

## **Rules on the commencement and pursuit of service activities**

Pursuant to Act LXXVI of 2009 on general rules on taking up and pursuit of service activities, the following rules shall be applied in Hungary to the commencement and pursuit of the service activities of undertakings operating on the internal market of the European Community and established in Hungary or in another EEA Member State, and also to their participation in the Internal Market Information System.

### **Commencement and pursuit of service activities**

Unless otherwise provided by a separate Act regulating the entitlement to the commencement and pursuit of a relevant service activity or by a Government Decree issued in the original legislative power for overriding reasons relating to the public interest, no licensing is required for the commencement or pursuit or use of the service activities of a service provider upon the establishment of the latter, and no notification of the commencement of a service activity is required either.

A service provider established in another EEA Member State may commence and pursue its service activities under the same conditions applicable to service providers established in Hungary, and the same requirements shall apply to it those governing service providers established in Hungary. The entitlement may not be restricted on grounds:

- that the service provider is not a Hungarian citizen or, in case of an organisation, its registered seat is outside Hungary;
- that any of the service provider's members (shareholders), employees, executive officers or supervisory board members is not a Hungarian citizen or their domicile is outside Hungary;
- that the principal place of the service provider's business activities is outside Hungary;
- of the form of establishment chosen by the service provider;
- of whether the service provider simultaneously carries out the service activities as an established entity in another EEA Member State, or it is registered for that purpose in another EEA Member State as well at the same time, or it is also a member of a professional organisation of another EEA Member State; or
- of whether it pursued service activities in the territory of Hungary earlier and if yes, how long; or was it officially registered in any records earlier and if yes, how long.

Unless otherwise provided by the Act on the commencement and pursuit of the service activity concerned or a Government Decree issued in the original legislative power

- for the purpose of enforcing the rules applicable to a profession with the aim of the maintaining the independence, dignity and professional secrecy thereof and also of ensuring a fair conduct vis-à-vis the users of the service and other persons engaged in the relevant profession, or
- with respect to the service providers engaged in any certification, accreditation, engineering control, inspection or testing activity, for the purpose of ensuring the independence and impartiality of such activity,

- the service provider is free to choose the scope of service activities it intends to pursue independently or jointly with other service providers or under a partnership agreement with them.

Unless explicitly provided otherwise in a separate Act regulating the entitlement to the commencement and pursuit of the service activity concerned or in a Government Decree issued in the original legislative power in relation to cross-border provision of services in order to protect the public order, the public security or the national security and defence interests, or in order to enforce public health or environmental requirements, no authorisation or notification of the commencement of service activity or the possession of any certificate, statutory certificate or documents are required for a service provider having the freedom to provide services in the territory of Hungary. Except for the cases specified by law, the provision of cross-border services shall not be restricted, and the mandatory requirements prescribed by law or any other requirement under the law as applicable to the commencement and pursuit of service activities shall not be applied to those services.

Service activities offered by service providers having the freedom to provide services are freely available and under the same conditions as prescribed for the use of the services of service providers established in Hungary. If any subsidy is granted by law to the user for using a specific service, using the services offered by a service provider having the freedom to provide services may be more detrimental for the user of the service, as regards the eligibility for subsidy, than using the service of a service provider established in Hungary.

If a service provider having the freedom to provide services, when providing cross-border services, in the course of its service activity carried out in the territory of Hungary:

- fails to comply with the requirements prescribed by law for the relevant service activity or any other mandatory requirement set out by law, and violates or poses a threat to the life, physical integrity or assets of the person using the service or of any other persons; or
- due to the extraordinary nature of the circumstances of carrying out the service activity, the violation of the life, physical integrity or assets of the person using the service or of any other person could not be prevented in any other manner but by taking measures for that purpose, and the law allows taking such a measure;

the public authority or court responsible for the oversight of the service may restrict the service activities of the service provider, and may take all necessary measures against the service provider.

This measure may be applied if:

- the underlying statutory provision is not intended to implement any mandatory EU legal act of general scope which relates to the safety of the services;
- it would provide a higher-level protection with respect to the safety of the services than the measures that might be taken, where appropriate, by the competent authorities

of the EEA Member State where the service provider is established in accordance with the laws thereof;

- it is proportionate to the objective pursued; and
- the competent authority of the EEA Member State where the service provider is established failed to take the necessary measures, or such measures are insufficient to avoid the harm or danger.

