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*Committee on the Internal Market and Consumer Protection*

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**VERSION 3**

**PROPOSALS FOR COMPROMISE AMENDMENTS:  
ARTICLES 1, 2, 3, 16, 34, 35, 36, 37**

**tabled by Evelyne Gebhardt, Rapporteur**

**Draft report  
Evelyne Gebhardt**

Proposal for a Directive of the European parliament and of the Council on services in the internal market

Proposal for a directive (COM(2004) 0002 – C5-0069/2004 – 2004/ 00001(COD))

Amendment 1  
Article 1

**Compromise amendments on Article 1**

*Article 1*

*Subject*

1. *This Directive establishes general provisions facilitating 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 apply either to the liberalisation of services of general economic*

**based on the following amendments**

AM 430 partly (Vergnaud), 431 (Hamon), 432 (Gebhardt) , 433 (Hedh), 434 (Hughes), 435 (Rizzo), 436 partly (Matsouka)

AM 185, 187, 303 (Vergnaud), 302 ( Hedh), 437 partly (Schwab), 438 (Fourtou,

**Unofficial translation**

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*interest or to the privatisation of public entities providing such services. It is also without prejudice to Community provisions on competition and State aid.*

Jäätteenmäki, Lambsdorff), 439 (Rühle, Jonckheer, Hudghton), 440 (Vergnaud), 441 partly (Harbour and others), 442 (Manders), 443 (Harbour and others), 444 (Rühle, Jonckheer, Hudghton), 445 (Vergnaud), 446 (Fourtou, Jäätteenmäki, Lambsdorff), 447 (Hedh), 485 (Roth-Behrendt)

*3. This Directive does not affect measures taken at Community or national level to protect or promote cultural or linguistic diversity or media pluralism.*

AM 448 (Gebhardt), 449 (Fourtou, Jäätteenmäki, Lambsdorff), 450 (Rühle, Jonckheer, Hudghton), 451 (Vergnaud), 452 (Patrie), 453 (Toubon), 183 (Harbour and others), 184 (Vergnaud)

*4. This Directive is without prejudice to employment law and, in particular, to the rules governing the relations between the social partners, including the right to take industrial action and the right to collective agreements, nor shall it affect national social security legislation in the Member States.*

AM 454 (Gebhardt), 455 (Vergnaud), 456 (van den Burg), 457 (Hamon), 458 (Hedh), 459 (Hughes), 460 (Désir, Fruteau), 461 + 462 (Rizzo), 592 (Rühle, Jonckheer, Hudghton), 593 (Matsouka), 181 partly (Jäätteenmäki), 206 (De Vits)

400 partly (Malmström), 409 partly (Malmström), 51 (Gebhardt)

**Compromise amendments on  
Article 2**

*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) services of general economic interest and services of general interest, as defined by the Member States.*

*b) areas of service activities which are regulated by specific sectoral legislation at Community level.*

*c) healthcare, whether or not it is provided via healthcare facilities, and regardless of the ways in which these are organised and financed at national level or whether they are public or private.*

*d) audiovisual services, whatever their mode of production, distribution and transmission, including radio broadcasting and cinema.*

**based on the following amendments**

AM 463 (Hudghton), 464 (Hughes), 474 partly (Thyssen), 482 (Hamon), 192 (De Vits), 194 (partly, Patrie), AM 7 (Gebhardt), 8 (Gebhardt), 15 (Gebhardt), 16 (Gebhardt), 54 (Gebhardt)

AM 507 (Weiler), 508 (Medina), 509 (*van den Burg*), 510 (Vergnaud), 13 (Gebhardt), 57 (Gebhardt)

