

EUROPEAN PARLIAMENT

2004



2009

Committee on the Internal Market and Consumer Protection

3.6.2005

PE 355.744v04-00

AMENDMENTS 1-73

Draft report

(PE 355744v04-00)

Evelyne Gebhardt

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

Proposal for a directive (COM2004/0001 – C6-0069/2004 – 2004/0001(COD))

Text proposed by the Commission

Amendments by Parliament

Amendment by Heide Rühle and Pierre Jonckheer

Amendment 1 Legal basis

Having regard to the Treaty establishing the European Community, and in particular the first and third sentence of Article 47(2) and Articles 55, 71 and 80(2) thereof,

Having regard to the Treaty establishing the European Community, and in particular the ***last paragraph of Article 50, Article 153 §2***, first and third sentence of Article 47(2) and Article 55 thereof,

Or. en

Justification

The last paragraph of Article 50 provides that the person providing a service abroad must be subject to the same conditions as are imposed by the State of destination. This provision clearly contradicts the Commission's proposals regarding the country of origin principle in this Directive. Article 153 §2 provides that consumer protection requirements shall be taken into account. Articles 71 and 80 concern transport policy and therefore are not relevant.

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Amendment 2

Recital 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

This Directive establishes a general legal framework which benefits a **limited number** of **commercial** 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

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.

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progressive and coordinated modernisation of national regulatory systems for service activities which is vital in order to achieve a genuine internal market for services by 2010. Provision should be made for a balanced mix of measures involving targeted harmonisation, administrative cooperation, and encouragement of the development of 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.

Or. en

Justification

The scope of this Directive should be limited to purely commercial services. Furthermore, until an upwards harmonisation is achieved, it is not reasonable to apply the "country of origin principle" to the free movement of services. Furthermore the application of this principle in this context is illegal, following the last paragraph of Article 50 EC which provides that "the person providing a service may, in order to do so, temporarily pursue his activity in the State where the service is provided, under the same conditions as are imposed by that State on its own nationals". Therefore the country of destination principle is the only legal principle in this context

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Amendment 3
Legislative resolution

HAVE **ADOPTED** THIS DIRECTIVE:

HAVE **REJECTED** THIS DIRECTIVE:

Or. en

Justification

The original Commission's proposal is in complete contradiction with the sort of Europe that people want, with high protection of labour standards and other social and environmental norms all over Europe (i.e. in "new" Member States as well as in the "old" ones).

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Amendment 4
Article 1

Subject-matter

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

Subject-matter

This Directive establishes general provisions ***aiming at harmonizing the conditions for:***

- facilitating exercise of the freedom of establishment for ***a limited number of commercial*** service providers and the free movement of services

- ***promoting the interests of the consumers of services and ensuring a high level of consumer protection in the services sector.***

Or. en

Justification

Facilitating exercise of freedom of establishment should not be the only objective of this Directive. It should also pursue the objective of protecting the consumers. Besides, the scope of this Directive should be limited to purely commercial services and exclude any type of service which involves a mission of general interest.

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Amendment 5

Article 1, paragraph 1a(new)

##

This Directive does not apply to nor indirectly affect services of general economic interest, as defined by the Member States. The provisions of this directive shall in all cases preserve the role of services of general economic interest, in particular in promoting social and territorial cohesion, and recognize the rights of employees working in the services sector.

This Directive does not deal with the abolition of monopolies providing services

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nor with aids granted by Member States.

This Directive does not deal with the liberalisation of services of general economic interest reserved to public or private entities nor with the privatisation of public entities providing services.

This Directive does not affect the freedom of the Member States to define what they consider to be services of general economic interest, how those services should be organised and financed and what specific obligations they should be subject to. This directive does not deal with the follow-up to the Commission White Paper on services of general interest

This Directive does not deal with the funding of services of general economic interest and does not apply to systems of aids granted by Member States, in particular in the health and social fields or in the audiovisual and cultural sector.

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

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

Or. en

Justification

It is essential to preserve completely the missions of general interest, including the legal status of providers (public or private), their funding, their obligations and their organisation. Services of general (economic) interest should be completely excluded and not affected in any way by this Directive. It is also necessary to respect the competences of Member States in the fields of cultural and media policy. This Directive should not be seen as a follow-up of the White Book on services of general interest. Furthermore, it should not affect the GATS negotiations

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Amendment 6
Article 2, paragraph 1

Scope

1. This Directive shall apply to services supplied by providers established in a Member State.

Scope

1. *Within the framework set out in Article 1*, this Directive shall *exclusively* apply to *the list of commercial services mentioned in Annex 1 and* supplied by providers established in a Member State.

Or. en

Justification

In order to ensure legal certainty concerning the scope of this Directive, it is preferable to use a positive list of sectors included in the scope. This approach is perfectly applicable since it is already being applied in the framework of the GATS negotiations

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Amendment 7

Article 2, paragraph 1a (new)

##

1a. Any modification of the list of services mentioned in Annex 1 shall necessitate a decision by the Council and the approval of the Parliament.

Or. en

Justification

Because of the changing nature of the services sector, it is necessary to preserve some flexibility in allowing modifications in the list of sectors included. However any modification should require the Parliament's formal approval

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Amendment by Heide Rühle and Pierre Jonckheer

Amendment 8
Article 2, paragraph 2

2. This Directive shall not apply to the following activities:

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

(b) electronic communications services and networks, and associated facilities and services, with respect to matters covered by Directives 2002/19/EC65, 2002/20/EC66, 2002/21/EC67, 2002/22/EC68 and 2002/58/EC69 of the European Parliament and of the Council;

(c) transport services *to the extent that they*

2. This Directive shall not apply to the following activities:

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

are governed by other Community instruments the legal basis of which is Article 71 or Article 80(2) of the Treaty.

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

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

(c) transport services;

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

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

(cc) gas transmission, distribution, supply and storage services within the meaning of Article 2 of Directive 2003/55/EC of the European Parliament and of the Council³;

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

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

(cf) services provided by a temporary employment agency;

(cg) services provided by security agencies;

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

Or. en

Justification

This Directive should not affect the follow-up to the White Paper on services of general interest. Furthermore, transport services and network services (post, electricity, gas), water distribution, supply and waste water management services, professions and activities which are connected with the exercise of official authority, services provided by a temporary employment agency, services provided by security agencies and audiovisual services should be totally excluded.

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Amendment by Heide Rühle and Pierre Jonckheer

Amendment 9
Article 2, paragraph 3a (new)

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

Or. en

Justification

In order to guarantee that the removal of barriers to the development of services between

Member States does not affect labour law and social security law issues, the field of labour law and social security law as such should be excluded from the scope of this Directive.

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Amendment by Heide Rühle and Pierre Jonckheer

Amendment 10
Article 2a (new)

Article 2a

Protection of labour law-related fundamental rights

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

Justification

This Directive deals with the provision of services and not with employees providing these services as such. It is important to state that this Directive should not be contrary to labour law related to fundamental rights, such as the right to freedom of association, freedom of negotiation, to take industrial action and to conclude collective agreements. Fundamental rights should be equally safeguarded in the internal market of goods and services.

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Amendment by Heide Rühle and Pierre Jonckheer

Amendment 11

Article 3

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

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

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

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

This Directive shall not affect the rules on conflict of laws, especially as contained in the 1980 Rome Convention on the law applicable to contractual obligations, and

Regulation (EC) No ... of the European Parliament and of the Council on the law applicable to non-contractual obligations

This Directive is consistent with and does not affect Directive EEC/89/552 ("Television Without Frontiers" Directive), including its definition of when a broadcaster is deemed to be established in a Member State, which continues to fully apply. This Directive also does not pre-empt the possible future revision of the "Television Without Frontiers" Directive. Furthermore, it does not affect the specificity of audiovisual services in international negotiations or trade in services.

This Directive is consistent with and does not affect Directive ..././EC on the recognition of professional qualifications.

This Directive is consistent with and does not affect Directive 1999/70/EC on fixed-term contract workers.

This Directive is consistent with and does not affect Directive 1997/81/EC on part-time workers.

This Directive is consistent with and does not affect Directive 1996/71/EC on posting of workers.

Or. en

Justification

Member States have to apply this Directive in compliance with all EC Treaty rules (not just the ones on establishment and free movement of services). The rules included in the specific pending Community instruments (Rome I and II) are more appropriate to safeguard a balance between interests involved. Furthermore, this Directive shall not affect Community instruments governing specific services ("Television Without Frontier" and "Recognition of professional qualifications").

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Amendments by Parliament

Amendment by Heide Rühle and Pierre Jonckheer

Amendment 12
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 *those* self-employed economic *activities mentioned in Annex 1 of this Directive and* as referred to in Article 50 of the Treaty, consisting in the provision of a service for consideration;

Or. en

Justification

Amendment consistent with the provisions proposed for Article 2.

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Text proposed by the Commission

Amendments by Parliament

Amendment by Heide Rühle and Pierre Jonckheer

Amendment 13

Article 4, paragraph 1a (new)

##

(1a) 'commercial service' means an activity consisting in the sale of a service for purely economic and financial purposes and involving no mission of general interest;

Or. en

Justification

This amendment is necessary to specify which type of services are included in the scope of this Directive

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Text proposed by the Commission

Amendments by Parliament

Amendment by Heide Rühle and Pierre Jonckheer

Amendment 14

Article 4, paragraph 1b (new)

##

(1b) ‘audiovisual services’ means services related to the production, distribution and communication to the public of audiovisual content, i.e. moving images and/or sound, irrespective of the technology used;

Or. en

Justification

This amendment is necessary to specify the definition of audiovisual services which should be excluded from the scope of this Directive

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Amendments by Parliament

Amendment by Heide Rühle and Pierre Jonckheer

Amendment 15
Article 4, paragraph 2

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

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

Or. en

Justification

This Directive only concerns service providers and recipients that are established in a

Member State of the European Union

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Amendment by Heide Rühle and Pierre Jonckheer

Amendment 16
Article 4, paragraph 5

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

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

Or. en

Justification

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

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Amendment by Heide Rühle and Pierre Jonckheer

Amendment 17

Article 4, paragraph 13a (new)

##

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

Or. en

Justification

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

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Amendment by Heide Rühle and Pierre Jonckheer

Amendment 18

Article 4, paragraph 13b (new)

##

13b. "overriding reasons relating to the public interest": the notion of overriding reasons relating to the public interest to which reference is made in this Directive covers inter alia the following grounds: the protection of public policy, public security, public safety, public health, the protection of consumers, recipients of services, workers and the environment including the urban environment, the health of animals, intellectual property, the conservation of the national historic and artistic heritage or social policy objectives and cultural policy objectives.

Justification

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

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Amendment by Heide Rühle and Pierre Jonckheer

Amendment 19
Article 5, Title

Simplification of procedures

Harmonisation of procedures

Or. en

Justification

The objectives of this Directive regarding freedom of establishment should go beyond the notion of "simplification", which reduces the ambitions of the Union to a simple "free trade area" with competition between the national rules rather than between the economic actors. The true objective of the Union should be to achieve upwards harmonisation of the rules in order to build up a fair internal market.

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Text proposed by the Commission

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Amendment by Heide Rühle and Pierre Jonckheer

Amendment 20
Article 5, Paragraph 1

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

1. *The Commission and the Member States shall establish, where feasible, harmonised European forms concerning certificates, attestations or other documents required for the establishment of a service provider.*

Or. en

##

Justification

The objectives of this Directive regarding freedom of establishment should go beyond the

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notion of "simplification", which reduces the ambitions of the Union to a simple "free trade area" with competition between the national rules rather than between the economic actors. The true objective of the Union should be to achieve upwards harmonisation of the rules in order to build up a fair internal market.

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Amendment 21

Article 5, Paragraph 1a (new)

##

1a. Where the establishment of European harmonised forms is not feasible, Member States shall be authorised to require a provider to supply a certificate, attestation or any other document proving that a requirement has been satisfied.

Or. en

Justification

A transitional derogation should be authorised in cases where the establishment of harmonised European forms is not feasible

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Amendment 22

Article 5, Paragraph 1b (new)

##

1b. In the cases where paragraph 1a applies, the Commission and the Member States will establish a coordination process in order to move closer the national provisions ruling the right of establishment. At the latest 4 years after the entry into force of this Directive, the harmonised European forms referred to in paragraph 1 shall apply to all services covered by this Directive.

Or. en

Justification

Transitional derogations should not last longer than 4 years and a coordination process should be immediately set up in order to harmonise provisions regarding the freedom of establishment.

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Amendment by Heide Rühle and Pierre Jonckheer

Amendment 23
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

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

instruments or where such a requirement is objectively justified by an overriding reason relating to the public interest.

instruments or where such a requirement is justified by an overriding reason relating to the public interest.

