 78

Article 36, paragraph 2, subparagraph 1

At the request of the Member State of origin, the competent authorities referred to in paragraph 1 shall carry out any checks, inspections and investigations necessary for ensuring effective supervision **by the Member State of origin.** 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 referred to in paragraph 1 shall carry out any checks, inspections and investigations necessary for ensuring effective supervision. In so doing, the competent authorities shall act to the extent permitted by the powers vested in them in their Member State.

Justification

Provided the national provisions of the Member State in which a service is to be provided are in keeping with the Treaty, it is reasonable to allow a Member State to impose conditions on economic activities conducted on its territory. The authorities of another Member State cannot reasonably be expected to provide effective supervision of service providers where the service in question is provided in another Member State. The Country of Origin Principle is both disproportionate and unworkable, and can only lead to an undermining of reasonable and proportionate legal requirements designed to protect the public interest.

Amendment 79

Article 36, paragraph 2, subparagraph 2, point (a)

(a) they consist exclusively in the establishment of facts and do not give rise to any other measure against the provider, subject to the possibility of case-by-case derogations as provided for in Article 19; ***deleted***

Justification

Provided the national provisions of the Member State in which a service is to be provided are in keeping with the Treaty, it is reasonable to allow a Member State to impose conditions on economic activities conducted on its territory. The authorities of another Member State cannot reasonably be expected to provide effective supervision of service providers where the service in question is provided in another Member State. The Country of Origin Principle is both disproportionate and unworkable, and can only lead to an undermining of reasonable and proportionate legal requirements designed to protect the public interest.

Amendment 80

Article 37, paragraph 1

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

1. Where a Member State intends to take a measure pursuant to Article 19, the procedure laid down in paragraphs 2 to 6 of this Article shall apply without prejudice ***to the right of that Member State to take action directly against the service provider or*** to proceedings before the courts.

Justification

The authorities of another Member State cannot be reasonably expected to provide effective supervision of service providers where the service in question is provided in another Member State. The Country of Origin Principle is both disproportionate and unworkable, and can only

lead to an undermining of reasonable and proportionate legal requirements designed to protect public health, the environment and other vital aspects of the public interest.

Amendment 81

Article 39, paragraph 1, introductory part

1. Member States shall, in cooperation with the Commission, **take accompanying measures to encourage** the drawing up of codes of conduct at Community level, in conformity with Community law, in particular in the following areas:

1. Member States shall, in cooperation with the Commission, encourage, ***on the basis of the national codes of conduct***, the drawing up of codes of conduct at Community level, in conformity with Community law, ***in all the Union languages and*** in particular in the following areas:

Justification

Certain national codes of conduct have been integrated into national law and have thus been made binding. It is therefore essential to take inspiration from them and ensure that the various Community codes are compatible with them, as well as taking respect for Community law into account.

Amendment 82

Article 39, paragraph 4 a (new)

4a. Such codes of conduct shall be without prejudice to existing legal requirements imposed on service providers by the Member States, provided such requirements are in keeping with Member States' obligations under the Treaty and existing Community law.

Justification

Professional Codes of Conduct are useful adjuncts to legal regulation and supervision, but can never replace it.

Amendment 83

Article 40, paragraph 1, point (b)

(b) gambling activities which involve wagering a stake with pecuniary value in games of chance, including lotteries and betting transactions, in the light of a report

deleted

***by the Commission and a wide consultation
of interested parties;***

Justification

Gambling involves by definition questions of public health, public order and morality and is therefore, with the exception of responsibilities accorded to it under Article 152 of the Treaty, entirely outside the competence of the Community institutions and must remain a matter for the Member States to regulate as they see fit. It is therefore inappropriate to give it as an example in this recital.

PROCEDURE

Title	Proposal for a directive of the European Parliament and of the Council on services in the internal market
Procedure number	2004/0001(COD)
Committee responsible	IMCO
Committee asked for its opinion Date announced in plenary	ENVI 16.9.2004
Enhanced cooperation	No
Draftsman Date appointed	Kartika Tamara Liotard 1.9.2004
Discussed in committee	23.11.2004
Date suggestions adopted	15.3.2005
Result of final vote	for: 47 against: 5 abstentions: 2
Members present for the final vote	Liam Aylward, Johannes Blokland, John Bowis, Frederika Brepoels, Martin Callanan, Dorette Corbey, Chris Davies, Avril Doyle, Mojca Drčar Murko, Edite Estrela, Anne Ferreira, Karl-Heinz Florenz, Françoise Grossetête, Cristina Gutiérrez-Cortines, Satu Hassi, Gyula Hegyi, Mary Honeyball, Marie Anne Isler Béguin, Caroline Jackson, Dan Jørgensen, Christa Kläß, Eija-Riitta Korhola, Urszula Krupa, Peter Liese, Jules Maaten, Linda McAvan, Marios Matsakis, Roberto Musacchio, Riitta Myller, Miroslav Ouzký, Adriana Poli Bortone, Vittorio Prodi, Dagmar Roth-Behrendt, Guido Sacconi, Karin Scheele, Carl Schlyter, Richard Seeber, Kathy Sinnott, Bogusław Sonik, María Sornosa Martínez, Åsa Westlund
Substitutes present for the final vote	María del Pilar Ayuso González, David Casa, Bairbre de Brún, Hélène Goudin, Vasco Graça Moura, Roger Helmer, Erna Hennicot-Schoepges, Karsten Friedrich Hoppenstedt, Kartika Tamara Liotard, Jiří Maštálka, Andres Tarand, Claude Turmes
Substitutes under Rule 178(2) present for the final vote	Martine Roure

27.4.2005

OPINION OF THE COMMITTEE ON INDUSTRY, RESEARCH AND ENERGY

for the Committee on the Internal Market and Consumer Protection

on the proposal for a directive of the European parliament and of the Council on services in the internal market

(COM(2004)0002 – C5-0069/2004 – 2004/0001(COD))

Draftsman: Jorgo Chatzimarkakis

SHORT JUSTIFICATION

The Service sector in the Community today accounts for almost 70% of GDP and the vast majority of work places. At the same time, it is a sector with a huge growth potential also attaining the goals of the Lisbon agenda. It is therefore regrettable that now, a full decade after the envisaged completion of the internal market, we are far from completing a single European market for services. Service providers often find their access to markets in other Member States blocked by complex and often incomprehensible formalities, duplication of requirements and disproportionate national restrictions. Innovative companies – and particularly SMEs – are limited in their expansion possibilities. And consumers on their part suffer from high prices and a lack of real choice.

Creating an Internal Market for Services is about enhancing flexibility in the economy, fostering competitiveness, and creating welfare and jobs.

While some sectors of the service industries (telecommunications, audiovisual & financial services, etc) are already covered by specific Directives, the remaining ones are both so diverse and so dynamic in their nature that they cannot be specifically defined. Hence the choice of a framework Directive as legal instrument is a good one. However, the heterogeneity and the resulting broadness of scope of the proposed framework Directive also creates some problems of definition, of unclarity as regards the scope, of unintended side-effects to minor sectors, and of the inevitable needs for special provisions and exceptions to the rules. In the interest of good lawmaking as well as the functioning of the proposed Directive, it is important that these definitions and delimitations are made as clear as possible.

The proposal builds on the “country of origin”- principle whereby a product (or in this case: a service) provided lawfully in one Member State shall not be subject to restrictions of another Member State to the extent that this would lead to an unjustified trade barrier. This principle is

crucial to the functioning of the internal market and should therefore be clearly defined by the directive, which is currently not the case. The principle should not be devalued by derogations despite the broad scope of the proposal. Needless to say, this requires effective administrative co-operation between Member State authorities in order to ensure effective supervision and consumer protection. At the same time excessive burdens on service providers must be avoided. The Community has already taken many steps to facilitate administrative co-operation across borders and reduce the bulk of “red tape” (i.e. through the promotion of e-Government services), and the proposal contains additional initiatives aimed at making administration simpler and more efficient. All these initiatives are welcomed by your draftsman. However, more could be done by introducing harmonised European forms for attestations and certificates as well as EU-wide databases containing information on established service providers, enabling authorities to have, via e-Government services, a better control.

No Member State can be forced under this Directive to liberalise or privatise additional public services.

Although this is the case, misunderstandings have arisen about the impact of liberalisation on workers' rights and on sensitive sectors such as health-related services. It could therefore be of some value to clarify what the proposed measure is not and does not do.

Your draftsman proposes a clause specifying that "the directive does not affect measures taken at community or national level, in order to promote cultural and linguistic diversity and to ensure the defence of pluralism "

Firstly, the proposed Directive does not reduce workers' rights or otherwise facilitate “social dumping”. Any posting of workers to another Member State must respect that Member State's employment conditions including minimum wages, working hours, and holiday rules.

Secondly, the proposed Directive does not prevent the recipient Member State from defining and enforcing relevant national standards. It could still carry out spot checks and demand all relevant information from the company which has posted workers there or from the relevant authorities in the country of origin. After all, the all-embracing approach with regards to clearly defined exceptions by the European Court of Justice is welcomed by your draftsman. It is a precondition for the completion of the Single Market.

Finally, we assume that the "Country of Origin Principle" will apply for the authorisation procedures of a service in the recipient countries but that the control of the modalities under which a service is provided will still be governed by the laws of the recipient countries.

In order to make this approach applicable to all member states and to all sectors, one possible approach could be the phasing in of the country of origin principle in certain sensitive issues with clearly fixed deadlines in order to allow that mechanisms of administrative cooperation are solidly established.

AMENDMENTS

The Committee on Industry, Research and Energy calls on the Committee on the Internal Market

and Consumer Protection, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission¹

Amendments by Parliament

Amendment 1
Recital 1 a (new)

(1a) A competitive market in services is vital to economic growth and employment in the EU. At present numerous barriers in the internal market prevent many service enterprises, particularly SMEs, from expanding beyond national borders and taking full advantage of the internal market. This is a danger not only to the worldwide competitiveness of service providers from the Union but also to industry, which is increasingly dependent on high-quality services. Moreover, a non-discriminatory market with obligations on the Member States to eliminate restrictions on the use of cross-border services, accompanied by greater transparency and requirements for service providers to provide information, would give European consumers better services at lower prices, while preserving their rights as users of services.

Amendment 2
Recital 7

(7) It is necessary to recognise the importance of the roles of professional bodies and professional associations in the regulation of service activities and the development of professional rules.

(7) It is necessary to recognise the importance of the roles of professional bodies and professional associations in the regulation of service activities and the development of professional rules, ***but these roles must not present any obstacles to increased competition from more operators.***

¹ OJ C ... /Not yet published in OJ.

Justification

It is important to stress that the basic aim of the directive is to increase competition, even if special circumstances are recognised.

Amendment 3
Recital 7 a (new)

(7a) This Directive does not apply to the financing of services of general economic interest and is not applicable to Member States' aid schemes, in particular in the health and social fields and in the audiovisual and culture sector, which are covered by the competition rules laid down in Title VI, Chapter 1 of the Treaty.

Amendment 4
Recital 7 b (new)

(7b) In a Europe wishing to achieve competitiveness, there is a need to create opportunities for lifelong learning in the private sector and avoid obstacles to it.

Justification

In order to achieve the objectives of the Lisbon Strategy, a strong boost needs to be given to lifelong learning for professionals.

Amendment 5
Recital 7 c (new)

(7c) As regards services of general interest, this Directive covers only services of general economic interest, i.e. services of an economic nature. Furthermore, certain services of general economic interest, such as in the field of transport, are excluded from the scope of application of the Directive. The Directive does not affect the freedom of the Member States to define, in compliance with Community law, what they consider to be services of general economic interest, to determine how those services

should be organised and financed, and to lay down the specific obligations to which they are subject. This Directive does not deal with the follow-up to the Commission White Paper on services of general interest.

Justification

This directive does not apply to public services.

Amendment 6
Recital 12

(12) Since transport services are already covered by a set of Community instruments specific to that field, they should be excluded from the scope of this Directive ***to the extent that they are regulated by other Community instruments adopted under Articles 71 and 80(2) of the Treaty.*** However, this Directive applies to ***services that are not regulated by specific instruments concerning transport, such as cash in transit or the transport of mortal remains.***

(12) Since transport services are already covered by a Community policy specific to that field, they should be excluded from the scope of this Directive. However, this Directive applies to the transport of cash in transit ***and*** the transport of mortal remains ***since internal market problems have been identified in this field.***

Justification

It should be clear what kinds of transport are excluded from the scope of the Directive. Simply stating “to the extent that they are governed by other Community instruments” is less than accurate. Since the Commission does not wish to include the transport sector as a whole, it is more logical to exclude it as a whole. Otherwise this sector will be governed by unnecessarily complex rules with transport under 3.5 tons falling under the application of the current Directive and transport over 3.5 tons falling under other Community rules, which again could lead to unfair competition.

Amendment 7
Recital 13

(13) There is already a considerable body of Community law on service activities, especially the regulated professions, postal services, television broadcasting, information society services and services relating to travel, holidays and package tours. Service activities are also covered by

(13) There is already a considerable body of Community law on service activities, especially the regulated professions, postal services, television broadcasting, information society services and services relating to travel, holidays and package tours. Service activities are also covered by

other instruments which do not deal with a specific category of services, such as those relating to consumer protection. This Directive builds on, and thus complements, the Community *acquis*. Where a service activity is already covered by one or more Community instruments, this Directive and those instruments will all apply, the requirements laid down by one adding to those laid down by the others. Accordingly, appropriate provisions should be laid down, including provision for derogations, in order to prevent incompatibilities and to ensure consistency as between all those Community instruments.

other instruments which do not deal with a specific category of services, such as those relating to consumer protection. This Directive builds on, and thus complements, the Community *acquis*. Where a service activity is already covered by one or more Community instruments, this Directive and those instruments will all apply, the requirements laid down by one adding to those laid down by the others. Accordingly, appropriate provisions should be laid down, including provision for derogations, in order to prevent incompatibilities and to ensure consistency as between all those Community instruments.

This Directive does not affect any such existing Community instruments or affect the possibility for the Community to revise such instruments and to change their scope of application or the level of Community harmonisation.

Justification

It should be made clear that the Services Directive affects neither existing directives or regulations nor any future changes thereof.

Amendment 8 Recital 16 a (new)

(16a) The Directive is also not applicable to professions and occupations that are connected permanently or occasionally with the exercise of official authority in a Member State and are therefore covered by the exemptions set out in Article 45 of the Treaty.

Amendment 9 Recital 19 a (new)

(19a) According to the case law of the Court of Justice of the European Communities, the decisive factor in determining whether a market operator has a claim to freedom to provide services or to freedom of establishment is whether that

operator is established in the Member State in which it provides the relevant service. If the operator is established in the Member State in which it provides a service, it is entitled to claim freedom of establishment. On the other hand, if the market operator is not established in the Member State in which the service is received, it is a cross-border service provider entitled to claim freedom to provide services.

Amendment 10
Recital 27 a (new)

(27a) 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 health care or social services. However, no such authorisation scheme or restriction may discriminate in terms of the applicant's country of origin, or be framed in such a way as to impede cross-border services which comply with Member States' requirements. Further, the criteria of necessity and proportionality must always be respected.

Amendment 11
Recital 28

(28) In cases where the number of authorisations available for an activity is limited because of scarcity of natural resources or technical capacity, as may be the position, for example, with regard to ***the award of analogue radio frequencies*** or the exploitation of hydro-electric plant, a procedure for selection from among several potential candidates must be adopted, with the aim of developing through open competition the quality and conditions for supply of services available to users. Such a

(28) In cases where the number of authorisations available for an activity is limited because of scarcity of natural resources or technical capacity, as may be the position, for example, with regard to the exploitation of hydro-electric plant, a procedure for selection from among several potential candidates must be adopted, with the aim of developing through open competition the quality and conditions for supply of services available to users. Such a procedure must provide guarantees of

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. Cases where the number of authorisations is limited for reasons other than scarcity of natural resources or technical capacity remain in any case subject to the other provisions of this Directive relating to authorisation schemes.

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. Cases where the number of authorisations is limited for reasons other than scarcity of natural resources or technical capacity remain in any case subject to the other provisions of this Directive relating to authorisation schemes.

Justification

Rules regarding the award of radio frequencies is already dealt with within the community framework for electronic communications services and networks, and associated facilities and services. The Telecom package is excluded from the scope of the Services Directive. This should also apply with respect to the award of radio frequencies.

Amendment 12 Recital 29

(29) The overriding reasons relating to the public interest to which reference is made in certain harmonisation provisions of this Directive are those recognised by the Court of Justice ***in relation to Articles 43 and 49 of the Treaty, notably*** the protection of consumers, recipients of services, workers ***and*** the urban environment.

(29) The overriding reasons relating to the public interest to which reference is made in certain harmonisation provisions of this Directive are those recognised by the Court of Justice ***and relate, more specifically, to public policy, public security, public health, social policy and cultural policy*** the protection of consumers, recipients of services, workers, ***the environment including*** the urban environment, ***the health of animals, intellectual property, and the conservation of national historic and artistic heritage.***

Justification

ECJ case law should be taken in its entirety, including social policy and cultural policy.

Amendment 13
Recital 33 a (new)

(33a) The outcome of the mutual evaluation process will differ according to the nature of the activities and the public interest concerned. In particular, according to the case-law of the Court of Justice, requirements subject to this mutual evaluation could be fully justified when they pursue public health or social policy objectives.

Amendment 14
Recital 34

(34) The restrictions to be examined include national rules which, on grounds other than those relating to professional qualifications, reserve access to activities such as games of chance to particular providers. Similarly, among the requirements to be examined are "must carry" rules applicable to cable operators which, by imposing an obligation on an intermediary service provider to give access to certain services delivered by specific service providers, affect his freedom of choice, access to programmes and the choice of the recipients.

(34) Among the requirements to be examined are "must carry" rules applicable to cable operators which, by imposing an obligation on an intermediary service provider to give access to certain services delivered by specific service providers, affect his freedom of choice, access to programmes and the choice of the recipients.

Justification

"Must carry" rules are already covered by Directive 2002/22/EC (Universal Service). Since "must carry" rules serve to safeguard cultural diversity and media pluralism they should not be affected by the Services Directive.

Amendment 15
Recital 35

(35) It is appropriate that the provisions of this Directive concerning freedom of establishment should apply only to the extent that the activities in question are open to competition, so that they do not oblige Member States to abolish existing monopolies, notably those of lotteries, ***or to***

(35) It is appropriate that the provisions of this Directive concerning freedom of establishment should apply only to the extent that the activities in question are open to competition, so that they do not oblige Member States ***to liberalise services of general economic interest, privatise public***

privatise certain sectors.

entities providing such services or abolish existing monopolies for other activities, notably those of lotteries and certain distribution services;

Justification

This directive does not apply to public services.

Amendment 16
Recital 38 a (new)

(38a) The supervisory responsibility of the competent authorities of the Member State of origin does not oblige the authorities of the country of origin themselves to carry out inspections and checks in the territory of the country of destination. These checks and inspections will be carried out by the authorities of the country of destination in accordance with the requirements of mutual administrative assistance and the partnerships established by this Directive, including electronic cooperation between the authorities of individual States.

Justification

Requires clarification.

Amendment 17
Recital 41 a (new)

(41a) The exclusion from the country of origin principle for matters covered by Directive 96/71/EC includes the right of the Member State 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 Article 43 and 49 of the Treaty.

Justification

This recital clarifies the scope of the derogation in article 17§5 concerning the posting of workers.

Amendment 18
Recital 47 a (new)

(47a) Application of the country of origin principle in the healthcare sector should be restricted not least because for many health services an establishment is required in the Member State in which the service is provided and such services cannot therefore be subject to the country of origin principle. Furthermore, in the case of cross-border healthcare service provision there are important general exceptions to the country of origin principle, for example with regard to professional qualifications or hygiene regulations. In addition, in view of the importance of protecting public safety, Member States should retain the possibility of intervening on a case-by-case basis.

Amendment 19
Recital 57 a (new)

(57a) As the terms and conditions applying to temporary workers are covered by Article 3(9) of Directive 96/71/EC, they are exempt from the application of the country of origin principle in this Directive. Further, the conditions concerning the hiring-out of workers, including the conditions regarding supply of workers by temporary

employment agencies, are exempt, meaning that the restrictions or prohibitions laid down by the host Member State apply as regards, inter alia, the use of hired-out workers, limitations as to the maximum duration of temporary employment, etc.

Justification

This recital clarifies the scope of the provisions concerning the posting of workers.

Amendment 20
Recital 59 a (new)

(59a) The prohibition on requiring a declaration to be made to the authorities of the Member State where the service is provided only prevents Member States from requiring systematic prior declarations in each case of posting of a worker and does not prevent them from requiring that service providers file declarations or complete forms relating to specific employment obligations, such as forms relating to contributions to funds dealing with holiday pay, provided that such declarations can be made after the beginning of the service provision.

Amendment 21
Recital 59 b (new)

(59b) This Directive prevents Member States from requiring service providers posting workers on their territory to systematically ship all employment documents which are normally kept at the place of establishment of the company to their territory and keep them there; however this Directive does not apply to documents which in the normal course of work are established and kept at the work place, such as time-sheets nor does it prevent the authorities in the host Member

State from requiring the service provider directly to submit documents in the event of an inspection or check or from enforcing that requirement in cases of non-compliance.

Justification

It is important to clarify that Article 24 (2) does not prevent the host MS from obliging the service provider or his workers to present as quickly as possible the documents with information mentioned under Article 24 (2) (a) to (f) if requested by the competent authority of the host country.

Amendment 22
Recital 60 a (new)

(60a) The requirements concerning the posting of workers also apply to the posting of third country nationals.

Justification

It is necessary to clarify that requirements concerning the posting of workers also apply in case of posting of third country nationals.

Amendment 23
Recital 66 a (new)

(66a) A prerequisite for effective cooperation between Member States is a well functioning electronic information system, such as IDA, in order to allow competent authorities easily to identify the relevant interlocutors in other Member States and to communicate with them in an efficient way, as well as to exchange documents and evidence quickly and reliably. The Member States and the Commission should promote measures, in particular agreements and regulations at European level, to create a legal framework for recognition and enforcement in administrative cases.

Justification

If the Directive is to operate effectively it is essential that all penalties in trade and labour market supervision should be directly enforceable even if the offenders are not in the territory of the authorities applying the penalties.

Amendment 24 Recital 71 a (new)

(71a) The Community may, in particular, adopt legal measures obliging Member States to cooperate effectively on the administrative aspects of cross-border information-sharing and control. The Community may take measures in order to avoid the duplication of checks or supervision and the duplication of documentation.

Amendment 25 Article 1

This Directive establishes general provisions facilitating exercise of the freedom of establishment for service providers and the free movement of services.

This Directive establishes general provisions facilitating exercise of the freedom of establishment for service providers and the free movement of services.

This Directive does not apply to the liberalisation of services of general economic interest or to the privatisation of public entities providing such services. It is also without prejudice to Community provisions on competition and aid.

This Directive does not deal with either the abolition of monopolies providing services or aid granted by Member States which is covered by the rules on competition laid down in the Treaty.

This Directive does not affect measures taken at Community or national level to protect or promote cultural or linguistic diversity or media pluralism.

Amendment 26 Article 2, paragraph 2, point (a)

(a) **financial services as defined in Article 2(b) of Directive 2002/65/EC;**

(a) **banking, credit, insurance, occupational and personal pension, investment and payment services;**

Justification

Financial services are excluded from the scope of the Directive. However, it is important that it is clear exactly what the term "financial services" includes.

Amendment 27

Article 2, paragraph 2, point (c)

(c) transport services **to the extent that they are governed by other Community instruments the legal basis of which is Article 71 or Article 80(2) of the Treaty.**

(c) transport services, **with the exception of the transport of mortal remains and cash in transit, with the proviso that national standards relating to safety and hygiene must be respected;**

Amendment 28

Article 2, paragraph 2, point (c a) (new)

(ca) energy services to the extent that they are governed by other Community instruments;

Justification

In order to avoid legal uncertainty, activities covered by the gas and electricity directives should not fall under this directive.

Amendment 29

Article 2, paragraph 2, point (c b) (new)

(cb) activities related to gambling;

Justification

Gambling is not an EU competence and should not be covered by this directive.

Amendment 30

Article 2, paragraph 2, point (c c) (new)

(cc) services of general interest;

Justification

Services of general interest and services of general economic interest should be subject to a framework Directive defining their fundamental principles and ensuring their public funding.

Services such as healthcare, culture, broadcasting, social services or education services must be clearly excluded from the scope of the proposed Directive

Amendment 31
Article 2, paragraph 2, letter (c d) (new)

(cd) activities covered by Article 45 of the Treaty that are connected, even occasionally, with the exercise of official authority.

Justification

The scope of this directive should not include activities covered by Article 45 of the Treaty, which stipulates that freedom of establishment does not apply to activities connected with the exercise of official authority, with these being regulated by the Member States in accordance with the principle of subsidiarity.

Amendment 32
Article 2, paragraph 2, point (c e) (new)

(ce) services of general economic interest;

Justification

Services of general interest and services of general economic interest should be subject to a framework Directive defining their fundamental principles and ensuring their public funding. Services such as healthcare, culture, broadcasting, social services or education services must be clearly excluded from the scope of the proposed Directive.

Amendment 33
Article 2, point (3)

(3) This Directive does not apply to the field of taxation, ***with the exception of Articles 14 and 16 to the extent that the restrictions identified therein are not covered by a Community instrument on tax harmonisation.***

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

Justification

The proposed version of the Article 2 par. 3 suggests that the Commission considers levying taxes as a burden to the free movement of services. I do not agree with this starting point and on the contrary I am convinced that the tax competition represents an important impetus for the development of the free movement of services. The consequence of the proposed formulation would be that only the country of origin would have the right to levy taxes. Therefore it would be better to exclude taxation in general.

Amendment 34
Article 3, paragraph 2

Application of this Directive shall not prevent the application of provisions of other Community instruments as regards the services governed by those provisions.

This Directive is without prejudice to other applicable Community instruments governing specific services.

Justification

The Directive, in its current drafting, applies to the major part of the gas activity chain (supply, distribution, construction and operation of infrastructures as well as to other related services). It is therefore crucial that the Directive takes into account and is reconciled with the pre-existing and specific EU rules applicable to the energy sector which have been elaborated at length on the basis of the specificities of this sector and ensure a balance between all the interests.

It is of the essence to prioritize the specific rules of the sectorial directives.

Amendment 35
Article 3, paragraph 2 a (new)

Community instruments governing freedom of establishment and freedom to provide services within the internal market in specific sectors or professions prevail over this Directive.

Amendment 36
Article 3 a (new)

Article 3a

This Directive may not be interpreted as affecting in any way the exercise of fundamental rights as recognised in Member States and the Charter of Fundamental Rights.

Justification

This directive should not inhibit the legal guarantee of fundamental rights, including the right or freedom to collective action.

Amendment 37
Article 4, point 10

10) “hospital care” means medical care ***deleted***

which can be provided only within a medical infrastructure and which normally requires the accommodation therein of the person receiving the care, the name, organisation and financing of that infrastructure being irrelevant for the purposes of classifying such care as hospital care;

Justification

Hospital care should be mentioned only in connection with reimbursement claims (Article 23).

Amendment 38
Article 5, paragraph 3

3. Paragraph 2 shall not apply to the documents referred to in Article 46 of Directive ../../EC of the European Parliament and of the Council *or in* Article 45(3) of Directive ../../EC of the European Parliament and of the Council .

3. Paragraph 2 shall not apply to the documents referred to in Article 46 of Directive ../../EC of the European Parliament and of the Council ***on the recognition of professional qualifications***, 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, public supply contracts and public service contracts¹*** and Article 3(2) of Directive ***90/5/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***.

(1) OJ L 134, 30.4.2004, p. 114, amended by Commission Regulation (EC) No 1874/2004 (OJ L 326, 29.10.2004, p. 17).

(2) OJ L 77, 14.3.1998, p. 36, amended by the 2003 Accession treaty.

Justification

This amendment clarifies the exceptions and defines them more clearly.

Amendment 39
Article 5, paragraph 3 a (new)

3a. Member States shall introduce, where appropriate, harmonised European forms, which will serve as an equivalent to certificates, attestations or any other document in relation to establishment.

Justification

The development of an harmonised European form will contribute to co-operation between supervising authorities in the country of origin and the host country. However, given that the procedures are very different between Member State legal systems and that the objective is not to harmonise them, the development of an harmonised European form would be feasible only in limited cases.

Amendment 40
Article 6, paragraph 1

Member States shall ensure that, by 31 December 2008 at the latest, it is possible for a service provider to complete the following procedures and formalities at a contact point known as a "single point of contact":

Member States shall ensure that, by 31 December 2008 at the latest, it is possible for a service provider to complete the following procedures and formalities at a contact point, ***in either his State of origin or the Member State where the service is provided, whichever the service provider may choose***, known as a "single point of contact":

Amendment 41
Article 6, paragraph 1 a (new)

The designation of single points of contract in the Member State shall not affect the division of responsibilities in the Member States.

Justification

The Directive does not encroached on the competences of Member States.

Amendment 42
Article 7, paragraph 1, point (a)

(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;

(a) requirements applicable to providers established in their territory, in particular ***requirements concerning social, labour and trade-union rights, and environmental and consumer protection matters, as well as*** those requirements concerning the procedures and formalities to be completed in order to access and to exercise service activities;

Justification

The single points of contact should provide this information to ensure that service providers have access to the applicable collective agreements, social legislation, environmental rules and consumer protection systems.

Amendment 43
Article 8, paragraph 2

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.

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, ***but Member States shall ensure that any such inspection and certification procedures are simple, straightforward and non-discriminatory.***

Justification

Inspection and certification procedures should not be burdensome for the service provider and should not be used as a means of discriminating against service providers from another Member State.

