

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.

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.