

## RESULTS OF THE STAKEHOLDERS CONSULTATION

### PROPOSAL TO REFORM THE NOTIFICATION PROCEDURE FOR AN IMPROVED ENFORCEMENT OF THE SERVICES DIRECTIVE

#### 1. Introduction

The Commission consulted stakeholders to contribute to the evaluation of the current notification procedure and to obtain feedback on potential improvements to the existing system. The consultation of stakeholders consisted of two pillars: (1) a public consultation of interested stakeholders through an EU Survey online and (2) through in-depth discussions with institutional stakeholders (Member States and other EU institutions) directly concerned by the notification procedure and its planned reform.

This document mainly summarizes the results gathered through the online public consultation questionnaire, which was running from 26 January until 19 April, for a period of 12 weeks.

The questionnaire notably invited stakeholders to share their views on issues such as the effective enforcement of the Single Market Rules and preventive examination; the efficiency of existing notification obligation under the Services Directive; possible measures to improve the current notification procedure; the impact of a notification procedure.

The last section provides a summary of the discussions with institutional stakeholders which took place in the Expert Group on the Implementation of the Services Directive including bilateral exchanges (meetings, position papers), as well as the views expressed by other EU institutions.

#### 2. **Summary of Responses to the European Commission's 2016 Public Consultation**

##### Executive summary

A total of 126 stakeholders from 21 countries responded to the public consultation. Two kinds of respondents were representatives of the business community (representatives of companies, of chambers of commerce or chambers of professionals, etc.) and more than 20% were public authorities.

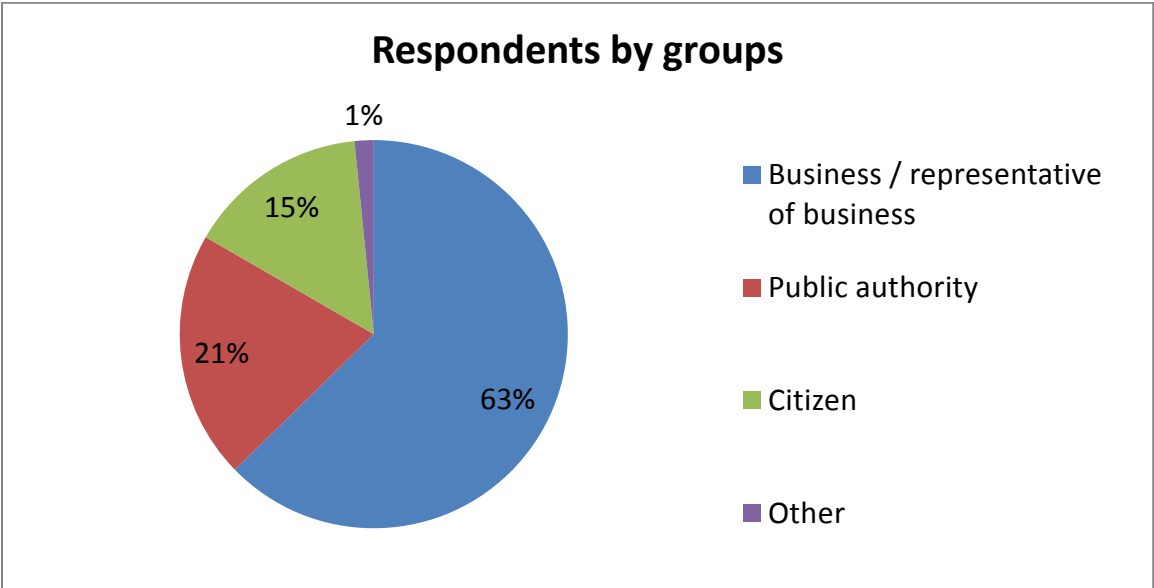
Main outcome of the public consultation is as follows:

- A large majority of stakeholders (80%) considered the current services notifications system not satisfactory, in particular public authorities who handle the notification procedure, as well as the business community.
- The consultation shows a large support for a series of options which could be included in a forthcoming initiative, in particular: an obligation to notify draft legislation (77%); increased transparency of the notification procedure vis-à-vis non-institutional stakeholders (70%); improvements to the proportionality test undertaken by Member States (74%); clearer legal consequences of non-notification (79%).
- Respondents also expressed an opinion in favour of extending the scope of the current notification obligation to a series of measures covered by the Services Directive: requirements related to prior authorisations (73%), requirements affecting multidisciplinary activities (80%); requirements to hold a professional indemnity insurance (73%); services standards (71%).

- Although some stakeholders identified a “standstill” period as a sensitive issue, most supported the need to give a clear timeframe for the notifying Member State, the Commission, other Member States and stakeholders to interact on a notified draft, before its adoption (65%).
- Trends in responses differ between main stakeholders groups. Businesses support in particular enhancing transparency of the current notification procedure; clarifications and extension of the scope of the notification obligation; and measures to improve the Commission decision powers and to prevent the adoption of disproportionate requirements by Member States. Public authorities were particularly supportive of clarifying the scope of the notification obligation and improving the current procedure. However, although overall supportive, some of them were more critical as regards measures which would prevent disproportionate restrictions from being adopted.
- Views on impacts of possible actions: the impact of further EU action was considered positive by a large majority of respondents, for the procedure itself (71%), the better functioning of the services markets (69%), enhanced compliance by Member States on proportionality (67%) and more systematic notification (60%).
- These results will feed into the impact assessment that DG GROW is currently preparing, and in particular to support the different policy options envisaged.

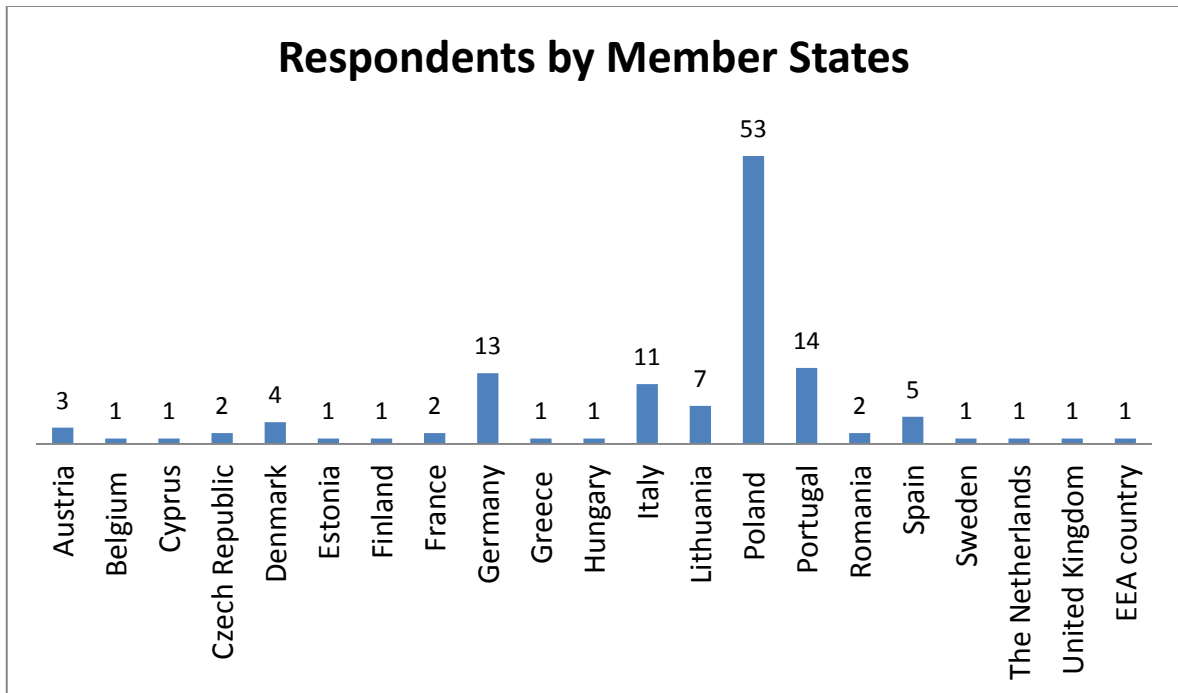
**3. Overview of the respondents to the public consultation**

The Commission received 126 replies from individuals and organisations in response of its online public consultation. The breakdown of respondents per group is as follows:



The large majority of responses (63%) came from businesses and their associations, almost a quarter from public authorities (21%) and further replies from citizens (15%) and other organisations (i.e. think tank) (1%).

With respect to the geographical distribution, the respondents came from 21 countries (20 Member States and 1 country from the European Economic Area, EEA), in particular from Poland, Portugal and Germany. No responses were submitted from the following states: Bulgaria, Croatia, Ireland, Latvia, Luxemburg, Malta, Slovakia and Slovenia. The breakdown of replies per country is as follows:



Poland comes out clearly as the largest provider of responses, with a total of 53. Nevertheless, responses received have come from diverse types of respondents and in that sense did not unbalance the overall trends observed amongst the other responses to the consultation: one public authority at State level handling notifications (Ministry of the Interior and Administration); one university (classified under “other”); and multiple types of representatives of the business community: 49 service providers among which 5 large companies, 12 SMEs and 32 micro companies; one chamber of commerce; one business federation.

#### 4. Consultations topics

##### 4.1. **Effective enforcement of the Single Market rules and preventive examination**

###### 4.1.1. ***Importance of uniform application and effective enforcement of existing rules***

A large majority of the respondents (83%) considered a uniform application and effective enforcement of EU rules to be important. Most respondents (63%) believed that efforts should be stepped up to ensure rules are applied correctly. 20% of respondents find current policies sufficient.

###### 4.1.2. ***Preventive examination to ensure proportionality of national requirements***

A majority of the respondents (54%) considered that an improved procedure for notifications of new national rules could help reinforce the uniform application of rules across the single market.

Almost one third of the respondents (29%) considered either the existing preventive tools such as sharing knowledge and experience or the enforcement tools which allow for a check after adoption at national level to be sufficient to provide for a more uniform application of single market rules for services.

Four out of five public authorities considered preventive examination necessary to ensure a more uniform application of single market rules for services whereas for business this is nearly 2 out of 3.

## **4.2. Existing rules and procedures under the Service Directive as regards notification obligations**

### **4.2.1. Effectiveness of the current notification procedure**

Most respondents who replied to this question (80%) were of the opinion that the current procedure for notifications under the Services Directive is either not working or considers the procedure to be in need of improvements. Close to three quarters of public authorities expressed this opinion and among business almost two third.

### **4.2.2. Shortcomings of the current notification procedure**

Around 8 out of 10 respondents indicated at least one shortcoming in the current notification procedure in the Services Directive.

The questions asked under this section concern the current notification procedure, of which external stakeholders (business community and citizens) are currently not part and on which it therefore is difficult for this group to have an opinion as precise as public authorities might have in respect of the shortcomings of the existing procedure. This being said, external stakeholders did have clear views on how existing procedure should be improved in subsequent sections of the online questionnaire.

In terms of the shortcomings of the current notification procedure in the Services Directive the group of respondents who replied to this question marked the following elements:

- A large majority of respondents (60%) considers the fact that for Member States and stakeholders the notification obligations are not clear in terms of what national regulation should be notified as a shortcoming.
- Half of the respondents (50%) regards the fact that the notification procedure is not transparent for stakeholders as a shortcoming.
- Close to half (45%) of the respondents saw the following as shortcomings in the existing procedure:
  - (I) the different rules exist on the notification obligation for establishment and temporary provision of cross-border services;
  - (II) the lack of clarity in terms of whether the notifying Member State must respond to comments issued by the Commission or other Member States;
  - (III) the assessment by Member States;
  - (IV) whether national legislation/regulation is justified and proportionate to meet public policy objectives.
- Over a third of respondents (37% and 34%) thinks (I) the fact that notified measures have already been adopted by Member States; and (II) the limited time to react to notified legislation/regulation and prevent the adoption at national level are shortcomings of the current procedure.
- More than a quarter of respondents (27%) believe that Member States not respecting their notification obligations and the absence of a mechanism in place to stop such behaviour are a shortcoming of the current rules, with business representing almost three quarters of this group.
- A small amount of respondents (20%) see the limited possibilities for Member States, the Commission and stakeholders to intervene as a shortcoming.

### **4.3. Measures to improve the current notification procedure for services**

#### **4.3.1. Elements to be included at EU policy level**

A large majority of respondents, including 69% of public authorities and 60% of the representatives of the business community, support EU action to improve the current notification obligation under the Services Directive. Only 15% of all respondents did not see the need for an EU action.

An obligation to notify draft legislation, rather than notifying legislation already adopted at national level, was identified as an element which an EU level policy action should include, by nearly three quarters of the respondents. More than half of the public authorities, including those handling notifications, recognized it as an element which could improve the current notification system under the Services Directive. 72% of the business community supported an obligation to notify draft legislation, which would represent an improvement compared to the current system (see footnote)<sup>1</sup>.

Nearly three quarters of respondents also considered that notifications should be made available to the public, supporting an increased transparency of the current notification procedure. This argument is in particular supported by 80% of the business community, which is today not associated to the notification procedure taking place between the notifying Member States, the Commission and other Member States. More than 60% of the public authorities also showed support to include such provision in a EU level policy action.

A very large number of respondents (83%) also agreed to the introduction of clarifications about the scope of the notification obligation in an EU level policy action, i.e. about the type of measure which should be notified. Among them, all public authorities but two supported such improvement, indicating that it might contribute to improving their understanding of the current system.

On the issue of scope, nearly 8 out of 10 respondents who shared their opinion on the matter also favoured aligning the procedure applicable to regulations governing the temporary cross-border provision of services with that applying to the freedom of establishment.

The clarification of the procedure to notify (including the different steps by which a public authority has to go through, the way to handle comments from the Commission and other Member States, etc.) was also identified as an improvement that an EU level action could bring, by 81% of all the respondents, among which 22 public authorities and 77% of the business community. Respondents who offered a more detailed response in their comments underlined that the system currently in place under the existing notification system for goods provides a clear procedure for goods and information society services, and could be used as an inspiration for services.

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<sup>1</sup>*Examples were shared in reference to the existing notification system for goods under which such an obligation is already operative and contributes to the compliance of Member States and overall efficiency of the notification procedure. Some respondents showed support for such obligation to be complemented by a provision specifying at what point in the legislative process Member States could be required to notify a legislative initiative.*

The introduction of a clear timeframe in the existing notification procedure is supported as a feature of a future EU level policy action by 65% of the respondents. This was the case of 65% of the public authorities and 73% of the representatives of the business community at large. Only a limited share of the respondents (23%) considers that such a provision is not necessary, some underlining that the current system already provides sufficient flexibility and clarity in this respect.

The introduction of an obligation for Member States to provide a thorough proportionality assessment was supported by three quarters of the respondents (74%) who expressed an opinion. Among those supporters, emphasis was put on the importance of the proportionality check prior to a national regulation on services, to evaluate consequences on the competition in the services market in particular, and the functioning of the single market in general. Several respondents also alerted that additional obligations for Member States to improve their proportionality test should not generate undue costs for administrations.

The improvement and clarification of the legal consequences of non-notification by a Member State was considered one of the most important features that an EU level policy action could include, with the support of almost 80% of the respondents, including 80% of the public authorities and 78% of the business community. Respondents recognized that the absence of the legal consequences is an important shortcoming of the current notification system.

More than half of the respondents supported the need to introduce instruments to prevent disproportionate requirements from being adopted at national level. Among them, nearly 60% of public authorities, which are handling notifications at local, regional or national level. In addition, almost 70% of the representatives of the business community who took position on this question, indicated their support.

#### **4.3.2. National regulatory requirements to be covered by notification obligations**

Most respondents expressed their support to expanding the current notification obligation for services to include other measures and requirements.

Almost half of the respondents who took a position did not consider the current scope of the notification obligation under the Services Directive satisfactory.

Requirements related to prior authorisations and their procedures for access and exercise of the service activity should additionally be covered, according to 73% of respondents who shared an opinion on the matter.

Many respondents from both public authorities and the business community expressed support for the introduction of requirements affecting multidisciplinary activities (50% and 54%).

At the same time, requirements to hold a professional indemnity insurance should additionally be covered by a notification obligation, according to nearly three quarters of the respondents which expressed an opinion on the matter.

More than three quarters of respondents support the notification obligation to also cover services standards.

Finally, more than 70% of respondents which expressed an opinion on whether they agree or not to extend the notification obligation to requirements affecting commercial communication supported the idea.

#### **4.3.3. Procedural clarifications to be provided**

Most respondents indicated the need to provide procedural clarifications to the existing notification procedure on several matters.

More than 8 out of 10 respondents (85%) supported the need to specify what type of information should be submitted by the notifying authority together with the notified legislation. This degree of support was echoed by public authorities (85%).

In addition, more than three quarters of the respondents (78%) indicated that clarification on the timing by which the Commission, Member States and stakeholders would be able to react to notifications is necessary. This was supported by 70% of public authorities and stakeholders (more than 80% of business representatives and 84% of citizens).

The introduction of a fixed timeframe for notifying Member States to respond to comments and reactions from the Commission, other Member States and stakeholders, was supported by nearly 8 out of 10 respondents (79%). This included three quarters of the public authorities and of representatives of the business community.

Respondents supported widely the idea to provide, in a forthcoming EU wide initiative, clarifications on when and how stronger measures can be taken by the Commission against disproportionate requirements. Three quarters of them answered favourably, whereas only 10% showed disagreement.

#### **4.3.4. Actions to prevent disproportionate restrictions**

Most respondents favoured actions to prevent the adoption of disproportionate restrictions by Member States.

Only one third of respondents (35%) expressing an opinion judged that the existing system which allows the Commission and Member States to discuss notifications is sufficient to prevent Member States from adopting disproportionate restrictions. On the other hand, two third of those respondents found the existing system to be insufficient including in particular 68% of the representatives from the business community which expressed their opinion on the matter.

Respondents expressed disagreement on the fact that the existing system allowing the Commission to adopt a legal Decision is sufficient to prevent Member States from adopting disproportionate



restrictions. Nearly three quarters of the respondents which expressed an opinion on the matter indicated so.

A majority of respondents among those who took position, agreed that the Commission should always be entitled to adopt a legal Decision on a notification, irrespective of whether this concerns temporary cross-border provision of services or the freedom of establishment.

In addition, among those who expressed an opinion, a majority of respondents agreed that a "standstill" period could be useful whereby the national legislative procedure is paused for a certain period (e.g. prior to the adoption of a law by the national parliament), in order to allow the Commission, other Member States and stakeholders to comment and react to the draft legislation.

According to more than two third of respondents who expressed their opinion (64%), the Commission should always be entitled to adopt a detailed opinion following the model applied to the notification procedure for the goods sector. Among these respondents, this position was supported by two third of the public authorities, and three quarters of the representatives from the business community.

The issue of inapplicability of new measures introduced by Member States, in case of failure to notify based on the existing jurisprudence in the goods sector, was met with divergent views from respondents. Three quarters of the respondents took a position on the matter, with 51% disagreed and 49% agreed for such clarification to be introduced in an EU level action.

With only less than three quarters of respondents taking position on the matter, around 60% disagreed with the idea that Member States should only be allowed to adopt legislation/regulation if they have obtained prior approval from the Commission.

#### **4.3.5. Measures to address proportionality assessment**

A very large share of respondents supported measures to strengthen the proportionality assessment undertaken by Member States when notifying.

Nearly three quarters (71%) of respondent which replied to the question disagreed that the current situation is satisfactory and that there is no need for further action.

Similarly, three quarters of the respondents replying to the question agreed that a legal obligation for Member States to submit proportionality assessments should be introduced.

More than 8 out of 10 respondents who expressed their opinion on the matter considered that the Commission should support proportionality assessment by Member States for particular areas (e.g. an analytical framework to guide assessment).

#### **4.4. Impact of a revised notification procedure under the Service Directive**

The notification procedure at the level of the Member State is under the responsibility of public authorities. Companies, professional organisations or citizens do not intervene directly in the

notification process. Therefore, the relevant information on the modification of the process of notification or on the administrative costs is essentially provided by the respondents from public authorities.

Replies submitted by the public authorities represent less than one fifth of all replies (18%). Almost all the authorities who replied to the public consultation (88%) are public authorities in charge of the notification process.

#### **4.4.1. Changes to national processes linked to the notification obligation**

Among the replies provided by public authorities (26 replies), only a limited number of national authorities considered that the new procedure would require significant changes on their part compared to the current notification obligation (19%).

For 38% of public authorities, the new notification procedure would not imply any changes or only limited changes in that regard.

More than one third of the public authorities (35%) do not know what will be the impact of the revised notification procedure.

It results from the 100 replies provided by the respondents other than the public authorities (companies, professional organisations, citizens) that a large part of them do not know what will be the impact on the fulfilment of the current notification obligation on Member States (40%).

As regard the remaining respondents (60%), most of them (36%) consider that the new procedure will have a significant impact, whereas for 21% there will be no changes or only limited changes.

#### **4.4.2. