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COM(2016) 821 final

2016/0398 (COD)

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on the enforcement of the Directive 2006/123/EC on services in the internal market, laying down a notification procedure for authorisation schemes and requirements related to services, and amending Directive 2006/123/EC and Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System**

(Text with EEA relevance)

{ SWD(2016) 434 final }

{ SWD(2016) 435 final }

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

#### • Reasons for and objectives of the proposal

A deeper and fairer internal market is one of the ten priorities of the European Commission. Building on its strength and exploiting its full potential is key to promoting jobs and growth in the European Union. The Commission in October 2015 adopted a Single Market Strategy with a series of actions to upgrade the single market for more opportunities for people and business, including a legislative proposal to improve the enforcement of the Services Directive by reforming its existing services notification procedure.<sup>1</sup> The European Council called for ambition in delivering the Single Market Strategy<sup>2</sup> and for the different Single Market strategies to be completed and implemented by 2018, recalling that "better implementation and enforcement of existing legislation will further help to reap the benefits of Europe's Single Market ambitions"<sup>3</sup>.

It follows from the Services Directive<sup>4</sup> that certain national rules restricting the freedom of establishment and the freedom to provide services must be non-discriminatory with regard to nationality or residence, proportionate and justified by overriding reasons relating to the public interest. To make sure that new measures imposed by Member States actually fulfil these conditions and thus facilitate the competitiveness and integration of the single market in services, the Services Directive provides that Member States shall notify to the Commission new or changed authorisation schemes or certain new or changed requirements falling under the Directive.

Commission assessments have shown, however, that the current notification procedure under the Services Directive does not always achieve its objective, despite efforts undertaken over the past years to improve its implementation, including guidance provided in the Handbook on the implementation of the Services Directive, exchange of experiences and best practices among national administrations and the publication of data on the use of the existing notification procedure by Member States. As a result, 40% of structured dialogues which the Commission had to launch vis-à-vis Member States in 2015 to ensure compliance with the Services Directive concerned newly introduced national measures. Thus, it appears that the existing notification procedure has not adequately contributed to a correct and full implementation of the Services Directive.<sup>5</sup>

The Commission therefore presents a self-standing legislative instrument modernising the current notification procedure under the Services Directive in order to improve the enforcement of the existing provisions of that Directive, by establishing a more effective and efficient procedure preventing the adoption by Member States of authorisation schemes or certain requirements not complying with the Services Directive. The provisions of the present Directive do not amend the existing Services Directive beyond the required revision of its specific provisions on notification procedures.

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<sup>1</sup> COM(2015) 550 final

<sup>2</sup> European Council Conclusions 18 December 2015, EUCO 28/15

<sup>3</sup> European Council Conclusions 28 June 2016, EUCO 26/16

<sup>4</sup> Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market *OJ L 376, 27.12.2006, p. 36*

<sup>5</sup> The full economic potential of the Services Directive of 2.6% EU GDP growth has not been reached. Reforms implemented by Member States in 2006 to 2014 are estimated to yield only around one third of this potential (0.9% EU GDP growth).

More specifically, the objectives of this legislative instrument are to increase the efficiency of the notification procedure, to improve the quality and content of the notifications submitted, to cover additional requirements which the application of the Services Directive has shown can constitute important barriers to the internal market for services, and to enhance effective compliance with the notification obligation.

A more effective, efficient and coherent notification procedure will support Member States and prevent the introduction of discriminatory, unjustified and disproportionate authorisation schemes or requirements related to services covered by Services Directive. Such authorisation schemes or requirements result in a less open and less integrated economy, with higher prices and less choice for consumers. They may also curtail entrepreneurship and investment as they are likely to reduce the number of firms being set up and entering the European market. The proposed legislation is thus expected to contribute to more competitive and integrated services markets in Europe, benefitting consumers and entrepreneurs alike.

- **Consistency with existing policy provisions in the policy area**

This Directive complements the existing notification procedure applicable for goods and information society services established by the Single Market Transparency Directive<sup>6</sup>. The relationship between the two Directives is regulated under both legal instruments.

This Directive also complements existing reporting obligations under the Professional Qualifications Directive<sup>7</sup>. It includes an article clearly defining the relationship between the two legal instruments and the obligations arising thereunder.

This Directive will be implemented using the existing Internal Market Information System established by the IMI Regulation<sup>8</sup>.

