



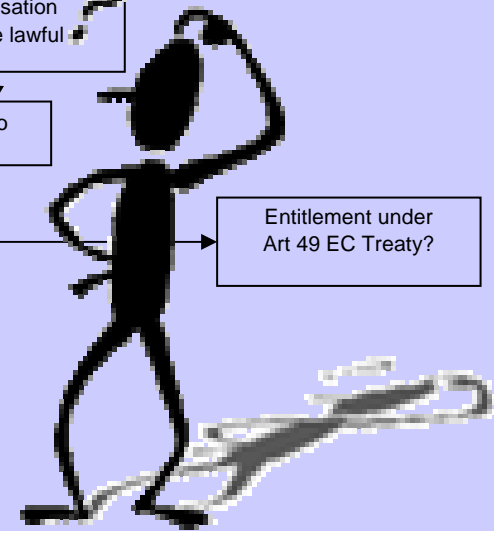
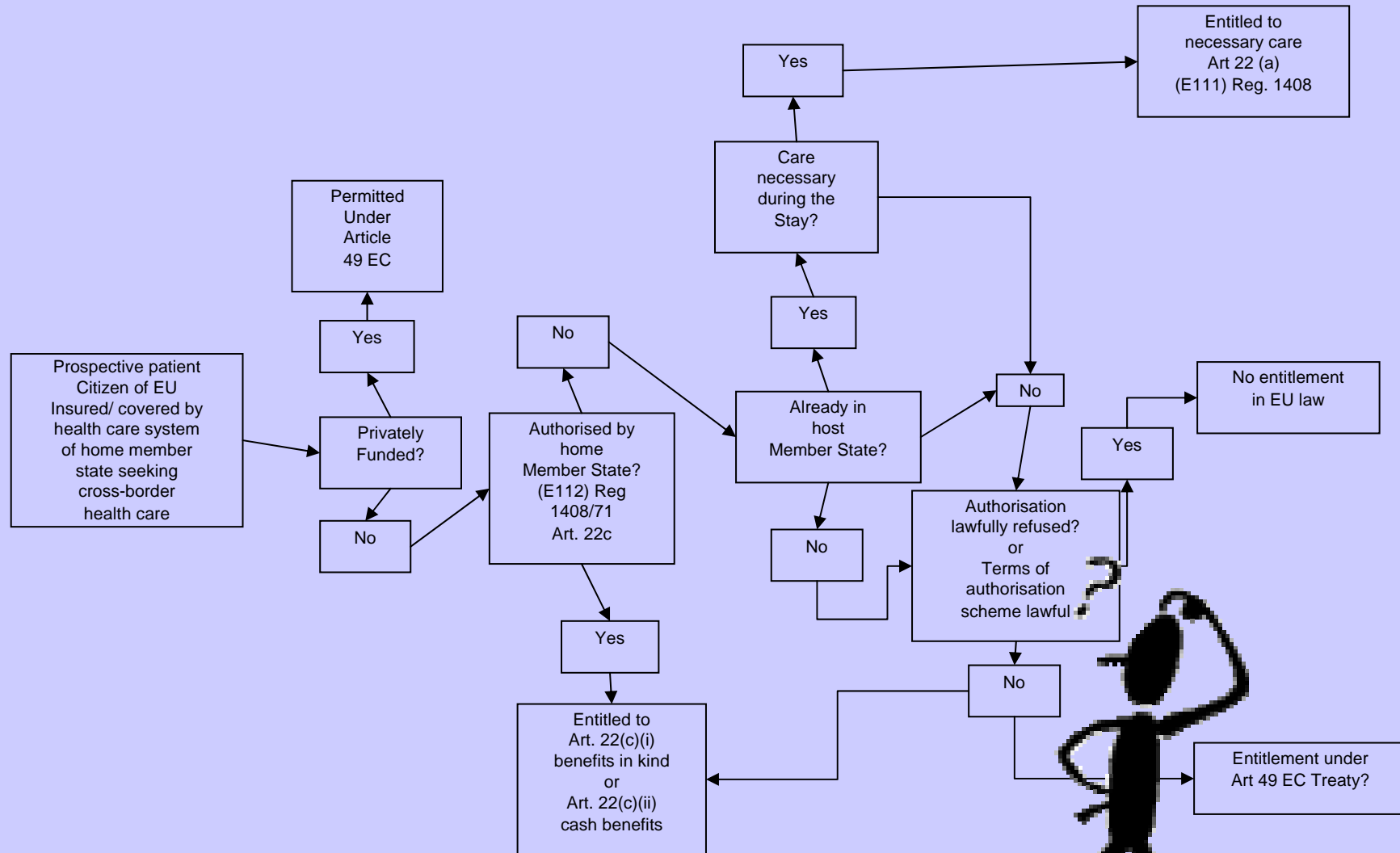
# Health systems and the internal market: the wider legal context

