

ACT ON SERVICES IN INTERNAL MARKET

- *Subject Matter*
- *Service*
- *Service Providers*
- *Recognition of Documents*
- *Submission of Trade License Application*
- *Information Duties of Service Provider*
- *Cross-Border Provision of Services*
- *Information Centre for Service Recipients*
- *Non-Discrimination of Service Recipients*
- *Performance of Supervision, Imposition of Fines*
- *Changes in Trade Licensing Act*
- *Changes in Acts on Courts and Administrative Fees*
- *Changes in Act on Commercial Registry*
- *Amendments to Other Legal Regulations*

ACT ON SERVICES IN INTERNAL MARKET

(Act No. 136/2010 Coll. on Services in the Internal Market and on amending and supplementing certain acts)

This Act transposes into the Slovak legal system Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market.

Subject Matter

This Act regulates rights and duties of service providers, as well as supervision over service providers, functioning of the points of single contact, as well as cooperation with authorities of other member states of the European Union (hereinafter as the "member state").

The Act shall not apply to certain specific services such as financial services, electronic communication services, healthcare services, private security services, services provided by notaries and court bailiffs, as well as transport services (air transport, railway transport, maritime transport and road transport), gambling activities and recognition of professional qualifications under special laws.

Service

Service, to which this Act shall apply, means any self-employed economic activity of industrial, production, commercial character or craftsmen or activities of the professions, normally provided for remuneration to the recipient of the service. Service shall mean also activity of experts, interpreters and translators.

Service Providers

For the purposes of providing services the Act distinguishes between so-called established service provider and so-called cross-border service provider.

Established service provider is any natural person who is a national of the Slovak

Republic or other member state, or any legal person incorporated under laws of the Slovak Republic or laws of other member state with its registered seat, headquarters or main place of business in the Slovak Republic or in other member state, that offers or provides services and is established in the Slovak Republic. The Act also further specifies definition of the term establishment.

Cross-border service provider is any service provider established in other member state and that provides services in the Slovak Republic occasionally.

This Act also defines who is considered as service recipient.

Recognition of Documents

This Act regulates the recognition of documents demonstrating certain fact when granting or creating the license. The procedure shall be simplified in such way that the applicant may demonstrate in cases stipulated by the law compliance with required conditions also by submitting document issued in other member state serving for the same purposes or if such document clearly evidences that the condition is fulfilled.

Submission of ordinary copy of relevant document with unofficial translation into Slovak language shall suffice, unless otherwise provided by this Act.

In certain cases, fulfilment of requirement for liability insurance for damage caused by performance of the profession may be recognized upon manifestation of insurance contract covering also the risk situated in the Slovak territory.

If it is necessary under special regulation to fulfil certain condition for issuance or granting of the license, such condition shall be deemed fulfilled if the applicant fulfilled equivalent or principally comparable condition in other member state.

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Submission of Trade License Application

The application for relevant license may be submitted not only at the competent authority, but also via the point of single contact which shall deliver such application to the competent authority. As of 1 January 2012 it will be possible to submit the application in electronic form, if statutory conditions are met. The Act specifies which authority performs the tasks of the point of single contact, as well as the steps to be taken by the point of single contact when granting the specific license.

Information Duties of Service Provider

This Act introduces several information duties for service providers regarding both established service providers as well as cross-border service providers.

Prior providing service or execution of the contract on provision of service, service provider is obliged to inform the recipient particularly on its general identification data, contact data, as well as on general condition of service providing, liability for defects, price of the service, in the extent specified by the Act.

The Act also introduces duty to make accessible such information in one of the forms determined by the Act, and accordingly introduces duty to make available upon request of recipient certain further information, such as information relating to the profession rules, out of court settlement of disputes, codex of behaviour etc.

Cross-Border Provision of Services

Under this Act, cross-border service provider may occasionally provide services in the Slovak territory if it complies with conditions for provision of such services under the laws of the state its establishment. Such cross-border service provider is not obligatory registered in the Slovak Commercial Registry.

This provision shall not apply to certain services provided in general economic interest, such as post services, services in the field of energy, neither to services of advocates and auditors.

Information Centre for Service Recipients

The Ministry of Economy of the Slovak Republic (the "Ministry") is entrusted by this Act to perform the tasks of information centre for service recipients. Within these tasks the Ministry provides information in connection with consumer protection, as well as other general information on requirements applied in other member states in relation to access to the activities in the area of services and their performance. The Ministry also provides the information on possibilities of dispute resolution between service provider and service recipient, as well as contact details of the associations for consumer protection.

Non-Discrimination of Service Recipients

The Act expressly stipulates prohibition of discrimination of service recipients, while the obligation of service provider is to ensure the same access conditions of service recipients to the provided services without regard to nationality, place of permanent residence or registered seat of the recipient.

Performance of Supervision, Imposition of Fines

The Act further regulates performance of supervision over cross-border service providers, protection of recipients within cross-border service providing, as well as supervision over established service providers providing service on cross-border basis in other member states. The Act also regulates the notification duty of the competent supervision authorities towards the state of establishment, aggrieved member states and the European Commission, if they find out that the activity of cross-border service provider seriously endangers or may seriously endanger health, security of persons or environment in the Slovak territory or in the territory of other member state.

Supervision over compliance with obligations under this Act is performed by the Slovak Trade Inspection.

The Act also regulates imposition of fines in

case the service provider commits an administrative offence. Under this Act the fine may be imposed in the scope from EUR 100 up to EUR 3,000.

Changes in Trade Licensing Act

This Act further amends and supplements Act No. 455/1991 Coll. on Trade Licensing, as amended (the "Trade Licensing Act") as principal legal regulation related to performance of business in the Slovak Republic.

