

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

CHAPTER I **U.K.**

**GENERAL PROVISIONS**

*Article 1* **U.K.**

**Subject matter**

1 This Directive establishes general provisions facilitating the 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 deal with the liberalisation of services of general economic interest, reserved to public or private entities, nor with the privatisation of public entities providing services.

3 This Directive does not deal with the abolition of monopolies providing services nor with aids granted by Member States which are covered by Community rules on competition.

This Directive does not affect the freedom of Member States to define, in conformity with Community law, what they consider to be services of general economic interest, how those services should be organised and financed, in compliance with the State aid rules, and what specific obligations they should be subject to.

4 This Directive does not affect measures taken at Community level or at national level, in conformity with Community law, to protect or promote cultural or linguistic diversity or media pluralism.

5 This Directive does not affect Member States' rules of criminal law. However, Member States may not restrict the freedom to provide services by applying criminal law provisions which specifically regulate or affect access to or exercise of a service activity in circumvention of the rules laid down in this Directive.

6 This Directive does not affect labour law, that is any legal or contractual provision concerning employment conditions, working conditions, including health and safety at work and the relationship between employers and workers, which Member States apply in accordance with national law which respects Community law. Equally, this Directive does not affect the social security legislation of the Member States.

7 This Directive does not affect the exercise of fundamental rights as recognised in the Member States and by Community law. Nor does it affect the right to negotiate, conclude and enforce collective agreements and to take industrial action in accordance with national law and practices which respect Community law.

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## Article 2 **U.K.**

### 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 non-economic services of general interest;
  - b financial services, such as banking, credit, insurance and re-insurance, occupational or personal pensions, securities, investment funds, payment and investment advice, including the services listed in Annex I to Directive 2006/48/EC;
  - c electronic communications services and networks, and associated facilities and services, with respect to matters covered by Directives 2002/19/EC, 2002/20/EC, 2002/21/EC, 2002/22/EC and 2002/58/EC;
  - d services in the field of transport, including port services, falling within the scope of Title V of the Treaty;
  - e services of temporary work agencies;
  - f healthcare services whether or not they are provided via healthcare facilities, and regardless of the ways in which they are organised and financed at national level or whether they are public or private;
  - g audiovisual services, including cinematographic services, whatever their mode of production, distribution and transmission, and radio broadcasting;
  - h gambling activities which involve wagering a stake with pecuniary value in games of chance, including lotteries, gambling in casinos and betting transactions;
  - i activities which are connected with the exercise of official authority as set out in Article 45 of the Treaty;
  - j social services relating to social housing, childcare and support of families and persons permanently or temporarily in need which are provided by the State, by providers mandated by the State or by charities recognised as such by the State;
  - k private security services;
  - l services provided by notaries and bailiffs, who are appointed by an official act of government.
- 3 This Directive shall not apply to the field of taxation.

## Article 3 **U.K.**

### Relationship with other provisions of Community law

- 1 If the provisions of this Directive conflict with a provision of another Community act governing specific aspects of access to or exercise of a service activity in specific sectors or for specific professions, the provision of the other Community act shall prevail and shall apply to those specific sectors or professions. These include:
  - a Directive 96/71/EC;
  - b Regulation (EEC) No 1408/71;
  - c Council Directive 89/552/EEC 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<sup>(1)</sup>;

d Directive 2005/36/EC.

2 This Directive does not concern rules of private international law, in particular rules governing the law applicable to contractual and non contractual obligations, including those which guarantee that consumers benefit from the protection granted to them by the consumer protection rules laid down in the consumer legislation in force in their Member State.

3 Member States shall apply the provisions of this Directive in compliance with the rules of the Treaty on the right of establishment and the free movement of services.

Article 4 **U.K.**

**Definitions**

For the purposes of this Directive, the following definitions shall apply:

- 1) ‘service’ means any self-employed economic activity, normally provided for remuneration, as referred to in Article 50 of the Treaty;
- 2) ‘provider’ means any natural person who is a national of a Member State, or any legal person as referred to in Article 48 of the Treaty and established in a Member State, who offers or provides a service;
- 3) ‘recipient’ means any natural person who is a national of a Member State or who benefits from rights conferred upon him by Community acts, or any legal person as referred to in Article 48 of the Treaty and established in a Member State, who, for professional or non-professional purposes, uses, or wishes to use, a service;
- 4) ‘Member State of establishment’ means the Member State in whose territory the provider of the service concerned is established;
- 5) ‘establishment’ means the actual pursuit of an economic activity, as referred to in Article 43 of the Treaty, by the provider for an indefinite period and through a stable infrastructure from where the business of providing services is actually carried out;
- 6) ‘authorisation scheme’ means any procedure under which a provider or recipient is in effect required to take steps in order to obtain from a competent authority a formal decision, or an implied decision, concerning access to a service activity or the exercise thereof;
- 7) ‘requirement’ means any obligation, prohibition, condition or limit provided for in the laws, regulations or administrative provisions of the Member States or in consequence of case-law, administrative practice, the rules of professional bodies, or the collective rules of professional associations or other professional organisations, adopted in the exercise of their legal autonomy; rules laid down in collective agreements negotiated by the social partners shall not as such be seen as requirements within the meaning of this Directive;
- 8) ‘overriding reasons relating to the public interest’ means reasons recognised as such in the case law of the Court of Justice, including the following grounds: public policy; public security; public safety; public health; preserving the financial equilibrium of the social security system; the protection of consumers, recipients of services and workers; fairness of trade transactions; combating fraud; the protection of the environment and the urban environment; the health of animals; intellectual property; the conservation of the national historic and artistic heritage; social policy objectives and cultural policy objectives;

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- 9) ‘competent authority’ means any body or authority which has a supervisory or regulatory role in a Member State in relation to service activities, including, in particular, administrative authorities, including courts acting as such, professional bodies, and those professional associations or other professional organisations which, in the exercise of their legal autonomy, regulate in a collective manner access to service activities or the exercise thereof;
- 10) ‘Member State where the service is provided’ means the Member State where the service is supplied by a provider established in another Member State;
- 11) ‘regulated profession’ means a professional activity or a group of professional activities as referred to in Article 3(1)(a) of Directive 2005/36/EC;
- 12) ‘commercial communication’ means any form of communication designed to promote, directly or indirectly, the goods, services or image of an undertaking, organisation or person engaged in commercial, industrial or craft activity or practising a regulated profession. The following do not in themselves constitute commercial communications:
- (a) information enabling direct access to the activity of the undertaking, organisation or person, including in particular a domain name or an electronic-mailing address;
  - (b) communications relating to the goods, services or image of the undertaking, organisation or person, compiled in an independent manner, particularly when provided for no financial consideration.

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- (1) [OJ L 298, 17.10.1989, p. 23](#). Directive as amended by Directive 97/36/EC of the European Parliament and of the Council ([OJ L 202, 30.7.1997, p. 60](#)).