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I Acts whose publication is obligatory

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⁽¹⁾ Text with EEA relevance.

Price: EUR 18

EN

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

The titles of all other acts are printed in bold type and preceded by an asterisk.

I

(Acts whose publication is obligatory)

**REGULATION (EC) No 1920/2006 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 12 December 2006
on the European Monitoring Centre for Drugs and Drug Addiction (recast)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 152 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽²⁾,

Whereas:

(1) At its meeting in Luxembourg on 28 and 29 June 1991, the European Council, approved the setting-up of a European Drugs Monitoring Centre. Such a body, named the European Centre for Drugs and Drug Addiction ('the Centre'), was established by Council Regulation (EEC) No 302/93 of 8 February 1993 ⁽³⁾, which has been substantially amended several times ⁽⁴⁾. Since further amendments are to be made, it should, in the interests of clarity, be recast.

(2) Factual, objective, reliable and comparable information concerning drugs, drug addiction and their consequences is required at Community level to help provide the Community and the Member States with an overall view and thus give them added value when, in their respective areas of competence, they take measures or decide on action to combat drugs.

(3) The drug phenomenon comprises many complex and closely interwoven aspects which cannot easily be dissociated. Therefore, the Centre should be entrusted with the task of furnishing general information which will help to provide the Community and its Member States with an overall view of the drug and drug addiction phenomenon. This task should not prejudice the allocation of powers between the Community and its Member States with regard to legislative provisions concerning drug supply and demand.

(4) By means of Decision No 2367/2002/EC of 16 December 2002 ⁽⁵⁾, the European Parliament and the Council established the Community statistical programme for the period from 2003 to 2007, which includes the Community's actions on statistics in the field of health and safety.

(5) Council Decision 2005/387/JHA of 10 May 2005 on information exchange, risk-assessment and control of new psychoactive substances ⁽⁶⁾ sets out the role of the Centre and its Scientific Committee in the rapid information system and in the assessment of the risks of new substances.

(6) Account should be taken of new methods of use, especially poly-drug use, where illicit drugs are taken in combination with licit drugs or medication.

(7) It should be one of the Centre's tasks to provide information on best practices and guidelines in the Member States and to facilitate the exchange of such practices among them.

(8) The Council Resolution of 10 December 2001 on the implementation of the five key epidemiological indicators on drugs urges Member States to ensure, making use of national focal points, that comparable information on those indicators is available. The implementation by Member States of those indicators is a precondition for the Centre to perform its tasks as set out in this Regulation.

⁽¹⁾ OJ C 69, 21.3.2006, p. 22.

⁽²⁾ Opinion of the European Parliament delivered on 14 June 2006 (not yet published in the Official Journal).

⁽³⁾ OJ L 36, 12.2.1993, p. 1. Regulation as last amended by Regulation (EC) No 1651/2003 (OJ L 245, 29.9.2003, p. 30).

⁽⁴⁾ See Annex II.

⁽⁵⁾ OJ L 358, 31.12.2002, p. 1. Decision as amended by Decision No 787/2004/EC (OJ L 138, 30.4.2004, p. 12).

⁽⁶⁾ OJ L 127, 20.5.2005, p. 32.

- (9) It is desirable for the Commission to be able to entrust the Centre directly with the implementation of Community structural assistance projects relating to drug information systems in third countries such as the candidate countries or the countries of the western Balkans which have been authorised by the European Council to participate in Community programmes and agencies.
- (10) The way in which the Centre is organised and its working methods should be consistent with the objective nature of the results sought, namely the comparability and compatibility of sources and methods in connection with drug information.
- (11) The information compiled by the Centre should concern priority areas, the content, scope and implementing arrangements of which should be defined.
- (12) There are national, European and international organisations and bodies that already supply information of this kind, and it is necessary for the Centre to be able to carry out its tasks in close cooperation with them.
- (13) Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data ⁽¹⁾ should apply to the processing of personal data by the Centre.
- (14) The Centre should also apply the general principles and limits governing the right of access to documents as provided for in Article 255 of the Treaty and defined by Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents ⁽²⁾.
- (15) The Centre should have legal personality.
- (16) In view of its size, the Centre's Management Board should be assisted by an Executive Committee.
- (17) In order to ensure that the European Parliament is well informed of the state of the drugs phenomenon in the European Union, it should have the right to question the Centre's Director.
- (18) The Centre's work should be conducted in a transparent fashion and its management should be subject to all existing good governance and anti-fraud rules, in particular Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) ⁽³⁾ and the Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-fraud Office (OLAF) ⁽⁴⁾ to which the Centre has acceded and the necessary implementing provisions of which it has adopted.
- (19) An external evaluation of the Centre's work should be conducted on a regular basis, and this Regulation should be adapted accordingly, if needed.
- (20) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States and can, by reason of the scale and effects of this Regulation, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary to achieve those objectives.
- (21) This Regulation respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union,

HAVE ADOPTED THIS REGULATION:

Article 1

Objective

1. This Regulation provides for the European Monitoring Centre for Drugs and Drug Addiction ('the Centre').
2. The Centre's objective is to provide, in the areas referred to in Article 3, the Community and its Member States with factual, objective, reliable and comparable information at European level concerning drugs and drug addiction and their consequences.

⁽¹⁾ OJ L 8, 12.1.2001, p. 1.

⁽²⁾ OJ L 145, 31.5.2001, p. 43.

⁽³⁾ OJ L 136, 31.5.1999, p. 1.

⁽⁴⁾ OJ L 136, 31.5.1999, p. 15.

3. The statistical, documentary and technical information processed or produced is intended to help provide the Community and the Member States with an overall view of the drug and drug addiction situation when, in their respective areas of competence, they take measures or decide on action. The statistical element of this information shall be developed, in collaboration with the relevant statistical authorities, using as necessary the Community Statistical Programme to promote synergy and avoid duplication. Account shall be taken of further data from the World Health Organisation and the United Nations Organisation (the 'UN') available worldwide.

4. Without prejudice to Article 2(d)(v), the Centre may not take any measure which goes beyond the sphere of information and the processing thereof.

5. The Centre shall not collect any data making it possible to identify individuals or small groups of individuals. It shall refrain from any transmission of information relating to specific named cases.

Article 2

Tasks

In order to achieve the objective set out in Article 1, the Centre shall perform the following tasks within its areas of activity:

(a) Collection and analysis of existing data

- (i) collecting, registering and analysing information, including data resulting from research, communicated by Member States and data emanating from Community, non-governmental national sources and competent international organisations, including the European Police Office (Europol); providing information on best practices in the Member States and facilitating the exchange of such practices among them; this collection, registration, analysis and information work shall also cover data on emerging trends in poly-drug use, including the combined use of licit and illicit psychoactive substances;
- (ii) carrying out surveys, preparatory studies and feasibility studies, together with any pilot projects necessary to accomplish its tasks; organising meetings of experts and, whenever necessary, setting up ad hoc working parties for the purpose; setting up and making available open scientific documentation resources and assisting in the promotion of information activities;
- (iii) providing an organisational and technical system capable of supplying information on similar or complementary programmes or action pursued by the Member States;

(iv) establishing and coordinating, in consultation and in cooperation with the competent authorities and organisations in the Member States, the network referred to in Article 5;

(v) facilitating exchanges of information between decision-makers, researchers, specialists and those involved in drugs-related issues in governmental and non-governmental organisations;

(b) Improvement of data-comparison methods

(i) ensuring improved comparability, objectivity and reliability of data at European level by establishing indicators and common criteria of a non-binding nature, compliance with which may be recommended by the Centre, with a view to ensuring greater uniformity of the measurement methods used by the Member States and the Community; in particular, the Centre shall develop tools and instruments to help Member States to monitor and evaluate their national policies and the Commission to monitor and evaluate Union policies;

(ii) facilitating and structuring information exchange in terms of both quality and quantity (databases);

(c) Dissemination of data

(i) making the information produced by it available to the Community, the Member States and competent organisations;

(ii) ensuring wide dissemination of work done in each Member State and by the Community itself, and, where appropriate, by third countries or international organisations;

(iii) ensuring wide dissemination of reliable non-confidential data, publishing on the basis of data which it gathers, a yearly report on the state of the drugs problem, including data on emerging trends;

(d) Cooperation with European and international bodies and organisations and with third countries

(i) contributing to improving coordination between national and Community action in its areas of activity;

- (ii) without prejudice to Member States' obligations with regard to transmission of information under the provisions of the United Nations Conventions on drugs, promoting the incorporation of data on drugs and drug addiction gathered in the Member States or emanating from the Community into international monitoring and drug-control programmes, particularly those established by the UN and its specialised agencies;
- (iii) cooperating actively with Europol to attain maximum efficiency in monitoring the drugs problem;
- (iv) cooperating actively with the organisations and bodies referred to in Article 20;
- (v) transferring, at the request of the Commission and with the approval of the Management Board referred to in Article 9, its know-how to certain third countries such as candidate countries or the countries of the western Balkans and assist in the creation and strengthening of structural links with the network referred to in Article 5 and the setting-up and consolidation of the national focal points referred to in that Article;

(e) **Information obligations**

In principle, the Centre shall, if it identifies new developments and changing trends, inform the competent authorities of the Member States thereof.

Article 3

Priority areas of activity

The objective and tasks of the Centre, as set out in Articles 1 and 2, shall be implemented following the order of priorities indicated in Annex I.

Article 4

Working method

1. The Centre shall progressively carry out its tasks in the light of the objectives adopted in the three-year and annual work programmes referred to in Article 9(4) and (5) and with due regard to the available resources.

2. In pursuing its activities, the Centre shall, in order to avoid duplication, take account of activities already carried out by other existing or future institutions and agencies, notably Europol, and shall ensure that it adds to their value.

Article 5

European Information Network on Drugs and Drug Addiction (Reitox)

1. The Centre shall have at its disposal the European Information Network on Drugs and Drug Addiction (Reitox). The network shall consist of one focal point for each Member State and each country which has concluded an agreement pursuant to Article 21 and a focal point for the Commission. The designation of the national focal points shall be the exclusive responsibility of the countries concerned.

2. The national focal points shall form an interface between the participating countries and the Centre. They shall contribute to the establishment of key indicators and data, including guidelines for their implementation with a view to obtaining reliable and comparable information at European Union level. They shall collect and analyse in an objective manner at national level, bringing together experience from different sectors – health, justice, law enforcement – in cooperation with experts and national organisations active in the field of drugs policy, all relevant information on drugs and drug addiction, as well as on policies and solutions applied. In particular, they shall provide data for the five epidemiological indicators specified by the Centre.

Each Member State shall ensure that its representative in the Reitox Network provides the information set out in Article 4(1) of Decision 2005/387/JHA.

The national focal points may also provide the Centre with information on new trends in the use of existing psychoactive substances and/or new combinations of psychoactive substances which pose a potential risk to public health as well as information on possible measures related to public health.

3. The national authorities shall ensure the operation of their focal point for the collection and analysis of data at national level on the basis of guidelines adopted with the Centre.

4. The specific tasks allocated to the national focal points shall appear in the Centre's three-year programme as referred to in Article 9(4).

5. While fully respecting the primacy of the national focal points, and in close cooperation with them, the Centre may have recourse to additional expertise and sources of information in the field of drugs and drug addiction.

*Article 6***Protection and confidentiality of data**

1. Data on drugs and drug addiction provided to or by the Centre may be published subject to compliance with Community and national rules on the dissemination and confidentiality of information. Personal data may not be published or made accessible to the public.

Member States and the national focal points shall be under no obligation to provide information classified as confidential under their national law.

2. Regulation (EC) No 45/2001 shall apply to the Centre.

*Article 7***Access to documents**

1. Regulation (EC) No 1049/2001 shall apply to documents held by the Centre.

2. The Management Board referred to in Article 9 shall adopt the arrangements for implementing Regulation (EC) No 1049/2001.

3. Decisions taken by the Centre pursuant to Article 8 of Regulation (EC) No 1049/2001 may give rise to the lodging of a complaint to the Ombudsman or form the subject of an action before the Court of Justice of the European Communities, under the conditions laid down in Articles 195 and 230 of the Treaty respectively.

*Article 8***Legal capacity and location**

1. The Centre shall have legal personality. In each of the Member States, it shall enjoy the most extensive legal capacity accorded to legal persons under their laws. It may, in particular, acquire or dispose of movable and immovable property and may be a party to legal proceedings.

2. The seat of the Centre shall be located in Lisbon.

*Article 9***Management Board**

1. The Centre shall have a Management Board consisting of one representative from each Member State, two representatives from the Commission, two independent experts particularly knowledgeable in the field of drugs designated by the European Parliament and one representative from each country which has concluded an agreement pursuant to Article 21.

Each member of the Management Board shall have one vote, except for the representatives of the countries which have concluded agreements pursuant to Article 21, who shall not have the right to vote.

The decisions of the Management Board shall be taken by a two-thirds majority of the members with a right to vote, except in the cases provided for in paragraph 6 of this Article and in Article 20.

Each member of the Management Board may be assisted or represented by a substitute. Where a full member who has the right to vote is absent, his or her substitute may exercise that right.

The Management Board may invite as non-voting observers representatives of international organisations with which the Centre cooperates in accordance with Article 20.

2. The Chairperson and Vice-Chairperson of the Management Board shall be elected from amongst and by its members for a three-year period. Their terms of office shall be renewable once.

The Chairperson and Vice-Chairperson shall have the right to take part in the voting.

The Management Board shall draw up its own rules of procedure.

3. The meetings of the Management Board shall be convened by its Chairperson. It shall hold an ordinary meeting at least once a year. The Centre's Director, as referred to in Article 11, shall take part in the meetings of the Management Board, without voting rights, and shall, under Article 11(3), provide for the Board's Secretariat.

4. The Management Board shall adopt a three-year work programme on the basis of a draft submitted by the Director, after consulting the Scientific Committee referred to in Article 13 and obtaining the opinion of the Commission, and shall forward it to the European Parliament, the Council and the Commission.

5. Under the three-year work programme, the Management Board shall adopt each year the Centre's annual work programme on the basis of a draft submitted by the Director, after consulting the Scientific Committee and obtaining the opinion of the Commission. The work programme shall be forwarded to the European Parliament, the Council and the Commission. It may be adjusted in the course of the year in accordance with the same procedure.

6. Where the Commission expresses its disagreement with the three-year or annual work programme, those programmes shall be adopted by the Management Board by a three-fourths majority of the members with a right to vote.

7. The Management Board shall adopt the annual report on the Centre's activities and forward it by 15 June to the European Parliament, the Council, the Commission, the Court of Auditors and the Member States.

8. The Centre shall forward annually to the budgetary authority any information relevant to the outcome of the evaluation procedures.

Article 10

Executive Committee

1. The Management Board shall be assisted by an Executive Committee. The Executive Committee shall be made up of the Chairperson and the Vice-Chairperson of the Management Board, two other members of the Management Board representing the Member States and appointed by the Management Board and two Commission representatives. The Director shall take part in meetings of the Executive Committee.

2. The Executive Committee shall meet at least twice a year and whenever necessary to prepare the decisions of the Management Board and to assist and advise the Director. It shall decide on behalf of the Management Board on those matters provided for in the financial rules adopted pursuant to Article 15(10) that are not reserved to the Management Board by this Regulation. Decisions shall be adopted by consensus.

Article 11

Director

1. The Centre shall be headed by a Director appointed by the Management Board on a proposal from the Commission for a five-year term, which shall be renewable.

2. Before appointment to a first term, out of a maximum of two terms, the candidate selected by the Management Board for the post of Director shall be invited without delay to make a statement before the European Parliament and answer questions put by members of that institution.

3. The Director shall be responsible for:

- (a) preparing and implementing the decisions and programmes adopted by the Management Board,
- (b) day-to-day administration,
- (c) preparing the Centre's work programmes,
- (d) the preparation of the draft estimate of the Centre's revenue and expenditure and the implementation of the budget,
- (e) the preparation and publication of the reports provided for in this Regulation,
- (f) managing all staff-related matters, and in particular exercising the powers which are devolved on the appointing authority,
- (g) defining the Centre's organisational structure and submitting it to the Management Board for approval,

(h) the performance of the tasks referred to in Articles 1 and 2,

(i) carrying out a regular assessment of the Centre's work.

4. The Director shall be accountable for his activities to the Management Board.

5. The Director shall be the Centre's legal representative.

Article 12

Hearing of the Director and of the Chairperson of the Management Board before the European Parliament

Each year the Director shall submit to the European Parliament the general report on the Centre's activities. The European Parliament may also ask for a hearing with the Director and the Chairperson of the Management Board on any subject related to the Centre's activities.

Article 13

Scientific Committee

1. The Management Board and the Director shall be assisted by a Scientific Committee which shall deliver an opinion where provided for in this Regulation on any scientific matter concerning the Centre's activities which the Management Board or the Director may submit to it.

The opinions of the Scientific Committee shall be published.

2. The Scientific Committee shall consist of at most fifteen well-known scientists appointed in view of their scientific excellence and their independence by the Management Board, following the publication of a call for expressions of interest in the *Official Journal of the European Union*. The selection procedure shall ensure that the specialist fields of the members of the Scientific Committee cover the most relevant scientific fields linked to the problems of drugs and drug addiction.

The members of the Scientific Committee shall be appointed in a personal capacity and shall give their opinions completely independently of the Member States and the Community Institutions.

The Scientific Committee shall take into account the various positions expressed in national expert opinions, if available, before delivering any opinion.

For the purpose of implementing Decision 2005/387/JHA, the Scientific Committee may be extended following the procedure laid down in Article 6(2) of that Decision.

3. Members shall serve on the Scientific Committee for a three-year period, which shall be renewable.

4. The Scientific Committee shall elect its chairperson for a three-year period. It shall be convened by its chairperson at least once a year.

Article 14

Drawing up of the budget

1. Estimates of all the revenue and expenditure of the Centre shall be prepared for each financial year, corresponding to the calendar year, and shall be shown in the budget of the Centre.

2. The revenue and expenditure shown in the budget shall be in balance.

3. The Centre's revenue shall, without prejudice to other resources, consist of a subsidy from the Community entered in the general budget of the European Union (Commission Section), payments for services rendered and any financial contributions from the organisations and bodies and third countries referred to in Articles 20 and 21 respectively.

4. The Centre's expenditure shall include:

(a) staff remuneration, administrative and infrastructure expenses, and operating costs;

(b) expenditure in support of the Reitox focal points.

5. Each year the Management Board, on the basis of a draft drawn up by the Director, shall produce an estimate of revenue and expenditure for the Centre for the following financial year. This estimate, which shall include a draft establishment plan, shall be forwarded by the Management Board to the Commission by 31 March, together with the Centre's work programme. The estimate shall be forwarded by the Commission to the European Parliament and the Council (hereinafter referred to as the 'budgetary authority') together with the preliminary draft general budget of the European Union.

6. On the basis of the estimate, the Commission shall enter in the preliminary draft general budget of the European Union the estimates it deems necessary for the establishment plan and the amount of the subsidy to be charged to the general budget, which it shall place before the budgetary authority in accordance with Article 272 of the Treaty.

7. The budgetary authority shall authorise the appropriations for the subsidy to the Centre and shall adopt the establishment plan for the Centre.

8. The budget shall be adopted by the Management Board. It shall become final following final adoption of the general budget of the European Union. Where appropriate, it shall be adjusted accordingly.

