



EUROPEAN COMMISSION

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*Mr Edgar MAYER  
President of the Bundesrat  
Dr Karl Renner-Ring 3  
A-1017 WIEN*

*Dear President,*

*The Commission would like to thank the Bundesrat for its Opinion on the 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 {COM(2016) 821 final}.*

*This proposal is part of a package of several proposals that should be seen in light of President Juncker's political commitment to unleash the full potential of the Single Market. This goal was confirmed by the European Council in its December 2015, June 2016 and December 2016 conclusions. The proposed measures aim to make it easier for services providers to navigate administrative formalities and to help Member States identify overly burdensome or outdated requirements on professionals operating domestically or across borders. Rather than introducing new substantive rules at the level of the European Union in the area of services, the Commission's focus is on ensuring that the existing rules are applied better, as evidence shows that implementing them to their full potential could provide a significant boost to the European Union's economy.*

*The Commission takes the concerns expressed by the Bundesrat as regards the principle of subsidiarity very seriously. The Commission is of the opinion that its legislative proposal for an improved services notification procedure is in line with the subsidiarity principle established in the Treaties. The objective of the proposal is to improve the functioning of the internal market and protect the freedom of establishment and the free provision of services, which are among the foundations of the European Union. To this end, the legislative proposal aims to put into place an effective mechanism to improve the implementation of the existing Services Directive.<sup>1</sup>*

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<sup>1</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. 36–68.

*The existing notification procedure for services was established by that Directive with the objective to ensure that new measures introduced by Member States comply with the Services Directive. An evaluation of this procedure, summarised in the Impact Assessment accompanying the legislative proposal, revealed important shortcomings because of which the existing procedure fails to contribute effectively to the prevention of the introduction of unjustified regulatory barriers to the services single market.*

*For this reason, not only the European Parliament and the European Court of Auditors but also the Council have all called on the Commission to improve the existing notification mechanism established by the Services Directive. In a public consultation, 80% of respondents considered the current notification procedure to be unsatisfactory, with almost three quarters of public authorities expressing the same opinion.*

*The purpose of the proposal is to ensure a better implementation of the provisions of the Services Directive, which aims specifically to eliminate or reduce the obstacles to the freedom of establishment and the provision of services in a cross-border context. The overall objective is to ensure a smooth functioning of the Single Market for services which is not limited to the territory of one Member State but covers the whole territory of the European Union. Therefore, given the specificity and the transnational nature of the Single Market, an efficient and coherent preventive control of national regulatory measures in the field of services can only be achieved at the level of the European Union.*

*The Commission is not intervening in the national parliamentary process; it is simply following its duties to ensure the proper implementation of Union law. To support this objective, shared by the Member States, the Commission believes that the obligation to notify draft measures at least three months prior to their adoption is necessary to have an effective consultation with the notifying Member State. The proposal does not prevent the parliamentary process from continuing when the Commission and other Member States are assessing the notified measure.*

*The Commission would also like to recall the existence of a similar notification obligation, and a period of three months, for the Member States in the area of information society services and goods on the basis of Directive 2015/1535/EC.<sup>2</sup> The procedure of that Directive requests Member States to suspend for a period of three months the adoption of the notified measure.*

*Article 258 of the Treaty on the Functioning of the European Union (TFEU) provides for the Commission power to bring a Member State before the Court of Justice of the European Union for violations of Union law. The Court of Justice of the European Union has rejected several challenges to the possibility for the Commission to take a Decision on the compatibility with Union law and the possibility for the Commission to open infringement proceedings. The presence of such powers in secondary legislation does not encroach upon the Court of Justice of the European Union's jurisdiction under Article 258 TFEU.*

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<sup>2</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, OJ L 241, 17.9.2015, p. 1–15.

*The Commission would like to underline that its power to adopt a Decision on the compatibility with Union law does not entail a shift of the burden of proof to the detriment of Member States. Under existing Union law, it is already the obligation of Member States wishing to introduce new regulation to show that such regulation would be justified and proportionate to meet a legitimate overriding reason of the general interest. Moreover, if the Commission adopted a Decision under Article 7 of its legislative proposal, it would be obliged to prove that the Services Directive has been violated, i.e. that the national measure constitutes a restriction and that it is not justified or proportionate. Member States could challenge such a Decision and it would be subject to a complete judicial review by the European Union's judicature.*

*Moreover, the possibility for the Commission to adopt binding Decisions on draft regulatory measures notified by Member States is already provided for in other legal acts of the European Union, such as the existing Services Directive and the Product Safety Directive<sup>3</sup>, and under the merger procedure.*

*As regards technical adaptations within the framework of the Internal Market Information System (IMI), the Commission would like to clarify that Internal Market Information System is already used for the current notification obligation contained in the Services Directive. The legislative proposal for an improved services notification procedure would not create significant changes in the use of that system. The Commission is looking forward to working with the Austrian authorities to facilitate the use of the Internal Market Information System.*

*Discussions between the Commission and the co-legislators concerning the proposal are now underway and the Commission remains hopeful that an agreement will be reached in the near future.*

*The Commission hopes that the clarifications provided in this reply address the issues raised by the Bundesrat and looks forward to continuing our political dialogue in the future.*

*Yours faithfully,*

*Julian King  
Member of the Commission*

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<sup>3</sup> Council Directive 92/59/EEC of 29 June 1992 on general product safety, OJ L 228, 11.8.1992, p. 24–32.