

Guidelines

regarding the provision of cross-border services

1. General remarks

According to Community legislation, **services**, shall be considered to be "services" where they are normally provided for remuneration, in so far as they are not governed by the provisions relating to freedom of movement for goods, capital and persons. According to Article 50 of the Treaty Establishing the European Community, services shall in particular, include:

- activities of an industrial character,
- activities of a commercial character,
- activities of craftsmen,
- activities of the professions.

According to a general principle, a service consist in the creation of a new good, which is connected with the need to possess **professional knowledge and production potential**. This applies to most works which may be carried out on the basis of civil law contracts, above all contracts for the delivery of a specific work.

A cross-border service, by definition a one-off service, must be limited in terms of its substantive scope and time. The freedom to provide services is based on **temporariness**. This means that the service provider provides his service in another EU country for a specified time, which means that this activity is not permanent or continuous. A service provider operating an enterprise in one Member State may temporarily provide services in another Member State of the EU.

According to Article 20a section 1 of the Act on Professional Self-Governments of Architects, Civil engineers and Town Planners of 15 December 2000 (OJ of 2001, No 5, item 42, as amended) added by the provisions of the Act on the Amendment to the Act on Professional Self-Governments of Architects, Civil Engineers and Town Planners of 7 November 2008 and the Building Law Act (OJ No 210, item 1321):

*A citizen of a member state holding professional qualifications of an architect, civil engineer or town planner, who practises this profession in accordance with the law in a member state other than the Republic of Poland shall have the right to temporarily and occasionally practice the profession of architect, civil engineer or town planner in the territory of the Republic of Poland, hereinafter referred to as the "provision of cross-border services, **without the need to have such professional qualifications recognised**.*

According to the provisions of the aforementioned Article 20 a section 1, a **cross-border service should be provided temporarily and must be limited in time**. However, the issue of the definition of these terms has appeared many times in the judicial decisions of the European Court of Justice (ECJ). According to these judicial decisions, **a time**

restriction would be considered a breach of the freedom to provide services. Determining how long a service may be provided depends on the way the service provider functions. It is not possible to define general limits of service duration. **A service provided in another country may not exceed the activity pursued in the country of registration.**

The basis for cross-border service provision should be a properly structured **contract** (e.g. a contract of specific work) concluded with the foreign customer ordering a given service. In this contract the parties define, among others, the scope of the service, the manner in which it is rendered, terms and conditions and the place where the service is provided. The content of such contract determines whether we are dealing with a cross-border service or with another form of trading, a hidden form of employment or hire of employees.

The provider offering cross-border services has rights, which cannot be restricted by the Member States. It has been determined on the basis of the judicial decisions of the European Court of Justice that:

- it is not possible to require the service provider to establish a seat in the territory of the State where the service is to be rendered,
- it is not allowed to demand that the key personnel live permanently in the State where the service is provided,
- service providers may not be required to pay social insurance contributions for their employees in the country where the service is provided, if such contributions have already been paid in the home country,
- it is not allowed to require obtaining a permit for providing certain services without taking into account the good performance guarantee already secured in the home country of the service provider,
- certain other restrictions may apply to services of special character, e.g. medical services, but also in such case the State is obligated to take into account the fact that the service provider guarantees proper performance of the service in his home country.

2) Tasks of the regional council of the chamber of civil engineers regarding allowing provision of cross-border services

a) Documents which should be submitted by the service provider

Prior to commencing the provision of cross-border services for the first time in the territory of the Republic of Poland, a civil engineer should submit to the regional chamber council competent from the point of view of the intended location of the services:

- 1) a written representation notifying of the intention to provide a given service, containing information on:
 - the type of professional activities which he intends to perform,
 - the place and approximate date of their commencement,
 - the insurance held or other means of individual or collective professional liability insurance,

- 2) a document confirming nationality,
- 3) a certificate issued by a competent agency of the Member State confirming that the civil engineer lawfully practises this profession in that Member State, and that at the time of issue of the certificate he is not banned, albeit temporarily, from practising the profession,
- 4) documents confirming the professional qualifications, including a document confirming the professional title granted in the Member State in which the service provider obtained his professional qualifications,
- 5) a contract, or the part of the contract allowing the regional council to assess the subject matter of the activity, duration and place of provision of the service,
- 6) documents allowing to determine whether the service rendered in Poland does not exceed the scale of the activity pursued in the country of registration.

A civil engineer providing cross-border services shall submit the aforementioned representation **once a year in subsequent years**.

b) Elements subject to assessment by the regional chamber council

Assessing the cross-border services to be rendered in Poland, the regional chamber council should take into account the following elements:

- subject matter of the service provided,
- duration of the provision of the service,
- frequency of providing the services in Poland,
- regularity of service provision,
- continuity of service provision.

The aforementioned elements should be assessed **at the scale of the entire country**, which entails an obligation to register persons who have received a permit to provide cross-border services in Poland in a special section of the PIIB BUDINFO program. This information will enable chambers to assess the service to be rendered in the area covered by the jurisdiction of a given regional chamber of civil engineers.

c) Rights and obligations of the regional chamber council

The competent **regional chamber council may** request competent authorities of the Member State to provide information confirming that the civil engineer has been practising his profession properly and lawfully, and that no disciplinary penalties or penal sanctions have been imposed upon him in connection with practising his profession.

In addition, on a reciprocity basis, if requested by a competent authority of a Member State other than the Republic of Poland, a competent **regional chamber council provides information**:

- confirming that the civil engineer performs his activity properly and in accordance with the law, and that no disciplinary penalties or penal sanctions have been imposed upon him in connection with practising his profession,
- necessary in considering a complaint filed against the civil engineer by the recipient of the service.

d) Temporary entry in the list of chamber members

Upon ascertaining that a service provider planning to provide cross-border services in Poland has met all the conditions set forth in legal regulations, a competent regional chamber council enters that service provider **free of charge** as a **temporary** member in the list of members of the chamber.

e) Case consideration period

Proceedings at the regional civil engineers chamber council shall be conducted **without undue delays**, which could open the chamber to charges of hampering the provision of cross-border services or causing delays in their rendering.