

Spain

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 Spain 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 Spain legislative powers are divided between the State and the Autonomous Communities. Autonomous communities have amongst others legislative powers in the fields of tourism and retail services. Local authorities have also powers to establish authorisation schemes and requirements, provided this has been established by law, in some fields such as itinerant markets, fairs, or funerary services, and in respect of any other service for which the power to regulate has been delegated to them by the State and/or the Autonomous Communities.

Main changes to Spanish legislation

Spain has adopted a horizontal law in order to implement the Services Directive (Law 17/2009 of 23 November on freedom of access to service activities and the provision thereof¹), which is binding on all territorial powers.

In addition, an omnibus law, amending 48 state laws on various subjects,² has been adopted (Law 25/2009 of 22 December amending various laws for the adaptation thereof to Law No 17/2009 of 23 November on freedom of access to service activities and the provision thereof³).

Other relevant legislative acts adopted include: Amendment to the Law 7/1996 of 15 January laying down rules for retail trade⁴, Amendment of the consolidated version of the Law on the Evaluation of Environmental Impact⁵, and amendment of 118 royal decrees and 21 ministerial orders.

The Autonomous Communities have also adopted laws that amend a significant number of sector-specific legislation falling within their competences: public administration, retail, tourism, agriculture, social services, professional bodies, environment, construction, industrial activities and craftwork, among others⁶.

¹ <http://www.boe.es/boe/dias/2009/11/24/pdfs/BOE-A-2009-18731.pdf>

² Areas affected: public administration, consumers, professional services, employment, industrial services and construction, energy, transport and communications, environment and agriculture, health, intellectual property.

³ <http://www.boe.es/boe/dias/2009/12/23/pdfs/BOE-A-2009-20725.pdf>

⁴ <http://www.boe.es/boe/dias/2010/03/02/pdfs/BOE-A-2010-3365.pdf>

⁵ <http://www.boe.es/boe/dias/2010/03/25/pdfs/BOE-A-2010-4908.pdf>

⁶ Andalucía: Ley 3/2010, of 21 May, Aragón: Decreto-Ley 1/2010, of 27 April, Balearic Islands: Law 8/2009, of 16 December, Canary Islands: Law 14/2009, of 30 December and Law 12/2009 of 16 December, Cantabria: Law of Cantabria 1/2010, of 27 April, Castile-la Mancha: Law 7/2009 of 17 December, Castille and León: Decree-Law 3/2009 of 23 December, Catalonia: Decree 106/2008 of 6 May, Autonomous Community of Valencia: Law 12/2009 of 23 December, Galicia: Law 1/2010 of 11 February, La Rioja: Law 6/2009 of 15 December, Community of Madrid: Law 8/2009 of 21 December, Murcia: Law 12/2009 of 11 December, Community of Navarre: Law Foral 6/2010 of 6 April.

Examples of authorisation schemes imposed on service providers established in Spain

As a general rule, the ex ante control of many activities, which is implied in the requirement of prior authorisation, has been replaced by an ex post control of the service activity, which is only carried out after the provider has submitted a communication or declaratory undertaking as to the fulfilment of certain defined requirements and has started the provision of the service. Communications and declaratory undertakings ensure appropriate ex post control for the purposes of verifying that the service activities carried out by the provider comply with the necessary legal requirements.

Authorisation schemes have been maintained in the retail sector for commercial establishments exceeding a certain size (large commercial establishments) and for street vendors⁷. Authorisations for franchisees and distance sellers have been replaced by a duty to give subsequent communication within 3 months since the initiation of the activity⁸. In respect of organisation of fairs, the prior authorisation requirement has been abolished and the registration has become voluntary, or else has been replaced by automatic registration based on a declaratory undertaking⁹.

In the sector of construction and industrial services, authorisations have been replaced by declaratory undertakings in good faith given by the owner of the activity (individual person or legal entity), which will lead to the provider being automatically entered into the relevant register¹⁰.

Similar undertakings are being introduced for services of repair and maintenance of vehicles¹¹.

In the tourism and hospitality/restaurants sector, legislation is exclusively issued at regional level. Authorisations have been replaced by declaratory undertakings in good faith or prior notifications for services of travel agencies, hotels, tourist apartments, camp sites, rural houses¹², restaurants and cafeterias¹³. In some cases authorisations have been maintained for environmental protection in case of accommodation establishments¹⁴ and active tourism¹⁵.

⁷ As a general rule, large commercial establishments will be those exceeding 2500 square metres. This threshold will vary in some autonomous communities, depending on population or on the specific territory or depending on whether the establishments are individually/collectively run. Street vendors outside itinerant markets are not allowed to sell in Spain. Authorisations for selling in itinerant markets are limited in number due to scarcity of public land (article 12 of the Services Directive), For example, in Andalusia, Law 1/1996 of 10 January on Retail and Law 9/1988 of 25 November on Itinerant Selling, amended by the Decree-Law 3/2009 of 22 December, lay down authorisation schemes for both activities.

⁸ See Articles 62 and 38 of Law 7/1996 of 15 January laying down rules for retail trade.

⁹ For instance, in La Rioja, see Law 3/2005 of 14 January on Retail, as amended by Law 6/2009 of 15 December.

¹⁰ See Law 21/1992 of 16 July on Industry, which has been amended by Law 25/2009 of 22 December amending various laws for the adaptation thereof to Law No 17/2009 of 23 November, on freedom of access to service activities and the provision thereof.