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

Or. en

Justification

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

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Committee on the Internal Market and Consumer Protection

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Evelyne Gebhardt

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

Proposal for a directive (COM2004/0001 – C6-0069/2004 – 2004/0001(COD))

Text proposed by the Commission

Amendments by Parliament

Amendment by Heide Rühle and Pierre Jonckheer

Amendment 24
Article 5, Paragraph 3

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

3. Paragraph 2 shall not apply to the documents referred to in **Article 50** of Directive.../EC of the European Parliament and of the Council *on the recognition of professional qualifications*, in Article 45(3) of **Directive 2004/18/EC** of the European Parliament and of the Council *on the coordination of procedures for the award of public works contracts, supply contracts and public service contracts¹*, in Article 3(2) of **Directive 98/5/EC of the European Parliament and of the Council to facilitate practice of the profession of lawyer on a**

permanent basis in a Member State other than that in which the qualification was obtained², in Directive 2003/58/EC of the European Parliament and of the Council amending Council Directive 68/151/EEC, as regards disclosure requirements in respect of certain types of companies³ or in Council Directive 89/666/EEC concerning disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another State⁴.

¹*OJ L 134, 30.4.2004, p. 114*

²*OJ L 77, 14.3.1998, p. 36*

³*OJ L 221, 4.9.2003, p. 13.*

⁴*OJ L 395, 30.12.1986, p. 36*

Or. en

Justification

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

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Evelyne Gebhardt

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

Proposal for a directive (COM2004/0001 – C6-0069/2004 – 2004/0001(COD))

Text proposed by the Commission

Amendments by Parliament

Amendment by Heide Rühle and Pierre Jonckheer

Amendment 25

Article 6

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

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

The Commission and the Member States shall ensure that, *from the entry into force of this Directive*, it is possible for a service provider, *in the cases where article 5 § 1 applies*, to complete the following procedures and formalities at a contact point known as *the "European* single point of contact":

(a) all procedures and formalities needed for access to his service activities, in particular, all necessary declarations, notifications or applications for authorisation from the

or a database, or for registration with a professional body or association;

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

competent authorities, including applications for inclusion in a register, a roll or a database, or for registration with a professional body or association;

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

Or. en

Justification

This amendment is consistent with the provisions proposed for Article 5. If European harmonised forms are established, it is logical to make them available from a European single point of contact

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Evelyne Gebhardt

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

Proposal for a directive (COM2004/0001 – C6-0069/2004 – 2004/0001(COD))

Text proposed by the Commission

Amendments by Parliament

Amendment by Heide Rühle and Pierre Jonckheer

Amendment 26
Article 6b (new)

##

6b. In the cases where article 5, §1a applies, Member States shall ensure that it is possible for a service provider to complete the procedures and formalities mentioned in Article 6 at a national "single point of contact"

Or. en

Justification

During the transitional derogation, in cases where the establishment of harmonised European forms is not feasible, documents and formalities should be available at national single points of contact

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Committee on the Internal Market and Consumer Protection

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Evelyne Gebhardt

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

Proposal for a directive (COM2004/0001 – C6-0069/2004 – 2004/0001(COD))

Text proposed by the Commission

Amendments by Parliament

Amendment by Heide Rühle and Pierre Jonckheer

Amendment 27
Article 6c (new)

##

6c. The creation of single points of contact shall not interfere with the allocation of functions or competences among competent authorities within each national system nor the exercise of official authority.

Or. en

Justification

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

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Evelyne Gebhardt

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

Proposal for a directive (COM2004/0001 – C6-0069/2004 – 2004/0001(COD))

Text proposed by the Commission

Amendments by Parliament

Amendment by Heide Rühle and Pierre Jonckheer

Amendment 28
Article 7, paragraph 1

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

(a) requirements applicable to providers established in their territory, in particular those requirements concerning the procedures and formalities to be completed in order to access and to exercise service activities;

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

(a) requirements applicable to providers established in their territory, in particular those requirements concerning the procedures and formalities to be completed in order to access and to exercise service activities;

- (b) the contact details of the competent authorities enabling the latter to be contacted directly, including the particulars of those authorities responsible for matters concerning the exercise of service activities;
- (c) the means of and conditions for accessing public registers and databases on providers and services;
- (d) the means of redress available in the event of dispute between the competent authorities and the provider or the recipient, or between a provider and a recipient or between providers;
- (e) the contact details of the associations or organisations, other than the competent authorities, from which providers or recipients may obtain practical assistance.

- (b) the contact details of the competent authorities enabling the latter to be contacted directly, including the particulars of those authorities responsible for matters concerning the exercise of service activities;
- (c) the means of and conditions for accessing public registers and databases on providers and services;
- (d) the means of redress available in the event of dispute between the competent authorities and the provider or the recipient, or between a provider and a recipient or between providers;
- (e) the contact details of the associations or organisations, other than the competent authorities, from which providers or recipients may obtain practical assistance.

Or. en

Justification

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

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Evelyne Gebhardt

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

Proposal for a directive (COM2004/0001 – C6-0069/2004 – 2004/0001(COD))

Text proposed by the Commission

Amendments by Parliament

Amendment by Heide Rühle and Pierre Jonckheer

Amendment 29
Article 7, paragraph 2

2. Member States shall ensure that it is possible for providers and recipients to receive, at their request, assistance from the competent authorities, consisting in information on the way in which requirements referred to in point (a) of paragraph 1 are generally interpreted and applied.

2. ***The Commission and the*** Member States shall ensure that it is possible for providers and recipients to receive, at their request, assistance from the competent authorities, consisting in information on the way in which requirements referred to in point (a) of paragraph 1 are generally interpreted and applied.

Or. en

Justification

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

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Evelyne Gebhardt

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

Proposal for a directive (COM2004/0001 – C6-0069/2004 – 2004/0001(COD))

Text proposed by the Commission

Amendments by Parliament

Amendment by Heide Rühle and Pierre Jonckheer

Amendment 30
Article 7, paragraph 3

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

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

Or. en

Justification

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

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Evelyne Gebhardt

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

Proposal for a directive (COM2004/0001 – C6-0069/2004 – 2004/0001(COD))

Text proposed by the Commission

Amendments by Parliament

Amendment by Heide Rühle and Pierre Jonckheer

Amendment 31
Article 7, paragraph 4

4. Member States shall ensure that the single points of contact and the competent authorities respond as quickly as possible to any request for information or assistance as referred to in paragraphs 1 and 2 and, in cases where the request is faulty or unfounded, inform the applicant accordingly without delay.

4. ***The Commission and the*** Member States shall ensure that the single points of contact and the competent authorities respond as quickly as possible to any request for information or assistance as referred to in paragraphs 1 and 2 and, in cases where the request is faulty or unfounded, inform the applicant accordingly without delay.

