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DRAFT OPINION

of the Committee on Economic and Monetary Affairs

for the Committee on the Internal Market and Consumer Protection

on the proposal for a directive of the European Parliament and of the Council on services in the internal market
(COM(2004)0002 – C6-0069/2004 – 2004/0001(COD))

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SHORT JUSTIFICATION

The directive aims to set up a legal framework that will apply to about 50 % of the European Union's GDP and 60 % of its employment market, in other words it will have unusually far-reaching consequences.

Scope The directive sets itself the task of regulating such extremely diverse economic activities as temporary employment agencies, the building industry, distributive trades, water supply, nursery schools, primary schools, television and health and caring services within a single legal framework. This raises the question of whether a standard framework is covered by current EC law for such a heterogeneous range of fields. For instance under Articles 44(1) and 52(1) of the EC Treaty, liberalising provisions are only ever permitted for a *'particular'* activity or *'specific'* service. Thus they expressly require a sectoral rather than a horizontal approach. And many of the companies affected, or the organisations representing them, have called for a sectoral arrangement. This poses the question as to whether the directive should not from the start be considered flawed and accordingly returned to the Commission.

Subsidiarity A second question concerns the directive's compatibility with the principle of subsidiarity. It does admittedly rule out general-interest services. But it does so on the basis of a very narrow definition of such services, since as a result of the fee-charging criterion vast swathes of public service provision fall into the realm of the services of public economic interest that it covers. Yet Article 152(5) of the EC Treaty, for instance, specifically subordinates Community action to the responsibilities of the Member States for the organisation of health services. Nor should the stealthy expansion of Union competences in the fields of broadcasting, water supply, culture, education or social services be taken for granted. If the directive is unchanged there is a risk that by it – while the debate on public service provision is far from over – de facto situations are created and by the fee-charging criterion large parts of public and communal services will be drawn into the scope of an EU internal market directive. It must therefore be changed at least to ensure that services of general economic interest are excluded from its scope, leaving it to the Member States to define the band width for the services that are ruled in.

Regulatory prohibition The directive seriously restricts the regulatory powers of the Member States. A good many demands are prohibited on principle. In other cases the Member States are to be subject to a mutual evaluation procedure, as a result of which any regulations that cannot by unanimous agreement be 'objectively justified by an overriding reason relating to the public interest' (Article 15(3)) must also be scrapped. The intended prohibition of regulation could have serious consequences. For example, the ban on restriction of legal form means that no area of social life could any longer be reserved to public-interest, not-for-profit undertakings. This would tear down all the barriers to private business interests in areas that for good reasons have not hitherto been subject to market rules. The prohibition on restricting quantitative authorisation limits would also affect doctors' practices or pharmacies, posing the risk of over-supply in affluent residential areas and under-supply in poorer ones. The prohibition on setting minimum or maximum prices also jeopardises the regulation of fees between doctors and social insurance schemes, and fee regulation in the case of lawyers, engineers or architects. And making the ban on dumping inadmissible could in future enable large corporations to conquer new markets in an aggressive way with the aid of dumping

prices subsidised across the board, in a form of competition that would finish off many smaller businesses.

Country of origin principle The free movement of services is to be organised under the directive on the basis of the country of origin principle. Here again the question arises as to whether using the principle as a general instrument for regulation is compatible with current EC law. The elementary principle of non-discrimination (Article 50 of the EC Treaty) means that companies with a registered office abroad must be treated in accordance with the same law as domestic companies. But the country of origin principle means that foreign service providers are placed either at an advantage or a disadvantage compared with local companies, depending on whether the law in their home country is more lenient or tougher than in the host country. Moreover 25 legal systems would have to apply simultaneously on the territory of each EU Member State, which is likely to result in considerable legal uncertainty.

Furthermore, the country of origin principle means abandoning the aim of further harmonisation by democratic lawmaking. Instead it is setting out on a path that will lead to a levelling down of standards to the lowest possible point. The undermining of higher standards is further encouraged by a number of prohibitions on regulation set out in Article 16.

Again, all powers to monitor service providers are in future to lie with the country of origin. The question of whether the country of origin has adequate capacities to fulfil this task remains unanswered. There seem grounds for concern that an effective way of supervising industry is thus being disabled.

There are also foreseeable implications for the tax system, and these have been expressly confirmed in a study commissioned by the ECON Committee. The simplified procedure for setting up a subsidiary should make it substantially easier to transfer profits gained in high taxation countries to low taxation countries. Further opportunities for fraud – particularly in the area of indirect taxation – are likely to arise.

As a general principle, the country of origin principle is not acceptable. It might, however, conceivably be usable in areas in which Community directives provide for extensive harmonisation, since in these cases the level of standards is equivalent.

Summary Far from merely regulating cross-border provision of services within the European Union, the directive makes serious inroads into the domestic legislation and the organisation of public service provision. Its transposition would be tantamount to a comprehensive breakthrough in deregulation that would cast doubt on the very foundations of the European social model. It is the duty of social responsibility to see that the directive is not accepted in its present form, but is either sent back to the Commission on the grounds of its serious shortcomings or is at the very least radically amended.

AMENDMENTS

The Committee on Economic and Monetary Affairs calls on the Committee on the Internal Market and Consumer Protection, as the committee responsible, to propose rejection of the Commission proposal in its report, as the proposal is socially unbalanced, insufficiently tested as to its consequences – especially for the working conditions of small and medium-sized

businesses – and in essential aspects at variance with current treaty provisions, particularly the principle of subsidiarity. In the event that this request is not accepted, the Committee on Economic and Monetary Affairs calls on the Committee on the Internal Market and Consumer Protection, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission[1]	Amendments by Parliament
	Amendment 1 Recital 1
(1) The European Union is seeking to forge ever closer links between the States and peoples of Europe and to ensure economic ***and*** social progress. In accordance with Article 14(2) of the Treaty, the internal market comprises an area without internal 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***,*** social ***and environmental*** progress. In accordance with Article 14(2) of the Treaty, the internal market comprises an area without internal frontiers in which ***freedom of establishment and the free movement of services*** are ensured. The elimination of ***unjustified*** obstacles to the development of ***freedom of establishment and*** 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 ***while also safeguarding a high level of employment and health protection, social security, environmental protection and equality between women and men***.
	Justification
	Establishment of the internal market as an area without borders is not an end in itself. The aims of the Community, as laid down particularly in Articles 2, 3(2) and 6 of the EC Treaty, are crucial. Giving precedence to the free movement of services over freedom of establishment is consonant neither with the letter nor the system of the EC Treaty.
	Amendment 2 Recital 3

[1] Not yet published in OJ.

(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.	***deleted***

Justification

'Services' do not exist in their own right, nor are small businesses, in particular, likely to profit from an unrestricted market in services. On the contrary, creating an unrestricted internal market may lead to a substantial process of centralisation and concentration in favour of multinational companies. Economic recovery in Europe depends much more on macroeconomic decisions.