Amendment 44
Article 9, paragraph 1, point (a)

(a) the authorisation scheme ***does not discriminate against*** the provider in question;

(a) the authorisation scheme does not discriminate against the provider in question as ***compared to domestic providers and corresponding authorisation schemes from the country of origin of the service provider are accepted.***

Justification

It should be made clearer that the aim is to create a level playing field for domestic and foreign service providers.

Amendment 45 Article 10, paragraph 5

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.

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 ***and may be withdrawn but only by the authority that granted it.***

Amendment 46 Article 16, paragraph 1, subparagraph 2

Paragraph 1 shall cover national provisions relating to access to and the exercise of a service activity, in particular those requirements governing the behaviour of the provider, the quality or content of the service, advertising, contracts and the provider's liability.

The provisions of this Directive shall apply to the authorisation to access to and the exercise of a service activity. Service activities provided in the country of destination shall continue to be governed by the regulations and supervision of the country of destination regarding issues of public health, safety and security so far as they are proportionate.

Amendment 47 Article 16, paragraph 3, introductory part

3. Member States may not, for reasons falling within the coordinated field, restrict the freedom to provide services in the case of a provider established in another Member State, in particular, by imposing any of the

3. Member States shall not make access to or the exercise of a service activity in their territory subject to compliance with discriminatory requirements based directly or indirectly on nationality or the location of the registered office.

Member States may not, for reasons falling within the coordinated field, restrict the freedom to provide services in the case of a provider established in another Member State

following requirements:

The following requirements shall therefore be prohibited:

Amendment 48
Article 16 a (new)

Article 16a

Application of the Services Directive in two stages

(1) Save for the provisions set out in this section, the country of origin principle shall enter into force in two stages.

(2) For services relating to newly-registered and non-regulated occupations, Article 45 of this Directive shall apply.

(3) For services which are subject to more stringent regulation in the Member States, for example because longer training periods or specific examinations or certificates are currently required of national providers for authorisation or provision of the relevant service activity, the Council may agree, not later than the date on which this Directive enters into force, to introduce two transitional periods of five years (Group A) and ten years (Group B) respectively, within which the Directive must also apply to those service activities.

(4) The Council shall divide the service activities referred to in paragraph 3 into two groups (A and B). For service activities in Group A (lightly-regulated occupations) the transitional period shall not exceed five years and for service activities in Group B, it shall not exceed ten years from the deadline laid down in Article 45.

If the Council fails to specify the groups referred to in paragraphs 3 and 4 before the date referred to in Article 45, there shall be no transitional periods.

Amendment 49
Article 17, paragraphs 2 to 4

(2) **electricity distribution** services within the meaning of point (5) of Article 2 of Directive 2003/54/EC of the European Parliament and of the Council;

(3) **gas distribution** services within the meaning of point (5) of Article 2 of Directive 2003/55/EC of the European Parliament and of the Council;

(3) water distribution services;

(2) **electricity transmission, distribution and supply** services within the meaning of point (5) of Article 2 of Directive 2003/54/EC of the European Parliament and of the Council;

(3) **gas transmission, distribution, supply, storage and LNG** services within the meaning of point (5) of Article 2 of Directive 2003/55/EC of the European Parliament and of the Council;

(4) water **abstraction, distribution, supply and treatment** services;

Justification

Amendments clarifying the sectors exempt from the country of origin principle.

In the proposal the derogation from the country of origin principle only concerns the distribution of gas. There is no objective justification to such a limited derogation : Directive 2003/55/EC which applies to all gas activity in the EU, encompasses indeed the transmission, distribution, supply and storage of natural gas according to its Article 1. Consequently, it is appropriate to extend the initial derogation to the above-mentioned gas activities in order to treat them on an equal basis and thus to avoid to having two different legal regimes for unjustified reasons.

Amendment 50
Article 17, point (6 a) (new)

(6a) regulated professions in the exercise of their official authority mission, or in their ancillary acts intrinsic to official authority;

Justification

It must be specified that the general derogation from the country of origin principle applies to regulated professions in the exercise of their official authority mission, and also to all the acts intrinsic to that mission.

Amendment 51
Article 18, paragraph 1, point (b)

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

deleted

Justification

There are no grounds for excluding gambling activities.

Amendment 52
Article 23, paragraph 2

2. Member States shall ensure that authorisation for assumption by their social security system of the cost of hospital care provided in another Member State is not refused where the treatment in question is among the benefits provided for by the legislation of the Member State of affiliation and where such treatment cannot be given to the patient within a time frame which is medically acceptable in the light of the patient's current state of health and the probable course of the illness.

2. The authorisation to claim hospital care shall be granted in accordance with Article 22 of Regulation (EEC) No 1408/71 and Article 20 of Regulation (EC) No 883/2004. Hospital care includes all medical treatment provided in a hospital in the Member State in which the patient is insured, the name, organisation and financing of that infrastructure being irrelevant for the purposes of classifying such care as hospital care.

Justification

This Amendment makes it clear that the criteria applied in the country of origin apply to assumption of the cost of hospital treatment.

Amendment 53
Article 24, paragraph 1, subparagraph 2

However, the Member State of posting may not make the provider or the posted worker subject to any ***of the following*** obligations, ***as regards the matters referred to in point (5) of Article 17***:

(a) to obtain authorisation from, or to be registered with, its own competent authorities, or to satisfy any other equivalent requirement;

(b) to make a declaration, other than declarations relating to an activity referred to in the Annex to Directive 96/71/EC which may be maintained until 31 December 2008;

(c) to have a representative in its territory;

(d) to hold and keep employment documents in its territory or in accordance with the conditions applicable in its

However, the Member State of posting may not make the provider or the posted worker subject to any obligations ***that go beyond the requirements of Directive 96/71/EC.***

territory.

Justification

Directive 96/71/EC has proved satisfactory in practice and should hence continue to apply. Further, in order not to mix the reference to the existing provisions with new obligations for holding and providing documentation, it is more relevant to specify the documents to be held and the conditions under which they must be provided under Paragraph 2 of this Article.

Amendment 54

Article 24, paragraph 2, subparagraph 1

2. In the circumstances referred to in paragraph 1, the Member State of origin shall ensure that the provider takes all measures necessary to be able to communicate the following information, both to its competent authorities and to those of the Member State of posting, within two years of the end of the posting:

- (a) identity of the posted worker;
- (b) nature of the tasks attributed to him,
- (c) the contact details of the recipient,
- (d) the place of posting,
- (e) the start and end **dates** for the posting,
- (f) the employment and working conditions applied to the posted worker;

2. The provider shall carry with him proof of his identity and copies of the licenses necessary for providing the service in question issued by the competent authorities of the country of origin. These documents must always be carried during the provision of the service. The provider shall present these documents to the competent authority of the host country on request. The Member State of origin shall ensure that the provider takes all measures necessary to be able to communicate the following information, both to its competent authorities and to those of the Member State of posting, within two years of the end of the posting:

- (a) identity of the posted worker;
- (b) nature of the tasks attributed to him,
- (c) the contact details of the recipient,
- (d) the place of posting,
- (e) the **presumed** start **date** and end **date (if known)** for the posting,
- (f) the employment and working conditions applied to the posted worker;

Justification

If requested by the competent authority of the host country, the provider should be able to present the minimum documentation, namely proof of identity and the relevant licenses if any. The other documentation mentioned should be exchanged electronically (e.g. by IDA or other eGovernment services) between national administrations upon request, and it should therefore

*not be compulsory for the provider to carry this at all times.
The end date may not be known or may be indefinite at start of posting.*

Amendment 55
Article 25, paragraph 2

2. Paragraph 1 does not prejudice the possibility for Member States to require a short-term visa for third country nationals who are not covered by the mutual recognition regime provided for in Article 21 of the Convention implementing the Schengen Agreement.

2. Paragraph 1 does not prejudice the possibility for Member States to require a short-term visa for third country nationals who are not covered by the mutual recognition regime provided for in Article 21 of the Convention implementing the Schengen Agreement, ***but this should not be unreasonably withheld from employees of undertakings established elsewhere in the EU.***

Justification

It is costly and time consuming for a company which wants to bring in people from outside the EU to obtain separate work visas and residence permits for each country to which they are posting the worker. It is important, therefore, that third country nationals should not be faced with unreasonable restrictions when posted to or from a country which is not party to the Schengen Agreement.

Amendment 56
Article 26, paragraph 1, point (e)

(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;

(e) in the case of the regulated professions, any professional body or similar institution with which the provider is registered, ***the registration number***, the professional title and the Member State in which that title has been granted;

Amendment 57
Article 26, paragraph 1, point (g a) (new)

(ga) in cases where professional liability insurance has to be taken out or a similar guarantee provided, the information referred to in Article 27(1), and in particular the details of the insurer or guarantor, the professional and territorial coverage and proof that up-to-date

payments have been made to the insurer.

Amendment 58
Article 26, paragraph 4 a (new)

4a. In order to guarantee effective supervision and effective consumer protection, Member States should also use e-government measures as proposed by the Commission.

The registration of all cross-border service providers should be carried out with the aid of a standard form drawn up by the Commission and valid throughout the Community.

Justification

Administrative cooperation between Member State should be improved in order to enhance supervision of service providers. At the same time, the formalities should be as simple and up-to-date as possible in order to cut down bureaucracy.

Amendment 59
Article 27, paragraph 5

5. For the implementation of paragraph 1, the Commission **may**, in accordance with the procedure referred to in Article 42(2), **establish** a list of services which exhibit the characteristics referred to in paragraph 1 and establish common criteria for defining, for the purposes of the insurance or guarantees referred to in that paragraph, what is appropriate to the nature and scope of the risk.

5. For the implementation of paragraph 1, the Commission **shall establish**, in accordance with the procedure referred to in Article 42(2), a list of services which exhibit the characteristics referred to in paragraph 1 and establish common criteria for defining, for the purposes of the insurance or guarantees referred to in that paragraph, what is appropriate to the nature and scope of the risk.

Amendment 60
Article 35, paragraph 3, subparagraph 2

Upon becoming aware of any unlawful conduct by a provider, or of specific acts, that are likely to cause serious damage in a Member State, Member States shall inform the Member State of origin, within the shortest possible period of time.

Upon becoming aware of any unlawful conduct by a provider, or of specific acts, that are likely to cause serious damage in a Member State, Member States shall inform the Member State of origin **and the Member State of posting** within the shortest possible period of time.

Justification

Supervision must be the responsibility of the Member State of posting as only it has a real incentive to exercise control.

Amendment 61

Article 36, paragraph 2, subparagraph 1

2. ***At the request of the Member State of origin***, the competent authorities referred to in paragraph 1 shall carry out any checks, inspections and investigations necessary for ensuring effective supervision ***by the Member State of origin***. In so doing, the competent authorities shall act to the extent permitted by the powers vested in them in their Member State.

2. The competent authorities referred to in paragraph 1 shall, ***at the request of the Member State of origin***, carry out any checks, inspections and investigations necessary for ensuring effective supervision. In so doing, the competent authorities shall act to the extent permitted by the powers vested in ***the comparable authorities in the Member State of origin***.

Justification

Supervision must be the responsibility of the Member State of posting as only it has a real incentive to exercise control.

Amendment 62

Article 37, paragraph 2

2. The Member State referred to in paragraph 1 shall ask the Member State of origin ***to take measures with regard to the service provider***, supplying all relevant information on the service in question and the circumstances of the case.
The Member State of origin shall check, within the shortest possible period of time, whether the provider is operating lawfully and verify the facts underlying the request. It shall inform the requesting Member State within the shortest possible period of time of the measures ***taken or envisaged*** or, as the case may be, the reasons why ***it has not taken any measures***.

2. The Member State referred to in paragraph 1 shall ask the Member State of origin ***for an immediate opinion***, supplying all relevant information on the service in question and the circumstances of the case.

The Member State of origin shall check, within the shortest possible period of time, whether the provider is operating lawfully and verify the facts underlying the request. It shall inform the requesting Member State within the shortest possible period of time of the measures ***that would be taken or envisaged in the Member State of origin in such a case*** or, as the case may be, the reasons why ***no measures would be taken***.

Justification

Supervision must be the responsibility of the Member State of posting as only it has a real incentive to exercise control.

PROCEDURE

Title	Proposal for a directive of the European parliament and of the Council on services in the internal market
References	COM(2004)0002 – C5-0069/2004 – 2004/0001(COD)
Committee responsible	IMCO
Committee asked for its opinion Date announced in plenary	ITRE 16.9.2004
Enhanced cooperation	
Draftsman Date appointed	Jorgo Chatzimarkakis 31.8.2004
Discussed in committee	23.11.2004 2.2.2005 16.3.2005 26.4.2005
Date amendments adopted	26.4.2005
Result of final vote	for: 34 against: 6 abstentions: 2
Members present for the final vote	Ivo Belet, Šarūnas Birutis, Jan Březina, Philippe Busquin, Jerzy Buzek, Joan Calabuig Rull, Pilar del Castillo Vera, Jorgo Chatzimarkakis, Giles Chichester, Lena Ek, Nicole Fontaine, Adam Gierek, Umberto Guidoni, András Gyürk, Fiona Hall, David Hammerstein Mintz, Rebecca Harms, Romana Jordan Cizelj, Werner Langen, Anne Laperrouze, Pia Elda Locatelli, Eluned Morgan, Angelika Niebler, Reino Paasilinna, Umberto Pirilli, Miloslav Ransdorf, Vladimír Remek, Teresa Riera Madurell, Paul Rübig, Catherine Trautmann, Claude Turmes, Nikolaos Vakalis, Alejo Vidal-Quadras Roca
Substitutes present for the final vote	Jan Christian Ehler, Malcolm Harbour, Erna Hennicot-Schoepges, Edit Herczog, Erika Mann, Lambert van Nistelrooij, John Purvis, Hannes Swoboda
Substitutes under Rule 178(2) present for the final vote	Alexander Lambsdorff

22.4.2005

OPINION OF THE COMMITTEE ON CULTURE AND EDUCATION

for the Committee on the Internal Market and Consumer Protection

on the proposal for a European Parliament and Council directive on services in the internal market

(COM(2004)0002 – C5-0069/2004 – 2004/0001(COD))

Draftswoman: Marie-Hélène Descamps

SHORT JUSTIFICATION

The proposal for a directive on services in the internal market forms part of the economic reform process launched by the Lisbon European Council with a view to making Europe the most competitive and dynamic knowledge-based economy in the world by 2010.

The aim of this Directive is to achieve a genuine internal market in services. It provides for the establishment of a legal framework eliminating obstacles to the freedom of establishment of service providers and to the freedom of movement of services between Member States.

While one can only applaud the principle underlying such a text, and in particular the objective of administrative simplification with the introduction of a one-stop shop for service providers, it needs to be remembered that the European Union is more than a market, more than a geographical expression, it is a history and a culture, and culture is not an item of merchandise.

Accordingly the specific nature of certain services, particularly cultural and audiovisual services, which have both economic and cultural aspects, needs to be taken into account. They are the bearers of identities and values, and as such cannot be treated as consumer goods or commercial services like any other.

It must not be forgotten that responsibility for the cultural sphere lies with the Member States, and the European Union has only a complementary competence. The subsidiarity principle is thus the underlying theme of all Community action in this sector.

