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Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on services in the internal market

(presented by the Commission)

[SEC(2004) 21]

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SUMMARY

1. This proposal for a directive is part of the process of economic reform launched by the Lisbon European Council with a view to making the EU the most competitive and dynamic knowledge-based economy in the world by 2010. Achieving this goal means that the establishment of a genuine internal market in services is indispensable. It has not hitherto been possible to exploit the considerable potential for economic growth and job creation afforded by the services sector because of the many obstacles¹ hampering the development of service activities in the internal market. This proposal forms part of the strategy adopted by the Commission to eliminate these obstacles and follows on from the Report on the State of the Internal Market for Services², which revealed their extent and significance.
2. The objective of the proposal for a Directive is to provide a legal framework that will eliminate the obstacles to the freedom of establishment for service providers and the free movement of services between the Member States, giving both the providers and recipients of services the legal certainty they need in order to exercise these two fundamental freedoms enshrined in the Treaty. The proposal covers a wide variety of economic service activities – with some exceptions, such as financial services – and applies only to service providers established in a Member State.
3. In order to eliminate the obstacles to the freedom of establishment, the proposal provides for:
 - administrative simplification measures, particularly involving the establishment of "**single points of contact**", at which service providers can complete the administrative procedures relevant to their activities, and the obligation to make it possible to complete these procedures **by electronic means**;
 - certain principles which **authorisation schemes** applicable to service activities must respect, in particular relating to the conditions and procedures for the granting of an authorisation;
 - **the prohibition of certain particularly restrictive legal requirements** that may still be in force in certain Member States;
 - the obligation to **assess the compatibility of certain other legal requirements** with the conditions laid down in the Directive, particularly as regards proportionality.
4. In order to eliminate the obstacles to the free movement of services, the proposal provides for:
 - the application of the **country of origin principle**, according to which a service provider is subject only to the law of the country in which he is established and Member States may not restrict services from a provider established in another

¹ "An Internal Market Strategy for Services", Communication from the Commission to the Council and the European Parliament, COM(2000) 888 final, 29.12.2000.

² Report from the Commission to the Council and the European Parliament on "The State of the Internal Market for Services", COM(2002) 441 final, 30.7.2002.

Member State. This principle is accompanied by derogations which are either general, or temporary or which may be applied on a case-by-case basis;

- the ***right of recipients to use services*** from other Member States without being hindered by restrictive measures imposed by their country or by discriminatory behaviour on the part of public authorities or private operators. In the case of patients, the proposal clarifies the circumstances in which a Member State may make reimbursement of the cost of health care provided in another Member State subject to authorisation;
- a ***mechanism to provide assistance to recipients*** who use a service provided by an operator established in another Member State;
- in the case of ***posting of workers*** in the context of the provision of services, the allocation of tasks between the Member State of origin and the Member State of destination and the supervision procedures applicable.

5. With a view to establishing the mutual trust between Member States necessary for eliminating these obstacles, the proposal provides for:

- ***harmonisation*** of legislation in order to guarantee equivalent protection of the general interest on vital questions, such as consumer protection, particularly as regards the service provider's obligations concerning information, professional insurance, multidisciplinary activities, settlement of disputes, and exchange of information on the quality of the service provider;
- ***stronger mutual assistance between national authorities*** with a view to effective supervision of service activities on the basis of a clear distribution of roles between the Member States and obligations to cooperate;
- ***measures for promoting the quality of services***, such as voluntary certification of activities, quality charters or cooperation between the chambers of commerce and of crafts;
- encouraging ***codes of conduct*** drawn up by interested parties at Community level on certain questions, including in particular commercial communications by the regulated professions.

6. With a view to taking full effect by 2010, the proposal is based on a dynamic approach involving phased implementation of some of its provisions, a commitment to additional harmonisation on certain specific matters (cash-in-transit services, gambling and judicial recovery of debts), the guarantee that it will evolve and that any need for new initiatives can be identified. Moreover, this proposal is without prejudice to any legislative or other Community initiatives in the field of consumer protection.

EXPLANATORY MEMORANDUM

1. NECESSITY AND OBJECTIVE

Services are omnipresent in today's economy, generating almost 70% of GNP and jobs and offering considerable potential for growth and job creation. Realising this potential is at the heart of the process of economic reform launched by the Lisbon European Council and aimed at making the EU the most competitive and dynamic knowledge-based economy in the world by 2010. It has not so far been possible to exploit fully the growth potential of services because of the many obstacles hampering the development of services activities between the Member States.

In its Report on "The State of the Internal Market for Services"¹ ("the report"), the Commission listed these obstacles and concluded that "*a decade after the envisaged completion of the internal market, there is a huge gap between the vision of an integrated EU economy and the reality as experienced by European citizens and European service providers.*" These obstacles affect a wide range of services such as distributive trades, employment agencies, certification, laboratories, construction services, estate agencies, craft industries, tourism, the regulated professions etc. and SMEs, which are predominant in the services sector, are particularly hard-hit. SMEs are too often discouraged from exploiting the opportunities afforded by the internal market because they do not have the means to evaluate, and protect themselves against, the legal risks involved in cross-border activity or to cope with the administrative complexities. The report, and the impact assessment which relates to this proposal, show the economic impact of this dysfunction, emphasising that it amounts to a considerable drag on the EU economy and its potential for growth, competitiveness and job creation.

These obstacles to the development of service activities between Member States occur in particular in two types of situation:

- when a service provider from one Member State wishes to establish himself in another Member State in order to provide his services. (For example, he may be subject to over-burdensome authorisation schemes, excessive red tape, discriminatory requirements, an economic test etc.);
- when a service provider wishes to provide a service from his Member State of origin into another Member State, particularly by moving to the other Member State on a temporary basis. (For example, he may be subject to a legal obligation to establish himself in the other Member State, need to obtain an authorisation there, or be subject to the application of its rules on the conditions for the exercise of the activity in question or to disproportionate procedures in connection with the posting of workers).

¹ COM(2002) 441 final, 30.7.2002.

Accordingly, the aim of this proposal for a Directive is to establish a legal framework to facilitate the exercise of freedom of establishment for service providers in the Member States and the free movement of services between Member States. It aims to eliminate certain legal obstacles to the achievement of a genuine internal market in services and to guarantee service providers and recipients the legal certainty they need in order to exercise these two fundamental freedoms enshrined in the Treaty in practice.

2. BACKGROUND

This proposal for a Directive forms part of a political process launched in 2000 by the European Council:

In March 2000, the Lisbon European Council adopted a programme of economic reform aimed at making the EU the most competitive and dynamic knowledge-based economy in the world by 2010. In this context, the EU Heads of State and Government invited the Commission and the Member States to devise a strategy aimed at eliminating the obstacles to the free movement of services².

In December 2000, in response to the call launched at the Lisbon Summit, the Commission set out "An Internal Market Strategy for Services"³, which received the full support of the Member States⁴, the European Parliament⁵, the Economic and Social Committee⁶ and the Committee of the Regions⁷. The aim of this strategy is to enable services to move across national borders within the European Union just as easily as within a single Member State. Above all it is based on a horizontal approach across all economic sectors involving services and on a two-stage process, the first involving identification of the difficulties hampering the smooth functioning of the internal market in services, and the second involving the development of appropriate solutions to the problems identified, and in particular a horizontal legal instrument.

In July 2002, the Commission presented its report on "The State of the Internal Market for Services", which marked the completion of the first phase in the strategy and provided as exhaustive a list as possible of barriers that exist in the internal market for services. This report also analyses the common features of these barriers and makes an initial evaluation of their economic impact⁸.

² Presidency Conclusions, Lisbon European Council, 24.3.2000, paragraph 17. The need to take action in these fields was also highlighted at the Stockholm and Barcelona Summits in 2001 and 2002.

³ "An Internal Market Strategy for Services" Communication from the Commission to the Council and the European Parliament. COM(2000) 888 final, 29.12.2000.

⁴ 2336th Council meeting on the Internal Market, Consumer Affairs and Tourism of 12 March 2001, 6926/01 (Presse 103) para. 17.

⁵ European Parliament Resolution on the Commission Communication "An Internal Market Strategy for Services" A5-0310/2001, 4.10.2001.

⁶ Opinion of the Economic and Social Committee on the Commission Communication "An Internal Market Strategy for Services" (additional opinion), CES 1472/2001 final, 28.11.2001.

⁷ Opinion of the Committee of the Regions on the Commission Communication "An Internal Market Strategy for Services", CDR 134/2001 final, 27.06.2001.

⁸ This report took up, in certain respects, in the case of services, the idea provided for in the former Article 100b EC of an inventory of national measures.

In November 2002, the conclusions of the Council on the Commission's report⁹, acknowledged *"that a decade after the envisaged completion of the internal market, considerable work still needs to be done in order to make the internal market for services a reality"* and emphasised *"that very high political priority should be given to the removal of both legislative and non-legislative barriers to services in the internal market, as part of the overall goal set by the Lisbon European Council to make the European Union the most dynamic and competitive economy in the world by 2010"*. The Council urged the Commission to accelerate work on the initiatives foreseen in the second stage of the strategy, and in particular on the legislative instrument.

In February 2003, the European Parliament also welcomed the Commission's report, emphasising that it *"insists that the Competitiveness Council reaffirm Member States' commitment to the country of origin and mutual recognition principles, as the essential basis for completing the internal market in goods and services"*¹⁰ and also that it *"welcomes the proposals for a horizontal instrument to ensure free movement of services in the form of mutual recognition, with automatic recognition being encouraged as far as possible, administrative cooperation and, where strictly necessary, harmonisation"*¹¹.

In March 2003, with the aim of reinforcing the economic dimension of the Lisbon strategy, the Spring European Council called for the strengthening of the horizontal role of the Competitiveness Council in order to increase competitiveness and growth in the framework of an integrated approach to competitiveness to be set out by the Commission. The establishment of a clear and balanced legal framework to facilitate the free movement of services in the internal market is one of the elements necessary for the success of the new integrated competitiveness strategy.

In May 2003, according to its *"Internal Market Strategy"*¹², the Commission announced that *"the Commission will make a proposal for a Directive on services in the internal market before the end of 2003. This Directive will establish a clear and balanced legal framework aiming to facilitate the conditions for establishment and cross-border service provision. It will be based on a mix of mutual recognition, administrative cooperation, harmonisation where strictly necessary and encouragement of European codes of conduct/professional rules"*.

⁹ Conclusion on obstacles to the provision of services in the internal market at the 2462nd Council meeting on Competitiveness (Internal Market, Industry, Research), Brussels, 14 November 2002, 13839/02 (Presse 344).

¹⁰ European Parliament Resolution of 13 February 2003 on the Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions: "2002 Review of the Internal Market Strategy – Delivering the promise" (COM(2002) 171 - C5-0283/2002 - 2002/2143(COS)). A5-0026/2003; point 35.

¹¹ Point 36.

¹² "Internal Market Strategy - Priorities 2003-2006" Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, COM(2003) 238 of 7.5.2003.

In October 2003, the European Council identified the internal market as a key area for improving the competitiveness of the European economy and thus creating conditions conducive to growth and employment. It "calls on the Commission to present any further proposals necessary to complete the internal market and to fully exploit its potential, to stimulate entrepreneurship and to create a true internal market in services, while having due regard to the need to safeguard the supply and trading of services of general interest"¹³.

3. MAIN FEATURES OF THE DIRECTIVE

a) A framework Directive

The Directive will establish a general legal framework applicable, subject to certain exceptions, to all economic activities involving services. This horizontal approach is justified by the fact that, as explained in the report¹⁴, the legal obstacles to the achievement of a genuine internal market in services are often common to a large number of different activities and have many features in common.

Since the proposal is for a framework Directive, it does not aim to lay down detailed rules or to harmonise all the rules in the Member States applicable to service activities. This would have led to over-regulation and a standardisation of the specific features of the national systems for regulating services. Instead, the proposal deals exclusively with questions that are vital for the smooth functioning of the internal market in services by giving priority to targeted harmonisation of specific points, to the imposition of obligations to achieve clear results without prejudging the legal techniques by which they will be brought about, and to the clarification of the respective roles of the Member State of origin and the Member State of destination of a service. The proposal also refers to Commission implementing measures on the way that certain provisions are applied.

While establishing a general legal framework, the proposal recognises the specific characteristics of each profession or field of activity. More particularly, it recognises the specific nature of the regulated professions and the particular role of self-regulation. For example, the proposal provides (Article 17) for a number of derogations from the country of origin principle that are directly linked to the specific characteristics of certain activities; it also contains specific provisions on certain activities such as professional insurance and guarantees (Article 27), commercial communications by the regulated professions (Article 29) or multidisciplinary activities (Article 30); finally, it relies also on alternative methods of regulation specific to certain activities, such as codes of conduct for the regulated professions (Article 39).

Moreover, this proposal is without prejudice to any legislative or other Community initiatives in the field of consumer protection.

¹³ Presidency Conclusions, Brussels European Council, 16-17.10.2003, para 16.

¹⁴ COM(2002) 441 op cit, part II.

b) A combination of regulatory techniques

The proposal for a Directive is based on a combination of techniques for regulating service activities, including in particular:

- the country of origin principle, according to which service providers are subject only to the law of the country in which they are established and Member States may not restrict services provided by operators established in another Member State. It therefore enables operators to provide services in one or more other Member States without being subject to those Member States' rules. This principle also means that the Member State of origin is responsible for the effective supervision of service providers established on its territory even if they provide services into other Member States;
- derogations from the country of origin principle, in particular in Article 17, necessary in order to take account of differences in the level of protection of the general interest in certain fields, the extent of Community-level harmonisation, the degree of administrative cooperation, or certain Community instruments. Some of these derogations will apply for a transitional period up to 2010, and are intended to allow time for additional harmonisation on certain specific questions. Finally, derogations on a case-by-case basis are possible, subject to certain substantive conditions and procedures;
- the establishment of obligations of mutual assistance between national authorities, which is vital for ensuring the high level of mutual trust between Member States on which the country of origin principle is based. In order to ensure that supervision is effective, the proposal provides for a high degree of administrative cooperation between authorities by organising the allocation of supervisory tasks, exchange of information and mutual assistance;
- targeted harmonisation to ensure protection of the general interest in certain essential fields where too wide a divergence in the level of protection, notably in the field of consumer protection, would undermine the mutual trust that is vital to the acceptance of the country of origin principle and could justify, in accordance with the case-law of the Court of Justice, measures restricting freedom of movement. Harmonisation is also provided for as far as the simplification of administrative procedures and the elimination of certain types of requirement are concerned;
- alternative methods of regulation that are important for the regulation of service activities. The proposal fully recognises their role and encourages the parties concerned to draw up, at Community level, codes of conduct on particular issues.

c) Coordination of the processes of modernisation

The proposal for a Directive aims to coordinate, at Community level, the modernisation of national systems for regulating service activities with a view to eliminating the legal obstacles to the achievement of a genuine internal market in services. The report emphasises the resistance to modernisation of the various national legal frameworks and notes that "*The fundamental principles of the Treaty, the importance attached to them by the Court, and the follow-up to the ambitious*

programmes of 1962 and 1985, have not always resulted in the adjustment of national legislation which might have been expected".¹⁵

Adapting legislation case by case and Member State by Member State following infringement procedures by the Commission, would be an inefficient way of responding to this need for modernisation, as it would be entirely reactive and would lack a shared political will to move towards a common objective¹⁶. The adjustment of legislation by all the Member States according to common principles and a common timetable will instead make it possible to benefit on a European scale from the resulting economic growth, to avoid distortions of competition between Member States that make their adjustments at different rates, and to encourage improved mobilisation around this objective, also in terms of allocation of national and Community administrative resources.

In order to transpose the Directive, Member States must:

- simplify the administrative procedures and formalities to which service activities are subject (Sections 1 and 2 of Chapter II), particularly by means of single points of contact (Article 6), the use of electronic procedures (Article 8) and simplification of the authorisation procedures for access to and the exercise of service activities (Articles 10–13); it should be noted that the obligations to communicate information (Article 7) and to make available electronic procedures (Article 8) do not prevent Member States from maintaining other procedures and methods of communication in parallel;
- eliminate from their legislation a number of requirements listed in the Directive that hamper access to and the exercise of service activities (Articles 14, 21, 29);
- guarantee in their legislation the free movement of services from other Member States and consequently adapt any rules that would hamper such movement (Articles 16, 20, 23 and 25);
- evaluate the justification and proportionality of a number of requirements listed in the Directive which, where they exist in their regulations, may significantly restrict the development of service activities (Articles 9, 15 and 30). This evaluation should lead to the elimination of unjustified requirements and will be the subject of mutual evaluation that could conclude, where appropriate, that other Community-level initiatives are necessary.

d) A dynamic approach

Given the scale of the obstacles identified in the report, the task of establishing a genuine area with no internal borders for services will take time. The modernisation of certain rules applied by the Member States will require fundamental changes (for example, single points of contact and the use of electronic procedures), additional harmonisation specific to certain activities, and take due account of the development of Community integration in other fields. In order to avoid a static approach that tackles a single problem and leaves the others unresolved, the proposal for a

¹⁵ COM(2002) 441 op cit. part II, Section C 2.