Amendment 3
Recital 4

(4) It is ***therefore*** necessary to remove barriers to the freedom of establishment for service providers in Member States and barriers to the freedom to provide services as between Member States and to guarantee providers and recipients the legal certainty necessary for the exercise in practice of those two fundamental freedoms of the Treaty. Since the barriers in the internal market for services affect operators who wish to become established in other Member States as well as those who provide a service in another Member State without being	(4) It is necessary to remove ***unjustified*** barriers to the freedom of establishment for service providers in Member States and barriers to the freedom to provide services as between Member States and to guarantee providers and recipients the legal certainty necessary for the exercise in practice of those two fundamental freedoms of the Treaty. Since the barriers in the internal market for services affect operators who wish to become established in other Member States as well as those who provide a service in another Member State without being

established there, it is necessary to enable service providers to develop their service activities within the internal market either by becoming established in a Member State or by making use of the freedom to provide services. Service providers should ***be able to choose between*** those two freedoms, ***depending on their strategy for growth in each Member State***.	established there, it is necessary to enable service providers to develop their service activities within the internal market either by becoming established in a Member State or ***when operating only temporarily in another Member State*** by making use of the freedom to provide services. Service providers should ***abide by the relevant legal requirements for*** those two freedoms, ***as laid down in Articles 43 et seq. and 49 et seq. of the EC Treaty. This does not affect the rights of Member States to require the service provider to become established in the country in which the service is provided***.

Justification

It cannot be left only to the decision of the service provider as to whether to set up a subsidiary. The EC Treaty lays down the requirements for this. Besides, questions of public safety and public order, the need to safeguard consumer protection, the requirements of health protection and tax law may make it necessary for the law of the Member State to require the establishment of a subsidiary.

Amendment 4
Recital 5

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

Justification

Articles 43 and 49 of the EC Treaty are the provisions laid down by treaty on creating an internal market in services. They are repeated almost word for word in the Constitution Treaty, as yet unratified: Articles III-137 and III-144. These unambiguous provisions cannot be sidelined by a referral to complicated procedures. If they are inadequate, they should be revised or expanded in a procedure to amend the treaty.

Amendment 5
Recital 6

(6) This Directive establishes a general legal framework which ***benefits*** a wide variety of services ***while taking into account*** the distinctive features of each type of activity or profession and its system of regulation. That framework is based on a dynamic and selective approach consisting in the removal, as a matter of priority, of barriers which may be dismantled quickly ***and, for the others, the launching of a process of evaluation, consultation and complementary harmonisation of specific issues, which*** will make possible the progressive and coordinated modernisation of national regulatory systems for service activities which is vital in order to achieve a genuine internal market for services ***by 2010***. Provision should be made for a balanced mix of measures involving targeted harmonisation, administrative cooperation***, the country of origin principle*** and encouragement of the development of codes of conduct on certain issues. That coordination of national legislative regimes should ensure a high degree of Community legal integration and a high level of protection of general interest objectives, especially ***of*** consumer protection***, which*** is vital in order to establish mutual trust between Member States.	(6) This Directive establishes a general legal framework which ***is intended to benefit*** a wide variety of services ***and take*** into account the distinctive features of each type of activity or profession and its system of regulation. That framework is based on a dynamic and selective approach consisting in the removal, as a matter of priority, of ***unjustifiable*** barriers which may be dismantled quickly***.*** The progressive and coordinated modernisation of national regulatory systems for service activities***,*** which is vital in order to achieve a genuine internal market for services***, should be accomplished at a later stage***. Provision should be made for a balanced mix of measures involving targeted harmonisation, administrative cooperation and encouragement of the development of codes of conduct on certain issues. That coordination of national legislative regimes should ensure a high degree of Community legal integration and a high level of protection of general interest objectives, especially ***health and employment protection, safeguarding building safety, environmental protection, equality between women and men and*** consumer protection***.*** ***That*** is vital in order to establish mutual trust between Member States.

Justification

The need is not to enforce an unrestricted market in services. The need is rather to eliminate unjustified, discriminatory and superfluous restrictions. And the deleted passage is consistent

with the call for removal of the country of origin principle as a general principle, as explained in detail further on.

Amendment 6
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[1], 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[2], 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[3] 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[4]. The present Directive does not aim to introduce specific new rules or systems in the field of taxation. ***Its sole objective is to remove restrictions, certain of which are fiscal in nature, and in particular those which are discriminatory, on freedom of establishment and the free movement of services, in accordance with the case-law of the Court of Justice of the European Communities, hereinafter 'the***	(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. 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[1], 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[2], 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[3] 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[4]. The present Directive does not aim to introduce specific new rules or systems in the field of taxation ***or abolish or change existing ones***.

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

The proposed provisions would have substantial implications for the rights of the Member States to levy taxes and their opportunities to carry out inspections. But tax policy in the field of direct taxation falls within the competence of the Member States. Harmonisation in the field of indirect taxation is regulated separately. Both fields, and regulation that directly affects them, should be excluded from the directive.

Amendment 7
Recital 12

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

Justification

Article 51(1) of the EC Treaty expressly excludes the field of transport from Title III of the Third Part of the EC Treaty. So it seems dubious from a systematic point of view to extend the services directive to two quantitatively insignificant transport services. There are also real doubts, for safety and public health reasons, about abolishing regulation by the Member States in this area on the grounds that it is obstructive or restrictive.

Amendment 8
Recital 13

(13) There is already a considerable body of Community law on service activities, especially the regulated professions, postal services, television broadcasting, information society services and services relating to travel, holidays and package 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 builds on, and thus complements, the Community *acquis*. Where a service activity is already covered by one or more Community instruments, those instruments will ***continue to*** apply ***and such activities will not fall within the scope of this Directive***.

Justification

Conflicts between the directive and existing regulations are already causing uncertainty in the companies affected. Because of its horizontal approach, the directive cannot – unlike sector-specific Community law – take account of the special nature of particular sectors. For this reason any overlap with existing directives, often leading to their being overridden, must be prevented.

Amendment 9
Recital 14

(14) The concept of service ***covers a wide variety of ever-changing activities, including business services such as management consultancy, certification and testing; facilities management, including office maintenance and security; advertising; recruitment services, including***	(14) ***For*** the concept of service ***the definition in Article 50 of the Treaty will apply. Activities in a Member State that are continuously or occasionally connected with the exercise of official authority (Article 45 of the Treaty) will not qualify as services.***

employment agencies; and the services of commercial agents. That concept also covers services provided both to businesses and to consumers, such as legal or fiscal advice; real estate services such as estate agencies; construction, including the services of architects; transport; distributive trades; the organisation of trade fairs; car rental; travel agencies; and security services. It also covers consumer services, such as those in the field of tourism, including tour guides; audio-visual services; leisure services, sports centres and amusement parks; health and health care services; and household support services, such as help for the elderly. Those activities may involve services requiring the proximity of provider and recipient, services requiring travel by the recipient or the provider and services which may be provided at a distance, including via the Internet.

