

Belgium

The information provided below refers to legal provisions adopted or modified pursuant to the implementation of the Services Directive as well as to legal provisions which Member States have indicated as being applicable to service providers in the areas covered by the directive. The information has been provided by Belgium in the context of the implementation of the Services Directive and of the mutual evaluation process. It does not represent a legal analysis or a position of the European Commission in respect of compliance with EU law in general or with the Services Directive in particular. National legal provisions might have suffered amendments during the mutual evaluation process so interested parties are invited to check national legislation in force.

Belgium is characterised by its federal structure consisting of three levels of power: the federal government, the federated entities (the regions and communities) and the local authorities (provinces and municipalities). In principle, the federal State and the federated entities have exclusive competences. As a result, legislation at federal, regional and local level may contain requirements that are relevant under the Services Directive. Legislation therefore had to be screened and, in some cases, abolished or amended at all the relevant levels.

Main changes to Belgian legislation

At federal level, Belgium has adopted a horizontal law for the implementation of the Services Directive¹ as well as a law introducing a series of changes to various specific laws². Belgium has reported to the Commission that several other changes are underway or in preparation.

The federated entities have also adopted, or are in the process of adopting, several horizontal laws implementing the general principles of the Directive³ as well as laws abolishing or amending existing requirements. While some regions have already adopted important parts of their implementation legislation,⁴ others have reported that they are still in the course of preparation/adoption.⁵

Examples of authorisation schemes imposed on service providers established in Belgium

At federal level, there is a "horizontal" authorisation scheme applying to economic operators which consists in the obligation for all businesses and individual providers to be registered in the so-called "crossroads bank for businesses"⁶, which consolidates in a single database several existing registers, including the company and the trade/crafts registers as well as several professional registers in which providers have to be entered.

Belgium has reported authorisation schemes in several service sectors.

In the area of construction and property-related services, authorisations are required for installation and maintenance of heating installations, electricity and ventilation.⁷

¹ Two laws on services (Lois sur les services – 26 March 2010, M.B. 30.04.2010, p. 24435)

² Law of 22 December 2009, M.B. 29.12.2009, p. 82151.

³ Decree of 10 December 2009, M.B. 24.12.2009, p. 81655.

⁴ Walloon Region, German speaking Community.

⁵ Flemish Region / Community, Brussels-Capital Region.

⁶ Loi du 16 janvier 2003 portant création d'une Banque-Carrefour des Entreprises, modernisation du registre de commerce, création de guichets-entreprises agréés et portant diverses dispositions (MB, 05.02.2003 et 29.04.2009) <http://www.ejustice.just.fgov.be/loi/loi.htm>.

⁷ Decree of 27 November 2003 published in M.B. du 05/02/2004, p. 7098.

In the area of retail, Belgium applies an authorisation scheme, for example to the opening of retail outlets⁸ and to itinerant traders⁹. At local level, additional permit requirements are sometimes imposed for night shops and phone/internet shops.¹⁰

Authorisations for tourism and related services concern for example the opening of travel agencies¹¹, tourist accommodations¹² and camping grounds.¹³

Examples of other types of requirements imposed on service providers established in Belgium

Belgium has reported shareholding requirements in the area of regulated professions, for example for accountants and tax advisors.¹⁴

As far as legal form requirements are concerned, Belgium has reported that services of non-judicial recovery of debts and advice to debtors have to be provided under a specific legal form¹⁵. For automobile experts¹⁶, private employment agencies¹⁷ and land surveyors¹⁸ a specific legal form is also required.

Tariff requirements are imposed on several activities, such as employment services¹⁹, home care services²⁰, and services provided by architects.²¹

As far as territorial restrictions are concerned, at local level, the activity of running a night shop or a phone/internet shop is in many cases subject to the requirement of respecting a minimum distance between two establishments²².

⁸ Law of 13 August 2004 relating to the setting-up of retail outlets, M.B. 05.10.2004, modified by the law of 22 December 2009, M.B. 29.12.2009 (removal of economic needs test).

⁹ Law of 25 June 1993, M.B. 30.09.1993, modified by the laws of 4 July 2005 (M.B. 25.08.2005), 20 July 2006 (M.B. 28.07.2006) and law of 22 December 2009 (M.B. of 29.12.2009) (removal of economic needs test).

¹⁰ See for example the model regulation for this type of requirement, which can be found under: http://www.vvsg.be/economie_en_werk/Documents/Reglement%20nachtwinkels%20en%20phoneshops%20iKV%20wet%20openingsuren.doc.

¹¹ See for example: Decree of 2 March 2007 concerning the statute of travel agencies.

¹² Flemish Decree of 10 July 2008, M.B. 26.08.2008.

¹³ Décret du 4 mars 1991 relatif aux conditions d'exploitation des terrains de caravanage, M.B. 26.04.1991, p. 8796.