Clearly, a proposal covering sectors as divergent as games of chance and audiovisual services is bound to pose problems not only for legislators and public opinion, but also for the various professions involved.

In any case, the various hearings of experts and professionals have raised more questions on the

application of the Directive than they have answered, and this has given rise to a widespread feeling of unease.

It therefore needs to be made clear that the proposal for a directive does not apply either in the field of national education or to aid granted by the Member States to culture or sport.

Cultural diversity and media pluralism are among the constituent elements of the European model recognised by the Union. To include cultural and audiovisual services within the scope of the Directive would endanger the commitment of the EU and the Member States to promoting this diversity. These services help to mould public opinion and forge the cultural identities of the Member States, thus justifying the retention of national support structures.

Audiovisual services are in any case covered by a sectoral approach at EU level in the form of the TV without Frontiers Directive (Directive 89/552, as amended by Directive 97/36/EC).

The TV without Frontiers Directive already reflects the objectives set out in the Services Directive, in that it guarantees the freedom to provide TV services in the internal market, giving precedence to the law of the Member State of origin at the expense of the law of the country of destination. In this Directive the country of origin principle applies only to certain co-ordinated areas by a number of important compensatory measures (such as the right of Member States to set production and broadcasting quotas).

Of course, the TV without Frontiers Directive does not cover or coordinate everything. Nevertheless, priority clearly needs to be given to a sectoral approach, which is most in line with the expectations of professionals in the audiovisual sector. The review of the TV without Frontiers Directive and of the Satellite/Cable Intellectual Property Directive provides an opportunity to see whether there are any remaining obstacles to the development of the internal market in the audiovisual sector.

The current version of the Services Directive does not reflect the requirements of cultural specificity, and does not sufficiently respect the competence of the Member States in an area where the Union is supposed only to have a complementary competence.

In the light of all these questions and uncertainties, audiovisual services, particularly TV broadcasting services, radio services, cinema services and press services, should be excluded from the scope of this Directive. Applying this proposal to such services would imply the use of purely economic criteria, whereby the requirements of the market take precedence over the principles of media pluralism and cultural diversity which the EU is currently defending in the negotiations on the draft International Convention on Cultural Diversity in UNESCO.

This objective is also mentioned and acknowledged in the Treaty establishing a Constitution for Europe.

AMENDMENTS

The Committee on Culture and Education calls on the Committee on the Internal Market and Consumer Protection, as the committee responsible, to incorporate the following amendments in

its report:

Text proposed by the Commission¹

Amendments by Parliament

Amendment 1
Recital (1 a) (new)

(1a) In view of the specific circumstances relating to the audiovisual sector, the latter should be excluded from the scope of this Directive; sector-specific rules exist in the form of Directive 89/552/EEC¹. In view of the closely-related subject matter, radio services and information society services, which are covered by Directives 95/46/EC² and 97/66/EC³, should also come under this exclusion. These services should, in a revision of Directive 89/552/EEC, be included in the scope thereof.

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

² 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 (OJ L 281, 23.11.1995, p.31).

³ Directive 97/66/EC of the European Parliament and of the Council of 15 December 1997 concerning the processing of personal data and the protection of privacy in the telecommunications sector (OJ L 24, 30.1.1998, p.1).

Amendment 2
Recital (3)

(3) ***Since*** services constitute the engine of

(3) ***While*** services constitute the engine of

¹ OJ C ... /Not yet published in OJ.

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 prevents consumers from gaining access to a greater variety of competitively priced 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 making the European Union the most competitive and dynamic knowledge-based economy in the world by 2010. Removing those barriers is essential in order to revive the European economy, particularly in terms of employment and investment.

economic growth and account for 70% of GDP and employment in the majority of Member States, **the culture, education and media sectors represent an important part of the European social model in terms of the creation of wealth and jobs, and their specific features should be safeguarded.**

The fragmentation of the internal market has a negative impact on the entire European economy, in particular on the competitiveness of SMEs, and prevents consumers from gaining access to a greater variety of competitively priced services. **The challenge is not only to obtain competitive prices, but to ensure that these prices reflect high-quality European standards. Otherwise, economic dumping will lead to socio-economic dumping.**

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 making the European Union the most competitive and dynamic knowledge-based economy in the world by 2010. Removing those barriers is essential in order to revive the European economy, particularly in terms of employment and investment.

Justification

The importance of cultural, educational and media services needs to be emphasised.

Amendment 3 Recital (6)

(6) This Directive establishes a general legal framework which benefits a wide variety of services while taking into account the distinctive features of each type of activity or profession and its system of regulation. **That framework** is based on a dynamic and selective approach consisting in the

(6) This Directive establishes a general legal framework which benefits a wide variety of services while taking into account the distinctive features of each type of activity or profession and its system of regulation. **In that sense, cultural services and products are not merchandise or consumer goods**

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 country of origin principle 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 of consumer protection, which is vital in order to establish mutual trust between Member States.

like any other, and must therefore be made subject to special conditions in the light of their dual nature as economic and cultural goods; these conditions must take account of the fact that the market cannot be the measure of all things and of the need, in particular, to ensure the freedom of expression and information. The general legal framework established by this Directive 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 country of origin principle 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 of consumer protection, which is vital in order to establish mutual trust between Member States.

Justification

In its resolution of 14 January 2004 on preserving and promoting cultural diversity, the European Parliament has recently stressed this specific feature of cultural services.

Amendment 4 Recital (6 a) (new)

(6a) This Directive has no effect on the European Community's position in negotiations on trade in services within

international organisations, in particular within the GATS framework.

Justification

Even with the audiovisual sector excluded from the scope of the Directive, the latter should not lead to any change in the EU's negotiating position in the current GATS negotiations, in particular as regards the definition of the audiovisual sector.

Amendment 5
Recital (7 a) (new)

(7a) This Directive shall not apply to aid granted by Member States inter alia to the cinema, to the theatre, to the press and to amateur sports.

Justification

Narrows down and clarifies the scope of the Directive.

Amendment 6
Recital (12 a) (new)

(12a) Audiovisual services, whatever their mode of transmission, in particular television broadcasting services as defined in Council Directive 89/552/EEC of 3 October 1989¹ on television without frontiers, as amended by Directive 97/36/EC, radio services, cinema services and press services, 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 establishing the European Community, in particular in order to respect and promote

the diversity of its cultures. In accordance with the subsidiarity principle and the rules of 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 inadequate.

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

Justification

Amendment coordinating with the amendment to Article 2, which aims to exclude audiovisual and press services from the scope of this Directive.

Amendment 7 Recital (12 a) (new)

(12a) Gambling activities which involve wagering a stake, including lotteries and betting transactions, should also be excluded from the scope of this Directive.

Justification

This amendment is in the interests of consistency with the amendment proposed to Article 2, which aims to exclude gambling activities which involve wagering a stake, including lotteries and betting transactions, from the scope of the Directive. The delicate area of games of chance calls for a regulatory policy and social policy approach, which would not be ensured under the Services Directive. Moreover, surplus profits from games of chance are first and foremost channelled to sport.

Amendment 8 Recital (13)

(13) There is already a considerable body of Community law on service activities, especially the regulated professions, postal services, **television broadcasting**, information society services and services relating to travel, holidays and package

(13) There is already a considerable body of Community law on service activities, especially the regulated professions, postal services, information society services and services relating to travel, holidays and package tours. Service activities are also

tours. Service activities are also covered by other instruments which do not deal with a specific category of services, such as those relating to consumer protection. This Directive builds on, and thus complements, the Community *acquis*. Where a service activity is already covered by one or more Community instruments, this Directive and those instruments will all apply, the requirements laid down by one adding to those laid down by the others. Accordingly, appropriate provisions should be laid down, including provision for derogations, in order to prevent incompatibilities and to ensure ***consistency as between all those Community instruments.***

covered by other instruments which do not deal with a specific category of services, such as those relating to consumer protection. This Directive builds on, and thus complements, the Community *acquis*. Where a service activity is already covered by one or more Community instruments, this Directive and those instruments will all apply, the requirements laid down by one adding to those laid down by the others. Accordingly, appropriate provisions should be laid down, including provision for derogations, in order to prevent incompatibilities and to ensure ***that this Directive does not infringe any of the existing instruments and does not deprive the Community of the option of revising them or amending their scope or the level of Community harmonisation.***

Justification

Since television broadcasting is already the subject of a body of Community law, it is necessary in this area to give priority to the sectoral approach. It is also important to clarify that this Directive does not affect either the existing directives and regulations or any amendments which may be made to them in future.

Amendment 9 Recital (13 a) (new)

(13a) This Directive is consistent with and does not affect any of the provisions of Directive 89/552/EEC, in particular its definition of when a broadcaster is deemed to be established in a Member State, which continues to apply in full. Moreover, this Directive does not pre-empt the possible future revision of Directive 89/552/EEC.

Justification

The relationship of the provisions laid down in this Directive to current Community law should be clarified so as to make it plain that inter alia in the area of freedom of establishment Directive 89/552/EEC lays down the relevant provisions relating to freedom of establishment and that the Services Directive does not apply supplementarily.

Amendment 10
Recital (14)

(14) The concept of service covers a wide variety of ever-changing activities, including business services such as management consultancy, certification and testing; facilities management, including office maintenance and security; advertising; recruitment services, including employment agencies; and the services of commercial agents. That concept also covers services provided both to businesses and to consumers, such as legal or fiscal advice; real estate services such as estate agencies; construction, including the services of architects; transport; distributive trades; the organisation of trade fairs; car rental; travel agencies; and security services. It also covers consumer services, such as those in the field of tourism, including tour guides; **audiovisual services**; leisure services, **sports centres** and amusement parks; health and health care services; and household support services, such as help for the elderly. Those activities may involve services requiring the proximity of provider and recipient, services requiring travel by the recipient or the provider and services which may be provided at a distance, including via the Internet.

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Justification

There is a need to clarify what the European Commission means by ‘sports centres’, and at any rate to exclude those fields of sport in which associations pursue objectives in the general interest, thereby playing a social and educational role in society, as is also set out in Article III-282 of the Treaty establishing a European Constitution: ‘The Union shall contribute to the promotion of European sporting issues, while taking account of the specific nature of sport, its structures based on voluntary activity and its social and educational function.’

Amendment 11
Recital (16)

(16) The characteristic of remuneration is absent in the case of activities performed, for

(16) The characteristic of remuneration is absent in the case of activities performed, for

no consideration, by the State in fulfilment of its social, cultural, educational and legal obligations. 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.

no consideration, by the State in fulfilment of its social, cultural, educational and legal obligations, ***such as courses provided under the national education system, whether at public or private educational establishments***. 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.

Justification

The Court of Justice has held that courses provided under the national educational system do not constitute services. It added that 'the nature of that activity is not affected by the fact that pupils or their parents must sometimes pay teaching or enrolment fees in order to make a certain contribution to the operating expenses of the system' (Humbel and Wirth cases C-263/86 and C-109/92).

Amendment 12 Recital (28)

(28) In cases where the number of authorisations available for an activity is limited because of scarcity of natural resources or technical capacity, as may be the position, for example, with regard to ***the award of analogue radio frequencies*** or the exploitation of hydro-electric plant, a procedure for selection from among several potential candidates must be adopted, with the aim of developing through open competition the quality and conditions for supply of services available to users. Such a procedure must provide guarantees of transparency and impartiality and the authorisation thus granted must not have an excessive duration, or be subject to automatic renewal, or confer any advantage on the successful provider. In particular, the duration of the authorisation granted must be fixed in such a way that it does not restrict or limit free competition beyond what is necessary to enable the provider to recoup the cost of investment and to make a fair return on the capital invested. Cases where the number of authorisations is limited for reasons other than scarcity of natural

(28) In cases where the number of authorisations available for an activity is limited because of scarcity of natural resources or technical capacity, as may be the position, for example, with regard to the exploitation of hydro-electric plant, a procedure for selection from among several potential candidates must be adopted, with the aim of developing through open competition the quality and conditions for supply of services available to users. Such a procedure must provide guarantees of transparency and impartiality and the authorisation thus granted must not have an excessive duration, or be subject to automatic renewal, or confer any advantage on the successful provider. In particular, the duration of the authorisation granted must be fixed in such a way that it does not restrict or limit free competition beyond what is necessary to enable the provider to recoup the cost of investment and to make a fair return on the capital invested. Cases where the number of authorisations is limited for reasons other than scarcity of natural resources or technical capacity remain in any

resources or technical capacity remain in any case subject to the other provisions of this Directive relating to authorisation schemes.

case subject to the other provisions of this Directive relating to authorisation schemes.

Justification

Amendment coordinating with the amendment to Article 2, which seeks to exclude audiovisual services from the scope of the Directive.

Amendment 13
Recital (34)

(34) The restrictions to be examined include national rules which, on grounds other than those relating to professional qualifications, reserve access to activities such as games of chance to particular providers. ***Similarly, among the requirements to be examined are ‘must carry’ rules applicable to cable operators which, by imposing an obligation on an intermediary service provider to give access to certain services delivered by specific service providers, affect his freedom of choice, access to programmes and the choice of the recipients.***

(34) The restrictions to be examined include national rules which, on grounds other than those relating to professional qualifications, reserve access to activities such as games of chance to particular providers.

Justification

The ‘must carry’ rules are already the subject of Directive 2002/22/EC (Universal Services Directive). In so far as these rules serve to protect cultural diversity or media pluralism, they should not be covered by this Directive.

Amendment 14
Recital (43 a) (new)

(43a) The country of origin principle should not be applied in the field of university education, since this would strip the country in which the instruction was given of all control over this, in a field that remains the competence of the Member States.

Justification

There is a need to guarantee the quality of university education and that the host country has the

possibility of checking whether or not the service provider is complying with the laws of its country of origin, since the latter will have little incentive to conduct those checks and experience obvious difficulties in doing so.

Amendment 15
Recital (47)

(47) It is necessary to allow Member States the possibility, exceptionally and on a case-by-case basis, of taking measures which derogate from the country of origin principle 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 access. Nor should that possibility permit the extension or limitation of derogations provided for in other Directives, such as ***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*** or Directive 2000/31/EC.

(47) It is necessary to allow Member States the possibility, exceptionally and on a case-by-case basis, of taking measures which derogate from the country of origin principle 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 access. Nor should that possibility permit the extension or limitation of derogations provided for in other Directives, such as Directive 2000/31/EC.

Justification

There is no reason to curb on principle any sectoral development by reference to a general principle which does not take account of the specific characteristics of audiovisual services.

Amendment 16
Recital (72)

(72) This Directive respects fundamental rights and observes the principles which are

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recognised notably in the Charter of Fundamental Rights of the European Union and, in particular, in Articles 8, 15, 21 and 47 thereof.

recognised notably in the Charter of Fundamental Rights of the European Union and, in particular, in Articles 8, 15, 21, 22 and 47 thereof.

Justification

Article 22 of the Charter of Fundamental Rights of the European Union states that ‘the Union shall respect cultural, religious and linguistic diversity’.

Amendment 17
Article 1

This Directive establishes general provisions facilitating exercise of the freedom of establishment for service providers and the free movement of services.

This Directive establishes general provisions facilitating exercise of the freedom of establishment for service providers and the free movement of services.