- **Consistency with other Union policies**

This Directive is complementary to a number of other policy initiatives related to services announced in the Single Market Strategy and in particular to the Directive on a proportionality test. The latter will set criteria for Member States when preparing proportionality assessments of draft national laws falling under the Professional Qualifications Directive. Some measures falling under the Professional Qualifications Directive also fall under the Services Directive and its notification obligation. In such cases, the information on the proportionality assessment to be provided under the present notification procedure would have to meet the requirements of the Directive on a proportionality test. Consistency between these instruments is being ensured.

## **2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY**

- **Legal basis**

The proposal is based on Articles 53(1), 62 and 114 TFEU.

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<sup>6</sup> Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services.

<sup>7</sup> Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications.

<sup>8</sup> Regulation (EU) No 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC ( ‘the IMI Regulation’ )( OJ L 316, 14.11.2012, p. 1).

Articles 53(1), 62 and 114 TFEU give the EU the competence to act with regard to the single market for services. EU rules adopted under Articles 53(1) and 62 TFEU should have the objective of coordination of the provisions laid down by law, regulation or administrative action in Member States concerning the taking-up and pursuit of activities as self-employed persons, in order to facilitate those activities. Article 114 TFEU gives the EU under certain conditions the competence to adopt EU legislation for the establishment and the functioning of the single market.

The notification procedure established by the present Directive aims to protect the freedom of establishment and the free provision of services, which are among the foundations of the Union. In particular, it aims to ensure that certain national restrictions to the freedom of establishment and to the freedom to provide services will comply with the Services Directive, contributing to its better enforcement.

The notification procedure established by the present Directive allows the assessment of national laws, regulations or administrative provisions and provides for an effective preventive action in case of non-compliance with the relevant provisions of the Services Directive. The Services Directive provides in particular for the conditions of non-discrimination, necessity and proportionality which need to be fulfilled by authorisation schemes and certain requirements related to services in the Member States. It also sets out specific rules related to authorisation schemes (for example as regards procedural guarantees) and to certain requirements (for example insurance requirements).

The notification procedure will have the effect of preventing the introduction of single market barriers resulting from a heterogeneous development of national laws and of contributing to the approximation of national laws, regulations or administrative provisions as regards the services covered by the Services Directive. This will improve the functioning of the EU single market for services and promote job creation and growth.

- **Subsidiarity (for non-exclusive competence)**

The overall objective of this legislative proposal is to ensure the smooth functioning of the EU single market for services, which is not limited to the territory of one Member State, but covers the entire territory of the EU. Given the transnational nature of the EU single market, an efficient and coherent verification of draft national measures with the provisions of the Services Directive, including the management of an appropriate IT tool for that purpose, can only be achieved at EU level. This Directive provides for a notification procedure replacing an already existing notification procedure established by the Services Directive.

- **Proportionality**

The measures introduced by this Directive are proportionate to its objective of a more effective notification procedure for an improved enforcement of the Services Directive. Compared to the existing procedure, this Directive establishes a more clearly described notification obligation that is closer aligned to the scope of the Services Directive, provides for a well-defined and efficient consultation procedure on draft notified measures, makes notifications transparent to stakeholders, specifies and makes coherent the existing possibility for the Commission to adopt Decisions on notified measures and clarifies the legal consequences for non-notification.

These measures do not extend beyond what is necessary to solve the identified problems and to achieve the identified objectives. They do not entail any obligation on service providers.

Nor do they impose any disproportionate costs on Member States: public authorities of the Member States are already obliged to comply with the Services Directive and to notify some measures to the Commission under the Services Directive. The small expected increase in administrative costs for Member States could in practice partially be compensated by a decrease of costs otherwise stemming from infringement cases, the number of which this initiative is supposed to reduce as it aims at avoiding certain barriers in the services sector incompatible with the Services Directive.

- **Choice of the instrument**

The coherent and transparent notification procedure which permits the verification of the compliance of authorisation schemes or requirements with the Services Directive prior to their adoption by Member States requires a legally binding instrument.

The proposal is based on Articles 53(1), 62 and 114 TFEU. By this proposal the Commission puts forward the adoption of a Directive.

