



EUROPEAN COMMISSION

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*Mr Pietro GRASSO
President of the
Senato della Repubblica
Piazza Madama, 1
IT – 00186 ROME*

Dear President,

The Commission would like to thank the Senato della Repubblica 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 {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for services providers to navigate administrative formalities and to help Member States identify overly burdensome or outdated requirements on professionals operating domestically or across borders.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 focuses on ensuring that existing Union rules are applied better. Evidence shows that implementing existing Union rules to their full potential could provide a significant boost to the economy of the European Union.

The Commission takes the concerns expressed by the Senato della Repubblica as regards the principle of proportionality very seriously. The Commission is of the opinion that its proposal fully respects this principle and is pleased to have this opportunity to provide a number of clarifications that it trusts will allay the Senato della Repubblica's concerns.

The Commission would like to recall the existence of a similar notification obligation for the Member States in the area of information society services and goods, based on Directive (EU) 2015/1535¹. The procedure of that Directive obliges Member States to notify draft measures and to suspend their adoption for a period of three months, establishing a preventive control of national measures.

¹ 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 stress that the introduction of a consultation period of a maximum of three months has been proposed in order to ensure the efficiency of the notification procedure. This consultation period opens up the possibility for the notifying Member State, other Member States and the Commission to assess the notified measure in particular in light of its justification and proportionality. The Commission considers the period of three months to be of an appropriate length, in particular given the experience with the notification procedure under the Directive (EU) 2015/1535.

In addition, during the consultation period, the decision-making process in the Member State is not suspended; on the contrary, nothing prevents this process from continuing its course according to the national procedures. In parallel, the Commission, other Member States and stakeholders 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.

Furthermore, the revised notification procedure provides for a shorter consultation period of two months, in case the Commission submits no comments, allowing the notifying Member State to finalise its decision-making process faster.

It is important to note that the 'Alert' which suspends the adoption of the notified measure for three months can be issued only if the Commission has serious concerns about the compliance of the measure with the Directive 2006/123/EC. The Commission considers that the three months period following the 'Alert' gives the Member State the appropriate time to implement possible changes to the initially notified measure and/or to enter into a more profound dialogue on this measure with the Commission.

The Commission notes the suggestion of the Senato della Repubblica to reduce the period during which the Commission can adopt a Decision requiring a Member State to refrain from the adoption or to repeal a measure, to three months as from the date of notification. The Commission would like to insist on the necessity of having a proper dialogue with the Member State prior to the adoption of such a Decision, fully ensuring the possibility for the Member State to address the concerns raised by the Commission and to avoid, if possible, its adoption.

The Commission would also like to clarify that the objective of the definition of 'draft measure' in the proposal is to make it functional in the context of a wide diversification of measures which are subject to notification (adopted at national, regional or local level) and of procedures related to the adoption of those measures. Therefore, that definition gives the Member State the flexibility in deciding when the measure should be considered as adopted, in light of applicable procedures. In addition, the Commission would like to stress that the definition of 'draft measure' to which 'substantial amendments can still be made' already exists and functions under the Directive (EU) 2015/1535.

As regards the concerns raised by the Senato della Repubblica on the 'substantial procedural defect' in case some important steps of the notification procedure are not observed by a Member State, the Commission would like to clarify that this concept is to be understood in the light of the case law developed by the Court of Justice of the European Union under Directive (EU) 2015/1535² (including the case C-20/05 mentioned in the Opinion). The Commission shares the view of the Senato della Repubblica that it is the competence of the Court of Justice of the European Union to confirm the application of the above-mentioned case law in the area covered by the new Directive on notifications for services.

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. 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 Senato della Repubblica and looks forward to continuing our political dialogue in the future.

Yours faithfully,

*Julian King
Member of the Commission*

² C-194/94 - CIA Security International v Signalson and Securitel, ECLI:EU:C:1996:172.