Justification

The wording of the proposed Recital 14 is not a definition but a highly arbitrary list. The scope of the services directive should be guided by the definition in the EC Treaty, which explicitly excludes sovereign activities. And the directive does not apply to all services. For this reason further restrictions are set out in the directive itself.

Amendment 10
Recital 15

(15) As the Court of Justice has consistently held with regard to Articles 49 et seq. of the Treaty, the concept of service covers any economic activity normally provided for remuneration, without the service having to be paid for by those benefiting from it and regardless of the financing arrangements for the remuneration received in return, by way of consideration. Any service whereby a provider participates in the economy, irrespective of his legal status or aims, or the field of action concerned, thus	***deleted***

constitutes a service.

Justification

As the Court of Justice's job is to apply Community law and it is not called upon to act as another Community legislative body, this recital has no binding effect on the legislative bodies, even if it accurately and completely reflects the case-law.

Amendment 11
Recital 16

(16) ***The characteristic of remuneration is absent in the case of*** activities performed, for no consideration, by the State in fulfilment of its social, cultural, educational and legal obligations. These activities are not covered by the definition in Article 50 of the Treaty and do not therefore fall within the scope of this Directive.	(16) ***This Directive does not affect*** activities performed, for no consideration, by the State in fulfilment of its social, cultural, educational and legal obligations. These activities are not covered by the definition in Article 50 of the Treaty and do not therefore fall within the scope of this Directive. ***Nor does the Directive cover services of general interest and services of general economic interest. Furthermore the Directive does not affect the freedom of Member States to determine what they regard as a service of general economic interest and how it should be organised and financed. The Directive does not require the Member States to privatise activities that are regarded as services of general economic interest or open them to competition. Nor does it require the abolition of monopolies.***

Justification

As the Commission itself puts it: 'The proposal does not affect the freedom of the Member States to define what they consider to be services of general economic interest and how they should be organised or financed. The proposal does not require Member States to privatise those activities that are considered services of general economic interest, nor to open them up to competition. Nor does the proposal require the abolition of monopolies.'.

Amendment 12
Recital 17

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

Justification

In view of the removal of the country of origin principle (see justification in amendment to Recital 37) the reference here to that principle is unnecessary.

Amendment 13
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. 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. ***A service ceases to be temporary when a service provider equips*** himself ***for a period of at least six months*** with some forms of infrastructure in the host Member State, such as an office, chambers or consulting rooms, ***or if he continuously or intermittently uses others' infrastructure because*** such infrastructure is necessary for the purposes of providing the service in question.

Justification

As the Commission itself points out: 'According to the definition provided in the proposed Directive, establishment… means the creation of any fixed infrastructure such as a permanent office or permanent premises (e.g. a medical practice, a laboratory, a hospital, an agency, or the office of a consulting or engineering firm)… It is irrelevant … whether the service provider is the owner of this infrastructure, the tenant or just the user.

Amendment 14
Recital 20

(20) The concept of authorisation scheme covers, *inter alia*, the administrative procedures for granting authorisations, licences, approvals or concessions, and also the obligation, in order to be eligible to exercise the activity, to be registered as a member of a profession or entered in a register, roll or database, to be officially appointed to a body or to obtain a card attesting to membership of a particular profession. ***Authorisation may be granted not only by a formal decision but also by an implicit decision arising, for example, from the silence of the competent authority or from the fact that the interested party must await acknowledgement of receipt of a declaration in order to commence the activity in question or for the latter to become lawful.***	(20) The concept of authorisation scheme covers, *inter alia*, the administrative procedures for granting authorisations, licences, approvals or concessions, and also the obligation, in order to be eligible to exercise the activity, to be registered as a member of a profession or entered in a register, roll or database, to be officially appointed to a body or to obtain a card attesting to membership of a particular profession.

Justification

The proposed method of granting authorisation, here including tacit approval in the absence of a response from the competent authority, offends against the principles of subsidiarity and proportionality of the EC Treaty. Questions of requirements for authorisation belong in all Member States to the essential substance of their respective legal traditions, whose general provisions are laid down in national law.

Amendment 15
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	***deleted***

points of contact, limitation of the obligation of prior authorisation to cases in which it is essential and the introduction of the principle of tacit authorisation by the competent authorities after a certain period of time has elapsed. Such modernising action, while maintaining the requirements on transparency and the updating of information relating to operators, is intended to eliminate the delays, costs and dissuasive effects which arise, for example, from unnecessary or excessively complex and burdensome procedures, the duplication of procedures, the red tape involved in submitting documents, the use of discretionary powers by the competent authorities, indeterminate or excessively long periods before a response is given, the limited duration of validity of authorisations granted and disproportionate fees and penalties. Such practices have particularly significant dissuasive effects on providers wishing to develop their activities in other Member States and require coordinated modernisation within an enlarged internal market of twenty-five Member States.

Justification

Administrative simplification comes within the essential scope of the Member States' competences. The attempt to intervene here by means of a Community directive is an offence against the principle of subsidiarity.

Amendment 16
Recital 24

(24) With the aim of administrative simplification, general formal requirements, such as a certified translation, must not be imposed, except where objectively justified by an overriding reason relating to the public interest, such as the protection of workers. It is also necessary to ensure that an authorisation normally permits access to, or exercise of, a	***deleted***

service activity throughout the national territory, unless a new authorisation for each establishment, for example for each new hypermarket, is objectively justified by an overriding reason relating to the public interest, such as protection of the urban environment.

Justification

The Member States' system of competences must not be interfered with if the principle of subsidiarity is not to be offended against. Besides, it is unrealistic to expect regional authorities to be able to afford translations from the EU's current 20 official languages on their own.

Amendment 17
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 as way that it does not restrict or limit free competition beyond what is necessary to enable the provider to recoup the cost of investment and to make a fair return on the capital invested. Cases where the number of authorisations is limited for reasons other than scarcity of natural resources or technical capacity remain in any case	***deleted***

subject to the other provisions of this Directive relating to authorisation schemes.

Justification

The requirement in this recital of a selection procedure contradicts the Commission's own statements (see 'Frequently asked questions and answers') that the directive is not intended to put pressure on Member States to liberalise as yet unliberalised sectors or abolish monopolies.

Amendment 18
Recital 29

(29) The ***overriding*** reasons relating to the public interest to which reference is made in ***certain*** harmonisation provisions of this Directive ***are those recognised by the Court of Justice in relation to Articles 43 and 49 of the Treaty, notably*** the protection of consumers, recipients of services, workers and the urban environment.	(29) The reasons relating to the public interest to which reference is made in ***the*** harmonisation provisions of this Directive ***correspond to the Community's objectives laid down in the Treaty, namely to promote balanced and sustainable economic and social progress while safeguarding a high level of employment and health protection, social security, environmental protection, equality for women and men and*** the protection of consumers, recipients of services, workers and the urban environment.

