APPENDICES TO THESIS

APPENDIX 1: List of Interviewees for thesis research

Date and Place	***Position/Function***
13 December 2006 (Strasbourg)	PES[1] Secretariat – European Parliament
13 December 2006 (Strasbourg)	MEP (ALDE[2]) - Member of IMCO committee
14 December 2006 (Strasbourg)	MEP (EPP/ED[3]) – Member of IMCO committee
15 December (Brussels)	European Commission – Functionary in DG Markt (Internal Market and Services) – Services Unit
15 December 2006 (Brussels)	Cabinet Commissioner McCreevy; Unit Services & Unit Post - Relations EP
1 March 2007 (Oxford)	Former Commissioner Internal Market
2 March 2007 (telephone)	MEP (PES) – Member of IMCO committee
6 April 2007 (Amsterdam)	Former Commissioner Internal Market
11 February 2008 (Brussels)	MEP (EPP-ED) - Member of TRAN committee
29 October 2009 (Telephone)	Regulation Strategy Vice President, Deutsche Post AG
30 October 2009 (London)	Head of Multilateral ICT Policy at the Department for Business, Innovation, and Skills
16 November 2009 (Brussels)	Belgian Post (La Poste) – Director Regulatory Affairs. (Also: Chairman of PostEurop's Postal Directive Working Group).
16 November 2009 (Brussels)	Belgian Post (La Poste) – Director Strategy & Regulatory Affairs
16 November 2009 (Brussels)	European Commission – Functionary in DG Markt – Postal Unit
17 November 2009 (Brussels)	MEP (PES) – Shadow Rapporteur Postal directive
18 November 2009 (Brussels)	TNT/TNT Post - Head of EU affairs (Also: Vice-chairman of PostEurop's Postal Directive Working Group)
19 November 2009 (Brussels)	UNI Post (Brussels) – Policy Officer
19 November 2009 (Brussels)	PES Secretariat -Former political advisor S&D Transport
1 December 2009 (Telephone)	MEP (ECR[4]) and former Cabinet member Bolkestein
8 December 2009 (Telephone)	French Post (La Poste) - Directeur de la Stratégie, des Études et des Projets
16 December 2009 (Telephone)	MEP (ALDE) - Member of TRAN Committee

1 Party of European Socialists (since 2009 the Progressive Alliance of Socialists and Democrats (S&D))
2 Alliance of Liberals and Democrats for Europe
3 European People's Party / European Democrats (since 2009 only European People's Party (EPP))
4 European Conservatives and Reformists Group

09 February 2010 (Brussels)	E.ON AG Brussels – Regulatory Affairs Manager
09 February 2010 (Brussels)	E.ON AG Brussels – Head of EU Representative Office of E.ON AG Brussels
09 February 2010 (Brussels)	Senior Advisor of Market Committee – ENTSO-E
09 February 2010 (Brussels)	BDEW German Association of Energy- and Water Industries Brussels – Adviser Energy Politics
10 February 2010 (Brussels)	European Commission – Policy Co-ordinator, Electricity and Gas in DG TREN (Transport and Energy)
11 February 2010 (Brussels)	German Permanent Representation – Energy Counsellor
12 February 2010 (Luxembourg)	European Court of Justice (Luxembourg) – Judge
15 February 2010 (Brussels)	Deputy Director Business Europe
16 February 2010 (Brussels)	MEP (ALDE)- Member of TRAN Committee
17 February 2010 (Brussels)	MEP (EPP-ED) - Member ITRE Committee
17 February 2010 (Brussels)	EDF – Head of EU Representative Office of EDG in Brussels
17 February 2010 (Brussels)	European commission - General Coordinator for the Third Internal Energy Market Legislative Package in DG TREN
18 February 2010 (Brussels)	French Permanent Representation – Energy Counsellor
18 February 2010 (Brussels)	UK Permanent Representation - Energy Counsellor
19 February 2010 (The Hague)	EnergieNed - Manager Public Affairs
23 February 2010 (Brussels)	European Commission – Deputy Head of Unit in DG TREN (former member of cabinet of former Energy Commissioner Piebalgs (‘04-’10))
23 February 2010 (Brussels)	RWE - Senior Manager EU Affairs
23 February 2010 (Brussels)	RWE – Officer EU Affairs
02 March 2010 (Telephone)	Rapporteur 3rd Postal Directive - MEP (EPP-ED)
29 November 2010 (Brussels)	NHS European Office - Director
29 November 2010 (Brussels)	Observatoire Social Européen - Senior Policy Analyst
29 November 2010 (Brussels)	French Permanent Representation – Health Counsellor
30 November 2010 (Brussels)	UK Permanent Representation – Health Counsellor
30 November 2010 (Brussels)	Dutch Permanent Representation – Health Counsellor
30 November 2010 (Brussels)	Swedish Permanent Representation – Health Counsellor
1 December 2010 (Brussels)	European Commission - Director DG SANCO (Health and Consumer Policy)

2 December 2010 (Brussels)	Spanish Permanent Representation – Health Counsellor
9 December 2010 (Telephone)	Union Européenne de l'Hospitalisation Privée – General delegate
12 January 2011 (London)	Former MEP (EPP-ED) and former rapporteur Patient Mobility Directive
6 April 2011 (Telephone)	Rapporteur 3rd Electricity Directive – MEP (PES)

APPENDIX 2: Postal Liberalisation

TABLE 1. Overview of status quo, draft Commission proposal and final directive 2008/6/EC

Articles[5]	*Status quo ('97 &'02 Directives)*	*Initial Commission draft proposal*	*Final directive as published in OJ*[6]
Arts. 3 & 6 *guarantee of universal service*	Through ex-ante designation of universal service provider(s)	Requires MS[7] to take steps to ensure universal service (alternatives to appointing universal service provider)	Excludes reference to the duty of NRA's to determine 'exceptional geographical conditions'. Inclusion of Art. 3(5) and (6) on details universal service.
Art. 4 *guarantee of universal service*	Through ex-ante designation of universal service provider(s)	Added Art. 4(2): MS may choose to designate one of more undertakings as universal service providers	Accepted
Art. 7 *reserved area*	Specified the reserved area for Universal Service providers (weight limit of 50 grams) and other services to the extent necessary to ensure the provision of universal service.	Prohibits MS to grant or maintain exclusive and special rights in postal sector.	Accepted (Art. 26 allows derogations for 11 MS by extending the deadline)
financing universal service	Reserved area (to the extent necessary, may keep direct mail and outgoing cross-border mail under reserved area). Compensation fund (Art. 9).	Alternatives to reserved area: public compensation through state subsidies, through public procurement procedures and compensation fund (allows for net cost sharing of users and/or providers of universal service).	Accepted and complemented by the directive's Annex 1(on quality standards for intra-Community cross-border mail).
date of implementa-tion	Includes sunset clause (i.e. foresees full market opening by 2009)	Directive proposed: 1 January 2009	Deleted and falls under Art. 24 (deadline Dec. 2010) and Art. 26 (deadline Dec. 2012)
Art. 9 *authorisation and licensing*	Permits authorisation and licensing for non-reserved services in- and outside scope of the universal service. Allows granting of authorisation to be subject to: (a) universal service obligations, (b) quality and performance requirements, (c) obligation not to infringe on the exclusive rights of universal service providers.	Reduce unjustified barriers. Specified unjustified authorisation procedures so as to harmonize conditions.	Art 9(2) second third indent more specific on when financial contribution may be asked for. An important change was the inclusion of the social chapter (asked for by PES)
Art. 11 *quality of service*	Ensure access to postal service under conditions that are transparent and non-discriminatory	Add 11(a): MS should ensure equal access conditions to elements of the postal infrastructure	Accepted
Art. 12	The tariffs of universal service	Specified application uniform	Adds Art 12 (fifth

[5] The numbers correspond to the Article numbers used in the final directive 2008/6/EC.

[6] Please note that 'Added' implies that the proposed Commission's draft Article was adopted and that the Parliament and/or Council added more information.