¹⁶ See impact assessment, paragraph 6.3.2.

Directive adopts a phased approach aimed at achieving a genuine internal market for services by 2010. The proposal therefore provides for:

- phased implementation of certain of its provisions (Articles 6–8)
- additional harmonisation on certain specific questions, i.e. cash-in-transit services, gambling, and recovery of debts by judicial means (Article 40(1)), which are the subject of temporary derogations from the principle of country of origin (Article 18). Moreover, the need for further harmonisation could be identified, in particular in the areas of consumer protection and cross-border contracts (Article 40(2)d);
- extension of the scope of application of the country of origin principle as rules come to be harmonised in certain fields (Articles 17 point 21 and 19(2))
- the possibility for the Commission to take implementing measures on the way that certain provisions will be put in place (Article 42)
- identification of the need for new initiatives, particularly through mutual evaluation (Article 40(2))

The dynamics of the proposal can be summarised as follows:

1 year after adoption (scheduled: 2005)	Deadline for transposition (scheduled: 2007)	Not later than 31 December 2008	1 January 2010	No specific deadlines; according to needs	As Community-level harmonisation progresses
<p>Commission proposals for additional harmonisation (Article 40) on:</p> <ul style="list-style-type: none"> - cash-in-transit, - gambling, - judicial recovery of debts. 	<p>Elimination of prohibited requirements (Article 14)</p> <p>Elimination of restrictions to free movement (Chapter III) except in the case of transitional derogations (Article 18) or those referred to in Article 17</p> <ul style="list-style-type: none"> - Harmonisation of authorisation schemes (Articles 10–13) - Harmonisation of the quality of services (Chapter IV) - Mutual assistance (Chapter V) <p>Mutual evaluation:</p> <ul style="list-style-type: none"> - report by each MS on the evaluation of requirements in its own legal system (Articles 9, 15 and 30), - each MS reacts to the reports by the other MS within six months. 	<ul style="list-style-type: none"> - Single points of contact (Article 6) - Right to information (Article 7) - Procedures by electronic means (Article 8) <p>Mutual evaluation:</p> <ul style="list-style-type: none"> - summary report by the Commission, accompanied where appropriate by proposals for additional initiatives (Article 41). 	<p>End of transitional derogations from the principle of country of origin (Article 18(2)) for:</p> <ul style="list-style-type: none"> - cash-in-transit, - judicial recovery of debts. 	<p>Implementing measures (comitology) (Article 42)</p> <ul style="list-style-type: none"> - procedures by electronic means - assistance for recipients - information on service providers and their services - professional insurance and guarantees, - mutual assistance - mutual evaluation. <p>Identification of the need for new initiatives (Article 40(2)) as a result of:</p> <ul style="list-style-type: none"> - experience of derogations on a case-by-case basis, - lack of codes of conduct. <p>Revision of the <i>acquis</i> in the area of consumer protection and the follow-up to the Commission Action Plan on contract law.</p>	<p>The scope of derogations from the country of origin principle as regards contracts concluded by consumers and derogations on a case-by-case basis (Article 19) is limited to the non-harmonised area.</p>

e) **A framework facilitating access to services**

The report emphasised that the users of services, and in particular consumers, are, together with SMEs, the main victims of the lack of a genuine internal market in services: they generally cannot benefit from a wide variety of competitively priced services and thus the better quality of life that they might expect from an area without internal borders.

By creating the conditions and legal certainty necessary for the development of service activities between Member States, and in so doing extending the range of services available, the Directive will be of direct benefit to the recipients of services. It will also guarantee better quality in the services on offer by enabling at Community level an increase in the efficiency of the supervision of service activities. The proposal also:

- provides for the right of recipients to use the services of providers established in other Member States without being hampered or dissuaded by restrictive measures applied by their country of residence (Article 20) or discriminatory behaviour by public authorities or private operators (Article 21). For the recipients of health services, the proposal clarifies, in accordance with the case-law of the Court of Justice, the circumstances in which a Member State may make assumption of the costs of health care provided in another Member State subject to prior authorisation;
- guarantees specific assistance for a recipient in his own Member State, in the form of information on legislation in the other Member States, the available means of redress, and associations or organisations offering practical assistance (Article 22);
- strengthens considerably the right of recipients to information on services so as to enable them to make fully-informed choices. At present, some service activities are already subject to transparency requirements under Community rules, but many others are not because of the lack of provisions that are applicable to all service activities (Articles 26, 27, 28, 30, 31 and 32);
- strengthens the protection of recipients by providing for requirements regarding the quality of service providers – particularly the obligation to take out professional insurance in the case of services involving a particular health, safety or financial risk for the recipient (Article 27) – the provisions on multidisciplinary activities (Article 30) and the settlement of disputes (Article 32).

4. **PREPARATORY WORK**

This proposal is the result of numerous analyses, surveys and consultations with the Member States, the European Parliament and other stakeholders that have taken place since the launching of the Internal Market Strategy for Services in December 2000 and which are described in the impact assessment. The Economic and Social Committee and the Committee of the Regions have also made substantial contributions to the Strategy.

5. COHERENCE WITH OTHER COMMUNITY POLICIES

An internal market in services will not be established by means of a legal instrument alone but will require accompanying measures. In legal terms, the proposal is consistent with other Community instruments: where a service activity is already covered by one or more Community instruments, the Directive and these instruments will apply cumulatively, the requirements of the one applying in addition to those of the others. Where there might have been questions of compatibility in connection with a given Article, the latter provides for derogations (in Article 17, for example) or appropriate clauses describing the relationship between the Directive and the other Community instruments, in order to ensure consistency. Moreover, this proposal is without prejudice to any legislative or other Community initiatives in the field of consumer protection.

There is a range of other complementary Community initiatives under way.

- The competitiveness of business-related services. In parallel with this proposal for a Directive on services in the internal market, the Commission has presented a Communication on the competitiveness of business-related services and their contribution to the performance of European enterprises¹⁷, in which it emphasises the importance of business services for the competitiveness of the EU and announces a series of supporting measures, including in particular the creation of a European Forum for business-related services. Whereas the Directive deals with the removal of legal and administrative barriers, the competitiveness of the services sector depends also on a number of complementary economic measures set out in the Communication on business-related services.
- Professional qualifications. This proposal for a Directive complements the proposal for a Directive on the recognition of professional qualifications¹⁸, given that it deals with questions other than professional qualifications such as professional insurance, commercial communications and multidisciplinary activities. The two proposals are fully compatible since, where freedom of establishment is concerned, they are aimed at facilitating establishment for service providers and, where freedom of movement for services is concerned, they are based on the country of origin principle.
- Posting of workers. The employment and working conditions applicable in the event of posting of workers are set out in Directive 96/71/EC¹⁹, which provides for the application of certain rules of the country to whose territory a worker is posted. For the sake of consistency with that directive, Article 17 of this proposal for a Directive contains a derogation from the country of origin principle where these rules are concerned. In order to facilitate the free movement of services and the application of Directive 96/71/EC, the proposal clarifies the allocation of tasks between the country of origin and the Member State of posting, and the administrative supervisory procedures (Article 24).

¹⁷ COM(2003) 747.

¹⁸ Proposal for a Directive of the European Parliament and of the Council on the recognition of professional qualifications, COM(2002) 119 final, 7.3.2002.

¹⁹ Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services.

- Reimbursement of costs of health care. The proposal for a Directive deals with the specific question of the compatibility of prior authorisation systems for assumption of the costs of health care provided in another Member State with the principle of freedom of movement for services. Article 23 of the proposal incorporates the distinction between hospital and non-hospital care that has been clearly established by the consolidated case-law of the Court of Justice²⁰. As regards the circumstances in which such prior authorisation is justified, the proposal clarifies the specific conditions for authorisation, in accordance with the case-law of the Court of Justice. Broader issues have been raised in the high level reflection process on patient mobility and health care developments in the European Union, including patients' rights, entitlements and duties; facilitating cooperation between health systems; providing appropriate information for patients, professionals and policymakers; ensuring access and quality in cross-border care; the impact of enlargement; and in general how to improve legal certainty and reconcile national objectives with European obligations in this area. The Commission will issue a Communication in spring 2004 setting out a comprehensive strategy for addressing patient mobility and health care with proposals responding to the recommendations of the reflection process.

- Safety of services. The Commission has presented a report on the safety of services for consumers²¹, which emphasises the substantial lack of data and information on the risks and safety of services. It also notes that it is impossible to identify specific gaps in Member State systems or significant differences in the level of protection, and that there is a lack of barriers to trade resulting from different national requirements that could justify harmonisation of national rules on the safety of services. The report concludes that the priority for Community action must be to improve the collection of key data in this area and set up a system for exchange of information on policy and regulatory developments. If it appears that there is a need to do so, measures establishing procedures for the definition of European standards will be adopted. The report foresees the establishment of a suitable Community framework to this effect. These analyses are, therefore, complementary to and consistent with this proposal for a Directive, which, moreover, provides for the possibility of derogations on a case-by-case basis aimed at guaranteeing the safety of services (Article 19). The Council, in its resolution of 1 December 2003 on the safety of services²², has warmly welcomed the Commission's report.

- Services of general interest. The Commission has launched a broad debate on the role of the European Union in promoting the provision of high quality services of general interest on the basis of a *Green Paper on services of general interest*²³. This proposal for a Directive does not go into this question as such or the question of opening up these services to competition. It covers all services that correspond to an economic activity within the meaning of the case-law of the Court relating to Article 49 of the Treaty. It does not, therefore,

²⁰ See "Report on the application of internal market rules to health services: implementation by the Member States of the Court's jurisprudence", Commission Staff Working Paper, SEC(2003) 900, 28.7.2003.

²¹ Report on the safety of services for consumers, COM(2003) 313 final of 6.6.2003.

²² OJ C 299, 10.12.2003, p. 1.

²³ COM(2003) 270 final, 21.5.2003.

cover non-economic services of general interest but only services of general economic interest. It should be noted that, in this proposal, certain activities that may be linked to services of general economic interest are subject, in so far as this is justified by their specific nature, to derogations from the country of origin principle. These include, in particular, postal services and electricity, gas and water distribution services. Neither does the proposal cover electronic communications as far as matters covered by the legislative package adopted in 2002 are concerned nor transport services to the extent that they are regulated by other Community instruments based on Article 71 or Article 80(2) of the Treaty. Even in the fields covered by the Directive, it does not affect the freedom of the Member States to define what they consider to be services of general interest and how they should function. In particular, the Directive does not affect the freedom of the Member States to organise public service broadcasting in accordance with protocol 32 of the Treaty on public service broadcasting in the Member States.

- GATS negotiations. The proposal for a Directive is an internal market instrument and therefore concerns only service providers established in a Member State, including, as laid down in Article 48 of the Treaty, companies or firms formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the Community. It does not cover external aspects and, in particular, does not cover:
 - the case of operators from third countries who wish to establish in a Member State (first establishment in the EU);
 - the case of operators from third countries who wish to provide services in the EU;
 - the case of branches of companies from third countries in a Member State (in the sense of Article 48 of the Treaty) who, not being companies formed in accordance with the legislation of a Member State, may not benefit from this Directive.

International trade in services is covered by international negotiations, particularly in the framework of GATS. In this connection, it should be emphasised that the EU is a very open market compared with many trading partners. The proposal does not affect these negotiations, which are aimed at facilitating trade in services and which reinforce the need for the EU swiftly to establish a genuine internal market in services to ensure the competitiveness of European businesses and strengthen Europe's negotiating position.

- eEurope: the eEurope Initiative and eEurope 2005 Action Plan aim to develop modern public services and a dynamic environment for electronic commerce in the EU. eGovernment is one of the key elements in implementation of eEurope and it also plays an important role in realising the Lisbon strategy. The proposal is thus coherent with the objective of the eGovernment initiative because it aims at simplifying administrative procedures.

- Unfair commercial practices. The proposed Directive on unfair business-to-consumer commercial practices²⁴ regulates those commercial practices which cause harm to consumers' economic interests. That proposal does not cover broader regulation of economic activities such as conditions of establishment. It aims to reduce internal market barriers which arise from a fragmented approach to the regulation of traders' behaviour in relation to their consumers, such as misleading or aggressive sales tactics.
- Cooperation between national authorities responsible for the application of consumer law. The proposal of the Commission for a Regulation²⁵ on cooperation in the area of consumer protection establishes a network of competent authorities responsible for the protection of consumers in cross-border situations. The proposal ensures that each Member State, on request, effectively protects all EU consumers from rogue traders operating in its territory. In order to ensure effective and efficient enforcement in cross-border cases, the Regulation harmonises certain powers and procedures within the Member States. It also eliminates barriers within Member States to protecting foreign consumers. The provisions on cooperation in this Directive, which do not address the same problems, will be complemented by the Regulation in respect of consumer protection.
- Revision of the *acquis* in respect of consumer protection. This proposal for a Directive is coherent with the revision of the *acquis* in respect of consumer protection, including the move towards full harmonisation, notably in the area of contract law.
- The “notification” Directive 98/34/EC. In the case of a draft national law containing a requirement listed in Article 15(2) of this proposal for a Directive, which applies specifically to an information society service and therefore falls within the field of application of Directive 98/34/EC as amended by Directive 98/48/EC, the notification of such a draft in accordance with Directive 98/34/EC as amended by Directive 98/48/EC would also comply with Article 15(6) of this Directive. Furthermore, the Commission is currently examining the possibility of extending the field of application of Directive 98/34/EC to services other than information society services. In this case, the notification procedure provided for in that Directive would, for the services concerned, replace the notification laid down in Article 15(6) of this Directive.
- Private international law. The Commission has presented two initiatives in the area of rules on conflict of laws:

²⁴ Proposal for a Directive of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices in the Internal Market and amending directives 84/450/EEC, 97/7/EC and 98/27/EC (the Unfair Commercial Practices Directive). COM(2003) 356 final of 18.6.2003

²⁵ Proposal for a Regulation of the European Parliament and of the Council on cooperation between national authorities responsible for the enforcement of consumer protection laws ("the Regulation on consumer protection cooperation") COM(2003) 443 final of 18.7.2003

- the proposal for a Regulation on the law applicable to non-contractual obligations²⁶ which aims to establish common rules on conflicts of law in order to determine the applicable law in non-contractual matters (the applicable law could be that of a third country). In order to ensure coherence with instruments, such as, for example, this proposal for a Directive, which are adopted in the framework of internal market policy and which apply the country of origin principle, the proposal for a Regulation provides (in Article 23(2)) for a specific derogation to ensure the application of this principle;
- the Green Paper on the conversion of the Rome Convention of 1980 on the law applicable to contractual obligations into a Community instrument²⁷. The Commission states explicitly in this Green Paper “*that it is clear to the Commission that such an instrument must leave intact internal market principles contained in the Treaty or in secondary law*”.

These instruments could, however, play an important role not only for the activities which are not covered by this Directive but also for the questions which are the object of derogations to the country of origin principle, notably the derogation in relation to contracts concluded by consumers, as well as the derogation relating to the non-contractual liability of the provider in the case of an accident occurring in the context of his activity which affects a person in a Member State which a provider visits.

Finally, it should be noted that the question of determining the jurisdiction of courts is not dealt with by this Directive, but by Regulation (EC) 44/2001 of the Council of 22 December 2000 concerning jurisdiction and the recognition and enforcement of judgments in civil and commercial matters or other Community instruments such as the Directive 96/71/EC.

6. LEGAL ASPECTS

a) Legal base and choice of instrument

The proposal for a Directive is based on Articles 47(2) and 55 of the Treaty²⁸, as well as on Articles 71 and 80(2) of the Treaty for matters concerning transport that are not regulated by other Community instruments based on the latter two articles. This legal base is justified by both its objective and its content:

- objective: Directives adopted under Article 47(2) must aim “*to make it easier for persons to take up and pursue activities as self-employed persons*”, which is precisely the aim of this proposal;

²⁶ Proposal for a European Parliament and Council Regulation on the law applicable to non-contractual obligations (“Rome II”). COM(2003) 427 final.

²⁷ A Green Paper on the conversion of the Rome Convention of 1980 on the law applicable to contractual obligations into a Community instrument and its modernisation, COM(2002) 654 final, 14 January 2003.