9. The Management Board shall, as soon as possible, notify the budgetary authority of its intention to implement any project which may have significant financial implications for the funding of the budget, in particular any projects relating to property such as the rental or purchase of buildings. It shall inform the Commission thereof.

Where a branch of the budgetary authority has notified its intention to deliver an opinion, it shall forward its opinion to the Management Board within a period of six weeks from the date of notification of the project.

Article 15

Implementation of the budget

1. The Director shall implement the Centre's budget.

2. By 1 March following each financial year, the Centre's accounting officer shall communicate the provisional accounts to the Commission's accounting officer together with a report on the budgetary and financial management for that financial year. The Commission's accounting officer shall consolidate the provisional accounts of the institutions and decentralised bodies in accordance with Article 128 of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities ⁽¹⁾ (hereinafter referred to as 'the general Financial Regulation').

3. By 31 March following each financial year, the Commission's accounting officer shall forward the Centre's provisional accounts to the Court of Auditors, together with a report on the budgetary and financial management for that financial year. The report on the budgetary and financial management for the financial year shall also be forwarded to the European Parliament and to the Council.

4. On receipt of the Court of Auditors' observations on the Centre's provisional accounts, pursuant to Article 129 of the general Financial Regulation, the Director shall draw up the Centre's final accounts under his own responsibility and submit them to the Management Board for an opinion.

5. The Management Board shall deliver an opinion on the Centre's final accounts.

6. The Director shall, by 1 July following each financial year, forward the final accounts to the European Parliament, the Council, the Commission and the Court of Auditors, together with the Management Board's opinion.

The final accounts shall be published.

7. The Director shall send the Court of Auditors a reply to its observations by 30 September. He shall also send this reply to the Management Board.

⁽¹⁾ OJ L 248, 16.9.2002, p. 1.

8. The Director shall submit to the European Parliament, at the latter's request, any information required for the smooth application of the discharge procedure for the financial year in question, as laid down in Article 146(3) of the general Financial Regulation.

9. The European Parliament, on a recommendation from the Council acting by a qualified majority, shall, before 30 April of year N + 2, give a discharge to the Director in respect of the implementation of the budget for year N.

10. The financial rules applicable to the Centre shall be adopted by the Management Board after the Commission has been consulted. They may not depart from Commission Regulation (EC, Euratom) No 2343/2002 ⁽¹⁾ on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 unless specifically required for the Centre's operation and with the Commission's prior consent.

Article 16

Combating fraud

1. In order to combat fraud, corruption and any other illegal activities affecting the Communities' financial interests, the provisions of Regulation (EC) No 1073/1999 shall apply without restriction to the Centre.

2. The decisions concerning funding and the implementing agreements and instruments resulting from them shall explicitly stipulate that the Court of Auditors and OLAF may carry out, if necessary, on-the-spot checks at the premises of the recipients of the Centre's funding.

Article 17

Privileges and immunities

The Protocol on the Privileges and Immunities of the European Communities shall apply to the Centre.

Article 18

Staff Regulations

The Staff Regulations of officials of the European Communities and the Conditions of Employment of other servants of the European Communities and the rules adopted jointly by the Community Institutions for the purpose of applying those Staff Regulations and Conditions of Employment shall apply to the staff of the Centre.

Where it engages staff from third countries following the conclusion of the agreements referred to in Article 21, the Centre shall, in any event, comply with the Staff Regulations and Conditions of Employment referred to in paragraph 1 of this Article.

The Centre shall exercise in respect of its staff the powers devolved to the appointing authority.

The Management Board shall, in agreement with the Commission, adopt the appropriate implementing rules in accordance with the Staff Regulations, Article 110, and the Conditions of Employment referred to in paragraph 1.

The Management Board may adopt provisions to allow national experts from other Member States to be employed on secondment at the Centre.

Article 19

Liability

1. The contractual liability of the Centre shall be governed by the law applicable to the contract in question. The Court of Justice shall have jurisdiction pursuant to an arbitration clause contained in a contract concluded by the Centre.

2. In the case of non-contractual liability, the Centre shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by the Centre or its staff in the performance of their duties. The Court of Justice shall have jurisdiction in disputes relating to the compensation of any such damage.

3. The personal liability of its staff towards the Centre shall be governed by the provisions applying to the staff of the Centre.

Article 20

Cooperation with other organisations and bodies

Without prejudice to relations which the Commission may maintain pursuant to Article 302 of the Treaty, the Centre shall actively seek to cooperate with international organisations and other, particularly European, governmental and non-governmental bodies competent in the sector of drugs.

Such cooperation shall be based on working arrangements concluded with the organisations and bodies referred to in the first paragraph. Those arrangements shall be adopted by the Management Board on the basis of a draft submitted by the Director and after the Commission has delivered an opinion. Where the Commission expresses its disagreement with these arrangements, the Management Board shall adopt them by a three-fourths majority of the members with a right to vote.

⁽¹⁾ OJ L 357, 31.12.2002, p. 72.

*Article 21***Participation of third countries**

The Centre shall be open to the participation of any third country that shares the interest of the Community and of its Member States in the Centre's objectives and work, on the basis of agreements entered into between such third countries and the Community on the basis of Article 300 of the Treaty.

*Article 22***Jurisdiction of the Court of Justice**

The Court of Justice shall have jurisdiction in actions brought against the Centre under Article 230 of the Treaty.

*Article 23***Evaluation report**

The Commission shall initiate an external evaluation of the Centre every six years to coincide with the completion of two of the Centre's three-year work programmes. Such evaluations shall also include the Reitox system. The Commission shall forward the evaluation report to the European Parliament, the Council and the Management Board.

In that context, the Commission shall, if appropriate, present a proposal for revision of the provisions of this Regulation in the light of developments in respect of regulatory agencies, in accordance with the procedure laid down in Article 251 of the Treaty.

*Article 24***Repeal**

Regulation (EEC) No 302/93 is hereby repealed.

References made to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex III.

*Article 25***Entry into force**

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

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg, 12 December 2006.

For the European Parliament
The President
J. BORRELL FONTELLES

For the Council
The President
M. PEKKARINEN

ANNEX I

- A. The work of the Centre shall be carried out with due regard to the respective powers of the Community and its Member States in the area of drugs, as those powers are defined by the Treaty. It shall cover the various facets of the drugs and drug addiction phenomenon, and the solutions applied. In doing so, the Centre shall be guided by the Drugs Strategies and Action Plans adopted by the European Union.

The Centre shall focus on the following priority areas:

- 1) monitoring the state of the drugs problem, in particular using epidemiological or other indicators, and monitoring emerging trends, in particular those involving poly-drug use;
 - 2) monitoring the solutions applied to drug-related problems; providing information on best practices in the Member States and facilitating the exchange of such practices among them;
 - 3) assessing the risks of new psychoactive substances and maintaining a rapid information system with regard to their use and also regarding new methods of using existing psychoactive substances;
 - 4) developing tools and instruments to help Member States to monitor and evaluate their national policies and the Commission to monitor and evaluate European Union policies.
- B. The Commission shall make available to the Centre, for dissemination, the information and statistical data which it possesses pursuant to its powers.
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ANNEX II

REPEALED REGULATION AND SUCCESSIVE AMENDMENTS

Council Regulation (EEC) No 302/93	OJ L 36, 12.2.1993, p. 1.
Council Regulation (EC) No 3294/94	OJ L 341, 30.12.1994, p. 7.
Council Regulation (EC) No 2220/2000	OJ L 253, 7.10.2000, p. 1.
Council Regulation (EC) No 1651/2003	OJ L 245, 29.9.2003, p. 30.

ANNEX III

CORRELATION TABLE

Council Regulation (EEC) No 302/93	This Regulation
Article 1	Article 1
—	Article 1(3), second and third sentences
Article 2(A), sub-heading	Article 2(a), sub-heading
Article 2(A)(1)	Article 2(a)(i), first phrase
—	Article 2(a)(i), second and third phrases
Article 2(A)(2) to (5)	Article 2(a)(ii) to (v)
Article 2(B), sub-heading	Article 2(b), sub-heading
Article 2(B)(6), first phrase	Article 2(b)(i), first phrase
—	Article 2(b)(i), second phrase
Article 2(B)(7)	Article 2(b)(ii)
Article 2(C), sub-heading	Article 2(c), sub-heading
Article 2(C)(8) to (10)	Article 2(c)(i) to (iii)
Article 2(D), sub-heading	Article 2(d), sub-heading
Article 2(D)(11) to (13)	Article 2(d)(i), (ii) and (iv)
—	Article 2(d)(iii) and (v)
—	Article 2(e)
Article 3	Article 4
Article 4	Article 3
Article 5(1)	Article 5(1)
—	Article 5(2), (3) and (4)
Article 5(4)	Article 5(5)
Article 6(2) and (3)	Article 6(1)
—	Article 6(2)
Article 6a	Article 7
Article 7	Article 8
—	Article 8, heading
—	Article 8 (2)
Article 8(1)	Article 9(1), first, fourth and fifth subparagraphs
Article 8(2)	Article 9(1), second and third subparagraphs; Article 9(2); Article 9(3), second sentence
—	Article 9(3), first and third sentences
Article 8(3)	Article 9(4)
Article 8(4)	Article 9(5), first and third sentences
—	Article 9(5), second sentence
—	Article 9(6)
Article 8(5) and (6)	Article 9(7) and (8)
—	Article 10
Article 9(1), first subparagraph	Article 11(1)

Council Regulation (EEC) No 302/93	This Regulation
—	Article 11(2)
Article 9(1), second subparagraph	Article 11(3)
Article 9(1), second subparagraph, first to sixth indent	Article 11(3)(a) to (f), first phrase
—	Article 11(3)(f), second phrase
—	Article 11(3)(g)
Article 9(1), second subparagraph, seventh indent	Article 11(3)(h)
—	Article 11(3)(i)
Article 9(2) and (3)	Article 11(4) and (5)
—	Article 12
Article 10(1)	Article 13(1)
Article 10(2)	Article 13(2), first and fourth subparagraphs
—	Article 13(2), second and third subparagraphs
Article 10(3), (4) and (5)	Article 13(3) and (4)
Article 11(1) to (6)	Article 14(1) to (5)
Article 11(7) to (10)	Article 14(6) to (9)
Article 11a(1) to (5)	Article 15(1) to (5)
Article 11a(6) and (7)	Article 15(6)
Article 11a(8) to (11)	Article 15(7) to (10)
—	Article 16
Article 12	Article 20
—	Article 20, second subparagraph
Article 13(1)	Article 21
Article 13(2)	—
Article 14	Article 17
Article 15	Article 18, first, third and fourth subparagraphs
—	Article 18, second and fifth subparagraphs
Article 16	Article 19
Article 17	Article 22
Article 18	Article 23, first subparagraph, first and third sentences
—	Article 23, first subparagraph, second sentence
—	Article 23, second subparagraph
—	Article 24
Article 19	Article 25
Annex, paragraph A, first subparagraph	Annex I, paragraph A, first subparagraph, first sentence
—	Annex I, paragraph A, first subparagraph, second and third sentences
—	Annex I, paragraph A, second subparagraph, points (1) to (4)
Annex, paragraph A, second subparagraph, points 1 to 5	—
Annex, paragraph B	Annex I, paragraph B
Annex, paragraph C	—
—	Annex II
—	Annex III

DIRECTIVE 2006/113/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 12 December 2006
on the quality required of shellfish waters
(codified version)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 175(1) thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Economic and Social Committee,

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽¹⁾,

Whereas:

- (1) Council Directive 79/923/EEC of 30 October 1979 on the quality required of shellfish waters ⁽²⁾ has been substantially amended ⁽³⁾. In the interests of clarity and rationality the said Directive should be codified.
- (2) The protection and improvement of the environment necessitate concrete measures to protect waters, including shellfish waters, against pollution.
- (3) It is necessary to safeguard certain shellfish populations from various harmful consequences, resulting from the discharge of pollutant substances into the sea.
- (4) Decision No 1600/2002/EC of the European Parliament and of the Council of 22 July 2002 laying down the Sixth Community Environment Action Programme ⁽⁴⁾ provides that quality objectives are to be jointly drawn up fixing the various requirements which an environment must meet, *inter alia* the definition of parameters for water, including shellfish waters.
- (5) Differences between the provisions in force in the various Member States as regards the quality required of shellfish waters may create unequal conditions of competition and thus directly affect the functioning of the internal market.

- (6) In order to attain the objectives of this Directive, the Member States must designate the waters to which it will apply and set limit values corresponding to certain parameters. The waters so designated will have to conform to these values within six years of designation.
- (7) For the purpose of checking the quality required of shellfish waters, a minimum number of samples should be taken and the measurements relating to parameters set out in Annex I should be carried out. Such sampling may be reduced or discontinued in the light of the results of the measurements.
- (8) Certain natural circumstances are beyond the control of the Member States and it is therefore necessary to provide for the possibility of derogating from this Directive in certain cases.
- (9) Technical and scientific progress may make necessary the rapid adaptation of some of the requirements laid down in Annex I. In order to facilitate the introduction of the measures required for this purpose, a procedure should be laid down establishing close cooperation between the Member States and the Commission. Such cooperation should take place in the Committee on Adaptation to Technical and Scientific Progress set up by Article 13(1) of Directive 2006/44/EC of the European Parliament and of the Council of 6 September 2006 on the quality of fresh waters needing protection or improvement in order to support fish life ⁽⁵⁾.
- (10) This Directive should be without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law of the Directives, as set out in Part B of Annex II,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

This Directive concerns the quality of shellfish waters and applies to those coastal and brackish waters designated by the Member States as needing protection or improvement in order to support shellfish (bivalve and gasteropod molluscs) life and growth and thus to contribute to the high quality of shellfish products directly edible by man.

⁽¹⁾ Opinion of the European Parliament delivered on 12 October 2006 (not yet published in the Official Journal) and Council Decision delivered on 30. November 2006.

⁽²⁾ OJ L 281, 10.11.1979, p. 47. Directive as amended by Directive 91/692/EEC (OJ L 377, 31.12.1991, p. 48).

⁽³⁾ See Annex II, Part A.

⁽⁴⁾ OJ L 242, 10.9.2002, p. 1.

⁽⁵⁾ OJ L 264, 25.9.2006, p. 20.

Article 2

The parameters applicable to the waters designated by the Member States are listed in Annex I.

Article 3

1. Member States shall, for the designated waters, set values for the parameters listed in Annex I, in so far as values are given in column G or I. They shall comply with the comments contained in both columns.

2. Member States shall not set values less stringent than those given in column I of Annex I and shall endeavour to observe the values in column G, while taking into account the principle set out in Article 8.

3. For discharges of effluents falling within parameters 'organohalogenated substances' and 'metals', the emission standards laid down by the Member States pursuant to Directive 2006/11/EC of the European Parliament and of the Council of 15 February 2006 on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community⁽¹⁾ shall be applied at the same time as the quality objectives and the other obligations arising from this Directive, in particular those relating to sampling.

Article 4

1. Member States shall designate shellfish waters and may subsequently make additional designations.

2. Member States may revise the designation of certain waters owing in particular to factors unforeseen at the time of designation, taking into account the principle set out in Article 8.

Article 5

Member States shall establish programmes in order to reduce pollution and to ensure that designated waters conform, within six years following designation in accordance with Article 4, to both the values set by the Member States in accordance with Article 3 and the comments contained in columns G and I of Annex I.

Article 6

1. For the purposes of implementing Article 5, the designated waters shall be deemed to conform to the provisions of this Directive if samples of such waters, taken at the minimum frequency specified in Annex I, at the same sampling point and over a period of 12 months, show that they conform to both the values set by the Member States in accordance with Article 3 and the comments contained in columns G and I of Annex I, as regards:

- (a) 100 % of the samples for the parameters 'organohalogenated substances' and 'metals';

⁽¹⁾ OJ L 64, 4.3.2006, p. 52.

- (b) 95 % of the samples for the parameters 'salinity' and 'dissolved oxygen';

- (c) 75 % of the samples for the other parameters listed in Annex I.

If, in accordance with Article 7(2), the sampling frequency for all the parameters in Annex I except 'organohalogenated substances' and 'metals' is lower than that indicated in Annex I, the values and comments referred to in the first subparagraph of this paragraph shall be complied with in the case of all the samples.

2. Instances in which the values set by Member States in accordance with Article 3 or the comments contained in columns G and I of Annex I are not respected shall not be taken into consideration in the calculation of the percentages provided for in paragraph 1 when such instances are the result of a disaster.

Article 7

1. The competent authorities in the Member States shall carry out sampling operations, the minimum frequency of which is laid down in Annex I.

2. Where the competent authority records that the quality of designated waters is appreciably higher than that which would result from the application of the values set in accordance with Article 3 and the comments contained in columns G and I of Annex I, the frequency of the sampling may be reduced. Where there is no pollution and no risk of deterioration in the quality of the waters, the competent authority concerned may decide that no sampling is necessary.

3. If sampling shows that a value set in accordance with Article 3 or a comment contained in columns G or I of Annex I is not respected, the competent authority shall establish whether this is the result of chance, a natural phenomenon or pollution and shall adopt appropriate measures.

4. The exact sampling point, the distance from this point to the nearest point where pollutants are discharged and the depth at which the samples are to be taken shall be fixed by the competent authority of each Member State on the basis of local environmental conditions in particular.

5. The reference methods of analysis to be used for calculating the value of the parameters concerned are set out in Annex I. Laboratories which employ other methods shall ensure that the results obtained are equivalent or comparable to those specified in Annex I.

Article 8

Implementation of the measures taken pursuant to this Directive may on no account lead, either directly or indirectly, to increased pollution of coastal and brackish waters.

Article 9

Member States may at any time set more stringent values for designated waters than those laid down in this Directive. They may also lay down provisions relating to parameters other than those provided for in this Directive.

Article 10

Where a Member State considers designating shellfish waters in the immediate vicinity of a frontier with another Member State, these States shall consult each other in order to determine the stretches of such waters to which this Directive might apply and the consequences to be drawn from the common quality objectives; these consequences shall be determined, after formal consultations, by each Member State concerned. The Commission may participate in these deliberations.

Article 11

The Member States may derogate from this Directive in the event of exceptional weather or geographical conditions.

Article 12

Such amendments as are necessary for adapting to technical and scientific progress the G values for the parameters and the methods of analysis contained in Annex I shall be adopted by the Committee set up by Article 13(1) of Directive 2006/44/EC in accordance with the procedure referred to in Article 13(2) thereof.

Article 13

1. For the purpose of applying this Directive, Member States shall provide the Commission with information concerning:
 - (a) the waters designated in accordance with Article 4(1), in summary form;
 - (b) the revision of the designation of certain waters in accordance with Article 4(2);
 - (c) the provisions laid down in order to establish new parameters in accordance with Article 9.
2. Where a Member State applies the provisions of Article 11, it shall forthwith notify the Commission thereof, stating its reasons and the periods anticipated.
3. More generally, Member States shall provide the Commission, on a reasoned request from the latter, with any information necessary for the application of this Directive.

Article 14

At intervals of three years, and for the first time for the period from 1993 to 1995 inclusive, the Member States shall send information to the Commission on the implementation of this Directive, in the form of a sectoral report which shall also cover other pertinent Community Directives. This report shall be drawn up on the basis of a questionnaire or outline drafted by the Commission in accordance with the procedure referred to in Article 6(2) of Council Directive 91/692/EEC of 23 December 1991 standardising and rationalising reports on the implementation of certain Directives relating to the environment ⁽¹⁾. The questionnaire or outline shall be sent to the Member States six months before the start of the period covered by the report. The report shall be sent to the Commission within nine months of the end of the three-year period covered by it.

The Commission shall publish a Community report on the implementation of this Directive within nine months of receiving the reports from the Member States.

Article 15

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

Article 16

Directive 79/923/EEC is hereby repealed, without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law of the Directives, as set out in Part B of Annex II.

References made to the repealed Directive shall be construed as being made to this Directive and should be read in accordance with the correlation table in Annex III.

Article 17

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

Article 18

This Directive is addressed to the Member States.

Done at Strasbourg, 12 December 2006.

For the European Parliament
The President
J. BORRELL FONTELLES

For the Council
The President
M. PEKKARINEN

⁽¹⁾ OJ L 377, 31.12.1991, p. 48. Directive as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).

ANNEX I

QUALITY OF SHELLFISH WATERS

	Parameter	G	I	Reference methods of analysis	Minimum sampling and measuring frequency
1.	pH pH unit		7 — 9	— Electrometry Measured <i>in situ</i> at the time of sampling	Quarterly
2.	Temperature °C	A discharge affecting shellfish waters must not cause the temperature of the waters to exceed by more than 2 °C the temperature of waters not so affected		— Thermometry Measured <i>in situ</i> at the time of sampling	Quarterly
3.	Coloration (after filtration) mg Pt/l		A discharge affecting shellfish waters must not cause the colour of the waters after filtration to deviate by more than 10 mg Pt/l from the colour of waters not so affected	— Filter through a 0.45 µm membrane Photometric method, using the platinum/cobalt scale	Quarterly
4.	Suspended solids mg/l		A discharge affecting shellfish waters must not cause the suspended solid content of the waters to exceed by more than 30 % the content of waters not so affected	— Filtration through a 0.45 µm membrane, drying at 105 °C and weighing — Centrifuging (for at least five minutes, with mean acceleration 2 800 to 3 200 g), drying at 105 °C and weighing	Quarterly
5.	Salinity ‰	12 to 38 ‰	≤ 40 ‰ Discharge affecting shellfish waters must not cause their salinity to exceed by more than 10 ‰ the salinity of waters not so affected	Conductimetry	Monthly
6.	Dissolved oxygen (Saturation %)	≥ 80 %	≥ 70 % (average value) Should an individual measurement indicate a value lower than 70 %, measurements shall be repeated An individual measurement may not indicate a value of less than 60 % unless there are no harmful consequences for the development of shellfish colonies	Winkler's method Electrochemical method	Monthly, with a minimum of one sample representative of low oxygen conditions on the day of sampling. However, where major daily variations are suspected, a minimum of two samples in one day shall be taken

	Parameter	G	I	Reference methods of analysis	Minimum sampling and measuring frequency
7.	Petroleum hydrocarbons		Hydrocarbons must not be present in the shellfish water in such quantities as to: — produce a visible film on the surface of the water and/or a deposit on the shellfish, — have harmful effects on the shellfish	Visual examination	Quarterly
8.	Organohalogenated substances	The concentration of each substance in shellfish flesh must be so limited that it contributes, in accordance with Article 1, to the high quality of shellfish products	The concentration of each substance in the shellfish water or in shellfish flesh must not reach or exceed a level which has harmful effects on the shellfish and larvae	Gas chromatography after extraction with suitable solvents and purification	Half-yearly
9.	Metals Silver Ag Arsenic As Cadmium Cd Chromium Cr Copper Cu Mercury Hg Nickel Ni Lead Pb Zinc Zn mg/l	The concentration of each substance in shellfish flesh must be so limited that it contributes in accordance with Article 1, to the high quality of shellfish products	The concentration of each substance in the shellfish water or in the shellfish flesh must not exceed a level which gives rise to harmful effects on the shellfish and their larvae The synergic effects of these metals must be taken into consideration	Spectrometry of atomic absorption preceded, where appropriate, by concentration and/or extraction	Half-yearly
10.	Faecal coliforms/100 ml	≤ 300 in the shellfish flesh and intervalvular liquid		Method of dilution with fermentation in liquid substrates in at least three tubes in three dilutions. Subculturing of the positive tubes on a confirmation medium. Count according to MPN (most probable number). Incubation temperature 44 °C ± 0,5 °C	Quarterly
11.	Substances affecting the taste of the shellfish		Concentration lower than that liable to impair the taste of the shellfish	Examination of the shellfish by tasting where the presence of one of these substances is presumed	
12.	Saxitoxin (produced by dinoflagellates)				

Abbreviations:

G = guide

I = mandatory

ANNEX II

PART A

Repealed Directive with its amendment

Council Directive 79/923/EEC
(OJ L 281, 10.11.1979, p. 47)

Council Directive 91/692/EEC
(OJ L 377, 31.12.1991, p. 48)

Only Annex I, point (e)

PART B

List of time-limits for transposition into national law

(referred to in Article 16)

Directive	Time-limit for transposition
79/923/EEC	6 November 1981
91/692/EEC	1 January 1993

ANNEX III

CORRELATION TABLE

Directive 79/923/EEC	This Directive
Article 1	Article 1
Article 2	Article 2
Article 3	Article 3
Article 4(1) and (2)	Article 4(1)
Article 4(3)	Article 4(2)
Article 5	Article 5
Article 6(1), first subparagraph, introductory sentence	Article 6(1), first subparagraph, introductory sentence
Article 6(1), first subparagraph, first indent	Article 6(1), first subparagraph, point (a)
Article 6(1), first subparagraph, second indent	Article 6(1), first subparagraph, point (b)
Article 6(1), first subparagraph, third indent	Article 6(1), first subparagraph, point (c)
Article 6(1), second subparagraph	Article 6(1), second subparagraph
Article 6(2)	Article 6(2)
Article 7	Article 7
Article 8	Article 8
Article 9	Article 9
Article 10	Article 10
Article 11	Article 11
Article 12	Article 12
Article 13, first paragraph, introductory sentence	Article 13(1), introductory sentence
Article 13, first paragraph, first indent	Article 13(1), point (a)
Article 13, first paragraph, second indent	Article 13(1), point (b)
Article 13, first paragraph, third indent	Article 13(1), point (c)
Article 13, second paragraph	Article 13(2)
Article 13, third paragraph	Article 13(3)
Article 14	Article 14
Article 15(1)	—
Article 15(2)	Article 15
—	Article 16
—	Article 17
Article 16	Article 18
Annex	Annex I
—	Annex II
—	Annex III

DIRECTIVE 2006/114/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 12 December 2006
concerning misleading and comparative advertising
(codified version)
(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 Article 95 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽²⁾,

Whereas:

- (1) Council Directive 84/450/EEC of 10 September 1984 concerning misleading and comparative advertising ⁽³⁾ has been substantially amended several times ⁽⁴⁾. In the interests of clarity and rationality the said Directive should be codified.
- (2) The laws against misleading advertising in force in the Member States differ widely. Since advertising reaches beyond the frontiers of individual Member States, it has a direct effect on the smooth functioning of the internal market.
- (3) Misleading and unlawful comparative advertising can lead to distortion of competition within the internal market.
- (4) Advertising, whether or not it induces a contract, affects the economic welfare of consumers and traders.
- (5) The differences between the laws of the Member States on advertising which misleads business hinder the execution of advertising campaigns beyond national boundaries and thus affect the free circulation of goods and provision of services.

(6) The completion of the internal market means a wide range of choice. Given that consumers and traders can and must make the best possible use of the internal market, and that advertising is a very important means of creating genuine outlets for all goods and services throughout the Community, the basic provisions governing the form and content of comparative advertising should be uniform and the conditions of the use of comparative advertising in the Member States should be harmonised. If these conditions are met, this will help demonstrate objectively the merits of the various comparable products. Comparative advertising can also stimulate competition between suppliers of goods and services to the consumer's advantage.

(7) Minimum and objective criteria for determining whether advertising is misleading should be established.

(8) Comparative advertising, when it compares material, relevant, verifiable and representative features and is not misleading, may be a legitimate means of informing consumers of their advantage. It is desirable to provide a broad concept of comparative advertising to cover all modes of comparative advertising.

(9) Conditions of permitted comparative advertising, as far as the comparison is concerned, should be established in order to determine which practices relating to comparative advertising may distort competition, be detrimental to competitors and have an adverse effect on consumer choice. Such conditions of permitted advertising should include criteria of objective comparison of the features of goods and services.

(10) The international conventions on copyright as well as the national provisions on contractual and non-contractual liability should apply when the results of comparative tests carried out by third parties are referred to or reproduced in comparative advertising.

(11) The conditions of comparative advertising should be cumulative and respected in their entirety. In accordance with the Treaty, the choice of forms and methods for the implementation of these conditions should be left to the Member States, insofar as those forms and methods are not already determined by this Directive.

⁽¹⁾ Opinion of 26 October 2006 (not yet published in the Official Journal).

⁽²⁾ Opinion of the European Parliament of 12 October 2006 (not yet published in the Official Journal) and Council Decision of 30 November 2006.

⁽³⁾ OJ L 250, 19.9.1984, p. 17. Directive as last amended by Directive 2005/29/EC of the European Parliament and of the Council (OJ L 149, 11.6.2005, p. 22).

⁽⁴⁾ See Annex I, Part A.

- (12) These conditions should include, in particular, consideration of the provisions resulting from Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs ⁽¹⁾, and in particular Article 13 thereof, and of the other Community provisions adopted in the agricultural sphere.
- (13) Article 5 of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks ⁽²⁾ confers exclusive rights on the proprietor of a registered trade mark, including the right to prevent all third parties from using, in the course of trade, any sign which is identical to, or similar to, the trade mark in relation to identical goods or services or even, where appropriate, other goods.
- (14) It may, however, be indispensable, in order to make comparative advertising effective, to identify the goods or services of a competitor, making reference to a trade mark or trade name of which the latter is the proprietor.
- (15) Such use of another's trade mark, trade name or other distinguishing marks does not breach this exclusive right in cases where it complies with the conditions laid down by this Directive, the intended target being solely to distinguish between them and thus to highlight differences objectively.
- (16) Persons or organisations regarded under national law as having a legitimate interest in the matter should have facilities for initiating proceedings against misleading and unlawful comparative advertising, either before a court or before an administrative authority which is competent to decide upon complaints or to initiate appropriate legal proceedings.
- (17) The courts or administrative authorities should have powers enabling them to order or obtain the cessation of misleading and unlawful comparative advertising. In certain cases it may be desirable to prohibit misleading and unlawful comparative advertising even before it is published. However, this in no way implies that Member States are under an obligation to introduce rules requiring the systematic prior vetting of advertising.
- (18) The voluntary control exercised by self-regulatory bodies to eliminate misleading or unlawful comparative advertising may avoid recourse to administrative or judicial action and ought therefore to be encouraged.
- (19) While it is for national law to determine the burden of proof, it is appropriate to enable courts and administrative authorities to require traders to produce evidence as to the accuracy of factual claims they have made.
- (20) Regulating comparative advertising is necessary for the smooth functioning of the internal market. Action at Community level is therefore required. The adoption of a Directive is the appropriate instrument because it lays down uniform general principles while allowing the Member States to choose the form and appropriate method by which to attain these objectives. It is in accordance with the principle of subsidiarity.
- (21) This Directive should be without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law and application of the Directives as set out in Part B of Annex I,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

The purpose of this Directive is to protect traders against misleading advertising and the unfair consequences thereof and to lay down the conditions under which comparative advertising is permitted.

Article 2

For the purposes of this Directive:

- (a) 'advertising' means the making of a representation in any form in connection with a trade, business, craft or profession in order to promote the supply of goods or services, including immovable property, rights and obligations;
- (b) 'misleading advertising' means any advertising which in any way, including its presentation, deceives or is likely to deceive the persons to whom it is addressed or whom it reaches and which, by reason of its deceptive nature, is likely to affect their economic behaviour or which, for those reasons, injures or is likely to injure a competitor;
- (c) 'comparative advertising' means any advertising which explicitly or by implication identifies a competitor or goods or services offered by a competitor;
- (d) 'trader' means any natural or legal person who is acting for purposes relating to his trade, business or profession and anyone acting in the name of or on behalf of a trader;

⁽¹⁾ OJ L 93, 31.3.2006, p. 12.

⁽²⁾ OJ L 40, 11.2.1989, p. 1. Directive as amended by Decision 92/10/EEC (OJ L 6, 11.1.1992, p. 35).

- (e) 'code owner' means any entity, including a trader or group of traders, which is responsible for the formulation and revision of a code of conduct and/or for monitoring compliance with the code by those who have undertaken to be bound by it.

Article 3

In determining whether advertising is misleading, account shall be taken of all its features, and in particular of any information it contains concerning:

- (a) the characteristics of goods or services, such as their availability, nature, execution, composition, method and date of manufacture or provision, fitness for purpose, uses, quantity, specification, geographical or commercial origin or the results to be expected from their use, or the results and material features of tests or checks carried out on the goods or services;
- (b) the price or the manner in which the price is calculated, and the conditions on which the goods are supplied or the services provided;
- (c) the nature, attributes and rights of the advertiser, such as his identity and assets, his qualifications and ownership of industrial, commercial or intellectual property rights or his awards and distinctions.

Article 4

Comparative advertising shall, as far as the comparison is concerned, be permitted when the following conditions are met:

- (a) it is not misleading within the meaning of Articles 2(b), 3 and 8(1) of this Directive or Articles 6 and 7 of Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market ('Unfair Commercial Practices Directive')⁽¹⁾;
- (b) it compares goods or services meeting the same needs or intended for the same purpose;
- (c) it objectively compares one or more material, relevant, verifiable and representative features of those goods and services, which may include price;
- (d) it does not discredit or denigrate the trade marks, trade names, other distinguishing marks, goods, services, activities or circumstances of a competitor;
- (e) for products with designation of origin, it relates in each case to products with the same designation;

- (f) it does not take unfair advantage of the reputation of a trade mark, trade name or other distinguishing marks of a competitor or of the designation of origin of competing products;
- (g) it does not present goods or services as imitations or replicas of goods or services bearing a protected trade mark or trade name;
- (h) it does not create confusion among traders, between the advertiser and a competitor or between the advertiser's trade marks, trade names, other distinguishing marks, goods or services and those of a competitor.

Article 5

1. Member States shall ensure that adequate and effective means exist to combat misleading advertising and enforce compliance with the provisions on comparative advertising in the interests of traders and competitors.

Such means shall include legal provisions under which persons or organisations regarded under national law as having a legitimate interest in combating misleading advertising or regulating comparative advertising may:

- (a) take legal action against such advertising;

or

- (b) bring such advertising before an administrative authority competent either to decide on complaints or to initiate appropriate legal proceedings.

2. It shall be for each Member State to decide which of the facilities referred to in the second subparagraph of paragraph 1 shall be available and whether to enable the courts or administrative authorities to require prior recourse to other established means of dealing with complaints, including those referred to in Article 6.

It shall be for each Member State to decide:

- (a) whether these legal facilities may be directed separately or jointly against a number of traders from the same economic sector;

and

- (b) whether these legal facilities may be directed against a code owner where the relevant code promotes non-compliance with legal requirements.

⁽¹⁾ OJ L 149, 11.6.2005, p. 22.

3. Under the provisions referred to in paragraphs 1 and 2, Member States shall confer upon the courts or administrative authorities powers enabling them, in cases where they deem such measures to be necessary taking into account all the interests involved and in particular the public interest:

- (a) to order the cessation of, or to institute appropriate legal proceedings for an order for the cessation of, misleading advertising or unlawful comparative advertising;

or

- (b) if the misleading advertising or unlawful comparative advertising has not yet been published but publication is imminent, to order the prohibition of, or to institute appropriate legal proceedings for an order for the prohibition of, such publication.

The first subparagraph shall apply even where there is no proof of actual loss or damage or of intention or negligence on the part of the advertiser.

Member States shall make provision for the measures referred to in the first subparagraph to be taken under an accelerated procedure either with interim effect or with definitive effect, at the Member States' discretion.

4. Member States may confer upon the courts or administrative authorities powers enabling them, with a view to eliminating the continuing effects of misleading advertising or unlawful comparative advertising, the cessation of which has been ordered by a final decision:

- (a) to require publication of that decision in full or in part and in such form as they deem adequate;
- (b) to require in addition the publication of a corrective statement.

5. The administrative authorities referred to in point (b) of the second subparagraph of paragraph 1 must:

- (a) be composed so as not to cast doubt on their impartiality;
- (b) have adequate powers, where they decide on complaints, to monitor and enforce the observance of their decisions effectively;
- (c) normally give reasons for their decisions.

6. Where the powers referred to in paragraphs 3 and 4 are exercised exclusively by an administrative authority, reasons for its decisions shall always be given. In this case, provision must be made for procedures whereby improper or unreasonable exercise of its powers by the administrative authority or improper or unreasonable failure to exercise the said powers can be the subject of judicial review.

Article 6

This Directive does not exclude the voluntary control, which Member States may encourage, of misleading or comparative advertising by self-regulatory bodies and recourse to such bodies by the persons or organisations referred to in the second subparagraph of Article 5(1) on condition that proceedings before such bodies are additional to the court or administrative proceedings referred to in that Article.

Article 7

Member States shall confer upon the courts or administrative authorities powers enabling them in the civil or administrative proceedings referred to in Article 5:

- (a) to require the advertiser to furnish evidence as to the accuracy of factual claims in advertising if, taking into account the legitimate interest of the advertiser and any other party to the proceedings, such a requirement appears appropriate on the basis of the circumstances of the particular case and in the case of comparative advertising to require the advertiser to furnish such evidence in a short period of time;

and

- (b) to consider factual claims as inaccurate if the evidence demanded in accordance with point (a) is not furnished or is deemed insufficient by the court or administrative authority.

Article 8

1. This Directive shall not preclude Member States from retaining or adopting provisions with a view to ensuring more extensive protection, with regard to misleading advertising, for traders and competitors.

The first subparagraph shall not apply to comparative advertising as far as the comparison is concerned.

2. The provisions of this Directive shall apply without prejudice to Community provisions on advertising for specific products and/or services or to restrictions or prohibitions on advertising in particular media.

3. The provisions of this Directive concerning comparative advertising shall not oblige Member States which, in compliance with the provisions of the Treaty, maintain or introduce advertising bans regarding certain goods or services, whether imposed directly or by a body or organisation responsible, under the law of the Member States, for regulating the exercise of a commercial, industrial, craft or professional activity, to permit comparative advertising regarding those goods or services. Where these bans are limited to particular media, this Directive shall apply to the media not covered by these bans.

4. Nothing in this Directive shall prevent Member States, in compliance with the provisions of the Treaty, from maintaining or introducing bans or limitations on the use of comparisons in the advertising of professional services, whether imposed directly or by a body or organisation responsible, under the law of the Member States, for regulating the exercise of a professional activity.

Article 9

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 10

Directive 84/450/EEC is hereby repealed, without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law and application of the Directives, as set out in Part B of Annex I.

References made to the repealed Directive shall be construed as being made to this Directive and should be read in accordance with the correlation table set out in Annex II.

Article 11

This Directive shall enter into force on 12 December 2007.

Article 12

This Directive is addressed to the Member States.

Done at Strasbourg, 12 December 2006.