[7] MS means: Member States.

costs of universal service	services should be affordable, cost oriented, access to all. Uniform tariff may be applied to some universal services (i.e. not necessarily cost oriented).	tariff. Encouraged to apply to single piece mail (mail mostly used by SME's) or when legitimate public interest at stake.	indent): tariffs should be available in particular to SME's
Arts. 12 & 14 *fair competition*	Art 12 (sixth indent) prohibits cross-subsidisation. Art. 14 specified accounting costs of universal service.	Allowed for cross-subsidisation by deleting Art 12(sixth indent). Art. 14 removed reserved area. Cost accounting is not necessary in absence of financing mechanisms	Added Art 14 (3(iv)): 'common costs'
Arts. 19, 22, 22(a) *consumer protection*	MS ensure transparent, simple, inexpensive procedures for user's complaints and ***may*** apply this to both universal and non-universal services.	MS shall encourage the development of independent *out of court schemes* for resolution of disputes between consumers and all postal service providers (more binding and specific measure)	Added Art 19 (1): postal service complaint procedures are necessary for all, without prejudice to compensation schemes.
Arts. 22 & 22(a) *NRA's*	'97 states the need for NRAs and '02 (through amendment) slightly enhanced its powers (establish controls and procedures)	Structural separation regulatory functions and ownership/control of postal operator; transparency allocation regulatory functions and enhanced cooperation NRAs; confirmed right to appeal against NRAs. Art.22(a): empowered NRAs to collect information.	Added Art 22a(3) & (4) on information provision of NRAs to European Commission and confidentiality of information agreement.
Arts. *on implemen-tation*	Sunset clause Art. 27: provisions would expire on 31 Dec. 2008 resulting in full liberalisation by 2009.	Deadline proposed: 31 December 2008.	Deadline 31 December 2010. Added Art. 26 (derogations for 11 MS); deadline 31 December 2012. Allowed for refusal to grant authorisation by those without reserved areas to postal providers with reserved areas. Added Art 23(a): Commission provides MS with assistance on implementation and calculation net cost universal service
Art. 23	Commission would provide the Parliament and the Council every *two* years with report on application of Directive	Commission would provide the Parliament and the Council every *three* years with a report on application of Directive	Commission would provide the Parliament and the Council every *four* years with report on application of Directive

Sources: Proposal amending Directive 97/67/EC concerning the full accomplishment of the internal market of community postal services, Brussels 18.10.2006, COM(2006) 594 final, 2006/0196 (COD); Consolidated version of the Postal Directive (working tool of DG MARKT); Directive 2008/6/EC of 20 February 2008 amending Directive 97/67/EC with regard to the full accomplishment of the internal market of Community postal services, OJ L52/3, 27.2.2008;Directive 2002/39/EC of June 2002 amending Directive 97/67/EC with regard to the further opening to competition of Community postal services, OJ L 176/21, 05.07.2002; Directive 97/67/EC of15 December 1997 on common rules for the development of the internal market of community postal services and the improvement of quality of service, OJ L15/14, 21.01.1998.

TABLE 2. Overview of activities undertaken by the European Commission (DG Markt) against Member States to ensure transposition of postal service legislation[8].

Country	*Date*	*Content*
Belgium	30 July 2001 – IP/ 01/1139	Formal request to Belgium to amend the way it has implemented Directive 97/67/EC on postal services. Belgium must ensure that the national postal regulator is fully independent from the public postal operators.
France	23 October 2001- IP/01/1476	Commission adopted a Decision on the monitoring of relations between La Poste and mail-preparation firms in France, fearing abuse of dominant position of La Poste.
France	26 June 2002 – IP/02/932	Formal request sent to France to ensure that the national regulatory authority for the postal sector is independent of the public postal operator.
France, Greece, Austria	14 July 2003 – IP/03/1005	Commission sent a reasoned opinion to Austria, France and Greece for failing to implement the 2nd Postal Directive (2002/39/EC) by the agreed date of 31 December 2002.
France	17 Dec. 2003 – IP/03/1754	Commission refers France to the ECJ to ensure it fully implements the two EU postal services Directive.
Estonia	3 Aug. 2005 – IP/05/1037	Commission adopted a reasoned opinion addressed to Estonian national authorities following their failure to transpose on time Directive 2002/39/EC on the further opening to competition of the Community postal services.
Greece	8 Oct. 2009 - IP/09/1477	Commission refers Greece to ECJ over its national legislation that imposes additional burdens and obligations on operators providing courier, parcel and mail services.

Source: http://ec.europa.eu/internal_market/post/infringements_archive_en.htm [last accessed 28 November 2009].

[8] This table provides an overview of cases and is not meant to be exhaustive.

TABLE 3. Overview of activities undertaken by the European commission (DG Competition) against Member States and/or companies to ensure compliance with state aid, competition and anti-trust legislation[9].

Complaint against	*Date*	*Content*
Deutsche Post AG	20 March 2001	Commission fines Deutsche Post 24 million euro's for abuse of dominant position in a case brought to the Court by UPS in 1994.
Deutsche Post AG	25 July 2001	Commission imposed a symbolic fine of 1000 euro's on Deutsche Post AG for abuse of dominant position.
Belgium	30 July 2001	Reasoned opinion addressed to Belgian authorities. The Commission requested a change in the way Belgium had implemented directive 97/67/EC in national law.
La Poste (Belgium)	05 December 2001	Commission fines Belgian postal operator La Poste 2,5 million euro's for abusing its dominant position.
Deutsche Post World Net	19 June 2002	Commission orders Deutsche Post World Net (DPWN) to repay 572 million euro's of unlawful state aid to the German government.
Germany	22 October 2002	Commission starts infringement procedure against Germany for contravening EU competition rules in the area of mail preparation services.
Poczta Polska	30 June 2005	Formal investigation by the Commission on the compensation for the incumbent Polish Postal Operator for providing universal postal service (i.e. receipt overcompensation or not).
Poste Italiane	22 November 2006	Commission opened a formal investigation under the state aid rule into the remuneration paid to Poste Italiane for the distribution of postal bonds.
Slovakia	7 October 2008	Commission requests Slovakia to re-open competition in the hybrid mail sector. The recent amendments to Slovakia's postal legislation infringe EC Treaty rules on dominant market positions (Art.82) in conjunction with Art. 86.

Source: FFPI website: http://www.freefairpost.com/others/news_ffpi.htm [last accessed 2 October 2009]

[9] This table provides an overview. This means this list is not meant to be exhaustive.

TABLE 4. Overview of the amendments proposed by MEPs to widen the grounds for prior authorization (Art. 9)

Political Party	*Nature of Amendments*	*MEPs proposing the amendments*
Amendments tabled by ALDE, EPP-ED and PES MEPs	To widen the services which apply to be subjected to authorisation (Art.9(2))	This was proposed through amendments: 254 by Luigi Cocilovo (ALDE) & Paolo Costa (ALDE); amendment 255 by Gabriele Albertini (EPP-ED), Armando Veneto (EPP-ED), Jas Gawronski (EPP-ED); amendment 256 by Vincenzo Lavarra (PES) & Marta Vincenzi (PES); amendment 258 by Etelka Barsi-Pataky (EPP-ED); amendment 259 by Leopold Jozef Rutowicz (Union for Europe of the Nations), Sylwester Chruszcz (Union for Europe of the Nations), Michał Tomasz Kamieński (European Conservatives and Reformists); amendment 260 by Nikolaos Sifunakis (PES).
Amendments tabled by EPP-ED and PES MEPs.	To include additional grounds to justify the requirement of authorisation amending Art. 9(2(3)).	This was proposed through amendment 289 by Dominique Vlasto, Mathieu Grosch (EPP-ED) and reads: where appropriate, be subject to social obligations under conditions to be laid down by legislation or negotiation between the social partners. Amendment 290 by Eva Lichtenberger (Greens) and Amendment 291 by Said El Khadraoui (PES) are similar and reads: be subject to an obligation to offer its staff the rights that previously engaged staff would have enjoyed.
Amendments tabled by ALDE, EPP-ED and PES MEPs	To weaken Art. 9(2(3)) which outlines those instances under which authorisations cannot be demanded.	This was demanded in amendment 293 by Eva Lichtenberger (Greens); amendment 294 by Luigi Cocilovo (ALDE) and Paolo Costa (ALDE); amendment 295 by Alessandro Battilocchio (PES); amendment 296 by Gabriele Albertini (EPP-ED), Armando Veneto (EPP-ED), and Jas Gawronski (EPP-ED); amendment 297 by Vincenzo Lavarra (PES) and Marta Vincenzi (PES).

Source: http://www.europarl.europa.eu/meetdocs/2004_2009/documents/am/664/664496/664496en.pdf [last accessed : 27 July 2011].

TABLE 5. Overview of the most significant amendments made by Parliament during 1st reading and their impact on the shape of the final directive.