### **3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS**

- **Ex-post evaluations/fitness checks of existing legislation**

In preparation of this Directive the Commission has carried out an evaluation of the existing notification procedure laid down in the Services Directive. It revealed a number of shortcomings of the existing procedure, in particular as follows: the possibilities for Member States, the Commission and stakeholders to intervene in a proactive manner prior to a national regulation being adopted are limited, the means to address notified requirements falling under this procedure are incoherent, there is a lack of proper proportionality assessments and the legal effects of non-compliance with the notification obligation are not clear. Above all, not all Member States comply with the notification obligation. This is to the detriment of services providers and services recipients and is also liable to make the work of national administrative and judicial authorities more burdensome and complicated.

- **Stakeholder consultations**

The Commission carried out a public consultation of interested stakeholders in preparation of this Directive between January and April 2016. It also organised in-depth discussions with institutional stakeholders (Member States and other EU institutions) directly concerned by the notification procedure and its planned reform. The results of this consultation exercise have been published and are included in the impact assessment.

A large majority of stakeholders that responded to the public consultation supported a legislative proposal to modernise the existing notification procedure under the Services Directive (70% of public authorities; 60% of businesses). Stakeholders gave various reasons: to bring more clarity on which measures are to be notified and when, to introduce the possibility for a national measure to be examined before it is officially adopted, to introduce clear rules in order to ensure compliance by all Member States with the notification obligation, and to make the notifications transparent to the public.

There was widespread support of stakeholders that responded to the public consultation for a legislative proposal clarifying and aligning the steps of the notification procedure (80% of public authorities and 80% of businesses), making notifications transparent (60% of public authorities and 80% of businesses), notifying measures at draft stage (50% of public

authorities; 70% of businesses), providing information on proportionality assessments (60% of public authorities; 50% of businesses), expanding the scope of the notification obligation to other key requirements falling under the Services Directive (60% of public authorities; 75% of businesses), and enhancing compliance of Member States with the notification obligation (80% of public authorities and 80% of businesses).

- **Collection and use of expertise**

The results of a mutual evaluation process with Member States in 2010-11<sup>9</sup>, performance checks carried out in 2011-12<sup>10</sup> and peer review undertaken in 2012-2013<sup>11</sup> all contributed to the preparation of this proposal for a Directive.

The Court of Auditors examined the existing notification obligation as part of its assessment of the effective implementation of the Services Directive<sup>12</sup>. It identified a number of shortcomings including a lack of clarity of the existing procedure, the absence of an obligation to notify a measure at draft stage and a lack of transparency of the notifications.

- **Impact assessment**

An impact assessment was carried out in preparation of this initiative. Beyond the status quo (baseline scenario), four policy options have been considered in the impact assessment report. Non-legislative guidelines (option 2) could help to clarify the current procedure and obligations stemming from it, but could not change the design of the existing procedure to make it more effective and efficient.

A legislative initiative could encompass several options. It could aim to increase the effectiveness, content and quality of the notification procedure, introducing the obligation to notify draft legal acts, making the system transparent, clarifying steps and tasks in the procedure and improving the quality of the information submitted as part of a notification (option 3). To make it more effective and relevant, the notification obligation could be extended in scope to cover important regulatory requirements falling under the Services Directive but not the existing notification obligation (option 4). And it could additionally include instruments to enhance the compliance of Member States with the notification obligation— two sub-options exist in this regard (options 5a & 5b).

The option to include services in the Single Market Transparency Directive was discarded due to the fact that the regulation of goods and services in EU law differs fundamentally. The option to merge the obligation under the Professional Qualifications Directive with the notification obligation of the Services Directive was not considered given that the two Directives differ in scope and subject-matter.

The preferred choice is a combination of options 3, 4 and 5a. This would allow best for the identified shortcomings to be addressed and would establish an effective and efficient notification procedure with only a small increase in administrative costs for national public authorities and the Commission.

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<sup>9</sup> COM(2011) 20 final

<sup>10</sup> SWD(2012) 147 final

<sup>11</sup> SWD(2013) 402 final

<sup>12</sup> Special report No 5/2016: “Has the Commission ensured effective implementation of the Services Directive?” <http://www.eca.europa.eu/en/Pages/DocItem.aspx?did=35556>

On 24 June 2016, the Regulatory Scrutiny Board issued a positive opinion on the Impact Assessment carried out by the Commission on this initiative. The Board's recommendations to explain in more detail the shortcomings of the existing notification procedure, to improve the justification for the proposed scope of the revised procedure, to explain better how problem definition and options interlink and to spell out in more detail the content of the preferred option and how it would solve the identified problems were fully taken on board.<sup>13</sup>

- **Regulatory fitness and simplification**

The proposed Directive will contribute to regulatory fitness and simplification by improving the uniform enforcement of existing EU legislation in the single market and by assisting in the prevention of the introduction of certain discriminatory, unjustified or disproportionate barriers in the field of services. It will replace the existing notification procedure established by the Services Directive with a clearer, more coherent, effective and efficient procedure. It will contribute to a more stable regulatory environment as it allows the verification of compliance with the Services Directive of authorisation schemes and certain requirements at draft stage and before their adoption, thus minimising the risk of certain national measures not complying with the Services Directive and necessitating further legal adaptations.

- **Fundamental rights**

This proposal promotes rights enshrined in the Charter of Fundamental Rights and in particular in Article 16 on freedom to conduct a business.

#### **4. BUDGETARY IMPLICATIONS**

The proposal has no impact on the European Union budget.

#### **5. OTHER ELEMENTS**

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The Directive foresees a Commission report on the results of the application of the Directive every three years.

- **Explanatory documents**

This proposal does not require explanatory documents for the transposition into national law given that it introduces limited changes to an already existing notification procedure established by the Services Directive. The Commission may, however, where necessary present guidance on the application of the revised notification procedure.

- **Detailed explanation of the specific provisions of the proposal**

Article 1 specifies the subject matter and the scope of the proposed Directive. The aim of the Directive is to ensure the compliance with the Services Directive of Member States' laws, regulations or administrative provisions introducing authorisation schemes or certain requirements falling under the scope of the Services Directive. The services sectors covered by this Directive are thus those covered by the Services Directive.

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<sup>13</sup> The results of the public consultation, evaluation report, impact assessment and opinion of the Regulatory Scrutiny Board can be found under [http://ec.europa.eu/smart-regulation/impact/ia\\_carried\\_out/cia\\_2016\\_en.htm#grow](http://ec.europa.eu/smart-regulation/impact/ia_carried_out/cia_2016_en.htm#grow)

Article 2 lays down the relevant definitions, in line with both, the definitions under the Treaty as interpreted by the CJEU, and the Services Directive.

Article 3 builds on the notification obligation set out in the Services Directive. It provides for a specific and unconditional obligation for Member States. It also specifies which measures need to be notified and when, what accompanying information must be submitted as part of any notification and the consequences of not respecting certain obligations under this Directive. In order to make the notification procedure efficient and effective and in the interest of all parties concerned, the applicable time limits are set out both in Article 3 and in Article 5. To avoid legal uncertainty and to ensure the smooth operation of the procedure, such time limits start running once the notification has been declared to be complete.

Article 4 specifies which requirements and authorisation schemes falling under the scope of Directive 2006/123/EC are covered by the notification obligation. It provides that Member States have to notify authorisation schemes, certain establishment requirements, certain requirements affecting the freedom to provide services and requirements concerning professional liability insurance and multidisciplinary activities.

Article 5 establishes a consultation period of three months following the notification of a draft measure. The Commission and other Member States have a maximum of two months to comment on a notified measure, followed by a maximum of one month for the notifying Member State to respond to such comments. The need for speed and efficiency must be reconciled with the need for the parties involved to be in a position to make in-depth and constructive comments and for the notifying Member State to address the concerns raised. All parties must implement the procedure in a spirit of sincere cooperation and respect for the other parties' legitimate needs, in the interest of the smooth and effective operation of the notification procedure.

Under Article 6 the Commission may issue an alert to the notifying Member State where after assessing the notified measure it has concerns about its compliance with the Services Directive. The issuing of an alert implies that the Member State concerned shall not adopt the notified measure at issue for three months.

After an alert has been issued, the Commission may pursuant to Article 7, and in line with the existing provision in the Services Directive, adopt a legally binding Decision finding the notified measure to be incompatible with the Services Directive and requesting the notifying Member State to refrain from adopting it.

Article 8 provides for transparency to third parties of notified draft measures, accompanying information and the final adopted measures. Given their knowledge of the markets concerned and the impact of laws, regulations and administrative provisions on them, it is important that third parties can be informed of notified draft measures.

