

## **I) Draft form for the sending of a request to make use of the case by case derogation**

### **1) Step by step checklist for the sending of a request to make use of the case by case derogation / to ascertain that the criteria for sending such a request are fulfilled in the case at hand**

**Step 1:** Is the service activity concerned covered by the Services Directive?

*If you are not sure whether the activity is covered by the Services Directive, click here to get more information:*

*[Link to relevant part of the "handbook":*

[http://ec.europa.eu/internal\\_market/services/docs/services-dir/guides/handbook\\_en.pdf](http://ec.europa.eu/internal_market/services/docs/services-dir/guides/handbook_en.pdf)

*Link to the scope of application of the Directive (Article 2)]*

Yes

**→ go to step two**

No

**→ do not make use of the case by case derogation**

**Step 2:** Does the measure you intend to take relate to the safety of services?

*[insert link to the relevant part of the case by case Guidelines]*

Yes, the measure relates to the safety of services

**→ go to step three**

No

**→ do not make use of the case by case derogation**

**Step 3:** Does the measure you intend to take relate to an individual service provider?

*[insert link to the relevant part of the case by case Guidelines]*

Yes

**→ go to step four**

No, the measure is applied in a general manner to a given type of service or category of service provider

**→ do not make use of the case by case derogation**

**Step 4:** Is the service provider established in another Member State?

*[insert link to the relevant part of the case by case Guidelines]*

Yes

→ go to step five

No

→ do not make use of the case by case derogation

**Step 5:** Are there exceptional circumstances that justify taking the measure?

*When assessing this, take into account whether the risk has a specific scope, whether it is related to the place where the service is provided, or whether there are any other specificities that distinguish it.*

*[insert link to the relevant part of the case by case Guidelines]*

Yes, the measure is taken under exceptional circumstances

→ go to step six

No, there are no exceptional circumstances.

→ do not make use of the case by case derogation

**Step 6:** Is there existing Community harmonisation in this area concerning the safety of services?

*[insert link to the relevant part of the case by case Guidelines]*

Yes, there is existing Community harmonisation.

→ do not make use of the case by case derogation

No, there is no existing Community harmonisation

→ go to step seven

**Step 7:** Does the measure you intend to adopt provide for a higher level of protection for the service recipient/ Are the measures taken by the Member State of establishment insufficient?

*When assessing this, take into account in particular what requirements the service provider has already fulfilled in his Member State of establishment and how adequate these measures are to guarantee the safety of the service (as compared to the measures you intend to take).*

*[insert link to the relevant part of the case by case Guidelines]*

Yes, the measures we intend to impose provide for a higher level of safety/ the Member State of establishment has not taken sufficient measures.

→ go to step eight

No

→ do not make use of the case by case derogation

**Step 8:** Is the measure you intend to take proportionate? *When assessing this, take into account in particular whether the objective pursued, i.e. the safety of the service, can be attained by less restrictive means than the measure you intend to impose.*

*[insert link to the relevant part of the alert Guidelines]*

Yes, the measure is proportionate.

→ **go to step nine**

No, there are less restrictive means to ensure the safety of the service

→ **do not make use of the case by case derogation**

**Step 9:** Is there a substantiated risk of immediate and serious damage?

*At this point please determine whether the scope, gravity and potential damages of the activity that forms the object of the procedure would not allow you to consult the Member State of establishment.*

*[insert link to the relevant part of the case by case Guidelines]*

Yes.

→ **continue with the urgency procedure**

No

→ **continue with the normal procedure – part 2**

## **2) General information on the service provider**

### **a. Contact details of the service provider**

Name of the service provider (*please indicate all trade names of the provider that are known to you*):

Name 1: [free text]

Name 2: [free text]

Other: [free text]

Professional address 1: [free text] Professional address 2: [free text]

Telephone number 1: [free text] Telephone number 2: [free text]

### **b. Type of service activity**

Select from [dropdown list/CPV/possibility to make multiple selections]. If necessary, provide additional information: [free text]

