

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

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.

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.

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### *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.

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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.