Article 9 provides for the designation of an authority in each Member State responsible at national level for the functioning of the notification procedure laid down in the present Directive.

Article 10 clarifies the relationship between this Directive and Directive (EU) 2015/1535 as well as Directive 2005/36/EC.

Article 11 establishes a periodic review of the application of the Directive.



Article 12 provides for amendments of the Directive 2006/123/EC.

Article 13 provides for an amendment of the Annex to Regulation (EU) No 1024/2012.

Article 14 specifies the period for the transposition of the Directive by Member States.

Article 15 deals with entry into force and application.

Article 16 specifies the addresses of the Directive.

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(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 53(1), 62 and 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>14</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The Treaty on the Functioning of the European Union (TFEU) guarantees to service providers the freedom of establishment in other Member States and the freedom to provide services between Member States.
- (2) Directive 2006/123/EC of the European Parliament and of the Council<sup>15</sup> specifies the content of the freedom of establishment and the freedom to provide services as regards certain services. It provides, inter alia, that authorisation schemes and certain types of requirements related to services must be non-discriminatory with regard to nationality or residence, justified by an overriding reason related to the public interest and proportionate.
- (3) Directive 2006/123/EC provides for an obligation for Member States to assess and adapt their legislation on authorisation schemes and certain requirements related to services, in order to bring it in conformity with the rules laid down in that Directive. Furthermore, with a view to facilitating the verification of future compliance by Member States, Directive 2006/123/EC provides for an obligation for Member States to notify new laws, regulations or administrative provisions which set out certain new requirements falling within the scope of that Directive, or any substantive changes to such requirements.

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<sup>14</sup> OJ C , , p. .

<sup>15</sup> Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ L 376, 27.12.2006, p. 36).

- (4) The Commission has received an increasing number of notifications from Member States regarding newly introduced requirements under Directive 2006/123/EC. However, not all of those national requirements are non-discriminatory with regard to nationality or residence, justified and proportionate, thus resulting in a significant number of structural dialogues launched by the Commission vis-à-vis Member States. This shows that the existing notification procedure is not sufficient to avoid discrimination on the grounds of nationality or residence, unjustified or disproportionate requirements. This is to the detriment of citizens and businesses in the internal market for services. Moreover, it appears that some new or modified requirements related to services falling within the scope of Directive 2006/123/EC have not been notified at all.
- (5) For these reasons the Commission, in its Single Market Strategy<sup>16</sup>, announced an initiative to improve compliance with Directive 2006/123/EC, by reforming the notification procedure provided under it.
- (6) The effective enforcement of the rules governing the internal market for services set out in Directive 2006/123/EC should be enhanced by improving the existing notification procedure established by that Directive in respect of national authorisation schemes and certain requirements concerning both access to self-employed activities and their exercise. The prevention of the adoption of national provisions establishing requirements and authorisation schemes that would be contrary to Directive 2006/123/EC should be facilitated. This Directive is without prejudice to the Commission's powers under the Treaties and the Member States' obligation to comply with the provisions of Union law.
- (7) The notification obligation established by this Directive should apply to regulatory measures of Member States, such as laws, regulations, administrative provisions of general nature or any other binding rule of general nature, including rules adopted by professional organisations to regulate in a collective manner access to service activities or the exercise thereof. The notification obligation should on the other hand not apply to individual decisions issued by national authorities.
- (8) The obligation for Member States to notify draft measures laying down authorisation schemes or requirements referred to in Article 4 of this Directive at least three months before their adoption is designed to ensure that measures to be adopted comply with Directive 2006/123/EC. In order for the notification procedure to be effective, a consultation on notified measures should take place sufficiently in advance of their adoption. This is appropriate to foster good cooperation and transparency between the Commission and Member States and to further develop exchanges between the Commission and national authorities on new or amended authorisation schemes and certain requirements covered by Directive 2006/123/EC, in accordance with Article 4(3) of the Treaty on European Union (TEU). With a view to ensuring the effectiveness of the procedure, breach of the obligation to notify or to refrain from adopting a notified measure, including during the period following the receipt of an alert, should be considered to be a substantial procedural defect of a serious nature as regards its effects vis-à-vis individuals.
- (9) In the spirit of transparency and cooperation, where substantive amendments are made to a draft measure that is subject to an ongoing notification procedure under this

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<sup>16</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Upgrading the Single Market: More opportunities for people and business (COM (2015) 550 final).