AM 523 (Toubon), 524 (partly, Zappala), 525 (Patrie), 526 (De Keyser, De Vits), 527 (partly, Svensson), 238 (Rizzo), 970 (Thyssen, Toubon), 971 (Matsouka), 972 (Rühle, Jonckheer, Hudghton), 973 (Rizzo), 379 (Thyssen, Toubon), 380 (Rizzo), 382 (Thyssen, Toubon), 385 (Thyssen, Toubon), 386 (Rizzo), 387 (Thyssen, Toubon), 388 (Rizzo), 389 (Thyssen, Toubon), 390 (Rizzo), 391 (Thyssen, Toubon), 392 (Matsouka), 393 (Rizzo), 41-46 (Gebhardt), 55 (Gebhardt), 67 (Gebhardt)

AM 538 (Toubon), AM 532 (Fourtou), 533 (Patrie), 534 (Rühle, Jonckheer, Hudghton), 535 (Szajer), 536 (Harbour and others), 537 (Désir, Fruteau), 539 (Ribeiro), 210 (Fourtou), 211 (Toubon), 212 (Désir, Fruteau), 29 (Gebhardt), 55 (Gebhardt)

*e) gambling activities which involve wagering a stake with pecuniary value in games of chance, including lotteries, casinos and betting transactions.*

AM 566 (Karas), 567 (Fourtou), 568 (Harbour and others), 569 (Vergnaud), 570 (Szajer), 571 (Ribeiro), 304 (Toubon), 305 (Fourtou), 307 (Fourtou), 308 (Toubon), 10 (Gebhardt), 29 (Gebhardt), 59 (Gebhardt)

*f) professions and activities that are permanently or temporarily linked with the exercise of public authority in a Member state, notably notaries.*

AM 499 (partly, Vergnaud), 500 (Szajer), 501 (Rühle, Jonckheer, Hudghton), 502 (Harbour and others), 503 (Lechner), 504 (Désir, Fruteau), 505 (Ribeiro e Castro), 547 (Zappala), 550 (Herczog), 202 (Harbour and others), 56 (Gebhardt)

*g) services provided by temporary employment agencies.*

AM 554 (Van den Burg), 555 (Patrie), 556 (Weiler), 557 (Rühle, Jonckheer, Hudghton), 558 (Matsouka), 492 (Hamon)

*3. This Directive does not apply in the field of taxation.*

AM 563 (Harbour and others), 564 (Coveney)

## Recitals on Article 2

### Recital a)

*This Directive shall not apply to services of general interest performed and defined by Member States in fulfilment of their obligations to protect the general interest, nor to services in the performance of which service providers are subject to particular requirements imposed by Member States or the Community regarding the proper performance of certain general interest tasks, and which comply with the criteria such as security of supply, general accessibility, universal coverage, continuity, affordability, legal certainty, sustainability, territorial and social cohesion or education and cultural diversity.*

AM 478 (Désir, Fruteau), 479 (Rizzo), 480 (Hughes), 53 (Gebhardt)

*Services of general interest are notably healthcare, social and welfare services,*

AM 480 (Hughes),

*education, audiovisual services, cultural services, postal, water, waste, electricity, gas, and environmental services.*

partly: 493 (Vergnaud), 492 (Hamon), 494 (Rizzo), 527 (Svensson), 528 (Vergnaud), 529 (Désir, Fruteau), 530 (De Keyser, De Vits), 531 (Patrie), 483 (Matsouka), 540 (Zappala), 541 (Rühle, Jonckheer, Hudghton), 542 (Doorn), 543 (Rühle, Jonckheer, Hudghton), 544 + 545 (Rühle, Jonckheer, Hudghton), 546 (De Keyser, De Vits)

**Recital b)**

*The areas of service activities which are covered by sectoral directives are notably services of a banking, credit, insurance, occupational or personal pension, investment or payment nature; electronic services and networks, and associated facilities and services; transport services; legal services.*

AM 511 (partly, Harbour and others), 512 (van den Burg), 513 (Rühle, Jonckheer, Hudghton), 514 (Vergnaud), 515 (Ribeiro e Castro), AM 547 (Zappala), 548 (Newton Dunn), 549 (Lehne), 550 (Herzog), 551 (Newton Dunn), 552 (Zappala), 553 (Hatzidakis), 204 (Zappala)