¹¹ <http://www.boe.es/boe/dias/2010/04/29/pdfs/BOE-A-2010-6754.pdf>

¹² For example, in the Community of Madrid, Law 1/2009 of 12 March, regulating Tourism, as amended by Law 7/2009 of 15 December; in the Community of Valencia, Law 3/1998 of 21 May on Tourism, as amended by Law 12/2009 of 23 December; and in Balearic Islands, Decree 60/2009 of 25 September.

¹³ In Canary Islands, see Law 7/1995 of 6 April, regulating Tourism, as amended by Law 14/2009 of 30 December.

¹⁴ For instance, for the opening-up of spas, skiing centres, or camping sites in certain types of floors or special locations the authorisation requirement has been maintained.

¹⁵ In Andalusia: Decree 20/2002 of 29 January on Rural and Active Tourism, as modified by Decree 80/2010 of 30 March.

Authorisations for providers engaged in food preparations for groups and events, as well as for food manipulators will be replaced by the authorisation provided by EU rules or the direct application, ensured via controls, of EU regulations in the field of food hygiene.¹⁶

In the field of education, authorisations are required for private educational institutions which give accredited teaching leading to official academic qualifications¹⁷.

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

Quantitative and territorial restrictions have generally been abolished, for example, quantitative and territorial restrictions in respect of driving schools, or minimum distance requirements between petrol stations have been removed.

Legal form requirements have been maintained for the organisation of activities in the public domain in one region¹⁸. They have been eliminated in respect of industrial services consisting of installation and repair of equipment, organisation of fairs or travel agencies both at national¹⁹ and regional levels²⁰.

As regards shareholding requirements and in respect of providers in the area of regulated professions which are organised as professional associations such as lawyers or architects, Spain has reduced from 75% to 51% the percentage of capital and voting rights which has to be in the hands of professionals when professionals choose to operate as a “professional company”²¹. However, professionals are free to adopt any legal form amongst those recognised in Spanish law (*sociedad anónima, sociedad limitada etc.*). In these cases, professionals would remain individually responsible for the professional work they provide (and not the company of which they form part).

Requirements fixing a minimum number of employees are imposed mostly on education or social services. In most cases however, these requirements are imposed in the form of ratios teachers/alumnae, and not in absolute terms.²²

Recommended tariffs by the different professional bodies have been abolished²³.

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

Spain has reported incompatibilities for the provision of advocacy and auditing services for the same client, between prosecutors and advocates²⁴, and relating to professions connected

¹⁶ See Regulation 853/2004, setting out the specific hygiene rules applicable to foods of animal origin and Regulation 852/2004 on food hygiene.

¹⁷ For example, in Catalonia, see Article 74 of Law 12/2009 of 10 July on Education.

¹⁸ Law 16/2006, of 17 October.

¹⁹ Order of 14 April of 1988 regulating travel agencies has been abolished.

²⁰ Decree 168/1994 of 30 May on Travel Agencies, as amended by Decree 106/2008 of 6 May.

²¹ See Law 2/2007 of 15 March on Professional Companies, amended by Law 25/2009 of 22 December amending various laws for the adaptation thereof to Law No 17/2009 of 23 November on freedom of access to service activities and the provision thereof.

²² See, Decree 170/1985 of 25 June for providers carrying out organised outdoor activities with children (Basque Country). For private education services, Decree 57/1998, of 16 April in Madrid and Law 12/2009, of 10 July. For social services for the elderly, Decree 27/1998, of 6 March in Rioja.

²³ Law 2/1974 of 13 February on Professional Bodies, as amended by Law 25/2009 of 22 December amending various laws for the adaptation thereof to Law No 17/2009 of 23 November, on freedom of access to service activities and the provision thereof.

with the drug distribution chain²⁵ and to laboratories carrying out analysis on environmental and food health²⁶. The obligation of exclusivity for travel agencies has been removed²⁷.

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

In its horizontal law, Spain has prohibited the imposition of requirements listed in Article 16(2) of the Services Directive. As this law is binding on all territorial powers, requirements inconsistent with this clause must be removed.

An obligation to send a declaratory undertaking when providing cross-border services in Spain is applicable to the providers of some industrial services such as lift installation and maintenance services²⁸, or a communication within 3 months since the initiation of the activity to franchisees and distant sellers²⁹, amongst others.

Laboratories evaluating the quality of metals³⁰ and agrarian consultancies³¹ shall also obtain an authorisation prior to the commencement of their activities.

An insurance obligation is applicable to travel agencies in certain regions³² and to active tourism activities³³.

²⁴ Royal Decree 658/2001 of 22 June regulating the Profession of Lawyer.

²⁵ For example, in Cantabria, Law 7/2001 of 19 December.

²⁶ Decree 126/1994, of 16 May in Catalonia.

²⁷ In Andalusia, Decree 31/2002 of 17 December on Travel Agencies, as amended by Decree 80/2010 of 30 March.

²⁸ See Royal Decree 560/2010, of 7 May.

²⁹ Law 7/1996 of 15 January laying down rules for retail trade, as modified by Law 1/2010 of 1 March.

³⁰ Law 17/1985 of 1 July in respect of objects made with precious metals.

³¹ Decree 392/2006 of 17 October, regulating the Catalan agricultural advisory system.

³² For instance, in Galicia, Decree 42/2001 of 1 February.

³³ In Castille and León, see Decree 96/2007 of 27 September regulating Active Tourism Companies.