Directive, the Commission, other Member States and stakeholders should be made aware of such amendments by the notifying Member State in due time. Modifications of merely clerical nature should not be communicated.

- (10) The information to be submitted by the notifying Member State should be sufficient to assess compliance with Directive 2006/123/EC and, in particular, the proportionality of a notified authorisation scheme or requirement. Therefore, in accordance with the case-law of the Court of Justice of the European Union (CJEU), such information should clarify the public interest objective pursued, set out how the notified authorisation scheme or requirement is necessary and justified to meet this objective and explain how it is proportionate in doing so; thus, it should include explanations on why it is suitable, why it does not go beyond what is necessary and why no alternative and less restrictive means would be available. The reasons which may be invoked by the Member State concerned by way of justification should be accompanied by appropriate evidence and by an analysis of the proportionality of the notified measure.
- (11) In order to ensure an effective exchange of information between the Member States and the Commission, the Internal Market Information System set up by Regulation (EU) No 1024/2012 of the European Parliament and of the Council<sup>17</sup> should continue to be used under this Directive.
- (12) The notification obligation set out in Directive 2006/123/EC requires Member States to inform the Commission and other Member States of requirements covered by Article 15(2), the third subparagraph of Article 16(1) and the first sentence of Article 16(3) of Directive 2006/123/EC. The application of that Directive has shown that authorisation schemes or requirements related to authorisation schemes, professional liability insurance, guarantees or similar arrangements, and multi-disciplinary restrictions are common and can constitute important barriers in the single market for services. They should hence also be covered by a notification obligation to facilitate the compliance of relevant Member States' draft laws, regulations and administrative provisions with Directive 2006/123/EC. The requirements mentioned in Article 16(2) of Directive 2006/123/EC are covered by the notification obligation to the extent that they fall under Article 16(3).
- (13) The present Directive establishes a consultation of three months to allow an assessment of notified draft measures as well as an effective dialogue with the notifying Member State. In order to make the consultation work in practice and to allow Member States, the Commission and stakeholders to effectively provide their comments, Member States should notify draft measures at least three months prior to their adoption. Notifying Member States should take into account the comments made on the notified draft measure, in compliance with Union law.
- (14) Where following the consultation the Commission still has concerns about the compliance with Directive 2006/123/EC of the notified draft measure, it may alert the notifying Member State, giving it the opportunity to bring its draft measure into conformity with EU law. That alert should include an explanation of the legal concerns identified by the Commission. Reception of such an alert entails that the notifying Member State shall not adopt the notified measure for three months.

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<sup>17</sup> Regulation (EU) No 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC ( 'the IMI Regulation' ) ( OJ L 316, 14.11.2012, p. 1).

- (15) Failure to comply with the obligation to notify draft measures at least three months prior to their adoption and/or to refrain from adopting the notified measure during this period and, as the case may be, during the 3 months following the reception of an alert, should be considered to be a substantial procedural defect of a serious nature as regards its effects vis-à-vis individuals.
- (16) To ensure the efficiency, effectiveness and coherence of the notification procedure, the Commission should retain the power to adopt Decisions requiring the Member State in question to refrain from adopting notified measures or, if already adopted, to repeal them, where they violate Directive 2006/123/EC.
- (17) Interested third parties should be given access to notifications sent by Member States in order to make them aware of planned authorisation schemes or certain requirements related to services in markets in which they actually or potentially operate and to enable them to provide comments thereon.
- (18) This Directive does not affect the obligations of Member States to notify the requirements related to information society services under Directive (EU) 2015/1535. In order to avoid duplications of notifications, a notification carried out under that Directive and in compliance with the relevant obligations laid down in this Directive should be deemed to equally fulfil the notification obligation established under this Directive.
- (19) For the same reason, a notification completed under this Directive should be deemed to fulfil the reporting obligations of Member States under Article 59(5) of Directive 2005/36/EC of the European Parliament and of the Council<sup>18</sup>.
- (20) As a consequence of the establishment of the notification procedure provided for in this Directive, the provisions of Directive 2006/123/EC concerning notification procedures should be deleted. Regulation (EU) 1024/2012 should be amended accordingly.
- (21) Since the objective of this Directive, namely establishing a notification procedure for the better enforcement of Directive 2006/123/EC facilitating the freedom of establishment for services providers and the freedom to provide services in the single market, cannot be sufficiently achieved by action at the level of Member States alone and can by reason of its scale and effect be better achieved at the Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 TEU. In accordance with the principle of proportionality this Directive does not go beyond what is necessary in order to achieve its objective.