**Compromise amendments on Article 3**

*Article 3*

*Relationship with other provisions of  
Community law*

***In case of conflict between the provisions of this Directive and other Community rules regulating specific aspects of the taking up and exercise of service activities in specific areas or professions, the latter shall prevail and apply to those specific areas, including, in particular:***

***a) Directive 96/71/EC concerning the posting of workers in the framework of the provision of services;***

***b) Regulation (EEC) No 1408/71 of the European Parliament and of the Council on the coordination of social security schemes;***

***c) Council Directive 89/552/EEG 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.***

***d) Directive .../.../EC of the European Parliament and of the Council concerning recognition of professional qualifications.***

***2. This Directive is without prejudice to the rules on private international law, in particular for the handling of contractual and non-contractual obligations,***

**based on the following amendments**

AM 581 partly (Harbour and others), 579 partly (Thyssen), 584 partly (Lechner), 585 partly (Jäätteenmäki), 586 partly (Fourtou, Jäätteenmäki, Lambsdorff), 215 partly (Harbour and others), 216 partly (Lechner), 217 partly (Thyssen), 218 partly (Toubon), 220 (Vergnaud), 221 (Harbour and others), 12 (Gebhardt), 60 (Gebhardt)

AM 221 (Harbour and others), 397 (Thyssen, Toubon), 398 (Matsouka), 47-50 (Gebhardt), 119 (Gebhardt), 120 (Gebhardt)

AM 222 (Harbour and others), 223 (Fourtou, Jäätteenmäki, Lambsdorff)

AM 224 (Fourtou, Jäätteenmäki, Lambsdorff), 225 (Harbour and others), 226 (Lambsdorff)

AM 589 (Harbour and others), grouping together AM 472 (Vergnaud), 583 partly (Rühle, Jonckheer, Hudghton), 587 partly Désir, Fruteau), 588 partly (Fourtou, Jäätteenmäki,

*including the form of agreements (Rome I and Rome II);*

Lambsdorff, Malmström, Wallis), 229 (van den Burg, De Vits), 230 (Vergnaud), 366 (Harbour and others), 367 (Thyssen), 368 (Harbour and others), 369 (Matsouka), 372 (Rizzo)

***Recital to Article 3***

*This Directive applies only in so far as there are no specific Community rules regulating specific aspects of the taking up and exercise of service activities in specific areas or professions.*

**Compromise amendments on Article 16**

**based on the following amendments**

*Principles governing the cross-border  
provision of services*

*1. As regards the taking up of the activity of a service, including requirements concerning qualifications, authorisations or notifications necessary to lawfully provide the services in a Member State other than the Member State of primary establishment, service providers shall comply with the national provisions of the Member State of primary establishment.*

*As regards the pursuit of the activity of a service, including requirements regarding the promotion, sales, provision and quality of services, as well as the behaviour of the service provider, in a Member State other than the Member State of primary establishment, service providers shall comply with the national provisions of the Member State where the service is provided.*

*2. Paragraph 1 shall apply to business services and to those services which are performed both in commercial transactions and for consumers.*

*3. The Member State where the service is provided shall be mainly responsible for supervising the provider and the services provided by him, in accordance with the requirements of mutual assistance and close cooperation with the Member State of establishment, as provided in this Directive.*



*4. Member States may continue to apply national provisions to the taking up of an activity of a service which are more restrictive or prescriptive than the rules from the Member State of primary establishment, in so far as these measures are applied in a non-discriminatory manner and are justified by reasons of general interest, such as social policy, consumer protection, environmental protection, public security, public health or public policy. These measures must also be suitable for securing the attainment of the objective which they pursue and they must not go beyond what is necessary to attain it. .*

*Member State shall notify the Commission without delay of any national provisions applied on the basis of paragraph 4.*

*5. [By two years after the entry into force] of this Directive, the Commission, after consulting the European Parliament and the Council, shall examine the necessary harmonisation measures regarding the rules regulating the taking up and pursuit of a service activity.*