Or. en

Justification

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

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Committee on the Internal Market and Consumer Protection

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Evelyne Gebhardt

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

Proposal for a directive (COM2004/0001 – C6-0069/2004 – 2004/0001(COD))

Text proposed by the Commission

Amendments by Parliament

Amendment by Heide Rühle and Pierre Jonckheer

Amendment 32

Article 7, paragraph 6a (new)

##

6a. The obligation for the Commission and the Member States to ensure that relevant information is easily accessible to providers and recipients can be fulfilled by rendering accessible this information through an Internet web site. The obligation for competent authorities to assist providers and recipients does not require these authorities to provide legal advice in individual cases but concerns only general information on the way in which requirements are usually interpreted or applied.

Justification

Access to information canl be facilitated by the establishment of an Internet website

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Committee on the Internal Market and Consumer Protection

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Evelyne Gebhardt

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

Proposal for a directive (COM2004/0001 – C6-0069/2004 – 2004/0001(COD))

Text proposed by the Commission

Amendments by Parliament

Amendment by Heide Rühle and Pierre Jonckheer

Amendment 33
Article 8, paragraph 1

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

1. ***The Commission and the*** Member States shall ensure that, by ***[three years from the entry into force of the Directive]***, all procedures and formalities relating to access to a service activity and to the exercise thereof may be easily completed, at a distance and by electronic means, at the relevant single point of contact and with the relevant competent authorities.

Or. en

Justification

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

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Evelyne Gebhardt

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

Proposal for a directive (COM2004/0001 – C6-0069/2004 – 2004/0001(COD))

Text proposed by the Commission

Amendments by Parliament

Amendment by Heide Rühle and Pierre Jonckheer

Amendment 34 Article 9, paragraph 1

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

- (a) the authorisation scheme does not discriminate against the provider in question;
- (b) the need for an authorisation scheme is objectively justified by an overriding reason relating to the public interest;

1. Member States *may* make access to a service activity or the exercise thereof subject to an authorisation scheme *if* the following conditions are satisfied:

- (a) *non-discrimination*: the authorisation scheme does not discriminate *on grounds of nationality or, with regard to companies, according to the location of the registered office*, against the provider in question;
- (b) *necessity*: the need for an authorisation scheme is objectively justified by an overriding reason relating to the public

(c) *the objective pursued cannot be attained by means of a less restrictive measure, in particular because an a posteriori inspection would take place too late to be genuinely effective.*

interest;

(c) *proportionality: the authorisation scheme must be suitable for securing the attainment of the objective pursued; it must not go beyond what is necessary to attain that objective; and it must not be possible to replace it with a less restrictive measure which attains the same result.*

Or. en

Justification

Criteria should be the same in Article 9 and in Article 15

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

Proposal for a directive (COM2004/0001 – C6-0069/2004 – 2004/0001(COD))

Text proposed by the Commission

Amendments by Parliament

Amendment by Heide Rühle and Pierre Jonckheer

Amendment 35

Article 9, paragraph 3a (new)

##

3a. The Commission and the Member States shall establish a coordination process in order to move closer the national provisions relating to authorisation schemes. At the latest 4 years after the entry into force of this Directive, harmonised authorisation schemes shall be established for all services covered by this Directive.

Or. en

Justification

The objectives of this Directive regarding freedom of establishment should not reduce the ambitions of the Union to a simple "free trade area" with competition between the national rules rather than between the economic actors. The true objective of the Union should be to achieve upwards harmonisation of the rules in order to build up a fair internal market.

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Evelyne Gebhardt

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

Proposal for a directive (COM2004/0001 – C6-0069/2004 – 2004/0001(COD))

Text proposed by the Commission

Amendments by Parliament

Amendment by Heide Rühle and Pierre Jonckheer

Amendment 36

Article 10, paragraph 2a (new)

##

2 a. This article shall not affect the distribution of powers at regional or local level for the granting of authorisations within each Member State.

Or. en

Justification

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

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Evelyne Gebhardt

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

Proposal for a directive (COM2004/0001 – C6-0069/2004 – 2004/0001(COD))

Text proposed by the Commission

Amendments by Parliament

Amendment by Heide Rühle and Pierre Jonckheer

Amendment 37

Article 10, paragraph 4

4. The authorisation shall enable the provider to have access to the service activity, or to exercise that activity, throughout the national territory, including by setting up agencies, subsidiaries, branches or offices, except where an authorisation for each individual establishment is objectively justified by an overriding reason relating to the public interest.

4. The authorisation shall enable the provider to have access to the service activity, or to exercise that activity, throughout the national territory, including by setting up agencies, subsidiaries, branches or offices, except where an authorisation for each individual establishment ***or an authorisation that is restricted to a specific part of the national territory*** is objectively justified by an overriding reason relating to the public interest.

Justification

This Directive should allow authorisations restricted to a specific part of the territory if this is justified by an overriding reason relating to the public interest

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Evelyne Gebhardt

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

Proposal for a directive (COM2004/0001 – C6-0069/2004 – 2004/0001(COD))

Text proposed by the Commission

Amendments by Parliament

Amendment by Heide Rühle and Pierre Jonckheer

Amendment 38

Article 11, paragraph 3

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

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

(a) the creation of subsidiaries whose activities fall within the scope of the authorisation system

(b) *changes in his situation which result* in the conditions for authorisation no longer being met, or which *affect* the accuracy of information available to a recipient.

Justification

Amendment of clarification

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

Proposal for a directive (COM2004/0001 – C6-0069/2004 – 2004/0001(COD))

Text proposed by the Commission

Amendments by Parliament

Amendment by Heide Rühle and Pierre Jonckheer

Amendment 39

Article 11, paragraph 3a (new)

##

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

Or. en

Justification

The possibility to revoke an authorisation should be explicitly included in this Directive

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Evelyne Gebhardt

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

Proposal for a directive (COM2004/0001 – C6-0069/2004 – 2004/0001(COD))

Text proposed by the Commission

Amendments by Parliament

Amendment by Heide Rühle and Pierre Jonckheer

Amendment 40
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

Or. en

Justification

The principle of the tacit authorisation has to be deleted because it could create problems of proof and legal uncertainty and it is not necessarily beneficial to the consumer.

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Evelyne Gebhardt

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

Proposal for a directive (COM2004/0001 – C6-0069/2004 – 2004/0001(COD))

Text proposed by the Commission

Amendments by Parliament

Amendment by Heide Rühle and Pierre Jonckheer

Amendment 41

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

Or. en

Justification

The principle of the tacit authorisation has to be deleted because it could create problems of proof and legal uncertainty and it is not necessarily beneficial to the consumer.