Former classification of trades changes, while concessions are cancelled. Trade Licensing Act under these changes distinguishes craftsman trades and professional trades, while most of the former concessions are now considered as professional trades.

Trades which are not determined under this Act as craftsman or professional are considered as so-called free trades.

Upon fulfilment of conditions required for performance of the trade provided in this Act so-called Trade License Certificate shall be issued. This certificate is successor of formerly issued Trade License or Concession Deed. Accordingly, specific requisites of the Trade License Certificate are stipulated by this Act.

This Act explicitly provides that extract from Trade Register is also considered as demonstration of trade license.

The Act specifically regulates the day of creation of trade license, particularly in connection with legal entities already registered in the Commercial Registry, legal entities not being subject of registration in the Commercial Registry and natural persons residing in the European Union or member state of Organization for Economic Cooperation and Development.

Further information which is required to be stated when notifying the trade is supplemented in the Trade Licensing Act.

Possibility to submit together with notification of trade also the information and documents

required for application for registration in the Commercial Registry is introduced by this Act. The competent District Office shall send this information and documents to the competent registry court in order to execute the registration in the Commercial Registry under conditions and in the form stipulated by the legal regulation.

The Act also regulates possibility to suspend the performance of trade, as well as conditions of cancellation and termination of trade license.

This Act also simplifies demonstration of the probity (i.e. no criminal record) being the general condition of performance of trade business activities. Further, the Act provides conditions for demonstration of professional qualification for specific trades of the persons of the Community.

The access right to the Trade Registry and issuance of the extract from such registry are stipulated by the Act, while the Act distinguishes between public and non-public part of the registry and regulates conditions of access.

Trade Licenses and Concession Deeds issued before 31 May 2010 shall remain valid under this Act.

Temporary provisions of the Act determine duties of entrepreneurs trade of which was suspended upon decision before 31 May 2010, as well as duties of entrepreneurs performing employment intermediation for remuneration and entrepreneurs performing the activities related to the security or alarm and similar systems.

Changes in Acts on Courts and Administrative Fees

This Act also amends certain provisions of Act on Court Fees and of Act on Administrative Fees, while the Act specifies details on collection of fees by the points of single contact. As of 1 January 2012 the possibility to pay court fees when submitting the application for registration also in electronic form throughout the central portal of public administration shall be introduced.

The amount of fees for the first registration in the Commercial Registry is regulated depending on type of person (i.e. legal form) to be registered.

The Amendment to the Act on Administrative Fees changes the amount of the fees in the part Financial Administration and Business Activities, particularly relating to the issuance of Trade License Certificates, as well as other decisions, extracts and acknowledgements for the purposes of trade business.

Changes in Act on Commercial Registry

This Act supplements several new provisions to Act on Commercial Registry, particularly on procedure of submission of application for registration in the Commercial Registry throughout the point of single contact, including the lapse of the period for execution of registration of such application.

Documents which are part of the application for registration according to this Act might be submitted to the point of single contact also in the electronic form as of 1 January 2012.

The list of information which is obligatory registered in the Commercial Registry in relation to the subsidiary and branch of the foreign person having its permanent residence outside the territory of member states of the European Union or member states of the Organization for Economic Cooperation and Development is also regulated by this Act.

Amendments to Other Legal Regulations

The Act on Services in the Internal Market also amends several acts, such as Act on Administrators, Act on Tax Advisors, and the Slovak Chamber of Tax Advisors, Act on Advocacy, Act on Auditors, Audit and Supervision of Performance of Audit, Act on Employment Services, Act on Patent Agents, Act on Interpreters and Translators, Act on Mediation, Act on Chamber of Restaurateurs, Act on Chamber of

Geodesist and Cartographers, Act on Organization of Market with Selected Agricultural Products, Act on Tour, Conditions of Business of Travel Offices and Travel Agencies and Act on Private Security.

The Act on Tax and Fees Administration is also being amended, particularly in respect to the fulfilment of registration and information duty connected with obtaining the trade license throughout the point of single contact. Further, Act on Criminal Registry and Act on State Statistics have been amended as well.

The amendment of Act on Authorized Architects and Authorized Construction Engineers, inter alia, specifies the information which the architects and engineers are obliged to publish in their information materials or on their internet domain.

The Act also changes Act on Road Transport, while regulating the conditions of issuance of license to perform the domestic road transport. Act on Conditions of Operation of Vehicles in Traffic on Ground Communication and Act on Civil Aviation have been also amended.

Accordingly, this Act amends also the Act on Private Veterinary Doctors, on Chamber of Private Veterinary Doctors and on amending Act on Veterinary Care, Act on Protection, Support and Development of Public Health, Act on Safety and Health Protection at Work, as well as Act on Health Insurance.

The acts in the field of energy, such as Act on Energy, Act on Thermal Energy and Act on Energy Effectiveness have been also amended. Further, the Act on Trade with Emission Quotes and Geological Act have also been amended.

This Act becomes effective on 1 June 2010 except for provisions regulating the electronic submission of application and documents and electronic collection of fees (Art. I Section 4 (3), Art. V point 67 Section 66ba (4) (b), Art. VI point 3 Section 11a (1) (c) and Art. XVIII point 3 Section 5d (1) (b)) which will become effective on 1 January 2012.

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Advokátska kancelária Čechová & Partners

Združenie advokátov: JUDr. Katarína Čechová (evidenčné číslo v zozname advokátov vedenom Slovenskou advokátskou komorou: 0339/317 831 63) poverená vedením účtovníctva združenia pod IČ DPH SK1020333083, JUDr. Simona Haláková (5503/318 195 41), Mgr. Ing. Michaela Jurková (4286/307 989 57), Mgr. Tomáš Mareta (1601/318 172 11), Mgr. Tomáš Rybár (3988/307 967 76).

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