Justification

The proposal defines the public interest much too narrowly and so fails to do justice to the Community's objectives, which go beyond the purely economic aspect. The restriction to 'overriding' reasons, in the terms of the extraordinarily restrictive case-law of the European Court, gives expression to an anti-social purpose.

Amendment 19
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***	(31) 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.

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.

Justification

The Court is not a Community legislative body. If the services directive has created criteria in Article 9 for granting authorisations to provide services, the actions to which the recital refers should be measured against them. Thus regulations requiring establishment may be directed against certain tax avoidance structures and accordingly justified..

Amendment 20
Recital 34

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

Justification

The detailed proposals interfere with the Member States' competences by violating the principle of subsidiarity.

Amendment 21
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 apply ***solely*** to the extent that the activities in question are ***opened up*** to competition, so that they do not oblige Member States to abolish existing monopolies, notably those of lotteries, or to privatise certain sectors. ***Barriers should be abolished only in areas that have already been opened up to competition. The Directive in no way requires the liberalisation or privatisation of services that are currently provided by the state or by other public institutions at national, regional or local level.***

Justification

The addition is in the interest of clarity and reflects explanations that the Commission has repeatedly provided, for instance in its document 'Frequently asked questions and answers'.

Amendment 22
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	***deleted***

market. By thus facilitating the free movement of services between Member States, that principle, together with harmonisation and mutual assistance measures, also enables recipients to gain access to a wider choice of high quality services from other Member States. That principle should be complemented by an assistance mechanism enabling the recipient, in particular, to be informed about the laws of the other Member States, and by the harmonisation of rules on the transparency of service activities.

Justification

The country of origin principle amounts in practice to one law for domestic and another for foreign service providers. Foreign service providers are placed either at an advantage or a disadvantage compared with local ones, depending on whether the law in their home country is more lenient or tougher than in the host country. As a result 25 legal systems would have to apply simultaneously on the territory of each EU Member State, which is likely to result in considerable legal uncertainty.

Amendment 23
Recital 38

(38) ***It is also necessary to ensure that supervision of service activities is carried out at source, that is to say, by the competent authorities of the Member State in which the provider is established.*** The competent authorities ***of the country of origin are best placed to ensure the effectiveness and continuity of supervision of the provider and to provide protection for recipients not only in their own Member State but also elsewhere in the Community. In order to establish mutual trust between Member States in the regulation of service activities, it should be clearly laid down that responsibility under Community law for supervision of the activities of providers, regardless of the place where the service is provided, lies with the Member State of origin.*** Determination of judicial jurisdiction does not fall within the scope of this

(38) ***Service activities should be supervised in the place where they are provided, where they may endanger or impair public welfare and where this can be effectively countered. In addition, some cooperation between*** the competent authorities ***in the two Member States will remain necessary.*** 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[1], 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[2].

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[1], 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[2].

Justification

Reasonable supervision of cross-border services by the country of origin's authorities is hard to imagine, as it is likely to have neither sufficient interest nor suitable capacities.

Amendment 24
Recital 40

(40) It is necessary to provide that the rule that the law of the country of origin is to apply may be departed from only in the areas covered by derogations, general or transitional. Those derogations are necessary in order to take into account the level of integration of the internal market or certain Community instruments relating to services pursuant to which a provider is subject to the application of a law other than that of the Member State of origin. Moreover, by way of exception, measures against a given provider may also be adopted in certain individual cases and under certain strict procedural and substantive conditions. In order to ensure the legal certainty which is essential in order to encourage SMEs to provide their services in other Member States, those derogations should be limited to what is strictly necessary. In particular, derogation should be possible only for reasons related to the safety of services, exercise of a health	***deleted***

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.

Justification

If the country of origin principle is dropped there need be no exceptions to its application. Otherwise the number of exceptions would have to be extended considerably.

Amendment 25
Recital 42

(42) ***It is appropriate to provide for derogation from the country of origin principle in the case of*** services covered by a general prohibition in ***the*** Member State to which a provider has moved, if that prohibition is ***objectively*** justified by reasons relating to public policy, public security or public health. ***That derogation should be limited to general prohibitions and should not, for example, cover national schemes which, while not prohibiting an activity in a general manner, reserve the exercise of that activity to one or several specific operators, or which prohibit the exercise of an activity without prior authorisation. The fact that a Member State permits an activity, but reserves it to certain operators, means that the activity is not subject to a general prohibition and is not regarded as inherently contrary to public policy, public security or public health. Consequently, the exclusion of such an activity from the scope of the Directive would not be justified.***	(42) Services ***may be*** covered by a general prohibition in ***a*** Member State to which a provider has moved, if that prohibition is justified by reasons relating to public policy, public security or public health.

Justification

To underline the fact that some services can be prohibited for important reasons, irrespective of the application of the country of origin principle excepted here.

Amendment 26
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

Since the aim is to exclude health services from the directive's scope, there is no need for the stipulation in Recital 51.

Amendment 27
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	***deleted***

hand, that provision does not seek to regulate, nor in any way to prevent, reimbursement, at the rates applicable in the Member State of affiliation, of the costs of health care provided in another Member State, even in the absence of a prior authorisation.

Justification

Since the aim is to exclude health services from the directive's scope, there is no need for the stipulation in Recital 53.

Amendment 28
Recital 54

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

Justification

Since the aim is to exclude health services from the directive's scope, there is no need for the stipulation in Recital 54.

Amendment 29
Recital 55

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

Justification

Since the aim is to exclude health services from the directive's scope, there is no need for the stipulation in Recital 55.

Amendment 30
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	***deleted***

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.

Justification

Since the aim is to exclude health services from the directive's scope, there is no need for the stipulation in Recital 56.

Amendment 31
Recital 57

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

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

Since the aim is to exclude health services from the directive's scope, there is no need for the stipulation in Recital 57.

Amendment 32
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.	(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 ***not permissible to curtail the rights of employees. To*** clarify the division of roles and tasks between the Member State of origin and the ***host*** Member State***: the*** present Directive does not aim to address issues of labour law. The monitoring of compliance with employment and working conditions in accordance with Directive 96/71/EC ***remains the task of the host State***.

Justification

Using the term 'Member State of posting' is misleading, as the Member State concerned is not sending employees somewhere else but taking them on. So to follow the example of Article 43 of the EC Treaty, where the term 'host state' occurs in the German version[1], 'host Member state' should be the term used here (and throughout). From the practical point of view there is a need to ensure that the material provisions of the Postal Workers Directive and monitoring by the host state authorities are not curtailed.

[1] The German term is 'Aufnahmestaat', rendered in the English version of Article 43 as 'country where such establishment is effected'. – Translator's note.