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Evelyne Gebhardt

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

Proposal for a directive (COM2004/0001 – C6-0069/2004 – 2004/0001(COD))

Text proposed by the Commission

Amendments by Parliament

Amendment by Heide Rühle and Pierre Jonckheer

Amendment 42
Article 14, introduction

Member States shall not make access to or the exercise of a service activity in their territory subject to compliance with any of the following:

Member States shall not make access to or the exercise of a service activity in their territory subject to compliance with any of the following ***requirements, unless these requirements are objectively justified by an overriding reason relating to the public interest:***

Or. en

Justification

The prohibition included in Article 14 should not affect the possibility for Member States to impose requirements that are justified by an overriding reason relating to the public interest

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Evelyne Gebhardt

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

Proposal for a directive (COM2004/0001 – C6-0069/2004 – 2004/0001(COD))

Text proposed by the Commission

Amendments by Parliament

Amendment by Heide Rühle and Pierre Jonckheer

Amendment 43

Article 14, paragraph 1, point (b)

(b) a requirement that the provider, his staff, persons holding the share capital or members of the provider's management or supervisory bodies be resident within the territory.

Deleted

Or. en

Justification

Effective supervision of the provider's activities would be made impossible if residence

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requirements were prohibited

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Evelyne Gebhardt

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

Proposal for a directive (COM2004/0001 – C6-0069/2004 – 2004/0001(COD))

Text proposed by the Commission

Amendments by Parliament

Amendment by Heide Rühle and Pierre Jonckheer

Amendment 44

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

Or. en

Justification

Economic tests are instruments that in some cases are necessary for the public authorities in order to organise or plan services provision

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Committee on the Internal Market and Consumer Protection

3.6.2005

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Evelyne Gebhardt

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

Proposal for a directive (COM2004/0001 – C6-0069/2004 – 2004/0001(COD))

Text proposed by the Commission

Amendments by Parliament

Amendment by Heide Rühle and Pierre Jonckheer

Amendment 45

Article 14, paragraph 6

(6) the direct or indirect involvement of competing operators, including within consultative bodies, in the granting of authorisations or in the adoption of other decisions of the competent authorities, with the exception of professional bodies and associations or other organisations acting as the competent authority;

(6) the direct or indirect involvement of competing operators, including within consultative bodies, in the granting of authorisations or in the adoption of other decisions of the competent authorities, with the exception of professional bodies and associations or other organisations acting as the competent authority; ***this prohibition does not concern the consultation of organisations such as chambers of commerce or social partners on matters other than individual applications for authorisation***

Justification

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

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##

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Evelyne Gebhardt

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

Proposal for a directive (COM2004/0001 – C6-0069/2004 – 2004/0001(COD))

Text proposed by the Commission

Amendments by Parliament

Amendment by Heide Rühle and Pierre Jonckheer

Amendment 46
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

Or. en

Justification

In some Member States, professional bodies organise insurance or financial guarantee for their members

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Evelyne Gebhardt

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

Proposal for a directive (COM2004/0001 – C6-0069/2004 – 2004/0001(COD))

Text proposed by the Commission

Amendments by Parliament

Amendment by Heide Rühle and Pierre Jonckheer

Amendment 47
Article 15, Title

Requirements *to be evaluated*

Harmonisation of requirements

Or. en

Justification

The objectives of this Directive regarding freedom of establishment should not reduce the ambitions of the Union to a simple "free trade area" with competition between the national rules rather than between the economic actors. The true objective of the Union should be to achieve upwards harmonisation of the rules in order to build up a fair internal market.

EUROPEAN PARLIAMENT

2004



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Committee on the Internal Market and Consumer Protection

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Evelyne Gebhardt

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

Proposal for a directive (COM2004/0001 – C6-0069/2004 – 2004/0001(COD))

Text proposed by the Commission

Amendments by Parliament

Amendment by Heide Rühle and Pierre Jonckheer

Amendment 48

Article 15, paragraph 1

1. Member States shall *examine whether, under their legal system, any of the requirements listed in paragraph 2 are imposed and shall ensure that any such requirements are compatible with the conditions laid down in paragraph 3. Member States shall adapt their laws, regulations or administrative provisions so as to make them compatible with those conditions*

1. *The Commission and the Member States shall establish a coordination process in order to move closer the national provisions concerning requirements related to the right of establishment of service providers. At the latest 4 years after the entry into force of this Directive, harmonised requirements shall be established for all services covered by this Directive.*

Or. en

Justification

The objectives of this Directive regarding freedom of establishment should not reduce the ambitions of the Union to a simple "free trade area" with competition between the national rules rather than between the economic actors. The true objective of the Union should be to achieve upwards harmonisation of the rules in order to build up a fair internal market.

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Evelyne Gebhardt

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

Proposal for a directive (COM2004/0001 – C6-0069/2004 – 2004/0001(COD))

Text proposed by the Commission

Amendments by Parliament

Amendment by Heide Rühle and Pierre Jonckheer

Amendment 49
Article 15, paragraph 2

2. Member States shall examine whether their legal system makes access to a service activity or the exercise of it subject to compliance with any of the following non-discriminatory requirements:

Deleted

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

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

legal person, to be a company with individual ownership, to be a non-profit making organisation or a company owned exclusively by natural persons;

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

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

(e) a ban on having more than one establishment in the territory of the same State;

(f) requirements fixing a minimum number of employees;

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

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

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

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

Or. en

Justification

This amendment is consistent with the provisions proposed for Article 15 paragraph 1. If a

coordination process is established in order to progress towards harmonisation of requirements, it is logical to leave open the list of requirements which could be subject to this harmonisation.

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Evelyne Gebhardt

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

Proposal for a directive (COM2004/0001 – C6-0069/2004 – 2004/0001(COD))

Text proposed by the Commission

Amendments by Parliament

Amendment by Heide Rühle and Pierre Jonckheer

Amendment 50

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.

Within a period of 3 months from the date of notification, the Commission shall examine the compatibility of any new

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.

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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.

Or. en

Justification

The notification to the Commission of new requirements would be logical if a harmonisation of requirements is established. However, even in this framework it is not the role of the Commission to "adopt a decision requesting the Member State in question to refrain from adopting them or to abolish them".

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

Proposal for a directive (COM2004/0001 – C6-0069/2004 – 2004/0001(COD))

Text proposed by the Commission

Amendments by Parliament

Amendment by Heide Rühle and Pierre Jonckheer

Amendment 51

Article 15, paragraph 6a (new)

##

5. Until the establishment of harmonised requirements as referred to in paragraph 1 is achieved, Member States shall be authorised to apply their existing requirements, provided that these requirements satisfy the conditions laid down in paragraph 3

Or. en

Justification

The setting up of a harmonisation process regarding requirements does not prevent Member States to apply their existing requirements until this harmonisation is achieved.