With respect to the use of the services provided as part of the service activities, any discrimination based on the nationality, domicile or place of establishment of the user of the service is prohibited, other than any derogating conditions directly related to the nature of such services and the circumstances of use that are reasonably justified by objective consideration. Any standard terms and conditions regarding the use of the services applied by the service provider which constitute such discrimination or the one referred to in Regulation (EU) 2018/302 will be null and void. The authority appointed by the Government Decree on the appointment of consumer authorities will proceed in all matters resulting from the violation of those prohibitions and conditions in accordance with the procedural rules set out in the Act on consumer protection.

Legislation may prescribe that the service provider notify the authority responsible for the oversight of the respective services, as specified in that legislation, about its intention to carry out the activity concerned.

The party submitting the application for the initiation of the licensing procedure required for the commencement or pursuit of the service activities shall be notified about the initiation of such proceedings. The notification shall include a brief information on the remedies available regarding the case type concerned, and also on the fact that in case if no adverse party is involved in the procedure and the authority fails to make a decision by the due date, then no other authority or specialised authority shall be appointed to proceed in the case, and the party will be entitled to pursue the activity requested. Within 5 days of the date when the underlying reason arises, the party shall be notified of the period of time not included in the period remaining until expiry the administrative time limit.

Where no adverse party has participated in the licensing procedure required for the commencement or pursuit of the service activities, and the specialised authority failed to issue any position statement by the end of the relevant execution period, or the determining authority failed to make any decision within the stipulated deadline:

- - in the event of an omission by the specialised authority, no other specialised authority may be appointed for the procedure, and the consent of the specialised authority shall be regarded as granted; and
- - in the event of an omission by the determining authority, no other authority shall be appointed for the procedure, and the party shall be entitled to commence and pursue the activity requested.

Where a service provider established in another EEA Member State had to meet any requirement identical or – as regards its purpose – equivalent to a requirement prescribed by

law for the commencement or pursuit of a particular service activity in the EEA Member State where the service provider is established, the fulfilment of the requirement in question shall be presumed in the authorisation procedure for the commencement or continuation of the particular service activity.

For the purpose of certifying the fulfilment of a requirement set out by law for the commencement or continuation of a service activity, documents issued by the competent authorities of another EEA Member State for the purposes of certifying compliance with the requirement concerned or for any other similar purpose, or any other document issued by the competent authorities of another EEA Member State from which the compliance with the particular requirement can be clearly established, shall be accepted.

In that case the client shall not be called upon to provide such documents in an original, authentic or certified copy or in a form attested by the competent Hungarian diplomatic mission, and the party shall not be required to provide a certified translation of the document either. If the determining authority has a reasonable doubt concerning the authenticity of a document issued by the authorities of another EEA Member State and submitted for the purpose of certifying the fulfilment of the relevant requirement, the determining authority will contact the competent authority of the relevant EEA Member State and disclose the information to it in order to demonstrate the authenticity thereof.

In the course of the authorisation procedure relating to the entitlement to commence or pursue service activities, the economic justification of the commencement or pursuit of the service activity, or the market needs, if any, or any other possible or actual economic effects of the activity shall not be examined, and the party shall not be called upon to demonstrate the information related to those issues.

When overseeing the service activities of a service provider established in Hungary, the service provider's service activities carried out in the territory of any other EEA Member State as well as any detrimental consequences of its service activities occurring in another EEA Member State shall also be taken into account if the non-compliance with legislative provisions applicable to the service provider or the administrative decisions imposed on it might affect such activities of the service provider or might be linked to those consequences.

The notification of a service shall contain the following information:

- the name of the service provider;
- the address of the service provider or the registered office if the service provider is an entity;
- the description of the services intended to be pursued;
- the information set out in a specific law regulating the entitlement to commence and pursue the relevant service activity.

If the existence of professional safeguards is required by law as a condition of the entitlement to commence or pursue the given service activity, the notification shall contain all relevant information.

In addition, the notification of a service provider having the freedom to provide services for its activities intended to be carried out in the territory of Hungary as cross-border service activities shall also contain the following details:

- the nationality of the service provider, or – if the applicant is a legal entity or unincorporated body established and registered in a different EEA Member State – the name of the registry in the EEA Member State where it was established and the registration number;
- the EEA Member State where the service provider is established;
- a statement from the service provider on his or her intention to pursue the activities within the scope of cross-border service provision; and
- the name of the licensing or registration authority and the service provider's licence or registration number if the service activity is subject to licensing or registration in the EEA Member State in which the service provider is established.

