

Germany

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 Germany 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.

Information on the implementation process regarding the Services Directive in Germany can be found on the following website of the German Federal Ministry of Economics and Technology:

<http://www.dienstleisten-leicht-gemacht.de/DLR/Navigation/umsetzung.html>

In Germany, legislative responsibilities are divided by the Constitution between the Federation and the Länder (states) which have wide-ranging legislative powers in numerous fields of law. In addition, local authorities and certain professional organisations (chambers) also have certain regulatory powers, e.g. to adopt statutes or by-laws on the basis of legislation. On this background, all levels, i.e. the Federation, the Länder, the municipalities and the chambers, have screened their legislation to verify its compliance with the Services Directive.

Main changes to German legislation

Germany has decided to implement the Services Directive by way of amendments to existing (in many cases sector-specific) legislation without adopting specific horizontal framework legislation. However, Germany has adopted new general procedural instruments in the Administrative Procedures Act (Verwaltungsverfahrensgesetz), in particular for the points of single contact and the rules on administrative cooperation.

The main changes that Germany has made affecting established providers (or providers wanting to establish in Germany) include the abolition of certain residence requirements which existed in certain Länder (for instance for interpreters/translators or different types of experts). Germany has also made requirements concerning legal form and shareholding requirements for architects and engineers less stringent.

As regards cross-border service providers, Germany has made a number of changes, such as abolishing the general notification obligation applicable to a wide variety of services set out in the general trade regulation act (Gewerbeordnung)¹ as well as abolishing the obligation to obtain an authorisation applicable to any kind of itinerant trade². In addition, for cross-border services, Germany has also abolished a number of authorisation schemes concerning specific services (for more specific information see below).

¹ See §4 in relation with §14 Gewerbeordnung (GewO)

² See §4 in relation with §55 GewO

Examples of authorisation schemes imposed on service providers established in Germany

In Germany, any kind of itinerant trade is subject to an authorisation scheme³.

Germany has also reported a number of authorisation schemes applicable to specific services:

In the area of construction/real estate Germany has authorisation schemes for property developers, property development managers and real estate agents.⁴

For certification/expert services, Germany has notified several authorisation schemes, in particular for experts/expert bodies in the field of sewage examination and soil protection⁵ and for structural inspection engineers and structural inspectors.⁶

As regards food and beverage related services a permit is required to operate a catering establishment and to serve alcohol.⁷

In the field of education, a permit is inter alia needed for continuing education facilities.⁸ Private higher education bodies require a state recognition.⁹

Examples of other types of requirements imposed on service providers established in Germany:

Legal form requirements are applicable to insolvency administrators¹⁰ who are only allowed to provide their services as a natural person.

Shareholding requirements have been notified in particular for companies/associations of lawyers¹¹ and patent attorneys¹².

Requirements fixing a minimum number of employees have been notified for certain expert/certification services, e. g. in cases of sewage examination.¹³

Minimum/maximum tariffs have been notified inter alia for several types of experts¹⁴, for insolvency administrators¹⁵, lawyers (for representation in courts)¹⁶ and veterinarians¹⁷. Fixed

³ See §55 GewO

⁴ § 34c Abs. 1 GewO.

⁵ Regulated at regional (Länder) level, e. g. § 8 Abs. 1 Abwassereigenkontrollverordnung Thüringen; § 17 Landesbodenschutzgesetz Nordrhein-Westfalen; § 15 Abwassergesetz Hamburg; § 6 Altlasten- und Bodenschutzgesetz Hessen.

⁶ Regulated at regional (Länder) level, e.g. § 3 Verordnung über die Prüfingenieure, Prüfämter und Prüfsachverständigen im Bauwesen Bayern; §§ 2 and 6 Bautechnische Prüfungsverordnung Berlin; § 18 Verordnung über Prüfingenieurinnen und Prüfingenieure, Prüfsachverständige und Technische Prüfungen Hamburg.

⁷ § 2 Gaststättengesetz (note: the responsibility for catering legislation was transferred to the Länder in 2006)

⁸ Regulated at regional (Länder) level, e.g. §§ 6, 8 Gesetz über die Weiterbildung in den Fachberufen des Gesundheitswesens Brandenburg; § 3 Abs. 1 Gesetz über die Weiterbildung in den Gesundheitsfachberufen und Altenpflegeberufen Sachsen; § 3 Gesetz über die Weiterbildung in den Fachberufen des Gesundheits- und Sozialwesens Thüringen.

⁹ Regulated at regional (Länder) level, e.g. §§ 104 et seqq. Hochschulgesetz Sachsen-Anhalt; § 72 et seq. Hochschulgesetz Nordrhein-Westfalen; §§ 12 et seqq. Berufsakademiegesetz Hamburg; § 102 Hochschulgesetz Hessen.

¹⁰ § 56 Abs. 1 Insolvenzordnung (InsO).

¹¹ § 59e Abs. 2 Bundesrechtsanwaltsordnung (BRAO).

¹² § 52e Abs. 2 Patentanwaltsordnung (PAO).

¹³ Regulated at regional (Länder) level, e.g. § 22 Abs. 3 Nr. 1 Anlagenverordnung Thüringen; § 3 Abs. 3 Verordnung über die Anerkennung als sachverständige Stelle für Abwasseruntersuchungen Mecklenburg-Vorpommern; § 22 Abs. 3 Anlagenverordnung Hessen; § 18 Abs. 3 Nr. 1 Anlagenverordnung Bayern.