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Evelyne Gebhardt

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

Proposal for a directive (COM2004/0001 – C6-0069/2004 – 2004/0001(COD))

Text proposed by the Commission

Amendments by Parliament

Amendment by Heide Rühle and Pierre Jonckheer

Amendment 52
Chapter 3, Section 1, Title

Country of origin principle and derogations

Harmonisation of provisions

Or. en

Justification

The objectives of this Directive regarding free movement of services should not reduce the ambitions of the Union to a simple "free trade area" with competition between the national rules rather than between the economic actors. The true objective of the Union should be to achieve upwards harmonisation of the rules in order to build up a fair internal market.

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Evelyne Gebhardt

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

Proposal for a directive (COM2004/0001 – C6-0069/2004 – 2004/0001(COD))

Text proposed by the Commission

Amendments by Parliament

Amendment by Heide Rühle and Pierre Jonckheer

Amendment 53

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. *The Commission and the Member States shall establish a coordination process in order to move closer the national provisions relating to access to and the exercise of a service activity. At the latest 4 years after the entry into force of this Directive, harmonised provisions shall be established for the free movement of all services covered by this Directive.*

Or. en

Justification

The objectives of this Directive regarding free movement of services should not reduce the ambitions of the Union to a simple "free trade area" with competition between the national rules rather than between the economic actors. The true objective of the Union should be to achieve upwards harmonisation of the rules in order to build up a fair internal market.

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Evelyne Gebhardt

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

Proposal for a directive (COM2004/0001 – C6-0069/2004 – 2004/0001(COD))

Text proposed by the Commission

Amendments by Parliament

Amendment by Heide Rühle and Pierre Jonckheer

Amendment 54

Article 16, paragraph 2

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

(2) ***The harmonised provisions referred to in*** paragraph 1 shall cover in particular those requirements governing the behaviour of the provider, the quality or content of the service, advertising, contracts and the provider's liability.

Or. en

Justification

This amendment is coherent with the provisions proposed for Article 16 paragraph 1

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

Proposal for a directive (COM2004/0001 – C6-0069/2004 – 2004/0001(COD))

Text proposed by the Commission

Amendments by Parliament

Amendment by Heide Rühle and Pierre Jonckheer

Amendment 55

Article 16, paragraph 2a (new)

##

2a. Until the establishment of harmonised provision as referred to in paragraph 1 is achieved, service providers shall be exclusively subject to the national provisions of the country of destination concerning the requirements referred to in paragraph 2..

Or. en

Justification

Until an upwards harmonisation is achieved, it is not reasonable to apply the "country of origin principle" to the free movement of services. Furthermore the application of this principle in this context is illegal, following the last paragraph of Article 50 EC which provides that "the person providing a service may, in order to do so, temporarily pursue his activity in the State where the service is provided, under the same conditions as are imposed by that State on its own nationals". Therefore the country of destination principle is the only legal principle in this chapter.

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Evelyne Gebhardt

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

Proposal for a directive (COM2004/0001 – C6-0069/2004 – 2004/0001(COD))

Text proposed by the Commission

Amendments by Parliament

Amendment by Heide Rühle and Pierre Jonckheer

Amendment 56

Article 16, paragraph 3

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

##

(3) The ***country of destination*** shall be responsible for supervising the provider and the services provided by him, ***in close cooperation with the service provider's Member State of origin, as provided in Article 35.***

Or. en

Justification

It is simply unthinkable that the Member State of origin would be in charge of supervising the activities of its national providers abroad. This provision would create enormous dangers to public security and public safety. The State of destination is the best placed to exercise supervision, assisted by the State of origin.

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Evelyne Gebhardt

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

Proposal for a directive (COM2004/0001 – C6-0069/2004 – 2004/0001(COD))

Text proposed by the Commission

Amendments by Parliament

Amendment by Heide Rühle and Pierre Jonckheer

Amendment 57

Article 16, paragraph 4

(4) Member States may not, for reasons falling within the coordinated field, restrict the freedom to provide services in the case of a provider established in another Member State, in particular, by imposing any of the following requirements:

Deleted

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

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

association in their territory;

(c) an obligation on the provider to have an address or representative in their territory or to have an address for service at the address of a person authorised in that territory;

(d) a ban on the provider setting up a certain infrastructure in their territory, including an office or chambers, which the provider needs to supply the services in question;

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

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

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

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

(i) restrictions on the freedom to provide the services referred to in Article 20, the first subparagraph of Article 23(1) or Article 25(1).

Or. en

##

Justification

The setting up of a harmonisation process regarding free movement of services does not prevent Member States to apply their existing requirements until this harmonisation is achieved.

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Evelyne Gebhardt

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

Proposal for a directive (COM2004/0001 – C6-0069/2004 – 2004/0001(COD))

Text proposed by the Commission

Amendments by Parliament

Amendment by Heide Rühle and Pierre Jonckheer

Amendment 58

Article 16, paragraph 4a (new)

##

4a. Member States shall ensure that all services provided by a provider established on their territory comply with the legal system applicable to providers in the Member State of destination.

Or. en

##

Justification

The last paragraph of Article 50 EC provides that "the person providing a service may, in order to do so, temporarily pursue his activity in the State where the service is provided, under the same conditions as are imposed by that State on its own nationals"

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Evelyne Gebhardt

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

Proposal for a directive (COM2004/0001 – C6-0069/2004 – 2004/0001(COD))

Text proposed by the Commission

Amendments by Parliament

Amendment by Heide Rühle and Pierre Jonckheer

Amendment 59
Article 17

Article 16 shall not apply to the following:

Deleted

(1) postal services within the meaning of point (1) of Article 2 of Directive 97/67/EC of the European Parliament and the Council⁷²;

(2) electricity distribution services within the meaning of point (5) of Article 2 of Directive 2003/54/EC of the European Parliament and of the Council⁷⁰;

(3) gas distribution services within the meaning of point (5) of Article 2 of

Directive 2003/55/EC of the European Parliament and of the Council⁷⁴;

(4) water distribution services;

(5) matters covered by Directive 96/71/EC;

(6) matters covered by Directive 95/46/EC of the European Parliament and of the Council⁷⁵;

(7) matters covered by Council Directive 77/249/EEC⁷⁶;

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

(9) the provisions of Regulation (EEC) No 1408/71 determining the applicable legislation;