E4P Conference - Benefits and challenges  
of enhanced patient mobility in Europe

Gent, 26 October 2006

Willy Palm  
Dissemination development Officer

# Access to care under Art. 22 Reg. 1408/71 or Art. 49 ECT



**Source:** based on Tamara Hervey, Freedom to provide health care services within the EU: An opportunity for a Transformative Directive (2006)

## Cost of cross-border care per capita

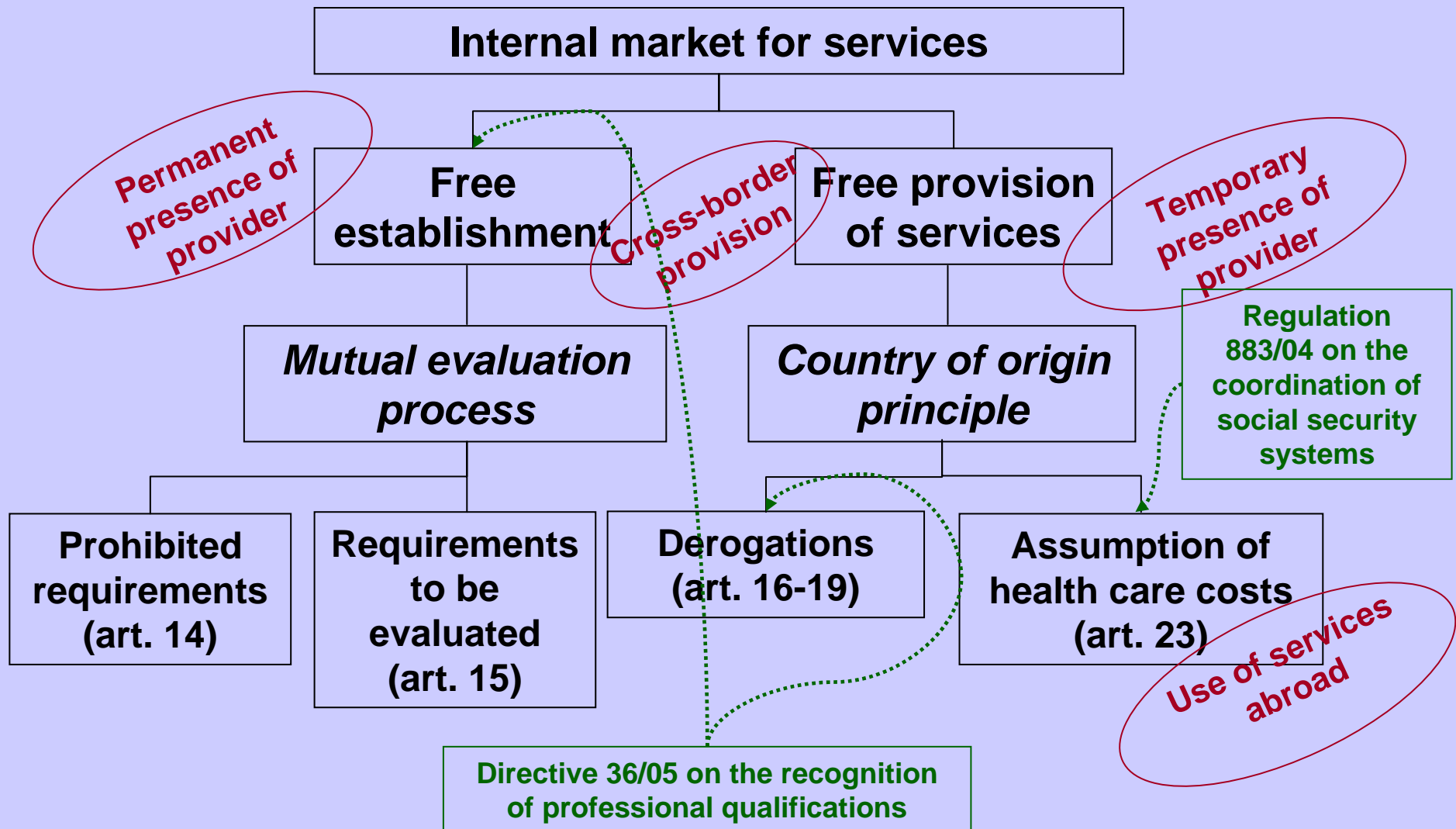
Average cost/habitant	1989	1993	1997	1998	2004
	€	€	€	€	€
<b>Austria</b>	-	-	0,48	1.87	<b>8.90</b>
<b>Belgium</b>	3,62	8,93	8,93	4.38	<b>6.42</b>
<b>Switzerland</b>					<b>10.02</b>
<b>Germany</b>	1,77	1,83	2,08	2.21	<b>1.87</b>
<b>Spain</b>	0,33	1,48	1,03	1.11	<b>3.72</b>
<b>France</b>	0,79	1,87	1,21	1.05	<b>5.79</b>
<b>Greece</b>	0,95	2,51	2,68	3.15	<b>0.79</b>
<b>Italy</b>	2,99	8,36	3,52	2.89	<b>2.26</b>
<b>Luxembourg</b>	58,01	149,55	135,29	116.0	<b>130.33</b>
<b>Netherlands</b>	1,95	0,26	1,98	2.85	<b>2.63</b>
<b>Portugal</b>	0,82	3,76	6,81	7.00	<b>3.85</b>
<b>Slovenia</b>					<b>0.99</b>
<b>Sweden</b>	-	-	0,65	0.96	<b>1.92</b>
<b>UK</b>	0,33	1,61	1,92	0.36	<b>0.76</b>
<b>Total</b>	<b>1,31</b>	<b>2,95</b>	<b>2,37</b>	<b>1.99</b>	<b>2.74</b>

