



EUROPEAN COMMISSION

*Brussels, 6.9.2017
C(2017) 5996 final*

*Ms Malu Dreyer
President of the Bundesrat
Leipziger Straße 3-4
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Dear President,

The Commission would like to thank the Bundesrat for its second Opinion, dated 31 March 2017, 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}.

The Commission considered very seriously the concerns already expressed by the Bundesrat in its Reasoned Opinion, dated 10 March 2017, as regards the principles of subsidiarity and proportionality. As outlined in its reply to the Reasoned Opinion, the Commission would like to recall that its proposal fully respects these principles. The Commission welcomes this opportunity to respond to the additional issues raised by the Bundesrat in its second Opinion.

The notification obligation in the legislative proposal requires Member States to notify draft measures which introduce new requirements or authorisation schemes or modifies such existing requirements or authorisation schemes. The obligation does not specify what form is chosen to introduce or modify requirements or authorisation schemes. The reason for this approach lies in the fact that legislative action per Member State could be different, but also that different layers of government could be affected by the notification obligation. It is important to note that Directive 2006/123/EC¹ is a horizontal legal instrument that affects a significant number of laws, regulations and administrative provisions at different levels within Member States' governmental structures. Due to this effect, all levels of these structures are already subject to the notification obligation provided for in Directive 2006/123/EC.

¹ 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.

In order to put in place an effective notification procedure, the Commission would like to introduce a consultation period of a maximum of three months. This consultation period opens up the possibility for the notifying Member State, the other Member States and the Commission to assess the notified measure in particular in light of its justification and proportionality. The proposal provides for a Commission assessment of the completeness of notifications received, but this should be understood as a purely factual exercise, which should not lead to any delay in the Member State's legislative process. The notification procedure in the proposal will use the existing Internal Market Information System.

During the consultation period, the parliamentary process would not be suspended, but would continue its course according to the national procedures. In parallel, both the Commission and other Member States would have the possibility to comment on the notified measure at a point in time when such comments could still be taken into account by the notifying Member State with the aim of preventing the adoption of a measure which is not compatible with Union law.

According to Directive 2006/123/EC, Member States may maintain certain regulatory requirements even where they constitute obstacles to the freedom of establishment and the freedom to provide services, provided they can show that these are non-discriminatory, justified by an overriding public interest and proportionate. The corresponding assessment is an obligation which is embedded in Directive 2006/123/EC. Hence, the Commission is of the opinion that this will not lead to any additional administrative burden. As to the possible increase in administrative costs, the Commission would like to refer to Annex 4 of the Impact Assessment, which features an estimation of the costs for public authorities. Based on information provided by the Member States, the Commission was able to estimate cost impacts for the various options in the Impact Assessment. The assessment shows that the overall cost per Member State of a notification is limited.

The proposal to clarify the possible consequences of non-compliance with the notification obligation should be seen in light of the lack of compliance by several Member States with the current notification obligation in Directive 2006/123/EC. The wording chosen is based on the case law developed by the Court of Justice of the European Union in respect of Directive 2015/1535/EU.²

The Commission believes that it is important to identify the measures covered by Directive 2006/123/EC which will be subject to the notification obligation. It is for this reason that the Commission proposes references to specific provisions in that Directive. This approach limits the obligation to those measures which are relevant. The possibility for the Commission to adopt a Decision in case the notified measure is incompatible with the provision of Directive 2006/123/EC is based on Article 15(7) of Directive 2006/123/EC.

² 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 designation of a competent authority at national level is without prejudice to the allocation of functions and powers among the authorities within the national system. Given that the proposal does not touch upon this allocation of competences, the Commission is of the opinion that a federal state like Germany would also not face transposition difficulties.

The points made above are based on the initial proposal presented by the Commission which is currently in the legislative process involving both the European Parliament and the Council.

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,

*Frans Timmermans
First Vice-President*

*Elżbieta Bieńkowska
Member of the Commission*