

The Netherlands

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 the Netherlands 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.

The Netherlands are a decentralised unitary State with three governmental levels, i.e. the national government, 12 provinces (regional level) and 430 municipalities (local level). The majority of Dutch legislation at local and regional level is largely similar. The Netherlands also have 26 water boards and several autonomous administrative authorities and professional organisations at a functional governmental level. All these entities have legislative powers and therefore the legislation had to be screened, adopted and/or amended at all the governmental levels.

For more information on (the implementation of) the Services Directive in the Netherlands, please consult the website of the Dutch government on this topic: <http://www.rijksoverheid.nl/onderwerpen/dienstenrichtlijn>.

Main changes to Dutch legislation

The Netherlands have adopted horizontal legislation for the implementation of the Services Directive.¹

In addition, several laws were modified to implement the Services Directive. The modifications were partly made on the occasion of pending legislative procedures in individual sector specific legislation. A number of modifications of sectoral acts were realised through the Modification Act Services Directive and the Modification Order in Council Services Directive.²

Examples of authorisation schemes imposed on service providers established in the Netherlands

In the Netherlands there are some not service sector specific authorisation schemes which are designed to protect and regulate a particular public interest or a particular activity. For instance, the Netherlands have a number of specific requirements for the protection of the

¹ Services Act (Wet van 12 november 2009 tot implementatie van Europese regelgeving betreffende het verkeer van diensten op de interne markt (*Dienstenwet*)).

² Modification Act Services Directive (Wet van 23 december 2009 tot aanpassing van diverse wetten ter implementatie van richtlijn 2006/123/EG van het Europees parlement en de Raad van de Europese Unie van 12 december 2006 betreffende diensten op de interne markt (PbEU L 376/6) (*Aanpassingswet dienstenrichtlijn*)), Modification Order in Council Services Directive (Besluit van 24 november 2009 tot aanpassing van diverse besluiten ter implementatie van richtlijn nr. 2006/123/EG van het Europees Parlement en de Raad van de Europese Unie van 12 december 2006 betreffende diensten op de interne markt (PbEU L 376) (*Aanpassingsbesluit dienstenrichtlijn*)). For a detailed list of the implementation legal acts communicated to the European Commission, please consult the Annex to this document.

environment (prevention of pollution, noise emissions etc.), mainly consisting of authorisation schemes in the field of waste management, inspections and technical verifications.³

In the area of construction several authorisation schemes exist, such as authorisations for excavation and digging activities⁴, an earth removal permit⁵, and a pumping of ground or surface water permit⁶.

Local authorisations in the area of tourism and related services concern campsite permits⁷ and location-related specific types of tours at regional level (provinces)⁸. There is also an authorisation requirement for reasons of fire safety for the use of any building to accommodate more than 10 persons overnight which affects tourist accommodation services.⁹

In the food and beverages sector many municipalities, based on the Model for a General Local Regulation of the Association of Dutch Municipalities VNG (Article 2:28 APV), require an operating permit for the operation of a catering establishment (restaurant, café).¹⁰ Furthermore and in any case, a license is required for the supply of alcoholic beverages.¹¹

In many municipalities (again based on the Model for a General Local Regulation of the VNG), services performed on the streets (e.g. street artists, street photographers) can not be carried out in certain areas and/or between certain hours and service providers wishing to do so in these areas or between these hours must apply for an authorisation by way of derogation.¹² Also, municipalities may have in place authorisation schemes directed at the organisers of public markets¹³ and practically all Dutch municipalities have an authorisation scheme for the organisation of larger events which is based on the Model for a General Local Regulation of the VNG.¹⁴

³ Environmental Management Act (*Wet milieubeheer*), Order in Council on collecting waste material (*Besluit inzamelen afvalstoffen*), Regulation collectors (*Regeling Inzamelaars*).

⁴ Article 2 (3) (a) in relation to Article 8 Information exchange act underground networks (*Wet informatieuitwisseling ondergrondse netten*); Article 45 Monuments and Historic Buildings Act 1988 (*Monumentenwet 1988*).

⁵ Article 4 Earth Removal Regulation Province Limburg (*Ontgrondingenverordening Provincie Limburg*), available online: <http://portal.prvlimburg.nl/psonline/documenten/22691/010528-0164.doc>.

⁶ Chapter C Ground Water Management Regulation on Water management (*Grondwater Beheer Verordening op de Waterhuishouding*), available online: http://kreeft.zeeland.nl/zeesterdoc/ZBI-O/ZEE/ZEE0/4009/400924_1.pdf.

⁷ Municipal regulations e.g. Article 5.8.2 General local regulation municipality Arnhem (*Algemeen Plaatselijke Verordening gemeente Arnhem*), available online: http://www.old arnhem.nl/bi_brondoc/verordeningen/1983%20-%20APV%20versie%2016-02-2009.pdf; Article 2 Camping Regulation Zoeterwoude (*Kampeerverordening Zoeterwoude*), available online: www.zoeterwoude.nl;

Article 2, Article 4, Article 5 Open Air Recreation (*Openluchtrecreatie*), available online: www.cromstrijen.nl;

Article 2 Open Air Recreation (*Openluchtrecreatie*), available online: www.houten.nl.

⁸ E.g. for tours with motor vehicles, Appendix 10 A Environmental regulation (*Milieuverordening*): available online: www.zuid-holland.nl; for foreshore walking tours, Articles 4, 5, 6 and 7 Foreshore walking regulation (*Wadloopverordening Noord-Holland 1996*), available online: www.noord-holland.nl.

⁹ Article 2.11.1 Decree fireproof use of buildings (*Besluit brandveilig gebruik bouwwerken*).

¹⁰ E.g. Article 2:28 General local regulation Terschelling (*Algemene Plaatselijke Verordening Terschelling*), available online: www.terschelling.nl.