Reports of the Administrative Commission for social security for migrant workers, 1990, 1994, 1998, 1999, 2005

# Health care is not an island

- geographically:  
exceptions to the territoriality principle
- Legally: application of Community law
- sector-wise:  
claim for sector-specific regulation

# The initial services Directive and health care



# Some things the proposed Services Directive would not do:

- *« It would not change the way Member States choose to organise health and social security systems. It is Member States' responsibility to decide to what extent and under what conditions private operators, for example private hospitals, may provide services funded by the social security system. »*



*Ceci n'est pas une pipe.*

**From: A checklist aiming to correct some myths about the Commission proposal (11 August 2004)**

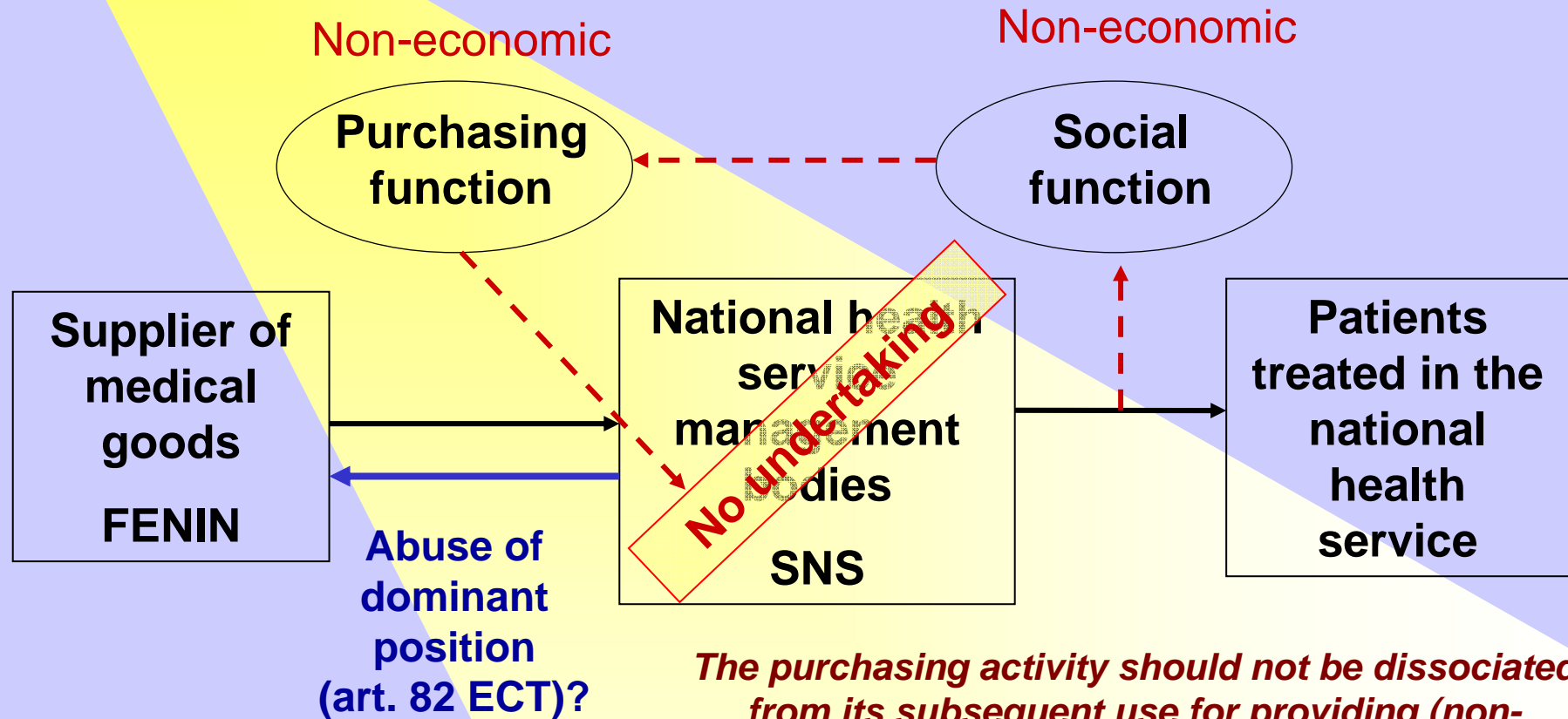
# The internal consequences

- *“Cross-border care has consequences for all health services, whether provided across borders or not”.*
- Internal effects on
  - Managing waiting lists flexibly
  - Provider choice and contracting arrangements
  - Benefit package

# Health and competition law

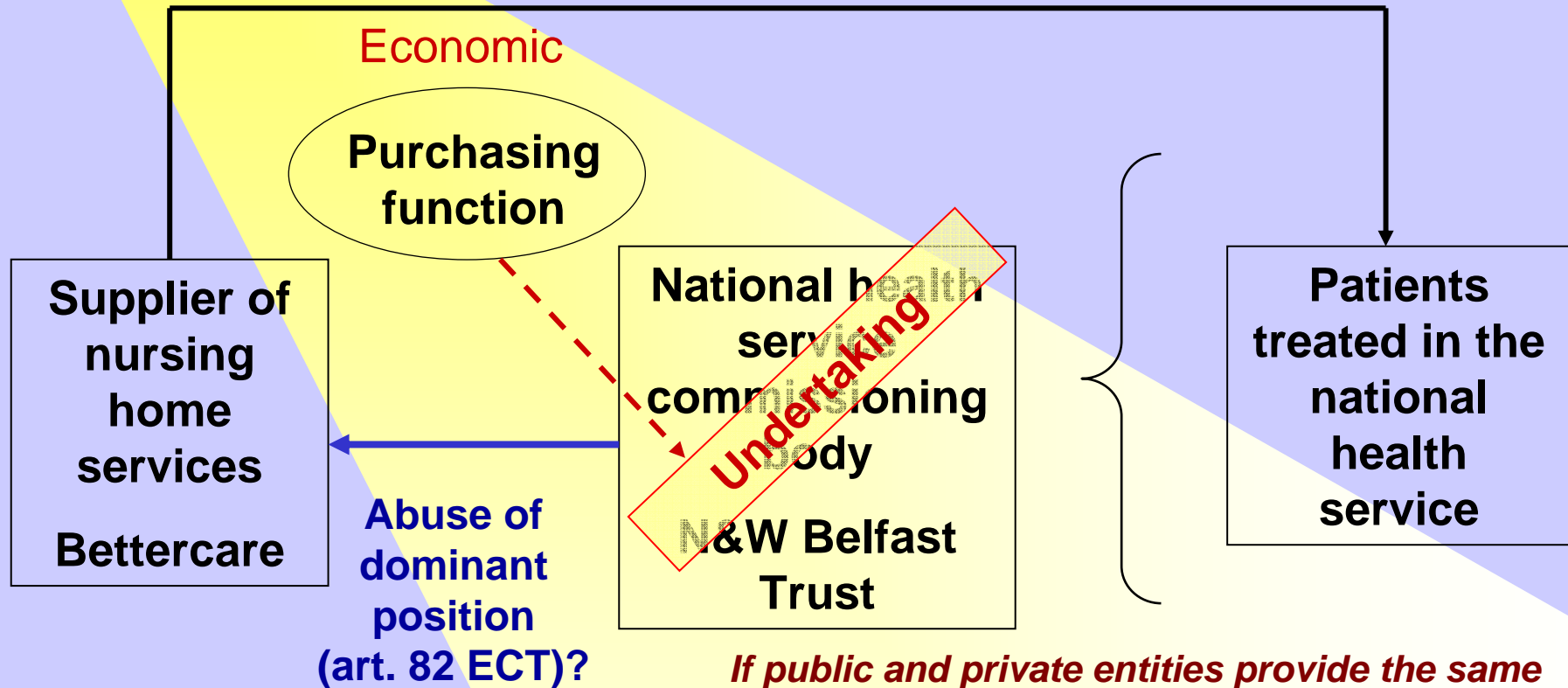
- Prohibits distortions of market competition
  - Exclusive rights
  - Abuse of dominant position
  - State aids
- Competition only applies to undertakings (entities performing an economic activity)
- ECJ: (social security) bodies performing an exclusively social function are no undertakings (*Poucet-Pistre, Cisal, AOK, Fenin*)

