

**Appendix to Resolution No. 23/R/14 of the National Council
of the Polish Chamber of Civil Engineers
of 10 December 2014**

Guidelines

concerning the cross-border service procedure

1. General remarks

These guidelines are aimed at coordinating and ensuring uniform cross-border service procedures at regional councils of chambers of civil engineers.

Under the Community law, **services** are activities which are temporary and cross-border in nature and which are not governed by the provisions relating to freedom of movement of capital, goods and persons. In accordance with Article 50 of the Treaty establishing the European Community (TEC), services in particular include activities of:

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

As a general rule, a service consists in the creation of a new good and as such requires expertise and adequate production capacity. This applies to most works that can be performed under civil law contracts.

A service provided as part of the cross-border provision of services, 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 their service in another EU country for a specified time, and that this activity is not continuous or permanent. A service provider established in one Member State may temporarily provide a service in another EU country.

Pursuant to Article 20a(1) of the Act of 15 December 2000 on professional self-governments of architects and construction engineers (Journal of Laws of 2013, item 932, as amended):

A citizen of a Member State holding professional qualifications of an architect or a construction engineer who lawfully pursues their profession in a Member State other than the Republic of Poland has the right to practice the profession of an architect or construction engineer, as appropriate, on the territory of the Republic of Poland, hereinafter referred to as the “provision of cross-border services” without the need for recognition of their professional qualifications.

It follows from Article 20a(1) that a cross-border service should be performed on a temporary basis and that it must be of limited duration. The question of definitions of these concepts has

been raised repeatedly in the case law of the European Court of Justice (ECJ). However, according to the foregoing imposition of a time limit would be considered violation of the principle of the free provision of services. The assessment of how long a service can be provided depends on the service provider's operating conditions and its overall duration cannot be defined. However, as a general rule, a service provided in another country must not exceed the scale of the activity pursued in the country of registration.

A service provider providing cross-border services has certain rights which cannot be restricted by Member States. Based on the case law of the European Court of Justice, it has been established that:

- the service provider cannot be required to establish a registered office in the country where the service is to be provided,
- it is forbidden to require that key personnel have their permanent residence in the country where the service is provided,
- the service provider cannot be required to pay insurance contributions for their employees in the country of provision of services if it already has paid contributions in the home country,
- it is not permitted to require authorisation to provide certain services without taking into account the guarantee of satisfactory performance of a service already presented in the country of establishment,
- certain additional restrictions may apply to specific services, e.g. medical services, but also in such a case the State is obliged to take into account that the service provider has presented guarantees of satisfactory performance in the country of establishment.

2. Tasks of the Regional Chamber Council of Civil Engineers connected with the cross-border service procedure.

a) Documents to be submitted by the service provider

Before commencing the provision of cross-border services for the first time in the territory of the Republic of Poland, a civil engineer submits to the Chamber Council competent for the location of the intended activity:

1) a written declaration of intention to provide a service, including information on:

- the type of professional activity they intend to perform,
- the location and approximate date of service commencement, if possible,
- the insurance or other means of individual or collective protection with regard to professional liability,

2) proof of the nationality,

3) an attestation issued by the competent authority of a Member State certifying that the civil engineer is legally established in a Member State for the purpose of pursuing the activities concerned and that he is not prohibited from practising, even temporarily, at the moment of delivering the attestation,

4) evidence of professional qualifications, including documents confirming a professional title awarded in the Member State in which the service provider obtained their professional qualifications.

A civil engineer intending to provide cross-border services in subsequent years must re-submit the declaration mentioned above once a year.

b) Elements to be assessed by the Regional Chamber Council

The provision of cross-border services is assessed on a case-by-case basis by the competent Regional Chamber Council. When assessing cross-border services to be provided in Poland, the Regional Chamber Council should take into account the following elements:

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

The above elements should be assessed on a nation-wide basis, which means that the Regional Board must register persons who have been temporarily entered on the list of members of the Regional Chamber of Civil Engineers in connection with the provision of cross-border services in Poland, using the dedicated tab of the PIIB BUDINFO programme. This publicly available information allows the chambers to assess the service to be provided in the area subject to the competence of the Regional Chamber of Civil Engineers, at the national level.

c) Powers and duties of the Regional Chamber Council

The competent Regional Chamber Council may request that the competent authorities in a Member State provide it with information confirming that a civil engineer lawfully pursues their profession and that they have not been subject to any disciplinary or criminal sanctions in connection with the pursuit of the profession or activity.

In addition, in accordance with the principal of reciprocity, the competent Regional Chamber Council provides, at the request of the competent authority in a Member State other than the Republic of Poland, the following information:

- confirming that a civil engineer lawfully pursues their profession and that they have not been subject to any disciplinary or criminal sanctions in connection with the pursuit of the profession or activity.
- necessary for correct pursuit of complaints filed against a civil engineer by a service recipient.

d) Temporary entry on the list of members of a Chamber

Once it has been established that the service provider planning to provide cross-border services in Poland has fulfilled all the conditions laid down by law, the competent Regional Chamber Council enters this person on the list of members of the Chamber on a temporary and free of charge basis.

(e) Period for examination of the case

Procedures of the Regional Council of the Chamber of Civil Engineers are to be conducted without undue delay so that the Chamber is not accused of hindering or delaying the provision of cross-border services.