Amendment 33
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 requirements of the Postal Workers Directive must not be curtailed. Posting is acceptable only if the obligation to make a declaration and monitoring options are maintained. Any necessary adjustments or modifications should be made under the Postal Workers Directive itself.

Amendment 34
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

See justification to Amendment 59.

Amendment 35
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 professions, as this contributes to consumer protection, the rule of

law and the integrity and dignity of the professions themselves. The extent to which this applies in a given Member State will depend on a number of factors, including aspects of the country's national culture and tradition.

Amendment 36
Recital 69

(69) The absence of a reaction from the Commission in the context of the mutual evaluation procedure provided for by this Directive has no effect on the compatibility with Community law of national requirements which are included in reports by Member States.	***deleted***

Justification

Since the reporting obligation and evaluation procedure are being dropped Recital 69 is superfluous.

Amendment 37
Recital 71

(71) Since the objectives of the proposed action, namely the elimination of barriers to the freedom of establishment for service providers in the Member States and to the free provision of services between Member States, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve those objectives.	***deleted***

Justification

The abstract and unfounded statement that the Member States are incapable of dealing successfully with the full range of regulation referred to in the proposed directive is further

proof that when the Commission drafted the directive it was not taking the principles of subsidiarity and proportionality very seriously.

Amendment 38
Article 1

This Directive establishes general provisions facilitating exercise of the freedom of establishment for service providers and the free movement of services.	This Directive establishes general provisions facilitating exercise of the freedom of establishment for service providers and the free movement of services. ***It shall not affect activities that, under the laws of the Member State in which they are provided, are continuously or occasionally connected with the exercise of official authority within the meaning of Article 45 of the Treaty.***

Justification

In view of the previous discussion of the proposed services directive it seems sensible and desirable to make an explicit distinction with the sovereign activities whose legal nature is for the Member States to determine.

Amendment 39
Article 2, paragraph 2, point (a)

(a) ***financial services as defined in Article 2(b) of Directive 2002/65/EC;***	(a) ***services of a banking, credit, insurance, occupational or personal pension, investment or payment nature;***

Justification

In the interest of comprehensibility and transparency the wording here should follow the Council Presidency's proposal of 10 January 2005 (2004/2001(COD) – 5161/05.

Amendment 40
Article 2, paragraph 2, point (c)

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

Justification

The proposed wording largely follows the above-mentioned Council Presidency proposal of 10 January 2005. The transport sector is already regulated separately in the EC Treaty. There are various directives for this sector. There are also reasons of safety and public health for making the two sectors mentioned subject to tighter regulation than is proposed in the general services directive.

Amendment 41
Article 2, paragraph 2, point (c) a (new)

(ca) those services of general interest and general economic interest that the responsible Member State or the Community makes subject to specific public service obligations.

Justification

Article 16 of the EC Treaty stresses the importance of services of general economic interest in promoting social and territorial cohesion. Under that article the Member States 'shall take care that such services operate on the basis of principles and conditions which enable them to fulfil their missions'. So failing to exclude services of general economic interest from the provisions of this directive would be interfering with the competence of the Member States.

Amendment 42
Article 2, paragraph 2, point (c) b (new)

(cb) postal services;

Justification

The relevant service sectors are, as with those listed in (a) and (b), already regulated by specific sectoral directives. So where they are not in any case excluded as services of general economic interest, there is no need for regulation in a general services directive.

Amendment 43
Article 2, paragraph 2, point (c) c (new)

(cc) electricity and gas supply;

Justification

See justification to Amendment 42.

Amendment 44
Article 2, paragraph 2, point (c) d (new)

(cd) air traffic control;

Justification

See justification to Amendment 42.

Amendment 45
Article 2, paragraph 2, point (c) e (new)

(ce) broadcasting (television and radio);

Justification

The television sector is regulated by the Television without frontiers Directive, 89/552/EEC, in accordance with Article 95 of the EC Treaty. There is no apparent need for further harmonisation. And there is certainly no need in the case of radio broadcasting. Besides, cultural criteria apply here, for which harmonisation is expressly not provided (see also no. 4).

Amendment 46
Article 2, paragraph 2, point (c) f (new)

(cf) the promotion of cinema;

Justification

Application of the services directive would contradict the statements in the Commission's Cinema Communication of 16 March 2004 – COM(2004) 171 final. Here too the principle that the Community has no competence for harmonisation in the cultural domain should apply.

Amendment 47
Article 2, paragraph 2, point (c) g (new)

(cg) the activity of lawyers and the judicial enforcement of claims;

Justification

The activity of lawyers is already regulated by Directives 77/249/EEC, 89/48/EEC and 98/5/EC. There is no apparent need for further regulation. In view of its close connection with

lawyers' activity it makes sense also totally to exclude the judicial enforcement of claims from the scope of the services directive and not just to temporarily exclude it from the country of origin principle.

Amendment 48
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 does not apply to the field of taxation.

Justification

The list of prohibited requirements in Article 14 and the country of origin principle in Article 16 will in the present wording have considerable consequences for taxation by the Member States. The proposed changes aim to eliminate these consequences as they are incompatible with the competences of the Member States and the principle of unanimity in matters of direct taxation.

Amendment 49
Article 2, paragraph 3 a (new)

	3a. This Directive does not apply to the fields of Education, Vocational Training and Youth, and Culture.

Justification

In these fields national and regional diversity is of vital importance. This is expressed in Articles 149, 150 and 151 of the EC Treaty, which respectively stipulate 'fully respecting the responsibility of the Member States' and 'excluding any harmonisation of the laws and regulations of the Member States'.

Amendment 50
Article 2, paragraph 3 b (new)

	3b. This Directive does not apply to the organisation of games of chance.

Justification

Liberalisation in the field of gambling contradicts the objectives of the Member States' law on public order (endangering public safety and order, especially protection of gaming participants and consumer protection), and in some cases even conflicts with Member States' criminal law provisions on prohibited gambling.

Amendment 51
Article 3, paragraph 2

Application of this Directive shall not ***prevent the application of*** provisions of other Community instruments ***as regards the services governed by those provisions***.	***The provisions*** of this Directive shall not ***take precedence over the*** provisions of other Community instruments***, where these contain special regulations for specific sectors or specific aspects of service provision***.

Justification

In view of the horizontal approach to regulation it would seem to make sense to give precedence to sectoral regulations, in accordance with the principle of speciality – as in the case of the forthcoming directive on services of general interest – or for specific aspects – as in the case of the directive on the recognition of professional qualifications, COM(2002) 119 final of 7 March 2002.

Amendment 52
Article 4, paragraph (1)

(1) 'service' means any self-employed economic activity, as referred to in Article 50 of the Treaty***, consisting in the provision of a service for consideration***;	(1) 'service' means any self-employed economic activity, as referred to in Article 50 of the Treaty***: for the purposes of this Directive, activities in a Member State that are continuously or occasionally connected with the exercise of official authority (Article 45 of the Treaty) shall not qualify as services***;

Justification

It is desirable to make clear at the outset that the realm of sovereign action, explicitly excluded from the regulation of services by Article 45 of the EC Treaty, is not the subject of the directive.