(10) the provisions of Directive .../EC of the European Parliament and the Council [on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, amending Regulation (EEC) 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 70/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC], that lay down the administrative formalities that beneficiaries must undertake before the competent authorities of the host Member States;

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

(12) the authorisation regime provided for in Articles 3 and 4 of Council Regulation (EEC) No 259/93⁷⁷;

(13) copyright, neighbouring rights, rights covered by Council Directive 87/54/EEC⁷⁸ and by Directive 96/9/EC of the European Parliament and of the Council⁷⁹ as well as industrial property rights;

(14) acts requiring by law the involvement

of a notary;

(15) statutory audit;

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

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

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

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

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

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

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

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

Or. en

Justification

This amendment is consistent with the provisions proposed for Articles 2 and 16

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Evelyne Gebhardt

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

Proposal for a directive (COM2004/0001 – C6-0069/2004 – 2004/0001(COD))

Text proposed by the Commission

Amendments by Parliament

Amendment by Heide Rühle and Pierre Jonckheer

Amendment 60
Article 18

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

Deleted

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

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

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

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

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

Or. en

Justification

This amendment is consistent with the provisions proposed for Articles 2 and 16

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Evelyne Gebhardt

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

Proposal for a directive (COM2004/0001 – C6-0069/2004 – 2004/0001(COD))

Text proposed by the Commission

Amendments by Parliament

Amendment by Heide Rühle and Pierre Jonckheer

Amendment 61

Article 19

1. By way of derogation from Article 16, and in exceptional circumstances only, a Member State may, in respect of a provider established in another Member State, take measures relating to any of the following:

Deleted

(a) the safety of services, including aspects related to public health;

(b) the exercise of a health profession;

(c) the protection of public policy, notably aspects related to the protection of minors.

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

(a) the national provisions in accordance with which the measure is taken have not been subject to Community harmonisation in the fields referred to in paragraph 1;

(b) the measures provide for a higher level of protection of the recipient than would be the case in a measure taken by the Member State of origin in accordance with its national provisions;

(c) the Member State of origin has not taken any measures or has taken measures which are insufficient as compared with those referred to in Article 37(2);

(d) the measures are proportionate.

3. Paragraphs 1 and 2 shall be without prejudice to provisions, laid down in Community instruments, which guarantee the freedom to provide services or which allow derogations therefrom.

Or. en

Justification

This amendment is consistent with the provisions proposed for Articles 2 and 16

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Evelyne Gebhardt

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

Proposal for a directive (COM2004/0001 – C6-0069/2004 – 2004/0001(COD))

Text proposed by the Commission

Amendments by Parliament

Amendment by Heide Rühle and Pierre Jonckheer

Amendment 62

Article 23

Assumption of health care costs

Deleted

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

The conditions and formalities to which the receipt of non-hospital care in their territory is made subject by Member States,

such as the requirement that a general practitioner be consulted prior to consultation of a specialist, or the terms and conditions relating to the assumption of the costs of certain types of dental care, may be imposed on a patient who has received non-hospital care in another Member State.

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

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

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

Or. en

Justification

Health care services should not be covered by this Directive. A more appropriate instrument should address the patient mobility issue.

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Committee on the Internal Market and Consumer Protection

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Evelyne Gebhardt

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

Proposal for a directive (COM2004/0001 – C6-0069/2004 – 2004/0001(COD))

Text proposed by the Commission

Amendments by Parliament

Amendment by Heide Rühle and Pierre Jonckheer

Amendment 63

Article 24

Specific provisions on the posting of workers

Deleted

1. Where a provider posts a worker to another Member State in order to provide a service, the Member State of posting shall carry out in its territory the checks, inspections and investigations necessary to ensure compliance with the employment and working conditions applicable under Directive 96/71/EC and shall take, in accordance with Community law, measures in respect of a service provider who fails

to comply with those conditions.

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

(a) to obtain authorisation from, or to be registered with, its own competent authorities, or to satisfy any other equivalent requirement;

(b) to make a declaration, other than declarations relating to an activity referred to in the Annex to Directive 96/71/EC which may be maintained until 31 December 2008;

(c) to have a representative in its territory;

(d) to hold and keep employment documents in its territory or in accordance with the conditions applicable in its territory.

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

(a) the identity of the posted worker; 62

(b) his position and the nature of the tasks attributed to him,

(c) the contact details of the recipient,

(d) the place of posting,

(e) the start and end dates for the posting,

(f) the employment and working conditions applied to the posted worker;

In the circumstances referred to in paragraph 1, the Member State of origin shall assist the Member State of posting to ensure compliance with the employment and working conditions applicable under Directive 96/71/EC and shall, on its own

initiative, communicate to the Member State of posting the information specified in the first subparagraph where the Member State of origin is aware of specific facts which indicate possible irregularities on the part of the provider in relation to employment and working conditions.

Or. en

Justification

This Directive is not appropriate to address the issue of posting of workers, which is dealt with under existing Directive 96/71/EC. Treating this issue in the context of the present Directive would be counter-productive and jeopardize labour law instead of bringing improvements concerning the scope and the provisions of the Directive on posting of workers.

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Evelyne Gebhardt

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

Proposal for a directive (COM2004/0001 – C6-0069/2004 – 2004/0001(COD))

Text proposed by the Commission

Amendments by Parliament

Amendment by Heide Rühle and Pierre Jonckheer

Amendment 64

Article 25

Posting of third country nationals

Deleted

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

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

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

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

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

Or. en

Justification

This Directive is not appropriate to address the issue of posting of workers, which is dealt with under existing Directive 96/71/EC. Treating this issue in the context of the present Directive would be counter-productive and jeopardize labour law instead of bringing improvements concerning the scope and the provisions of the Directive on posting of workers.

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Evelyne Gebhardt

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Proposal for a directive (COM2004/0001 – C6-0069/2004 – 2004/0001(COD))

Text proposed by the Commission

Amendments by Parliament

Amendment by Heide Rühle and Pierre Jonckheer

Amendment 65

Article 26, paragraph 1

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

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

Or. en

Justification

This amendment is consistent with the provisions proposed for Article 6

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2009

Committee on the Internal Market and Consumer Protection

3.6.2005

PE 355.744v04-00

AMENDMENTS 66-73

Draft report

(PE 355.744v04-00)

Evelyne Gebhardt

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

Proposal for a directive (COM2004/0001 – C6-0069/2004 – 2004/0001(COD))

Text proposed by the Commission

Amendments by Parliament

Amendment by Heide Rühle and Pierre Jonckheer

Amendment 66

Article 27, paragraph 3

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

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

3. When a provider establishes himself in their territory, Member States may not require professional insurance or a financial guarantee from the provider where he is already covered by a guarantee which is equivalent, or essentially comparable as regards its purpose ***and the coverage it provides in terms of the insured risk, the insured sum or a ceiling for the financial guarantee and possible exclusions from the coverage,*** in another Member State in which the provider is already established.

