

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

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.

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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<sup>(1)</sup>;
  - (b) in the electricity sector, services covered by Directive 2003/54/EC<sup>(2)</sup> 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<sup>(3)</sup>;
  - (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<sup>(4)</sup>;
- 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<sup>(5)</sup>;
- 5) the activity of judicial recovery of debts;
- 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<sup>(6)</sup> 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<sup>(7)</sup>;
  - 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<sup>(8)</sup> and by Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases<sup>(9)</sup>, 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<sup>(10)</sup>;
  - 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.

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- (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) [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](#)).
- (7) [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](#)).
- (8) [OJ L 24, 27.1.1987, p. 36](#).
- (9) [OJ L 77, 27.3.1996, p. 20](#).
- (10) [OJ L 157, 9.6.2006, p. 87](#).