Amendment 53
Article 4, paragraph (4)

(4) 'Member State of origin' means the Member State in whose territory the provider of the service concerned ***is established***;	(4) 'Member State of origin' means the Member State in whose territory the provider of the service concerned ***has the establishment from which he provides the service in another Member State***;

Justification

To clarify the fact that there must be an immediate connection between the service provision and a specific establishment.

Amendment 54
Article 4, paragraph (5)

(5) 'establishment' means the actual pursuit of an ***economic*** activity, as referred to in ***Article 43*** of the Treaty, ***through a fixed establishment of the provider for an indefinite period***;	(5) 'establishment' means the actual ***taking up and*** pursuit of an activity ***as a self-employed person***, as referred to in ***Article 43, second paragraph*** of the Treaty, ***in a Member State for a period of more than six months***;

Justification

The longer-term pursuit of an activity can easily take place 'for a definite period'. Hence this term is not a valid criterion for delimitation. The crucial point is the duration of participation in the Member State's economic life. This also corresponds to the delimitation defined in Article 50, second paragraph of the EC Treaty.

Amendment 55
Article 4, paragraph (7)

(7) 'requirement' means any obligation, prohibition, condition or limit provided for in the laws, regulations or administrative provisions of the Member States or in consequence of ***case-law,*** administrative practice or the rules of professional bodies, or the collective rules of ***professional associations or other*** professional organisations, adopted in the exercise of their legal autonomy;	(7) 'requirement' means any obligation, prohibition, condition or limit provided for in the laws, regulations or administrative provisions of the Member States or in consequence of administrative practice or the rules of professional bodies, or the collective rules of ***public-law*** professional organisations, adopted in the exercise of their legal autonomy;

Justification

Under the proposal, requirements arising directly from the case-law of the Member States' constitutional courts would also be measured against the directive. The Community has no competence for this. The purpose of including civil-society associations and organisations is to include collective agreement regulations in the scope of the directive. This contradicts the principle of safeguarding the freedom to conclude collective agreements.

Amendment 56
Article 4, paragraph (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, professional bodies, and ***public-law*** professional organisations which, in the exercise of their legal autonomy, regulate in a collective manner access to service activities or the exercise thereof;

Justification

See justification on Article 7(2).

Amendment 57
Article 4, paragraph (10)

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

Justification

The definition is not required as health services, and particularly patient care, are not supposed to be covered by the directive.

Amendment 58
Article 4, paragraph (11)

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

Justification

The term that the Commission uses is misleading. It is replaced by the more precise term 'host Member State' which takes its meaning from the law of establishment set out in Article 43, second paragraph of the EC Treaty.

Amendment 59
Article 4, paragraph (12)

(12) 'lawful employment' means the salaried activity of a worker, performed in accordance with the national law of the Member State ***of origin of the provider***;	(12) 'lawful employment' means the salaried activity of a worker, performed in accordance with the national law of the Member State ***whose law is to be applied to the employment contract***;

Justification

Any restriction of the validity of the Postal Workers Directive should be avoided.

Amendment 60
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***	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

reason relating to the public interest.	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 61
Article 9, paragraph 1, point (b)

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

Justification

The phrase requiring certain national regulation schemes to be 'objectively justified by an overriding reason relating to the public interest' will lead to unacceptable restriction of national regulatory competences. This would deny the Member States the right to make law in accordance with such principles as appropriateness, legal culture, the support of society and social consensus.

Amendment 62
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

Scrapping the evaluation procedure means also dropping the report referred to here.

Amendment 63
Article 10, paragraph 2, point (b)

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

Justification

See justification to the amendment to Article 9(1)(b).

Amendment 64
Article 10, paragraph 2, point (c)

(c) proportionate to that public interest objective;	*does not affect English version*

Justification

does not affect English version

Amendment 65
Article 10, paragraph 6

6. Any refusal or other response from the competent authorities, including withdrawal of an authorisation, shall be fully reasoned***, in particular with regard to the provisions of this Article, and*** shall be open to challenge before the courts.	6. Any refusal or other response from the competent authorities, including withdrawal of an authorisation, shall be fully reasoned ***in writing. Any such decision*** shall be open to challenge before the courts. ***The notice of refusal shall point this out in writing, with details of the procedure and time-limits concerned.***

Justification

The reasons for refusal must obviously not refer to the directive, which is not directly applicable to the applicant, but to the national law that will apply. It must be possible to challenge refusals in the courts. So it is also necessary to set out the reasons in writing with details of the challenge procedure.

Amendment 66
Article 10, paragraph 6 a (new)

	6a. It shall be possible to make authorisation subject to conditions,

requirements and time-limits if this is necessary to fulfil the aims set out in Article 9(1).

Justification

If no direct entitlement to unconditional authorisation, without requirements or time-limits, follows from the statutory regulation, subjecting the authorisation to one of the above provisos is a kinder alternative to outright refusal. So that should be feasible as a matter of principle. The conditions in which such provisos are required must be determined by reference to the specific service and individual circumstances. A binding uniform regulation laid down by a Community legal act, as the proposal intends with Article 11(1) and (2) with the limited authorisation period, contradicts the principle of subsidiarity.

Amendment 67
Article 10, paragraph 6 b (new)

6b. Authorisation may be withdrawn if the practical requirements for granting it cease to apply or if it has been granted in conjunction with an admissible reservation of the right to withdraw authorisation. Such a reservation shall be admissible only if it is necessary to fulfil the aims set out in Article 9(1).

Justification

Options to withdraw authorisation are an essential element of the effective control of service activities in accordance with the aims listed in Article 9.

Amendment 68
Article 11, paragraph 1, point (c)

(c) a limited authorisation period can be ***objectively*** justified by ***an overriding reason*** relating to the public interest.	(c) a limited authorisation period can be justified by ***reasons*** relating to the public interest.

Justification

See justification to the amendment to Article 9(1)(b).

Amendment 69
Article 12

1. Where the number of authorisations available for a given activity is limited because of the scarcity of available natural resources or technical capacity, Member States shall apply a selection procedure to potential candidates which provides full guarantees of impartiality and transparency, including, in particular, adequate publicity about the launch of the procedure.	***deleted***
2. In the cases referred to in paragraph 1, authorisation must be granted for an appropriate limited period and may not be open to automatic renewal, nor confer any other advantage on the provider whose authorisation has just expired or on any person having any particular links with that provider.	

Justification

As the Commission's proposal does not expressly exclude services of general economic interest, the regulation proposed here implies a requirement to apply a selection procedure to that field also. Which contradicts the Commission's statement that 'for services of general economic interest which are not open to competition in some Member States – for example, water supply or basic postal services – the Directive does not require Member States to open them up to competition.'

