

Submitted by the Minister for Economic and Business Affairs (Lene Espersen).
Adopted by the Danish Parliament on 7 May 2009.

Law on services in the internal market¹⁾

Chapter 1

Scope

§ 1. This law applies to

- 1) service providers, who are nationals of or established in a EU/EEA Member State, who wish to establish or are already established in Denmark and
- 2) service providers, who are established in a EU/EEA Member State, who wish to deliver services on a temporary basis in Denmark or who deliver services on a temporary basis in Denmark.

Para. 2. This law does not apply to

- 1) liberalisation of services of general economic interest, reserved to public or private entities,
- 2) privatisation of public entities providing services,
- 3) abolition of monopolies providing services,
- 4) aids granted by Member States which are covered by Community rules on competition,
- 5) definitions, in conformity with Community law, of what is considered to be services of general economic interest,
- 6) organisation and financing, in compliance with the State aid rules, of services of general economic interest, and what specific obligations they should be subject to,
- 7) measures taken, in conformity with Community law, to protect or promote cultural or linguistic diversity or media pluralism,
- 8) rules of criminal law,
- 9) labour law, including rules regulating health and safety at work,
- 10) social security legislation,
- 11) the exercise of fundamental rights,
- 12) the field of taxation,
- 13) rules of private international law and
- 14) provisions of another Community act governing specific aspects of access to or exercise of a service activity in specific sectors or for specific professions in conflict with the provisions of this law.

Para. 3. This law does not apply to the following services:

- 1) non-economic services of general interest,
- 2) financial services,
- 3) electronic communications services and networks, and associated facilities and services, with

¹⁾ The law implements parts of Directive 2006/123/EC of the European Parliament and the Council from 12 December 2006.

respect to matters covered by Directives 2002/19/EC, 2002/21/EC, 2002/22/EC and 2002/58/EC.

- 4) services in the field of transport, including port services, falling within the scope of Title V of the Treaty,
- 5) services provided by temporary work agencies,
- 6) healthcare services,
- 7) audiovisual services,
- 8) gambling activities, which involve wagering a stake with pecuniary value in games of chance, including lotteries, gambling in casinos and betting transactions,
- 9) activities, which are connected with the exercise of official authority,
- 10) social services relating to social housing, childcare and support of families and persons permanently or temporarily in need which are provided by the State, by providers mandated by the State or by charities
- 11) private security services.

Chapter 2

Definitions

§ 2. For the purposes of this law, the following definitions shall apply:

- 1) *Service*: Any self-employed economic activity, normally provided for remuneration.
- 2) *Service provider*:
 - a) Any natural person, who is a national of a EU/EEA Member State, who offers or provides a service.
 - b) Any legal person, who is established in a EU/EEA Member State, who offers or provides a service.
- 3) *Service recipient*:
 - a) Any natural person, who is a national of a EU/EEA Member State or who benefits from rights conferred upon him or her by Community acts, when he or she for professional or non-professional purposes uses, or wishes to use, a service.
 - b) Any legal person, established in a EU/EEA Member State when this person for professional or non-professional purposes uses, or wishes to use, a service.
- 4) *Establishment*: Service providers' actual pursuit of an economic activity for an indefinite period and through a stable infrastructure from where the business of providing services is actually carried out.
- 5) *Temporary provision of services*: The provision of services in another EU/EEA Member State than the Member State where the service provider is established.
- 6) *Authorisation scheme*: Any procedure under which a service provider is required to take steps in order to obtain permission from a competent authority concerning access to or exercise of a service activity.
- 7) *Requirement*: Any obligation, prohibition, condition or limit provided for in laws, regulations or administrative provisions or in consequence of case-law, administrative practice, the rules of professional bodies, or the collective rules of professional associations or other professional organisations, adopted in the exercise of their legal autonomy. Rules laid down in collective agreements negotiated by the social partners shall not as such be seen as requirements within the meaning of the law.
- 8) *Overriding reasons relating to the public interest*: Reasons recognised as such in the case law of the Court of Justice, inter alia public order, public security, public health or the protection of the environment.

- 9) *Competent authority*: Any body which has a supervisory or regulatory role in relation to the access to or exercise of a service activity.

Chapter 3

Information requirements for service providers

§ 3. The service provider must inform the service recipient of under which legal form his or her business is carried on.

Para. 2. The service provider must in a clear and unambiguous manner supply the service provider with the information mentioned in para. 1 in good time before conclusion of the contract or, where there is no written contract, before the service is provided.