For the European Parliament
The President
J. BORRELL FONTELLES

For the Council
The President
M. PEKKARINEN

ANNEX I

PART A

Repealed Directive with its successive amendments

Council Directive 84/450/EEC

(OJ L 250, 19.9.1984, p. 17)

Directive 97/55/EC of the European Parliament and of the Council

(OJ L 290, 23.10.1997, p. 18)

Directive 2005/29/EC of the European Parliament and of the Council

(OJ L 149, 11.6.2005, p. 22)

only Article 14

PART B

List of time-limits for transposition into national law and application

(referred to in Article 10)

Directive	Time-limit for transposition	Date of application
84/450/EEC	1 October 1986	—
97/55/EC	23 April 2000	—
2005/29/EC	12 June 2007	12 December 2007

ANNEX II

CORRELATION TABLE

Directive 84/450/EEC	This Directive
Article 1	Article 1
Article 2, introductory words	Article 2, introductory words
Article 2, point 1	Article 2(a)
Article 2, point 2	Article 2(b)
Article 2, point 2a	Article 2(c)
Article 2, point 3	Article 2(d)
Article 2, point 4	Article 2(e)
Article 3	Article 3
Article 3a(1)	Article 4
Article 4(1), first subparagraph, first sentence	Article 5(1), first subparagraph
Article 4(1), first subparagraph, second sentence	Article 5(1), second subparagraph
Article 4(1), second subparagraph	Article 5(2), first subparagraph
Article 4(1), third subparagraph	Article 5(2), second subparagraph
Article 4(2), first subparagraph, introductory words	Article 5(3), first subparagraph, introductory words
Article 4(2), first subparagraph, first indent	Article 5(3), first subparagraph, point (a)
Article 4(2), first subparagraph, second indent	Article 5(3), first subparagraph, point (b)
Article 4(2), first subparagraph, final words	Article 5(3), second subparagraph
Article 4(2), second subparagraph, introductory words	Article 5(3), third subparagraph
Article 4(2), second subparagraph, first indent	Article 5(3), third subparagraph
Article 4(2), second subparagraph, second indent	Article 5(3), third subparagraph
Article 4(2), second subparagraph, final words	Article 5(3), third subparagraph
Article 4(2), third subparagraph, introductory words	Article 5(4), introductory words
Article 4(2), third subparagraph, first indent	Article 5(4), point (a)
Article 4(2), third subparagraph, second indent	Article 5(4), point (b)
Article 4(3), first subparagraph	Article 5(5)
Article 4(3), second subparagraph	Article 5(6)
Article 5	Article 6
Article 6	Article 7
Article 7(1)	Article 8(1), first subparagraph
Article 7(2)	Article 8(1), second subparagraph
Article 7(3)	Article 8(2)
Article 7(4)	Article 8(3)
Article 7(5)	Article 8(4)
Article 8, first subparagraph	—
Article 8, second subparagraph	Article 9
—	Article 10
—	Article 11
Article 9	Article 12
—	Annex I
—	Annex II

DIRECTIVE 2006/115/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 12 December 2006
on rental right and lending right and on certain rights related to copyright in the field of intellectual
property
(codified version)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 47(2), 55 and 95 thereof,

Having regard to the proposal from the Commission,

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

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽¹⁾,

Whereas:

- (1) Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property ⁽²⁾ has been substantially amended several times ⁽³⁾. In the interests of clarity and rationality the said Directive should be codified.
- (2) Rental and lending of copyright works and the subject matter of related rights protection is playing an increasingly important role in particular for authors, performers and producers of phonograms and films. Piracy is becoming an increasing threat.
- (3) The adequate protection of copyright works and subject matter of related rights protection by rental and lending rights as well as the protection of the subject matter of related rights protection by the fixation right, distribution right, right to broadcast and communication to the public can accordingly be considered as being of fundamental importance for the economic and cultural development of the Community.
- (4) Copyright and related rights protection must adapt to new economic developments such as new forms of exploitation.

(5) The creative and artistic work of authors and performers necessitates an adequate income as a basis for further creative and artistic work, and the investments required particularly for the production of phonograms and films are especially high and risky. The possibility of securing that income and recouping that investment can be effectively guaranteed only through adequate legal protection of the rightholders concerned.

(6) These creative, artistic and entrepreneurial activities are, to a large extent, activities of self-employed persons. The pursuit of such activities should be made easier by providing a harmonised legal protection within the Community. To the extent that these activities principally constitute services, their provision should equally be facilitated by a harmonised legal framework in the Community.

(7) The legislation of the Member States should be approximated in such a way as not to conflict with the international conventions on which the copyright and related rights laws of many Member States are based.

(8) The legal framework of the Community on the rental right and lending right and on certain rights related to copyright can be limited to establishing that Member States provide rights with respect to rental and lending for certain groups of rightholders and further to establishing the rights of fixation, distribution, broadcasting and communication to the public for certain groups of rightholders in the field of related rights protection.

(9) It is necessary to define the concepts of rental and lending for the purposes of this Directive.

(10) It is desirable, with a view to clarity, to exclude from rental and lending within the meaning of this Directive certain forms of making available, as for instance making available phonograms or films for the purpose of public performance or broadcasting, making available for the purpose of exhibition, or making available for on-the-spot reference use. Lending within the meaning of this Directive should not include making available between establishments which are accessible to the public.

⁽¹⁾ Opinion of the European Parliament delivered on 12 October 2006 (not yet published in the Official Journal).

⁽²⁾ OJ L 346, 27.11.1992, p. 61. Directive as last amended by Directive 2001/29/EC of the European Parliament and of the Council (OJ L 167, 22.6.2001, p. 10).

⁽³⁾ See Annex I, Part A.

- (11) Where lending by an establishment accessible to the public gives rise to a payment the amount of which does not go beyond what is necessary to cover the operating costs of the establishment, there is no direct or indirect economic or commercial advantage within the meaning of this Directive.
- (12) It is necessary to introduce arrangements ensuring that an unwaivable equitable remuneration is obtained by authors and performers who must remain able to entrust the administration of this right to collecting societies representing them.
- (13) The equitable remuneration may be paid on the basis of one or several payments at any time on or after the conclusion of the contract. It should take account of the importance of the contribution of the authors and performers concerned to the phonogram or film.
- (14) It is also necessary to protect the rights at least of authors as regards public lending by providing for specific arrangements. However, any measures taken by way of derogation from the exclusive public lending right should comply in particular with Article 12 of the Treaty.
- (15) The provisions laid down in this Directive as to rights related to copyright should not prevent Member States from extending to those exclusive rights the presumption provided for in this Directive with regard to contracts concerning film production concluded individually or collectively by performers with a film producer. Furthermore, those provisions should not prevent Member States from providing for a rebuttable presumption of the authorisation of exploitation in respect of the exclusive rights of performers provided for in the relevant provisions of this Directive, in so far as such presumption is compatible with the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (hereinafter referred to as the Rome Convention).
- (16) Member States should be able to provide for more far-reaching protection for owners of rights related to copyright than that required by the provisions laid down in this Directive in respect of broadcasting and communication to the public.
- (17) The harmonised rental and lending rights and the harmonised protection in the field of rights related to copyright should not be exercised in a way which constitutes a disguised restriction on trade between Member States or in a way which is contrary to the rule of media exploitation chronology, as recognised in the judgment handed down in *Société Cinéthèque v. FNCF* ⁽¹⁾.
- (18) This Directive should be without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law of the Directives as set out in Part B of Annex I,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

RENTAL AND LENDING RIGHT

Article 1

Object of harmonisation

1. In accordance with the provisions of this Chapter, Member States shall provide, subject to Article 6, a right to authorise or prohibit the rental and lending of originals and copies of copyright works, and other subject matter as set out in Article 3(1).

2. The rights referred to in paragraph 1 shall not be exhausted by any sale or other act of distribution of originals and copies of copyright works and other subject matter as set out in Article 3(1).

Article 2

Definitions

1. For the purposes of this Directive the following definitions shall apply:

- (a) 'rental' means making available for use, for a limited period of time and for direct or indirect economic or commercial advantage;
- (b) 'lending' means making available for use, for a limited period of time and not for direct or indirect economic or commercial advantage, when it is made through establishments which are accessible to the public;
- (c) 'film' means a cinematographic or audiovisual work or moving images, whether or not accompanied by sound.

2. The principal director of a cinematographic or audiovisual work shall be considered as its author or one of its authors. Member States may provide for others to be considered as its co-authors.

Article 3

Rightholders and subject matter of rental and lending right

1. The exclusive right to authorise or prohibit rental and lending shall belong to the following:

- (a) the author in respect of the original and copies of his work;

⁽¹⁾ Joined Cases 60/84 and 61/84 [1985] ECR 2 605.

- (b) the performer in respect of fixations of his performance;
- (c) the phonogram producer in respect of his phonograms;
- (d) the producer of the first fixation of a film in respect of the original and copies of his film.

2. This Directive shall not cover rental and lending rights in relation to buildings and to works of applied art.

3. The rights referred to in paragraph 1 may be transferred, assigned or subject to the granting of contractual licences.

4. Without prejudice to paragraph 6, when a contract concerning film production is concluded, individually or collectively, by performers with a film producer, the performer covered by this contract shall be presumed, subject to contractual clauses to the contrary, to have transferred his rental right, subject to Article 5.

5. Member States may provide for a similar presumption as set out in paragraph 4 with respect to authors.

6. Member States may provide that the signing of a contract concluded between a performer and a film producer concerning the production of a film has the effect of authorising rental, provided that such contract provides for an equitable remuneration within the meaning of Article 5. Member States may also provide that this paragraph shall apply *mutatis mutandis* to the rights included in Chapter II.

Article 4

Rental of computer programs

This Directive shall be without prejudice to Article 4(c) of Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs ⁽¹⁾.

Article 5

Unwaivable right to equitable remuneration

1. Where an author or performer has transferred or assigned his rental right concerning a phonogram or an original or copy of a film to a phonogram or film producer, that author or performer shall retain the right to obtain an equitable remuneration for the rental.

2. The right to obtain an equitable remuneration for rental cannot be waived by authors or performers.

3. The administration of this right to obtain an equitable remuneration may be entrusted to collecting societies representing authors or performers.

4. Member States may regulate whether and to what extent administration by collecting societies of the right to obtain an equitable remuneration may be imposed, as well as the question from whom this remuneration may be claimed or collected.

Article 6

Derogation from the exclusive public lending right

1. Member States may derogate from the exclusive right provided for in Article 1 in respect of public lending, provided that at least authors obtain a remuneration for such lending. Member States shall be free to determine this remuneration taking account of their cultural promotion objectives.

2. Where Member States do not apply the exclusive lending right provided for in Article 1 as regards phonograms, films and computer programs, they shall introduce, at least for authors, a remuneration.

3. Member States may exempt certain categories of establishments from the payment of the remuneration referred to in paragraphs 1 and 2.

CHAPTER II

RIGHTS RELATED TO COPYRIGHT

Article 7

Fixation right

1. Member States shall provide for performers the exclusive right to authorise or prohibit the fixation of their performances.

2. Member States shall provide for broadcasting organisations the exclusive right to authorise or prohibit the fixation of their broadcasts, whether these broadcasts are transmitted by wire or over the air, including by cable or satellite.

3. A cable distributor shall not have the right provided for in paragraph 2 where it merely retransmits by cable the broadcasts of broadcasting organisations.

Article 8

Broadcasting and communication to the public

1. Member States shall provide for performers the exclusive right to authorise or prohibit the broadcasting by wireless means and the communication to the public of their performances, except where the performance is itself already a broadcast performance or is made from a fixation.

⁽¹⁾ OJ L 122, 17.5.1991, p. 42. Directive as amended by Directive 93/98/EEC (OJ L 290, 24.11.1993, p. 9).

2. Member States shall provide a right in order to ensure that a single equitable remuneration is paid by the user, if a phonogram published for commercial purposes, or a reproduction of such phonogram, is used for broadcasting by wireless means or for any communication to the public, and to ensure that this remuneration is shared between the relevant performers and phonogram producers. Member States may, in the absence of agreement between the performers and phonogram producers, lay down the conditions as to the sharing of this remuneration between them.

3. Member States shall provide for broadcasting organisations the exclusive right to authorise or prohibit the rebroadcasting of their broadcasts by wireless means, as well as the communication to the public of their broadcasts if such communication is made in places accessible to the public against payment of an entrance fee.

Article 9

Distribution right

1. Member States shall provide the exclusive right to make available to the public, by sale or otherwise, the objects indicated in points (a) to (d), including copies thereof, hereinafter 'the distribution right':

- (a) for performers, in respect of fixations of their performances;
- (b) for phonogram producers, in respect of their phonograms;
- (c) for producers of the first fixations of films, in respect of the original and copies of their films;
- (d) for broadcasting organisations, in respect of fixations of their broadcasts as set out in Article 7(2).

2. The distribution right shall not be exhausted within the Community in respect of an object as referred to in paragraph 1, except where the first sale in the Community of that object is made by the rightholder or with his consent.

3. The distribution right shall be without prejudice to the specific provisions of Chapter I, in particular Article 1(2).

4. The distribution right may be transferred, assigned or subject to the granting of contractual licences.

Article 10

Limitations to rights

1. Member States may provide for limitations to the rights referred to in this Chapter in respect of:

- (a) private use;

(b) use of short excerpts in connection with the reporting of current events;

(c) ephemeral fixation by a broadcasting organisation by means of its own facilities and for its own broadcasts;

(d) use solely for the purposes of teaching or scientific research.

2. Irrespective of paragraph 1, any Member State may provide for the same kinds of limitations with regard to the protection of performers, producers of phonograms, broadcasting organisations and of producers of the first fixations of films, as it provides for in connection with the protection of copyright in literary and artistic works.

However, compulsory licences may be provided for only to the extent to which they are compatible with the Rome Convention.

3. The limitations referred to in paragraphs 1 and 2 shall be applied only in certain special cases which do not conflict with a normal exploitation of the subject matter and do not unreasonably prejudice the legitimate interests of the rightholder.

CHAPTER III

COMMON PROVISIONS

Article 11

Application in time

1. This Directive shall apply in respect of all copyright works, performances, phonograms, broadcasts and first fixations of films referred to in this Directive which were, on 1 July 1994, still protected by the legislation of the Member States in the field of copyright and related rights or which met the criteria for protection under this Directive on that date.

2. This Directive shall apply without prejudice to any acts of exploitation performed before 1 July 1994.

3. Member States may provide that the rightholders are deemed to have given their authorisation to the rental or lending of an object referred to in points (a) to (d) of Article 3(1) which is proven to have been made available to third parties for this purpose or to have been acquired before 1 July 1994.

However, in particular where such an object is a digital recording, Member States may provide that rightholders shall have a right to obtain an adequate remuneration for the rental or lending of that object.

4. Member States need not apply the provisions of Article 2(2) to cinematographic or audiovisual works created before 1 July 1994.

5. This Directive shall, without prejudice to paragraph 3 and subject to paragraph 7, not affect any contracts concluded before 19 November 1992.

6. Member States may provide, subject to the provisions of paragraph 7, that when rightholders who acquire new rights under the national provisions adopted in implementation of this Directive have, before 1 July 1994, given their consent for exploitation, they shall be presumed to have transferred the new exclusive rights.

7. For contracts concluded before 1 July 1994, the unwaivable right to an equitable remuneration provided for in Article 5 shall apply only where authors or performers or those representing them have submitted a request to that effect before 1 January 1997. In the absence of agreement between rightholders concerning the level of remuneration, Member States may fix the level of equitable remuneration.

Article 12

Relation between copyright and related rights

Protection of copyright-related rights under this Directive shall leave intact and shall in no way affect the protection of copyright.

Article 13

Communication

Member States shall communicate to the Commission the main provisions of national law adopted in the field covered by this Directive.

Article 14

Repeal

Directive 92/100/EEC is hereby repealed, without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law of the Directives as set out in Part B of Annex I.

References made to the repealed Directive shall be construed as being made to this Directive and should be read in accordance with the correlation table in Annex II.

Article 15

Entry into force

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

Article 16

Addressees

This Directive is addressed to the Member States.

Done at Strasbourg, 12 December 2006.

For the European Parliament
The President
J. BORRELL FONTELLES

For the Council
The President
M. PEKKARINEN

ANNEX I

PART A

Repealed Directive with its successive amendments

Council Directive 92/100/EEC	Article 11(2) only
(OJ L 346, 27.11.1992, p. 61)	
Council Directive 93/98/EEC	Article 11(1) only
(OJ L 290, 24.11.1993, p. 9)	
Directive 2001/29/EC of the European Parliament and of the Council	
(OJ L 167, 22.6.2001, p. 10)	

PART B

List of time-limits for transposition into national law

(referred to in Article 14)

Directive	Time-limit for transposition
92/100/EEC	1 July 1994
93/98/EEC	30 June 1995
2001/29/EC	21 December 2002

ANNEX II

CORRELATION TABLE

Directive 92/100/EEC	This Directive
Article 1(1)	Article 1(1)
Article 1(2)	Article 2(1), introductory words and point (a)
Article 1(3)	Article 2(1), point (b)
Article 1(4)	Article 1(2)
Article 2(1), introductory words	Article 3(1), introductory words
Article 2(1), first indent	Article 3(1)(a)
Article 2(1), second indent	Article 3(1)(b)
Article 2(1), third indent	Article 3(1)(c)
Article 2(1), fourth indent, first sentence	Article 3(1)(d)
Article 2(1), fourth indent, second sentence	Article 2(1), point (c)
Article 2(2)	Article 2 (2)
Article 2(3)	Article 3(2)
Article 2(4)	Article 3(3)
Article 2(5)	Article 3(4)
Article 2(6)	Article 3(5)
Article 2(7)	Article 3(6)
Article 3	Article 4
Article 4	Article 5
Article 5(1) to (3)	Article 6(1) to (3)
Article 5(4)	—
Article 6	Article 7
Article 8	Article 8
Article 9(1), introductory words and final words	Article 9(1), introductory words
Article 9(1), first indent	Article 9(1)(a)
Article 9(1), second indent	Article 9(1)(b)
Article 9(1), third indent	Article 9(1)(c)
Article 9(1), fourth indent	Article 9(1)(d)
Article 9(2), (3) and (4)	Article 9(2), (3) and (4)
Article 10(1)	Article 10(1)
Article 10(2), first sentence	Article 10(2), first subparagraph
Article 10(2), second sentence	Article 10(2), second subparagraph
Article 10(3)	Article 10(3)
Article 13(1) and (2)	Article 11(1) and (2)
Article 13(3), first sentence	Article 11(3), first subparagraph
Article 13(3), second sentence	Article 11(3), second subparagraph
Article 13(4)	Article 11(4)
Article 13(5)	—
Article 13(6)	Article 11(5)
Article 13(7)	Article 11(6)

Directive 92/100/EEC	This Directive
Article 13(8)	—
Article 13(9)	Article 11(7)
Article 14	Article 12
Article 15(1)	—
Article 15(2)	Article 13
—	Article 14
—	Article 15
Article 16	Article 16
—	Annex I
—	Annex II

DIRECTIVE 2006/123/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 12 December 2006
on services in the internal market

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 Article 55 thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Economic and Social Committee ⁽¹⁾,

Having regard to the opinion of the Committee of the Regions ⁽²⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽³⁾,

Whereas:

(1) The European Community 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 is ensured. In accordance with Article 43 of the Treaty the freedom of establishment is ensured. Article 49 of the Treaty establishes the right to provide services within the Community. The elimination of barriers to the development of service activities between Member States is essential in order to strengthen the integration of the peoples of Europe and to promote balanced and sustainable economic and social progress. In eliminating such barriers it is essential to ensure that the development of service activities contributes to the fulfilment of the task laid down in Article 2 of the Treaty of promoting throughout the Community a harmonious, balanced and sustainable development of economic activities, a high level of employment and of social protection, equality between men and women, sustainable and non-inflationary growth, a high degree of competitiveness and convergence of economic performance, a high level of protection and improvement of the quality of the environment, the raising of the standard of living and quality of life and economic and social cohesion and solidarity among Member States.