Amendment 70
Article 13, paragraph 3

3. Authorisation procedures and formalities shall provide interested parties with a guarantee that their application~~s~~ will be processed as quickly as possible and***, in any event,*** within a reasonable period ***which is fixed and published in advance***.	3. Authorisation procedures and formalities shall provide interested parties with a guarantee that their application~~s~~ will be processed as quickly as possible and within a reasonable period.

Justification

In so far as the regulations go beyond general procedural principles and determine the details of administrative procedures in the individual Member States, they seriously offend against the principle of subsidiarity and should be scrapped.

Amendment 71
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

In so far as the regulations go beyond general procedural principles and determine the details of administrative procedures in the individual Member States, they seriously offend against the principle of subsidiarity and should be scrapped.

Amendment 72
Article 13, paragraph 5, point (c)

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

Justification

In so far as the regulations go beyond general procedural principles and determine the details of administrative procedures in the individual Member States, they seriously offend against the principle of subsidiarity and should be scrapped.

Amendment 73
Article 14, paragraph 2

(2) a prohibition on having an establishment in more than one Member State or on being entered in the registers or enrolled with professional bodies or associations of more than one Member State;	***deleted***

Justification

For individual services a residential requirement may be desirable irrespective of nationality. Such regulations may be desirable in individual cases for fiscal reasons.

Amendment 74
Article 14, paragraph 3

(3) restrictions on the freedom of a provider to choose between a principal or a secondary establishment, in particular an obligation on the provider to have his principal establishment in their territory, or restrictions on the freedom to choose between establishment in the form of an agency, branch or subsidiary;	***deleted***

Justification

For individual services a residential requirement may be desirable irrespective of nationality. Such regulations may be desirable in individual cases for fiscal reasons.

Amendment 75
Article 14, paragraph 5

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

In the case of many services such tests may certainly be desirable for more important reasons. There are no reasoned, differentiating decision-making criteria in the Commission proposal, as is not surprising given the horizontal approach chosen. A prohibition on setting and actively pursuing economic planning objectives in the public interest is neither justified nor required by the Treaty. The abuse of such activities for other purposes, such as discrimination, is already precluded.

Amendment 76
Article 14, paragraph 7

(7) an obligation to provide or participate in a financial guarantee or to take out insurance from a service-provider or body established in their territory;	***deleted***

Justification

See justification on Article 14(5).

Amendment 77
Article 15, paragraph 2, point (a)

(a) quantitative or territorial restrictions, in particular in the form of limits fixed according to population, or of a minimum geographical distance between service-providers;	***deleted***

Justification

The prohibition on restricting quantitative authorisation limits would also affect doctors' practices or pharmacies, posing the risk of over-supply in affluent residential areas and under-supply in poorer ones. The prohibition on setting minimum or maximum prices also jeopardises the regulation of fees between doctors and social insurance schemes, and fee regulation in the case of lawyers, engineers or architects. Besides, regulation by the Community in this way would also contradict the principle of subsidiarity.

Amendment 78
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

Such obligations may in individual cases be desirable, such as for fiscal reasons. And by prohibiting them it would become impossible to reserve certain areas for the non-profit sector

and the powers of collective associations, especially welfare organisations, would be jeopardised. This would have the effect of enforcing comprehensive commercialisation.

Amendment 79
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

To safeguard certain services it can indeed make sense to require such minimum conditions. In each case this is a matter for the competence of the regional bodies in the individual Member States.

Amendment 80
Article 15, paragraph 2, point (d)

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

Justification

In the case of a number of services the reliability of the service provider or the people acting responsibly for him can be of vital importance.

Amendment 81
Article 15, paragraph 2, point (f)

(f) requirements fixing a minimum number of employees;	***deleted***

Justification

The option to agree on a requirement to maintain a specific number of employees in the event of privatisation of public companies affords employees some protection.

Amendment 82
Article 15, paragraph 2, point (g)

(g) fixed minimum and/or maximum tariffs with which the provider must comply;	***deleted***

Justification

If prohibition of dumping were to become inadmissible, large corporations could in future use dumping prices, financed by across-the-board subsidies, to aggressively conquer new markets, a form of competition that would give many small businesses no chance. This blatantly contradicts the repeated reference to small businesses as potential beneficiaries of the directive. Besides, this provision is incompatible with other EU directives such as the directive on sales promotion in the internal market.

Amendment 83
Article 15, paragraph 2, point (h)

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

Justification

If prohibition of dumping were to become inadmissible, large corporations could in future use dumping prices, financed by across-the-board subsidies, to aggressively conquer new markets, a form of competition that would give many small businesses no chance. This blatantly contradicts the repeated reference to small businesses as potential beneficiaries of the directive. Besides, this provision is incompatible with other EU directives such as the directive on sales promotion in the internal market.

Amendment 84
Article 15, paragraph 2, point (j)

(j) an obligation on the provider to supply other specific services jointly with his service.	***deleted***

Justification

In the event of privatisation this is often the only way of continuing to ensure that certain services are offered at all.

Amendment 85
Article 15, paragraph 3, point (b)

(b) necessity: requirements must be ***objectively*** justified by ***an overriding reason relating to the public interest***;	(b) necessity: requirements must be justified by ***the criteria in Articles 5 and 6***;

Justification

A consequence of the proposed amendments to Article 9(1)(b).

Amendment 86
Article 15, paragraph 4

4. In the mutual evaluation report provided for in Article 41, Member States shall specify the following:	***deleted***
(a) the requirements that they intend to maintain and the reasons why they consider that those requirements comply with the conditions set out in paragraph 3;	
(b) the requirements which have been abolished or made less stringent.	

Justification

The mutual evaluation procedure, with its comprehensive nature, has no legal basis in the EC Treaty and contradicts the subsidiarity principle. This is still clearer in the attempt to make Member States effectively beholden to the Commission by prior scrutiny of standards.

Amendment 87
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	***deleted***

down in paragraph 3 and the need for it arises from new circumstances.

Justification

See justification to paragraph 4.

Amendment 88
Article 15, paragraph 6

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

Justification

See justification to paragraph 4.

Amendment 89
Chapter III, Section I, Article 15 a (new)

	Article 15a
	Establishment
	1. Service providers from one Member State may offer and provide services in another Member State without establishing themselves there.
	2. However, it shall constitute

establishment if, for a period of more than six months, business premises that they or others own are used continuously or intermittently.

3. The Member States may by statutory regulation make it an obligation to maintain an establishment on their territory if a service provider continuously or intermittently subcontracts the workforce to third parties established on their territory.

Justification

It has recently emerged from the meat-processing industry in Germany that longer-term partial works are being allocated under service contracts and carried on in the factory premises of the contractor without giving grounds for the creation of a separate establishment. There is reason to fear that 'constructive outsourcing' will occur in other industries with the aim of circumventing social standards and tax requirements. To counteract abuses the option needs explicitly to be available to regulate for requiring establishment by law in the domain of subcontracted employment if this extends over a substantial period.

