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2009

Committee on Employment and Social Affairs

2004/0001(COD)

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

PA_Leg

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 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

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.

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 Commission¹

Amendments by Parliament

Amendment 1

Citation 1

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,

Justification

The deletion is consistent with the amendment to Article 2 on the scope of this Directive.

Amendment 2

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 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.**

(1) The European Union is seeking to forge ever closer links between the States and peoples of Europe and to ensure economic and social progress. In accordance with Article 14(2) of the Treaty, the internal market comprises an area without internal frontiers in which the free movement of services and the freedom of establishment are ensured. The elimination of obstacles to the development of service activities between Member States is essential in order to strengthen the integration of the peoples of Europe. ***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.***

¹ OJ C ... /Not yet published in OJ.

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 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 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**. 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,

(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.

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 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").

(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 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

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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.***

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, 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***

(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 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.***

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

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 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.*

(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 *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)

(13 h) 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 activities or to the exercise thereof and not those applicable to goods as such.***

(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.***

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 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.

(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.

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 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

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**

(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

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.

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

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

(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

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.

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 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.

(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. ***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 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.

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

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)

(32 a) 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,

(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.

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***

(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.

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

(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 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

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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.

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,

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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

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

Amendment 41
Recital 39

<i>(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.</i>	<i>deleted</i>
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Justification

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

Amendment 42
Recital 40

<i>(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</i>	<i>(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</i>
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than that of the Member State of origin. Moreover, by way of exception, measures against a given provider may also be adopted in certain individual cases and under certain strict procedural and substantive conditions. In order to ensure the legal certainty which is essential in order to encourage SMEs to provide their services in other Member States, those derogations should be limited to what is strictly necessary. In particular, derogation should be possible only for reasons related to the safety of services, exercise of a health profession or matters of public policy, such as the protection of minors, and to the extent that national provisions in this field have not been harmonised. In addition, any restriction of the freedom to provide services should be permitted, by way of exception, only if it is consistent with fundamental rights which, as the Court of Justice has consistently held, form an integral part of the general principles of law enshrined in the Community legal order.

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.

Justification

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

Amendment 43 Recital 41 a (new)

(41 a) 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, 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 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 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 48
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 *deleted*

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 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 *deleted*

care must be objectively defined and a 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 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 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 51
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 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. 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 54
Recital 60

(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 *deleted*

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 55
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 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 encourage professionals to draw up, in accordance with Community law, codes of conduct at Community level. ***deleted***

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 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*

2. This Directive shall not apply to the 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;

Article 71 or Article 80(2) of the Treaty.

(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 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 institutions***, 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;

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 *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

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 *deleted*
Member State in whose territory a provider
posts a worker in order to provide services
there;

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 *deleted*
salaried activity of a worker, performed in
accordance with the national law of the
Member State of origin of the provider;

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)

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.

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.

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.

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, introduction

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)

(6 a) 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;

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***

(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.*

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)

(3 a) 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)

2 a. 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

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

to a recipient.

(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, 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

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, introduction

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, 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 planning objectives set by the competent authority; ***deleted***

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, point 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, point 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;

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; ***and it must not be possible to replace those requirements with other, less restrictive measures which attain the same result.***

(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

deleted

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.

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

(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

General provision

(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.

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).

(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, point -1 (new)

(-1) the working conditions and terms of employment of the service provider;

Amendment 114

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; ***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, 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; ***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, 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; ***deleted***

Justification

The removal of this point of Article 17 is consistent with the amendments to Article 2 of this Directive.

Amendment 117
Article 17, point 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, point 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, point 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, point 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, point 10

(10) the provisions of Directive .../.../EC of the European Parliament and the Council [on

(10) as regards administrative formalities concerning the free movement of persons

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;

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, 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 123
Article 17, point 23 a (new)

(23 a) 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.

Amendment 125
Article 19

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)

(21 a) 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 tot 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.

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 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

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.

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

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 131

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 132
Article 26, paragraph 1, introduction

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.

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.

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)

(5 a) 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

1. Member States shall ensure that, ***in respect of the fields coordinated by this Directive and other Community***

provider and the activities concerned are also exercised where a service is provided in another Member State.

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

Article 36

deleted

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.

Amendment 141 Article 37

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

<i>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:</i>	<i>deleted</i>
<i>(a) the detailed rules for the exercise of cash-in-transit services;</i>	
<i>(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</i>	

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 28.7.2004
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 Cabrnock, 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 Lohdieu, 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	