¹¹ Articles 12-22, 24 en 25 Licensing- and Catering Act (*Drank- en Horecawet*).

¹² E.g. Article 2:9 General Local Regulation Municipality Roermond (*Algemene Plaatselijke Verordening Gemeente Roermond*) available online: www.roermond.nl.

¹³ E.g. Article 4 Market Regulation Municipality Amersfoort 2009 (*Marktverordening Gemeente Amersfoort 2009*), available online: www.amersfoort.nl.

¹⁴ E.g. Article 2:25 General Local Regulation Municipality Rhenen 2010 (*Algemene Plaatselijke Verordening Gemeente Rhenen 2010*), available online: www.rhenen.nl. The authorisation for small events has been abolished in most municipalities.

Examples of other types of requirements imposed on service providers established in the Netherlands

Municipalities in the Netherlands generally (again based on the Model for a General Local Regulation of the VNG) have quantitative or territorial restrictions for some activities which are deemed to be sensitive from the point of view of public order/policy, e.g. regarding the maximum number of gaming machines (i.e. machines concerning games of skill).¹⁵

There are some legal form requirements for inspection services of commodity machines, requiring inspection organisations to be constituted as a legal person.¹⁶

There are shareholding requirements in the area of regulated professions for accountants. The majority of the capital in an accountants' organisation must be held by Registered Accountants or Administration Accountants¹⁷ and the majority of the persons that determine the daily policy of the organisation must consist of Registered Accountants or Administration Accountants.¹⁸

Furthermore, the Netherlands reported that in two municipalities requirements are imposed concerning the minimum number of employees in nursery schools.¹⁹

The Netherlands regulate tariffs for the provision of energy measurement services carried out by the operators of the energy networks.²⁰

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

As a requirement on multidisciplinary activities of the regulated professions, the Netherlands reported a general provision aiming at ensuring that accountants carrying out legally required accountancy checks are not influenced by the owners or shareholders of an accountants' organisation, the persons who (also) determine the policy of an accountants' organisation, the supervisory body of an accountants' organisation, or an entity that is affiliated to an accountants' organisation in such a way that it jeopardizes their independence and objectivity.²¹

No other requirements on multidisciplinary activities were reported.

¹⁵ E.g. Article 2 Gaming Machine Halls Regulation Purmerend 1999 (*Speelautomatenhallenverordening Purmerend 1999*); Article 2:28 General Local Regulation Municipality Rucphen (*Algemene Plaatselijke Verordening Municipality Rucphen*), available online: www.rucphen.nl.

¹⁶ Article 6g (1) (a) Commodities Act Decree Machines (*Warenwetbesluit machines*).

¹⁷ Article 33 Further Regulation on Accountants' Offices (*Nadere voorschriften accountantskantoren*), available online: www.novaa.nl; Article 33 Further rules accountants' offices concerning assurance services (*Nadere voorschriften accountantskantoren ter zake van assurance-opdrachten*), available online: www.nivra.nl.

¹⁸ Code of conduct regulation, Accountants' organisations regulation, further rules independency public accountant (*Verordening gedragscode, Verordening accountantsorganisaties en Nadere voorschoreften onafhankelijkheid van de openbaar accountant*), available online: www.novaa.nl; Article B1-291.1 Code of conduct regulation (*Verordening gedragscode*), available online: www.nivra.nl.

¹⁹ Articles 1-11 and 14 Quality rules nursery schools (*Kwaliteitsregels peuterspeelzalen*), available online: www.soest.nl; Article 2 and further Quality rules nursery schools (*Kwaliteitsregels peuterspeelzalen*), available online: www.almere.nl.

²⁰ Section 7 Decision setting measuring tariffs electricity 2008 (*Besluit tot vaststelling meettarieven elektriciteit 2008*), available online: www.energiekamer.nl; Article 80a and article 81e Gas Act (*Gaswet*).

²¹ Article 1 and 27 of the Decree Supervision Accountants' organisations (*Besluit toezicht accountantsorganisaties (Bta)*).

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

Legislation in the Netherlands usually does not distinguish between establishment and temporary cross-border provision of services.²² Thus, a number of the authorisation schemes as set out above also apply to cross-border service providers.

Other requirements than authorisation schemes applicable to cross-border service providers include, for example: the obligation for organisations for the certification of certain machines and protective equipment to have a seat or establishment in the Netherlands;²³ the requirement for sworn interpreters, private detective agencies and traffic controllers to possess a professional identity document;²⁴ requirements by many municipalities, based on the Model Building Regulation by the VNG, in the construction sector to use equipment that is in good condition²⁵

²² Dutch regulation focuses on the way the activity concerned is carried out and not on the permanent or temporary nature of the activity, or on the issue if the provider is established in the Netherlands or in another Member State.

²³ Article 6g of the Commodity Act machines (*Warenwetbesluit machines*) and article 2b of the Commodity Act machines (*Warenwetbesluit machines*); Article 6d (1) sub b Commodities Decree personal protective equipment (*Warenwetbesluit persoonlijke beschermingsmiddelen*).

²⁴ Article 8, 12, 15, 30, 31, 33 and 36 of the Act sworn interpreters and translator (*Wet beëdigde talken en vertalers*), Article 11 Decree sworn interpreters and translators (*Besluit beëdigde talken en vertalers*); Article 9 paragraph 8 Private detective agencies and private security organisations act (*Wet particuliere beveiligingsorganisaties en recherchebureaus*); Article 3-6, Article 14 Regulation traffic controllers (*Regeling verkeersregelaars*).

²⁵ E.g. Article 4.10 Building Regulation Municipality Winterswijk (*Bouwverordening Gemeente Winterswijk*), available online: www.winterswijk.nl.