§ 4. The service provider must, at the service recipient's request, supply the following information:

- 1) Whether the service provider exercises different types of services.
- 2) Whether the service provider collaborates with other service providers concerning the exercise of the service in question.

Para. 2. If the service provider delivers different types of services or collaborates with other service providers concerning the exercise of the service in question, the service provider must, at the service recipient's request, supply information on the measures taken to avoid potential conflicts of interest.

Para. 3. § 3, para. 2, is applicable to the information in para. 1 and 2 with the necessary adjustments.

§ 5. The service provider must in a clear and unambiguous manner supply the service provider with the information mentioned in §§ 3 and 4 in good time before conclusion of the contract or, where there is no written contract, before the service is provided.

Chapter 4

Rights of service recipients

§ 5. A service provider may not subject a service recipient to discriminatory treatment based of the nationality, place of registered office or place of residence of the service recipient.

Para. 2. Para. 1 does not preclude the possibility of providing for differences in the conditions of access where those differences are directly justified by objective criteria.

§ 6. A competent authority may not impose on a service recipient requirements which restrict the use of a service supplied by a service provider established in another EU/EEA Member State.

Para. 2. A competent authority may not impose on a service recipient discriminatory requirements based on the nationality place of registered office or place of residence of the service recipient.

Para. 3. Para. 2 does not preclude the possibility for competent authorities to provide for differences in the conditions of access where those differences are directly justified by objective criteria.

Chapter 5

Documents

§ 7. Where competent authorities require documentation proving that a requirement has been satisfied, they shall accept any document issued in another EU/EEA Member State, which proves that the requirement has been satisfied.

Para. 2. A competent authority may require that a service provider or a service recipient submits unauthorised translations of documents.

Para. 3. With regards to documents issued in another EU/EEA Member State, a competent authority may only require the submission of the original document or a certified copy or certified translation hereof if provided for in other Community instruments or justified by an overriding reason relation to the public interest.

Para. 4. Para. 1-3 do not concern documents referred to in article 7(2) and 50 of Directive 2005/36/EC, in Articles 45(3), 46, 49 and 50 of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, in Article 3(2) of Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained, in the First Council Directive 68/151/EEC of 9 March 1968 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community and in the Eleventh Council Directive 89/666/EEC of 21 December 1989 concerning disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another State.

§ 8. Attestation of insurance or guarantee issued by a credit institution or an insurer established in another EU/EEA Member State must be considered as sufficient attestation for meeting a requirement concerning professional liability insurance or another form of guarantee if the insurance or guarantee in question is equivalent or essentially comparable in terms of purpose and coverage.

Chapter 6

Freedom of establishment

§ 9. Service providers have the right to establish themselves in Denmark.

Para. 2. If an authorisation is required in order to deliver a service the authorisation scheme and the conditions for granting the authorisation must be made public in advance, justified by an overriding reason relating to the public interest and non-discriminatory. The authorisation scheme and the conditions for granting the authorisation must also be appropriate for the purpose of achieving the objective pursued, and the purpose may not be possible achieve by means of a less restrictive measure.

Para. 3. When a competent authority investigates whether a service provider meets the conditions for granting an authorisation it must observe the requirements, which the service provider is already subject to in another EU/EEA Member State or in relation to another Danish authorisation, if these requirements are equivalent or essentially comparable to the conditions for granting the Danish authorisation in question. The competent authority may not require the same condition fulfilled several times.

Para. 4. A competent authority may not directly or indirectly involve a competing service provider in relation to the competent authority's granting of authorisation to a service provider.

§ 10. A competent authority may not pose any of the following requirements on a service provider:

- 1) Discriminatory requirements based directly or indirectly on nationality or, in the case of companies, the location of the registered office.
- 2) A prohibition on having an establishment in more than one Member State or on being entered in the registers or enrolled with professional bodies or associations of more than one Member State.
- 3) Restrictions on the freedom of a provider to choose between a principal or a secondary establishment, in particular an obligation on the provider to have its principal establishment in their territory, or restrictions on the freedom to choose between establishment in the form of an agency, branch or subsidiary.
- 4) Conditions of reciprocity with the Member State in which the provider already has an establishment.
- 5) The case-by-case application of an economic test making the granting of authorisation subject to proof of the existence of an economic need or market demand, an assessment of the potential or current economic effects of the activity or an assessment of the appropriateness of the activity in relation to the economic planning objectives set by the competent authority.
- 6) An obligation to provide or participate in a financial guarantee or to take out insurance from a provider or body established in their territory
- 7) An obligation to have been pre-registered, for a given period, in the registers held in their territory or to have previously exercised the activity for a given period in their territory.

