

## **Poland**

*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 Poland 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 Polish legislation**

On 4 March 2010 Poland adopted the Act on providing services in the territory of the Republic of Poland<sup>1</sup>, a horizontal act implementing the Services Directive. The Act sets out general rules prescribed by the Directive and introduces amendments to a number of specific acts regulating various service activities. The Act amends also the Act of 2 July 2004 on freedom of economic activity<sup>2</sup> by implementing in this act certain general principles stemming from the Directive as well as the rules related to the point of single contact.

### **Examples of authorisation schemes imposed on service providers established in Poland**

In Poland each established entrepreneur must be registered either with the Register of Business Activity of natural persons<sup>3</sup> (if such entrepreneur is a natural person) or with the register of entrepreneurs of the National Court Register (in all other cases e.g. if such entrepreneur is a company, partnership or branch). The legal basis for the operation of the National Court Register is the Act of 20 August 1997 on the National Court Register<sup>4</sup>. The obligation to be registered with the National Court Register results from provisions of specific acts, for example, in case of partnerships and companies, from the provisions of the Code of Commercial Partnerships and Companies<sup>5</sup>.

There are a number of specific authorisation schemes in several service sectors in the form of, e.g., procedures for the issuance of permits, licences or entry in the register of regulated activity. None of these authorisation schemes has been abolished by the Act of 4 March 2010 on providing services in the territory of the Republic of Poland. Some of the authorisation schemes have been made less burdensome, for example those concerning certain services governed by Act of 18 December 2003 on protection of plants, where procedures for the issuance of permit have been replaced with procedures for entry in the register.

Examples of services sectors where authorisations are required include: services of tour operators and travel agents (agencies)<sup>6</sup>, retail and wholesale of alcohol beverages<sup>7</sup>, services of

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<sup>1</sup> Journal of Laws 2010, No. 47, item 278. Texts of legal acts may be found through an online search engine of the Polish Parliament at <http://isap.sejm.gov.pl/>

<sup>2</sup> Journal of Laws 2007, No. 155, item 1095 as amended

<sup>3</sup> *ibid.*

<sup>4</sup> Journal of Laws 2001, No. 17, item 209 as amended

<sup>5</sup> Journal of Laws 2000, No. 94, item 1037 as amended

<sup>6</sup> Act of 29 August 1997 on tourist services (Journal of Laws 2004, No. 223, item 2268 as amended), Ordinance of Minister of Finance of 17 February 2005 on the customer insurance related to the activity performed by tour operators and tourist agents (Journal of Laws 2005, No. 32, item 281), Ordinance of Minister of Finance of 14

employment agencies (i.e. job placement services, vocational counselling services and personal advisory services)<sup>8</sup>, storing of personal and payroll documentation pertaining to employees<sup>9</sup>, tax advisory services by legal persons<sup>10</sup>, detective services<sup>11</sup>, trade in and distribution of gaseous fuels<sup>12</sup>, training of aviation personnel<sup>13</sup>, collective management of copyrights and derivative rights<sup>14</sup>, training of various categories of drivers and candidates for drivers<sup>15</sup>, services consisting in repairing and modernising technical equipment<sup>16</sup>, services related to batteries and accumulators<sup>17</sup>, certain services related to end-of-life vehicles<sup>18</sup>, certain services related to the used electric and electronic equipment<sup>19</sup>, services of extractive waste disposal facilities<sup>20</sup>, packaging or trade in plant protection products<sup>21</sup>, training on trade, packaging and use of plant protection products<sup>22</sup>, waste management services<sup>23</sup>, drafting forest management plans<sup>24</sup>, certification in the area of electronic signatures<sup>25</sup>, various services

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February 2005 on minimal amount of bank or insurance guarantee related to the activity performed by tour operators and tourist agents (Journal of Laws 2005, No. 32, item 279)

<sup>7</sup> Act of 26 October 1982 on upbringing in sobriety and counteracting alcoholism (Journal of Laws 2007, No. 70, item 473 as amended), Ordinance of Minister of Economy of 13 June 2001 on type of documents required for the submission of an application on issuing of the authorisations for the wholesale trade in alcohol beverages, templates of the applications and information on sale of alcohol beverages (Journal of Laws 2001, No. 60, item 614)

<sup>8</sup> Act of 20 April 2004 on promotion of the employment and institutions of the labour market (Journal of Laws 2008, No. 69, item 415 as amended)

<sup>9</sup> Act of 14 July 1983 on national archive resources and archives (consolidated text: Journal of Laws 2006, No. 97, item 673 as amended)