(2) A competitive market in services is essential in order to promote economic growth and create jobs in the European Union. At present numerous barriers within the internal market prevent providers, particularly small and medium-sized enterprises (SMEs), from extending their operations beyond their national borders and from taking full advantage of the internal market. This weakens the worldwide competitiveness of European Union providers. A free market which compels the Member States to eliminate restrictions on cross-border provision of services while at the same time increasing transparency and information for consumers would give consumers wider choice and better services at lower prices.

(3) The report from the Commission on 'The State of the Internal Market for Services' drew up an inventory of a large number of barriers which are preventing or slowing down the development of services between Member States, in particular those provided by 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 providers. The barriers affect a wide variety of service activities across all stages of the provider's activity and have a number of common features, including the fact that they often arise from administrative burdens, the legal uncertainty associated with cross-border activity and the lack of mutual trust between Member States.

(4) Since services constitute the engine of economic growth and account for 70 % of GDP and employment in most Member States, this fragmentation of the internal market has a negative impact on the entire European economy, in particular on the competitiveness of SMEs and the movement of workers, and prevents consumers from gaining access to a greater variety of competitively priced services. It is important to point out that the services sector is a key employment sector for women in particular, and that they therefore stand to benefit greatly from new opportunities offered by the completion of the internal market for services. The European Parliament and the Council have emphasised that the removal of legal barriers to the establishment of a genuine internal market is a matter of priority for achieving the goal set by the European Council in Lisbon of 23 and 24 March 2000

⁽¹⁾ OJ C 221, 8.9.2005, p. 113.

⁽²⁾ OJ C 43, 18.2.2005, p. 18.

⁽³⁾ Opinion of the European Parliament of 16 February 2006 (not yet published in the Official Journal), Council Common Position of 24 July 2006 (OJ C 270 E, 7.11.2006, p. 1) and Position of the European Parliament of 15 November 2006. Council Decision of 11 December 2006.

of improving employment and social cohesion and achieving sustainable economic growth so as to make the European Union the most competitive and dynamic knowledge-based economy in the world by 2010, with more and better jobs. Removing those barriers, while ensuring an advanced European social model, is thus a basic condition for overcoming the difficulties encountered in implementing the Lisbon Strategy and for reviving the European economy, particularly in terms of employment and investment. It is therefore important to achieve an internal market for services, with the right balance between market opening and preserving public services and social and consumer rights.

- (5) It is therefore necessary to remove barriers to the freedom of establishment for providers in Member States and barriers to the free movement of services as between Member States and to guarantee recipients and providers the legal certainty necessary for the exercise in practice of those two fundamental freedoms of the Treaty. Since the barriers in the internal market for services affect operators who wish to become established in other Member States as well as those who provide a service in another Member State without being established there, it is necessary to enable providers to develop their service activities within the internal market either by becoming established in a Member State or by making use of the free movement of services. Providers should be able to choose between those two freedoms, depending on their strategy for growth in each Member State.
- (6) 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.
- (7) 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 provision on the freedom to provide services and encouragement of the development of codes of conduct on certain issues. That coordination of national legislative regimes should ensure a high degree of Community legal integration and a high level of protection of general interest objectives, especially protection of consumers, which is vital in order to establish trust between Member States. This Directive also takes into account other general interest objectives, including the protection of the environment, public security and public health as well as the need to comply with labour law.
- (8) It is appropriate that the provisions of this Directive concerning the freedom of establishment and the free movement of services should apply only to the extent that the activities in question are open to competition, so that they do not oblige Member States either to liberalise services of general economic interest or to privatise public entities which provide such services or to abolish existing monopolies for other activities or certain distribution services.
- (9) This Directive applies only to requirements which affect the access to, or the exercise of, a service activity. Therefore, it does not apply to requirements, such as road traffic rules, rules concerning the development or use of land, town and country planning, building standards as well as administrative penalties imposed for non-compliance with such rules which do not specifically regulate or specifically affect the service activity but have to be respected by providers in the course of carrying out their economic activity in the same way as by individuals acting in their private capacity.
- (10) This Directive does not concern requirements governing access to public funds for certain providers. Such requirements include notably those laying down conditions under which providers are entitled to receive public funding, including specific contractual conditions, and in particular quality standards which need to be observed as a condition for receiving public funds, for example for social services.
- (11) This Directive does not interfere with measures taken by Member States, in accordance with Community law, in relation to the protection or promotion of cultural and linguistic diversity and media pluralism, including the funding thereof. This Directive does not prevent Member States from applying their fundamental rules and principles relating to the freedom of press and freedom of expression. This Directive does not affect Member State laws prohibiting discrimination on grounds of nationality or on grounds such as those set out in Article 13 of the Treaty.

- (12) This Directive aims at creating a legal framework to ensure the freedom of establishment and the free movement of services between the Member States and does not harmonise or prejudice criminal law. However, Member States should not be able to restrict the freedom to provide services by applying criminal law provisions which specifically affect the access to or the exercise of a service activity in circumvention of the rules laid down in this Directive.
- (13) It is equally important that this Directive fully respect Community initiatives based on Article 137 of the Treaty with a view to achieving the objectives of Article 136 thereof concerning the promotion of employment and improved living and working conditions.
- (14) This Directive does not affect terms and conditions of employment, including maximum work periods and minimum rest periods, minimum paid annual holidays, minimum rates of pay as well as health, safety and hygiene at work, which Member States apply in compliance with Community law, nor does it affect relations between social partners, including the right to negotiate and conclude collective agreements, the right to strike and to take industrial action in accordance with national law and practices which respect Community law, nor does it apply to services provided by temporary work agencies. This Directive does not affect Member States' social security legislation.
- (15) This Directive respects the exercise of fundamental rights applicable in the Member States and as recognised in the Charter of fundamental Rights of the European Union and the accompanying explanations, reconciling them with the fundamental freedoms laid down in Articles 43 and 49 of the Treaty. Those fundamental rights include the right to take industrial action in accordance with national law and practices which respect Community law.
- (16) This Directive concerns only providers established in a Member State and does not cover external aspects. It does not concern negotiations within international organisations on trade in services, in particular in the framework of the General Agreement on Trade in Services (GATS).
- (17) This Directive covers only services which are performed for an economic consideration. Services of general interest are not covered by the definition in Article 50 of the Treaty and therefore do not fall within the scope of this Directive. Services of general economic interest are services that are performed for an economic consideration and therefore do fall within the scope of this Directive.
- However, certain services of general economic interest, such as those that may exist in the field of transport, are excluded from the scope of this Directive and certain other services of general economic interest, for example, those that may exist in the area of postal services, are the subject of a derogation from the provision on the freedom to provide services set out in this Directive. This Directive does not deal with the funding of services of general economic interest and does not apply to systems of aids granted by Member States, in particular in the social field, in accordance with Community rules on competition. This Directive does not deal with the follow-up to the Commission White Paper on Services of General Interest.
- (18) Financial services should be excluded from the scope of this Directive since these activities are the subject of specific Community legislation aimed, as is this Directive, at achieving a genuine internal market for services. Consequently, this exclusion should cover all financial services such as banking, credit, insurance, including reinsurance, occupational or personal pensions, securities, investment funds, payments and investment advice, including the services listed in Annex I to Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions ⁽¹⁾.
- (19) 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 facilitating 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.
- (20) The exclusion from the scope of this Directive as regards matters of electronic communications services as covered by Directives 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive) ⁽²⁾, 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive) ⁽³⁾, 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and
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- ⁽¹⁾ OJ L 177, 30.6.2006, p. 1.
⁽²⁾ OJ L 108, 24.4.2002, p. 7.
⁽³⁾ OJ L 108, 24.4.2002, p. 21.

services (Framework Directive) ⁽¹⁾, 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) ⁽²⁾ and 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) ⁽³⁾ should apply not only to questions specifically dealt with in these Directives but also to matters for which the Directives explicitly leave to Member States the possibility of adopting certain measures at national level.

(21) Transport services, including urban transport, taxis and ambulances as well as port services, should be excluded from the scope of this Directive.

(22) The exclusion of healthcare from the scope of this Directive should cover healthcare and pharmaceutical services provided by health professionals to patients to assess, maintain or restore their state of health where those activities are reserved to a regulated health profession in the Member State in which the services are provided.

(23) This Directive does not affect the reimbursement of healthcare provided in a Member State other than that in which the recipient of the care is resident. This issue has been addressed by the Court of Justice on numerous occasions, and the Court has recognised patients' rights. It is important to address this issue in another Community legal instrument in order to achieve greater legal certainty and clarity to the extent that this issue is not already addressed in Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community ⁽⁴⁾.

(24) Audiovisual services, whatever their mode of transmission, including within cinemas, should also be excluded from the scope of this Directive. Furthermore, this Directive should not apply to aids granted by Member States in the audiovisual sector which are covered by Community rules on competition.

(25) Gambling activities, including lottery and betting transactions, should be excluded from the scope of this Directive in view of the specific nature of these activities, which entail implementation by Member States of policies relating to public policy and consumer protection.

(26) This Directive is without prejudice to the application of Article 45 of the Treaty.

(27) This Directive should not cover those social services in the areas of housing, childcare and support to families and persons in need which are provided by the State at national, regional or local level by providers mandated by the State or by charities recognised as such by the State with the objective of ensuring support for those who are permanently or temporarily in a particular state of need because of their insufficient family income or total or partial lack of independence and for those who risk being marginalised. These services are essential in order to guarantee the fundamental right to human dignity and integrity and are a manifestation of the principles of social cohesion and solidarity and should not be affected by this Directive.

(28) This Directive does not deal with the funding of, or the system of aids linked to, social services. Nor does it affect the criteria or conditions set by Member States to ensure that social services effectively carry out a function to the benefit of the public interest and social cohesion. In addition, this Directive should not affect the principle of universal service in Member States' social services.

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

(30) There is already a considerable body of Community law on service activities. This Directive builds on, and thus complements, the Community acquis. Conflicts between this Directive and other Community instruments have been identified and are addressed by this Directive, including by means of derogations. However, it is necessary to provide a rule for any residual and exceptional cases where there is a conflict between a provision of this Directive and a provision of another Community instrument. The existence of such a conflict should be determined in compliance with the rules of the Treaty on the right of establishment and the free movement of services.

⁽¹⁾ OJ L 108, 24.4.2002, p. 33.

⁽²⁾ OJ L 108, 24.4.2002, p. 51.

⁽³⁾ OJ L 201, 31.7.2002, p. 37. Directive as amended by Directive 2006/24/EC (OJ L 105, 13.4.2006, p. 54).

⁽⁴⁾ OJ L 149, 5.7.1971, p. 2. Regulation as last amended by Regulation (EC) No 629/2006 of the European Parliament and of the Council (OJ L 114, 27.4.2006, p. 1).

- (31) This Directive is consistent with and does not affect Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications ⁽¹⁾. It deals with questions other than those relating to professional qualifications, for example professional liability insurance, commercial communications, multidisciplinary activities and administrative simplification. With regard to temporary cross-border service provision, a derogation from the provision on the freedom to provide services in this Directive ensures that Title II on the free provision of services of Directive 2005/36/EC is not affected. Therefore, none of the measures applicable under that Directive in the Member State where the service is provided is affected by the provision on the freedom to provide services.
- (32) This Directive is consistent with Community legislation on consumer protection, such as Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market (the Unfair Commercial Practices Directive) ⁽²⁾ and Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (the Regulation on consumer protection cooperation) ⁽³⁾.
- (33) The services covered by this Directive concern a wide variety of ever-changing activities, including business services such as management consultancy, certification and testing; facilities management, including office maintenance; advertising; recruitment services; and the services of commercial agents. The services covered are also 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; distributive trades; the organisation of trade fairs; car rental; and travel agencies. Consumer services are also covered, such as those in the field of tourism, including tour guides; leisure services, sports centres and amusement parks; and, to the extent that they are not excluded from the scope of application of the Directive, household support services, such as help for the elderly. Those activities may involve services requiring the proximity of provider and recipient, services requiring travel by the recipient or the provider and services which may be provided at a distance, including via the Internet.
- (34) According to the case-law of the Court of Justice, the assessment of whether certain activities, in particular activities which are publicly funded or provided by public entities, constitute a 'service' has to be carried out on a case by case basis in the light of all their characteristics, in particular the way they are provided, organised and financed in the Member State concerned. The Court of Justice has held that the essential characteristic of remuneration lies in the fact that it constitutes consideration for the services in question and has recognised that the characteristic of remuneration is absent in the case of activities performed, for no consideration, by the State or on behalf of the State in the context of its duties in the social, cultural, educational and judicial fields, such as courses provided under the national education system, or the management of social security schemes which do not engage in economic activity. The payment of a fee by recipients, for example, a tuition or enrolment fee paid by students in order to make a certain contribution to the operating expenses of a system, does not in itself constitute remuneration because the service is still essentially financed by public funds. These activities are, therefore, not covered by the definition of service in Article 50 of the Treaty and do not therefore fall within the scope of this Directive.
- (35) Non-profit making amateur sporting activities are of considerable social importance. They often pursue wholly social or recreational objectives. Thus, they might not constitute economic activities within the meaning of Community law and should fall outside the scope of this Directive.
- (36) The concept of 'provider' should cover any natural person who is a national of a Member State or any legal person engaged in a service activity in a Member State, in exercise either of the freedom of establishment or of the free movement of services. The concept of provider should thus not be limited solely to cross-border service provision within the framework of the free movement of services but should also cover 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 should 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. The concept of 'recipient' should also cover third country nationals who already benefit from rights conferred upon them by Community acts such as Regulation (EEC) No 1408/71, Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents ⁽⁴⁾, Council Regulation (EC) No 859/2003 of 14 May 2003

⁽¹⁾ OJ L 255, 30.9.2005, p. 22.

⁽²⁾ OJ L 149, 11.6.2005, p. 22.

⁽³⁾ OJ L 364, 9.12.2004, p. 1. Regulation as amended by Directive 2005/29/EC.

⁽⁴⁾ OJ L 16, 23.1.2004, p. 44.

extending the provisions of Regulation (EEC) No 1408/71 and Regulation (EEC) No 574/72 to nationals of third countries who are not already covered by those provisions solely on the ground of their nationality ⁽¹⁾ and Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States ⁽²⁾. Furthermore, Member States may extend the concept of recipient to other third country nationals that are present within their territory.

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.

- (37) The place at which a provider is established should be determined in accordance with the case law of the Court of Justice according to which the concept of establishment involves the actual pursuit of an economic activity through a fixed establishment for an indefinite period. This requirement may also be fulfilled where a company is constituted for a given period or where it rents the building or installation through which it pursues its activity. It may also be fulfilled where a Member State grants authorisations for a limited duration only in relation to particular services. An establishment does not need to take the form of a subsidiary, branch or agency, but may consist of an office managed by a provider's own staff or by a person who is independent but authorised to act on a permanent basis for the undertaking, as would be the case with an agency. According to this definition, which requires the actual pursuit of an economic activity at the place of establishment of the provider, a mere letter box does not constitute an establishment. Where a provider has several places of establishment, it is important to determine the place of establishment from which the actual service concerned is provided. Where it is difficult to determine from which of several places of establishment a given service is provided, the location of the provider's centre of activities relating to this particular service should be that place of establishment.
- (38) The concept of 'legal persons', according to the Treaty provisions on establishment, leaves operators free to choose the legal form which they deem suitable for carrying out their activity. Accordingly, 'legal persons', within the meaning of the Treaty, means all entities constituted under, or governed by, the law of a Member State, irrespective of their legal form.
- (39) The concept of 'authorisation scheme' should cover, *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
- (40) The concept of 'overriding reasons relating to the public interest' to which reference is made in certain provisions of this Directive has been developed by the Court of Justice in its case law in relation to Articles 43 and 49 of the Treaty and may continue to evolve. The notion as recognised in the case law of the Court of Justice covers at least the following grounds: public policy, public security and public health, within the meaning of Articles 46 and 55 of the Treaty; the maintenance of order in society; social policy objectives; the protection of the recipients of services; consumer protection; the protection of workers, including the social protection of workers; animal welfare; the preservation of the financial balance of the social security system; the prevention of fraud; the prevention of unfair competition; the protection of the environment and the urban environment, including town and country planning; the protection of creditors; safeguarding the sound administration of justice; road safety; the protection of intellectual property; cultural policy objectives, including safeguarding the freedom of expression of various elements, in particular social, cultural, religious and philosophical values of society; the need to ensure a high level of education, the maintenance of press diversity and the promotion of the national language; the preservation of national historical and artistic heritage; and veterinary policy.
- (41) The concept of 'public policy', as interpreted by the Court of Justice, covers the protection against a genuine and sufficiently serious threat affecting one of the fundamental interests of society and may include, in particular, issues relating to human dignity, the protection of minors and vulnerable adults and animal welfare. Similarly, the concept of public security includes issues of public safety.
- (42) The rules relating to administrative procedures should not aim at harmonising administrative procedures but at removing overly burdensome authorisation schemes, procedures and formalities that hinder the freedom of establishment and the creation of new service undertakings therefrom.

⁽¹⁾ OJ L 124, 20.5.2003, p. 1.

⁽²⁾ OJ L 158, 30.4.2004, p. 77.

- (43) 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 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 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 arbitrary use of 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.
- (44) Member States should introduce, where appropriate, forms harmonised at Community level, as established by the Commission, which will serve as an equivalent to certificates, attestations or any other document in relation to establishment.
- (45) In order to examine the need for simplifying procedures and formalities, Member States should be able, in particular, to take into account their necessity, number, possible duplication, cost, clarity and accessibility, as well as the delay and practical difficulties to which they could give rise for the provider concerned.
- (46) 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, 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 could 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.
- (47) With the aim of administrative simplification, general formal requirements, such as presentation of original documents, certified copies or a certified translation, should not be imposed, except where objectively justified by an overriding reason relating to the public interest, such as the protection of workers, public health, the protection of the environment or the protection of consumers. It is also necessary to ensure that an authorisation as a general rule permits access to, or exercise of, a service activity throughout the national territory, unless a new authorisation for each establishment, for example for each new hypermarket, or an authorisation that is restricted to a specific part of the national territory is objectively justified by an overriding reason relating to the public interest.
- (48) In order to further simplify administrative procedures, it is appropriate to ensure that each provider has a single point through which he can complete all procedures and formalities (hereinafter referred to as 'points of single contact'). The number of points of single contact per Member State may vary according to regional or local competencies or according to the activities concerned. The creation of points of single contact should 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 point of single contact and coordinator. Points of single 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. Points of single 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.
- (49) The fee which may be charged by points of single contact should be proportionate to the cost of the procedures and formalities with which they deal. This should not prevent Member States from entrusting the points of single contact with the collection of other administrative fees, such as the fee of supervisory bodies.
- (50) It is necessary for providers and recipients of services to have easy access to certain types of information. It should be for each Member State to determine, within the framework of this Directive, the way in which providers and recipients are provided with information. In particular, the obligation on Member States to ensure that relevant information is easily accessible to providers and recipients and that it can be accessed by the public without obstacle could be fulfilled by making this information accessible through a website. Any information given should be provided in a clear and unambiguous manner.