Amendment 5  
Replacing Article 43

#### Review clause

*[By three years after the entry into force] of this Directive, the Commission shall submit to the European Parliament and the Council a comprehensive report on the application of this Directive, in particular of its scope, the application of Article 16, on the scope for further harmonisation of Community law relating to the taking up and pursuit of*

*a service activity or to specific service sectors, and on any measures that need to be taken at Community level to ensure that appropriate levels of consumer and social protection are maintained. The report shall be accompanied by a proposal to revise this Directive and by further harmonisation measures.*

*2. The European Parliament and the Council shall endeavour to act, in accordance with the Treaty, within two years of the presentation by the Commission of any proposal submitted under paragraph 1.*

Amendment 6  
Chapter V

**Chapter V: Administrative Cooperation (am. 1084 PPE-DE)**

Amendment 7  
Article 34

<b>Compromise amendments on Article 34</b>	<b>based on the following amendments</b>
<i>1. Member States shall ensure that the powers of monitoring and supervision provided for in national law in respect of the service provider are also exercised where a service is provided in another Member State.</i>	1085 (ALDE)
<i>2 Paragraph 1 does not oblige the Member State of primary establishment to carry out factual checks and controls in the territory of the Member State where the service is provided.</i>	1092 ALDE
<i>3 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 objectively justified and non discriminatory.</i>	1093 ALDE

Amendment 8  
Article 35

<b>Compromise amendments on Article 35</b>	<b>based on the following amendments</b>
<i>1. Member States shall give each other mutual assistance and shall put in place all possible measures for effective cooperation with one another in order to ensure the supervision of providers and the services they provide.</i>	1094 Thyssen
<i>2. The Member State where the service is provided is responsible for the supervision of the service provider and the services provided in its territory, in conformity with paragraphs 2 and 3.</i>	1095 EPP-ED
<i>3. The Member State where the service is provided :</i>  <i>- shall take any measure necessary to ensure that service providers comply with its national law as regards the pursuit of a service activity in its territory and where Article 16 paragraph 4 applies.</i>  <i>- shall carry out in its territory checks, inspections and investigations which are necessary to supervise the service provided;</i>  <i>- shall carry out checks, inspections and investigations when they are requested by the Member State of primary establishment;</i>	1096 EPP-ED
<i>4. 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.</i>	1097 (EPP-ED)
<i>5. Upon becoming aware of any unlawful conduct by a provider, or of specific acts, that are likely to cause serious damage in a Member State, Member States shall inform</i>	1098 (Heaton-Harris)

*the Member State of primary establishment, within the shortest possible period of time.*

*6. If the Member State where the service is provided, having carried out checks, inspections and investigations according to Paragraph 2, finds that a service provider did not comply with his obligations, he can oblige the service provider to deposit a security or impose intermediary measures on the service provider.*

1100 (EPP-ED)

Amendment 9  
Article 36

**Compromise amendments on Article 36**

**based on the following amendments**

*1. The Member State of primary establishment is responsible for the supervision of the service provider in its territory, in particular through supervisory measures at the place of establishment of the service provider and in conformity with paragraph 2.*

1104 (EPP-ED)

*2. The Member State of primary establishment:*

1105 (EPP-ED)

*- 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.*

*- shall supply information on providers established in its territory when requested to do so by another Member State and in particular confirmation that a service provider is established in its territory and exercising his activities in a lawful manner.*

*3. The Member state of primary establishment cannot refuse to take supervisory or enforcement measures in its territory on the ground that the service has been provided [or created damages] in another Member State.*

1110 (EPP-ED)

Amendment 10  
Article 37  
(Amendement 1111 EPP-ED)

**Compromise amendments on Article 37**

*Alert mechanism*

*1. A Member State becoming aware of serious specific acts or circumstances that are likely to cause serious damage to the health or safety of persons in its territory or in other Member States, shall inform the Member State of primary 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 the authorities of the Member States in order to implement paragraph 1.*

*3. The Commission shall prepare and regularly update, in accordance with the procedure laid down in Article 42, guidelines concerning the management of the network referred to in paragraph 1.*

**based on the following amendments**