<sup>10</sup> Act of 5 July 1996 on tax advisory services (Journal of Laws 2008, No. 73, item 443 as amended)

<sup>11</sup> Act of 6 July 2001 on detective services (Journal of Laws 2002, No. 12, item 110, as amended)

<sup>12</sup> Act of 10 April 1997 on energy (Journal of Laws 1997, No. 54, item 348 as amended)

<sup>13</sup> Act of 3 July 2002 on aviation (Journal of Laws 2006, No. 100, item 696, as amended), Ordinance of Minister of Infrastructure on certification of activity in civil aviation of 6 May 2003 (Journal of Laws, No. 146, item 1421)

<sup>14</sup> Act of 4 February 1994 on copyrights and related rights (consolidated text: Journal of Laws o2006, No. 90, item 631 as amended)

<sup>15</sup> Act of 28 October 2002 on transporting hazardous goods by road (Journal of Laws 2002, No. 199, item 1671 as amended), Act of 6 September 2001 on road transport (Journal of Laws 2007, No.125, item 874 as amended) Act of 20 June 1997 on road traffic (Journal of Laws 2005, No. 108, item 908 as amended)

<sup>16</sup> Act of 21 December 2000 on technical supervision (Journal of Laws 2000, No. 122, item 1321 as amended)

<sup>17</sup> Act of 24 April 2009 on batteries and accumulators (Journal of Laws 2009, No. 79, item 666)

<sup>18</sup> Act of 20 January 2005 on recycling of end-of-life vehicles (Journal of Laws 2005, No. 25, item 202 as amended)

<sup>19</sup> Act of 29 July 2005 on used electric and electronic equipment (Journal of Laws 2005, No. 180, item 1495 as amended)

<sup>20</sup> Act of 10 July 2008 on extractive waste (Journal of Laws 2008, No. 39, item 865 as amended)

<sup>21</sup> Act of 18 December 2003 on protection of plants (Journal of Laws 2008, No. 133, item 849, No. 227, item 1505 and Journal of Laws 2009, No. 20, item 106, No. 31, item 206 and No. 98, item 817)

<sup>22</sup> *ibid.*

<sup>23</sup> Act of 27 April 2001 on waste (Journal of Laws 2007, No. 39, item 251, as amended)

<sup>24</sup> Ordinance of Minister of Environment of 20 December 2005 concerning granting permissions for drafting of forest management plans (Journal of Laws 2005, No. 256, item 2152)

<sup>25</sup> Act of 18 September 2001 on electronic signature (Journal of Laws 2001, No. 130, item 1450 as amended) and executive ordinances

involving animals<sup>26</sup>, postal services<sup>27</sup>, collection of municipal waste<sup>28</sup>, disposal of sewage and collective water management<sup>29</sup>.

### **Examples of other types of requirements imposed on service providers established in Poland**

Quantitative or territorial restrictions still exist in respect of retail trade in alcohol, namely there is a restriction concerning the number of the points of sale of alcohol beverages in the area of a given commune.<sup>30</sup>

As far as legal form requirements are concerned, there is a ban on provision of services by advocates, legal advisors and foreign lawyers practicing in Poland in the form of limited liability company or joint stock company. For tax advisors, advocates, legal advisors and patent agents another legal form of providing the activity has been introduced i.e. the joint stock limited partnership<sup>31</sup>.

In the case of the storing of personal and payroll files of the employees there used to be a requirement to perform the activity in the form of a joint stock company (and additionally in the form of the cooperative, provided that the activity in this scope and form was performed on 31 March, 2003). This requirement was amended and now the activity may be performed by an entrepreneur being a legal person or by an organisational entity without legal personality (like, for example, a partnership)<sup>32</sup>.

Poland decided to maintain a restriction concerning the legal form in which providers of collective management of copyrights and related rights may operate i.e. the obligation to perform this activity in the form of an association)<sup>33</sup>.

There are limitations concerning shareholding in companies providing tax advisory services<sup>34</sup> and patent agent services<sup>35</sup> (an obligation to hold majority of shares by the representatives of these professions and an obligation to issue only registered shares in joint stock companies).

Maximum tariffs are applicable to services of storing of personal and payroll files of employees<sup>36</sup> and for services of collecting municipal waste from property owners, emptying septic tanks and transporting liquid impurities<sup>37</sup>. Minimum tariffs are applicable for services of the collective management of copyrights and related rights<sup>38</sup>.