- (51) The information provided to providers and recipients of services should include, in particular, information on procedures and formalities, contact details of the competent authorities, conditions for access to public registers and data bases and information concerning available remedies and the contact details of associations and organisations from which providers or recipients can obtain practical assistance. The obligation on competent authorities to assist providers and recipients should not include the provision of legal advice in individual cases. Nevertheless, general information on the way in which requirements are usually interpreted or applied should be given. Issues such as liability for providing incorrect or misleading information should be determined by Member States.
- (52) 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. This obligation should not prevent Member States from providing other means of completing such procedures and formalities, in addition to electronic means. The fact that it must be possible to complete those procedures and formalities at a distance means, in particular, that Member States must ensure that they may be completed across borders. The obligation as to results does not cover procedures or formalities which by their very nature are impossible to complete at a distance. Furthermore, this does not interfere with Member States' legislation on the use of languages.
- (53) The granting of licences for certain service activities may require an interview with the applicant by the competent authority in order to assess the applicant's personal integrity and suitability for carrying out the service in question. In such cases, the completion of formalities by electronic means may not be appropriate.
- (54) The possibility of gaining access to a service activity should 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 signatures ⁽¹⁾, 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) ⁽²⁾. 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.
- (55) This Directive should be without prejudice to the possibility for Member States to withdraw authorisations after they have been issued, if the conditions for the granting of the authorisation are no longer fulfilled.
- (56) According to the case law of the Court of Justice, public health, consumer protection, animal health and the protection of the urban environment constitute overriding reasons relating to the public interest. Such overriding reasons may justify the application of authorisation schemes and other restrictions. However, no such authorisation scheme or restriction should discriminate on grounds of nationality. Further, the principles of necessity and proportionality should always be respected.
- (57) The provisions of this Directive relating to authorisation schemes should concern cases where the access to or exercise of a service activity by operators requires a decision by a competent authority. This concerns neither decisions by competent authorities to set up a public or private entity for the provision of a particular service nor the conclusion of contracts by competent authorities for the provision of a particular service which is governed by rules on public procurement, since this Directive does not deal with rules on public procurement.
- (58) In order to facilitate access to and exercise of service activities, it is important to evaluate and report on authorisation schemes and their justification. This reporting obligation concerns only the existence of authorisation schemes and not the criteria and conditions for the granting of an authorisation.

⁽¹⁾ OJ L 13, 19.1.2000, p. 12.

⁽²⁾ OJ L 178, 17.7.2000, p. 1.

- (59) The authorisation should as a general rule enable the provider to have access to the service activity, or to exercise that activity, throughout the national territory, unless a territorial limit is justified by an overriding reason relating to the public interest. For example, environmental protection may justify the requirement to obtain an individual authorisation for each installation on the national territory. This provision should not affect regional or local competences for the granting of authorisations within the Member States.
- (60) This Directive, and in particular the provisions concerning authorisation schemes and the territorial scope of an authorisation, should not interfere with the division of regional or local competences within the Member States, including regional and local self-government and the use of official languages.
- (61) The provision relating to the non-duplication of conditions for the granting of an authorisation should not prevent Member States from applying their own conditions as specified in the authorisation scheme. It should only require that competent authorities, when considering whether these conditions are met by the applicant, take into account the equivalent conditions which have already been satisfied by the applicant in another Member State. This provision should not require the application of the conditions for the granting of an authorisation provided for in the authorisation scheme of another Member State.
- (62) Where the number of authorisations available for an activity is limited because of scarcity of natural resources or technical capacity, a procedure for selection from among several potential candidates should be adopted with the aim of developing through open competition the quality and conditions for supply of services available to users. Such a procedure should provide guarantees of transparency and impartiality and the authorisation thus granted should not have an excessive duration, be subject to automatic renewal or confer any advantage on the provider whose authorisation has just expired. In particular, the duration of the authorisation granted should be fixed in such a way that it does not restrict or limit free competition beyond what is necessary in order to enable the provider to recoup the cost of investment and to make a fair return on the capital invested. This provision should not prevent Member States from limiting the number of authorisations for reasons other than scarcity of natural resources or technical capacity. These authorisations should remain in any case subject to the other provisions of this Directive relating to authorisation schemes.
- (63) In the absence of different arrangements, failing a response within a time period, an authorisation should be deemed to have been granted. However, different arrangements may be put in place in respect of certain activities, where objectively justified by overriding reasons relating to the public interest, including a legitimate interest of third parties. Such different arrangements could include national rules according to which, in the absence of a response of the competent authority, the application is deemed to have been rejected, this rejection being open to challenge before the courts.
- (64) 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.
- (65) 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, should not be made subject to criteria such as place of establishment, residence, domicile or principal provision of the service activity. However, these criteria should not include requirements according to which a provider or one of his employees or a representative must be present during the exercise of the activity when this is justified by an overriding reason relating to the public interest. Furthermore, a Member State should not restrict the legal capacity or the right of companies, incorporated in accordance with the law of another Member State on whose territory they have their primary establishment, to bring legal proceedings. Moreover, a Member State should not be able to confer any advantages on providers having a particular national or local socio-economic link; nor should it be able to 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.
- (66) Access to or the exercise of a service activity in the territory of a Member State should not be subject to an economic test. The prohibition of economic tests as a prerequisite for the grant of authorisation should cover economic tests as such, but not requirements which are objectively justified by overriding reasons relating to the public interest, such as the protection of the urban environment, social policy or public health. The prohibition should not affect the exercise of the powers of the authorities responsible for applying competition law.

- (67) With respect to financial guarantees or insurance, the prohibition of requirements should concern only the obligation that the requested financial guarantees or insurance must be obtained from a financial institution established in the Member State concerned.
- (68) With respect to pre-registration, the prohibition of requirements should concern only the obligation that the provider, prior to the establishment, be pre-registered for a given period in a register held in the Member State concerned.
- (69) In order to coordinate the modernisation of national rules and regulations in a manner consistent with the requirements of the internal market, it is necessary to evaluate certain non-discriminatory national requirements which, by their very nature, could severely restrict or even prevent access to an activity or the exercise thereof under the freedom of establishment. This evaluation process should be limited to the compatibility of these requirements with the criteria already established by the Court of Justice on the freedom of establishment. It should not concern the application of Community competition law. Where such requirements are discriminatory or not objectively justified by an overriding reason relating to the public interest, or where they are disproportionate, they must be abolished or amended. The outcome of this assessment will be different according to the nature of the activity and the public interest concerned. In particular, such requirements could be fully justified when they pursue social policy objectives.
- (70) For the purposes of this Directive, and without prejudice to Article 16 of the Treaty, services may be considered to be services of general economic interest only if they are provided in application of a special task in the public interest entrusted to the provider by the Member State concerned. This assignment should be made by way of one or more acts, the form of which is determined by the Member State concerned, and should specify the precise nature of the special task.
- (71) The mutual evaluation process provided for in this Directive should not affect the freedom of Member States to set in their legislation a high level of protection of the public interest, in particular in relation to social policy objectives. Furthermore, it is necessary that the mutual evaluation process take fully into account the specificity of services of general economic interest and of the particular tasks assigned to them. This may justify certain restrictions on the freedom of establishment, in particular where such restrictions pursue the protection of public health and social policy objectives and where they satisfy the conditions set out in Article 15(3)(a), (b) and (c). For example, with regard to the obligation to take a specific legal form in order to exercise certain services in the social field, the Court of Justice has already recognised that it may be justified to subject the provider to a requirement to be non-profit making.
- (72) Services of a general economic interest are entrusted with important tasks relating to social and territorial cohesion. The performance of these tasks should not be obstructed as a result of the evaluation process provided for in this Directive. Requirements which are necessary for the fulfilment of such tasks should not be affected by this process while, at the same time, unjustified restrictions on the freedom of establishment should be addressed.
- (73) The requirements to be examined include national rules which, on grounds other than those relating to professional qualifications, reserve access to certain activities to particular providers. These requirements also include obligations 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, and requirements which relate to the shareholding of a company, in particular obligations to hold a minimum amount of capital for certain service activities or to have a specific qualification in order to hold share capital in or to manage certain companies. The evaluation of the compatibility of fixed minimum and/or maximum tariffs with the freedom of establishment concerns only tariffs imposed by competent authorities specifically for the provision of certain services and not, for example, general rules on price determination, such as for the renting of houses.
- (74) The mutual evaluation process means that during the transposition period Member States will first have to conduct a screening of their legislation in order to ascertain whether any of the above mentioned requirements exists in their legal systems. At the latest by the end of the transposition period, Member States should draw up a report on the results of this screening. Each report will be submitted to all other Member States and interested parties. Member States will then have six months in which to submit their observations on these reports. At the latest by one year after the date of transposition of this Directive, the Commission should draw up a summary report, accompanied where appropriate by proposals for further initiatives. If necessary the Commission, in cooperation with the Member States, could assist them to design a common method.
- (75) 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.

- (76) 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 provision on the freedom to provide services cover the requirements applicable to access to service activities or to the exercise thereof and not those applicable to goods as such.
- (77) 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. As regards the distinction between the freedom of establishment and the free movement of services, according to the case law of the Court of Justice the key element is whether or not the operator is established in the Member State where it provides the service concerned. If the operator is established in the Member State where it provides its services, it should come under the scope of application of the freedom of establishment. If, by contrast, the operator is not established in the Member State where the service is provided, its activities should be covered by the free movement of services. The Court of Justice has consistently held that the temporary nature of the activities in question should 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. The fact that the activity is temporary should not mean that the provider may not equip itself with some forms of infrastructure in the Member State where the service is provided, 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.
- (78) 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 borders, it is necessary to clarify the extent to which requirements of the Member State where the service is provided can be imposed. It is indispensable to provide that the provision on the freedom to provide services does not prevent the Member State where the service is provided from imposing, in compliance with the principles set out in Article 16(1)(a) to (c), its specific requirements for reasons of public policy or public security or for the protection of public health or the environment.
- (79) The Court of Justice has consistently held that Member States retain the right to take measures in order to prevent providers from abusively taking advantage of the internal market principles. Abuse by a provider should be established on a case by case basis.
- (80) It is necessary to ensure that providers are able to take equipment which is integral to the provision of their service with them when they travel to provide services in another Member State. In particular, it is important to avoid cases in which the service could not be provided without the equipment or situations in which providers incur additional costs, for example, by hiring or purchasing different equipment to that which they habitually use or by needing to deviate significantly from the way they habitually carry out their activity.
- (81) The concept of equipment does not refer to physical objects which are either supplied by the provider to the client or become part of a physical object as a result of the service activity, such as building materials or spare parts, or which are consumed or left in situ in the course of the service provision, such as combustible fuels, explosives, fireworks, pesticides, poisons or medicines.
- (82) The provisions of this Directive should not preclude the application by a Member State of rules on employment conditions. Rules laid down by law, regulation or administrative provisions should, in accordance with the Treaty, be justified for reasons relating to the protection of workers and be non-discriminatory, necessary, and proportionate, as interpreted by the Court of Justice, and comply with other relevant Community law.
- (83) It is necessary to ensure that the provision on the freedom to provide services may be departed from only in the areas covered by derogations. 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 establishment. Moreover, by way of exception, measures against a given provider should also be adopted in certain individual cases and under certain strict procedural and substantive conditions. In addition, any restriction of the free movement of services should be permitted, by way of exception, only if it is consistent with fundamental rights which form an integral part of the general principles of law enshrined in the Community legal order.
- (84) The derogation from the provision on the freedom to provide services concerning postal services should cover both activities reserved to the universal service provider and other postal services.

- (85) The derogation from the provision on the freedom to provide services relating to the judicial recovery of debts and the reference to a possible future harmonisation instrument should concern only the access to and the exercise of activities which consist, notably, in bringing actions before a court relating to the recovery of debts.
- (86) This Directive should not affect terms and conditions of employment which, pursuant to 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⁽¹⁾, apply to workers posted to provide a service in the territory of another Member State. In such cases, Directive 96/71/EC stipulates that providers have to comply with terms and conditions of employment in a listed number of areas applicable in the Member State where the service is provided. These are: maximum work periods and minimum rest periods, minimum paid annual holidays, minimum rates of pay, including overtime rates, the conditions of hiring out of workers, in particular the protection of workers hired out by temporary employment undertakings, health, safety and hygiene at work, protective measures with regard to the terms and conditions of employment of pregnant women or women who have recently given birth and of children and young people and equality of treatment between men and women and other provisions on non-discrimination. This not only concerns terms and conditions of employment which are laid down by law but also those laid down in collective agreements or arbitration awards that are officially declared or de facto universally applicable within the meaning of Directive 96/71/EC. Moreover, this Directive should not prevent Member States from applying terms and conditions of employment on matters other than those listed in Article 3(1) of Directive 96/71/EC on the grounds of public policy.
- (87) Neither should this Directive affect terms and conditions of employment in cases where the worker employed for the provision of a cross-border service is recruited in the Member State where the service is provided. Furthermore, this Directive should not affect the right for the Member State where the service is provided to determine the existence of an employment relationship and the distinction between self-employed persons and employed persons, including 'false self-employed persons'. In that respect the essential characteristic of an employment relationship within the meaning of Article 39 of the Treaty should be the fact that for a certain period of time a person provides services for and under the direction of another person in return for which he receives remuneration. Any activity which a person performs outside a relationship of subordination must be classified as an activity pursued in a self-employed capacity for the purposes of Articles 43 and 49 of the Treaty.
- (88) The provision on the freedom to provide services should not apply in cases where, in conformity with Community law, an activity is reserved in a Member State to a particular profession, for example requirements which reserve the provision of legal advice to lawyers.
- (89) The derogation from the provision on the freedom to provide services concerning 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 recognised 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.
- (90) Contractual relations between the provider and the client as well as between an employer and employee should not be subject to this Directive. The applicable law regarding the contractual or non contractual obligations of the provider should be determined by the rules of private international law.
- (91) It is necessary to afford Member States the possibility, exceptionally and on a case-by-case basis, of taking measures which derogate from the provision on the freedom to provide services in respect of a provider established in another Member State on grounds of the safety of services. However, it should be possible to take such measures only in the absence of harmonisation at Community level.
- (92) 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. This also includes cases where recipients of a service are under an obligation to obtain authorisation from or to make a declaration to their competent authorities in order to receive a service from a provider established in another Member State. This does not concern general authorisation schemes which also apply to the use of a service supplied by a provider established in the same Member State.

⁽¹⁾ OJ L 18, 21.1.1997, p. 1.

- (93) The concept of financial assistance provided for the use of a particular service should not apply to systems of aids granted by Member States, in particular in the social field or in the cultural sector, which are covered by Community rules on competition, nor to general financial assistance not linked to the use of a particular service, for example grants or loans to students.
- (94) In accordance with the Treaty rules on the free movement of services, discrimination on grounds of the nationality of the recipient 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 should not preclude the reservation of advantages, especially as regards tariffs, to certain recipients, if such reservation is based on legitimate and objective criteria.
- (95) 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 restricted by application of a criterion, included in general conditions made available to the public, relating to the recipient's nationality or place of residence. It does not follow that it will be unlawful discrimination if provision were made in such general conditions for different tariffs and conditions to apply to the provision of a service, where those tariffs, prices and conditions are justified for objective reasons that can vary from country to country, such as additional costs incurred because of the distance involved or the technical characteristics of the provision of the service, or different market conditions, such as higher or lower demand influenced by seasonality, different vacation periods in the Member States and pricing by different competitors, or extra risks linked to rules differing from those of the Member State of establishment. Neither does it follow that the non-provision of a service to a consumer for lack of the required intellectual property rights in a particular territory would constitute unlawful discrimination.
- (96) 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 supply his electronic address, including that of his website. Furthermore, the obligation to make available certain information in the provider's information documents which present 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.
- (97) It is necessary to provide in this Directive for certain rules on high quality of services, ensuring in particular information and transparency requirements. These rules should apply both in cases of cross border provision of services between Member States and in cases of services provided in a Member State by a provider established there, without imposing unnecessary burdens on SMEs. They should not in any way prevent Member States from applying, in conformity with this Directive and other Community law, additional or different quality requirements.
- (98) Any operator providing services involving a direct and particular health, safety or financial risk for the recipient or a third person should, in principle, be covered by appropriate professional liability insurance, or by another form of guarantee which is equivalent or comparable, which means, in particular, that such an operator should as a general rule have adequate insurance cover for services provided in one or more Member States other than the Member State of establishment.
- (99) The insurance or guarantee should be appropriate to the nature and extent of the risk. Therefore it should be necessary for the provider to have cross-border cover only if that provider actually provides services in other Member States. Member States should not lay down more detailed rules concerning the insurance cover and fix for example minimum thresholds for the insured sum or limits on exclusions from the insurance cover. Providers and insurance companies should maintain the necessary flexibility to negotiate insurance policies precisely targeted to the nature and extent of the risk. Furthermore, it is not necessary for an obligation of appropriate insurance to be laid down by law. It should be sufficient if an insurance obligation is part of the ethical rules laid down by professional bodies. Finally, there should be no obligation for insurance companies to provide insurance cover.
- (100) It is necessary to put an end to total prohibitions on commercial communications by the regulated professions, not by removing bans on the content of a commercial communication but rather by removing those bans 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.

- (101) It is necessary and in the interest of recipients, in particular consumers, to ensure that it is possible for providers to offer multidisciplinary services and that restrictions in this regard be limited to what is necessary to ensure the impartiality, independence and integrity of the regulated professions. This does not affect restrictions or prohibitions on carrying out particular activities which aim at ensuring independence in cases in which a Member State entrusts a provider with a particular task, notably in the area of urban development, nor should it affect the application of competition rules.
- (102) 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 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 1998 laying down a procedure for the provision of information in the field of technical standards and regulations⁽¹⁾ and of rules on Information Society services, issue a mandate for the drawing up of specific European standards.
- (103) In order to solve potential problems with compliance with judicial decisions, it is appropriate to provide that Member States recognise equivalent guarantees lodged with institutions or bodies such as banks, insurance providers or other financial services providers established in another Member State.
- (104) The development of a network of Member States' consumer protection authorities, which is the subject of Regulation (EC) No 2006/2004, 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 greater 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.
- (105) Administrative cooperation is essential to make the internal market in services function properly. Lack of cooperation between Member States results in proliferation of rules applicable to providers or duplication of controls for cross-border activities, and can also be used by rogue traders to avoid supervision or to circumvent applicable national rules on services. It is, therefore, essential to provide for clear, legally binding obligations for Member States to cooperate effectively.
- (106) For the purposes of the Chapter on administrative cooperation, 'supervision' should cover activities such as monitoring and fact finding, problem solving, enforcement and imposition of sanctions and subsequent follow-up activities.
- (107) In normal circumstances mutual assistance should take place directly between competent authorities. The liaison points designated by Member States should be required to facilitate this process only in the event of difficulties being encountered, for instance if assistance is required to identify the relevant competent authority.
- (108) Certain obligations of mutual assistance should apply to all matters covered by this Directive, including those relating to cases where a provider establishes in another Member State. Other obligations of mutual assistance should apply only in cases of cross-border provision of services, where the provision on the freedom to provide services applies. A further set of obligations should apply in all cases of cross-border provision of services, including areas not covered by the provision on the freedom to provide services. Cross-border provision of services should include cases where services are provided at a distance and where the recipient travels to the Member State of establishment of the provider in order to receive services.
- (109) In cases where a provider moves temporarily to a Member State other than the Member State of establishment, it is necessary to provide for mutual assistance between those two Member States so that the former can carry out checks, inspections and enquiries at the request of the Member State of establishment or carry out such checks on its own initiative if these are merely factual checks.
- (110) It should not be possible for Member States to circumvent the rules laid down in this Directive, including the provision on the freedom to provide services, by conducting checks, inspections or investigations which are discriminatory or disproportionate.