Amendment 90
Article 16, paragraph 1

1. ***Member States shall ensure that providers are subject only to the national provisions of their Member State of origin which fall within the coordinated field.***	1. ***In so far as is not otherwise provided for as a result of other Community legal acts, international private law or an effective agreement between the parties to a service contract, service providers shall be subject to the laws of the Member State in which they provide the service. With regard to those areas in which Community law prescribes extensive harmonisation, service providers shall be subject to the laws of their country of origin.***
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.	

Justification

The country of origin principle rests on the wholesale application to services of Court of Justice case-law on the free movement of goods. In the case of goods, these are actually manufactured in the country of origin, and so the manufacturing activities should be regulated there. In the case of services, the action of providing the service occupies a far more prominent position. So it makes no sense not to take into account the legal system of the Member State in which the services are provided.

Amendment 91
Article 16, paragraph 2

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

Justification

See justification to Article 16(1).

Amendment 92
Article 16, paragraph 3, point (a)

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

Justification

If a firm opens an establishment in another Member p business in another Member State the latter can require its legislative provisions on establishment to be complied with. The current problems with delimitation should be settled under the new Article 16 here proposed. There is no need for more extensive prohibition.

Amendment 93
Article 16, paragraph 3, point (b)

(b) an obligation on the provider ***to make a declaration or notification to, or*** to obtain an authorisation from, their competent authorities, including entry in a register or registration with a professional body or association in their territory;	(b) an obligation on the provider to obtain an authorisation from, their competent authorities, including entry in a register or registration with a professional body or association in their territory;

Justification

A Member State cannot be denied the option of using a notification requirement to find out who is carrying on an economic activity on its territory. There is no legal basis in the EC Treaty for any prohibition. On the other hand a requirement to obtain authorisation and other formalities can be dispensed with after clarification in the new proposed Article 16.

Amendment 94
Article 16, paragraph 3, point (c)

(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;	(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 ***if the service activity occurs once only and lasts only a short time***;

Justification

Without a contact address there is no opportunity to establish contact between the authorities and the service provider. This could be a considerable disadvantage to the latter. But in the case of a one-off and brief activity the option is unnecessary.

Amendment 95
Article 16, paragraph 3, point (e)

(e) an obligation on the provider to comply with requirements, relating to the exercise of a service activity, applicable in their territory;	***deleted***

Justification

This provision is unnecessary following deletion of the country of origin principle.

Amendment 96
Article 16, paragraph 3, point (f)

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

Justification

Following amendment of Article 16 these arrangements are no longer relevant.

Amendment 97
Article 16, paragraph 3, point (g)

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

Justification

Following amendment of Article 16 these arrangements are no longer relevant.

Amendment 98
Article 16, paragraph 3, point (h)

(h) requirements which affect the use of equipment which is an integral part of the service provided;	***deleted***

Justification

Following amendment of Article 16 these arrangements are no longer relevant.

Amendment 99
Article 16, paragraph 3, point (i)

(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).	***deleted***

Justification

Following amendment of Article 16 these arrangements are no longer relevant.

Amendment 100
Article 19, paragraph 1, first sentence

1. ***By way of derogation from*** Article 16,	1. ***Notwithstanding*** Article 16 a Member

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:	State may, in respect of a provider established in another Member State, take measures relating to any of the following:

Justification

Follows from amendment of Article 16.

Amendment 101
Article 19, paragraph 2

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

Justification

Follows from deletion of the country of origin principle.

Amendment 102
Article 19, paragraph 3

3. Paragraphs 1 and 2 shall be without prejudice to provisions, laid down in Community instruments, which guarantee	***deleted***

the freedom to provide services or which allow derogations therefrom.

Justification

Follows from deletion of the country of origin principle.

Amendment 103
Article 20, point (b)

(b) limits on tax deductibility or on the grant of financial assistance by reason of the fact that the provider is established in another Member State or by reason of the location of the place at which the service is provided;	***deleted***

Justification

In so far as the provision applies to taxation it should be deleted, as under Article 2(3) the directive does not cover fiscal matters. If regulation should prove desirable in this field it would need to be dealt with in a fiscal context. As far as the granting of financial assistance is concerned, this would cast doubt on currently admissible subsidies to promote regional infrastructure. That is unacceptable.

Amendment 104
Article 23

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.	***deleted***
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

Under Article 2(2)(ca) (new), the scope of the directive does not [include] services of general interest and services of general economic interest, so does not apply to [hospital or health care][text missing – Translator's note].

Amendment 105
Article 24, paragraph 1

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

Justification

The services directive must not lead to any undermining of the provisions of the Postal Workers Directive. That directive's purpose is to assist the application of requirements in the host country in important areas and safeguard monitoring by the country's authorities.

Irrespective of this, any extra obligations that the services directive imposes in addition to the Postal Workers Directive may apply cumulatively.

Amendment 106
Article 24, paragraph 2

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:	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 ***host*** Member State, within two years of the end of the posting:

Justification

On the distinction in terminology see amendment to Article 4(11).

Amendment 107
Article 29, paragraph 1

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

Justification

A number of Member States have long considered it necessary to regulate commercial communications by certain professions, as this contributes to consumer protection, the rule of law and the integrity and dignity of the professions themselves. There are considerable differences, arising from national cultures and traditions.

Amendment 108
Article 36, paragraph 1

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***.	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 ***in accordance with paragraph 2 be responsible for*** the supervision of the provider***, in which the authorities of the Member State of origin shall participate***.

Justification

In so far as the national provisions of the Member State comply with the Treaty, it makes sense to allow a Member State to set conditions for activities that are carried out on its territory. The authorities of another Member State cannot reasonably be expected to carry out effective supervision of service providers if the service in question is provided in another Member State.

Amendment 109
Article 36, paragraph 2, first subparagraph

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

Justification

See justification for Article 36(1).

Amendment 110
Article 36, paragraph 2, point (c)

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

Justification

See justification to amendment to Article 9(1)(b).

Amendment 111
Article 41

1. By the [date of transposition] at the latest, Member States shall present a report to the Commission, containing the information specified in the following provisions:	***deleted***
(a) Article 9(2), on authorisation systems;	
(b) Article 15(4), on requirements to be evaluated;	
(c) Article 30(4), on multidisciplinary activities.	
2. The Commission shall forward the reports provided for in paragraph 1 to the	

Member States, which shall submit their observations on each of the reports within six months. Within the same period, the Commission shall consult interested parties on those reports.

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

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

Justification

The proposed evaluation not only interferes with the competences of the Member States and offends against the principle of subsidiarity, it will also require an exceptionally cumbersome bureaucratic procedure. It is also clear from the proposal that informing and involving the European Parliament, and the parliaments of the Member States, at an early stage in not contemplated at all.