²⁸ Article 55 refers to Article 47(2), making it applicable to the free movement of services.

- content: the content of the proposal is clearly directed at effectively eliminating obstacles to the freedom of establishment and the free movement of services by means of provisions that prohibit certain requirements and guarantee the free movement of services. Other provisions harmonise certain questions in a targeted manner, or ensure administrative cooperation to the extent necessary for eliminating these obstacles.

As for the choice of instrument, Article 47(2) specifies the use of a Directive.

b) Subsidiarity

The proposal for a Directive is aimed at eliminating legal obstacles to the freedom of establishment for service providers and the free movement of services. The obstacles in question have been clearly identified on the basis of complaints, petitions and questions from the European Parliament, consultation of interested parties, and studies or analyses.

This aim cannot be achieved by unilateral action on the part of the Member States. In accordance with the case-law of the Court of Justice, some of these obstacles may be justified in the absence of a Community instrument and therefore, if they are to be eliminated, necessitate prior coordination of national schemes, including through administrative cooperation. Other obstacles are already incompatible with Articles 43 and 49 of the Treaty but have not yet been eliminated by the Member States on their own initiative and would require case-by-case treatment by means of large numbers of infringement procedures, which, as already emphasised, would be as ineffective as it would be unmanageable.

Furthermore, the concern to keep to a minimum interference with the characteristics of national regimes has justified certain legislative choices:

- the proposal does not result in detailed and systematic harmonisation of all the national rules applicable to services; it limits itself to the essential aspects that must be coordinated in order to guarantee freedom of establishment and the free movement of services;
- the application of the country of origin principle will make it possible to achieve the objective of guaranteeing the free movement of services whilst allowing the various national regimes to co-exist with all their distinctive characteristics. These regimes may not be used to restrict the provision of services by an operator established in another Member State;
- the proposal avoids interference with the institutional organisation of the regulation of services in the Member States. For example, it merely specifies the functions of the single points of contact without imposing any institutional characteristics, (type of body – administrative, chamber of commerce, professional body etc.); similarly, in its definition of "competent authority", the proposal (Article 4(8)) takes account of the fact that the competent authority for a given activity may, depending on the Member State, be a professional body, a government authority or a professional association, but does not impose one or the other.

c) **Proportionality**

The principle of proportionality referred to in Article 5 of the Treaty is the factor underlying several legislative choices in the proposal for a Directive:

- the choice between types of regulation: harmonisation is proposed only as a last resort for matters for which neither administrative cooperation nor reliance on the adoption of codes of conduct by the interested parties at Community level are sufficient; harmonisation is proposed in areas where it is proved to be necessary, such as consumer protection;
- the content of the harmonisation: the proposal gives as much priority as possible to the service provider's obligations as regards information so that recipients can make an informed choice;
- the balance between the various regulatory methods: the Directive proposes a balance between, on the one hand, the scope of the country of origin principle and, on the other, the extent of harmonisation, administrative cooperation and reliance on codes of conduct, as well as the number and scope of derogations to the country of origin principle. The balance proposed represents a selective and flexible approach that takes full account of all the interests concerned;
- the concern to provide a suitable framework for SMEs: the provisions on single points of contact, electronic procedures, information and assistance for service providers, the country of origin principle, the simplification of procedures for the posting of workers, and the voluntary measures in connection with quality policy etc. all stem directly from a wish to make it easier for SMEs to exercise the freedoms of the internal market.

All these legislative choices make it possible to propose a balanced instrument containing provisions that do not go beyond what is necessary for achieving the aim of establishing a genuine internal market in services.

7. **SPECIFIC QUESTIONS**

a) **What activities are covered by the Directive (Articles 2 and 4)?**

Article 2 defines the scope of the Directive ("services supplied by providers established in a Member State") and Article 4(1) defines a "service" ("*any self-employed economic activity, as provided for by Article 50 of the Treaty, consisting of the provision of a service against consideration*").

This definition covers a very wide range of activities including, for example, management consultancy, certification and testing, maintenance, facilities management and security, advertising services, recruitment services, including the services of temporary employment agencies, services provided by commercial agents, legal or tax consultancy, property services, such as those provided by estate agencies, construction services, architectural services, distributive trades, organisation of trade fairs and exhibitions, car-hire, security services, tourist services, including travel agencies and tourist guides, audiovisual services, sports centres and amusement parks, leisure services, health services and personal domestic services, such as assistance for old people.

The definition of "service" provided for in this proposal is based on the case-law of the Court of Justice²⁹, according to which "services" mean any self-employed economic activity normally performed for remuneration, which need not, however, be paid by those for whom the service is performed. The essential characteristic of remuneration lies in the fact that it constitutes consideration for the service in question, irrespective of how this consideration is financed. Consequently, a service is any activity through which a provider participates in the economy, irrespective of his legal status or aims, or the field of action concerned.

Thus the following are covered:

- services provided to consumers, to businesses or to both;
- services provided by an operator who has travelled to the Member State of the recipient, services provided at a distance (via the Internet, for example), services provided in the country of origin following travel by the recipient, or services provided in another Member State to which both the provider and the recipient have travelled (tourist guides, for example);
- services for which a fee is charged or which are free to the final recipient.

However, the definition does not cover non-economic activities, nor activities performed by the State for no consideration as part of its social, cultural, education and judicial functions where there is no element of remuneration.

b) Why should certain services or fields be excluded from the scope of the Directive (Article 2)?

The Directive does not apply to financial services because these activities are already covered by a comprehensive policy – the Financial Services Action Plan³⁰, which is currently being implemented and is aimed, like this proposal for a Directive, at establishing a genuine internal market in services. For the same reasons, the Directive does not apply to electronic communications services and networks as far as the questions governed by the Directives in the "telecom package" adopted in 2002 are concerned (Directives 2002/19/EC, 2002/20/EC, 2002/21/CE, 2002/22/EC and 2002/58/EC of the European Parliament and of the Council). Given that transport services are already covered by a set of Community instruments dealing with specific issues in this field, it is appropriate to exclude transport services from the scope of application of this Directive to the extent that they are regulated by other Community instruments based on Articles 71 and 80(2) of the Treaty.

The Directive does not apply in the field of taxation, which has its own legal base. However, in accordance with the case-law of the Court, certain tax measures that are not covered by a Community instrument may constitute restrictions contrary to Articles 43³¹ (freedom of establishment) and 49³² of the Treaty (free movement of

²⁹ Judgments of: 26 April 1988, *Bond van Adverteerders*, Case 352/85, point 16; 27 September 1988, *Humbel*, 263/86, point 17; 11 April 2000, *Deliège*, C-51/96 and C-191/97, point 56; 12 July 2001, *Smits and Peerbooms*, Case C-157/99, point 57.

³⁰ "Implementing the framework for financial markets: action plan", COM(1999) 232, 11.5.1999.

³¹ For example, Judgment of 12 March 1994, *Halliburton*, Case C-1/93.

³² For example, Judgment of 29 November 2001, *de Coster*, Case C-17/00.

services), particularly where they have a discriminatory effect. This is why Articles 14 (prohibited requirements in connection with freedom of establishment) and 16 (principle of country of origin in connection with free movement of services) of the proposal for a Directive apply to tax measures that are not covered by a Community instrument.

Finally, it should be noted that the Directive does not apply to activities covered by Article 45 of the Treaty. This provides expressly that the chapter on the freedom of establishment and that on services (by virtue of Article 55 of the Treaty) do not apply to those activities which are directly and specifically connected with the exercise of official authority.

c) What are "single points of contact" (Article 6)?

The concept of "single points of contact" does not involve each Member State setting up a single, physical, centralised agency for its entire territory. The point of contact is "single" only as far as the individual service provider is concerned. It means that a service provider must be able to complete all the formalities and procedures required for the exercise of service activities, particularly those relating to authorisations, through one and the same body. He must not be obliged to visit a number of different bodies, organisations, offices etc. but must be able to complete all the necessary formalities via a single interlocutor.

The number of single points of contact in each Member State, and their institutional nature, will vary depending on the internal organisation of the Member State and in particular the regional or local competencies or the activities concerned. Single points of contact may be the authorities that are directly competent – for issuing authorisation, for example – or bodies that merely function as intermediaries between the service providers and the directly competent authorities.

d) What is the difference between the requirements to be eliminated (Article 14) and the requirements to be evaluated (Article 15)?

The report lists a large number of legal obstacles resulting from requirements in the legal systems of the Member States that prevent, hamper or discourage the establishment of service providers in certain Member States. With a view to making it easier to exercise the freedom of establishment, the proposal provides for two different solutions depending on the type of requirement in question:

- on the one hand, the proposal prohibits certain requirements, listed in Article 14 ("prohibited requirements"), which, particularly in the light of the case-law of the Court of Justice, are manifestly incompatible with the freedom of establishment, particularly where they have a discriminatory effect. The prohibition of these requirements will mean that, during the transposition period, each Member State will have to examine systematically whether they exist in its legal system and, if so, eliminate them;
- on the other hand, the proposal requires the Member States to examine a number of other requirements, listed in Article 15 ("requirements to be evaluated"), that have major restrictive effects on the freedom of establishment and have been reported by interested parties, but may be justified in certain cases depending on the precise content of the rules in question and the

circumstances in which they apply. For this category of requirements, therefore, during the transposition period, Member States will have to conduct a "screening" of their legislation – in other words, they will have to examine whether requirements of this kind exist in their legal systems, evaluate them in the light of the conditions laid down in the Directive (objectively justifiable by an overriding reason relating to the general interest and satisfying the principle of proportionality), and eliminate them if these conditions are not met. A report on the implementation of this Article must be drawn up not later than at the end of the transposition period.

e) What will the mutual evaluation procedure involve (Articles 9, 15, 30 and 41)?

The proposal for a Directive provides for the mutual evaluation of the application of Article 9(1), which sets out the conditions under which a service activity may be subject to an authorisation scheme³³, Article 15, which lists a number of requirements to be evaluated, and Article 30, which specifies the conditions under which multidisciplinary activities may be limited.

The procedure consists of several phases:

- during the transposition period, Member States must first conduct a "screening" of their legislation in order to ascertain whether requirements of the kind referred to in these three Articles exist in their legal systems, evaluate them in the light of the conditions laid down in the Articles in question, and eliminate or modify them if these conditions are not met,
- by the end of the transposition period at the latest, Member States must draw up a report on the implementation of these three Articles. Each report will be submitted to the other Member States and interested parties, including national consumer associations. Member States will then have six months in which to submit their observations on each of the reports by the other Member States and during the same period the Commission will consult interested parties. This "peer review" procedure will enable exchange between Member States of best practice in the area of the modernising the regulation of services,
- by 31 December 2008 at the latest, the Commission will draw up a synthesis report, accompanied where appropriate by proposals for further initiatives.

A procedure of this kind will make it possible to keep track of the process of modernisation and reform of the regulatory schemes governing services and to identify any need for additional action at Community level.

f) How will the implementation of Articles 14, 15 and 16 of the Directive relate to the Commission's role as guardian of the Treaty, in particular as regards infringement procedures?

The list of prohibited requirements (Article 14), requirements to be evaluated (Article 15) and restrictions prohibited under Article 16 obviously do not prevent the Commission from launching, without waiting until the Directive has been fully

³³ This does not concern authorisation schemes imposed or permitted by Community law (Article 9(3)), notably those in the field of the environment.

transposed, infringement procedures against any measures contrary to the Treaty taken by Member States that it becomes aware of, particularly following a complaint. The obligations provided for in Articles 14, 15 and 16 of the Directive and the procedures provided for in Article 226 of the Treaty have different aims. While the latter concern individual cases resulting from specific circumstances and measures in a particular Member State, the former are on the other hand aimed at ensuring, in a general and systematic fashion, that the legal systems correspond to the requirements of a genuine internal market in services in which the freedom of establishment and free movement of services are facilitated.

g) Are requirements that are listed neither in Article 14 nor in Article 15 considered to be in conformity with the freedom of establishment provided for in Article 43 of the Treaty?

Unlike Article 16(3) of the proposal, which lays down the principle of prohibiting restrictions on the free movement of services and gives a few examples purely for illustrative purposes, Article 14 contains a list of requirements concerning freedom of establishment that must be eliminated and Article 15 contains a list of requirements relating to establishment which must be evaluated. The requirements listed are those that have been identified, particularly in the report, as having considerable restrictive effects and which must, therefore, be the subject of a systematic and general modernisation process. Articles 14 and 15 do not, therefore, concern all the types of restriction that are incompatible with Article 43 of the Treaty, and hence the absence of certain requirements from these lists does not mean that the requirements in question are presumed to be in conformity with the Treaty. Consequently, these lists in no way affect the Commission's scope for opening infringement procedures for failure to respect Article 43 of the Treaty, as the Member States are still obliged to ensure that their legislation is compatible with Community law in all respects.

h) Why is there a section specifically devoted to the rights of recipients of services (Chapter III Section 2)?

The Commission receives large numbers of complaints from users, particularly consumers, who, even though they wish to benefit from cross-border services and are prepared to bear the cost of such transactions, come up against various types of obstacles. In particular, consumers are often confronted with the application of higher tariffs or with refusals to offer services simply on the grounds that they are nationals of a particular Member State or are resident in a particular country. Problems of this kind, which result not only from acts by public authorities but also from the behaviour of private operators, have been reported in several areas including, for example, participation in sporting or cultural events, access to monuments, museums and tourist sites, promotional offers, use of leisure facilities, entrance to amusement parks etc.

The persistence of discrimination of this kind restricts or eliminates the possibility of cross-border transactions and makes European citizens more acutely aware of the lack of a genuine internal market in services. This inconsistency with the idea of an area without internal borders is particularly felt by recipients now that technological developments provide the opportunity to overcome geographical distances and natural barriers by making it possible for services that had hitherto been strictly national to be provided across borders.

The principle of non-discrimination in the internal market implies that access by recipients – particularly consumers – to services offered to the public should not be denied or rendered more difficult simply because of the formal criterion of the recipient's nationality or place of residence. Consequently, the Directive lays down, to varying degrees, obligations for Member States and service providers.

For the Member States, the proposal stipulates:

- (Article 20) that Member States may not impose restrictions on recipients on the use of services provided by operators established in a different Member State, and
- (Article 21(1)), that neither the Member State of origin of the service provider nor the Member State of destination may apply discriminatory measures to recipients based on nationality or place of residence as such. This does not apply to cases where tariffs vary on the basis of other objective criteria such as a direct link with contributions paid by certain recipients.

For service providers, the proposal in Article 21(2) prohibits them, in their general conditions relating to access to their services, from providing for refusal of access, or subjecting access to less favourable conditions, on grounds of the nationality or place of residence of the recipient. This does not prevent service providers from refusing to provide services or applying different tariffs and conditions if they can demonstrate that this is directly justified by objective reasons, such as actual additional costs resulting from the distances involved or the technical aspects of the service.

i) Why is the question of the posting of third country nationals covered (Article 25)?

The report has shown that service providers who, in the context of providing a service, post a worker who is a third country national from one Member State to another often encounter legal obstacles, including in particular the obligation for the worker in question to have a visa or work permit issued by the authorities of the Member State to which he is posted. The report has also shown that these difficulties affect a whole range of service activities, including those in high-tech sectors that are suffering from a lack of specialised workers.

If these obstacles are to be eliminated, it is vital that the Member State of posting has a number of guarantees regarding the legality of the postings and supervision by the Member State of origin. With a view to giving the Member State of origin this kind of responsibility, it will under Article 25 of the proposal be obliged, on the one hand, to ensure that service providers post workers only if they meet the residence and lawful-employment requirements laid down in their national legislation, and on the other hand to readmit the worker to their territory. In view of these guarantees, Member States of posting may not lay down requirements that conflict with the country of origin principle, such as an obligation to have an entry, exit, residence or work permit, except in the cases provided for in Article 25(2).

j) Why does the country of origin principle not apply to certain matters or activities (Article 17)?

The derogations to the country of origin principle have been determined according to two types of consideration.

- (1) The Community *acquis*. Certain derogations are provided for in order to take into account the fact that existing Community instruments apply the rule according to which cross-border service provision may be subject to the legislation of the country of destination. Concerning a rule contrary to Article 16 of the Directive, derogations are necessary in order to ensure coherence with this *acquis*. Such derogations concern Directive 96/71/EC (posting of workers), Regulation (EEC) No 1408/71 (social security), Regulation (EEC) No 259/93 (transport of waste) and certain instruments on the free movement of persons and the recognition of qualifications.

In other fields, the free movement of services is already the subject of a framework formed by Community instruments which adopt a specific approach compared with that taken in this Directive and which justify a derogation, in particular those dealing with protection of personal data³⁴.

- (2) The level of disparity between national regimes. For certain activities or matters, too wide a divergence in national approaches or an insufficient level of Community integration may exist and prevent the application of the country of origin principle. As far as possible, the Directive harmonises, or provides for strengthened administrative cooperation, in order to establish the mutual confidence necessary for the application of the country of origin principle. However, in certain cases, it is not possible at this stage to achieve such harmonisation in this Directive or to establish such cooperation and it is therefore necessary to allow for a derogation. These cases concern derogations relating to certain activities such as notarial acts, postal services, electricity, gas and water distribution services as well as those relating to certain questions such as intellectual property, total prohibitions justified by reasons of public policy, public security or public health, rules linked to the specific characteristics of the place where the service is provided justified by reasons of public policy, public security or the protection of public health or the environment, authorisations schemes relating to the reimbursement of the costs of hospital care, registration of vehicles leased in another Member State or derogations on contractual matters or extra-contractual liability.

³⁴

The Directive on the protection of personal data (which also applies the country of origin principle) does not use the same criterion to define the country of origin: it uses the criterion of the establishment of the “controller”, while this proposal uses the establishment of the “provider”. A derogation is therefore necessary to avoid any conflict which could lead to the designation of two different countries of origin according to each of the Directives.

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Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of [...]

on services in the internal market

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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 proposal from the Commission¹,

Having regard to the opinion of the European Economic and Social Committee²,

Having regard to the opinion of the Committee of the Regions³,

Acting in accordance with the procedure referred to in Article 251 of the Treaty⁴,

Whereas:

- (1) The European Union is seeking to forge ever closer links between the States and peoples of Europe and to ensure economic and social progress. In accordance with Article 14(2) of the Treaty, the internal market comprises an area without internal frontiers in which the free movement of services and the freedom of establishment are ensured. The elimination of obstacles to the development of service activities between Member States is essential in order to strengthen the integration of the peoples of Europe and to promote balanced and sustainable economic and social progress.
- (2) The report from the Commission on "The State of the Internal Market for Services"⁵ drew up an inventory of a large number of barriers which are preventing or slowing down the development of services between Member States, in particular those provided by small and medium-sized enterprises (SMEs), which are predominant in the field of services. The report concludes that a decade after the envisaged completion of the internal market, there is still a huge gap between the vision of an integrated European Union economy and the reality as experienced by European citizens and service providers. The barriers listed affect a wide variety of service activities across all stages of the service provider's activity and have a number of common features, including, in particular, the fact that they often arise from administrative burdens, the

¹ OJ C

² OJ C

³ OJ C

⁴ OJ C

⁵ COM(2002) 441 final.

legal uncertainty associated with cross-border activity and the lack of mutual trust between Member States.

- (3) Since services constitute the engine of economic growth and account for 70% of GDP and employment in the majority of Member States, this fragmentation of the internal market has a negative impact on the entire European economy, in particular on the competitiveness of SMEs, and prevents consumers from gaining access to a greater variety of competitively priced services. The European Parliament and the Council have emphasised that the removal of legal barriers to the establishment of a genuine internal market is a matter of priority for achieving the goal set by the Lisbon European Council of making the European Union the most competitive and dynamic knowledge-based economy in the world by 2010. Removing those barriers is essential in order to revive the European economy, particularly in terms of employment and investment.
- (4) It is therefore necessary to remove barriers to the freedom of establishment for service providers in Member States and barriers to the freedom to provide services as between Member States and to guarantee providers and recipients the legal certainty necessary for the exercise in practice of those two fundamental freedoms of the Treaty. Since the barriers in the internal market for services affect operators who wish to become established in other Member States as well as those who provide a service in another Member State without being established there, it is necessary to enable service providers to develop their service activities within the internal market either by becoming established in a Member State or by making use of the freedom to provide services. Service providers should be able to choose between those two freedoms, depending on their strategy for growth in each Member State.
- (5) Those barriers cannot be removed solely by relying on direct application of Articles 43 and 49 of the Treaty, since, on the one hand, addressing them on a case-by-case basis through infringement procedures against the Member States concerned would, especially following enlargement, be extremely complicated for national and Community institutions, and, on the other hand, the lifting of many barriers requires prior coordination of national legal schemes, including the setting up of administrative cooperation. As the European Parliament and the Council have recognised, a Community legislative instrument makes it possible to achieve a genuine internal market for services.
- (6) This Directive establishes a general legal framework which benefits a wide variety of services while taking into account the distinctive features of each type of activity or profession and its system of regulation. That framework is based on a dynamic and selective approach consisting in the removal, as a matter of priority, of barriers which may be dismantled quickly and, for the others, the launching of a process of evaluation, consultation and complementary harmonisation of specific issues, which will make possible the progressive and coordinated modernisation of national regulatory systems for service activities which is vital in order to achieve a genuine internal market for services by 2010. Provision should be made for a balanced mix of measures involving targeted harmonisation, administrative cooperation, the country of origin principle and encouragement of the development of codes of conduct on certain issues. That coordination of national legislative regimes should ensure a high degree of Community legal integration and a high level of protection of general interest objectives, especially of consumer protection, which is vital in order to establish mutual trust between Member States.

- (7) It is necessary to recognise the importance of the roles of professional bodies and professional associations in the regulation of service activities and the development of professional rules.
- (8) This Directive is consistent with other current Community initiatives concerning services, particularly those relating to the competitiveness of business-related services, the safety of services⁶, and work on patient mobility and the development of health care in the Community. It is also consistent with current initiatives concerning the internal market, such as the proposal for a Regulation of the European Parliament and of the Council on sales promotions in the internal market⁷, and those concerning consumer protection, such as the proposal for a Directive on unfair commercial practices⁸ and the proposal for a Regulation of the European Parliament and of the Council on cooperation between national authorities responsible for the enforcement of consumer protection laws ("the Regulation on consumer protection cooperation")⁹.
- (9) Financial services should be excluded from the scope of this Directive since those activities are currently the subject of a specific action plan aimed, as is this Directive, at achieving a genuine internal market for services. Financial services are defined in Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC¹⁰. That Directive defines a financial service as any service of a banking, credit, insurance, personal pension, investment or payment nature.
- (10) In view of the adoption in 2002 of a package of legislative instruments relating to electronic communications networks and services, as well as to associated resources and services, which has established a regulatory framework to facilitate access to those activities within the internal market, notably through the elimination of most individual authorisation schemes, it is necessary to exclude issues dealt with by those instruments from the scope of this Directive.
- (11) In view of the fact that the Treaty provides specific legal bases for taxation matters and for the Community instruments already adopted in that field, it is necessary to exclude the field of taxation from the scope of this Directive, with the exception, however, of the provisions concerning prohibited requirements and the free movement of services. Harmonisation in the field of taxation has been achieved notably through Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment¹¹, Council Directive 90/434/EEC of 23 July 1990 on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States¹², Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable

⁶ COM(2003) 313 final; OJ C 299, 10.12.2003, p. 1.

⁷ COM(2002) 585 final.

⁸ COM(2003) 356 final.

⁹ COM(2003) 443 final.

¹⁰ OJ L 271, 9.10.2002, p. 16.

¹¹ OJ L 145, 13.6.1977, p. 1. Directive as last amended by Directive 2003/92/EC (OJ L 260, 11.10.2003, p. 8).

¹² OJ L 225, 20.8.1990, p. 1.

in the case of parent companies and subsidiaries of different Member States¹³ and Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States¹⁴. The present Directive does not aim to introduce specific new rules or systems in the field of taxation. Its sole objective is to remove restrictions, certain of which are fiscal in nature, and in particular those which are discriminatory, on freedom of establishment and the free movement of services, in accordance with the case-law of the Court of Justice of the European Communities, hereinafter “the Court of Justice”, with respect to Articles 43 and 49 of the Treaty. The field of value added tax (VAT) is the subject of harmonisation at Community level, in accordance with which service providers carrying out cross-border activities may be subject to obligations other than those of the country in which they are established. It is nevertheless desirable to establish a system of “one-stop shops” for service providers, in order to enable all their obligations to be fulfilled by means of a single electronic portal to the tax authorities in their home Member State.

- (12) Since transport services are already covered by a set of Community instruments specific to that field, they should be excluded from the scope of this Directive to the extent that they are regulated by other Community instruments adopted under Articles 71 and 80(2) of the Treaty. However, this Directive applies to services that are not regulated by specific instruments concerning transport, such as cash in transit or the transport of mortal remains.
- (13) There is already a considerable body of Community law on service activities, especially the regulated professions, postal services, television broadcasting, information society services and services relating to travel, holidays and package tours. Service activities are also covered by other instruments which do not deal with a specific category of services, such as those relating to consumer protection. This Directive builds on, and thus complements, the Community *acquis*. Where a service activity is already covered by one or more Community instruments, this Directive and those instruments will all apply, the requirements laid down by one adding to those laid down by the others. Accordingly, appropriate provisions should be laid down, including provision for derogations, in order to prevent incompatibilities and to ensure consistency as between all those Community instruments.
- (14) The concept of service covers a wide variety of ever-changing activities, including business services such as management consultancy, certification and testing; facilities management, including office maintenance and security; advertising; recruitment services, including employment agencies; and the services of commercial agents. That concept also covers services provided both to businesses and to consumers, such as legal or fiscal advice; real estate services such as estate agencies; construction, including the services of architects; transport; distributive trades; the organisation of trade fairs; car rental; travel agencies; and security services. It also covers consumer services, such as those in the field of tourism, including tour guides; audio-visual services; leisure services, sports centres and amusement parks; health and health care services; and household support services, such as help for the elderly. Those activities may involve services requiring the proximity of provider and recipient, services

¹³ OJ L 225, 20.8.1990 p. 6.

¹⁴ OJ L 157, 26.6.2003 p. 49.

requiring travel by the recipient or the provider and services which may be provided at a distance, including via the Internet.

- (15) As the Court of Justice has consistently held with regard to Articles 49 et seq of the Treaty, the concept of service covers any economic activity normally provided for remuneration, without the service having to be paid for by those benefiting from it and regardless of the financing arrangements for the remuneration received in return, by way of consideration. Any service whereby a provider participates in the economy, irrespective of his legal status or aims, or the field of action concerned, thus constitutes a service.
- (16) The characteristic of remuneration is absent in the case of activities performed, for no consideration, by the State in fulfilment of its social, cultural, educational and legal obligations. These activities are not covered by the definition in Article 50 of the Treaty and do not therefore fall within the scope of this Directive.
- (17) This Directive does not concern the application of Articles 28 to 30 of the Treaty relating to the free movement of goods. The restrictions prohibited pursuant to the country of origin principle cover the requirements applicable to access to service activities or to the exercise thereof and not those applicable to goods as such.
- (18) The concept of provider covers any natural person who is a national of a Member State or any legal person who is engaged in a service activity there, in exercise either of the freedom of establishment or of the freedom to provide services. The concept of provider is thus not limited solely to cross-border service provision within the framework of the freedom to provide services but also covers cases in which an operator establishes itself in a Member State in order to develop its service activities there. On the other hand, the concept of a provider does not cover the case of branches in a Member State of companies from third countries because, under Article 48 of the Treaty, the freedom of establishment and free movement of services may benefit only companies constituted in accordance with the laws of a Member State and having their registered office, central administration or principal place of business within the Community.
- (19) Where an operator travels to another Member State to exercise a service activity there, a distinction should be made between situations covered by the freedom of establishment and those covered, due to the temporary nature of the activities concerned, by the free movement of services. The Court of Justice has consistently held that the temporary nature of the activities in question must be determined in the light not only of the duration of the provision of the service, but also of its regularity, periodical nature or continuity. In any case, the fact that the activity is temporary does not mean that the service provider may not equip himself with some forms of infrastructure in the host Member State, such as an office, chambers or consulting rooms, in so far as such infrastructure is necessary for the purposes of providing the service in question.
- (20) The concept of authorisation scheme covers, *inter alia*, the administrative procedures for granting authorisations, licences, approvals or concessions, and also the obligation, in order to be eligible to exercise the activity, to be registered as a member of a profession or entered in a register, roll or database, to be officially appointed to a body or to obtain a card attesting to membership of a particular profession. Authorisation may be granted not only by a formal decision but also by an implicit decision arising,

for example, from the silence of the competent authority or from the fact that the interested party must await acknowledgement of receipt of a declaration in order to commence the activity in question or for the latter to become lawful.

- (21) The concept of the coordinated field covers all requirements applicable to access to service activities and to the exercise thereof, in particular those laid down by the laws, regulations and administrative provisions of each Member State, whether or not they fall within an area harmonised at Community level or are general or specific in nature and regardless of the legal field to which they belong under national law.
- (22) One of the fundamental difficulties faced, in particular by SMEs, in accessing service activities and exercising them is the complexity, length and legal uncertainty of administrative procedures. For this reason, following the example of certain modernising and good administrative practice initiatives undertaken at Community and national level, it is necessary to establish principles of administrative simplification, *inter alia* through the introduction, coordinated at Community level, of a system of single points of contact, limitation of the obligation of prior authorisation to cases in which it is essential and the introduction of the principle of tacit authorisation by the competent authorities after a certain period of time has elapsed. Such modernising action, while maintaining the requirements on transparency and the updating of information relating to operators, is intended to eliminate the delays, costs and dissuasive effects which arise, for example, from unnecessary or excessively complex and burdensome procedures, the duplication of procedures, the red tape involved in submitting documents, the use of discretionary powers by the competent authorities, indeterminate or excessively long periods before a response is given, the limited duration of validity of authorisations granted and disproportionate fees and penalties. Such practices have particularly significant dissuasive effects on providers wishing to develop their activities in other Member States and require coordinated modernisation within an enlarged internal market of twenty-five Member States.
- (23) In order to facilitate access to service activities and the exercise thereof in the internal market, it is necessary to establish an objective, common to all Member States, of administrative simplification and to lay down provisions concerning, *inter alia*, single points of contact, the right to information, procedures by electronic means and the establishment of a framework for authorisation schemes. Other measures adopted at national level to meet that objective may involve reduction of the number of procedures and formalities applicable to service activities and the restriction of such procedures and formalities to those which are essential in order to achieve a general interest objective and which do not duplicate each other in terms of content or purpose.
- (24) With the aim of administrative simplification, general formal requirements, such as a certified translation, must not be imposed, except where objectively justified by an overriding reason relating to the public interest, such as the protection of workers. It is also necessary to ensure that an authorisation normally permits access to, or exercise of, a service activity throughout the national territory, unless a new authorisation for each establishment, for example for each new hypermarket, is objectively justified by an overriding reason relating to the public interest, such as protection of the urban environment.
- (25) It is appropriate to provide for single points of contact in order to ensure that each provider has a single point at which he can complete all procedures and formalities.

The number of single points of contact per Member State may vary according to regional or local competencies or according to the activities concerned. The creation of single points of contact does not interfere with the allocation of functions among competent authorities within each national system. Where several authorities at regional or local level are competent, one of them may assume the role of single point of contact and coordinator. Single points of contact may be set up not only by administrative authorities but also by chambers of commerce or crafts, or by the professional organisations or private bodies to which a Member State decides to entrust that function. Single points of contact have an important role to play in providing assistance to providers either as the authority directly competent to issue the documents necessary to access a service activity or as an intermediary between the provider and the authorities which are directly competent. In its Recommendation of 22 April 1997 on improving and simplifying the business environment for business start-ups¹⁵, the Commission was already encouraging Member States to introduce points of contact to simplify formalities.

- (26) The setting up, in the reasonably near future, of electronic means of completing procedures and formalities will be vital for administrative simplification in the field of service activities, for the benefit of providers, recipients and competent authorities. In order to meet that obligation as to results, national laws and other rules applicable to services may need to be adapted. The fact that it must be possible to complete those procedures and formalities at a distance means in particular that Member States must ensure that they may be completed across borders. The obligation as to results does not cover procedures or formalities which by their very nature are impossible to complete at a distance.
- (27) The possibility of gaining access to a service activity may be made subject to authorisation by the competent authorities only if that decision satisfies the criteria of non-discrimination, necessity and proportionality. That means, in particular, that authorisation schemes should be permissible only where an *a posteriori* inspection would not be effective because of the impossibility of ascertaining the defects of the services concerned *a posteriori*, due account being taken of the risks and dangers which could arise in the absence of a prior inspection. However, the provision to that effect made by this Directive cannot be relied upon in order to justify authorisation schemes which are prohibited by other Community instruments such as Directive 1999/93/EC of the European Parliament and the Council of 13 December 1999 on a Community framework for electronic signatures¹⁶, or Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the internal market ('Directive on electronic commerce')¹⁷. The results of the process of mutual evaluation will make it possible to determine, at Community level, the types of activity for which authorisation schemes should be eliminated.
- (28) In cases where the number of authorisations available for an activity is limited because of scarcity of natural resources or technical capacity, as may be the position, for example, with regard to the award of analogue radio frequencies or the exploitation of hydro-electric plant, a procedure for selection from among several potential candidates

¹⁵ OJ L 145, 5.6.1997, p. 29.