# The Fenin case (C-205/03)



*The purchasing activity should not be dissociated from its subsequent use for providing (non-economic?) health services to citizens*

# The Bettercare case (UK)



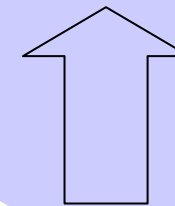
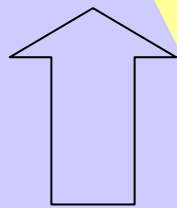
*If public and private entities provide the same services, any analysis will have to be undertaken in the framework of art. 86(2) ECT (A.G. Maduro)*

# Regulating the grey area between economic and non-economic activities

**competition rules apply**

Undertakings entrusted with the operation of **services of general economic interest** or having the character of a revenue-producing monopoly shall be subject to the rules contained in this Treaty, in particular to the rules on competition, insofar as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Community.

**competition rules do not apply**

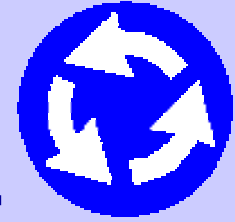


**economic**

Art. 86 (2) ECT

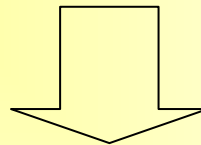
**non-economic**





# Health services of general interest

- **White Paper on services of general interest (12 May 2004):** « *The Commission is of the view that it is useful to develop a systematic approach in order to identify and recognise the specific characteristics of social and health services of general interest and to clarify the framework in which they operate and can be modernised. **This approach will be set out in a Communication on social services of general interest, including health services, to be adopted in the course of 2005.** »*



- **Communication on Social services of general interest in the European Union (26 April 2006):** « *Following the vote in Parliament on the first reading of the proposal for a directive on services in the internal market on 16 February 2006, the Commission excluded health services from the field of application of its amended proposal. It undertook to present a specific initiative and is now giving thought to this subject. **Consequently, this communication does not deal with these services.***»

# Services and values

*“Our health systems are a fundamental part of Europe’s social infrastructure. We do not under-estimate the challenges that lie ahead in reconciling individual needs with the available finances, as the population of Europe ages, as expectations rise, and as medicine advances. In discussing future strategies, our shared concern should be to protect the values and principles that underpin the health systems of the EU.*”

***As Health Ministers in the 25 Member States of the European Union, we invite the European Institutions to ensure that their work will protect these values as work develops to explore the implications of the European Union on health systems as well as the integration of health aspects in all policies.”***

**Statement on common values and principles in EU health systems  
(Health Council, 1 June 2006)**

Open method of  
coordination  
on health care and care  
for the elderly

High level  
group

XB  
projects and  
contracts

*Health and social policy*

Regulation  
883/04

ECJ  
rulings  
1998-2006



*Internal market*

Services  
Directive

Services  
general  
interest

*Competition*

**Health services Directive?**

Communication on  
health and social SGIs

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driver's seat?**

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**Policy Brief**

Cross-Border Health Care in Europe

**Patient mobility  
Cross-Border Health Care**

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Martin McKee  
Willy Palm  
Ilaria Passarini  
Francesco Ronfimi

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