Articles	*Amendments proposed*	*Adopted/Rejected/Other*
Art. 7(2)	Each Member State shall ensure that the financing of the universal service is guaranteed at all times in a fully liberalised postal market. Each Member State shall notify the Commission of the steps it intends to take in order to fulfil this obligation.	Removal of direct Member State obligation to ensure the financing of the universal service.
New Art. 7(a)	To the extent necessary for ensuring the maintenance of the universal service, Member States that have acceded to the EU after the entry into force of Directive 2002/39/EC* or Member States with a small population and a limited geographical size,… or with a particularly difficult topography,… may continue, until 31 December 2012, to reserve services to universal service provider(s) within three conditions and limits set.	Adopted in Directive 2008/6/EC: new recital 31.
Art. 9(2)	Added: 'and for services considered to be possible substitute; even where they to some extent overlap with universal service obligations'. These Parliamentary amendments would have widened grounds for authorization.	Removed: maintained grounds for authorization as proposed by Commission.
Art. 9(5)	Member States shall request all operators to fully respect the labour laws to which they are subject 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, Member States shall request the selected operator to fully respect the social security legislation to which it is subject and collective agreements concluded between social partners.	Removed. Alternative Art. 9(2): where appropriate, be made subject to or impose an obligation to respect working conditions laid down by national legislation.
Art. 11(b)	This Directive is without prejudice ***to relevant national provisions on*** the protection of personal data, and without prejudice to the rights of Member States to adopt measures to ensure, where appropriate, access to the postal network of universal service providers or other elements of the postal infrastructure under conditions of transparency and non-discrimination.	Removed (argued not to be essential; already been adequately addressed by recital 35).
Art. 12	Member States shall publish the rules and criteria for ensuring affordability at national level. National regulatory authorities shall monitor all price changes and shall publish regular reports.	Removed
Art. 23	A separate report on general employment trends in the sector and on the working conditions applied by all operators in every Member State shall be submitted no later than three years from the date of the opening up of the market to competition. The report shall also give an account of measures adopted through legislation or negotiation between the social partners. If the report reveals distortions of competition, it shall, if appropriate, also make proposals.	Removed. This amendment would have enhanced Commission influence through enhanced delegation.
New Art. 23(a)	The Commission shall provide assistance to the Member States on the implementation of this Directive, including guidance on the calculation of any net cost, before 1 January 2009. Member States shall present to the Commission their financing plans as referred to in Article 7(4) and may present studies.	Removed. Alterative: Annex 1 on net cost calculation (This is not binding; the Commission is still allowed to provide guidelines).

Source: http://www.europarl.europa.eu/oeil/FindByProcnum.do?lang=en&procnum=COD/2006/0196 [last accessed 27 July 2011].

APPENDIX 3: Electricity Market Liberalisation

TABLE 1. Overview of the European Commission's observations regarding failures within the electricity market per country

Member State	*Observation*
Austria	- Insufficient competences of the regulators in relation to the directives, in particular with respect to the possibilities to file complaints to the regulator - Preferential access for certain historical contracts in the market of electricity and gas - Absence of some regional laws
Belgium	- Discriminatory system of third party access to the transmission and distribution systems and the insufficient transparency of the connection tariffs - Exemption of regulation for certain new investments
Czech Republic	- Absence of, or insufficient legal unbundling of transmission and distribution system operators in order to guarantee their independence - Absence of the notification of the public service obligations - Preferential access for certain historical contracts in the market of electricity and gas
Estonia	- Absence of independence of the transmission system operator and distribution system m operator in the management - Insufficient competences of the regulators in relation to the management ad allocation of interconnection capacity - Existence of regulated prices which block arrival of new suppliers - Absence of the notification of the public service obligations
Finland	Absence of, or insufficient functional unbundling of t and distribution system operators in order to guarantee their independence
France	- Absence of, or insufficient legal unbundling distribution system operators in order to guarantee their independence - Existence of regulated prices which block the arrival of new suppliers - Absence of the notification of the public service obligations - Preferential access for certain l contracts in the market of electricity
Germany	- Absence of the notification of public service obligations - Preferential access for certain historical contracts in the market of electricity
Greece	- Absence of, or insufficient legal and management unbundling of transmission and distribution system operators in order to guarantee their independence - absence of the notification of the public service obligations
Ireland	- Absence of the notification of the public service obligations - Absence of legal unbundling TSO - Regulated prices
Italy	- Absence of /or insufficient unbundling of distribution system operators in order to guarantee their independence - Existence of regulated prices which block the arrival of new suppliers - Preferential access for certain historical contracts in the market of electricity and gas
Latvia	- Existence of regulated prices which block the arrival of new suppliers - Absence of the notification of the public service obligations
Lithuania	- Delay in the entry into force of legal unbundling of transmission and distribution system operators - Absence of the notification of the public service obligations
Poland	- Absence of, or insufficient legal unbundling of and distribution system operators in order to guarantee their independence - Absence of the notification of the public service obligations - Preferential access for certain historical contracts in the market of electricity - No labelling provisions in national legislation
Slovakia	- Absence of, or insufficient legal unbundling of transmission and distribution system operators in order to guarantee their independence - Absence of the notification of the public service obligations - Preferential access for certain contracts in the market of Electricity
Spain	Existence of regulated prices which block the arrival of new suppliers.
Sweden	- Absence of, or insufficient functional unbundling of and distribution system operators in order to guarantee their independence

	- Insufficient competences of the regulators in relation to the directives, in particular for fixing the tariffs of access to the networks
United Kingdom	Preferential access for certain historical contracts in the market of Electricity

Source: Memo DG TREN, *'Infringement procedures opened in the gas and electricity market sector, by Member State'*, MEMO/06/152, Brussels 4 April 2006.

TABLE 2. Overview of problems in internal electricity market and the Commission's proposed solutions

Main remaining problems internal electricity market	*Proposed solutions by the Commission*
1. Market concentration (concentration in generation)	1. Through legislation: ownership unbundling & ISO option; authorization. Paired with enhanced application competition law.
2. Vertical foreclosure	2. Ownership unbundling & ISO option.
3. Lack of market integration (lack interconnection capacity; diverging market models)	3. Creation of European Networks of Transmission System Operators for electricity (ENTSO-E); enhanced power NRAs; establishment ACER.
4. Lack of transparency (problems in information on capacity of networks)	4. Requirement for transparency and record keeping (enables NRA to better monitor market)
5. Distrust in price formation mechanisms (unclear how prices are formed)	5. ACER as supervisory body, able to issue guidelines. NRA enhanced power.

Source: Herbert Smith LLP Energy e-bulletin, 'The EUs Third Energy Package: Tighter control over Europe's transmission network business', 12 May 2009; Herbert Smith LLP Energy e-bulletin, 'European Commission adopts draft Third Energy Package', 26 September 2007; Herbert Smith LLP EU, Competition and regulation e-bulletin, 'Energy Sector Inquiry – Final Report', 18 January 2007.

TABLE 3. Overview of status quo, draft Commission proposal and final directive 2009/72/EC

Articles[10]	*Status quo (Directive 2003/54/EC)*	*Initial Commission draft proposal*	*Final directive as published in OJ*[11]
Art. 3 *public service obligation and customer protection*	Defined public service obligations and customer protection	Commission may adopt guidelines for implementation of this Article.	Added: Parliamentary amendments on consumer rights (new Articles 4, 5, 12, 13,16) and amending old Art 3(5) (now Art. 3(7))
Art. 5 *technical rules*	MS ensure that technical rules are defined and notified to Commission	No changes proposed	Added (weakened EP amendment): Agency may make recommendation towards compatibility of technical rules
New Art. 6 *promotion of regional cooperation*	No provisions on regional cooperation	MS should cooperate and promote cooperation	Added Parliament: Agency shall cooperate with NRA to ensure compatibility of regulatory frameworks. Added Council: MS check that TSOs have one or more integrated system at regional level (Art. 6(3)); vertically integrated TSOs should establish a compliance program (Art. 6(4)).
Art. 7 *authorization procedure for new capacity*	Outlined criteria allowed for MS to consider before granting authorisation for construction of new generating capacity (ex. Art. 6)	No changes proposed	Added by Parliament: commitment to 2020 goals and reduction of emissions
Art. 8(5) *tendering for new capacity*	MS shall designate authority to independent body responsible for organisation, monitoring and control of tendering procedure (ex. Art. 7(5)	No changes proposed	Parliament wanted to remove TSO as a body capable of this function. However, it remained (as Art. 8(5))
Art. 9 *unbundling of transmission systems and transmission system operators*	Unbundling of TSO on the basis of independence of TSO (in e.g. vertically integrated company) in its legal form, organization and decision making (ex. Art. 10).	Unbundling means that the TSO should be completely separate from the undertaking (makes vertically integrated companies illegal). Allows ownership unbundling and Independent System Operator (ISO).	Added Parliament: clarification on unbundling when control of transmission operator lies with Member State; possibility for other options for vertically integrated companies. Added by Council: Independent Transmission Operator (ITO) option. Also added "Scottish Clause" (Art. 9(9)) which states that in unbundling measures and ISO measures do not apply when there

[10] The numbers correspond to the Article numbers used in the final directive (2009/72/EC)

[11] Please note that 'Added' implies that the proposed Commission's draft Article was adopted and that the Parliament and/or Council added more information.