¹⁶ OJ L 13, 19.1.2000, p. 12.

¹⁷ OJ L 178, 17.7.2000, p. 1.

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

- (29) The overriding reasons relating to the public interest to which reference is made in certain harmonisation provisions of this Directive are those recognised by the Court of Justice in relation to Articles 43 and 49 of the Treaty, notably the protection of consumers, recipients of services, workers and the urban environment.
- (30) In order to establish a genuine internal market for services, it is necessary to abolish any restrictions on the freedom of establishment and the free movement of services which are still enshrined in the laws of certain Member States and which are incompatible with Articles 43 and 49 of the Treaty respectively. The restrictions to be prohibited particularly affect the internal market for services and should be systematically dismantled as soon as possible.
- (31) The Court of Justice has consistently held that the freedom of establishment is predicated, in particular, upon the principle of equal treatment, which entails the prohibition not only of any discrimination on grounds of nationality but also of any indirect discrimination based on other grounds but capable of producing the same result. Thus, access to a service activity or the exercise thereof in a Member State, either as a principal or secondary activity, may not be made subject to criteria such as place of establishment, residence, domicile or principal provision of the service activity. Similarly, a Member State may not restrict the legal capacity or the right to bring legal proceedings of companies incorporated in accordance with the law of another Member State on whose territory they have their primary establishment. Moreover, a Member State may not confer any advantages on providers having a particular national or local socio-economic link; nor may it restrict, on grounds of place of establishment, the provider's freedom to acquire, exploit or dispose of rights and goods or to access different forms of credit or accommodation in so far as those choices are useful for access to his activity or for the effective exercise thereof.
- (32) The prohibition of economic tests as a prerequisite for the grant of authorisation covers economic tests as such, but not requirements which are objectively justified by overriding reasons relating to the public interest, such as protection of the urban environment. That prohibition does not affect the exercise of the powers of the authorities responsible for applying competition law.
- (33) In order to coordinate the modernisation of national rules and regulations in a manner consistent with the requirements of the internal market, it is necessary to evaluate certain non-discriminatory national requirements which, by their very nature, could severely restrict or even prevent access to an activity or the exercise thereof under the freedom of establishment. Member States must ensure, during the transposition period of this Directive, that such requirements are necessary and proportionate and, where

appropriate, they must abolish or amend them. Moreover, those requirements must in any case be compatible with Community competition law.

- (34) The restrictions to be examined include national rules which, on grounds other than those relating to professional qualifications, reserve access to activities such as games of chance to particular providers. Similarly, among the requirements to be examined are "must carry" rules applicable to cable operators which, by imposing an obligation on an intermediary service provider to give access to certain services delivered by specific service providers, affect his freedom of choice, access to programmes and the choice of the recipients.
- (35) It is appropriate that the provisions of this Directive concerning freedom of establishment should apply only to the extent that the activities in question are open to competition, so that they do not oblige Member States to abolish existing monopolies, notably those of lotteries, or to privatise certain sectors.
- (36) The fact that this Directive specifies a number of requirements to be abolished or evaluated by the Member States during the transposition period is without prejudice to any infringement proceedings against a Member State for failure to fulfil its obligations under Articles 43 or 49 of the Treaty.
- (37) In order to secure effective implementation of the free movement of services and to ensure that recipients and providers can benefit from and supply services throughout the Community regardless of frontiers, it is necessary to establish the principle that a provider may be subject only to the law of the Member State in which he is established. That principle is essential in order to enable providers, especially SMEs, to avail themselves with full legal certainty of the opportunities offered by the internal market. By thus facilitating the free movement of services between Member States, that principle, together with harmonisation and mutual assistance measures, also enables recipients to gain access to a wider choice of high quality services from other Member States. That principle should be complemented by an assistance mechanism enabling the recipient, in particular, to be informed about the laws of the other Member States, and by the harmonisation of rules on the transparency of service activities.
- (38) It is also necessary to ensure that supervision of service activities is carried out at source, that is to say, by the competent authorities of the Member State in which the provider is established. The competent authorities of the country of origin are best placed to ensure the effectiveness and continuity of supervision of the provider and to provide protection for recipients not only in their own Member State but also elsewhere in the Community. In order to establish mutual trust between Member States in the regulation of service activities, it should be clearly laid down that responsibility under Community law for supervision of the activities of providers, regardless of the place where the service is provided, lies with the Member State of origin. Determination of judicial jurisdiction does not fall within the scope of this Directive but within that of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters¹⁸, or other Community instruments such as Directive 96/71/EC of the European Parliament and of the Council of

¹⁸ OJ L 12, 16.1.2001, p. 1. Directive as last amended by the Act of Accession 2003.

16 December 1996 concerning the posting of workers in the framework of the provision of services¹⁹.

- (39) As a corollary to the principle that the law of the country of origin should apply and that the country of origin should be responsible for supervision, it is necessary to lay down the principle that Member States may not restrict services coming from another Member State.
- (40) It is necessary to provide that the rule that the law of the country of origin is to apply may be departed from only in the areas covered by derogations, general or transitional. Those derogations are necessary in order to take into account the level of integration of the internal market or certain Community instruments relating to services pursuant to which a provider is subject to the application of a law other than that of the Member State of origin. Moreover, by way of exception, measures against a given provider may also be adopted in certain individual cases and under certain strict procedural and substantive conditions. In order to ensure the legal certainty which is essential in order to encourage SMEs to provide their services in other Member States, those derogations should be limited to what is strictly necessary. In particular, derogation should be possible only for reasons related to the safety of services, exercise of a health profession or matters of public policy, such as the protection of minors, and to the extent that national provisions in this field have not been harmonised. In addition, any restriction of the freedom to provide services should be permitted, by way of exception, only if it is consistent with fundamental rights which, as the Court of Justice has consistently held, form an integral part of the general principles of law enshrined in the Community legal order.
- (41) In cases where a provider moves temporarily to a Member State other than the Member State of origin, it is necessary to provide for mutual assistance between those two States so that the former can carry out checks, inspections and enquiries at the request of the Member State of origin or carry out such checks on its own initiative if these are merely factual checks. Moreover, it should be possible in the case of posted workers for the Member State of posting to take action against a provider established in another Member State in order to ensure compliance with the employment and working conditions applicable under Directive 96/71/EC.
- (42) It is appropriate to provide for derogation from the country of origin principle in the case of services covered by a general prohibition in the Member State to which a provider has moved, if that prohibition is objectively justified by reasons relating to public policy, public security or public health. That derogation should be limited to general prohibitions and should not, for example, cover national schemes which, while not prohibiting an activity in a general manner, reserve the exercise of that activity to one or several specific operators, or which prohibit the exercise of an activity without prior authorisation. The fact that a Member State permits an activity, but reserves it to certain operators, means that the activity is not subject to a general prohibition and is not regarded as inherently contrary to public policy, public security or public health. Consequently, the exclusion of such an activity from the scope of the Directive would not be justified.

¹⁹ OJ L 18, 21.1.1997, p. 1.

- (43) The country of origin principle should not apply to specific requirements, laid down by the Member State to which a provider has moved, the rationale for which is inextricably linked to the particular characteristics of the place where the service is provided, and which must be fulfilled in order to maintain public policy, public safety, public health or the protection of the environment. Such would be the position, for example, in the case of authorisations to occupy or use the public highway, requirements relating to the organisation of public events or requirements relating to the safety of building sites.
- (44) The exclusion from the country of origin principle of matters relating to the registration of vehicles leased in a Member State other than that in which they are used follows from the case-law of the Court of Justice, which has accepted that a Member State may impose such an obligation, in accordance with proportionate conditions, in the case of vehicles used on its territory. That exclusion does not cover occasional or temporary rental.
- (45) A number of Directives concerning contracts concluded by consumers have already been adopted at Community level. However, the approach followed by those Directives is one of minimal harmonisation. In order to limit as far as possible divergences between consumer protection rules across the Community that fragment the internal market to the detriment of consumers and enterprises, the Commission stated in its Communication on consumer policy strategy 2002-2006²⁰ that one of its key priorities would be full harmonisation. Furthermore, the Commission stressed in its Action Plan on "A more coherent European contract law"²¹ the need for greater coherence in European consumer law which would entail, in particular, a review of the existing law on contracts concluded with consumers in order to remedy residual inconsistencies, to fill gaps and to simplify legislation.
- (46) It is appropriate to apply the country of origin principle to the field of contracts concluded by consumers for the supply of services only to the extent that Community Directives provide for full harmonisation, because in such cases the levels of consumer protection are equivalent. The derogation from the country of origin principle relating to the non-contractual liability of a provider in the case of an accident involving a person and occurring as a consequence of the service provider's activities in the Member State into which he has moved temporarily concerns physical or material damage suffered by a person in the accident.
- (47) It is necessary to allow Member States the possibility, exceptionally and on a case-by-case basis, of taking measures which derogate from the country of origin principle in respect of a provider established in another Member State, for certain reasons such as the safety of services. It should be possible to take such measures only in the absence of harmonisation at Community level. Moreover, that possibility should not permit restrictive measures to be taken in areas in which other Directives prohibit all derogation from the free movement of services, such as Directive 1999/93/EC or Directive 98/84/EC of the European Parliament and the Council of 20 November 1998 on the legal protection of services based on, or consisting of, conditional access²². Nor should that possibility permit the extension or limitation of derogations provided for in

²⁰ OJ C 137, 8.6.2002, p. 2.

²¹ OJ C 63, 15.3.2003, p. 1.

²² OJ L 320, 28.11.1998, p. 54.

other Directives, such as Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities²³ or Directive 2000/31/EC.

- (48) Restrictions on the free movement of services, contrary to this Directive, may arise not only from measures applied to providers, but also from the many barriers to the use of services by recipients, especially consumers. This Directive mentions, by way of illustration, certain types of restriction applied to a recipient wishing to use a service performed by a provider established in another Member State.
- (49) In accordance with the Treaty rules on the free movement of services, as interpreted by the Court of Justice, discrimination on grounds of the recipient's nationality or national or local residence is prohibited. Such discrimination could take the form of an obligation, imposed only on nationals of another Member State, to supply original documents, certified copies, a certificate of nationality or official translations of documents in order to benefit from a service or from more advantageous terms or prices. However, the prohibition of discriminatory requirements does not preclude the reservation of advantages, especially as regards tariffs, to certain recipients, if such reservation is based on legitimate, objective criteria, such as a direct link to taxes paid by those recipients.
- (50) If an internal area without frontiers is to be effectively achieved, Community citizens must neither be prevented from benefiting from a service which is technically accessible on the market, nor be made subject to different conditions and tariffs, by reason of their nationality or place of residence. The persistence of such discrimination with respect to the recipients of services highlights, for the Community citizen, the absence of a genuine internal market in services and, in a more general sense, compromises the integration of the peoples of Europe. The principle of non-discrimination within the internal market means that access by a recipient, and especially by a consumer, to a service on offer to the public may not be denied or hampered by application of a criterion, included in general conditions made available to the public, relating to the recipient's nationality or place of residence. It does not follow that provision may not be made in such general conditions for variable tariffs and conditions to apply to the provision of a service, where those tariffs and conditions are directly justified for objective reasons such as additional costs effectively incurred because of the distance involved or the technical characteristics of the provision of the service, or different market conditions, or extra risks linked to rules differing from those of the Member State of origin.
- (51) In accordance with the principles established by the Court of Justice with regard to the freedom to provide services, and without endangering the financial balance of Member States' social security systems, greater legal certainty as regards the reimbursement of health costs should be provided for patients, who benefit as recipients from the free movement of services, and for health professionals and managers of social security systems.

²³ OJ L 298, 17.10.1989, p. 23. Directive as amended by Directive 97/36/EC of the European Parliament and of the Council (OJ L 202, 30.1.1997, p. 60).

- (52) Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community²⁴ and, in particular, its provisions regarding affiliation to a system of social security, fully applies to employed and self-employed workers who provide or take part in the supply of a service.
- (53) Article 22 of Regulation (EEC) No 1408/71, which concerns authorisation for assuming the costs of health care provided in another Member State, contributes, as the Court of Justice has emphasised, to facilitating the free movement of patients and the provision of cross-border medical services. The purpose of that provision is to ensure that insured persons possessing an authorisation have access to health care in another Member State under conditions which, as regards the assumption of costs, are as favourable as those applying to insured persons in that Member State. It thus confers on insured persons rights they would not otherwise have and facilitates the free movement of services. On the other hand, that provision does not seek to regulate, nor in any way to prevent, reimbursement, at the rates applicable in the Member State of affiliation, of the costs of health care provided in another Member State, even in the absence of a prior authorisation.
- (54) In the light of the case-law developed by the Court of Justice on the free movement of services, it is necessary to abolish the requirement of prior authorisation for reimbursement by the social security system of a Member State for non-hospital care provided in another Member State, and Member States must amend their legislation accordingly. In so far as the reimbursement of such care remains within the limits of the cover guaranteed by the sickness insurance scheme of the Member State of affiliation, abolition of the prior authorisation requirement is not likely seriously to disrupt the financial equilibrium of social security systems. As the Court of Justice has consistently held, the conditions under which Member States grant non-hospital care on their own territory remain applicable in the case of care provided in a Member State other than that of affiliation in so far as those conditions are compatible with Community law. By the same token, authorisation schemes for the assumption of costs of care in another Member State must comply with this Directive as regards the conditions for granting authorisation and the related procedures.
- (55) As the Court of Justice has consistently held with regard to the free movement of services, a system of prior authorisation for the reimbursement of hospital care provided in another Member State appears justified by the need to plan the number of hospital infrastructures, their geographical distribution, the mode of their organisation, the equipment with which they are provided and even the nature of the medical services which they are able to offer. The aims of such planning are to ensure, within each Member State, sufficient permanent access to a balanced range of quality hospital care, to secure efficient cost management and, so far as is possible, to avoid wastage of financial, technical or human resources. In accordance with the case-law of the Court of Justice, the concept of hospital care must be objectively defined and a system of prior authorisation must be proportionate to the general interest objective pursued.
- (56) Article 22 of Council Regulation (EEC) No 1408/71 specifies the circumstances in which the competent national institution may not refuse an authorisation sought on the basis of that provision. Member States may not refuse authorisation in cases where the

²⁴ OJ L 149, 5.7.1971, p. 2. Regulation as last amended by the Act of Accession 2003.

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

- (57) The assumption of costs, by the social security systems of the Member States, in respect of health care provided in another Member State must not be lower than that provided for by their own social security system for health care provided in their territory. As the Court has consistently pointed out with regard to the free movement of services, in the absence of authorisation, the reimbursement of non-hospital care in accordance with the scales of the Member State of affiliation would not have a significant effect on the financing of its social security system. In cases where authorisation has been granted, in the framework of Article 22 of Regulation (EEC) No 1408/71, the assumption of costs is made in accordance with the rates applicable in the Member State in which the health care is provided. However, if the level of coverage is lower than that to which the patient would have been entitled if he had received the same care in the Member State of affiliation, the latter must assume the remaining costs up to the level which would have applied.
- (58) As regards the posting of workers in the context of the provision of services in a Member State other than the Member State of origin, it is necessary to clarify the division of roles and tasks between the Member State of origin and the Member State of posting, in order to facilitate the free movement of services. The present Directive does not aim to address issues of labour law as such. The division of tasks and the specifying of the forms of cooperation between the Member State of origin and the Member State of posting facilitates the free movement of services, especially by abolishing certain disproportionate administrative procedures, while also improving the monitoring of compliance with employment and working conditions in accordance with Directive 96/71/EC.
- (59) In order to avoid discriminatory or disproportionate administrative formalities, which would be a disincentive to SMEs in particular, it is necessary to preclude the Member State of posting from making postings subject to compliance with requirements such as an obligation to request authorisation from the authorities. The obligation to make a declaration to the authorities of the Member State of posting should also be prohibited. However, it should be possible to maintain such an obligation until 31 December 2008 in the field of building work in accordance with the Annex to Directive 96/71/EC. In that connection, a group of Member State experts on the application of that Directive are studying ways to improve administrative cooperation between Member States in order to facilitate supervision. Furthermore, as regards employment and working conditions other than those laid down in Directive 96/71/EC, it should not be possible for the Member State of posting to take restrictive measures against a provider established in another Member State.
- (60) By virtue of the free movement of services, a service provider is entitled to post workers even if they are not Community citizens but third country nationals, provided that they are legally present and lawfully employed in the Member State of origin. It is appropriate to place the Member State of origin under an obligation to ensure that any

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

- (61) Following the adoption of Council Regulation (EC) No 859/2003 of 14 May 2003 extending the provisions of Regulation (EEC) No 1408/71 and Regulation (EEC) No 574/72 to nationals of third countries who are not already covered by those provisions solely on the ground of their nationality²⁵, third country nationals are covered by a system of cooperation on the application of social security schemes to employed persons and to members of their families moving within the Community, established by Regulation (EEC) No 1408/71, under which the rules of the country under whose social security scheme the worker is insured are to apply.
- (62) It is appropriate to provide that, as one of the means by which the provider may make the information which he is obliged to supply easily accessible to the recipient, he is to supply his electronic address, including that of his website. Furthermore, the obligation to present certain information in the provider's information documents presenting his services in detail should not cover commercial communications of a general nature, such as advertising, but rather documents giving a detailed description of the services proposed, including documents on a website.
- (63) Any operator providing services involving a particular health, safety or financial risk for the recipient should be covered by appropriate professional indemnity insurance, or by another form of guarantee which is equivalent or comparable, which means, in particular, that he should have adequate insurance coverage for services provided in one or more Member States other than the Member State of origin.
- (64) It is necessary to put an end to the total prohibitions of commercial communications by the regulated professions, not by removing bans on the content of a commercial communication but rather those which, in a general way and for a given profession, forbid one or more forms of commercial communication, such as a ban on all advertising in one or more given media. As regards the content and methods of commercial communication, it is necessary to encourage professionals to draw up, in accordance with Community law, codes of conduct at Community level.
- (65) In order to increase transparency and promote assessments based on comparable criteria with regard to the quality of the services offered and supplied to recipients, it is important that information on the meaning of quality labels and other distinctive marks relating to these services be easily accessible. That obligation of transparency is particularly important in areas such as tourism, especially the hotel business, in which the use of a system of classification is widespread. Moreover, it is appropriate to examine the extent to which European standardisation could facilitate compatibility and quality of services. European standards are drawn up by the European standards-setting bodies, the European Committee for Standardisation (CEN), the European

²⁵ OJ L 124, 20.5.2003, p. 1.

Committee for Electrotechnical Standardisation (CENELEC) and the European Telecommunications Standards Institute (ETSI). Where appropriate, the Commission may, in accordance with the procedures laid down in Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998²⁶ laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services, issue a mandate for the drawing up of specific European standards.

- (66) The development of a network of Member State consumer protection authorities, which is the subject of the proposal for the Regulation on consumer protection cooperation, complements the cooperation provided for in this Directive. The application of consumer protection legislation in cross-border cases, in particular with regard to new marketing and selling practices, as well as the need to remove certain specific obstacles to cooperation in this field, necessitates a higher degree of cooperation between Member States. In particular, it is necessary in this area to ensure that Member States require the cessation of illegal practices by operators in their territory who target consumers in another Member State.
- (67) It is necessary to provide that the Member States, in cooperation with the Commission, are to encourage interested parties to draw up codes of conduct at Community level aimed in particular at promoting the quality of services and taking into account the specific nature of each profession. Those codes of conduct should comply with Community law, especially competition law.
- (68) This Directive is without prejudice to any legislative or other initiatives in the field of consumer protection.
- (69) The absence of a reaction from the Commission in the context of the mutual evaluation procedure provided for by this Directive has no effect on the compatibility with Community law of national requirements which are included in reports by Member States.
- (70) Directive 98/27/EC of the European Parliament and of the Council of 19 May 1998 on injunctions for the protection of consumers' interests²⁷ approximates the laws, regulations and administrative provisions of the Member States relating to actions for an injunction aimed at the protection of the collective interests of consumers included in the Directives listed in the Annex to Directive 98/27/EC. In order to enable such actions to be brought in cases where the present Directive has been infringed, to the detriment of the collective interests of consumers, the Annex to Directive 98/27/EC should be amended accordingly.
- (71) Since the objectives of the proposed action, namely the elimination of barriers to the freedom of establishment for service providers in the Member States and to the free provision of services between Member States, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance

²⁶ OJ L 204, 21.7.1998, p. 37. Directive as last amended by the Act of Accession 2003.

²⁷ OJ L 166, 11.6.1998, p. 51. Directive as last amended by Directive 2002/65/EC of the European Parliament and of the Council (OJ L 271, 9.10.2002, p. 16).

with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve those objectives.

- (72) This Directive respects fundamental rights and observes the principles which are recognised notably in the Charter of Fundamental Rights of the European Union and, in particular, in Articles 8, 15, 21 and 47 thereof.
- (73) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission²⁸,

HAVE ADOPTED THIS DIRECTIVE:

²⁸ OJ L 184, 17.7.1999, p. 23.

Chapter I

General provisions

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.

Article 2

Scope

1. This Directive shall apply to services supplied by providers established in a Member State.
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/EC²⁹, 2002/20/EC³⁰, 2002/21/EC³¹, 2002/22/EC³² and 2002/58/EC³³ of the European Parliament and of the Council;
 - (c) transport services to the extent that they are governed by other Community instruments the legal basis of which is Article 71 or Article 80(2) of the Treaty.
3. This Directive does not apply to the field of taxation, with the exception of Articles 14 and 16 to the extent that the restrictions identified therein are not covered by a Community instrument on tax harmonisation.

²⁹ OJ L 108, 24.4.2002, p. 7.

³⁰ OJ L 108, 24.4.2002, p. 21.

³¹ OJ L 108, 24.4.2002, p. 33.

³² OJ L 108, 24.4.2002, p. 51.

³³ OJ L 201, 31.7.2002, p. 37.

Article 3

Relationship with other provisions of Community law

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.

Article 4

Definitions

For the purposes of this Directive, the following definitions shall apply:

- (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;
- (2) "provider" means any natural person who is a national of a Member State, or any legal person, who offers or provides a service;
- (3) "recipient" means any natural or legal person who, for professional or non-professional purposes, uses, or wishes to use, a service;
- (4) "Member State of origin" means the Member State in whose territory the provider of the service concerned is established;
- (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;
- (6) "authorisation scheme" means any procedure under which a provider or recipient is in effect required to take steps in order to obtain from a competent authority a formal decision, or an implied decision, concerning access to a service activity or to the exercise thereof;
- (7) "requirement" means any obligation, prohibition, condition or limit provided for in the laws, regulations or administrative provisions of the Member States or in consequence of case-law, administrative practice or the rules of professional bodies, or the collective rules of professional associations or other professional organisations, adopted in the exercise of their legal autonomy;
- (8) "competent authority" means any body or authority which has a supervisory or regulatory role in a Member State in relation to service activities, including, in particular, administrative authorities, professional bodies, and those professional associations or other professional organisations which, in the exercise of their legal autonomy, regulate in a collective manner access to service activities or the exercise thereof;

- (9) "coordinated field" means any requirement applicable to access to service activities or to the exercise thereof;
- (10) "hospital care" means medical care which can be provided only within a medical infrastructure and which normally requires the accommodation therein of the person receiving the care, the name, organisation and financing of that infrastructure being irrelevant for the purposes of classifying such care as hospital care;
- (11) "Member State of posting" means the Member State in whose territory a provider posts a worker in order to provide services there;
- (12) "lawful employment" means the salaried activity of a worker, performed in accordance with the national law of the Member State of origin of the provider;
- (13) "regulated profession" means a professional activity or a group of professional activities, access to which or pursuit of which, or one of the modes of pursuing which, is conditional, directly or indirectly, upon possession of specific professional qualifications, pursuant to laws, regulations or administrative provisions;
- (14) "commercial communication" means any form of communication designed to promote, directly or indirectly, the goods, services or image of an undertaking, organisation or person engaged in commercial, industrial or craft activity or practising a regulated profession. The following do not in themselves constitute commercial communications:
- (a) information enabling direct access to the activity of the undertaking, organisation or person, including in particular a domain name or an electronic-mailing address;
 - (b) communications relating to the goods, services or image of the undertaking, organisation or person, compiled in an independent manner, particularly when provided for no financial consideration.

Chapter II

Freedom of establishment for service providers

SECTION 1

ADMINISTRATIVE SIMPLIFICATION

Article 5

Simplification of procedures

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

2. Where Member States require a provider or recipient to supply a certificate, attestation or any other document proving that a requirement has been satisfied, they shall accept any document from another Member State which serves an equivalent purpose or from which it is clear that the requirement in question has been satisfied. They may not require that a document from another Member State be produced in its original form, or as a certified copy or as a certified translation, save in the cases provided for in other Community instruments or where such a requirement is objectively justified by an overriding reason relating to the public interest.
3. Paragraph 2 shall not apply to the documents referred to in Article 46 of Directive .../EC of the European Parliament and of the Council³⁴ or in Article 45(3) of Directive .../EC of the European Parliament and of the Council³⁵.

Article 6

Single points of contact

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

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

Article 7

Right to information

1. Member States shall ensure that the following information is easily accessible to providers and recipients through the single points of contact:
 - (a) requirements applicable to providers established in their territory, in particular those requirements concerning the procedures and formalities to be completed in order to access and to exercise service activities;
 - (b) the contact details of the competent authorities enabling the latter to be contacted directly, including the particulars of those authorities responsible for matters concerning the exercise of service activities;

³⁴ [Proposal for a Directive of the European Parliament and of the Council on the recognition of professional qualifications.]

³⁵ [Proposal for a Directive of the European Parliament and of the Council on the coordination of procedures for the award of public works, supply and service contracts.]

- (c) the means of and conditions for accessing public registers and databases on providers and services;
 - (d) the means of redress available in the event of dispute between the competent authorities and the provider or the recipient, or between a provider and a recipient or between providers;
 - (e) the contact details of the associations or organisations, other than the competent authorities, from which providers or recipients may obtain practical assistance.
2. Member States shall ensure that it is possible for providers and recipients to receive, at their request, assistance from the competent authorities, consisting in information on the way in which requirements referred to in point (a) of paragraph 1 are generally interpreted and applied.
 3. Member States shall ensure that the information and assistance referred to in paragraphs 1 and 2 are provided in a clear and unambiguous manner, that they are easily accessible at a distance and by electronic means, and that they are kept up-to-date.
 4. Member States shall ensure that the single points of contact and the competent authorities respond as quickly as possible to any request for information or assistance as referred to in paragraphs 1 and 2 and, in cases where the request is faulty or unfounded, inform the applicant accordingly without delay.
 5. Member States shall implement paragraphs 1 to 4 by 31 December 2008 at the latest.
 6. Member States and the Commission shall take accompanying measures in order to encourage single points of contact to make the information provided for in paragraphs 1 and 2 available in other Community languages.

Article 8

Procedures by electronic means

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.
2. Paragraph 1 shall not apply to the inspection of premises on which the service is provided or of equipment used by the provider, or to physical examination of the capability of the provider.
3. The Commission shall, in accordance with the procedure referred to in Article 42(2), adopt detailed rules for the implementation of paragraph 1 with a view to facilitating the interoperability of information systems and use of procedures by electronic means between Member States.

SECTION 2

AUTHORISATIONS

Article 9

Authorisation schemes

1. Member States shall not make access to a service activity or the exercise thereof subject to an authorisation scheme unless the following conditions are satisfied:
 - (a) the authorisation scheme does not discriminate against the provider in question;
 - (b) the need for an authorisation scheme is objectively justified by an overriding reason relating to the public interest;
 - (c) the objective pursued cannot be attained by means of a less restrictive measure, in particular because an *a posteriori* inspection would take place too late to be genuinely effective.
2. In the report referred to in Article 41, Member States shall identify their authorisation schemes and give reasons showing their compatibility with paragraph 1.
3. This Section shall not apply to authorisation schemes which are either imposed or permitted by other Community instruments.

Article 10

Conditions for the granting of authorisation

1. Authorisation schemes shall be based on criteria which preclude the competent authorities from exercising their power of assessment in an arbitrary or discretionary manner.
2. The criteria referred to in paragraph 1 must be:
 - (a) non-discriminatory;
 - (b) objectively justified by an overriding reason relating to the public interest;
 - (c) proportionate to that public interest objective;
 - (d) precise and unambiguous;
 - (e) objective;
 - (f) made public in advance.

3. The conditions for granting authorisation for a new establishment shall not duplicate requirements and controls which are equivalent or essentially comparable as regards their purpose, to which the provider is already subject in another Member State or in the same Member State. The contact points referred to in Article 35 and the provider shall assist the competent authority by providing any necessary information on those requirements.
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.
5. The authorisation shall be granted as soon as it has been established, in the light of an appropriate examination, that the conditions for authorisation have been met.
6. Any refusal or other response from the competent authorities, including withdrawal of an authorisation, shall be fully reasoned, in particular with regard to the provisions of this Article, and shall be open to challenge before the courts.

Article 11

Duration of authorisation

1. An authorisation granted to a provider shall not be for a limited period, except in cases where:
 - (a) the authorisation is being automatically renewed;
 - (b) the number of available authorisations is limited;
 - (c) a limited authorisation period can be objectively justified by an overriding reason relating to the public interest.
2. Paragraph 1 shall not concern the maximum period during which the provider must actually commence his activity after receiving authorisation.
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.

Article 12

Selection from among several candidates

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

Article 13

Authorisation procedures

1. Authorisation procedures and formalities shall be clear, made public in advance and such as to provide interested parties with a guarantee that their application will be dealt with objectively and impartially.
2. Authorisation procedures and formalities shall not be dissuasive and shall not unduly complicate or delay the provision of the service. They shall be easily accessible and any charges which the relevant parties may incur from their application shall be proportionate to the cost of the authorisation procedures in question.
3. Authorisation procedures and formalities shall provide interested parties with a guarantee that their applications will be processed as quickly as possible and, in any event, within a reasonable period which is fixed and published in advance.
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.
5. All applications for authorisation shall be acknowledged as quickly as possible. The acknowledgement must specify the following:
 - (a) the period for response referred to in paragraph 3;
 - (b) the available means of redress;
 - (c) a statement that in the absence of a response within the period specified, the authorisation shall be deemed to have been granted.
6. In the case of an incomplete application or where an application is rejected on the grounds that it fails to comply with the required procedures or formalities, the

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

SECTION 3

REQUIREMENTS PROHIBITED OR SUBJECT TO EVALUATION

Article 14

Prohibited requirements

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:

- (1) discriminatory requirements based directly or indirectly on nationality or, in the case of companies, the location of the registered office, including in particular:
 - (a) nationality requirements for the provider, his staff, persons holding the share capital or members of the provider's management or supervisory bodies;
 - (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.
- (2) a prohibition on having an establishment in more than one Member State or on being entered in the registers or enrolled with professional bodies or associations of more than one Member State;
- (3) restrictions on the freedom of a provider to choose between a principal or a secondary establishment, in particular an obligation on the provider to have his principal establishment in their territory, or restrictions on the freedom to choose between establishment in the form of an agency, branch or subsidiary;
- (4) conditions of reciprocity with the Member State in which the provider already has an establishment, save in the case of conditions of reciprocity provided for in Community instruments concerning energy;
- (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;
- (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;

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

Article 15

Requirements to be evaluated

1. Member States shall examine whether, under their legal system, any of the requirements listed in paragraph 2 are imposed and shall ensure that any such requirements are compatible with the conditions laid down in paragraph 3. Member States shall adapt their laws, regulations or administrative provisions so as to make them compatible with those conditions.
2. Member States shall examine whether their legal system makes access to a service activity or the exercise of it subject to compliance with any of the following non-discriminatory requirements:
 - (a) quantitative or territorial restrictions, in particular in the form of limits fixed according to population, or of a minimum geographical distance between 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.

3. Member States shall verify that requirements referred to in paragraph 2 satisfy the following conditions:
 - (a) non-discrimination: requirements must be neither directly nor indirectly discriminatory according to nationality or, with regard to companies, according to the location of the registered office;
 - (b) necessity: requirements must be objectively justified by an overriding reason relating to the public interest;
 - (c) proportionality: requirements must be suitable for securing the attainment of the objective pursued; they must not go beyond what is necessary to attain that objective; and it must not be possible to replace those requirements with other, less restrictive measures which attain the same result.
4. In the mutual evaluation report provided for in Article 41, Member States shall specify the following:
 - (a) the requirements that they intend to maintain and the reasons why they consider that those requirements comply with the conditions set out in paragraph 3;
 - (b) the requirements which have been abolished or made less stringent.
5. From the date of entry into force of this Directive, Member States shall not introduce any new requirement of a kind listed in paragraph 2, unless that requirement satisfies the conditions laid down in paragraph 3 and the need for it arises from new circumstances.
6. Member States shall notify to the Commission any new laws, regulations or administrative provisions which set requirements as referred to in paragraph 5, together with the reasons for those requirements. The Commission shall communicate the provisions concerned to the other Member States. Such notification shall not prevent the adoption by Member States of the provisions in question.