Unless a shorter period of time is specified by the service provider in the notification, the notification on the service provider's activities intended to be carried out as cross-border provision of services shall be in effect for 5 calendar years.

In justified cases, the authority responsible for the oversight of the service shall, upon receipt of the notification, verify whether the notification complies with the above requirements, and, within 8 days from the receipt of the notification:

- inform the applicant by sending a certificate if the notification meets the substantive requirements and the procedural fee or administrative service fee has been paid;
- advise the service provider of the legal consequences of continuing the activity without notification and indicate the shortcomings of the notification if the notification fails to comply with the requirements or the procedural fee or administrative service fee has not been paid and no cost exemption has been granted to the service provider.

After submitting a notification, the service provider shall immediately notify the authority responsible for the oversight of the relevant activity of any changes in the information submitted with in the notification or of the termination of the service activity in accordance with the rules applicable to the notification of service activities.

The authority responsible for the oversight of the services will verify the fulfilment of the notification requirement. The authority imposes a fine if it establishes during the inspection that a service provider pursues any activities to be reported without notification or fails to report a change in the data subject to mandatory notification; and

- if the service provider otherwise complies with the legal requirements to commence and pursue the given activities, it will register him or her ex officio on the records specified in Section 27, or enter the data change in the register; or
- if the service provider does not comply with the legal requirements to commence and continue a given activity, it prohibits the continuation of such activity in a decision

until the entitlement to commencing and continuing the given activity is duly demonstrated.

In the authorisation procedure required for the commencement or pursuit of a service activity, the authority responsible for the oversight of the services will ex officio register the service provider at the same time as the authorisation is granted, and delete the service provider from the register who is no longer entitled to pursue the activity.

In the procedure related to the notification, the authority responsible for the oversight of the services will ex officio register the service provider within 15 days of the receipt of the notification, or will delete the service provider from the records referred to in Section 27 if:

- by reason of the infringement of the legislative requirements applicable to the service activity concerned, the service provider has been prohibited from pursuing the relevant service activity in a final or definitive ruling; or
- the service provider has declared the discontinuance of the service activity; or
- the notification has expired.

Relying on the register of service providers maintained by it, the authority responsible for the oversight of the services publishes up-to-date information on the internet free of charge and in a manner available to anyone without any restriction as laid down in the Government Decree.

The body appointed by the Government in a Decree operates an integrated point of administration and information which is accessible by electronic means and provides information for service providers and users in a transparent and systematic manner based on uniform criteria for each service activity on the requirements and procedures for the commencement and pursuit of each service activity as well as on the competent authorities and organisations providing practical assistance and their contact details, and on the remedies generally available in the event of any impairment of rights, and also on other available dispute settlement channels.

In addition, it ensures that all required procedural acts and data reporting can be executed via a uniform web platform in the simplest manner requiring the smallest number of steps (except if liaising by electronic means is not applicable as to the contacts concerned), and ensures access to all public data of official registers related to service activities, and also provides information on the conditions of request for information from such registers.

An integrated point of administration and information provides general information to the users on the requirements applicable in each EEA Member State to the commencement and pursuit of various types of service activities, in particular the relevant consumer protection regulations, the ways of dispute settlement and legal remedies available under the laws of various EEA Member States where a legal dispute arises between service providers and users of a service as well as the major organisations offering practical assistance in matters relating to the service activity in other EEA Member States and their contact details, especially the functioning of the European Consumer Centres Network.

At the specific request of the service provider or the users, the body operating the integrated point of administration, in collaboration with the authorities responsible for the oversight of the relevant services, provides general information – through a central customer service – on the usual enforcement practices concerning the requirements for the commencement and pursuit of the service activity concerned.

#### Participation in the Internal Market Information System

In administrative authority matters relating to the commencement and pursuit of service activities, as regards requests under the Act on the Code of General Administrative Procedure, authorities maintain contacts with the competent authorities of other EEA Member States by electronic means, through the Internal Market Information System (hereinafter ‘the IMI System’) in accordance with the rules laid down in the IMI Regulation and the relevant Government Decree.

The IMI coordinator appointed in the Government Decree and the relevant authority publish – on the website of the relevant authority or in any other manner usually applied by the authority – a general disclosure document including information on data processing in the IMI System as detailed in the IMI Regulation on the purpose and legal grounds of data processing in the IMI System, the authorities authorised to handle and process data and coordinated by the relevant authority, the period of processing, the persons authorised to know the data, and also the rights and remedies of data subjects relating to data processing.