⁽¹⁾ OJ L 204, 21.7.1998, p. 37. Directive as last amended by the 2003 Act of Accession.

- (111) The provisions of this Directive concerning exchange of information regarding the good repute of providers should not pre-empt initiatives in the area of police and judicial cooperation in criminal matters, in particular on the exchange of information between law enforcement authorities of the Member States and on criminal records.
- (112) Cooperation between Member States requires a well-functioning electronic information system in order to allow competent authorities easily to identify their relevant interlocutors in other Member States and to communicate in an efficient way.
- (113) It is necessary to provide that the Member States, in cooperation with the Commission, are to encourage interested parties to draw up codes of conduct at Community level, aimed, in particular, at promoting the quality of services and taking into account the specific nature of each profession. Those codes of conduct should comply with Community law, especially competition law. They should be compatible with legally binding rules governing professional ethics and conduct in the Member States.
- (114) Member States should encourage the setting up of codes of conduct, in particular, by professional bodies, organisations and associations at Community level. These codes of conduct should include, as appropriate to the specific nature of each profession, rules for commercial communications relating to the regulated professions and rules of professional ethics and conduct of the regulated professions which aim, in particular, at ensuring independence, impartiality and professional secrecy. In addition, the conditions to which the activities of estate agents are subject should be included in such codes of conduct. Member States should take accompanying measures to encourage professional bodies, organisations and associations to implement at national level the codes of conduct adopted at Community level.
- (115) Codes of conduct at Community level are intended to set minimum standards of conduct and are complementary to Member States' legal requirements. They do not preclude Member States, in accordance with Community law, from taking more stringent measures in law or national professional bodies from providing for greater protection in their national codes of conduct.
- (116) Since the objectives of this Directive, namely the elimination of barriers to the freedom of establishment for providers in the Member States and to the free provision of services between Member States, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale of the action, be better achieved at Community level, the Community may adopt measures,

in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

- (117) 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 Commission ⁽¹⁾.
- (118) In accordance with paragraph 34 of the Interinstitutional Agreement on better law-making ⁽²⁾, Member States are encouraged to draw up, for themselves and in the interest of the Community, their own tables, which will, as far as possible, illustrate the correlation between the Directive and the transposition measures, and to make them public,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

1. This Directive establishes general provisions facilitating the exercise of the freedom of establishment for service providers and the free movement of services, while maintaining a high quality of services.
2. This Directive does not deal with the liberalisation of services of general economic interest, reserved to public or private entities, nor with the privatisation of public entities providing services.
3. This Directive does not deal with the abolition of monopolies providing services nor with aids granted by Member States which are covered by Community rules on competition.

This Directive does not affect the freedom of Member States to define, in conformity with Community law, what they consider to be services of general economic interest, how those services should be organised and financed, in compliance with the State aid rules, and what specific obligations they should be subject to.

4. This Directive does not affect measures taken at Community level or at national level, in conformity with Community law, to protect or promote cultural or linguistic diversity or media pluralism.

⁽¹⁾ OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).

⁽²⁾ OJ C 321, 31.12.2003, p. 1.

5. This Directive does not affect Member States' rules of criminal law. However, Member States may not restrict the freedom to provide services by applying criminal law provisions which specifically regulate or affect access to or exercise of a service activity in circumvention of the rules laid down in this Directive.

6. This Directive does not affect labour law, that is any legal or contractual provision concerning employment conditions, working conditions, including health and safety at work and the relationship between employers and workers, which Member States apply in accordance with national law which respects Community law. Equally, this Directive does not affect the social security legislation of the Member States.

7. This Directive does not affect the exercise of fundamental rights as recognised in the Member States and by Community law. Nor does it affect the right to negotiate, conclude and enforce collective agreements and to take industrial action in accordance with national law and practices which respect Community law.

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) non-economic services of general interest;
- (b) financial services, such as banking, credit, insurance and re-insurance, occupational or personal pensions, securities, investment funds, payment and investment advice, including the services listed in Annex I to Directive 2006/48/EC;
- (c) electronic communications services and networks, and associated facilities and services, with respect to matters covered by Directives 2002/19/EC, 2002/20/EC, 2002/21/EC, 2002/22/EC and 2002/58/EC;
- (d) services in the field of transport, including port services, falling within the scope of Title V of the Treaty;
- (e) services of temporary work agencies;
- (f) healthcare services whether or not they are provided via healthcare facilities, and regardless of the ways in which they are organised and financed at national level or whether they are public or private;

- (g) audiovisual services, including cinematographic services, whatever their mode of production, distribution and transmission, and radio broadcasting;
- (h) gambling activities which involve wagering a stake with pecuniary value in games of chance, including lotteries, gambling in casinos and betting transactions;
- (i) activities which are connected with the exercise of official authority as set out in Article 45 of the Treaty;
- (j) social services relating to social housing, childcare and support of families and persons permanently or temporarily in need which are provided by the State, by providers mandated by the State or by charities recognised as such by the State;
- (k) private security services;
- (l) services provided by notaries and bailiffs, who are appointed by an official act of government.

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

Article 3

Relationship with other provisions of Community law

1. If the provisions of this Directive conflict with a provision of another Community act governing specific aspects of access to or exercise of a service activity in specific sectors or for specific professions, the provision of the other Community act shall prevail and shall apply to those specific sectors or professions. These include:

- (a) Directive 96/71/EC;
- (b) Regulation (EEC) No 1408/71;
- (c) Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities ⁽¹⁾;
- (d) Directive 2005/36/EC.

2. This Directive does not concern rules of private international law, in particular rules governing the law applicable to contractual and non contractual obligations, including those which guarantee that consumers benefit from the protection granted to them by the consumer protection rules laid down in the consumer legislation in force in their Member State.

⁽¹⁾ OJ L 298, 17.10.1989, p. 23. Directive as amended by Directive 97/36/EC of the European Parliament and of the Council (OJ L 202, 30.7.1997, p. 60).

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

Article 4

Definitions

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

- 1) 'service' means any self-employed economic activity, normally provided for remuneration, as referred to in Article 50 of the Treaty;
- 2) 'provider' means any natural person who is a national of a Member State, or any legal person as referred to in Article 48 of the Treaty and established in a Member State, who offers or provides a service;
- 3) 'recipient' means any natural person who is a national of a Member State or who benefits from rights conferred upon him by Community acts, or any legal person as referred to in Article 48 of the Treaty and established in a Member State, who, for professional or non-professional purposes, uses, or wishes to use, a service;
- 4) 'Member State of establishment' 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, by the provider for an indefinite period and through a stable infrastructure from where the business of providing services is actually carried out;
- 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 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, the rules of professional bodies, or the collective rules of professional associations or other professional organisations, adopted in the exercise of their legal autonomy; rules laid down in collective agreements negotiated by the social partners shall not as such be seen as requirements within the meaning of this Directive;
- 8) 'overriding reasons relating to the public interest' means reasons recognised as such in the case law of the Court of Justice, including the following grounds: public policy; public security; public safety; public health; preserving the financial equilibrium of the social security system; the protection

of consumers, recipients of services and workers; fairness of trade transactions; combating fraud; the protection of the environment and the urban environment; the health of animals; intellectual property; the conservation of the national historic and artistic heritage; social policy objectives and cultural policy objectives;

- 9) '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, including courts acting as such, 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;
- 10) 'Member State where the service is provided' means the Member State where the service is supplied by a provider established in another Member State;
- 11) 'regulated profession' means a professional activity or a group of professional activities as referred to in Article 3(1)(a) of Directive 2005/36/EC;
- 12) '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

ADMINISTRATIVE SIMPLIFICATION

Article 5

Simplification of procedures

1. Member States shall examine the procedures and formalities applicable to access to a service activity and to the exercise thereof. Where procedures and formalities examined under this paragraph are not sufficiently simple, Member States shall simplify them.
2. The Commission may introduce harmonised forms at Community level, in accordance with the procedure referred to in Article 40(2). These forms shall be equivalent to certificates, attestations and any other documents required of a provider.

3. 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 a document from another Member State to be produced in its original form, or as a certified copy or as a certified translation, save in the cases provided for in other Community instruments or where such a requirement is justified by an overriding reason relating to the public interest, including public order and security.

The first subparagraph shall not affect the right of Member States to require non-certified translations of documents in one of their official languages.

4. Paragraph 3 shall not apply to the documents referred to in Article 7(2) and 50 of Directive 2005/36/EC, in Articles 45(3), 46, 49 and 50 of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts ⁽¹⁾, in Article 3(2) of Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained ⁽²⁾, in the First Council Directive 68/151/EEC of 9 March 1968 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community ⁽³⁾ and in the Eleventh Council Directive 89/666/EEC of 21 December 1989 concerning disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another State ⁽⁴⁾.

Article 6

Points of single contact

1. Member States shall ensure that it is possible for providers to complete the following procedures and formalities through points of single contact:

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

⁽¹⁾ OJ L 134, 30.4.2004, p. 114. Directive as last amended by Commission Regulation (EC) No 2083/2005 (OJ L 333, 20.12.2005, p. 28).

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

⁽³⁾ OJ L 65, 14.3.1968, p. 8. Directive as last amended by Directive 2003/58/EC of the European Parliament and of the Council (OJ L 221, 4.9.2003, p. 13).

⁽⁴⁾ OJ L 395, 30.12.1989, p. 36.

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

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

Article 7

Right to information

1. Member States shall ensure that the following information is easily accessible to providers and recipients through the points of single 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 details of those authorities responsible for matters concerning the exercise of service activities;
- (c) the means of, and conditions for, accessing public registers and databases on providers and services;
- (d) the means of redress which are generally available in the event of dispute between the competent authorities and the provider or the recipient, or between a provider and a recipient or between providers;
- (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 the requirements referred to in point (a) of paragraph 1 are generally interpreted and applied. Where appropriate, such advice shall include a simple step-by-step guide. The information shall be provided in plain and intelligible language.

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 points of single 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 and the Commission shall take accompanying measures in order to encourage points of single contact to make the information provided for in this Article available in other Community languages. This does not interfere with Member States' legislation on the use of languages.

6. The obligation for competent authorities to assist providers and recipients does not require those authorities to provide legal advice in individual cases but concerns only general information on the way in which requirements are usually interpreted or applied.

Article 8

Procedures by electronic means

1. Member States shall ensure that 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, through the relevant point of single 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 or of the personal integrity of the provider or of his responsible staff.

3. The Commission shall, in accordance with the procedure referred to in Article 40(2), adopt detailed rules for the implementation of paragraph 1 of this Article with a view to facilitating the interoperability of information systems and use of procedures by electronic means between Member States, taking into account common standards developed at Community level.

CHAPTER III

FREEDOM OF ESTABLISHMENT FOR PROVIDERS

SECTION 1

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 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 39(1), Member States shall identify their authorisation schemes and give reasons showing their compatibility with paragraph 1 of this Article.

3. This section shall not apply to those aspects of authorisation schemes which are governed directly or indirectly 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 manner.

2. The criteria referred to in paragraph 1 shall be:

- (a) non-discriminatory;
- (b) justified by an overriding reason relating to the public interest;
- (c) proportionate to that public interest objective;
- (d) clear and unambiguous;
- (e) objective;
- (f) made public in advance;
- (g) transparent and accessible.

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 liaison points referred to in Article 28(2) and the provider shall assist the competent authority by providing any necessary information regarding 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 means of setting up agencies, subsidiaries, branches or offices, except where an authorisation for each individual establishment or a limitation of the authorisation to a certain part of the territory is justified by an overriding reason relating to the public interest.

5. The authorisation shall be granted as soon as it is established, in the light of an appropriate examination, that the conditions for authorisation have been met.

6. Except in the case of the granting of an authorisation, any decision from the competent authorities, including refusal or withdrawal of an authorisation, shall be fully reasoned and shall be open to challenge before the courts or other instances of appeal.

7. This Article shall not call into question the allocation of the competences, at local or regional level, of the Member States' authorities granting authorisations.

Article 11

Duration of authorisation

1. An authorisation granted to a provider shall not be for a limited period, except where:

- (a) the authorisation is being automatically renewed or is subject only to the continued fulfilment of requirements;
- (b) the number of available authorisations is limited by an overriding reason relating to the public interest;

or

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

2. Paragraph 1 shall not concern the maximum period before the end of which the provider must actually commence his activity after receiving authorisation.

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

- (a) the creation of subsidiaries whose activities fall within the scope of the authorisation scheme;
- (b) changes in his situation which result in the conditions for authorisation no longer being met.

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

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, conduct and completion of the procedure.

2. In the cases referred to in paragraph 1, authorisation shall 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.

3. Subject to paragraph 1 and to Articles 9 and 10, Member States may take into account, in establishing the rules for the selection procedure, considerations of public health, social policy objectives, the health and safety of employees or self-employed persons, the protection of the environment, the preservation of cultural heritage and other overriding reasons relating to the public interest, in conformity with Community law.

Article 13

Authorisation procedures

1. Authorisation procedures and formalities shall be clear, made public in advance and be such as to provide the applicants 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 applicants may incur from their application shall be reasonable and proportionate to the cost of the authorisation procedures in question and shall not exceed the cost of the procedures.

3. Authorisation procedures and formalities shall provide applicants with a guarantee that their application will be processed as quickly as possible and, in any event, within a reasonable period which is fixed and made public in advance. The period shall run only from the time when all documentation has been submitted. When justified by the complexity of the issue, the time period may be extended once, by the competent authority, for a limited time. The extension and its duration shall be duly motivated and shall be notified to the applicant before the original period has expired.

4. Failing a response within the time period set or extended in accordance with paragraph 3, authorisation shall be deemed to have been granted. Different arrangements may nevertheless be put in place, where justified by overriding reasons relating to the public interest, including a legitimate interest of third parties.

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

- (a) the period referred to in paragraph 3;
- (b) the available means of redress;

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

6. In the case of an incomplete application, the applicant shall be informed as quickly as possible of the need to supply any additional documentation, as well as of any possible effects on the period referred to in paragraph 3.

7. When a request is rejected because it fails to comply with the required procedures or formalities, the applicant shall be informed of the rejection as quickly as possible.

SECTION 2

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 its 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, an assessment of the potential or current economic effects of the activity or an assessment of the appropriateness of the activity in relation to the economic planning objectives set by the competent authority; this prohibition shall not concern planning requirements which do not pursue economic aims but serve overriding reasons relating to the public interest;

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

7) an obligation to provide or participate in a financial guarantee or to take out insurance from a provider or body established in their territory. This shall not affect the possibility for Member States to require insurance or financial guarantees as such, nor shall it affect requirements relating to the participation in a collective compensation fund, for instance for members of professional bodies or organisations;

8) an obligation to have been pre-registered, for a given period, in the registers held in their territory or to have previously 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 providers;
- (b) an obligation on a provider to take a specific legal form;
- (c) requirements which relate to the shareholding of a company;

- (d) requirements, other than those concerning matters covered by Directive 2005/36/EC 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) an obligation on the provider to supply other specific services jointly with his service.

3. Member States shall verify that the requirements referred to in paragraph 2 satisfy the following conditions:

- (a) non-discrimination: requirements must be neither directly nor indirectly discriminatory according to nationality nor, with regard to companies, according to the location of the registered office;
- (b) necessity: requirements must be 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. Paragraphs 1, 2 and 3 shall apply to legislation in the field of services of general economic interest only insofar as the application of these paragraphs does not obstruct the performance, in law or in fact, of the particular task assigned to them.

5. In the mutual evaluation report provided for in Article 39(1), 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.

6. From 28 December 2006 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.

7. Member States shall notify the Commission of any new laws, regulations or administrative provisions which set requirements as referred to in paragraph 6, together with the reasons for those requirements. The Commission shall communicate the provisions concerned to the other Member States. Such notification shall not prevent Member States from adopting the provisions in question.

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

The notification of a draft national law in accordance with Directive 98/34/EC shall fulfil the obligation of notification provided for in this Directive.

CHAPTER IV

FREE MOVEMENT OF SERVICES

SECTION 1

Freedom to provide services and related derogations

Article 16

Freedom to provide services

1. Member States shall respect the right of providers to provide services in a Member State other than that in which they are established.

The Member State in which the service is provided shall ensure free access to and free exercise of a service activity within its territory.

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

- (a) non-discrimination: the requirement may be neither directly nor indirectly discriminatory with regard to nationality or, in the case of legal persons, with regard to the Member State in which they are established;
- (b) necessity: the requirement must be justified for reasons of public policy, public security, public health or the protection of the environment;
- (c) proportionality: the requirement must be suitable for attaining the objective pursued, and must not go beyond what is necessary to attain that objective.

2. Member States may not restrict the freedom to provide services in the case of a provider established in another Member State 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 obtain an authorisation from their competent authorities including entry in a register or registration with a professional body or association in their territory, except where provided for in this Directive or other instruments of Community law;
- (c) a ban on the provider setting up a certain form or type of infrastructure in their territory, including an office or chambers, which the provider needs in order to supply the services in question;
- (d) the application of specific contractual arrangements between the provider and the recipient which prevent or restrict service provision by the self-employed;
- (e) an obligation on the provider to possess an identity document issued by its competent authorities specific to the exercise of a service activity;
- (f) requirements, except for those necessary for health and safety at work, which affect the use of equipment and material which are an integral part of the service provided;
- (g) restrictions on the freedom to provide the services referred to in Article 19.

3. The Member State to which the provider moves shall not be prevented from imposing requirements with regard to the provision of a service activity, where they are justified for reasons of public policy, public security, public health or the protection of the environment and in accordance with paragraph 1. Nor shall that Member State be prevented from applying, in accordance with Community law, its rules on employment conditions, including those laid down in collective agreements.

4. By 28 December 2011 the Commission shall, after consultation of the Member States and the social partners at Community level, submit to the European Parliament and the Council a report on the application of this Article, in which it shall consider the need to propose harmonisation measures regarding service activities covered by this Directive.

Article 17

Additional derogations from the freedom to provide services

Article 16 shall not apply to:

- 1) services of general economic interest which are provided in another Member State, *inter alia*:
 - (a) in the postal sector, services covered by Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service ⁽¹⁾;
 - (b) in the electricity sector, services covered by Directive 2003/54/EC ⁽²⁾ of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity;
 - (c) in the gas sector, services covered by Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas ⁽³⁾;
 - (d) water distribution and supply services and waste water services;
 - (e) treatment of waste;
- 2) matters covered by Directive 96/71/EC;
- 3) matters covered by Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data ⁽⁴⁾;
- 4) matters covered by Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services ⁽⁵⁾;
- 5) the activity of judicial recovery of debts;

⁽¹⁾ OJ L 15, 21.1.1998, p. 14. Directive as last amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1).

⁽²⁾ OJ L 176, 15.7.2003, p. 37. Directive as last amended by Commission Decision 2006/653/EC (OJ L 270, 29.9.2006, p. 72).

⁽³⁾ OJ L 176, 15.7.2003, p. 57.