Within a period of 3 months from the date of notification, the Commission shall examine the compatibility of any new requirements with Community law and, as the case may be, shall adopt a decision requesting the Member State in question to refrain from adopting them or to abolish them.

Chapter III

Free movement of services

SECTION 1

COUNTRY OF ORIGIN PRINCIPLE AND DEROGATIONS

Article 16

Country of origin principle

- (1) Member States shall ensure that providers are subject only to the national provisions of their Member State of origin which fall within the coordinated field.

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 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) Member States may not, for reasons falling within the coordinated field, restrict the freedom to provide services in the case of a provider established in another Member State, in particular, by imposing any of the following requirements:
- (a) an obligation on the provider to have an establishment in their territory;
 - (b) an obligation on the provider to make a declaration or notification to, or to obtain an authorisation from, their competent authorities, including entry in a register or registration with a professional body or association in their territory;
 - (c) an obligation on the provider to have an address or representative in their territory or to have an address for service at the address of a person authorised in that territory;
 - (d) a ban on the provider setting up a certain infrastructure in their territory, including an office or chambers, which the provider needs to supply the services in question;
 - (e) an obligation on the provider to comply with requirements, relating to the exercise of a service activity, applicable in their territory;
 - (f) the application of specific contractual arrangements between the provider and the recipient which prevent or restrict service provision by the self-employed;

- (g) an obligation on the provider to possess an identity document issued by its competent authorities specific to the exercise of a service activity;
- (h) requirements which affect the use of equipment which is an integral part of the service provided;
- (i) restrictions on the freedom to provide the services referred to in Article 20, the first subparagraph of Article 23(1) or Article 25(1).

Article 17

General derogations from the country of origin principle

Article 16 shall not apply to the following:

- (1) postal services within the meaning of point (1) of Article 2 of Directive 97/67/EC of the European Parliament and the Council³⁶;
- (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 Council³⁷;
- (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 Council³⁸;
- (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 Council³⁹;
- (7) matters covered by Council Directive 77/249/EEC⁴⁰;
- (8) the provisions of Article [...] of Directive .../.../EC on the recognition of professional qualifications;
- (9) the provisions of Regulation (EEC) No 1408/71 determining the applicable legislation;
- (10) the provisions of Directive .../.../EC of the European Parliament and the Council [on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, amending Regulation (EEC) 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC], that lay down

³⁶ OJ L 15, 21.1.1998, p. 14.

³⁷ OJ L 176, 15.7.2003, p. 37.

³⁸ OJ L 176, 15.7.2003, p. 57.

³⁹ OJ L 281, 28.11.1995, p. 1.

⁴⁰ OJ L 78, 26.3.1997, p. 17.

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 259/93⁴¹;
- (13) copyright, neighbouring rights, rights covered by Council Directive 87/54/EEC⁴² and by Directive 96/9/EC of the European Parliament and of the Council⁴³ 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.

Article 18

Transitional derogations from the country of origin principle

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

⁴¹ OJ L 30, 6.2.1993, p. 1.

⁴² OJ L 24, 27.1.1987, p. 36.

⁴³ OJ L 77, 27.3.1996, p. 20.

- (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).

Article 19

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

1. By way of derogation from Article 16, and in exceptional circumstances only, a Member State may, in respect of a provider established in another Member State, take measures relating to any of the following:
 - (a) the safety of services, including aspects related to public health;
 - (b) the exercise of a health profession;
 - (c) the protection of public policy, notably aspects related to the protection of minors.
2. The measures provided for in paragraph 1 may be taken only if the mutual assistance procedure laid down in Article 37 is complied with and all the following conditions are fulfilled:
 - (a) the national provisions in accordance with which the measure is taken have not been subject to Community harmonisation in the fields referred to in paragraph 1;
 - (b) the measures provide for a higher level of protection of the recipient than would be the case in a measure taken by the Member State of origin in accordance with its national provisions;
 - (c) the Member State of origin has not taken any measures or has taken measures which are insufficient as compared with those referred to in Article 37(2);
 - (d) the measures are proportionate.
3. Paragraphs 1 and 2 shall be without prejudice to provisions, laid down in Community instruments, which guarantee the freedom to provide services or which allow derogations therefrom.

SECTION 2

RIGHTS OF RECIPIENTS OF SERVICES

Article 20

Prohibited restrictions

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

- (a) an obligation to obtain authorisation from or to make a declaration to their competent authorities;
- (b) limits on tax deductibility or on the grant of financial assistance by reason of the fact that the provider is established in another Member State or by reason of the location of the place at which the service is provided;
- (c) requirements which subject the recipient to discriminatory or disproportionate taxes on the equipment necessary to receive a service at a distance from another Member State.

Article 21

Non-discrimination

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

Article 22

Assistance for recipients

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

- (a) information on the requirements applicable in other Member States relating to access to and exercise of service activities, in particular those relating to consumer protection;
 - (b) information on the means of redress available in the case of a dispute between a provider and a recipient;
 - (c) the contact details of associations or organisations, including Euroguichets and the contact points of the European extra-judicial network (EEJ-net), from which providers or recipients may obtain practical assistance.
2. Member States may confer responsibility for the task referred to in paragraph 1 to single points of contact or to any other body, such as Euroguichets, the contact points of the European extra-judicial network (EEJ-net), consumer associations or Euro Info Centres.

By the date specified in Article 45 at the latest, Member States shall communicate to the Commission the names and contact details of the designated bodies. The Commission shall transmit them to all Member States.

3. In order to be able to send the information referred to in paragraph 1, the relevant body approached by the recipient shall contact the relevant body for the Member State concerned. The latter shall send the information requested as soon as possible. Member States shall ensure that those bodies give each other mutual assistance and shall put in place all possible measures for effective cooperation.
4. The Commission shall, in accordance with the procedure referred to in Article 42(2), adopt measures for the implementation of paragraphs 1, 2 and 3, specifying the technical mechanisms for the exchange of information between the bodies of the various Member States and, in particular, the interoperability of information systems.

Article 23

Assumption of health care costs

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

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

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

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

3. Member States shall ensure that the level of assumption by their social security system of the costs of health care provided in another Member State is not lower than that provided for by their social security system in respect of similar health care provided in their territory.
4. Member States shall ensure that their authorisation systems for the assumption of the costs of health care provided in another Member State are in conformity with Articles 9, 10, 11 and 13.

SECTION 3

POSTING OF WORKERS

Article 24

Specific provisions on the posting of workers

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

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

- (a) to obtain authorisation from, or to be registered with, its own competent authorities, or to satisfy any other equivalent requirement;
 - (b) to make a declaration, other than declarations relating to an activity referred to in the Annex to Directive 96/71/EC which may be maintained until 31 December 2008;
 - (c) to have a representative in its territory;
 - (d) to hold and keep employment documents in its territory or in accordance with the conditions applicable in its territory.
2. In the circumstances referred to in paragraph 1, the Member State of origin shall ensure that the provider takes all measures necessary to be able to communicate the following information, both to its competent authorities and to those of the Member State of posting, within two years of the end of the posting:
 - (a) the identity of the posted worker;

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

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

Article 25

Posting of third country nationals

1. Subject to the possibility of derogation as referred to in paragraph 2, where a provider posts a worker who is a national of a third country to the territory of another Member State in order to provide a service there, the Member State of posting may not require the provider or the worker posted by the latter to hold an entry, exit, residence or work permit, or to satisfy other equivalent conditions.
2. Paragraph 1 does not prejudice the possibility for Member States to require a short-term visa for third country nationals who are not covered by the mutual recognition regime provided for in Article 21 of the Convention implementing the Schengen Agreement.
3. In the circumstances referred to in paragraph 1, the Member State of origin shall ensure that a provider posts only a worker who is resident in its territory in accordance with its own national rules and who is lawfully employed in its territory.

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

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

Chapter IV

Quality of services

Article 26

Information on providers and their services

1. Member States shall ensure that providers make the following information available to the recipient:
 - (a) the name of the service provider, the geographic address at which he is established, and the details which enable him to be contacted rapidly and communicated with directly and, as the case may be, by electronic means;
 - (b) where the provider is registered in a trade or other similar public register, the name of that register and the provider's registration number, or equivalent means of identification in that register;
 - (c) where the activity is subject to an authorisation scheme, the particulars of the relevant competent authority or the single point of contact;
 - (d) where the provider exercises an activity which is subject to VAT, the identification number referred to in Article 22(1) of Directive 77/388/EEC;
 - (e) in the case of the regulated professions, any professional body or similar institution with which the provider is registered, the professional title and the Member State in which that title has been granted;-
 - (f) the general conditions and clauses, if any, used by the provider;
 - (g) contractual clauses concerning the law applicable to the contract and/or the competent courts.
2. Member States shall ensure that the information referred to in paragraph 1, according to the provider's preference:
 - (a) is supplied by the provider on his own initiative;
 - (b) is easily accessible to the recipient at the place where the service is provided or the contract concluded;
 - (c) can be easily accessed by the recipient electronically by means of an address supplied by the provider;
 - (d) appears in any information documents supplied to the recipient by the provider, setting out a detailed description of the service he provides.
3. Member States shall ensure that, at the recipient's request, providers supply the following additional information:

- (a) the main features of the service;
 - (b) the price of the service or, if an exact price cannot be given, the method for calculating the price so that the recipient can check it, or a sufficiently detailed estimate;
 - (c) the legal status and form of the provider;
 - (d) as regards the regulated professions, a reference to the professional rules applicable in the Member State of origin and how to access them.
4. Member States shall ensure that the information which a provider must supply in accordance with this Chapter is made available or communicated in a clear and unambiguous manner, and in good time before conclusion of the contract or, where there is no written contract, before the service is provided.
 5. The information requirements laid down in this Chapter are in addition to requirements already provided for in Community law and do not prevent Member States from imposing additional information requirements applicable to providers established in their territory.
 6. The Commission may, in accordance with the procedure referred to in Article 42(2), specify the content of the information provided for in paragraphs 1 and 3 of this Article according to the specific nature of certain activities and may specify the practical means of implementing paragraph 2.

Article 27

Professional insurance and guarantees

1. Member States shall ensure that providers whose services present a particular risk to the health or safety of the recipient, or a particular financial risk to the recipient, are covered by professional indemnity insurance appropriate to the nature and extent of the risk, or by any other guarantee or compensatory provision which is equivalent or essentially comparable as regards its purpose.
2. Member States shall ensure that providers supply a recipient, at his request, with information on the insurance or guarantees referred to in paragraph 1, and in particular the contact details of the insurer or guarantor and the territorial coverage.
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.

4. Paragraphs 1, 2 and 3 do not affect professional insurance or guarantee arrangements provided for in other Community instruments.

5. For the implementation of paragraph 1, the Commission may, in accordance with the procedure referred to in Article 42(2), establish a list of services which exhibit the characteristics referred to in paragraph 1 and establish common criteria for defining, for the purposes of the insurance or guarantees referred to in that paragraph, what is appropriate to the nature and scope of the risk.

Article 28

After-sales guarantees

1. Member States shall ensure that providers supply a recipient, at his request, with information on the existence or otherwise of an after-sales guarantee, on its content and on the essential criteria for its application, in particular, its period of validity and territorial cover.
2. Member States shall ensure that the information referred to in paragraph 1 appears in any information documents supplied by providers, setting out a detailed description of the services offered.
3. Paragraphs 1 and 2 do not affect the regulation of after-sales guarantees provided for in other Community instruments.

Article 29

Commercial communications by the regulated professions

1. Member States shall remove all total prohibitions on commercial communications by the regulated professions.
2. Member States shall ensure that commercial communications by the regulated professions comply with professional rules, in conformity with Community law, which relate, in particular, to the independence, dignity and integrity of the profession, as well as to professional secrecy, in a manner consonant with the specific nature of each profession,.

Article 30

Multidisciplinary activities

1. Member States shall ensure that providers are not made subject to requirements which oblige them to exercise a given specific activity exclusively or which restrict the exercise jointly or in partnership of different activities.

However, the following providers may be made subject to such requirements:

- (a) the regulated professions, in so far as is justified in order to guarantee compliance with the rules governing professional ethics and conduct, which vary according to the specific nature of each profession;

- (b) providers of certification, accreditation, technical monitoring, test or trial services in so far as is justified in order to ensure their independence and impartiality.
2. Where multidisciplinary activities are authorised, Member States shall ensure the following:
 - (a) that conflicts of interest and incompatibilities between certain activities are prevented;
 - (b) that the independence and impartiality required for certain activities is secured;
 - (c) that the rules governing professional ethics and conduct for different activities are compatible with one another, especially as regards matters of professional secrecy.
 3. Member States shall ensure that providers supply the recipient, at his request, with information on their multidisciplinary activities and partnerships and on the measures taken to avoid conflicts of interest. That information shall be included in any information document in which providers give a detailed description of their services.
 4. In the report referred to in Article 41, Member States shall indicate which providers are subject to the requirements laid down in paragraph 1, the content of those requirements and the reasons for which they consider them to be justified.

Article 31

Policy on quality of services

1. Member States shall, in cooperation with the Commission, take accompanying measures to encourage providers to take action on a voluntary basis in order to ensure the quality of service provision, in particular through use of one of the following methods:
 - (a) by having their activities certified or assessed by independent bodies;
 - (b) by drawing up their own quality charter or participating in quality charters or labels drawn up by professional bodies at Community level.
2. Member States shall ensure that information on the significance of certain labels and the criteria for applying labels and other quality marks relating to services can be easily accessed by recipients and providers.
3. Member States shall, in cooperation with the Commission, take accompanying measures to encourage professional bodies, as well as chambers of commerce and craft associations, within Member States to cooperate at Community level in order to promote the quality of service provision, especially by making it easier to assess a provider's competence.

4. Member States shall, in cooperation with the Commission, take accompanying measures to encourage the development of independent assessments in relation to the quality and defects of service provision, and in particular the development at Community level of comparative trials or testing and the communication of the results.
5. Member States and the Commission shall encourage the development of voluntary European standards with the aim of facilitating compatibility between services supplied by providers in different Member States, information to the recipient and the quality of service provision.

Article 32

Settlement of disputes

1. Member States shall take the general measures necessary to ensure that providers supply a postal address, fax number or e-mail address to which all recipients, including those resident in another Member State, can send a complaint or a request for information on the service provided.
2. Member States shall take the general measures necessary to ensure that providers respond to the complaints referred to in paragraph 1 in the shortest possible time and make best efforts to find appropriate solutions.
3. Member States shall take the general measures necessary to ensure that providers are obliged to demonstrate compliance with the obligations laid down in this Directive as to the provision of information and to demonstrate that the information is accurate.
4. Where a financial guarantee is required for compliance with a judicial decision, Member States shall recognise equivalent guarantees lodged with a provider or body established in another Member State.
5. Member States shall take the general measures necessary to ensure that providers who are subject to a code of conduct, or are members of a trade association or professional body, which provides for recourse to a non-judicial means of dispute settlement, inform the recipient accordingly, and mention that fact in any document which presents their services in detail, specifying how to access detailed information on the characteristics of and conditions for the use of such a mechanism.

Article 33

Information on the good repute of providers

1. Member States shall, at the request of a competent authority in another Member State, supply information on criminal convictions, penalties, administrative or disciplinary measures and decisions concerning insolvency or bankruptcy involving fraud, taken by their competent authorities in respect of the provider, which are liable to bring into question either his ability to conduct his business or his professional reliability.

2. The Member State which supplies the information referred to in paragraph 1 shall at the same time specify whether a particular decision is final or whether an appeal has been lodged in respect of it, in which case the Member State in question should provide an indication of the date when the decision on appeal is expected.

Moreover, that Member State shall specify the provisions of national law pursuant to which the provider was found guilty or penalised.

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

Chapter V

Supervision

Article 34

Effectiveness of supervision

1. Member States shall ensure that the powers of monitoring and supervision provided for in national law in respect of the provider and the activities concerned are also exercised where a service is provided in another Member State.
2. Member States shall ensure that providers supply their competent authorities with all the information necessary for monitoring their activities.

Article 35

Mutual assistance

1. In accordance with Article 16, Member States shall give each other mutual assistance and shall put in place all possible measures for effective cooperation with one another in order to ensure the supervision of providers and the services they provide.
2. For the purposes of paragraph 1, Member States shall designate one or more points of contact, the contact details of which shall be communicated to the other Member States and the Commission.
3. Member States shall supply the information requested by other Member States or the Commission by electronic means and within the shortest possible period of time.