This Directive concerns neither the liberalisation of services of general economic interest which are reserved to bodies governed by public or private law, nor the privatisation of public bodies which provide services.

This Directive concerns neither the abolition of service monopolies nor aid granted by the Member States, which come under the common rules on competition.

Justification

Declaratory clarification of the scope of the provisions.

Amendment 18
Article 1, subparagraph (1 a) (new)

(1a) This Directive shall not affect measures taken at Community or national level in compliance with Community law in order to promote cultural and linguistic diversity, ensure the defence of pluralism and guarantee freedom of the press.

Justification

This amendment is necessary in order to respect the competences of the Member States in

matters of cultural and audiovisual policy. It also guarantees coherence with the similar provisions of Article 1(6) of Directive 2000/31/EC (E-commerce Directive) and Article 1(3) of Directive 2002/21/EC (Electronic Communications Networks and Services Framework Directive).

Amendment 19
Article 2, paragraph 2, point (b a) (new)

(ba) audiovisual services, whatever their mode of production, distribution and transmission, including radio broadcasting, cinema services, cultural services, the services of intellectual property rights collecting societies and written and electronic press publishing and distribution services;

Justification

Audiovisual services are already the subject of a specific EU-level approach in the form of the TV without Frontiers Directive. The Services Directive could have serious consequences for national rules, particularly for obligations regarding content, rules governing the ownership and concentration of the media, requirements concerning the award of licences, 'must carry' rules and rules on media chronology. Making audiovisual and cultural services subject to the general rules of the Directive in this way would be contrary to the subsidiarity principle and the positions being defended at the current UNESCO negotiations. Electronic means of distribution are growing in importance for the press.

Amendment 20
Article 2, paragraph 2, point (b a) (new)

(ba) Gambling activities which involve wagering a stake, including lotteries and betting transactions;

Justification

The delicate area of games of chance calls for a regulatory policy and social policy approach, which would not be ensured under the Services Directive. Moreover, surplus profits from games of chance are first and foremost channelled into sports.

Amendment 21
Article 3, subparagraph 2

Application of this Directive shall ***not***

Application of this Directive shall ***be***

prevent the application of provisions of other Community instruments as regards the services governed by those provisions.

without prejudice to the application of provisions of other Community instruments as regards the services governed by those provisions. ***In the event of conflict with sectoral Community instruments, the latter shall prevail.***

Justification

The wording 'shall not prevent' used by the Commission is not strong enough to ensure the priority over this Directive of other important Community instruments such as the TV without Frontiers Directive or the Professional Qualifications Directive. It is preferable to specify that sectoral Community instruments shall prevail in the event of a conflict.

Amendment 22
Article 17, point (7 a) (new)

(7a) higher education;

Justification

When applying the country of origin principle, a host country for a university would have no control over the university courses provided within its own borders in a field of national competence. In addition, the rights of students should be protected. Once registered it would be extremely difficult for them to change 'service provider' if that service was of poor quality.

Amendment 23
Article 18, paragraph 1, point (b)

(b) gambling activities which involve waging a stake with pecuniary value in games of chance, including lotteries and betting transactions; ***deleted***

Justification

Under the amendment proposed to Article 2, gambling activities which involve wagering a stake, including lotteries and betting transactions, are to be excluded from the scope of the Directive. The reference in Article 18 accordingly lapses.

Amendment 24
Article 40, paragraph 1, point (b)

(b) gambling activities which involve waging a stake with pecuniary value in games of chance, including lotteries and ***deleted***

***betting transactions, in the light of a report
by the Commission and a wide consultation
of interested parties;***

Justification

Under the amendment proposed to Article 2, gambling activities which involve wagering a stake, including lotteries and betting transactions, are to be excluded from the scope of the Directive. The reference in Article 40(1)(b) accordingly lapses.

PROCEDURE

Title	Proposal for a directive of the European Parliament and of the Council on services in the internal market		
Procedure number	COM(2004)0002 – C5-0069/2004 – 2004/0001(COD)		
Committee responsible	IMCO		
Committee asked for its opinion Date announced in plenary	CULT 12.2.2004		
Enhanced cooperation			
Draftswoman Date appointed	Marie-Hélène Descamps 27.10.2004		
Discussed in committee	25.11.2004	1.2.2005	14.3.2005
Date amendments adopted	21.4.2005		
Result of final vote	for:	29	
	against:	2	
	abstentions:	1	
Members present for the final vote	María Badía i Cutchet, Christopher Beazley, Giovanni Berlinguer, Guy Bono, Marie-Hélène Descamps, Jolanta Dićkutė, Věra Flasarová, Milan Gaľa, Claire Gibault, Vasco Graça Moura, Lissy Gröner, Luis Francisco Herrero-Tejedor, Ruth Hieronymi, Manolis Mavrommatis, Marianne Mikko, Zdzisław Zbigniew Podkański, Miguel Portas, Christa Prets, Karin Resetarits, Nikolaos Sifunakis, Helga Trüpel, Henri Weber, Thomas Wise, Tomáš Zatloukal		
Substitutes present for the final vote	Ivo Belet, Michael Cramer, Ignasi Guardans Cambó, András Gyürk, Małgorzata Handzlik, Gyula Hegyi, Nina Škottová, Witold Tomczak		
Substitutes under Rule 178(2) present for the final vote			

1.7.2005

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS

for the Committee on the Internal Market and Consumer Protection

on the proposal for a European Parliament and Council directive on services in the internal market

(COM(2004)0002 – C5-0069/2004 – 2004/0001(COD))

Draftsman: Kurt Lechner

SHORT JUSTIFICATION

Your draftsman takes the view that the only way to make progress in making Europe the most competitive and dynamic knowledge-based economic area in the world is to dismantle the many substantial barriers to the cross-border movement of services.

The services sector today accounts for the lion's share of economic added value in the European Union. While the internal market is almost complete for the movement of goods, there are still considerable deficits in the services sector. Moreover, barriers in the services sector ultimately also affect the movement of goods, since the delivery of goods is increasingly linked to the provision of services. It is our objective to establish a genuine internal market in the services sector too. This will foster economic progress, promote growth and create jobs. It will also give people - consumers and enterprises alike - more freedom and freedom of movement, for instance in using services and choosing service providers and customers. However, the movement of goods and the movement of services cannot be addressed using the same instruments. Services are generally supplied locally and are to a great extent embedded in national and regional traditions, cultures and rules, indeed they are a characteristic component thereof. It is important to take these specific characteristics into account. The proposal seeks to do just this.

For the important sector of freedom of establishment, the existing legal situation is essentially retained. The simplifications provided for are to be welcomed, not least in the interests of the Member States themselves.

As regards provisional services, the proposal adopts a cautious approach to harmonisation and in particular makes no provision for maximum harmonisation: instead, it takes as a basis the principle of mutual recognition and the country of origin principle, in respect of which it in turn provides for numerous derogations. Despite reservations about individual points, this approach is to be welcomed. The scope for making progress by individual measures - sectoral directives,

objections, decisions of the Court of Justice - is now limited.

Through the introduction of the country of origin principle the horizontal approach adopted will lead to a change in emphasis. The introduction in this connection of a legal obligation for Member States to review their provisions means that real progress appears possible.

The framework nature of the proposal for a directive leaves room for manoeuvre to make whatever adjustments are necessary in transposition. At the same time, an increase in quality can be expected when a directive is transposed and adjusted.

However, your draftsman considers it necessary to make a number of additions and improvements:

(1) Legal questions

The proposal is based on Article 47, paragraph 2, sentences 1 and 3, and Article 55, Article 71 and Article 80, paragraph 2, ECT. This is appropriate. However, it is questionable whether all the individual rules are covered by this legal basis. One case in point is the country of origin principle which would appear to be contrary to Article 50, third sentence, ECT. That provision merely forbids Member States from imposing more unfavourable conditions on services providers from another Member State than on its own citizens and does not exclude the country of origin principle. It is also questionable whether the rules on private international law are covered by Article 47, paragraph 2, ECT or whether they go beyond the scope of that article and Article 65 ECT would therefore be appropriate. Your draftsman shares such concerns, although the same approach was taken in earlier directives (Directive 89/552/EEC 'Television without frontiers', Directive 95/46/EC 'Data protection', Directive 99/93/EC 'Electronic signature' and Directive 2000/31/EC 'e-commerce'). Since other reasons have also been put forward for exempting the rules on private international law from the country of origin principle, it is sufficient merely to mention this issue here.

In applying the country of origin principle, the proposal has taken into account the legal systems of Member States and their infrastructures. It has also taken into account the specific characteristics of individual Member States by providing for a large number of derogations from the country of origin principle. The desired objective of dismantling barriers in the services sector cannot be achieved at Member State level alone, especially since it is the Member States that have erected these barriers and are in some cases strengthening them. While the effect of applying the country of origin principle means an intervention in the legal system of the country of destination, this does not go beyond what is necessary. Since this is a framework directive which is transposed by the Member States and constitutes a balanced regulatory approach, the principles of proportionality and subsidiarity have been respected.

(2) Consistency with other Community instruments:

The proposal is based on an accumulation of provisions, i.e. their cumulative weight. Your draftsman is in favour of unrestricted applicability of other Community instruments governing the access to service activities and to the exercise thereof. A clear statement about the consistency of the proposal and its clearly defined limits is necessary. Only then will the proposal provide the desired legal certainty for users.

(3) Services of general interest

The relationship with services of general interest must be clarified. In judging services of general interest, the various cultural and historical traditions, geographical circumstances and the special characteristics of each activity must be emphasised and respected. A distinction must be drawn between services of general interest and services of general economic interest. The proposal only covered services of general economic interest. In this connection, the derogations in Article 17 for postal services, electricity distribution services, gas distribution services and water distribution services are to be welcomed. Services of general interest, on the other hand, do not fall within the scope of the services directive, and this must be clearly stated.

(4) Country of origin principle

The country of origin principle does not apply to all services but only to those which fall within the coordinated sector and for which no derogations are provided. Consumer contracts, for example, are not covered. The introduction of barriers to the movement of services on the basis of the country of origin principle is obviously not intended by the directive. This should be clarified.

(5) Private international law

The proposal also intervenes in areas which belong to private international law, the issue of applicable legislation. The practical significance of this is less than might appear at first, since consumer contracts are excluded and parties are normally free to choose the law applicable to their contract.

Private international law is an extremely complex legal area. This naturally creates barriers. The proposal does not solve these problems either. On the contrary, it raises additional questions, for example, the question of which law is applicable when service providers from various countries provide a service, questions relating to non-contractual liability, etc.

Additional problems may arise owing to differences in the content of legislation transposed by the Member States. It is in line with the principles of sound legislative practice that these questions should be addressed in individual legal instruments - preferably in regulations - and that the present directive, which is aimed at dismantling bureaucratic and administrative barriers, is not encumbered with them.

AMENDMENTS

The Committee on Legal Affairs calls on the Committee on the Internal Market and Consumer Protection, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission¹

Amendments by Parliament

Amendment 1

¹ Not yet published in the OJ.

Recital 9 a (new)

(9a) Given that the regulation of services of general interest at European level does not appear appropriate, bearing in mind the national identities of the Member States, including their communal local government, the diverse cultural and historical traditions, geographical circumstances and the special features of the activities in question should be specially emphasised and respected. This derogation does not cover services of general economic interest.

Justification

It would appear inappropriate to regulate services of general interest given the lack of a legal basis in Community law. Furthermore, a general regulation would infringe the subsidiarity principle.

Amendment 2
Recital 9 b (new)

(9b) This Directive does not cover the professions and activities of members of those professions which are permanently or temporarily directly and specifically connected with the exercise of official authority such, in particular, as the activities of public office holders in connection with registration and certification.

Justification

The Directive should not apply to activities which are permanently or temporarily connected to the exercise of public authority.

Amendment 3
Recital 13

(13) There is already a considerable body of Community law on service activities, especially the regulated professions, postal services, television broadcasting,

(13) There is already a considerable body of Community law on service activities, especially the regulated professions, postal services, television broadcasting,

information society services and services relating to travel, holidays and package tours. Service activities are also covered by other instruments which do not deal with a specific category of services, such as those relating to consumer protection. ***This Directive builds on, and thus complements, the Community acquis. Where a service activity is already covered by one or more Community instruments, this Directive and those instruments will all apply, the requirements laid down by one adding to those laid down by the others. Accordingly, appropriate provisions should be laid down, including provision for derogations, in order to prevent incompatibilities and to ensure consistency as between all those Community instruments.***

information society services and services relating to travel, holidays and package tours. Service activities are also covered by other instruments which do not deal with a specific category of services, such as those relating to consumer protection. ***A clear regulation is therefore necessary in order to clarify the relationship between this Directive and other Community provisions. In order to ensure the consistency of Community law, this Directive should merely complement other Community instruments governing service activities and the exercise thereof.***

Justification

The Commission proposal builds on rules already applicable in this field. In order to create a clear legal situation, the relationship to other Community instruments governing service activities and the exercise thereof must be clearly defined. With regard to service activities and the exercise thereof, the service activities directive merely broadens the scope of the other Community instruments.

Amendment 4 Recital 19

(19) 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

(19) 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 host Member State, such as an office, chambers or consulting rooms, in so far as such infrastructure is necessary for the purposes of providing the service in question.

some forms of infrastructure in the host Member State, such as an office, chambers or consulting rooms, in so far as such infrastructure is necessary for the purposes of providing the service in question.

However, in accordance with the jurisprudence of the Court of Justice, the provisions on establishment are applicable where a service provider concentrates wholly or primarily on providing services in another Member State, without being established there.

Justification

This criterion makes it easier to distinguish between freedom of services and freedom of establishment.

Amendment 5 Recital 24 a (new)

(24 a) The overriding reasons relating to the public interest to which reference is made in certain harmonisation provisions of this Directive are those recognised, or capable of being recognised, by the Court of Justice in relation to Articles 43 and 49 of the Treaty, notably the protection of consumers, workers and the urban environment, professional rules whose purpose is to protect recipients of services and the administration of justice.

Justification

This incorporates additional criteria recognised by the Court of Justice (judgement of 18 January 1979, Van Wesemael, 110/78 and 111/78, Rec. p. 35 ; Säger, 25 July 1991, C-76/90; Van Binsbergen, 3 December 1974, Case 33/74).

Amendment 6 Recital 29

(29) The overriding reasons relating to the public interest to which reference is made in certain harmonisation provisions of this

deleted

Directive are those recognised by the Court of Justice in relation to Articles 43 and 49 of the Treaty, notably the protection of consumers, recipients of services, workers and the urban environment.

Justification

This is essentially in line with Recital 24 a (new).

Amendment 7
Recital 38

(38) It is also necessary to ensure that supervision of service activities is carried out at source, that is to say, by the competent authorities of the Member State in which the provider is established. The competent authorities of the country of origin are best placed to ensure the effectiveness and continuity of supervision of the provider and to provide protection for recipients not only in their own Member State but also elsewhere in the Community. In order to establish mutual trust between Member States in the regulation of service activities, it should be clearly laid down that responsibility under Community law for supervision of the activities of providers, regardless of the place where the service is provided, lies with the Member State of origin. Determination of judicial jurisdiction does not fall within the scope of this Directive but within that of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, or other Community instruments such as 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 services.