⁽⁴⁾ OJ L 281, 23.11.1995, p. 31. Directive as amended by Regulation (EC) No 1882/2003.

⁽⁵⁾ OJ L 78, 26.3.1977, p. 17. Directive as last amended by the 2003 Act of Accession.

6) matters covered by Title II of Directive 2005/36/EC, as well as requirements in the Member State where the service is provided which reserve an activity to a particular profession;

7) matters covered by Regulation (EEC) No 1408/71;

8) as regards administrative formalities concerning the free movement of persons and their residence, matters covered by the provisions of Directive 2004/38/EC that lay down administrative formalities of the competent authorities of the Member State where the service is provided with which beneficiaries must comply;

9) as regards third country nationals who move to another Member State in the context of the provision of a service, the possibility for Member States to require visa or residence permits 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 of 14 June 1985 on the gradual abolition of checks at the common borders ⁽¹⁾ or the possibility to oblige third country nationals to report to the competent authorities of the Member State in which the service is provided on or after their entry;

10) as regards the shipment of waste, matters covered by Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community ⁽²⁾;

11) copyright, neighbouring rights and rights covered by Council Directive 87/54/EEC of 16 December 1986 on the legal protection of topographies of semiconductor products ⁽³⁾ and by Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases ⁽⁴⁾, as well as industrial property rights;

12) acts requiring by law the involvement of a notary;

13) matters covered by Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audit of annual accounts and consolidated accounts ⁽⁵⁾;

14) the registration of vehicles leased in another Member State;

15) provisions regarding contractual and non-contractual obligations, including the form of contracts, determined pursuant to the rules of private international law.

Article 18

Case-by-case derogations

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 the safety of services.

2. The measures provided for in paragraph 1 may be taken only if the mutual assistance procedure laid down in Article 35 is complied with and 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 field of the safety of services;
- (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 establishment in accordance with its national provisions;
- (c) the Member State of establishment has not taken any measures or has taken measures which are insufficient as compared with those referred to in Article 35(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 19

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;

⁽¹⁾ OJ L 239, 22.9.2000, p. 19. Convention as last amended by Regulation (EC) No 1160/2005 of the European Parliament and of the Council (OJ L 191, 22.7.2005, p. 18).

⁽²⁾ OJ L 30, 6.2.1993, p. 1. Regulation as last amended by Commission Regulation (EC) No 2557/2001 (OJ L 349, 31.12.2001, p. 1).

⁽³⁾ OJ L 24, 27.1.1987, p. 36.

⁽⁴⁾ OJ L 77, 27.3.1996, p. 20.

⁽⁵⁾ OJ L 157, 9.6.2006, p. 87.

- (b) discriminatory limits on the grant of financial assistance by reason of the fact that the provider is established in another Member State or by reason of the location of the place at which the service is provided.

Article 20

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 21

Assistance for recipients

1. Member States shall ensure that recipients can obtain, in their Member State of residence, the following information:
 - (a) general information on the requirements applicable in other Member States relating to access to, and exercise of, service activities, in particular those relating to consumer protection;
 - (b) general information on the means of redress available in the case of a dispute between a provider and a recipient;
 - (c) the contact details of associations or organisations, including the centres of the European Consumer Centres Network, from which providers or recipients may obtain practical assistance.

Where appropriate, advice from the competent authorities shall include a simple step-by-step guide. Information and assistance shall be provided in a clear and unambiguous manner, shall be easily accessible at a distance, including by electronic means, and shall be kept up to date.

2. Member States may confer responsibility for the task referred to in paragraph 1 on points of single contact or on any other body, such as the centres of the European Consumer Centres Network, consumer associations or Euro Info Centres.

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 fulfilment of the requirements set out in paragraphs 1 and 2, the body approached by the recipient shall, if necessary, contact the relevant body for the Member State concerned. The latter shall send the information requested as soon as possible to the requesting body which shall forward the information to the recipient. Member States shall ensure that those bodies give each other mutual assistance and shall put in place all possible measures for effective cooperation. Together with the Commission, Member States shall put in place practical arrangements necessary for the implementation of paragraph 1.

4. The Commission shall, in accordance with the procedure referred to in Article 40(2), adopt measures for the implementation of paragraphs 1, 2 and 3 of this Article, 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, taking into account common standards.

CHAPTER V

QUALITY OF SERVICES

Article 22

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 provider, his legal status and form, the geographic address at which he is established and details enabling 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 Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes – Common system of value added tax: uniform basis of assessment ⁽¹⁾;

⁽¹⁾ OJ L 145, 13.6.1977, p. 1. Directive as last amended by Directive 2006/18/EC (OJ L 51, 22.2.2006, p. 12).

- (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) the existence of contractual clauses, if any, used by the provider concerning the law applicable to the contract and/or the competent courts;
 - (h) the existence of an after-sales guarantee, if any, not imposed by law;
 - (i) the price of the service, where a price is pre-determined by the provider for a given type of service;
 - (j) the main features of the service, if not already apparent from the context;
 - (k) the insurance or guarantees referred to in Article 23(1), and in particular the contact details of the insurer or guarantor and the territorial coverage.
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 which set 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) where the price is not pre-determined by the provider for a given type of service, the price of the service or, if an exact price cannot be given, the method for calculating the price so that it can be checked by the recipient, or a sufficiently detailed estimate;
 - (b) as regards the regulated professions, a reference to the professional rules applicable in the Member State of establishment and how to access them;
 - (c) information on their multidisciplinary activities and partnerships which are directly linked to the service in question 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;
 - (d) any codes of conduct to which the provider is subject and the address at which these codes may be consulted by electronic means, specifying the language version available;
 - (e) where a provider is subject to a code of conduct, or member of a trade association or professional body which provides for recourse to a non-judicial means of dispute settlement, information in this respect. The provider shall specify how to access detailed information on the characteristics of, and conditions for, the use of non-judicial means of dispute settlement.
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 40(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 of this Article.

Article 23

Professional liability insurance and guarantees

1. Member States may ensure that providers whose services present a direct and particular risk to the health or safety of the recipient or a third person, or to the financial security of the recipient, subscribe to professional liability insurance appropriate to the nature and extent of the risk, or provide a guarantee or similar arrangement which is equivalent or essentially comparable as regards its purpose.

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

When a Member State requires a provider established in its territory to subscribe to professional liability insurance or to provide another guarantee, that Member State shall accept as sufficient evidence attestations of such insurance cover issued by credit institutions and insurers established in other Member States.

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

4. For the implementation of paragraph 1, the Commission may, in accordance with the regulatory procedure referred to in Article 40(2), establish a list of services which exhibit the characteristics referred to in paragraph 1 of this Article. The Commission may also, in accordance with the procedure referred to in Article 40(3), adopt measures designed to amend non-essential elements of this Directive by supplementing it by establishing common criteria for defining, for the purposes of the insurance or guarantees referred to in paragraph 1 of this Article, what is appropriate to the nature and extent of the risk.

5. For the purpose of this Article

— ‘direct and particular risk’ means a risk arising directly from the provision of the service,

— ‘health and safety’ means, in relation to a recipient or a third person, the prevention of death or serious personal injury,

— ‘financial security’ means, in relation to a recipient, the prevention of substantial losses of money or of value of property,

— ‘professional liability insurance’ means insurance taken out by a provider in respect of potential liabilities to recipients and, where applicable, third parties arising out of the provision of the service.

Article 24

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 consistent with the specific nature of each profession. Professional rules on commercial communications shall be non-discriminatory, justified by an overriding reason relating to the public interest and proportionate.

Article 25

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, and is necessary in order to ensure their independence and impartiality;

(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 between providers referred to in points (a) and (b) of paragraph 1 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. In the report referred to in Article 39(1), Member States shall indicate which providers are subject to the requirements laid down in paragraph 1 of this Article, the content of those requirements and the reasons for which they consider them to be justified.

Article 26

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) certification or assessment of their activities by independent or accredited bodies;
- (b) drawing up their own quality charter or participation 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 providers and recipients.

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 and consumer associations, in their territory to cooperate at Community level in order to promote the quality of service provision, especially by making it easier to assess the competence of a provider.

4. Member States shall, in cooperation with the Commission, take accompanying measures to encourage the development of independent assessments, notably by consumer associations, 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, in cooperation with the Commission, shall encourage the development of voluntary European standards with the aim of facilitating compatibility between services supplied by providers in different Member States, information to the recipient and the quality of service provision.

Article 27

Settlement of disputes

1. Member States shall take the general measures necessary to ensure that providers supply contact details, in particular a postal address, fax number or e-mail address and telephone number to which all recipients, including those resident in another Member State, can send a complaint or a request for information about the service provided. Providers shall supply their legal address if this is not their usual address for correspondence.

Member States shall take the general measures necessary to ensure that providers respond to the complaints referred to in the first subparagraph in the shortest possible time and make their best efforts to find a satisfactory solution.

2. 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.

3. Where a financial guarantee is required for compliance with a judicial decision, Member States shall recognise equivalent guarantees lodged with a credit institution or insurer established in another Member State. Such credit institutions must be authorised in a Member State in accordance with Directive 2006/48/EC and such insurers in accordance, as appropriate, with First Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance ⁽¹⁾ and Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance ⁽²⁾.

4. 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 thereof 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.

CHAPTER VI

ADMINISTRATIVE COOPERATION

Article 28

Mutual assistance – general obligations

1. Member States shall give each other mutual assistance, and shall put in place 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 this Chapter, Member States shall designate one or more liaison points, the contact details of which shall be communicated to the other Member States and the Commission. The Commission shall publish and regularly update the list of liaison points.

⁽¹⁾ OJ L 228, 16.8.1973, p. 3. Directive as last amended by Directive 2005/68/EC of the European Parliament and of the Council (OJ L 323, 9.12.2005, p. 1).

⁽²⁾ OJ L 345, 19.12.2002, p. 1. Directive as last amended by Directive 2005/68/EC.

3. Information requests and requests to carry out any checks, inspections and investigations under this Chapter shall be duly motivated, in particular by specifying the reason for the request. Information exchanged shall be used only in respect of the matter for which it was requested.

4. In the event of receiving a request for assistance from competent authorities in another Member State, Member States shall ensure that providers established in their territory supply their competent authorities with all the information necessary for supervising their activities in compliance with their national laws.

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

6. 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.

7. 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.

8. Member States shall communicate to the Commission information on cases where other Member States do not fulfil their obligation of mutual assistance. Where necessary, the Commission shall take appropriate steps, including proceedings provided for in Article 226 of the Treaty, in order to ensure that the Member States concerned comply with their obligation of mutual assistance. The Commission shall periodically inform Member States about the functioning of the mutual assistance provisions.

Article 29

Mutual assistance – general obligations for the Member State of establishment

1. With respect to providers providing services in another Member State, the Member State of establishment shall supply information on providers established in its territory when requested to do so by another Member State and, in particular, confirmation that a provider is established in its territory and, to its knowledge, is not exercising his activities in an unlawful manner.

2. The Member State of establishment 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. In so doing, the competent authorities shall act to the extent permitted by the powers

vested in them in their Member State. The competent authorities can decide on the most appropriate measures to be taken in each individual case in order to meet the request by another Member State.

3. Upon gaining actual knowledge of any conduct or specific acts by a provider established in its territory which provides services in other Member States, that, to its knowledge, could cause serious damage to the health or safety of persons or to the environment, the Member State of establishment shall inform all other Member States and the Commission within the shortest possible period of time.

Article 30

Supervision by the Member State of establishment in the event of the temporary movement of a provider to another Member State

1. With respect to cases not covered by Article 31(1), the Member State of establishment shall ensure that compliance with its requirements is supervised in conformity with the powers of supervision provided for in its national law, in particular through supervisory measures at the place of establishment of the provider.

2. The Member State of establishment shall not refrain from taking supervisory or enforcement measures in its territory on the grounds that the service has been provided or caused damage in another Member State.

3. The obligation laid down in paragraph 1 shall not entail a duty on the part of the Member State of establishment to carry out factual checks and controls in the territory of the Member State where the service is provided. Such checks and controls shall be carried out by the authorities of the Member State where the provider is temporarily operating at the request of the authorities of the Member State of establishment, in accordance with Article 31.

Article 31

Supervision by the Member State where the service is provided in the event of the temporary movement of the provider

1. With respect to national requirements which may be imposed pursuant to Articles 16 or 17, the Member State where the service is provided is responsible for the supervision of the activity of the provider in its territory. In conformity with Community law, the Member State where the service is provided:

- (a) shall take all measures necessary to ensure the provider complies with those requirements as regards the access to and the exercise of the activity;

(b) shall carry out the checks, inspections and investigations necessary to supervise the service provided.

2. With respect to requirements other than those referred to in paragraph 1, 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 paragraphs 3 and 4.

3. At the request of the Member State of establishment, the competent authorities of the Member State where the service is provided shall carry out any checks, inspections and investigations necessary for ensuring the effective supervision by the Member State of establishment. In so doing, the competent authorities shall act to the extent permitted by the powers vested in them in their Member State. The competent authorities may decide on the most appropriate measures to be taken in each individual case in order to meet the request by the Member State of establishment.

4. On their own initiative, the competent authorities of the Member State where the service is provided may conduct checks, inspections and investigations on the spot, provided that those checks, inspections or investigations are not discriminatory, are not motivated by the fact that the provider is established in another Member State and are proportionate.

Article 32

Alert mechanism

1. Where a Member State becomes aware of serious specific acts or circumstances relating to a service activity that could cause serious damage to the health or safety of persons or to the environment in its territory or in the territory of other Member States, that Member State shall inform the Member State of establishment, the other Member States concerned and the Commission within the shortest possible period of time.

2. The Commission shall promote and take part in the operation of a European network of Member States' authorities in order to implement paragraph 1.

3. The Commission shall adopt and regularly update, in accordance with the procedure referred to in Article 40(2), detailed rules concerning the management of the network referred to in paragraph 2 of this Article.

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, in conformity with their national law, on disciplinary or administrative actions or criminal sanctions and decisions concerning insolvency or bankruptcy involving fraud taken by their competent authorities in respect of the provider which are directly relevant to the provider's competence or professional reliability. The Member State which supplies the information shall inform the provider thereof.

A request made pursuant to the first subparagraph must be duly substantiated, in particular as regards the reasons for the request for information.

2. Sanctions and actions referred to in paragraph 1 shall only be communicated if a final decision has been taken. With regard to other enforceable decisions referred to in paragraph 1, the Member State which supplies the information shall 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 paragraphs 1 and 2 must comply with rules on the provision of personal data and with rights guaranteed to persons found guilty or penalised in the Member States concerned, including by professional bodies. Any information in question which is public shall be accessible to consumers.

Article 34

Accompanying measures

1. The Commission, in cooperation with Member States, shall establish an electronic system for the exchange of information between Member States, taking into account existing information systems.

2. Member States shall, with the assistance of the Commission, take accompanying measures to facilitate the exchange of officials in charge of the implementation of mutual assistance and training of such officials, including language and computer training.

3. The Commission shall assess the need to establish a multi-annual programme in order to organise relevant exchanges of officials and training.

Article 35

Mutual assistance in the event of case-by-case derogations

1. Where a Member State intends to take a measure pursuant to Article 18, the procedure laid down in paragraphs 2 to 6 of this Article shall apply without prejudice to court proceedings, including preliminary proceedings and acts carried out in the framework of a criminal investigation.

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

The Member State of establishment 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 establishment as provided for in the second subparagraph of paragraph 2, the requesting Member State shall notify the Commission and the Member State of establishment 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 establishment are inadequate;
- (b) the reasons why it believes the measures it intends to take fulfil the conditions laid down in Article 18.

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 2, 3 and 4. In such cases, the measures shall be notified within the shortest possible period of time to the Commission and the Member State of establishment, stating the reasons for which the Member State considers that there is urgency.

Article 36

Implementing measures

In accordance with the procedure referred to in Article 40(3), the Commission shall adopt the implementing measures designed to amend non-essential elements of this Chapter by supplementing it by specifying the time-limits provided for in Articles 28 and 35. The Commission shall also adopt, in accordance with

the procedure referred to in Article 40(2), the practical arrangements for the exchange of information by electronic means between Member States, and in particular the interoperability provisions for information systems.

CHAPTER VII

CONVERGENCE PROGRAMME

Article 37

Codes of conduct at Community level

1. Member States shall, in cooperation with the Commission, take accompanying measures to encourage the drawing up at Community level, particularly by professional bodies, organisations and associations, of codes of conduct aimed at facilitating the provision of services or the establishment of a provider in another Member State, in conformity with Community law.

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

Article 38

Additional harmonisation

The Commission shall assess, by 28 December 2010 the possibility of presenting proposals for harmonisation instruments on the following subjects:

- (a) access to the activity of judicial recovery of debts;
- (b) private security services and transport of cash and valuables.

Article 39

Mutual evaluation

1. By 28 December 2009 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 schemes;
- (b) Article 15(5), on requirements to be evaluated;
- (c) Article 25(3), 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 of receipt. 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 40(1), which may make observations.

4. In the light of the observations provided for in paragraphs 2 and 3, the Commission shall, by 28 December 2010 at the latest, present a summary report to the European Parliament and to the Council, accompanied where appropriate by proposals for additional initiatives.

5. By 28 December 2009 at the latest, Member States shall present a report to the Commission on the national requirements whose application could fall under the third subparagraph of Article 16(1) and the first sentence of Article 16(3), providing reasons why they consider that the application of those requirements fulfil the criteria referred to in the third subparagraph of Article 16(1) and the first sentence of Article 16(3).

Thereafter, Member States shall transmit to the Commission any changes in their requirements, including new requirements, as referred to above, together with the reasons for them.

The Commission shall communicate the transmitted requirements to other Member States. Such transmission shall not prevent the adoption by Member States of the provisions in question. The Commission shall on an annual basis thereafter provide analyses and orientations on the application of these provisions in the context of this Directive.

Article 40

Committee procedure

1. The Commission shall be assisted by a Committee.
2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof. The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.
3. Where reference is made to this paragraph, Article 5a(1) to (4), and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

Article 41

Review clause

The Commission, by 28 December 2011 and every three years thereafter, shall present to the European Parliament and to the Council a comprehensive report on the application of this Directive. This report shall, in accordance with Article 16(4), address in particular the application of Article 16. It shall also consider

the need for additional measures for matters excluded from the scope of application of this Directive. It shall be accompanied, where appropriate, by proposals for amendment of this Directive with a view to completing the Internal Market for services.

Article 42

Amendment of Directive 98/27/EC

In the Annex to Directive 98/27/EC of the European Parliament and of the Council of 19 May 1998 on injunctions for the protection of consumers' interests ⁽¹⁾, the following point shall be added:

'13. Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ L 376, 27.12.2006, p. 36)'.

Article 43

Protection of personal data

The implementation and application of this Directive and, in particular, the provisions on supervision shall respect the rules on the protection of personal data as provided for in Directives 95/46/EC and 2002/58/EC.

CHAPTER VIII

FINAL PROVISIONS

Article 44

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 28 December 2009.

They shall forthwith communicate to the Commission the text of those measures.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

⁽¹⁾ OJ L 166, 11.6.1998, p. 51. Directive as last amended by Directive 2005/29/EC.

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 45

Entry into force

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

Article 46

Addressees

This Directive is addressed to the Member States.

Done at Strasbourg, 12 December 2006.

For the European Parliament

The President

J. BORRELL FONTELLES

For the Council

The President

M. PEKKARINEN