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<sup>18</sup> Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (OJ L 255, 30.9.2005, p. 22).

HAVE ADOPTED THIS DIRECTIVE:

### *Article 1*

#### **Subject matter and scope**

This Directive lays down rules on the notification by Member States of draft laws, regulations or administrative provisions introducing new, or amending existing authorisation schemes and certain requirements falling under the scope of Directive 2006/123/EC.

### *Article 2*

#### **Definitions**

For the purpose of this Directive, the definitions set out in Article 4(1), (2), (3) and (5) to (9) of Directive 2006/123/EC and in Article 5 second paragraph of Regulation (EU) No 1024/2012 shall apply.

In addition, the following definitions shall apply:

- (a) 'draft measure' means a text laying down an authorisation scheme or a requirement, within the meaning of Article 4(6) and (7) of Directive 2006/123/EC, respectively, formulated with the view of having it enacted as a law, regulation or administrative provision of a general nature, the text being at the stage of preparation at which substantive amendments can still be made by the notifying Member State;
- (b) 'adoption' means the decision in a Member State making the law, regulation or administrative provision of a general nature final according to the applicable procedure.

### *Article 3*

#### **Notification obligation**

1. Member States shall notify to the Commission any draft measure that introduces new requirements or authorisation schemes referred to in Article 4, or modifies such existing requirements or authorisation schemes.
2. Where a Member State modifies a notified draft measure with the effect of significantly extending its scope or content, or shortening the timetable originally envisaged for implementation, or adding requirements or authorisation schemes, or making those requirements or authorisation schemes more restrictive for the establishment, or the cross-border provision of services, it shall notify the modified draft measure previously notified under paragraph 1 again, including an explanation of the objective and content of the modifications. In such a case, the previous notification shall be deemed to be withdrawn.
3. Draft measures referred to in paragraphs 1 and 2 shall be notified to the Commission at least three months prior to their adoption.
4. The breach of one of the obligations set out in Article 3(1), (2) and (3) or in Article 6(2) shall constitute a substantial procedural defect of a serious nature as regards its effects vis-à-vis individuals.
5. Member States shall, as part of any notification, provide information demonstrating the compliance of the notified authorisation scheme or requirement with Directive 2006/123/EC.

That information shall identify the overriding reason relating to the public interest pursued and give the reasons why the notified authorisation scheme or requirement is non-discriminatory on grounds of nationality or residence and why it is proportionate.

That information shall include an assessment demonstrating that less restrictive means are not available as well as specific evidence substantiating the arguments put forward by the notifying Member State.

6. In the notification, the Member State concerned shall also communicate the text of the legislative or regulatory provision that underlies the notified draft measure.
7. Member States concerned shall communicate the adopted measure within two weeks following its adoption.
8. For the purpose of the notification procedure established by this Directive and to ensure the exchange of information between the notifying Member State, other Member States and the Commission, the Internal Market Information System set out in Regulation (EU) No 1024/2012 shall be used.

#### *Article 4*

#### **Authorisation schemes and requirements subject to the notification obligation**

Member States shall notify the following authorisation schemes and requirements:

- (a) authorisation schemes within the meaning of Article 9(1) of Directive 2006/123/EC;
- (b) requirements referred to in Article 15(2) of Directive 2006/123/EC;
- (c) requirements affecting the freedom to provide services referred to in the third subparagraph of Article 16(1) and in the first sentence of Article 16(3) of Directive 2006/123/EC;
- (d) requirement to subscribe to a professional liability insurance, guarantee or similar arrangement as referred to in Article 23 of Directive 2006/123/EC;
- (e) requirement to exercise a given specific activity exclusively or which restricts the exercise jointly or in partnership of different activities as referred to in Article 25 of Directive 2006/123/EC.

#### *Article 5*

#### **Consultation**

1. Upon receipt of a notification from a Member State referred to in Article 3(1) and (2), the Commission informs the notifying Member State of the completeness of the notification received.
2. As from the date of the Commission informing the notifying Member State of the completeness of a notification received, a consultation of maximum three months shall take place among the notifying Member State, other Member States and the Commission.
3. The Commission and Member States may, within a period of two months as of the beginning of the consultation period referred to in paragraph 2, submit comments to the notifying Member State.