¹⁴ Royal decree of 15 February 2005, M.B. 16.03.2005.

¹⁵ Decree of 29 April 1996 concerning advice services to debtors, M.B. 28.08.1996.

¹⁶ Law of 15 May 2007, M.B. 02.06.2008.

¹⁷ Decree of 13 April 1999, M.B. 05.06.1999, p. 20880. This regulation will be adapted by 31 December 2010. On 2 April 2010 the Flemish Government took a decision-in-principle to bring the forthcoming legislation on private placement in full conformity with the Services Directive, including the abolition of the obligation to take a specific legal form.

¹⁸ Law of 11 May 2003 concerning the protection of the title and profession of land surveyor-expert, M.B. 06.06.2003. Belgium has reported that it intends to make this requirement less stringent.

¹⁹ Decision of the Flemish government of 8 June 2000 implementing the decree of 13 April 1999 on private employment services in the Flemish region, M.B. 11.11.2000, p. 37341. This regulation will be adapted by 31 December 2010. On 2 April 2010 the Flemish Government has already adopted a decision-in-principle to bring the forthcoming legislation on private placement in full conformity with the Services Directive, including the abolition of the fixed maximum tariffs.

²⁰ Act of 20 July 2001 for the promotion of local services and jobs, <http://www.werk.belgie.be/moduleTab.aspx?id=651&idM=102>.

²¹ Rules on duties of the profession of 18 April 1985, M.B. 08.05.1985. Belgium has reported that it intends to abolish minimum tariffs applicable to architects.

²² See for example the model regulation for this type of requirement, which can be found under: http://www.vvsg.be/economie_en_werk/Documents/Reglement%20nachtwinkels%20en%20phoneshops%20iKV%20wet%20openingsuren.doc

Examples of requirements on multidisciplinary activities of the regulated professions or in the area of certification, accreditation, technical monitoring and testing services

Such restrictions exist with respect to the exercise of the certain professions, for example for architects²³, accountants and tax advisors²⁴, veterinarians²⁵ and automobile experts.²⁶

Examples of requirements which apply to service providers established in other Member States and providing services in Belgium

At federal level, there is a general obligation for any self-employed provider to make a prior notification when providing cross-border services in Belgium.²⁷

Other examples of requirements applicable to cross-border service providers include at federal level an obligation to obtain a prior authorisation for services of non-judicial recovery of debts²⁸ and for itinerant activities²⁹ as well as requirements concerning the use of safety equipment for the operation of fairground attractions.³⁰

At the level of the federated entities, cross-border service providers are for example subject to an establishment requirement for centres of career services³¹, to authorisation procedures for environmental specialists³², consultation of debtors,³³ and vocational training operators³⁴.

²³ Act of 20 February 1939 concerning the protection of the title of architect, M.B. 25/03/1939.

²⁴ Law of 22 April 1999 concerning the profession of accountants and tax advisors; see http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=1999042236&table_name=loi.

²⁵ Act of 28 August 1991 concerning the exercise of veterinary activities, http://www.ordederdierenartsen.be/cms/files/file_sys_Documenten_Bestand_3.pdf.

²⁶ Act of 15 May 2007 regarding the recognition and protection of the profession of car-expert and the foundation of the Institute of car-experts, M.B. 02.06.2008.

²⁷ Article 153 and following of the Programme Law of 27 December 2006, M.B. 28 December 2006; Royal Decree of 20 March 2007 adopted in implementation of Chapter 8 of Title IV of the Programme Law of 27 December 2006 introducing a prior declaration for employees and seconded self-employed persons, M.B. 28.03. 2007.

²⁸ Law of 20 December 2002 concerning the amicable recovery of debts, M.B. 29.01.2003.

²⁹ Law of 25 June 1993 sur l'exercice et l'organisation des activités ambulantes et foraines, M.B. 30.09.1993.

³⁰ Royal Decree of 24 September 2006 concerning the exercise and organisation of fairground activities and ambulant activities in fairground gastronomy, M.B. 29.09.2006, p.50537.

³¹ Decision of the Flemish Government of 27 August 2004 on the recognition and funding of centres for career services, M.B. 06.12.2004, p. 81054.

³² Decision of the Flemish Government of 01.06.1995 concerning general and sectoral provisions on the environmental hygiene (Vlarem II).

³³ Decree of 29 April 1996 regarding consulting of debtors, M.B. 28.08.1996.

³⁴ Decision of the Flemish Government of 4 April 2003 concerning the supplementary education, mentioned in article 34 and 35 of the Decree of 7 May 2004 establishing the autonomous public agency Flemish Agency for Entrepreneurial Training - Syntra Vlaanderen, M.B. 30.05.2003, p. 29613.