

Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market

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.

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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;

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- 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

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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.

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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.