			are current arrangements in place which guarantee a more effective independence of the transmission system operator than the ITO regime.
Art. 10 *designation and certification of TSOs*	MS shall designate, or require undertakings to designate, one or more transmission system operators (ex. Art. 8)	Enhances the power of the regulators to monitor compliance of TSO, and enhance power of the Commission in the procedure of assigning a TSO.	Removed: Council moved the proposed Art. 8b(7&8) of the draft directive to Regulation 714/2009.
New Art. 11 *certification in relation to third countries, also known as 'reciprocity clause' or "Gazprom Clause"*	Not applicable	Energy producers from countries which are not fully open to competition should not be allowed to buy up the transmission businesses of energy companies in European countries where full unbundling has been introduced (former Art. 8b(2) of draft directive)	Added Council: TSOs of third countries have to respect the same unbundling rules as Community TSOs. In addition, security of energy supply criterion of MS and the Community is included which has to be taken into account when certification is granted. The main decision on certification for third countries will remain with the national regulatory authorities; the Commission is requested to give its opinion.
Art 12 *task of transmission system operators*	Outlined responsibilities of TSO (ensure ability to meet demand, security, manage energy flows, provide information to users and other operators and ensure non-discrimination (ex. Art. 9)).	TSO should promote energy efficiency	Added by Parliament: reference to service obligation, collecting congestion rents and payments, granting third-party access, which is monitored by NRA
New Art. 13 *ISO option*	Not applicable	Outlines an alternative for full unbundling, i.e. Independent system operators (ISO) and gives the conditions which this ISO has to fulfil. (Parliament in its amendments wanted to delete this option, keeping ownership unbundling as the only option)	Council removed draft Art. 10(4): power of the Commission to keep NRAs accountable for executing a Commission's decision in line with procedure of this Art. (10)
New Art. 14 *unbundling of transmission system owners*	Not applicable	A TSO which is part of vertically integrated undertaking, where an ISO has been appointed, shall be independent from other activities not relating to transmission.	Adopted
Art. 16 *confidentiality for TSOs*	The TSO shall preserve the confidentiality of commercially sensitive information and shall	Added provisions to make Article compatible with unbundling and add clause to prevent TSOs,	Added as weakened version of the Parliament's amendment: information necessary for effective competition and efficient

	disclose information regarding its own activities in a non-discriminatory manner (ex. Art. 12).	in context of activities by related undertakings, to abuse information obtained from third parties.	functioning of the market shall be made public (new Art. 16(3))
New Chapter V (Art. 17-23) *Independent Transmission Operator*	Not applicable	Not applicable	Added by Council: Allows for an option to keep TSO as part of a vertically integrated company by creating complete independence of the TSO from the vertically integrated undertaking. All conditions which need to be fulfilled to guarantee independence are outlined (independence staff and management, supervisory body, compliance program) Art. 22 specifies the TSOs duty to set out a 10 year network development plan so as to allow NRAs to check that all necessary investments are made. Art. 23 specified the TSOs duty to establish procedures for access of new power plants to the transmission system, subject of approval of NRA.
Art. 26 *Unbundling of DSOs*	Specified that DSO, when part of a vertically integrated undertaking, shall be independent from activities not relating to distribution. It outlines the conditions that need to be fulfilled to assure independence (ex. Art. 15).	Spells out the duty of DSO to publish an annual report on measures taken to the body responsible for monitoring the DSO (i.e. the compliance officer). It is further specified that the compliance officer should be fully independent and access to all information. Furthermore, it specifies that the Commission may adopt guidelines to ensure compliance of DSO with these duties.	Added by Parliament: provisions on monitoring vertically integrated DSOs. Commission's amendments were included except for the provisions on the Commission's ability to adopt guidelines to ensure full and effective compliance of the distribution system operator
New Art. 28 *closed distribution systems*	Not applicable	Not applicable	Added by Parliament: defines a closed distribution system and specifies conditions under which these systems are exempted from requirements to procure the energy it uses to cover energy losses and from the requirement that tariffs are approved prior to their entry into force (applies to e.g. airports, train stations, hospitals)
Art. 29 *combined*	Spelled out that the rules do not create an	Confirms this and refers to the new Articles in the	Adopted

operator	obligation to separate the ownership assets of the combined system from the vertically integrated undertaking. It subsequently outlines conditions with which the combined system operator needs to comply (ex. Art.17).	directive which specify the conditions with which the operators need to comply (Art. 9 (unbundling), 13, 14 (ISO) or Chapter V (ITO))	
Art. 32 *third party access*	MS would ensure the implementation of a system of third party access to the transmission and distribution systems based on published tariffs and without discrimination. Access may be refused when the operator of transmission or distribution system lacks capacity. Reasons must be given, and must be controlled by MS (ex. Art. 20).	Not applicable	Added by Parliament: system users who have been refused access can make use of a dispute settlement procedure. Control is still with MS or, where so provided, with regulatory authority.
New Art. 35-37 (Part of Chapter IX: National Regulatory Authorities) *Art. 35 (designation and independence of regulatory authorities)* *Art. 36 (general objectives of the regulatory authority)* *Art. 37 (duties and powers of the regulatory authority)*	MS shall designate independent regulatory authorities, responsible for ensuring non-discrimination, effective competition and efficient functioning of the market. It outlines what aspects should be monitored and its overall duties (ex. Art.23).	Only allows for a single national regulatory authority and more clearly specifies what conditions should be fulfilled to be deemed 'independent'. The overall powers and duties of the NRAs are enhanced and specified to reduce uncertainty. It outlines the NRAs objectives, it enhances and more clearly specifies the NRAs duties, its powers to execute these duties and details its responsibilities. A provision is included which allows the Commission to adopt guidelines on the implementation by the regulatory authorities of its powers.	These changes result in the creation of Chapter IX: National Regulatory Authorities (Art. 35-40) Added Council: a derogation from the principle of having a single national regulatory agency (Art. 35(3)). Added Council: an additional provision to guarantee NRA independence (Art. 35(4)) Added by Parliament: extra policy objectives of the regulatory authority (Art. 36(d);(e); (f); (g) & (h)) Added by Parliament: extra duties of regulatory authority (Art. 37(1a); (1k); (1l); (1t); (1u)) Added by Parliament: a derogation from Art. 37(1) in Art. 37(2). Added Council: increase details on penalties (Art. 37 (4d)) Added Council: Art37(5) which outlines additional duties for the regulatory authority in instance that the TSO has been designated in accordance with Chapter V (ITO) to

			bring Art. 37 in line with changes made by including ITO option. Result: increased powers NRA. Added by Parliament: enhanced NRA powers in Art. 37(6b,c); Art. 37(9); Art. 37(10). Excluded: The provision which grants the Commission the power to adopt guidelines. (was not in EP amendments)
New Art. 38 *regulatory regime for cross-border issues*	Not applicable	Specifies that regulatory agencies should cooperate and provide the Agency (ACER) with information. In cases of conflict, ACER has the power to decide. Commission may adopt guidelines on the extent to which NRAs should cooperate and on situations in which Agency becomes competent to decide upon the regulatory regime for infrastructure.	Added some watered down Parliamentary amendments : provision on coordination of development of all network codes; coordinate development of rules governing management of congestion and additional referrals to cooperation between NRA. Council moved for legal reasons draft Art. 22d (3&4) to Art.8 of new Agency Regulation: conditions under which Agency shall decide upon the regulatory regime for infrastructure.
New Art. 39 (compliance with guidelines)	Not applicable	Any regulatory authority and the Commission may request the opinion of the Agency on the compliance of a decision taken by a regulatory authority with guidelines referred to in this Directive. In addition, the Commission will be informed by Agency and NRAs when guidelines are not complied with. It is specified under what conditions and how the Commission can start proceedings.	Changes Council: where the Commission initially would 'initiate proceedings' the wording has been changed into 'examine the case further' (in Art. 39(5);(6);(7)) (implication: reduction of forcefulness of Article).
New Art. 40 *record keeping*	Not applicable	MS require supply undertakings to keep relevant data for at least five years for NRA, NCA and Commission to check. It specifies details of data, allows Commission to adopt guidelines to ensure uniform application of Article.	Adopted entirely

New Art. 43 *level playing field*	Not applicable	Not applicable	Added Council: measure that MS may take pursuant to this Directive in order to ensure a level playing field shall be compatible with the Treaty, notably Art. 30, and with Community law.
Art. 44 d*erogations*	MS which can demonstrate after the Directive has been brought into force that there are substantial problems for the operation of their small isolated systems or for reasons of a technical nature have substantial problems, may apply for derogations of certain parts of the Directive (ex. Art. 26).	Not applicable	Added by pressure Council: derogations for Cyprus, Luxembourg and/or Malta
New Art. 46 *Committee*	Not applicable	The Commission shall be assisted by a committee.	The final text limits the applicability of Articles of Decision 1999/468/EC.
Annex 1 *measures on consumer protection*	Outlines rights of consumers (ex. Annex A)	Adds that consumers have at their disposal their consumption data, shall be properly informed each months of consumption and allows for change of supplier at any time of the year	Added by Parliament: provision on consumer rights through internet, prevent non-contractual barriers (Art. 1D), ensure good standard of service and out-of-court dispute settlements (1F); allow for smart meters to allow consumers to track electricity consumption (Art. 1I, Art. 2)

Sources: Proposal for a directive amending Directive 2003/54/EC concerning common rules for the internal market in electricity, Brussels 19.09.2007, COM(2007) 528 final, 2007/0195 (COD); Directive 2009/72/EC of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC, OJ L 211/55, 14.8.2009; Directive 2003/54/EC of 26 June 2003 concerning common rules for the internal market in electricity and repealing Directive 96/92/EC, OJ L 176/37, 15.07.2003; Directive 96/92/EC of 19 December 1996 concerning common rules for the internal market in electricity, OJ L 27, 30.1.1997.