Para 2. The prohibition in para. 1, no. 5, litra a-c, does not concern planning requirements, which do not pursue economic aims but serve overriding reasons relating to the public interest.

Para 2. Para. 1 (6) does not preclude that a competent authority may require the service provider to take part in a collective compensation-fund in Denmark.

Chapter 7

Temporary provision of services

§ 11. Service providers who are established in another EU/EEA Member State have the right to provide services in Denmark on a temporary basis.

Para. 2. A competent authority may only impose requirements on a service provider, who provides services in Denmark temporarily, if the requirements are justified for reasons of

- 1) public order,
- 2) public security,
- 3) public health or
- 4) the protection of the environment.

Para. 3. Requirements imposed on a service provider, who provides services in Denmark temporarily, may not be neither directly nor indirectly discriminatory with regard to nationality or Member State of establishment.

Para. 4. Requirements imposed on a service provider, who provides services in Denmark temporarily, must be appropriate for the purpose of achieving the objective pursued, which cannot be attained by means of a less restrictive measure.

§ 12. § 11 does not apply to:

- 1) services of general economic interest which are provided in another Member State,

- 2) matters covered by Directive 96/71/EC,
- 3) matters covered by Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data,
- 4) matters covered by Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services,
- 5) the activity of judicial recovery of debts,
- 6) matters covered by Title II of Directive 2005/36/EC,
- 7) requirements, which reserve an activity to a particular profession,
- 8) matters covered by Regulation (EEC) No 1408/71,
- 9) as regards administrative formalities concerning the free movement of persons and their residence, matters covered by the provisions of Directive 2004/38/EC that lay down administrative formalities of the competent authorities of the Member State where the service is provided with which beneficiaries must comply,
- 10) requirements for non-EU/EEA nationals and nationals of Switzerland to obtain a visa or residence permission,
- 11) requirements for non-EU/EEA nationals and nationals of Switzerland to report to the Danish, competent authorities on or after their entry,
- 12) as regards the shipment of waste, matters covered by Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community,
- 13) copyright, neighbouring rights and rights covered by Council Directive 87/54/EEC of 16 December 1986 on the legal protection of topographies of semiconductor products and by Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases, as well as industrial property rights,
- 14) acts requiring by law the involvement of a notary,
- 15) matters covered by Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audit of annual accounts and consolidated accounts,
- 16) the registration of vehicles leased in another EU/EEA member state,
- 17) provisions regarding contractual and non-contractual obligations, including the form of contracts, determined pursuant to the rules of private international law.

Chapter 8

Administrative cooperation

§ 13. The Minister for Economic and Business Affairs will issue further rules concerning the procedures for the administrative cooperation with competent authorities in other EU/EEA Member States, including the electronic exchange of information about service providers.

Para. 2. The Minister for Economic and Business Affairs appoints the competent authority who will act as Denmark's liaison point for the administrative cooperation with competent authorities in other EU/EEA Member States.

Chapter 9

Other precautionary measures

§ 14. The Minister for Economic and Business Affairs will issue further rules concerning the precautionary measures that may as an exception be taken with regards to service providers who delivers services in Denmark on a temporary basis, in accordance with articles 18 and 35 of the Directive on services in the internal market, as well as the procedures to do so.

Chapter 10

Reporting requirements

§ 15. The Minister for Economic and Business Affairs will issue further rules in order to meet the requirements in articles 15 (7) and 39 in Directive 2006/123/EC of the European Parliament and the Council concerning reporting to the European Commission any new requirements on services, service providers and service recipients.

Chapter 11

Setting up a point of point of single contact

§ 16. The Minister for Economic and Business Affairs will issue further rules in order to meet the requirements of Directive 2006/123/EC of the European Parliament and the Council concerning the setting up of a point of single contact.

Chapter 12

Penalties

§ 17. Violation of § 3, para. 1, § 4, para. 1 and 2, and § 5 is punishable by fine unless a more severe penalty is required according to other legislation.

Chapter 13

Entry into force etc.

§ 18. This law enters into force on 28 December 2009.

§ 19. This law does not apply to the Faroe Islands or Greenland.