

Malta

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 Malta 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.

Main changes to Maltese legislation

Malta has adopted a mix of horizontal and specific implementing measures in its legislation. For this purpose a new a horizontal “framework” implementation law, the *Services (Internal Market) Act (Cap 500)*, has been adopted and was published on the 29.12.2009. The omnibus act that was adopted with the *Services (Internal Market) Act* also includes implementing amendments to another sixteen pieces of primary legislation which all came into force on the same date, dealing with service sectors such as general trade¹, tourism², certain regulated professions³, employment and training services⁴ and education⁵.

Examples of authorisation schemes imposed on service providers established in Malta

The Trading Licences Act⁶ covers general trade, meaning the exercise of any trading or economic activity including the sale of goods and the provision of any other service, irrespective of whether such an activity is exercised from commercial premises or otherwise, which is not regulated under any other law. The Act required anyone wanting to undertake a commercial activity to apply for a licence. The licensing scheme has been changed so as to provide for a posteriori notification obligation for the majority of commercial activities, thus retaining the authorisation process primarily for activities posing a potential risk to public health.

Malta has also reported authorisation schemes in several service sectors.

In the tourism sector, authorisations are required for accommodation, catering, travel services, tourist guides⁷ and outside promotional contacts (OPCs)⁸.

¹ Trading Licences Act (Cap. 441), 2002

² Malta Travel and Tourism Services Act (Cap. 409), 1999.

³ Accountancy Profession Act (Cap. 281), 1979; Engineering Profession Act (Cap. 321), 1988; Periti Act (Cap. 390), 1996; Veterinary Services Act (Cap. 437), 2001.

⁴ Employment and Training Services Act (Cap. 343), 1990.

⁵ Education Act (Cap. 327), 1988.

⁶ Cap. 441, 2002.

⁷ All under Malta Travel and Tourism Services Act (Cap. 409), 1999.

⁸ Malta Travel and Tourism Services Act (Cap. 409), 1999; Timeshare and Timeshare-like Products Promotion (Licensing of OPC Representatives) Regulations (L.N. 287 of 2010), 2010.

There are several authorisation schemes in the retail sector, concerning services such as the operation of an autogas retail station⁹, the retail distribution of LPG in cylinders and from a fixed point of sale¹⁰ and the retail sale of fuels¹¹.

Driving instructors and the operators of driving schools also require authorisations¹².

In relation to some activities, authorisation schemes have been replaced with a notification obligation, for example in the case of public brokers¹³ and commercial agents¹⁴, or with information obligations for recipients in the case of doorstep selling¹⁵.

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

A legal form requirement is imposed on architects/civil engineers (periti)¹⁶ and engineers¹⁷. A shareholding requirement exists for the accountancy profession¹⁸.

Recreational diving services providers are subject to a requirement fixing a minimum number of employees¹⁹.

Activities in the fields of catering establishments²⁰, tourism accommodation²¹ and travel operators and organised excursion operators²² are reserved to persons who have either specific activity-related training or relevant experience.

Previously, the services of public brokers, commercial agents, periti (architects/civil engineers) and advocates were subject to fixed schedules of fees. These schedules, though still contained in the legislation, are now reported to be optional and parties are free to agree different fees²³.

⁹ Malta Resources Authority Act (Cap 423), 2000; Liquefied Petroleum Gas Market Regulations (S.L. 423.31), 2008.

¹⁰ Malta Resources Authority Act (Cap. 423), 2000; Liquefied Petroleum Gas Market Regulations (S.L. 423.31), 2008.

¹¹ Malta Resources Authority Act (Cap. 423), 2000; Petroleum for Inland (Retail) Fuel Market Regulations (L.N. 53 of 2010), 2010.

¹² Motor Vehicles (Driving Licences) Regulations (S.L. 65.18), 2002.

¹³ Commercial Code (Cap. 13).

¹⁴ Commercial Code (Cap. 13).

¹⁵ Doorstep Contracts Act (Cap. 317), 1987 and inserted as a notification under the trading licenses act.

¹⁶ Periti Act (Cap. 390), 1996.

¹⁷ Engineering Profession Act (Cap. 321), 1988.

¹⁸ Accountancy Profession Act (Cap. 281), 1979.

¹⁹ Malta Travel and Tourism Services Act (Cap. 409), 1999; Recreational Diving Service Providers Regulations (S.L. 409.13), 2004. The Maltese authorities have notified their intention to issue new Regulations in this field.

²⁰ Malta Travel and Tourism Services Act (Cap. 409), 1999; Catering Establishments Regulations (S.L. 409.15), 2004.

²¹ Malta Travel and Tourism Services Act (Cap. 409), 1999; Bed and Breakfast (Operations) in Tourism Accommodation Establishments (S.L. 409.14), 2004; Tourism Accommodation Establishment Regulations (S.L. 409.04), 2002.

²² Malta Travel and Tourism Services Act (Cap. 409), 1999; Travel Operators and Organised Excursion Operators Regulations (S.L. 409.09), 2002.

²³ Commercial Code (Cap. 13); Code of Organisation and Civil Procedure (Cap. 12).

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

Malta has reported that such requirements are applicable to lawyers²⁴, periti²⁵ and engineers²⁶. Periti and engineers can only enter into a partnership with another professional of the same type and the partnership must have as its exclusive object the exercise of the profession. Lawyers can form a limited number of types of association with other lawyers only.

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

The *Services (Internal Market) Act* recognises the right of service providers established in other Member States to provide services in Malta and provides that competent authorities may only impose requirements that are non-discriminatory, justified for reasons of public policy public security; public health or the protection of the environment, and proportionate. In addition, Malta has introduced amendments to some sectoral laws, to bring them in conformity with the freedom to provide services, and where justified, a notification requirement was introduced to replace authorisations.

Marketing companies intending to promote timeshare and timeshare-like products through OPCs ("outside promotional contacts")²⁷ must submit a written declaration to the competent authority before commencing the provision of services. In the construction field, such a declaration is required for electrical installations²⁸.

An authorisation is required for driving instructors²⁹ and for carrying out roadworthiness testing on vehicles (VRT testers)³⁰. Stonemasons must also obtain an authorisation³¹.

²⁴ Code of Ethics and Conduct for Advocates in Malta.

²⁵ Periti Act (Cap. 390), 1996.

²⁶ Engineering Profession Act (Cap. 321), 1988.

²⁷ Malta Travel and Tourism Services Act (Cap. 409), 1999; Timeshare and Timeshare-like Products Promotion (Licensing of OPC Representatives) Regulations (L.N. 287 of 2010), 2010.

²⁸ Malta Resources Authority Act (Cap. 423), 2001; Electrical Installations Regulations (L.N. 225 of 2010), 2010.

²⁹ Traffic Regulation Ordinance (Cap. 65), 1931; Motor Vehicles (Driving Licences) Regulations (L.N. of 191 of 2002), 2002; Motor Vehicles (Driving Licences) (Amendment) Regulations (L.N. 89 of 2010), 2010.

³⁰ Traffic Regulation Ordinance (Cap. 65), 1931; Motor Vehicles Roadworthiness Test Regulations (L.N. 126 of 1998), 1998; Motor Vehicles Roadworthiness Test (Amendment) Regulations (L.N. 90 of 2010), 2010.

³¹ Code of Police Laws (Cap. 10). Malta has reported the intention to issue new regulations in this field, in order to comply with the Services Directive.