TABLE 4. Trends of Parliamentary amendments and subsequent results

Nature of Amendment	Adopted (weakened) Amendments	Rejected
Customer rights	Art. 3(4) & 3(5) on customer protection; Art. 3(7) on vulnerable customers; Art. 3(8) on national energy plan to ensure supply vulnerable customers; Art. 3(9c) on information provisions regarding dispute settlements; Art. 3(11) on energy efficiency; Art. 3(12) on single points of contact; Art. 3(13) on energy ombudsman; Art. 3(16) on establishment Energy Consumer Checklist; Art. 36(d) & 36(h) on consumer protection. Annex 1: enhanced consumer rights though complaint procedures and enhancement power of NRA regarding installation of smart meters.	The following proposals were rejected: Art. 3(6) [provisions of information shall be harmonized within MS and relevant markets] Art. 3(7) [aim at reducing costs of energy to low income households; same conditions for those in remote areas] Art. 3(9b) [MS may require revenues from household customers to be spent on energy efficiency measures] Art. 33(2) [costumers shall have the right to contract simultaneously with several suppliers and enhance power ACER to detect flaws and enhance efficiency] Art. 36 [consumers benefit from long term agreements; monitoring costs of consumers] Art. 37 [amendment reads: NRA shall put in place independent complaints service or redress scheme; outline guidelines on how complaints should be made]
Harmonisation	Enhanced Agency powers through Art.5; Art. 6(2) [influence Agency on compatibility regulatory frameworks; compatibility technical rules and rules concerning regional cooperation] Art. 38 (2b); (2c) [coordinate network codes, development of rules governing management of congestion]	Where the EP tabled amendments that required harmonization of rules and standards, in all cases the outcome refuted 'harmonisation' and replaced this by 'ensuring compatibility'. Weakened adoption. Rejected: Art. 36 [amendment reads: establishing standardized rules governing relationships between final customers and suppliers, distributors and metering system operators].
Strengthen powers NRAs	Strengthened powers NRAs through: Art.3(9) [on NRA powers to ensure customer protection]; Art. 12(h) [NRA monitors granting and managing 3rd party access]; Art. 15(2); watered down amendment EP in Art 16(3) by excluding the wish for enhanced NRA power; Art.32(2) [watered down option: regulatory authorities are competent regarding third-party access when so provided by Member States] Enhanced NRA powers through Art. 36 (a); (36(d); 36(e); 36(f); 36(g); 36(h) [general objectives of the regulatory authority]; Art. 37(1a) [transmission or distribution tariffs]; Art. 37(1h) [setting and approving standards for quality]; Art. 37(1k) & Art. 37(1l) [contractual practice and contractual freedom]; Art. 37(1n) [enforcing consumer protection rights]; Art. 37(1s) [monitoring generation capacity] and Art. 37(1u) [compatibility of data exchange	Where the EP in many amendments called for strengthening power of NRA by placing power with NRA where MS were previously in charge, the compromise was almost everywhere: 'the regulatory authorities where the Member States have so provided or Member States' as opposed to EP's proposed 'regulatory authorities'. Failed amendments to Art. 15(3); 15(4); 15(7); 26(3) on NRA involvement in dispatching and balancing. Failed: addition Art. 35(5) [amendment reads: budgetary needs of regulatory authority are met by direct revenues from energy market operations] Failed: addition Art. 36 [amendment reads: harmonizing necessary data exchange processes] Failed addition Art. 36 [amendment: NRA may sanction operator for not honouring 10 year investment plan] Failed addition Art. 36 [amendment: NRA may sanction TSO and DSO if connections and repairs are prolonged without due cause] Failed additions Art. 37 [right of veto NRA; right to fix or approve network access tariffs; right to establish standards for quality of service, monitoring implementation and imposing sanctions for non-

	processes]; Art. 37(9) [congestion management], Art. 37(10) [transmission and distribution tariffs]; Art. 38(2b) & (2c) [coordination of development of network codes and management congestion].	compliance; right to impose price caps in uncompetitive markets; right to audit maintenance policy of TSO; right to develop guidelines regarding time limited licensing procedure;
Full ownership unbundling	NEW Art. 28: inclusion provisions on closed distribution systems which define them, and allows the operator of these systems to be exempt from certain provisions in the directive. It applies to e.g. airports, train stations, hospitals	The EP tabled many amendments to assure full ownership unbundling. The following were rejected: Delete Art 10 (Independent System Operator). Art. 8(5) [took out provision "where a TSO is fully independent …it may be designated as the body responsible for … the tendering procedure"]
Task DSO	Art. 25(1) [general responsibilities]	Rejected 3 additional amendments to Art. 25(3) to enhance the powers of the NRAs in controlling functioning of DSO.
Regulated prices		Amendments rejected: Art. 36 [amendment reads: focus attention to impact regulated prices on functioning market] Art. 36 [amendment reads: report MS in which regulated tariffs are lower than market price] Art. 37 [amendment reads: NRA involvement to set tariffs that reflect actual costs and do not discriminate against new market entrants]

Sources: Parliament legislative resolution of 18 June 2008 on the proposal for a directive of the European Parliament and of the Council amending Directive 2003/54/EC concerning common rules for the internal market in electricity (COM(2007)0528 – C6-0316/2007 – 2007/0195(COD)), P6_TA(2008)0294, First Reading; Recommendation for Second Reading, Committee on Industry, Research and Energy, A6-0216/2009, 2 April 2009, http://www.europarl.europa.eu/sides/getDoc.do?language=EN&reference=A6-0216/2009, [last accessed 27 July 2011].

TABLE 5. Overview of proceedings by DG Transport and Energy (TREN) to ensure compliance with the Electricity directives[12]

Against	*Date*	*Content*
18 Member States	13 Oct. 2004	Commission sent letters of formal notice to 18 member states (DE, ES, FI, IRE, IT, LIT, LAT, MAL, UK, CZ, SLO, SE, GRE, PO, POR, ES, LUX) asking them to transport the EU directives on the internal market in electricity and gas into national law.
7 Member States	16 March 2005	Commission sent a reasoned opinion to DE, BEL, LI, SE, GRE, ES, LUX on the basis of failure to transpose the 2nd electricity directive. This is the second stage of infringement procedures.
ES, GRE, LUX	06 July 2005	These Member States are taken before the ECJ as the 3rd stage of the infringement procedure resulting from a failure to transpose the 2nd Electricity Directive. A reasoned opinion is sent to Portugal.
17 Member States	04 April 2006	The Commission sent 28 letters of formal notice to 17 Member States on the basis of failure to implement the 2nd electricity directive. This is the first stage of infringement procedures.
Luxembourg	19 May. 2006	After having been referred to the ECJ by the Commission, the Court has ruled against Luxembourg for gas and electricity.
Luxembourg	July 2006	The Commission sent a letter of formal notice to Luxembourg following the ruling of the ECJ.
Portugal and Hungary	4 July & 18 Oct. '06 resp.	The Commission sent letters of formal notice to these countries regarding the implementation of the electricity directive.
16 Member States	12 Dec. 2006	The Commission sent 26 reasoned opinions to 16 Member States. This presents the 2nd phase of the infringement procedures for the breach of 2003 Directive.
Luxembourg	27 June 2007	The Commission sent a reasoned opinion to Luxembourg following the ECJ ruling in May 2006. This is the second step in the procedure following the Court judgment. Although Luxembourg stated its intention to implement the Directive in reply, no such implementation has been communicated so far.
Belgium, Poland	05 June 2008	The European Commission decided to bring an action before the ECJ against Belgium for failure to transpose correctly into national legislation the provision of the Directives on internal electricity and gas markets. A month earlier, the Commission referred Sweden and Greece to the Court for incorrect transposition of the Electricity and Gas directives. It addressed a reasoned opinion to Hungary for incorrect transposition of the Electricity directive. A letter of formal notice has been sent to Bulgaria regarding the electricity sector.
Bulgaria	29 Jan. 2009	Commission sent reasoned opinion to Bulgaria for failure to implement directive 2003/54/EC. This is the second step of the infringement procedure.
Slovakia	14 May 2009	Commission refers Slovakia to the Court on the basis of not ensuring non-discriminatory access to the transmission network (i.e. failure to act in line with 2nd Electricity directive)
25 Member States	25 June 2009	The Commission sent letters of formal notice to Austria, Belgium, Bulgaria, the Czech Republic, Denmark, Germany, Estonia, Spain, Finland, France, Greece, Hungary, Ireland, Italy, Lithuania, Latvia, Luxembourg, The Netherlands, Poland, Portugal, Romania, Slovenia, Slovakia, Sweden and United Kingdom for not complying with the applicable gas and electricity regulations. Commission also sent letters of formal notice to Greece, Poland, Portugal, Romania and Lithuania for maintaining a system of regulated prices, which violates the EU directives.

