

## **Portugal**

*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 Portugal 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.*

In Portugal, the large majority of requirements covered by the Services Directive are laid down at national level. Although the regions of Azores and Madeira are competent to regulate many service activities covered by the Directive, in general they apply the national rules with minor adjustments relating to the competent authorities and, exceptionally, to specific subject matters concerning regional public interests.

### **Main changes to Portuguese legislation**

Portugal has adopted a horizontal transposition law on 20 May 2010, the Decree-Law establishing principles and rules to simplify the free access and the exercise of service activities in the Portuguese territory.<sup>1</sup> The Decree Law also includes some changes to legislation in various sectors. Portugal has reported that the remaining sectoral changes required by the Services Directive are expected to be adopted in the coming weeks. The reporting of requirements carried out by the Portuguese authorities corresponded to the situation prior to the implementation of the Services Directive by the above-mentioned Decree-Law and the sectoral amendment legislation.

### **Examples of authorisation schemes applicable to establishment in Portugal**

Portugal has reported authorisation schemes for the opening up and running of larger retail establishments<sup>2</sup>, selling in itinerant markets and street selling<sup>3</sup>, lift installation and maintenance services<sup>4</sup>, tourism and related services (car rental<sup>5</sup>, water parks<sup>6</sup>), tickets sales<sup>7</sup>, placement agencies<sup>8</sup>, private education<sup>9</sup> and real estate<sup>10</sup>.

Portugal has reported an intention to replace authorisation procedures with prior declarations in the following sectors: production of topographic maps or maps based on topographical

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<sup>1</sup> The Decree-Law has not been published yet.

<sup>2</sup> DL 21/2009 <http://dre.pt/pdf1sdip/2009/04/07400/0227002275.pdf> ; <http://www.dgae.min-economia.pt/>

<sup>3</sup> DL 122/79 <http://www.dgae.min-economia.pt/>

<sup>4</sup> DL 320/2002 <http://dre.pt/pdf1sdip/2002/12/300A00/81608169.pdf>

<sup>5</sup> DL 354/86 <http://dre.pt/pdf1sdip/2009/04/06400/0203202038.pdf>

<sup>6</sup> DL 65/97

<sup>7</sup> DL 310/2002

<sup>8</sup> DL 260/2009 <http://dre.pt/pdf1sdip/2009/09/18700/0691506925.pdf>

<sup>9</sup> Law 9/79 <http://www.dre.pt/pdf1sdip/1979/03/06500/04230425.PDF> DL 553/80

<sup>10</sup> DL 211/2004 <http://www.dre.pt/pdfgratis/2004/08/194A00.PDF>

and CMVM Regulation 8/2002, republished by CMVM Regulation 7/2007 <http://www.cmvm.pt/NR/rdonlyres/AF83CDE4-66A9-4689-B087-5174C62497C9/8658/Regulamento72007FIIeOICVM1.pdf>

Real Estate Funds [http://www.cmvm.pt/NR/rdonlyres/DCD107CE-67DD-4836-AD72-67BB00D4C240/11011/Regulamento08\\_2002\\_vconsolidada.pdf](http://www.cmvm.pt/NR/rdonlyres/DCD107CE-67DD-4836-AD72-67BB00D4C240/11011/Regulamento08_2002_vconsolidada.pdf)

themes<sup>11</sup>, analysis of the quality of water for human consumption<sup>12</sup> and installers of telecommunications infrastructure (so-called ITUR ITED<sup>13</sup>).

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

The obligation to take a specific legal form in Portugal is applicable to sectors like private higher education<sup>14</sup>, tourism<sup>15</sup>, real estate<sup>16</sup>.

Obligations related to shareholding are applicable in tourism sector (car rental<sup>17</sup> and travel agencies<sup>18</sup>).

In Portugal, a minimum number of employees is required for placement agencies<sup>19</sup>, construction<sup>20</sup>, diving activities/services<sup>21</sup>, technical services (inspection and maintenance of lifts, skip hoists, escalators and moving walkways)<sup>22</sup> inspection of gas networks<sup>23</sup>, installation of gas networks<sup>24</sup>, tourism (holidays camps)<sup>25</sup> and whale watching<sup>26</sup>.

Maximum tariffs exist for the servicing of lifts, escalators and moving walkways<sup>27</sup>, and for the inspection of gas distribution networks and premises in buildings<sup>28</sup>.

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<sup>11</sup> There will be an amendment to Article 8 of Decree-Law No 193/95

<http://www.igeo.pt/servicos/PRODUCAO%20CARTOGRAFICA.pdf>

<sup>12</sup> Approved amendment to Article 26 of Decree-Law No 306/2007 in the horizontal transposition law.

<http://www.dre.pt/pdf1sdip/2007/08/16400/0574705765.pdf>

<sup>13</sup> Proposed amendment to Article 42 of Decree-Law No 123/2009. <http://dre.pt/pdf1sdip/2009/05/09800/0325303279.pdf>

<sup>14</sup> Article 32 of Law 62/2007. <http://dre.pt/pdf1sdip/2007/09/17400/0635806389.pdf>. The intention to amend this requirement has been announced.

<sup>15</sup> DL 209/97 Article 5 (2/a) of Decree-Law 209/97, of 13 August 1997, republished by Decree-Law 263/2007, of 20 July 2007 - lays down conditions to access and exercise of travel and tourism agencies - Specific legal form: legal persons.

<http://dre.pt/pdf1sdip/2007/07/13900/0461504634.pdf>. The intention to amend this requirement has been announced.

<sup>16</sup> Article 6 (1.a) of Decree Law 211/2004, of 20 August. To be modified through proposal of law by the parliament or the government (under authorisation), currently in discussion. Legal form of commercial company or other type of groups of companies effectively established in a MS of the EU. <http://dre.pt/pdf1sdip/2004/08/196A00/55255539.pdf>

<sup>17</sup> Share capital not less than €50 000. This requirement of the legislation currently in force (Decree Law 354/86 of 23 October, reviewed and republished by Decree Law 77/2009, of 1 April) has been deleted in the legislative amendment currently in preparation. <http://dre.pt/pdf1sdip/2009/04/06400/0203202038.pdf>. The intention to amend this requirement has been announced.

<sup>18</sup> Article 5 (2a) of Decree Law 209/97, of 13 August, as amended by Decree Law 12/99, of 11 January, 76-A/2006, of 29 March and DL 263/2007, of 20 July. Minimum paid-up capital of 100 000 Euros.

<http://dre.pt/pdf1sdip/2007/07/13900/0461504634.pdf>. The intention to amend this requirement has been announced.

<sup>19</sup> Article 16(3) of Decree Law 260/2009, of 25 September - Legal status for the licensing and the operation of private placement and temporary work agencies. <http://dre.pt/pdf1sdip/2009/09/18700/0691506925.pdf>

<sup>20</sup> Articles 7 (b), 9 (3,4) of Decree Law 12/2004, of 9 January and Ordinance (Portaria)16/2004, of 10 January. To be modified through proposal of law by the parliament or the government (under authorisation procedure), currently in discussion. <http://dre.pt/pdf1sdip/2004/01/007A00/01130126.pdf>

<sup>21</sup> Article 26 (4) of Decree Law 16/2007, of 22 January, <http://dre.pt/pdf1sdip/2007/01/01500/05530560.pdf>

<sup>22</sup> Point 2.3 of annex IV - Decree Law 320/2002 <http://dre.pt/pdf1sdip/2002/12/300A00/81608169.pdf>

<sup>23</sup> Articles 4(e) and 9 (2) of annex II of Ordinance 362/2000, of 20 June, as amended by Ordinance 1358/2003, of 13 December

<sup>24</sup> Articles 4 (b, f), 6, 9 and 10 of annex I of Decree Law 263/89

<sup>25</sup> Article 19 of Decree Law 304/2003. <http://dre.pt/pdf1sdip/2009/07/14000/0468504692.pdf>

<sup>26</sup> Article 14 of the annex to Decree Law 9/2006. <http://dre.pt/pdf1sdip/2006/01/005A00/01210126.pdf>

<sup>27</sup> Article 7(2) of Decree Law n° 320/2002, of 28 December. <http://dre.pt/pdf1sdip/2002/12/300A00/81608169.pdf>. The intention to amend this requirement has been declared.

<sup>28</sup> Article 18(3) of Decree Law 521/99. <http://dre.pt/pdf1sdip/1999/12/286A00/87008704.pdf>. Ordinance 625/2000 <http://dre.pt/pdf1sdip/2000/08/193B00/42224222.pdf>. The intention to amend this requirement has been declared.

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

Restrictions to multidisciplinary activities are applicable to some regulated professions, for example to lawyers<sup>29</sup>, “solicitadores”<sup>30</sup>, legal consultants<sup>31</sup>, accountants<sup>32</sup>, real estate agents<sup>33</sup>.

Restrictions exist also in respect of other providers of services, such as operation of the gas distribution networks and branches<sup>34</sup> and co-generation energy auditors<sup>35</sup>.

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

Authorisations have been reported for cross-border provision amongst others in following sectors: travel agencies<sup>36</sup>, car rental without a driver<sup>37</sup>, aerial photography<sup>38</sup>, ticket sales<sup>39</sup>, market salespersons<sup>40</sup>, private education (studies leading to a degree)<sup>41</sup> and driving schools<sup>42</sup>, real estate<sup>43</sup>, construction<sup>44</sup> and placement services<sup>45</sup>.

Insurance requirements have also been reported as being applicable to both established and cross-border service providers alike in respect of several service activities, such as servicing of lifts, escalators and moving walkways,<sup>46</sup> tourist guides and maritime tour operators,<sup>47</sup> travel and tourism agencies and tour guides,<sup>48</sup> estate agencies,<sup>49</sup> construction,<sup>50</sup> accountants,<sup>51</sup> and statutory auditing.<sup>52</sup>

Other requirements, such as notification obligations for temporary representative offices apply to travel agencies<sup>53</sup>. An obligation to notify the opening, removal or closing down of temporary establishments is imposed on real estate agencies<sup>54</sup>.

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<sup>29</sup> Articles 76 and 77 Bar Association Statute, approved by Law 15/2005

<sup>30</sup> Article 114 of annex to the Decree Law 88/2003

<sup>31</sup> Article 1(2) of Law 49/2004

<sup>32</sup> Article 14 of the annex to the Decree Law 452/99. <http://dre.pt/pdf1sdip/2009/10/20700/0799908029.pdf>.

<sup>33</sup> Article 4(2) of Decree Law 211/2004. <http://dre.pt/pdf1sdip/2004/08/196A00/55255539.pdf>. The intention to amend this requirement has been announced.

<sup>34</sup> Article 8 of the annex of Ordinance (Portaria) 82/2001. <http://dre.pt/pdf1sdip/2001/02/033B00/06850688.pdf>

<sup>35</sup> Point 5.2. Guide for Recognition of Auditors for Energy Audits in cogeneration plants.

<https://www.portaldapresa.pt/CVE/Services/BalcaoUnico/Licenca.aspx?CodCategoria=13&CodSubCategoria=1&CodActividade=247&CodLicenca=424&CodLingua=PT>. The intention to amend this requirement has been announced.

<sup>36</sup> Decree-Law 209/97, of 13 August 1997. <http://dre.pt/pdf1sdip/2007/07/13900/0461504634.pdf>. The intention to amend this requirement has been declared.

<sup>37</sup> Decree Law 354/86 of 23 October. <http://dre.pt/pdf1sdip/2009/04/06400/0203202038.pdf>. The intention to amend this requirement was declared.

<sup>38</sup> DL 172/93 to be modified

<sup>39</sup> DL 310/2002 to be modified

<sup>40</sup> DL 42/08 <http://dre.pt/pdf1sdip/2008/03/04900/0149901503.pdf> and DL 142/2006 <http://dre.pt/sug/1s/diplomas-lista.asp> are to be modified.

<sup>41</sup> L 62/2007 <http://dre.pt/pdf1sdip/2007/09/17400/0635806389.pdf> is to be modified (but the authorisation scheme shall remain in place)

<sup>42</sup> DL 86/98. The intention to amend this requirement was declared.

<sup>43</sup> CMVM Regulation 8/2002 <http://www.cmvm.pt/NR/exeres/C1EFE44B-ABD7-401D-ACBD-17899F4F2093.htm> The intention to amend this requirement has been announced.

<sup>44</sup> DL 12/2004 <http://dre.pt/pdf1sdip/2004/01/007A00/01130126.pdf> is to be modified

<sup>45</sup> DL 260/2009 <http://dre.pt/pdf1sdip/2009/09/18700/0691506925.pdf> is to be modified

<sup>46</sup> DL 320/2002 <http://dre.pt/pdf1sdip/2002/12/300A00/81608169.pdf>

<sup>47</sup> DL 108/2009 <http://dre.pt/pdf1sdip/2009/05/09400/0303503045.pdf>

<sup>48</sup> DL 209/97 <http://dre.pt/pdf1sdip/2007/07/13900/0461504634.pdf>

<sup>49</sup> DL 211/2004 <http://dre.pt/pdf1sdip/2004/08/196A00/55255539.pdf>

<sup>50</sup> Law 31/2009 <http://dre.pt/pdf1sdip/2009/07/12700/0427604285.pdf>

<sup>51</sup> DL 452/99 <http://dre.pt/pdf1sdip/2009/10/20700/0799908029.pdf>

<sup>52</sup> DL 487/99 <http://dre.pt/pdf1sdip/2008/11/22600/0813508177.pdf>

<sup>53</sup> DL 209/97 <http://dre.pt/pdf1sdip/2007/07/13900/0461504634.pdf>

<sup>54</sup> DL 211/2004 <http://dre.pt/pdf1sdip/2004/08/196A00/55255539.pdf>

It is important to stress yet again that the reporting of requirements carried out by the Portuguese authorities corresponded to the situation prior to the implementation of the Services Directive and to the declared intentions at the time to adopt sector-specific amendments at the time which had not yet been reflected in published draft legislation. The Portuguese authorities have indicated that forthcoming amendments will expressly exclude the application of authorisation schemes laid down in sector-specific legislation to those service providers established in a Member State other than Portugal for all service activities with a few exceptions addressing specific concerns related to the territory where the service is provided. These amendments have not been adopted yet though.

An amendment that is already in force is the one introduced in the *Código das Sociedades Comerciais* (Corporate Code), which, in its article 4, obliges companies that are not established in Portugal but want to provide services there for more than one year to open up a representation (a branch or agency) in Portugal<sup>55</sup>. The requirement has been abolished for service providers established in other Member States and providing cross-border services falling within the scope of the Services Directive.

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<sup>55</sup> DL 49/2010, article 2 <http://dre.pt/pdf1sdip/2010/05/09700/0172201728.pdf>