(38) It is also necessary to ensure that ***in the coordinated field*** supervision of service activities is carried out at source, that is to say, by the competent authorities of the Member State in which the provider is established. The competent authorities of the country of origin are best placed to ensure the effectiveness and continuity of supervision of the provider and to provide protection for recipients not only in their own Member State but also elsewhere in the Community. In order to establish mutual trust between Member States in the regulation of service activities, it should be clearly laid down that responsibility under Community law for supervision of the activities of providers, regardless of the place where the service is provided, lies with the Member State of origin. Determination of judicial jurisdiction does not fall within the scope of this Directive but within that of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, or other Community instruments such as 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 services.

Justification

Supervision by the Member State of origin only takes place within the coordinated field.

Amendment 8
Recital 38 a (new)

(38a) The obligation of the country of origin to supervise the service provider shall not rule out the right of the country of destination to supervise compliance with the provisions.

Amendment 9
Recital 51

(51) In accordance with the principles established by the Court of Justice with regard to the freedom to provide services, and without endangering the financial balance of Member States' social security systems, greater legal certainty as regards the reimbursement of health costs should be provided for patients, who benefit as recipients from the free movement of services, and for health professionals and managers of social security systems.

(51) It should not be possible to make the reimbursement of expenses for treatment dependent on authorisation. In accordance with the principles established by the Court of Justice with regard to the freedom to provide services, and without endangering the financial balance of Member States' social security systems, greater legal certainty as regards the reimbursement of health costs should be provided for patients, who benefit as recipients from the free movement of services, and for health professionals and managers of social security systems.

Justification

This amendment is intended to clarify the text.

Amendment 10
Recital 67

(67) It is necessary to provide that the Member States, in cooperation with the Commission, are to encourage interested parties to draw up codes of conduct at Community level aimed in particular at promoting the quality of services and taking into account the specific nature of each

(67) It is necessary to provide that the Member States, in cooperation with the Commission, are to encourage interested parties to draw up codes of conduct at Community level aimed in particular at promoting the quality of services and taking into account the specific nature of each

profession. Those codes of conduct should comply with Community law, especially competition law.

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.***

Justification

It must be made clear that in some Member States parts of the rules governing professional ethics and conduct are regulated by law and that the codes of conduct may not replace or take precedence over these rules.

Amendment 11
Article 2, paragraph 1

1. This Directive shall apply ***to services supplied by providers established in a Member State.***

1. This Directive shall apply:
- to service providers established in a Member State who provide services in another Member State (freedom to provide services) and
- to service providers from a Member State who wish to become established in another Member State (freedom of establishment).

Justification

The wording of the Commission proposal also covers provision of services within a single Member State. However, the legal bases of the directive confer regulatory powers only in respect of situations with a cross-border dimension. The wording of this amendment ensures that only establishments and services with a cross-border dimension are covered.

Amendment 12
Article 2, paragraph 2, letter (c a)(new)

ca. gambling activities, which involve wagering a stake with pecuniary value in games of chance, including lotteries and betting transactions.

Justification

The gambling sector should be excluded from the scope of this directive. Gambling is subject everywhere in Europe to special and exclusive rights based on the public interest. Government supervision and national regulations are necessary in order to combat fraud and organised crime in this sector. National lotteries also generate considerable income for public interest objectives.

Amendment 13
Article 2, paragraph 3 a (new)

(3a) This Directive shall not apply to services of general interest.

Justification

In the cases of services of general interest, the various cultural and historical traditions, geographical circumstances and special features of the activities concerned must be specially emphasised and respected.

Amendment 14
Article 2, paragraph 3 b (new)

(3b) In accordance with Article 39(4) and 45 of the Treaty, this Directive shall not apply to professions and activities which are permanently or temporarily connected with the exercise of official authority in a Member State, particularly that of notary.

Justification

Compare the justification of the amendment to Recital 9 b (new)

Amendment 15
Article 3, paragraph 2

Application of this Directive shall not prevent the application of provisions of other Community instruments as regards the services governed by those provisions.

Other Community instruments, in particular those governing service activities or the exercise thereof, shall apply without restriction and shall merely be completed by this Directive.

Justification

Compare the justification of the amendment to Recital 13.

Amendment 16
Article 3, paragraph 2 a (new)

This Directive does not establish additional rules of private international law, nor does

it deal with issues of jurisdiction.

Justification

This Directive cannot establish rules of private international law as it lacks the appropriate legal base in accordance with the Treaties to do so. (see par. 1 Legal Questions in the short justification of the draft Opinion).

Amendment 17
Article 4, paragraph 5

(5) "establishment" means the actual pursuit of an economic activity, as referred to in Article 43 of the Treaty, through a fixed establishment of the provider for an indefinite period;

(5) "establishment" means the actual pursuit of an economic activity, as referred to in Article 43 of the Treaty, through a fixed establishment of the provider for an indefinite period; ***where a service provider has more than one establishment, the place of establishment shall be that from which the service is provided.***

Justification

This amendment is intended to clarify the legislation.

Amendment 18
Article 4, paragraph 10

(10) "hospital care" means medical care ***which can be provided only within a medical infrastructure and which normally requires the accommodation therein of the person receiving the care***, the name, organisation and financing of that infrastructure being irrelevant for the purposes of classifying such care as hospital care;

(10) "hospital care" means medical care ***which in the Member State of the insured person can be provided only within a hospital, because accommodation therein is necessary or the infrastructure of a hospital is required***, the name, organisation and financing of that infrastructure being irrelevant for the purposes of classifying such care as hospital care;

Justification

'Hospital care' means not only accommodation in the hospital, but also treatment which requires hospital infrastructures.

Amendment 19
Article 6, paragraph 1 a (new)

This provision shall not affect the right of Member States to create the 'single points of contact' in accordance with their national organisational sovereignty.

Amendment 20
Article 7

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

- (a) requirements applicable to providers established in their territory, in particular those requirements concerning the procedures and formalities to be completed in order to access and to exercise service activities;*
- (b) the contact details of the competent authorities enabling the latter to be contacted directly, including the particulars of those authorities responsible for matters concerning the exercise of service activities;*
- (c) the means of and conditions for accessing public registers and databases on providers and services;*
- (d) the means of redress 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

*Member States shall ensure that **service providers have access, at the single points of contact, to all the information they need to set up an establishment together with information on means of redress in the event of dispute as to whether the requirements for taking up and performing the service have been fulfilled.***

requirements referred to in point (a) of paragraph 1 are generally interpreted and applied.

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

4. Member States shall ensure that the single points of 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 31 December 2008 at the latest.

6. Member States and the Commission shall take accompanying measures in order to encourage single points of contact to make the information provided for in paragraphs 1 and 2 available in other Community languages.

Justification

Recipients of services have no particular interest in information about setting up an establishment. A legal entitlement to such information on the part of recipients of services would therefore lead to additional bureaucracy unjustified by any corresponding interest in terms of consumer protection.

Amendment 21 Article 13(5)

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

*5. All applications for authorisation shall be acknowledged **on request**.*

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

Justification

There is no good reason for making acknowledgement of receipt compulsory, which would in many cases lead to unnecessary bureaucracy. Accordingly it should only be sent on request. In any case the service provider can obtain the information listed in subparagraphs (a) to (c) from the single contact point pursuant to Article 7, so additional regulation is unnecessary and only creates unnecessary administrative work.

Amendment 22
Article 14 paragraph 2

Does not affect EN text

Amendment 23
Article 15 Title and paragraphs 1 to 4

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

Permitted Requirements

1. Article 14 shall not affect the following requirements regarding access to or exercise of a service activity, which shall be permitted to the extent that they are compatible with other provisions of Community law:
(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, in particular to be a legal person, to be a company with individual ownership, to be a non-profit making organisation or a company owned exclusively by natural persons;

(c) requirements which relate to the shareholding of a company, in particular an obligation to hold a minimum amount of capital for certain service activities or to have a specific professional qualification in order to hold capital in or to manage certain companies;

(d) requirements, other than those concerning professional qualifications or provided for in other Community instruments, which reserve access to the service activity in question to particular providers by virtue of the specific nature of the activity;

(e) a ban on having more than one establishment in the territory of the same State;

(f) requirements fixing a minimum number of employees;

(g) fixed minimum and/or maximum tariffs with which the provider must comply;

(h) prohibitions and obligations with regard to selling below cost and to sales;

(i) requirements that an intermediary provider must allow access to certain specific services provided by other service-providers;

(j) an obligation on the provider to supply other specific services jointly with his service.

service-providers;

(b) an obligation on a provider to take a specific legal form, in particular to be a legal person, to be a company with individual ownership, to be a non-profit making organisation or a company owned exclusively by natural persons;

(c) requirements which relate to the shareholding of a company, in particular an obligation to hold a minimum amount of capital for certain service activities or to have a specific professional qualification in order to hold capital in or to manage certain companies;

(d) requirements, other than those concerning professional qualifications or provided for in other Community instruments, which reserve access to the service activity in question to particular providers by virtue of the specific nature of the activity;

(e) a ban on having more than one establishment in the territory of the same State;

(f) requirements fixing a minimum number of employees;

(g) fixed minimum and/or maximum tariffs with which the provider must comply;

(h) prohibitions and obligations with regard to selling below cost and to sales;

(i) requirements that an intermediary provider must allow access to certain specific services provided by other service-providers;

(j) an obligation on the provider to supply other specific services jointly with his service.

2. Where the legal systems of the Member States impose requirements as listed in paragraph 1 (a) to (j), the Member States shall examine whether they are non-discriminatory and objectively justified by an overriding reason relating to the public interest, and whether the objective being pursued could not be achieved by less restrictive measures.

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 objectively 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 41, Member States shall specify the following:*
- (a) the requirements that they intend to maintain and the reasons why they consider that those requirements comply with the conditions set out in paragraph 3;*
 - (b) the requirements which have been abolished or made less stringent.*

Justification

The requirements in Article 15 constitute restrictions on the freedom to provide services which are permitted by the case law of the Court of Justice if they are non-discriminatory and justified by an overriding reason relating to the public interest. Article 15 of the draft directive does not alter this in any way. However, the wording of the Commission proposal does not make this sufficiently clear, and a clearer wording should therefore be chosen.

Amendment 24 Article 15(5)

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

Justification

It is self-evident that new requirements must comply with the requirements of Article 15 (1) et seq. The requirement that they must be justified by new circumstances is an interference in the Member States' legislative powers. It would also make a mockery of the purpose of the directive if a Member State wanted to replace a requirement with a less restrictive one.

Amendment 25

Article 15, paragraph 6, subparagraph 1

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

6. Member States shall notify to the Commission any new laws, regulations or administrative provisions ***as set out in paragraph 1.*** Such notification shall not prevent the adoption by Member States of the provisions in question.

Justification

The transparency aimed at by this provision is equally well achieved by the amended wording, which also cuts the administrative work involved to the basic minimum. Including the duty of notification as early as the drafting stage constitutes excessive interference in the Member States' parliamentary legislative process.

Amendment 26

Article 16, paragraph 1, subparagraph 1

1. Member States shall ensure that providers are subject only to the national provisions of their Member State of origin which fall within the coordinated field.

1. Member States shall ensure that providers are subject only to the national provisions of their Member State of origin which fall within the coordinated field, ***without prejudice to the provisions of the criminal law of the host Member State.***

The host Member State shall not be obliged to subject providers to the provisions of the criminal law of their Member State of origin.

Justification

The principle of the territorial nature of criminal law should be upheld, and the provisions of the criminal law of the State of origin should not be applied on the territory of the host State. It is

not appropriate for a directive under the first pillar to lay down conflict of legislation rules in the field of criminal law. The Hague programme adopted by the European Council in November 2004 provided for the establishment of mechanisms to resolve conflicts of jurisdiction in criminal law but an appropriate act should be adopted for that purpose, within the competency of the European Union.

Amendment 27

Article 16, paragraph 1, subparagraph 2

Paragraph 1 shall cover national provisions relating to access to and the exercise of a service activity, ***in particular those requirements governing the behaviour of the provider, the quality or content of the service, advertising, contracts and the provider's liability.***

Paragraph 1 shall cover national provisions relating to access to and the exercise of a service activity.

Justification

It is questionable whether the areas listed after the words ‘in particular’ can really be classified as access to and the exercise of a service activity. At all events, this list does not make for clarity. In so far as problems of interpretation remain in the shortened version, they are addressed in the following article or may, if necessary, be eliminated at the transposition stage.

Amendment 28

Article 16, paragraph 2 a (new)

2a. Neither the country of origin principle nor the country of destination principle are rules of private international law; they shall not be construed as such by Member States when implementing this Directive.

Justification

This Directive cannot establish rules of private international law as it lacks the appropriate legal base in accordance with the Treaties to do so. (see par. 1. Legal Questions in the short justification of the draft Opinion).

Amendment 29

Article 16, paragraph 3, letter (b)

(b) an obligation on the provider to make a declaration or notification to, or to obtain an authorisation from, their competent authorities, including entry in a register or

b) an obligation on the provider to make a declaration or notification to, or to obtain an authorisation from, their competent authorities, including entry in a register or

registration with a professional body or association in their territory;

registration with a professional body or association in their territory. ***Member States may, however, provide either for automatic temporary registration or pro forma membership of a professional body or association provided that such registration or membership does not delay or complicate in any way the provision of services and does not entail any additional costs for the service provider;***

Justification

The purpose of the amendment is to ensure the proposal for a directive is consistent with the common position on the directive on the recognition of professional qualifications which is due to be approved within the next few weeks. The text seeks to strike a fair balance between the country of origin principle and the host country principle, which has already received widespread support in the Council and the European Parliament.

Amendment 30 Article 16 a (new)

Article 16a

Declaration to be made in advance, if the service provider moves

1. 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 host Member State in a written declaration to be made in advance 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.

2. Moreover, for the first provision of services or if there is a material change in the situation substantiated by the documents, Member States may require

that the declaration be accompanied by the following documents:

- a) proof of the nationality of the service provider,*
- b) an attestation certifying that the holder is legally established in a Member State for the purpose of pursuing the activities concerned,*
- c) evidence of professional qualifications,*
- d) any means of proof that the service provider has pursued the activity concerned for at least two years during the previous ten years.*

3. For the first provision of services, the competent authority of the host Member State may check the professional qualifications of the service provider prior to the first provision of services. Such a prior check shall be possible only where the purpose of the check is to avoid serious damage to the health or safety of the service recipient due to a lack of professional qualification of the service provider and where this does not go beyond what is necessary for that purpose.

Within a maximum of one month of receipt of the declaration and accompanying documents, the competent authority shall endeavour to inform the service provider either of its decision not to check his qualifications or of the outcome of such check. Where there is a difficulty which would result in delay, the competent authority shall notify the service provider within the first month of the reason for the delay and the timescale for a decision, which must be finalised within the second month of receipt of completed documentation.