Source: http://ec.europa.eu/energy/infringements/proceedings/electricity_gas_en.htm. [last accessed: 28/02/2010].

[12] This table provides an overview. This means this list is not meant to be exhaustive.

TABLE 6. Overview of proceedings by DG Competition (COMP) in electricity market on basis of state aid[13].

Against	Date	Content
Poland	Nov. 2005	The Commission opened an in-depth investigation on long-term Power Purchase Agreements (PPAs) in Poland. In September 2007, the Commission closed the in-depth investigation with a positive decision with certain conditions.
Hungary	Sept. 2005	The Commission opened an in-depth investigation on the PPAs in Hungary, since it consider that they confer a State aid to the generators benefiting from them. The Commission concluded in May 2008 that these agreements constitute unlawful and incompatible state aid to the power generators and requested Hungary to terminate them before the end of 2008 and to recover the aid granted to the generators concerned since the country's accession in 2004
EDF and Electrabel	26 July 2007	Commission opened proceedings against both companies due to concerns that they could be foreclosing access to customers in France and Belgium through use of long-term electricity supply contracts
Spain	Jan. 2007	The Commission opened an in-depth investigation procedure to examine the potential aid to large and medium-sized companies and to electricity distributors in Spain in the form of artificially low regulated industrial tariffs for electricity.
France	June 2007	The Commission opened an in-depth investigation procedure on the regulated electricity tariffs in France. (In France, the electricity price for each category of users is regulated by law. Over the last few years, the market price of electricity has increased considerably, whereas the tariffs for large industrial users have remained relatively stable. As a result, certain these users are enjoying tariffs considerably below the market price.)

Source: Table compiled by author based on information from the website of DG Competition (European Commission)

TABLE 7. Overview of proceedings by DG Competition (COMP) in the electricity market on the basis of anti-trust[14]

Issue	*Proceedings*
Electricity, gas, steam and air conditioning supply	COMP/38.264 EEA+VERBUND / EHP COMP/39.386 Long term electricity contracts in France COMP/39.388 German electricity wholesale market COMP/39.387 Long term electricity contracts in Belgium COMP/39.564 Applicability of Slovak Competition Act to Regulated Sectors COMP/39.389 German electricity balancing market
Electric power generation, transmission and distribution	COMP/38.700 Greek lignite and electricity markets COMP/37.732 Synergen COMP/38.015 PO/Interconnector France-UK+3 COMP/39.172 Electricity sector inquiry COMP/37.921 Viking Cable+3 COMP/37.542 Gas Natural + Endesa COMP/37.125 Statkraft+I/S Elsam+18
Production of electricity	COMP/39.442 French electricity wholesale market
Transmission of electricity	COMP/39.351 Swedish Interconnectors COMP/39.326 E.On et al

Source: http://ec.europa.eu/competition/antitrust/cases/index/by_nace_code_d.html, [last accessed 28 February 2010].

[13] This table provides an overview. This means this list is not meant to be exhaustive. A selection of the most important cases in this area was made.

[14] This table provides an overview. This means this list is not meant to be exhaustive

APPENDIX 4: Services Directive

TABLE 1. Main barriers to free movement of services

Nature of Barrier	*Description*
Horizontal barriers	Barriers not specific for services, affecting a range of activities (e.g. firm start-up licenses)
Additional regulation compliance costs due to not-acknowledging a foreign firm's compliance with regulation in its home country	For service exports that are already subject to regulations by national authorities in their origin country, complying with the regime of the host country may result in the duplication of regulatory requirements and its burdens
Barriers to establishment	In branches like commercial medical laboratories, some member states require the provider to have no more than a single establishment
Operational restrictions	Several countries require in particular service sectors that only locally established firms may provide services
Restrictions on the use of foreign services	Countries sometimes apply regulations that restrict the freedom of consumers to use services from abroad.
Other barriers	The sale of services across borders may be hindered by differences in contract law; the lack of clarity on the regulations cause legal and economic uncertainty; the intra-EU differences in regulations regarding to the payment and reimbursement of value added tax and other indirect taxes (rates, classification systems and procedures) may function as effective barriers for service providers that operate across national borders

Source: CPB Report, *The Free movement of services within the EU*, by H. Kox, A. Lejour and R. Montizaan, no. 69, October 2004 (revised September 2005).

TABLE 2. Overview of amending process towards final Services Directive 2006/123/EC

Articles[15]	*Initial Official Commission draft*	*Parliament's amendments (1st reading)*	*Council's amendments*[16]
Arts. 1 *Subject matter*	To facilitate the exercise freedom of establishment and free movement of services	Add provision on what issues the directive does not address (excl. healthcare, general economic interest services; does not affect criminal or labour law)	No significant changes made by Council.
Art. 2 *scope*	All services (excl. non-economic activities, financial services, electronic communication, taxation and transport)	Excl. services of general interest, services of banking, credit, insurance, port services, legal, healthcare, social, audiovisual, security, gambling services, temporary work agencies	No significant changes made by Council
Art. 4 *Definitions*	Service means any self-employed economic activity consisting in provision of a service for consideration	Add definitions (e.g. services of general economic interest, public service obligation, overriding reasons relating to public interest)	Definition 'public service obligation' was removed
CHAPTER II	Freedom of establishment for service providers		
Administrative simplification			
Art. 5 *Simplification of procedures*	MS shall simplify procedures and formalities applicable to service activity	Include harmonised European forms (Art. 5(2))	No significant changes made by Council
Art. 6 *Single Points of Contact*	MS should ensure service providers can complete all formalities and procedures through one and the same body	Foresaw a role for the Commission in establishing them; ensure there are no additional expenses for provider	Remove role Commission; remove obligation regarding pro forma registration
Art.7 *Right to information*	MS shall ensure information is easily accessible	No significant changes	Removed deadline for implementation
Art. 8 *Electronic procedures*	MS shall ensure procedures can be completed by electronic means	No significant changes	No significant changes made by Council
Art. 9 *Authorisation schemes*	Conditions under which a service activity may be subject to an authorisation scheme	No significant changes	No significant changes by Council (Commission changed wording: 'if then may' into 'not.. unless')
Art. 10-13 *Authorisation procedures*	Conditions for granting authorisation; duration of authorisation may not be limited except for some instances; clear authorisation procedures	Add 'overriding reasons relating to public interest' as conditions for authorisation; add to Art. 12(3) to allow for considerations of public health, safety, protection of environment etc. during selection procedures	Added: failure to respond in time means authorisation has been granted; included a more detailed outline of the information that should be provided to applicants.

15 The numbering of the Articles corresponds to the numbering of the draft directive.

16 The reason this table does not discuss the final directive as published in the Official Journal, as had been done for the other directives, lies in the fact that the final composition corresponds completely to the Common position as adopted by the Council (a common position which is almost completely similar to the common position of the Parliament after 1st reading) as Parliament did not amend the directive in 2nd reading.