The reciprocity is not a pre-condition of fulfilling the requests received from other EEA Member States. When fulfilling the requests, the authorities have a duty to prioritise and cooperate with the competent authorities of other EEA Member States and also with the relevant domestic authorities.

If a request, the underlying reasons and the information or measure requested are duly justified, the requested authority is obliged to comply with the request to the extent necessary for the purposes and by the date specified therein.

If – having regard to the circumstances of the case – the fulfilment of a request is not feasible by the deadline specified by the requesting authority, or any difficulty arises in the fulfilment thereof, or the fulfilment thereof is impossible due to any reason whatsoever, the requested authority shall notify the requesting authority of that fact and, if the fulfilment of the request is otherwise possible, on the deadline by which it can presumably fulfil the request.

A competent authority of another EEA Member State has the right to be appraised of the information included in the service-related registers as well as in the registers under the Act on public company information, company registration and winding-up proceedings under the conditions applicable to all other relevant Hungarian authorities.

As regards service providers established in Hungary and providing cross-border services in the territory of another EEA Member State, at the request of the competent authority of the other EEA Member State the requested authority shall certify that the service provider concerned is actually established and, in the absence of any information to the contrary,

lawfully pursues its service activities in the territory of Hungary. If the fulfilment of a request for information relating to a service provider established in the territory of Hungary and providing cross-border services in the territory of another EEA Member State requires information which is only available at the relevant service provider, the requested authority shall take measures in a verification procedure initiated ex officio to obtain all data required.

At the request of the competent authority of the EEA Member State where the service provider is established, the authority shall, to the extent necessary, verify the service activities of the service provider pursued as cross-border provision of services in the territory of Hungary, take all necessary measures and inform the requesting authority on the outcome of the verification and on the measures taken.

Any request sent to the competent authority of another EEA Member State shall be properly justified in depth, and the purpose thereof shall be properly specified, and in case of a request for measures, the necessity of such measures should also be indicated as well as the references to the underlying laws.

Upon a request sent by a competent authority of another EEA Member State in accordance with Article 35(2) of Directive 2006/123/EC of the European Parliament and of the Council, the authority responsible for supervision of the service verifies ex officio the lawfulness of the operations of the service provider and, in this context, investigates the facts set out in the request. The requested authority shall notify the requesting authority of the outcome of the verification and the actual or intended measures, or of the rejection to take the measure requested. The reasons of the measures taken or intended to be taken and their compliance as set out in the request or the reasons of rejecting to take the measures should be detailed in the notification.

If the authority responsible for the supervision of the services finds in the course of its procedure that:

- the service provider having the freedom to provide services commits an infringement referred to in Section 10 when providing cross-border services in the territory of Hungary; or
- due to the extraordinary nature of the circumstances of carrying out the service activity, the violation of the life, physical integrity or assets of the person using the service or of any other person could not be prevented in any other manner but by taking measures for that purpose;

then, by sending the final decision establishing the infringement or the necessity of measures (by specifying the measures), it shall request the competent authority responsible for the supervision of the services in the other EEA Member State where the service provider is established to take the necessary measures.

If the competent authority of the other EEA Member State where the service provider is established fails to take the necessary measures, or the authority responsible for the supervision of the services finds that the measures taken or intended to be taken are



insufficient, it shall notify the European Commission and the other EEA Member State where the service provider is established of the measures it intends to take. In the notification, the following should be described in detail:

- the reasons why the measures were or will be taken by the competent authority of the EEA Member State where the service provider is established are insufficient; and
- to what extent the measures envisaged comply with the criteria set out.

The authority responsible for the supervision of the services may take the necessary measures upon the expiration of 20 days following the day when the notification is sent, except if the European Commission, relying on the notification, ruled within that period of time that the measures envisaged were incompatible with the law of the European Union.

If there is an urgent need to take action, the authority responsible for the supervision of the services may take the necessary measures without any such notification; however, it shall inform the European Commission and the other EEA Member State where the service provider is established, explaining in detail the reasons for taking immediate action and sending its decision at the same time. If, after the measures have been taken, the European Commission establishes in its decision that the measures are incompatible with the law of the European Union, the determining authority shall revoke its decision.

Should the authority obtain knowledge of an infringing conduct of any service provider relating to the pursuit of the service activity which seriously violates or poses a threat to the life or physical integrity of the person using the services or of any other person in the territory of Hungary or in another EEA Member State, or causes or threatens to cause serious damages to the environment, the authority shall notify the European Commission and – as the case may be – the EEA Member State where the service provider is established as set out in law, as well as all other EEA Member States concerned.