Where there is a substantial difference between the professional qualifications of the service provider and the training required in the host Member State, to the extent that that difference is such as to be

harmful to public health or safety, the host Member State shall give the service provider the opportunity to show, in particular by means of an aptitude test, that he has acquired the knowledge or competence lacking. In any case, it must be possible to provide the service within one month of a decision being taken in accordance with the previous subparagraph.

In the absence of a reaction of the competent authority within the deadlines set in the previous subparagraphs, the service may be provided.

Justification

The purpose of the amendment is to ensure the proposal for a directive is consistent with the common position on the directive on the recognition of professional qualifications which is due to be approved within the next few weeks. The text seeks to strike a fair balance between the country of origin principle and the host country principle, which has already received widespread support in the Council and the European Parliament.

Amendment 31 **Article 17, paragraph 7**

(7) *matters covered by Council Directive 77/249/EEC;*

(7) Provision of legal services as defined by the national law of the country of destination;

Justification

Under the Commission proposal it would be possible for providers of legal services not qualified as legal practitioners to pursue activities in areas reserved for the legal profession. Such service providers are not in fact covered by the scope of Directive 77/249/EEC, and this would place qualified lawyers in a less favourable position.

Amendment 32 **Article 17, paragraph 20**

(20) *the freedom of parties to choose the law applicable to their contract;*

(20) the treatment of contractual and non-contractual liability, including the form of contracts, under private international law (rules on conflict of laws);

Justification

Compare the justification to the amendment in respect of Recital 13 and Article 16, paragraph 1.

Amendment 33
Article 17, paragraph 23

(23) the non-contractual liability of a provider in the case of an accident involving a person and occurring as a consequence of the service provider's activities in the Member State to which he has moved temporarily. ***deleted***

Justification

Compare the justification to the amendment in respect of Recital 13 and Article 16, paragraph 1.

Amendment 34
Article 18, paragraph 1, letter (b)

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

Justification

If games of chance are to be entirely excluded from the scope of the directive, the proposed preserve of Article 18(1)(b) as a transitional derogation also ceases to apply.

Amendment 35
Article 18, paragraph 1, letter (c)

(c) access to the activity of judicial recovery of debts. ***deleted***

Justification

Follows on from amendment to Article 17(7).

Amendment 36
Article 21

Article 21

deleted

Non-discrimination

1. Member States shall ensure that the recipient is not made subject to discriminatory requirements based on his nationality or place of residence.

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

Justification

The issue of discrimination by service providers against service recipients is already adequately regulated at Community level, e.g. in the anti-discrimination directives or the directives on unfair business practices. There is no need for any further rules, still less for such an all-embracing and thus inappropriate one. It constitutes a disproportionate interference in the private autonomy of contracting parties and also has no direct connection to the completion of the internal market in services.

Article 22

deleted

Assistance for recipients

1. Member States shall ensure that recipients can obtain, in their Member State of residence, the following information:

(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) information on the means of redress available in the case of a dispute between a provider and a recipient;

(c) the contact details of associations or organisations, including Euroguichets and the contact points of the European extra-judicial network (EEJ-net), from which providers or recipients may obtain practical assistance.

2. Member States may confer responsibility for the task referred to in paragraph 1 to single points of 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 45 at the latest, Member States shall communicate to the Commission the names and contact details of the designated bodies. The Commission shall transmit them to all Member States.

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

4. The Commission shall, in accordance

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

Justification

This provision is impracticable and bears no relation to actual practice. It makes excessive demands not only on the national authorities but also on the Commission. It would involve an unnecessary inflation of the administrative apparatus without any real corresponding interest on the part of the service recipient. No information deficit for service recipients has yet been perceived in practice.

Amendment 38

Article 23, paragraph 3, subparagraph 1 a (new)

The cost of treatment actually incurred shall constitute the ceiling for reimbursement.

Justification

The purpose of this amendment is twofold: to ensure that only that sum is reimbursed which is reimbursed for the same service in the Member State of affiliation and that the reimbursement does not exceed the costs actually incurred.

Amendment 39

Article 23, paragraph 4 a (new)

4a. The foregoing rules do not imply any further restriction on the rights of the Member States to regulate their own health systems and health services.

Justification

Clarification.

Amendment 40

Article 24, paragraph 2 a (new)

2a. The Member State of posting may

impose on the service provider the duties excluded under paragraph 1(a) to (d) where there are reasonable grounds for suspicion that the service provider is contravening the obligations arising from Directive 96/71/EC.

Justification

Clarification.

Amendment 41
Article 26

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

(a) the name of the service provider, the geographic address at which he is established, and the details which enable him to be contacted rapidly and communicated with directly and, as the case may be, by electronic means;

(b) where the provider is registered in a trade or other similar public register, the name of that register and the provider's registration number, or equivalent means of identification in that register;

(c) where the activity is subject to an authorisation scheme, the particulars of the relevant competent authority or the single point of contact;

(d) where the provider exercises an activity which is subject to VAT, the identification number referred to in Article 22(1) of Directive 77/388/EEC;

(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.

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

(a) the name of the service provider, the geographic address at which he is established, and the details which enable him to be contacted rapidly and communicated with directly and, as the case may be, by electronic means;

(b) where the provider is registered in a trade or other similar public register, the name of that register and the provider's registration number, or equivalent means of identification in that register;

(c) where the provider exercises an activity which is subject to VAT, the identification number referred to in Article 22(1) of Directive 77/388/EEC;

(d) the general conditions and clauses, if any, used by the provider;

(e) contractual clauses concerning the law applicable to the contract and/or the competent courts.

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

(a) is supplied by the provider on his own initiative;

(b) is easily accessible to the recipient at the place where the service is provided or the contract concluded;

(c) can be easily accessed by the recipient electronically by means of an address supplied by the provider;

(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

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

Justification

These deletions serve to help reduce the regulation of the service sector, which is the aim pursued by the Directive.

Amendment 42

Article 28

Article 28

deleted

After-sales guarantees

- 1. Member States shall ensure that providers supply a recipient, at his request, with information on the existence or otherwise of an after-sales guarantee, on its content and on the essential criteria for its application, in particular, its period of validity and territorial cover.***
- 2. Member States shall ensure that the information referred to in paragraph 1 appears in any information documents supplied by providers, setting out a detailed description of the services offered.***
- 3. Paragraphs 1 and 2 do not affect the regulation of after-sales guarantees provided for in other Community instruments.***

Justification

The Commission proposal itself exempts consumer contracts, and thus the legal right to a guarantee in respect of such contracts, from the application of the country of origin principle. Accordingly there is no need for a special right of information for consumers.

Amendment 43

Article 30, paragraph 4

- 4. In the report referred to in Article 41, Member States shall indicate which providers are subject to the requirements***

deleted

laid down in paragraph 1, the content of those requirements and the reasons for which they consider them to be justified.

Justification

Such an evaluation report would entail an immense bureaucratic effort for the Member States, which would not be justified by a corresponding benefit. It is unrealistic to expect all 25 Member States to evaluate all 25 reports. Furthermore the all-embracing requirement to give reasons, pursuant to Article 15(4)(a), renders a large part of national legislation effectively beholden to the Commission, which is unacceptable in the light of subsidiarity and the allocation of competences.

Amendment 44
Article 33, paragraph 3

3. Implementation of ***paragraph 1*** must comply with the rights guaranteed to persons found guilty or penalised in the Member States concerned, especially as regards the protection of personal data.

3. Implementation of ***paragraphs 1 and 2*** must comply with the rights guaranteed to persons found guilty or penalised in the Member States concerned, especially as regards the protection of personal data.

Justification

Intended for clarification.

Amendment 45
Article 34, paragraph 1

1. Member States shall ensure that the powers of monitoring and supervision provided for in national law in respect of the provider and the activities concerned are also exercised where a service is provided in another Member State.

1. Member States shall ensure that the powers of monitoring and supervision provided for in national law in respect of the provider and the activities concerned are also exercised where a service is provided in another Member State, ***provided they fall within the coordinated field***.

Justification

See justification for the amendment to Recital 38.

Amendment 46
Article 35, paragraph 1

1. ***In accordance with Article 16***, 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.

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.

Justification

This amendment is intended to clarify the text.

Amendment 47
Article 37, paragraph 6

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

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

Justification

The obligation to submit a prior request to the Member State of origin is incompatible with an urgent measure; derogations should therefore be permitted in this respect, as in the case of the requirements of paragraphs 3 and 4.

Amendment 48
Article 38

In accordance with the procedure referred to in Article 42(2), the Commission shall adopt the implementing measures necessary for the implementation of this Chapter, specifying the time-limits provided for in Articles 35 and 37 and the practical arrangements for the exchange of information by electronic means between the ***single points of contact***, and in particular the interoperability

In accordance with the procedure referred to in Article 42(2), the Commission shall adopt the implementing measures necessary for the implementation of this Chapter, specifying the time-limits provided for in Articles 35 and 37 and the practical arrangements for the exchange of information by electronic means between the ***Member States***, and in particular the interoperability provisions for

provisions for information systems.

information systems.

Justification

Terminology should be standardised in line with Articles 35 and 37.

Amendment 49
Article 39, paragraph 1(b)

(b) the rules of professional ethics and conduct of the regulated professions which aim in particular at ensuring, as appropriate to the specific nature of each profession, independence, impartiality and professional secrecy;

(b) the rules of professional ethics and conduct of the regulated professions which aim in particular at ensuring, as appropriate to the specific nature of each profession, independence, impartiality and professional secrecy; ***binding rules governing professional ethics and conduct of the Member States which are regulated by law shall not be affected.***

Justification

Compare the justification to the amendment to Recital 67.

Amendment 50
Article 39, paragraph 2

2. Member States shall ensure that the codes of conduct referred to in paragraph 1 are accessible at a distance, by electronic means and transmitted to the Commission. *deleted*

Justification

Since the Services Directive is a framework directive, its provisions regarding codes of conduct should only enunciate general principles and not contain any more detailed rules, since this would render the Directive unwieldy.

Amendment 51
Article 39, paragraph 3

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 *deleted*

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.

Justification

Information requirements also represent an additional bureaucratic burden for the service provider. However, there is no evidence of a need for regulation for all services in question.

Amendment 52
Article 40, paragraph 1, letter (b)

(b) gambling activities which involve waging a stake with pecuniary value in games of chance, including lotteries and betting transactions, in the light of a report by the Commission and a wide consultation of interested parties; **deleted**

Justification

In view of the national and cultural nature of lotteries, regulation in this area should be the preserve of the Member States in the light of the subsidiarity principle.

Amendment 53
Article 41

Article 41 **deleted**
Mutual evaluation

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

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

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

on those reports.

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

4. In the light of the observations provided for in paragraphs 2 and 3, the Commission shall, by 31 December 2008 at the latest, present a summary report to the European Parliament and to the Council, accompanied where appropriate by proposals for additional initiatives.

Justification

Such an evaluation report would entail an immense bureaucratic burden for the Member States, which would not be justified by a corresponding benefit. It is unrealistic to expect all 25 Member States to evaluate all 25 reports. Furthermore the across-the-board requirement to give reasons, pursuant to Article 15(4)(a) makes a large part of national legislation effectively beholden to the Commission, which is unacceptable in the light of subsidiarity and the allocation of competences.

PROCEDURE

Title	Proposal for a European Parliament and Council directive on services in the internal market
References	(COM(2004)0002 – C5-0069/2004 – 2004/0001(COD))
Committee responsible	IMCO
Committee asked for its opinion Date announced in plenary	JURI 16.12.2004
Enhanced cooperation	no
Drafts(wo)man Date appointed	Kurt Lechner 7.10.2004
Discussed in committee	30.11.2004 7.3.2005 30.3.2005
Date amendments adopted	21.6.2005
Result of final vote	for: 14 against: 9 abstentions: 0
Members present for the final vote	Maria Berger, Bert Doorn, Monica Frassoni, Giuseppe Gargani, Piia-Noora Kauppi, Kurt Lechner, Klaus-Heiner Lehne, Katalin Lévai, Alain Lipietz, Antonio López-Istúriz White, Antonio Masip Hidalgo, Hans-Peter Mayer, Viktória Mohácsi, Aloyzas Sakalas, Francesco Enrico Speroni, Diana Wallis, Rainer Wieland, Nicola Zingaretti, Jaroslav Zvěřina, Tadeusz Zwiefka
Substitutes present for the final vote	Jean-Paul Gauzès, Arlene McCarthy, Toine Manders, József Szájer
Substitutes under Rule 178(2) present for the final vote	

4.5.2005

OPINION OF THE COMMITTEE ON WOMEN'S RIGHTS AND GENDER EQUALITY

for the Committee on the Internal Market and Consumer Protection

on the proposal for a directive of the European Parliament and of the Council on services in the internal market

(COM(2004)0002 – C5-0069/2004 – 2004/0001(COD))

Draftsman: Raül Romeva i Rueda

SHORT JUSTIFICATION

Employment effects that are expected to result from adoption Draft Directive on Services are exaggerated. There is a risk of adverse effects on women's employment, especially concerning female-dominated service sectors (healthcare and other social services).

The impact assessment, made by the Commission, is rather ambiguous. While recognising that it is very difficult to provide a reliable estimate of the effect of barriers to services on the EU economy, it states that millions of jobs will be created. There is still no comprehensive analysis on the problematic of creation of jobs and better quality of jobs within the EU. The social dimension and an impact assessment of social and employment effects are missing. Research shows that previous liberalisations have led to the destruction of existing jobs and the erosion of social cohesion.

A more detailed analysis is needed, that specifies the kind of services likely to suffer from barriers, or benefit in terms of employment growth from the removal of barriers.

Health services as currently organised are already successful in creating employment, and in many cases skilled and high-paying jobs.

In the "Employment in Europe 2004" report by DG Employment (Sept. 2004), a comparison was made between employment structures in the US and Europe, and it was shown that health and social services are one area where between 1998 and 2003 "employment growth rates in a majority of EU Member States out-performed those observed for the US". This section of the report concludes:

"...the key to increasing employment in services is in the creation of jobs in the comparatively high-paying, high-productive services, such as business services, education and health and social services. To achieve this, ... further increases in final demand for services are necessary. The latter will follow on from further increases in the labour market participation of women and older people, from more, and more efficient, investment in human capital and lifelong learning,

sharing the related costs and responsibilities between public authorities, companies and individuals, and from the support of public spending in areas such as education and health and social services."

Therefore it is highly questionable whether the Directive would bring any benefits with regard to health services.

The success in health services could be built on, not by increasing competition but by investing in training and increasing support from public spending.

Women may also be affected negatively, as consumers of public services, such as health services and social services, especially in situations where, at the moment, Member States have conditions to guarantee the quality and quantity of such services.

The Directive foresees liberalisation of healthcare and social services. This would lead to deterioration of social welfare and healthcare cover in favour of private insurance.

The challenge that the EU faces regarding healthcare or eldercare are too important to leave to the market. Public authorities must be able to exercise control and may have laws promoting services of general economic interest.

Possible negative effects of the Directive on women employment conditions in terms of income level would mean worse cover in case of private insurance and widening the gap. Liberalisation of health and social services would be a backwards step in terms of social and economic rights, especially of women.

The country of origin principle will negatively affect women as workers in the services sectors, as well as women as consumers of public and other services.