Art. 14 *Prohibited requirements*	List of prohibited requirements to which MS may not make access to their territory subject to.		No significant changes made by Council
Art. 15 *Requirements to be evaluated*	List of requirements to be evaluated by MS	Exclude legislation in field of services of general economic interest and social insurance schemes	No significant changes made by Council (Commission included obligation on MS to inform them of changes made)
Chapter III	Free movement of services		
Art. 16 *CoOP*	MS shall ensure providers are only subject to the national provisions of their MS of origin which fall within coordinated field	Changed into 'freedom to provide services' (Art.21); outline the rights for service providers to freely exercise their service activity; allow for exceptions for reasons of public policy, public security, public health and environmental protection and employment conditions	No significant changes made. (Commission changed numbering back to initial draft numbering; i.e. Parliament's Arts. 21-26 were renumbered Arts. 16-21, thereby corresponding to initial numbering again)
Art. 17 *Derogations from CoOP*	List of services that are excluded from CoOP principle (e.g. postal, electricity, gas, water distribution services)	(Renumbered Art. 22). Added some derogations: services of general economic interests, treatment of waste, professional qualifications, international private law	No significant changes made by Council
Art. 19 *Case-by-case derogations*	List of exceptional circumstances under which MS may derogate from CoOP	(renumbered Art. 23)	No significant changes made by Council
Art. 20-21 *Rights of recipients*	MS may not impose requirements which restrict the use of a service supplies by an out-of state service provider; prohibits discriminatory requirements	No significant amendments.	No significant changes made by Council
Art. 22 *Assistance recipients*	MS are responsible to ensure information to recipients	No significant amendments. New Article: Assistance for providers (Art. 27).	No significant changes made to Art. 22. Parliament's new Art. 27 was removed
Art. 23 *Assumption of healthcare costs*	Outline the conditionality of MS obligations to assume healthcare costs	Excluded due to exclusion of healthcare services	Adopted Parliament's exclusion
Art. 24 *Provisions on posting of workers*	Member state of origin will be responsible for checking and ensure compliance with employment and working conditions in country of posting	Excluded due to exclusion of posting of workers from this directive	Adopted Parliament's exclusion
Art. 25 *Posting of third country nationals*	Conditions set out under which third country nationals may access other member state markets	Excluded posting of workers	Adopted Parliament's exclusion
Chapter IV	Quality of services		
Art. 26-32 *Ensure service*	MS shall inform recipients; MS shall	(renumbered Art. 28-35) Add to Art. 35(3): provisions on	Removed inclusion on compulsory liability

recipient rights	ensure that service providers are covered by professional insurance; MS shall ensure providers supply recipients after-sales guarantees; MS should encourage quality of services; MS should ensure that providers respond to complaints	the protection of personal data.	insurance and added some provisions under Art. 22(1); added definitions to Art. 23; After sales guarantees (former Art. 30) was removed; added specific requirements for credit institutions under Art. 27(3); Parliament's Art. 35 was renumbered Art. 33 (numbering was changed into Art. 22-27)
Chapter V	Supervision		
Arts. 34-38 *Supervision and implementation*	MS shall provide mutual assistance, shall ensure monitoring and supervision of out of state service providers	Complete change in structure: Art. 16-20 now cover former Art. 34-38. Add: MS where service is provided may also conduct checks! MS of destination is made responsible for supervision within its territory. MS of primary establishment is responsible for supervision of provider in its territory; New Art. 19 'Alert mechanism'.	No significant changes made but completely restructured. Numbering changed: Art. 28-36 now cover former Parliament's articles 16-20 in addition to some other Articles. The content was not changed; only the structure.
Chapter VI	Convergence programme		
Art. 39 *Codes of conduct at EU level*	MS shall take measures to encourage the drawing up of codes of conduct at EU level	No significant amendments	Renumbered Art. 37. No significant changes made.
Art. 40 *Additional harmonisation*	Specification of possible additional harmonising instruments	No significant amendments	Renumbered Art. 38. No significant changes made
Additional changes worth noticing	Not applicable	Not applicable	Add to Art. 39 (mutual evaluation) another provision on evaluation of national requirements; Council extends implementation period of directive with three years.

Sources: European Commission, *Draft proposal for a directive on services in the internal market*, COM (2004) 2 final/3, Brussels 5 March 2004; Position of the European Parliament, Consolidated legislative document adopted at first reading on 16 February 2006 with a view to the adoption of Directive 2006/…/EC, EP-PE_TC1-COD(2004)0001; Statement of the Council's reasons regarding the Council's common position on directive on services in the internal market, Interinstitutional file: 2004/0001 (COD), Brussels 17 July 2006; Council's common position on directive on services in the internal market, Interinstitutional file: 2004/0001 (COD), Brussels 17 July 2006; European Commission, Amended proposal for a directive on services in the internal market, COM(2006) 160 final, Brussels 4 April 2006; Directive 2006/123/EC of 12 December 2006 on services in the internal market, L376/36, Official Journal of the European Union.

TABLE 3. Level of delegation awarded to the Commission in the draft services directive

Articles	*Description of its content*
Art. 8(3). Procedures by electronic means	The Commission shall, in accordance with the procedure referred to in Article 42(2)[17], adopt detailed rules for the implementation of paragraph 1 with a view to facilitating the interoperability of information systems and use of procedures by electronic means between Member States.
Art. 15(6). Requirements to be evaluated	Within a period of 3 months from the date of notification, the Commission shall examine the compatibility of any new requirements with Community law and, as the case may be, shall adopt a decision requesting the Member State in question to refrain from adopting them or to abolish them.
Art. 22(4). Assistance for recipients	The Commission shall, in accordance with the procedure referred to in Article 42(2), adopt measures for the implementation of paragraphs 1, 2 and 3, specifying the technical mechanisms for the exchange of information between the bodies of the various Member States and, in particular, the interoperability of information systems.
Art. 26(6) Information on providers and their services	The Commission may, in accordance with the procedure referred to in Article 42(2), specify the content of the information provided for in paragraphs 1 and 3 of this Article according to the specific nature of certain activities and may specify the practical means of implementing paragraph 2.
Art. 27(5) Professional insurance and guarantee	For the implementation of paragraph 1, the Commission may, in accordance with the procedure referred to in Article 42(2), establish a list of services which exhibit the characteristics referred to in paragraph 1 and establish common criteria for defining, for the purposes of the insurance or guarantees referred to in that paragraph, what is appropriate to the nature and scope of the risk.
Art. 31. Policy on quality of services.	Member States shall, in cooperation with the Commission, take accompanying measures to encourage providers to take action on a voluntary basis in order to ensure the quality of service provision.
Art. 38. Implementing measures	In accordance with the procedure referred to in Article 42(2), the Commission shall adopt the implementing measures necessary for the implementation of this Chapter, specifying the time limits provided for in Articles 35 and 37 and the practical arrangements for the exchange of information by electronic means between the single points of contact, and in particular the interoperability provisions for information systems.

Source: Draft Services Directive, COM(2004) 2 final/3, Brussels 5 March 2004.

[17] Comitology procedure.

APPENDIX 5: Healthcare Liberalisation

TABLE 1. Overview of amending process towards final Patient Mobility directive 2011/24/EU

Articles[18]	*Initial Official Commission draft*	*Parliament's amendments (1st reading)*	*Council's amendments*	*Final directive 2011/24/EU*
Art. 1 *Aim of the directive*	General framework for provision of safe, high quality, efficient cross-border healthcare.	Rules for access to safe, high-quality care in other MS whilst respecting national competencies.	No amendments	All amendments accepted
Art. 2 *scope*	Apply to provision of healthcare regardless of financing, both public and private.	Apply to provision of *cross-border* healthcare (see below); excluding long-term care and organ transplantation	Exclude public vaccination programmes against infectious diseases; clarify again shall not affect laws and regulations in Member States relating to the organisation and financing of healthcare in situations not related to cross-border healthcare	All amendments accepted
Art. 4 *Definitions (in particular 'cross-border healthcare')*	Cross-border healthcare includes movement of patients and movement of healthcare providers.	Cross-border healthcare simply refers to movement of patients (Plus new definitions added)	No significant changes	EPs amendment accepted
Art. 5 *Responsibilities authorities of MS of treatment*	MS of treatment is responsible for organisation of healthcare, ensure standards, privacy, monitor application , inform patients, set up complaints system	MS of treatment is responsible, healthcare provided according to MS legislation, standards and legislation of quality, there is no obligation to provide healthcare to outsider, list duties of MS to maximise patient safety; set up mechanism for cost calculation. Ensure non-discrimination	Content largely same but rewritten so that starting point is that the legislation of MS of treatment and its guidelines on quality and safety apply; include possibility restriction access in case of overriding reasons general interest. Removal of Commission involvement in establishing common security level of health data;	Parliament's amendments adopted; Council's clarifications adopted and removal of Commission influence
Art. 6 *Responsibilities authorities*	MS should reimburse costs of insured person if treatment would	MS of affiliation shall give a medical justification when rejecting	Removal of extra rights for rare disease patients and disabled patients	Followed line Council; minimal specification responsibilities MS of

[18] The Article numbers correspond with the numbering of the Articles in the final Patient Mobility directive (2011/24/EU).

of MS of affiliation	have been reimbursed in home state, but can decide this themselves.	reimbursement of treatment; patients with rare diseases should always get treatment and reimbursement; extra costs of persons with disabilities should be reimbursed; right to access medical record		affiliation.
Art. 8 *Hospital care*	Hospital and specialised care are defined in directive and partly by a list of healthcare compiled by the Commission. MS is allowed a system of prior authorisation for reimbursement on two conditions; this should be communicated	***Hospital care*** only! This is defined by MS of affiliation (limited to three definitions given). Place responsibility on MS in new articles (8(4),(5),(6)) to only pay upfront what would have been paid at home, prior authorisation possible at local level, guarantee right to apply for prior authorisation and allow for appeal procedures in case of refusal. Rare disease patients should not be subject to prior authorisation	Common definitions of hospital and non-hospital care removed. Directive refers only to 'healthcare'. This means hospital and non-hospital care are to be defined by each member state. Removed prohibition to subject rare disease patients to prior authorisation. Introduced a new Art. 8 on prior authorisation, widening the grounds on which this is allowed. Included: prior authorisation may not be denied when healthcare cannot be provided in medically justifiable time-limit.	Adoption Council's widening of prior authorisation grounds. Parliament reintroduced the requirement of proportionality and necessity. EP included that reimbursement may be made subject to overriding reasons of general interest (new Art. 7(9)) and that free movement of patients may be restricted when objectively justified by planning requirements to the object of ensuring sufficient and permanent access to a balanced range of high-quality treatment (new Art. 7(7)). Both amendments seem compromise towards Council from trialogue meeting.
Art. 9 (7) (new) *Clearing house*	Not applicable	Commission shall conduct study into establishment of a clearing house to facilitate reimbursement of costs	Removed	Followed Council: not included
New Art. 9 – admin. procedures cross-border healthcare	Not applicable	Not applicable	Parliament in 2nd reading added this Article. Procedures should be publicly available; MS should set out reasonable time limits which requests for cross-border healthcare should be dealt with; when considering a request	Adopted

			they should consider: medical condition and urgency of individual circumstance; allow for voluntary system of prior notification.	
Art. 10 *Prior notification (new) (substitute for up front payment by patient)*	Not applicable	MS may offer patients a voluntary system of prior notification granting them a written confirmation of max. amount they will be paid. Reimbursement would be done directly in hospital.	Removed	Followed Council: not included
Art. 11 *European Patients Ombudsman (new)*	N.A.	Commission to present proposal; established to consider and mediate patient complaints regarding prior authorisation and reimbursement costs	Removed	Followed Council: not included
New Art. 13. *Rare diseases*	Not applicable	Not applicable	Parliament in 2nd reading adopted Art. 13 on rare diseases (the Commission shall support Member States in cooperating in the development of diagnosis and treatment capacity)	Adopted
Art. 14 *National contact points*	MS shall designate national contact points. They shall provide information to patients (rights, guarantees of quality and safety), help patients protect rights and get redress in event of harm, develop international out-of-court settlement scheme for disputes	Similar, but assure MS encompass all actors, information is disseminated among patients and enhance cooperation between contact points. Main task of national contact points: inform patients about rights and make this explicit.	Removal of all extra services that National Contact Points would have to supply (information via internet, legal and administrative options in place to settle disputes in case of harm)	Adopted. Parliament in 2nd reading added: information should be made publicly available; National contact points should inform about legal and administrative measures available to settle disputes; specific mentioning of people with disabilities.
Art. 15 *duty cooperation*	MS shall render mutual assistance for implementation of directive and facilitate cooperation in cross-border healthcare	Add: MS may conclude agreements on cooperation arrangements, guarantee that resisters of health professionals can be consulted, exchange information about disciplinary and criminal findings	Same	Adopted. Parliament in 2nd reading added: Commission shall stimulate regional cooperation; add sharing of information on 'right to practise' of health professionals.

Art. 16 *Recognition of prescrip-tions*	Mutual recognition of prescriptions unless exceptions made on basis of human health or on basis of justified doubts about the authenticity of individual prescriptions. Commission should implement measures to facilitate this recognition of prescriptions.	Add: recognition of prescription shall not affect national rules of prescribing and reimbursement; allow MS of affiliation to demand alternative medicine when deemed as effective	Added: guidelines supporting the member states in developing the interoperability of ePrescriptions (seems a 'Spanish' amendment). Furthermore, measures of guidelines adopted by Commission shall be proportional to its costs of compliance and to the likely benefits of it.	Adopted. Parliament in 2nd reading added: pharmacist's right to refuse on ethical grounds; stress the compliance with data protection.
Art. 17 *European reference networks*	MS shall facilitate the development of the European reference networks of healthcare providers. Objectives are specified and Commission shall adopt a list of criteria and conditions that European reference networks must fulfil and set out the procedure for establishment	Add: the Commission shall include a list of rare disease areas which the European reference networks must fulfil (so as to prevent discrimination against patients with these diseases).	Make this into voluntary cooperation. Slightly reduce tasks Commission; remove rare diseases.	Adopted. Parliament in 2nd reading added: rare diseases as area of research; add objective of ERN (i.e. establishing quality and safety benchmarks and spreading of best practise).
Art. 18 *Trial areas (new)*	N.A.	The Commission may designate border regions as trial areas in which innovative cross-border healthcare initiatives can be tested and evaluated	Removed	Removed
Art. 19 *E-Health*	The Commission shall adopt measures to facilitate communication technology systems in healthcare	Add: MS shall ensure use of E-Health adheres to same medical quality and safety standards and offers protection to patients	Larger role for Commission (assist MS in draw up guidelines on a non-exhaustive list of data included in patients' summaries, design effective methods for enabling the use of medical information for public health and research and support MS in developing common identification and authentication measures to facilitate transferability of data in cross-border healthcare).	Adopted. Explicit role of Commission in assisting in the objectives was removed. Parliament in 2nd reading: *voluntary* cooperation in exchanging information and stimulate cooperation; add clear objective E-Health.

Art. 20 *Coopera-tion health technology*	MS shall facilitate a network connecting national authorities responsible for health technology assessment and outlines the objectives of the network	***The Commission*** shall facilitate the establishment of network connecting national authorities	Make this into voluntary cooperation.	Parliament in 2nd reading: reintroduce the Commission to establish and manage this network.
New delegation to Commission		Generally in favour of delegation of power to Commission in ensuring a variety of tasks	Generally opposed to delegation of power to Commission in ensuring a variety of tasks	Compromise: delegation of power to Commission regarding European Reference networks (Art. 12(5)) and recognition of prescription (Art. 11(5)). **BUT** this can be revoked at any time (Art. 16, 17 and 18)

Sources: Proposal amending Directive 97/67/EC concerning the full accomplishment of the internal market of community postal services, Brussels 18.10.2006, COM(2006) 594 final, 2006/0196 (COD); Consolidated version of the Postal Directive (working tool of DG MARKT); Directive 2002/39/EC of June 2002 amending Directive 97/67/EC with regard to the further opening to competition of Community postal services, OJ L 176/21, 05.07.2002; Directive 97/67/EC 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, OJ L15/14, 21.01.1998.

TABLE 2. Overview of the most contentious aspects the directive and their compromise

Issue	*Relevance*	*How amended*
Reimbursement	Council (dominant); Parliament	Parliament: MS should reimburse costs of treatment abroad if this is equally effective and would have been reimbursed in home state. MS should provide medical justification for rejection of reimbursement. Patients with rare diseases should always get reimbursed; additional costs of disabled shall be reimbursed. Council: Reject special rights for disabled and patients with rare diseases. MS should reimburse the costs of treatment abroad is this is equally effective and would have been reimbursed in the home state. This right may be limited on the basis of (a) overriding reasons of general interest, (b) requirement of prior authorisation. Council: A specific provision for pensioners; exception to the rule of reimbursement.
Assistance patients	Parliament	Parliament: creation clearing house, European Patients Ombudsman, prior notification. Council opposed all.
Supranational assistance in implementation	Parliament; Council	Parliament: propose new supranational institutions, requested involvement Commission, granted more power to European reference networks Council: reduced Commission influence, limited power European reference networks and rejected new supranational institutions.
Patients' rights	Parliament	Parliament: enhance patient's rights, include special rights and enhance responsibility MS to ensure these rights. Council: opposed EP amendments on MS duties and reduced MS duties outlined in the Commission's draft
Legal basis	Council (minority Parliament)	Parliament: minority wanted a dual legal basis for the directive. Council included a dual legal basis for the directive.
E-Health	Council	Parliament: MS responsible to ensure quality and safety and for introduction of regulatory requirements for practitioners. Council: clear duties for the Commission to ensure that E-Health complies with rules on data protection.
Prior Authorisation	Council (mainly), Parliament	Parliament: a minority wanted wider grounds for MS to demand prior authorisation. Council: widened the grounds on which MS can demand prior authorisation.

Source: Table composed by author by tracing the amending process.