¹⁴ See for example § 1 Abs. 5, § 3 Abs. 1, § 4 Baugebührenverordnung Sachsen-Anhalt, § 10 Landesverordnung über Prüfsachverständige für Standsicherheit Rheinland-Pfalz etc.

tariffs also exist for architects and engineers¹⁸. However, a number of these tariffs have been notified as abolished.¹⁹

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

As regards regulated professions, Germany has notified restrictions to multidisciplinary activities for lawyers²⁰, patent agents²¹, auditors²² and veterinarians²³.

As regards certification, technical monitoring etc. services, Germany has notified restrictions on multidisciplinary activities for structural inspectors/structural inspection engineers.²⁴ These are generally prohibited from serving as experts or engineers on projects in which they have been involved in respect of planning or execution.

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

As set out above, for cross-border services Germany has made a number of modifications, such as the abolition of the general notification obligation in the general trade regulation act and the abolition of the authorisation requirements for any kind of itinerant trade. In addition, Germany has also abolished a number of authorisation schemes concerning specific services, inter alia for real estate agents²⁵, the auctioneering sector²⁶, property developers and property development managers²⁷. Changes affecting other types of requirements have also been made in certain sectors.

Most requirements which have been reported by Germany for cross-border services providers concern different types of expert/certification services, in particular as regards the safety of buildings but also for various other types of experts, such as experts carrying out emission tests etc.

For example, some Länder have notified an obligation for structural inspection engineers to have an establishment in the territory of the respective Land.²⁸

Authorisations and notification obligations have also been notified for various different expert/certification services, including for structural inspection engineers²⁹. Authorisation requirements have also been reported for interpreters/translators at court³⁰.

¹⁵ § 63 Insolvenzordnung (InsO).

¹⁶ § 49b Bundesrechtsanwaltsordnung (BRAO); § 4 Rechtsanwaltsvergütungsgesetz (RVG).

¹⁷ See Gebührenordnung für Tierärzte (GOT).

¹⁸ See Verordnung über die Honorare für Architekten- und Ingenieurleistungen (HOAI).

¹⁹ § 4, 16, 17, 38, 49d, 48b, 47 a, 41, 45b, 46 a, 56, 65, 74, 83, 89, 94, 99 HOAI. – According to § 1 HOAI, tariffs applicable for architects and engineers do not apply in cases of cross-border services provision.

²⁰ § 59a Bundesrechtsanwaltsordnung (BRAO).

²¹ See §§ 52a and 52e Patentanwaltsordnung (PAO).

²² § 44 b Wirtschaftsprüferordnung.

²³ See for instance §16 Berufsordnung der Tierärztekammer Sachsen-Anhalt.

²⁴ Regulated on regional (Länder) level, e.g. § 25 Abs. 1 Satz 1 Nr. 4 Verordnung über die Prüflingenieur, Prüfämter und Prüfsachverständigen im Bauwesen Bayern; § 5 Abs. 4 Bautechnische Prüfungsverordnung Brandenburg; § 7 Abs. 4 Verordnung über die Anerkennung als sachverständige Stelle für Abwasseruntersuchungen Mecklenburg-Vorpommern.

²⁵ See §4 in relation with §34c GewO

²⁶ See §4 in relation with §34b GewO

²⁷ See §4 in relation with §34c GewO

²⁸ See for instance § 4 Abs. 2 Verordnung über Prüflingenieurinnen und Prüflingenieur, Prüfsachverständige und Technische Prüfungen Hamburg.

For certain expert/certification services, Germany has also notified requirements to take out insurance³¹ as well as requirements to have a specific identity document³².

²⁹ For authorisations see for instance § 66 Abs. 2 Satz 5 i. V. m. § 65 Abs. 4 bis 6 Bauordnung Sachsen; § 9 Abs. 3 ThürPPVO; § 26 BImSchG; § 29a BImSchG; § 2 Abs. 8 MilchGüteVO; § 19i Abs. 2 Satz 3 Wasserhaushaltsgesetz; § 5 Abs. 1 S. 3 Heizkostenverordnung etc.; for notifications see for example § 63d Abs. 2 i.V.m. § 65 Abs. 4 Thüringer Bauordnung. In many cases notification requirements are imposed if the requirements the service provider had to comply with in other Member States equal those in Germany/the respective Land whereas authorisation schemes apply in other cases.

³⁰ See for instance § 6 Saarländisches Ausführungsgesetz zum Gerichtsverfassungsgesetz (SAG GVG);

³¹ See for instance ;§ 6 Abs. 5;Rohrfernleitungsverordnung;§ 1 Abs. 2 Verordnung der Sächsischen Staatsregierung über die öffentliche Bestellung und Vereidigung von Sachverständigen auf dem Gebiet der Land- und Forstwirtschaft sowie des Garten- und Weinbaus; § 7 Abs. 5 Verordnung über Sachverständige und Untersuchungsstellen für den Bodenschutz und die Altlastenbehandlung im Saarland;

³² See for example ;§ 2 Abs. 3 Verordnung der Sächsischen Staatsregierung über die öffentliche Bestellung und Vereidigung von Sachverständigen auf dem Gebiet der Land- und Forstwirtschaft sowie des Garten- und Weinbaus