Application of the country of origin principle to cross border service providers can provoke abuse and manipulation. In areas that are not Europe-wide harmonised this principle would allow various national regimes to co-exist in the same host country and juxtaposition of possibly 25 national regulations. This would encourage service providers to set up in those EU Member States with the lowest tax rates and protection of workers rights and countries with higher standards of protection to lower them, in order to stay competitive.

It might create a situation when consumers will not know which rules apply to a specific service and/or provider and where to go in case of conflict. As a result customers will not be able to obtain good quality services.

Temporary agencies are 'services' within the scope of the Directive. In many countries the majority of agency workers are women. The derogation in article 17 for 'matters covered by the posting directive' is not enough to safeguard national rules and regulations with regard to temporary agency work. Where the posting directive would apply, the proposals in article 24 and 25 of the Directive would make it impossible for Member States to monitor and enforce their rules.

In the name of mutual confidence and recognition, the Member State of Posting, while notably being the one that is responsible for the enforcement of its own legislation, is seriously hindered by the prohibitions as listed in Article 24.

The Draft Services Directive should not deal with Temporary Agency Work, and in particular not with the special aspects of monitoring, supervision and enforcement that continue to be necessary in a sector that is so vulnerable to possible abuses and fraud.

AMENDMENTS

The Committee on Women's Rights and Gender Equality calls on the Committee on the Internal Market and Consumer Protection, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission ¹	Amendments by Parliament
Amendment 1 Recital 3	
<p>(3) Since services constitute the engine of economic growth and account for 70% of GDP and employment in the majority of Member States, this fragmentation of the internal market has a negative impact on the entire European economy, in particular on the competitiveness of SMEs, and prevents consumers from gaining access to a greater variety of competitively priced 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 making the European Union the most competitive and dynamic knowledge-based economy in the world by 2010. Removing those barriers is essential in order to revive the European economy, particularly in terms of employment and investment.</p>	<p>(3) Since services constitute the engine of economic growth and account for 70% of GDP and employment in the majority of Member States, this fragmentation of the internal market has a negative impact on the entire European economy, in particular on the competitiveness of SMEs, and prevents consumers from gaining access to a greater variety of competitively priced services. <i>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.</i> 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 making the European Union the most competitive and dynamic knowledge-based economy in the world by 2010. Removing those barriers is essential in order to revive the European economy, particularly in terms of employment and investment.</p>

Justification

Many women on the European labour market are employed in the service sector and therefore it is essential to ensure a competitive services market in the EU. At present, a wide range of internal market barriers prevent many service providers from carrying on their business across national borders. Not only does this undermine competitiveness within and outside Europe, it also prevents the creation of new jobs in Europe, especially for women.

¹ OJ C ... /Not yet published in OJ.

Amendment 2
Recital 7 a (new)

(7a) This Directive should take full account of the principle of gender mainstreaming and the adverse consequences that this Directive may have for women in the employment field and women in general. Particular account should be taken of the fact that many women, especially, work in low-paid service jobs and have insecure conditions of employment. There should therefore be a particular focus on avoiding the lowering of the level of pay, social rights and employment rights of these women as a consequence of this Directive.

PROCEDURE

Title	Proposal for a directive of the European Parliament and of the Council on services in the internal market
References	COM(2004)0002 - C6-0069/2004 - 2004/0001(COD)
Committee responsible	IMCO
Committee asked for its opinion Date announced in plenary	FEMM 16.09.2004
Enhanced cooperation	No
Draftsperson Date appointed	Raül Romeva i Rueda 25.01.2005
Discussed in committee	31.3.2005 26.4.2005
Date amendments adopted	26.4.2005
Result of final vote	for: 18 against: 0 abstentions: 7
Members present for the final vote	Edit Bauer, Emine Bozkurt, Hiltrud Breyer, Edite Estrela, Ilda Figueiredo, Věra Flasarová, Nicole Fontaine, Lissy Gröner, Anneli Jäätteenmäki, Lívia Járóka, Piia-Noora Kauppi, Rodi Kratsa-Tsagaropoulou, Urszula Krupa, Siiri Oviir, Marie Panayotopoulos-Cassiotou, Christa Prets, Marie-Line Reynaud, Teresa Riera Madurell, Raül Romeva i Rueda, Amalia Sartori, Eva-Britt Svensson, Britta Thomsen, Anne Van Lancker, Corien Wortmann-Kool, Anna Záborská
Substitutes present for the final vote	Zuzana Roithová, Marta Vincenzi
Substitutes under Rule 178(2) present for the final vote	Małgorzata Handzlik, Erna Hennicot-Schoepges

28.7.2005

OPINION OF THE COMMITTEE ON PETITIONS

for Committee on the Internal Market and Consumer Protection

on the proposal for a directive of the European Parliament and of the Council on services in the internal market

(COM(2004)0002 – C6-0069/2004 – 2004/0001(COD))

Draftsman: Marcin Libicki

SHORT JUSTIFICATION

The internal market is one of the essential foundations of the European Union. Its operation hinges on the principles of the free movement of goods, persons, services and capital. Freedom of services is still less developed than the others, despite its real importance to the EU economy: services are a leading sector, generating as they do 70% of GDP and of jobs, with key significance to the EU economy.

It is still not yet possible to take full advantage of the benefits of the internal market, owing to the existence of barriers restricting the development of service operations, and this impacts negatively on the economic development of the EU. EU bodies and institutions, including the Committee on Petitions, have repeatedly received information on the difficulties encountered by businessmen wishing to offer services in Member States other than their country of origin. The Committee on Petitions, in its letter of....., has already brought the problem of discrimination against businesses, particularly from the new Member States, to the attention of Commissioner Charlie McCreevy.

The objective of the Commission proposal for a European Parliament and Council directive on services in the internal market is full implementation of the fundamental freedom of establishment and to provide services set out in the Treaty, in order to stimulate speedier development of the EU economy and to create new jobs. It must also be stated that in its current form the single market does not meet the expectations of the operators working within it, and in particular does not fully utilise the potential of small and medium-sized enterprises.

In view of the above, the draftsman welcomes the proposal for a directive, recognising it as essential to the implementation of the Treaty, which cannot be achieved solely and exclusively on the basis of the binding *acquis communautaire*. Especially in view of the enlargement of the Union to include ten new Member States, there are clearly obstacles in the way of businesses

wishing to provide services in Member States other than their country of origin. It would seem that liberalisation of services and removing these barriers are a fundamental precondition for overcoming the difficulties encountered in implementing the Lisbon Strategy.

The draftsman also supports the idea of simplifying administrative procedures, particularly by establishing single points of contact and making it possible for administrative procedures to be carried out electronically. Furthermore, he supports the general prohibition on permit systems for service operations and the possibility of a derogation therefrom if specific criteria are met. He also supports the creation of a catalogue of prohibited requirements and requirements to be evaluated by the Member States with relation to service operations.

One of the foundations of the Commission proposal is the country of origin principle, by which the service provider must be subject to the laws of the country in which he operates.

The draftsman fully supports this principle, whilst pointing out that in building Europe and exploiting its economic potential, there should be no fear of true competition, the cornerstone of which is precisely the country of origin principle. This principle offers the possibility of avoiding a series of restrictions on the freedom of establishment and to provide services such as: quantity restrictions, territorial restrictions, nationality requirements, residence requirements, requirements for a single place of business, discriminatory authorisation and registration systems, restrictions on the performance of a large number of operations, requirements concerning the minimum number of workers and discriminatory qualifying requirements.

The draftsman cautions against the misuse of the concept of social dumping, aimed at restricting the liberalisation of the services market. Particular emphasis should be laid on the fact that the proposed directive will also have positive effects, not only for service providers, but for workers and consumers, enabling them to benefit to a greater extent from the free market.

The Committee on Petitions has received a number of petitions, the authors of which have indicated possible dangers that could result from the liberalisation of the services market on the basis of the directive on services¹. The authors of the petitions have expressed their fears on the possible lowering of standards, the transfer of companies to other countries, and threats to quality of service and consumer protection.

In view of the above, it must be stated that the creation of an amenable environment for these enterprises must be accompanied by concern for the interests of consumers and workers. It should also be pointed out that, in conditions of open competition, the consumers themselves will have a choice of service standards, and this will automatically regulate the standard level.

The draftsman is opposed to the removal from the directive text of provisions specifically expressing concern for worker and consumer protection, such as a mechanism to support service users who avail themselves of the services of an operator based in another Member State, or a division of tasks between Member States involved in the posting of workers in the provision of service. He welcomes the provisions designed to improve the quality of service provided and to ensure suitable protection for recipients of services which carry a specific risk.

¹ See petitions 539/2004 by Mikael Prohorenko (Swedish), on behalf of the 'Svenska Elektrikerförbundet Avd.1' (Swedish Electricians Association) and three co-signatories, 690/2004 by Serge Bayard (Belgian), 70/2005 by Dave Prentis (British) on behalf of the 'Unison' trade union and 163/2005 by Carolin Philipp (German).

The horizontal approach taken in the Commission proposal should be considered appropriate, removing as it does the need to harmonise all the relevant provisions in the Member States.

In conclusion, the draftsman would like to stress that a clear majority of market surveys has unequivocally shown the benefits brought by liberalising the services market (higher wages, lower prices, higher employment). In the interests of the EU economy and particularly in view of the objectives of the Lisbon Strategy, it must be pointed out that the success of the Community economy depends to a large extent on the speedy adoption of the proposed directive and an end to the attempts by Member States to revise it and delay its implementation. It must also be considered that if the proposed directive cannot be adopted by the Member States in a form close to the current one, the Member States should consider the adoption of the directive to be essential to the realisation of the economic objectives of the EU, and should not take action to create stronger cooperation in this sphere on the basis of Article 11 of the Treaty establishing the European Community and Article 43 of the Treaty on European Union.

During the initial discussion held at the Committee on Petitions meeting of 24 May 2005, the members of the committee agreed that there was a need for integration and liberalisation of the services market. They stressed that liberalisation was necessary in order to draw full benefit from the possibilities offered by the internal market. A number of members indicated that while liberalising the services market with the aim of creating an amenable environment for the companies, particular care should be given to consumers and workers as the 'main customers' of the Committee on Petitions.

AMENDMENTS

The Committee on Petitions calls on the Committee on the Internal Market and Consumer Protection, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission ¹	Amendments by Parliament
Amendment 1 Recital 3	
(3) Since services constitute the engine of economic growth and account for 70% of GDP and employment in the majority of Member States, this fragmentation of the internal market has a negative impact on the entire European economy, in particular on the competitiveness of SMEs, and prevents consumers from gaining access to a greater variety of competitively priced services. The	(3) Since services constitute the engine of economic growth and account for 70% of GDP and employment in the majority of Member States, this fragmentation of the internal market has a negative impact on the entire European economy, in particular on the competitiveness of SMEs, and prevents consumers from gaining access to a greater variety of competitively priced services. The

¹ Not yet published in OJ.

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 making the European Union the most competitive and dynamic knowledge-based economy in the world by 2010. Removing those barriers is *essential in order to revive* the European economy, particularly in terms of employment and investment.

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 making the European Union the most competitive and dynamic knowledge-based economy in the world by 2010. Removing those barriers 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 however important to achieve a single market in services, with a balance between market opening, public services and social and consumer rights.*

Amendment 2
Recital 3a (new)

(3a) Particularly after the accession of ten new Member States, entrepreneurs wishing to provide services in another Member State are faced with obvious barriers.

PROCEDURE

Title	Proposal for a directive of the European Parliament and of the Council on services in the internal market		
References	COM(2004)0002 - C6-0069/2005 - 2004/0001(COD)		
Committee responsible	IMCO		
Committee asked for its opinion Date announced in plenary	PETI 9.6.2005		
Enhanced cooperation			
Drafts(wo)man Date appointed	Marcin Libicki 17.03.2005		
Discussed in committee	13.7.2005	0.0.0000	0.0.0000
Date suggestions adopted	13.7.2005		
Result of final vote	for: 11 against: 0 abstentions: 0		
Members present for the final vote	Robert Atkins, Manolis Mavrommatis, Inés Ayala Sender, Michael Cashman, Proinsias De Rossa, Janelly Fourtou, David Hammerstein Mintz, Andreas Schwab		
Substitutes present for the final vote	Marie-Hélène Descamps, Doris Pack, Panayiotis Demetriou		
Substitutes under Rule 178(2) present for the final vote			

PROCEDURE

Title	Proposal for a directive of the European Parliament and of the Council on services in the internal market				
References	COM (2004)0002 – C5-0069/2004 – 2004/0001(COD)				
Date submitted to Parliament	22.1.2004				
Committee responsible Date announced in plenary	IMCO 16.9.2004				
Committee(s) asked for opinion(s) Date announced in plenary	CONT 27.1.2005 JURI 16.12.2004	ECON 16.9.2004 FEMM 24.2.2005	ENVI 16.9.2004 PETI 9.6.2005	ITRE 16.9.2004	CULT 16.12.2004
Not delivering opinion(s) Date of decision					
Enhanced cooperation Date announced in plenary	EMPL 16.9.2005				
Rapporteur(s) Date appointed	Evelyne GEBHARDT 28.7.2004				
Previous rapporteur(s)					
Simplified procedure – date of decision					
Legal basis disputed Date of JURI opinion	/				
Financial endowment amended Date of BUDG opinion	/				
European Economic and Social Committee consulted – date of decision in plenary	0.0.0000				
Committee of the Regions consulted – date of decision in plenary					
Discussed in committee	28.7.2004 23.11.2004 24.5.2005	30.8.2004 18.1.2005 13.6.2005	27.9.2004 1.2.2005 11.7.2005	26.10.2004 17.3.2005 14.9.2005	11.11.2004 19.4.2005 24.10.2005
Date adopted	22.11.2005				
Result of final vote	+ : 25 – : 10 0 : 5				
Members present for the final vote	Bert Doorn, Janelly Fourtou, Evelyne Gebhardt, Malcolm Harbour, Anna Hedh, Edit Herczog, Anneli Jäätteenmäki, Pierre Jonckheer, Henrik Dam Kristensen, Alexander Lambsdorff, Kurt Lechner, Lasse Lehtinen, Arlene McCarthy, Manuel Medina Ortega, Bill Newton Dunn, Zita Pleštinšká, Giovanni Rivera, Zuzana Roithová, Luisa Fernanda Rudi Ubeda, Heide Rühle, Leopold Józef Rutowicz, Andreas Schwab, József Szájer, Marianne Thyssen, Jacques Toubon, Bernadette Vergnaud, Phillip Whitehead, Joachim Wuermeling				

Substitute(s) present for the final vote	Mario Borghezio, André Brie, Ieke van den Burg, Simon Coveney, Benoît Hamon, Konstantinos Hatzidakis, Gisela Kallenbach, Guntars Krasts, Cecilia Malmström, Alexander Stubb, Stefano Zappalà
Substitute(s) under Rule 178(2) present for the final vote	Kartika Tamara Liotard, Luca Romagnoli, Tadeusz Zwiefka
Date tabled	15.12.2005 A6-0409/2005
Comments (available in one language only)	...