Where equivalence is only partial, Member

States may require a supplementary guarantee to cover those aspects not already covered.

Or. en

Justification

This amendment brings more certainty concerning the coverage of the provider in terms of insurance and financial guarantee

EUROPEAN PARLIAMENT

2004



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Amendment by Heide Rühle and Pierre Jonckheer

Amendment 67

Article 31, paragraph 5a (new)

##

5a. Voluntary action taken under the aegis of this Article shall in no way prejudice the right of Member States to establish, within the scope permitted by the Treaty, and provided these are non-discriminatory and proportionate, mandatory standards and rules protecting the public interest or pursuing any policy goal in keeping with the Treaty.

Or. en

Justification

Voluntary actions should not prevent public authorities to adopt protecting rules regarding public interest or any policy goal

EUROPEAN PARLIAMENT

2004



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Amendments by Parliament

Amendment by Heide Rühle and Pierre Jonckheer

Amendment 68

Article 37

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

Deleted

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

2. The Member State referred to in paragraph 1 shall ask the Member State of origin to take measures with regard to the

service provider, supplying all relevant information on the service in question and the circumstances of the case.

The Member State of origin shall check, within the shortest possible period of time, whether the provider is operating lawfully and verify the facts underlying the request.

It shall inform the requesting Member State within the shortest possible period of time of the measures taken or envisaged or, as the case may be, the reasons why it has not taken any measures.

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

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

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

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

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

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

6. In the case of urgency, a Member State

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

Or. en

Justification

This amendment is consistent with the deletion of Article 19

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2004



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Proposal for a directive (COM2004/0001 – C6-0069/2004 – 2004/0001(COD))

Text proposed by the Commission

Amendments by Parliament

Amendment by Heide Rühle and Pierre Jonckheer

Amendment 69

Article 39, paragraph 1

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

- (a) the content of and detailed rules for commercial communications relating to regulated professions, as appropriate to the specific nature of each profession;
- (b) the rules of professional ethics and conduct of the regulated professions which aim in particular at ensuring, as appropriate

1. *Until the entry into force of the harmonisation measures referred to in articles 5, 6, 9, 15 and 16 of this Directive,* Member States shall, in cooperation with the Commission, take accompanying measures to encourage the drawing up of codes of conduct at Community level, in conformity with Community law, in particular in the following areas:

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

to the specific nature of each profession, independence, impartiality and professional secrecy;

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

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

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

Or. en

Justification

This amendment is consistent with provisions proposed for Articles 5, 6, 9, 15 and 16

EUROPEAN PARLIAMENT

2004



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AMENDMENTS 73-73

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Proposal for a directive (COM2004/0001 – C6-0069/2004 – 2004/0001(COD))

Text proposed by the Commission

Amendments by Parliament

Amendment by Heide Rühle and Pierre Jonckheer

Amendment 73

Article 41, paragraph 1

1. By the [date of transposition] at the latest, Member States shall present a report to the Commission, containing the information specified in the following provisions:

- (a) Article 9(2), on authorisation systems;
- (b) Article 15(4), on requirements *to be evaluated*;
- (c) Article 30(4), on multidisciplinary activities

1. By the [date of transposition] at the latest, Member States shall present a report to the Commission, containing the information specified in the following provisions:

- (a) Article 9(2), on authorisation systems;
- (b) Article 15(4), on *harmonisation of* requirements;
- (c) Article 30(4), on multidisciplinary activities

(ca) article 5 (1), on harmonisation of

procedures

(cb) article 6(1), on single points of contact

*(cc) article 16(1), on provisions regarding
free movement of services*

Or. en

Justification

This amendment is consistent with the provisions proposed for Articles 5, 6, 15 and 16

EUROPEAN PARLIAMENT

2004



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AMENDMENTS 71-73

Draft report

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Text proposed by the Commission

Amendments by Parliament

Amendment by Heide Rühle and Pierre Jonckheer

Amendment 71

Article 42, paragraph 3a (new)

##

3a. The Committee may propose any amendment to the list of services mentioned in Annex 1 of this Directive. The proposals of the Committee shall be examined in conformity with Article 2, §1a of this Directive

Or. en

Justification

This amendment is consistent with the provisions proposed for Article 2 of this Directive

EUROPEAN PARLIAMENT

2004



2009

Committee on the Internal Market and Consumer Protection

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PE 355.744v04-00

AMENDMENTS 72-73

Draft report

(PE 355.744v04-00)

Evelyne Gebhardt

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Proposal for a directive (COM2004/0001 – C6-0069/2004 – 2004/0001(COD))

Text proposed by the Commission

Amendments by Parliament

Amendment by Heide Rühle and Pierre Jonckheer

Amendment 72

Article 43

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

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

Or. en

Justification

Reports by the Commission should be presented more frequently in order to ensure a more effective follow-up, in particular regarding the harmonisation measures

EUROPEAN PARLIAMENT

2004



2009

Committee on the Internal Market and Consumer Protection

3.6.2005

PE 355.744v04-00

AMENDMENTS 73-73

Draft report

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Evelyne Gebhardt

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

Proposal for a directive (COM2004/0001 – C6-0069/2004 – 2004/0001(COD))

Text proposed by the Commission

Amendments by Parliament

Amendment by Heide Rühle and Pierre Jonckheer

Amendment 73

Annex 1 (new)

##

Annex 1

In accordance with article 2, this Directive covers exclusively the following sectors :

1. BUSINESS SERVICES

Computer and Related Services

Real Estate Services

Rental/Leasing Services without Operators

Advertising services

Market research and public opinion polling services

Management consulting service

Services related to management. consulting

Maintenance and repair of equipment (not including maritime vessels, aircraft or other transport equipment)

Building-cleaning services

Photographic services

Packaging services

Printing, publishing

Convention services

2. DISTRIBUTION SERVICES

Commission agents' services

Wholesale trade services

Retailing services

Franchising

3. TOURISM AND TRAVEL RELATED SERVICES

Hotels and restaurants (incl. catering)

Travel agencies and tour operators service

Tourist guides services

Or. en

Justification

This amendment is consistent with the provisions proposed for Article 2 and proposes a list of sectors to be included in the scope of this Directive. Any sector which is not in this list should not be covered by this Directive