4. The notifying Member State shall respond to comments submitted by the Commission or other Member States within one month after their reception and prior to the adoption of the notified measure, either explaining how those comments will be taken into account in the notified measure or indicating the reasons why those comments cannot be taken into account.
5. Where neither the Commission nor other Member States have submitted comments to a notified draft measure within the two months referred to in paragraph 3, the consultation period shall end immediately.

#### *Article 6*

##### **Alert**

1. Before the closure of the consultation period referred to in Article 5(2), the Commission may alert the notifying Member State of its concerns about the compatibility with Directive 2006/123/EC of the draft measure notified and of its intention to adopt a Decision referred to in Article 7.
2. Upon receipt of such an alert, the notifying Member State shall not adopt the draft measure for a period of three months after the closure of the consultation period.

#### *Article 7*

##### **Decision**

Where the Commission has issued an alert in accordance with Article 6(1), it may, within a period of three months after the date of the closure of the consultation period referred to in Article 5(2), adopt a Decision finding the draft measure to be incompatible with Directive 2006/123/EC and requiring the Member State concerned to refrain from adopting the draft measure or, if such measure has been adopted in breach of Article 3(3) or Article 6(2), to repeal it.

#### *Article 8*

##### **Information to the public**

The Commission shall publish on a dedicated public website the notifications made by Member States under Articles 3(1) and (2) and the related adopted measures.

#### *Article 9*

##### **Designation of competent authority**

Member States shall designate a competent authority responsible at national level for the operation of the notification procedure established by this Directive.

#### *Article 10*

##### **Link to other notification or reporting mechanisms**

1. Where a Member State is required to notify a measure under Article 3 of this Directive and under Article 5(1) of Directive (EU) 2015/1535, a notification carried out under that Directive and which complies with the obligations laid down in paragraphs 3, 5, 6 and 7 of Article 3 of this Directive shall be deemed to have



satisfied also the notification obligation established under Article 3(1) and (2) of this Directive.

2. Where a Member State is required to notify a measure under Article 3 of this Directive and to inform the Commission in accordance with Article 59(5) of Directive 2005/36/EC, that notification shall be deemed to have satisfied also the information obligation set out in Article 59(5) of Directive 2005/36/EC.

#### *Article 11*

##### **Report and review**

1. By [36 months after the date for transposition of this Directive] and at the latest every five years thereafter, the Commission shall present a report to the European Parliament, the Council and the European Economic and Social Committee on the application of this Directive.
2. Following the report referred to in paragraph 1, the Commission shall regularly evaluate this Directive and submit the evaluation results to the European Parliament, the Council and the European Economic and Social Committee.
3. Where appropriate, the reports referred to in paragraphs 1 and 2 shall be accompanied by relevant proposals.

#### *Article 12*

##### **Amendments to Directive 2006/123/EC**

Directive 2006/123/EC is amended as follows:

1. Article 15(7) is deleted with effect from [one day after the deadline for the transposition].
2. In Article 39(5), the second and third subparagraphs are deleted with effect from [one day after the deadline for the transposition].

#### *Article 13*

##### **Amendments to Regulation (EU) No 1024/2012**

The Annex to Regulation (EU) No 1024/2012 is amended as follows:

1. point 1 is replaced by the following:

*"1. Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market: Chapter VI.";*

2. the following point 11 is added:

*"11. Directive (EU) XXXX/XXXX of the European Parliament and of the Council of XX on the enforcement of the Directive 2006/123/EC on services in the internal market, laying down a notification procedure for authorisations schemes and requirements related to services, and amending Directive 2006/123/EC and Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System, unless a notification, as provided for in that Directive, is made in accordance with Directive (EU) 2015/1535.".*

*Article 14*

**Transposition**

1. Member States shall adopt and publish, by [calendar date one year as from the date of the entry into force of that Directive] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive.

The provisions adopted to transpose this Directive shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of those provisions.
3. Member States shall apply those provisions from [calendar date one year as from the date of the entry into force of that Directive + one day].

*Article 15*

**Entry into force**

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

*Article 16*

**Addressees**

This Directive is addressed to the Member States.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*