

**COMMUNICATION**

**from the European Affairs Committee of the Federal Council  
to the European Commission, the European Parliament and the Council  
pursuant to Article 23f (4) of the Austrian Constitution**

**4 April 2017**

**COM (2016) 821 final**

**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**

The proposed directive on a notification procedure contains provisions regarding the duty of notification of the Member States within the scope of Directive 2006/123/EC on Services in the Internal Market (Services Directive). The proposal is based on Article 53 para.1 and Articles 62 and 114 TFEU. Pursuant to Article 114, measures can be adopted for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market. As the proposed directive provides for a shared competence between the Member States and the European Union, a subsidiarity and proportionality check is of particular importance in this case.

The procedure is to be applied in all cases in which substantial new provisions are to be introduced within the scope of the directive. Based on Directive 2006/123/EC, this would concern authorisation schemes and all requirements regarding the freedom of establishment or the provision of services as well as rules governing access to and the exercise of service professions. When introducing a new requirement in a service sector, the Member State will have to demonstrate that less restrictive means are not available. In the event of an alert being issued by the Commission, the national legislative process would presumably be delayed. The Federal Council fails to see how this new regime should ensure more efficient and better law enforcement.

The proposal substantially interferes with the legislative sovereignty of the Member States and is therefore in conflict with the principle of subsidiarity. The time limits provided for in the proposal can lead to major delays in the legislative process of the Member State concerned. Moreover, the fact that no deadline is set for the Commission by which it has to inform the Member State of the completeness of the notification received is another cause for concern. While the Member States are bound by strict time limits, the Commission is under no such constraint.

Article 7 of the proposed directive is a cause for fundamental concern. In accordance with this article, the Commission has the right to adopt a binding ex-ante decision on the compatibility of the requirement in question with European Union law. However, pursuant to Article 19 (1) of the Treaty on European Union, this is within the sphere of competence of the Court of Justice of the European Union. A binding assessment by the Commission would result in the competence to assess legal provisions for their conformity with Union law being shifted from the Court to the Commission. Moreover, Member States objecting to the Commission's decision would be forced to institute legal action, which in turn would put the Member States in a disadvantaged position, as they would have to bear the burden of proof and provide evidence of the conformity of their national rules with Union law.

In view of the aforementioned substantive concerns, the proposal does not satisfy the test of subsidiarity. In the Federal Council's opinion, the proposal is in conflict with the principle of subsidiarity and constitutes an excessive interference with the legislative sovereignty of the Member States.

Similar arguments apply to the related changes within the framework of the internal market information system (IMI). Although its technical adaptation would be the Commission's responsibility, the changes would require a considerable personnel training effort on the part of the Member States, which the Federal Council rejects as being disproportionate.