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

Upon becoming aware of any unlawful conduct by a provider who is likely to provide services in other Member States, or of specific acts, that could cause serious

damage to the health or safety of persons, Member States shall inform all other Member States and the Commission within the shortest possible period of time.

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

The Member State of origin shall undertake the checks, inspections and investigations requested by another Member State and shall inform the latter of the results and, as the case may be, of the measures taken.

5. In the event of difficulty in meeting a request for information, the Member State in question shall rapidly inform the requesting Member State with a view to finding a solution.
6. Member States shall ensure that registers in which providers have been entered, and which may be consulted by the competent authorities in their territory, may also be consulted, in accordance with the same conditions, by the equivalent competent authorities of the other Member States.

Article 36

Mutual assistance in the event of the temporary movement of the provider

1. In respect of the matters covered by Article 16, where a provider moves temporarily to another Member State in order to provide a service without being established there, the competent authorities of that Member State shall participate in the supervision of the provider in accordance with paragraph 2.
2. At the request of the Member State of origin, the competent authorities referred to in paragraph 1 shall carry out any checks, inspections and investigations necessary for ensuring effective supervision by the Member State of origin. In so doing, the competent authorities shall act to the extent permitted by the powers vested in them in their Member State.

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

- (a) they consist exclusively in the establishment of facts and do not give rise to any other measure against the provider, subject to the possibility of case-by-case derogations-as provided for in Article 19;
- (b) they are not discriminatory and are not motivated by the fact that the provider is established in another Member State;
- (c) they are objectively justified by an overriding reason relating to the public interest and are proportionate to the objective pursued.

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

1. Where a Member State intends to take a measure pursuant to Article 19, the procedure laid down in paragraphs 2 to 6 of this Article shall apply without prejudice to proceedings before the courts.
2. The Member State referred to in paragraph 1 shall ask the Member State of origin to take measures with regard to the service provider, supplying all relevant information on the service in question and the circumstances of the case.

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

3. Following communication by the Member State of origin as provided for in the second subparagraph of paragraph 2, the requesting Member State shall notify the Commission and the Member State of origin of its intention to take measures, stating the following:
 - (a) the reasons why it believes the measures taken or envisaged by the Member State of origin are inadequate;
 - (b) the reasons why it believes the measures it intends to take fulfil the conditions laid down in Article 19.
4. The measures may not be taken until fifteen working days after the date of notification provided for in paragraph 3.

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

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

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

Article 38

Implementing measures

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

Chapter VI

Convergence programme

Article 39

Codes of conduct at Community level

1. Member States shall, in cooperation with the Commission, take accompanying measures to encourage the drawing up of codes of conduct at Community level, in conformity with Community law, in particular in the following areas:
 - (a) the content of and detailed rules for commercial communications relating to regulated professions, as appropriate to the specific nature of each profession;
 - (b) the rules of professional ethics and conduct of the regulated professions which aim in particular at ensuring, as appropriate to the specific nature of each profession, independence, impartiality and professional secrecy;
 - (c) the conditions to which the activities of estate agents are subject.
2. Member States shall ensure that the codes of conduct referred to in paragraph 1 are accessible at a distance, by electronic means and transmitted to the Commission.
3. Member States shall ensure that providers indicate, at the recipient's request, or in any information documents which present their services in detail, any codes of conduct to which they are subject and the address at which these codes may be consulted by electronic means, specifying the language versions available.
4. Member States shall take accompanying measures to encourage professional bodies, organisations and associations to implement at national level the codes of conduct adopted at Community level.

Article 40

Additional harmonisation

1. The Commission shall assess, by [one year after the entry into force of this Directive] at the latest, the possibility of presenting proposals for harmonisation instruments on the following subjects:
 - (a) the detailed rules for the exercise of cash-in-transit services;
 - (b) gambling activities which involve wagering a stake with pecuniary value in games of chance, including lotteries and betting transactions, in the light of a report by the Commission and a wide consultation of interested parties;
 - (c) access to the activity of judicial recovery of debts.
2. In order to ensure the proper functioning of the internal market for services, the Commission shall assess the need to take additional initiatives or to present proposals for legislative instruments, particularly in relation to the following:
 - (a) matters which, having been the subject of case-by-case derogations, have indicated the need for harmonisation at Community level;
 - (b) matters covered by Article 39 for which it has not been possible to finalise codes of conduct before the date of transposition or for which such codes are insufficient to ensure the proper functioning of the internal market;
 - (c) matters identified through the mutual evaluation procedure laid down in Article 41;
 - (d) consumer protection and cross-border contracts.

Article 41

Mutual evaluation

1. By the [date of transposition] at the latest, Member States shall present a report to the Commission, containing the information specified in the following provisions:
 - (a) Article 9(2), on authorisation systems;
 - (b) Article 15(4), on requirements to be evaluated;
 - (c) Article 30(4), on multidisciplinary activities.
2. The Commission shall forward the reports provided for in paragraph 1 to the Member States, which shall submit their observations on each of the reports within six months. Within the same period, the Commission shall consult interested parties on those reports.

3. The Commission shall present the reports and the Member States' observations to the Committee referred to in Article 42(1), which may make observations.
4. In the light of the observations provided for in paragraphs 2 and 3, the Commission shall, by 31 December 2008 at the latest, present a summary report to the European Parliament and to the Council, accompanied where appropriate by proposals for additional initiatives.

Article 42

Committee

1. The Commission shall be assisted by a Committee, consisting of representatives of the Member States and chaired by the Commission representative.
2. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply, in accordance with the provisions of Article 8 of that Decision.
3. The Committee shall adopt its rules of procedure.

Article 43

Report

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

Article 44

Amendment of Directive 1998/27/EC

In the Annex to Directive 1998/27/EC, the following point shall be added:

- "13. Directive.../EC of the European Parliament and of the Council of ... on services in the internal market (OJ L [...], [...], p. [...])".

Chapter VII

Final provisions

Article 45

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

force] at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 46

This Directive shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Article 47

This Directive is addressed to the Member States.

Done at Brussels, [...]

For the European Parliament
The President
[...]

For the Council
The President
[...]

LEGISLATIVE FINANCIAL STATEMENT

Policy area(s): Internal Market

Activit(y/ies): Internal Market for goods and services

TITLE OF ACTION: PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON SERVICES IN THE INTERNAL MARKET

1. BUDGET LINE(S) + HEADING(S)

12 02 01 Implementation and development of the internal market

12 01 04 01 Implementation and development of the internal market – Expenditure on administrative management

2. OVERALL FIGURES

2.1. Total allocation for action (operational expenditure): EUR 0.700 million in commitment appropriations, already covered by existing allocation under internal market policy area in the financial programming.

2.2. Period of application:

2004 - 2010

2.3. Overall multiannual estimate of expenditure:

(a) Schedule of commitment appropriations/payment appropriations (financial intervention) (*see point 6.1.1*)

EUR million (to three decimal places)

	2004	2005	2006	2007	2008	2009 and subs. years	Total
Commitments	0.200	0.400					
Payments	0.100	0.500					

(b) Technical and administrative assistance and support expenditure (*see point 6.1.2*)

Commitments				0.100			
Payments				0.100			

Subtotal a+b							
Commitments	0.200	0.400		0.100			
Payments	0.100	0.500		0.100			

- (c) Overall financial impact of human resources and other administrative expenditure
(see points 7.2 and 7.3)

Commitments/ payments	0.869	0.869	0.869	0.869			
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TOTAL a+b+c							
Commitments	1.069	1.269	0.869	0.969			
Payments	0.969	1.369	0.869	0.969			

2.4. Compatibility with financial programming and financial perspective

Proposal is compatible with existing financial programming.

2.5. Financial impact on revenue:

Proposal has no financial implications (involves technical aspects regarding implementation of a measure)

3. BUDGET CHARACTERISTICS

12 02 01 Implementation and development of the internal market

Type of expenditure		New	EFTA contribution	Contributions form applicant countries	Heading in financial perspective
No Comp	Diff	NO	YES	NO	No 3

12 01 04 01 Implementation and development of the internal market – Expenditure on administrative management

Type of expenditure		New	EFTA contribution	Contributions form applicant countries	Heading in financial perspective
No Comp	Non Diff	NO	YES	NO	No 3

4. LEGAL BASIS

Article 47(2) and Article 55 as well as Article 71 and Article 80(2) of the EC Treaty

5. DESCRIPTION AND GROUNDS

5.1. Need for Community intervention

5.1.1. Objectives pursued

Services are everywhere in the modern economy. In the EU, services excluding public administration account for 53.6% of GDP and 67.2% of employment and offer good prospects for further growth and more jobs. However, the freedom to provide cross-border services and the freedom of establishment across borders are hampered by a large number of barriers. Realising the potential of services in the internal market, and ensuring that they deliver better quality and value to European citizens and business, is a major aim of the EU's economic reform programme.

The Commission's report on the State of the Internal Market for Services (COM(2002) 441 final), included an inventory of the barriers which hinder the development of cross-border services. These barriers affect a large variety of service activities such as distribution, employment agencies, certification, laboratories, construction, real estate agencies, craftsmen, tourism and they hit SMEs, which are predominant in the services sector (89% of SMEs are involved in services), particularly hard.

The report, and the impact assessment which accompanies the Directive on services in the internal market, examine the effects of these barriers on the EU economy and show the potential gains to be achieved by the removal of these barriers, which fragment the internal market in Services.

5.1.2. Measures taken in connection with ex ante evaluation

- (a) The *ex ante* evaluation on the Commission's Internal Market Strategy for Services was conducted in-house in August 2002. The Internal Market Strategy for Services consists of two stages. The first stage was concluded by the above-mentioned report on the State of the Internal Market in Services. The second stage covers the adoption of a proposal for a Directive on Services in the Internal Market as well as non-legislative measures.
- (b) The *ex ante* evaluation explained the context of the Services Strategy, its rationale and approach and summarised the work carried out during the first stage of the Services Strategy, which focussed in particular on the wide variety of sources of evidence of barriers. It also included a preliminary outline of systems and indicators to monitor the effectiveness of the second stage of the Services Strategy.

It found that the Services Strategy had so far been well managed and provided the necessary information for the implementation of the second stage of the Services Strategy. It confirmed the need for Community action in this field and demonstrated the value added and cost-effectiveness of Community intervention.

5.2. Action envisaged and budget intervention arrangements

The Directive will address internal market barriers a combination of three inter-linked elements: the country of origin principle, harmonisation and administrative cooperation.

- In order to facilitate cross-border establishment, there is a need for administrative simplification, a need to remove restrictions resulting from over-complex, intransparent or discriminatory authorisation procedures and a need to remove a number of other requirements which currently hamper cross-border establishment strategies of service providers.
- The barriers affecting the freedom to provide services require mainly that Member States refrain from applying their own rules and regulations to incoming services from other Member States and from supervising and controlling them. Instead they should rely on control by the authorities in the country of origin of the service provider. However, temporary derogations from the country of origin principle will be provided - for example, for secure transport of cash and debt collection. These issues need further analysis and will be subject to external studies.
- The application of the country of origin principle will necessitate an efficient system of administrative cooperation between Member States, establishing their respective responsibilities in the context of cross-border service provision. There might be a need for a coordinated solution in order to facilitate the exchange of information through electronic means.

The Directive will ensure a progressive approach to implementation. It will address a large number of barriers immediately while setting up a framework to resolve, within fixed time periods, the remaining barriers on the basis of mutual evaluation between Member States and further consultation with stakeholders. Therefore, the resources allocations will be extended to cover a certain period of time.

5.3. Methods of implementation

The negotiation of the Directive in the Council and in the European Parliament will be carried out by DG MARKT staff within existing resources. The transposition of the Directive will require monitoring and assistance to the Member States. This will also be carried out by the staff of DG MARKT. Furthermore, Article 41 of the Directive specifies that Commission will be assisted by a committee consisting of Member States' representatives on certain specific issues.

6. FINANCIAL IMPACT

6.1. Total financial impact on operational expenditure - (over the entire programming period)

6.1.1. Financial intervention

Commitments (in EUR million to three decimal places)

Breakdown	2004	2005	2006	2007	2008	2009 and subs. Years]	Total
Action 1		0.400					
Action 2	0.200						
etc.							
TOTAL	0.200	0.400					

6.1.2. Technical and administrative assistance, support expenditure and IT expenditure (commitment appropriations)

	2004	2005	2006	2007	2008	2009 and subs. Years	Total
1) Technical and administrative assistance							
a) Technical assistance offices							
b) Other technical and administrative assistance: - intra muros: - extra muros: <i>of which for construction and maintenance of computerised management systems</i>				0.100			
Subtotal 1							
2) Support expenditure							
a) Studies							
b) Meetings of experts							
c) Information and publications							
Subtotal 2							
TOTAL				0.100			

6.2. Calculation of costs by measure envisaged in operational expenditure (over the entire programming period)

Commitments (in EUR million to three decimal places)

Breakdown	Type of outputs (projects, files)	Number of outputs (total for years 2004-2010)	Average unit cost	Total cost (total for years 2004-2010)
<u>Action 1</u>				
- Measure 1 (analysis of secure transport of cash in view of proposing complementary harmonisation)	Study	1	0.200	0.200
- Measure 2 (analysis of debt collection in view of proposing complementary harmonisation)	Study	1	0.200	0.200
<u>Action 2</u>				
- Measure 1 (development and monitoring of economic indicators – see 8.1 Follow-up arrangements)	Study	1	0.200	0.200
TOTAL COST			0.600	0.600

7. IMPACT ON STAFF AND ADMINISTRATIVE EXPENDITURE

Human and administrative resource requirements will be covered from within the budget allocated to the managing DG in the framework of the annual allocation procedure.

7.1. Impact on human resources

Types of post		Staff to be assigned to management of the action using existing resources		Total	Description of tasks deriving from the action
		Number of permanent posts	Number of temporary posts		
Officials or temporary staff	A	6	0.5	6	<i>Because the Directive covers a wide range of services activities specific knowledge is needed on a multitude of sectors (distribution, regulated professions, construction, certification, craftsmen etc.) as well as on specific questions such as reimbursement of health care or administrative simplification.</i>
	B	1		1.5	
	C				
Other human resources		1 END		1	
Total		8	0.5	8.5	

7.2. Overall financial impact of human resources

EUR million to three decimal places

Type of human resources	Amount (EUR)	Method of calculation*
Officials	0.756	7* 0.108
Temporary staff	0.054	0.5* 0.108
Other human resources (specify budget line)	0.043	1* 0.043
Total	0.853	

The amounts are total expenditure for twelve months.

7.3. Other administrative expenditure deriving from the action

EUR million to three decimal places

Budget line (number and heading)	Amount EUR	Method of calculation
Overall allocation (Title A7)		
12 01 02 11 01 – Missions		
12 01 02 11 02 – Meetings, conferences		
12 01 02 11 03 – Committees (consultative committee)	0.016	24 experts* 650
12 01 02 11 04 – Studies and consultations		
Other expenditure (specify)		
Information systems		
Other administrative expenditure (specify)		
Total	0.016	

The amounts are total expenditure for twelve months.

EUR million to three decimal places

I.	Annual total (7.2 + 7.3)	0.869
II.	Duration of action	4 years
III.	Total cost of action (I x II)	3.476*

** costs for human resources could be extended beyond the 4 years depending on the results of the negotiation and the subsequent work programme*

8. FOLLOW-UP AND EVALUATION

8.1. Follow-up arrangements

The Directive would be implemented by the Member States two years after its adoption (which is envisaged by the end of 2005), i.e. by the end of 2007. Furthermore, an additional year (until the end of 2008) is foreseen to achieve the move to the necessary system of administrative cooperation (putting in place electronic procedures, implementation of single points of contact etc.). This additional time for implementation takes account of the initial administrative investments required.

The Commission services, assisted by a committee consisting of Member States' representatives, will actively monitor and assist the 25 Member States in the transposition of the Directive. The large scope and the wide range of issues addressed in the Directive require partnership between the Commission and Member States to ensure a smooth and homogenous transposition and functioning of the Directive across the Union.

The Commission services would also monitor the expected impacts of the Directive. More specifically, with the assistance of external economic consultants (contract

already concluded but will require financing in 2004) economic indicators (e.g. compliance costs of service companies, Community cross-border trade/FDI in services, involvement of SMEs in cross-border trade/FDI, price differentials) will be tracked.

8.2. Arrangements and schedule for the planned evaluation

Since the real economic and social impacts will not be measurable until such time as the Directive has been fully working, it is proposed that the first *ex post* evaluation will feature in the report that will be presented by the Commission by 2008 and that further evaluations will feature in the reports to be presented every three years following the first report.

9. ANTI-FRAUD MEASURES

Open tendering procedures will be used for the aforementioned study contracts and a close follow up of the resulting contracts will be carried out.