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<sup>26</sup> Act of 11 March 2004 on the protection of animals health and fighting animal infectious diseases (Journal of Laws 2008, No. 213, item 1342)

<sup>27</sup> Act of 12 June 2003 on postal services (Journal of Laws 2008, No. 189, item 1159; Journal of Laws 2009, No. 18, item 97 and No. 168, item 1323)

<sup>28</sup> Act of 13 September 1996 on maintaining cleanliness and order in communes (Journal of Laws 2005, No. 236, item 2008, as amended)

<sup>29</sup> Act of 7 June 2001 on collective water management and sewage disposal (Journal of Laws 2006, No. 123, item 858 as amended)

<sup>30</sup> idem footnote no. 7

<sup>31</sup> Act of 5 July 1996 on tax advisory services (Journal of Laws 2008, No. 73, item 443 as amended), Act of 6 July 1982 on legal advisors (Journal of Laws 2002, No. 123, item 1059 as amended), Act of 26 May 1982 on advocates (Journal of laws 2009, No. 146, item 1188 as amended), Act of 11 April 2001 on patent agents (Journal of Laws 2001, No. 49, item 509 as amended)

<sup>32</sup> idem footnote no. 9

<sup>33</sup> idem footnote no. 14

<sup>34</sup> Act of 5 July 1996 on tax advisory services (Journal of Laws 2008, No. 73, item 443 as amended)

<sup>35</sup> Act of 11 April 2001 on patent agents (Journal of Laws 2001, No. 49, item 509 as amended)

<sup>36</sup> idem footnote no. 9

<sup>37</sup> idem footnote no. 28

<sup>38</sup> idem footnote no. 14

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

Poland has replaced the restriction to the exercise of a service activity jointly or in partnership in respect of advocates, legal advisors, tax advisors, foreign lawyers practicing in Poland and patent agents with the possibility to establish a joint enterprise by representatives of these professions.<sup>39</sup> Certain restrictions still apply with regard to composition of partners or with regard to the shareholding in such enterprises (e.g. in case of patent agents' office in the form of partnership, at least half of the partners must be patent agents).

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

The Act of 4 March 2010 on providing services in the territory of the Republic of Poland<sup>40</sup> includes a general clause pursuant to which service providers from EEA countries who exercise freedom to provide services in Poland do not need to register with the Register of Business Activity of natural persons or with the register of entrepreneurs of the National Court Register. In addition, in accordance with this clause, temporary service providers may be made subject to a duty to obtain a certificate, concession, license, permit, consent, or entry in the register of regulated activity or any other appropriate register only in case sector-specific regulations impose such an obligation for reasons of public order, public safety, public health or the protection of the environment.

In accordance with sector-specific regulations authorisations are required for certain categories of cross-border service providers. These include, for instance: tour operators and travel agents<sup>41</sup>, providers of training for aviation personnel<sup>42</sup>, operators of extractive waste disposal facilities<sup>43</sup>, providers of services consisting in repairing and modernising technical equipment<sup>44</sup>, providers of postal services other than universal services<sup>45</sup>, providers of services within the scope of packaging of or trade in plant protection products<sup>46</sup>, providers of training on trade, packaging and use of plant protection products<sup>47</sup>.

Providers of training for various categories of drivers and candidates for drivers (such as driving schools) even if they operate cross-border must possess infrastructure in the territory of Poland<sup>48</sup>. This requirement has been reported by Poland as falling within the category of requirements on having an establishment in Poland.

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<sup>39</sup> Act of 26 May 1982 on advocates (Journal of Laws 2009, No. 146, item 1188 as amended), Act of 6 July 1982 on legal advisors (Journal of Laws 2002, No. 123, item 1059 as amended), Act of 5 July 1996 on tax advisory services (Journal of Laws 2008, No. 73, item 443 as amended), Act of 5 July 2002 on provision of legal services by foreign lawyers in the territory of the Republic of Poland (Journal of Laws 2002, No. 126, item.1069 as amended), Act of 11 April 2001 on patent agents (Journal of Laws 2001, No. 49, item 509 as amended)

<sup>40</sup> idem footnote no. 1

<sup>41</sup> idem footnote no. 6

<sup>42</sup> idem footnote no. 13

<sup>43</sup> idem footnote no. 20

<sup>44</sup> idem footnote no. 16

<sup>45</sup> idem footnote no. 27

<sup>46</sup> idem footnote no. 21

<sup>47</sup> ibid.

<sup>48</sup> idem footnote no. 15