## **3) Detailed description of the case and justification why, in your view, the case by case derogation can be used**

### **a. Description of the specific concrete situation that forms the basis for this request**

*Please indicate the specificities of the particular case, such as the particular characteristics of the place where the service is provided or the details concerning the risk that prompted the request.*

[free text]

### **b. Description of the measure you intend to take**

We intend to take the following measure: [free text]

If relevant, please indicate the duration of the intended measure: [free text]

### **c. Justification of the measure you intend to take**

- 1) Please explain why the measure provides for a higher level of protection of the recipient / why you consider the Member State of establishment has not taken sufficient measures in the specific case: [free text]
- 2) Please explain why the measure is proportionate / why it is suitable for attaining the objective pursued and why the objective cannot be attained by a less restrictive measure: [free text]

d. **Attachments** (*please upload any document or picture that can help understanding the case at hand*)

e. **Additional information you may want to provide on the case:** [free text]

#### 4) Details for the sending of the request

- **Please indicate the Member State and, if known, the competent authority who should receive the request**

[dropdown list of Member States]

[dropdown list of competent authorities]

**The selected Member State/competent authority is requested to look into this case and take appropriate measures, if necessary.**

**II) Draft form for the answer to be provided by the Member State of establishment to a case by case derogation request**

**a. Feedback on the request sent by [the Member State where the service is provided]**

Following your request (*please tick the appropriate box(es)*):

- We have contacted the service provider. Please specify [free text]
- We have carried out factual checks. Please specify [free text]
- We need additional information to be able to properly examine the case. Please specify [free text]
- Other information you may want to provide: Please specify [free text]

**b. Have you decided to take measures against the service provider following examination of the case?**

- Yes. We have decided to take the following measure: [free text]  
Date when the measure enters into effect: [select date field]  
If relevant, please indicate the duration of the measure: [free text]
- No. We do not see the need to take measures  
If No, what is the reason:
  - The requirements of our Member State are, in our view, sufficient to ensure the safety of this service. Please specify [free text]
  - In our view this service does not create a specific safety risk
  - Other: [free text]

**c. Attachments** (*please upload any document or picture that can help understanding the case at hand such as inspection reports,*)

**d. Additional information you want to provide on the case:** [free text]

### **III) Draft form for the reaction of the Member State where the service is provided**

#### **1) Reaction to the reply sent by the Member State of establishment**

- **Feedback on the reply sent by [the Member State of establishment]**

We are satisfied with your reply/explanations and do not intend to take measures. [free text] *[in this case the request to make use of the case by case derogation will be closed]*

We need additional information in order to properly assess the need to take the proposed measure. Please specify [free text]

The explanations / the measures taken by the Member State of establishment are insufficient. We still intend to take the intended measures (*Before choosing this reply option, please determine in particular whether the scope, gravity and potential damages of the specific service that forms the object of this request would not allow you to further consult the Member State of establishment*). Please justify [free text]

**→ proceed to step 2**

#### **2) Notification of the intended measure [to the Member State of establishment and the Commission]**

**a. Description of the measure you intend to take**

We intend to take the following measure: [free text]

**Date** when the measure enter into effect (*note that the measure can only be taken 15 working days after the date of notification, unless the Commission has adopted a decision to the contrary*): [date field]

**Duration** of the measure: [free text]

**b. Justification of the measure you intend to take**

1. Please explain why the measure provides for a higher level of protection of the recipient / why you consider that the Member State of establishment has not taken sufficient measures in the specific case: [free text]
2. Please explain why the measure is proportionate / why it is suitable for attaining the objective pursued and why the objective cannot be attained by a less restrictive measure: [free text]

c. **Attachments** (*please upload any document or picture that can help understanding the case at hand such as inspection reports,*)

d. **Additional information you may want to provide on the case:** [free text]

e. **Please indicate the Member State and, if known, the competent authority who should receive the notification**

[dropdown list of Member States]

[dropdown list of competent authorities]

The Commission will examine the compatibility with Community law of the intended measure. If the Commission concludes that the measure is incompatible with Community law, it will adopt a decision asking the Member State where the service is provided to refrain or to put an end to the measure taken.

**Please note that further procedural steps will take place outside the IMI system.**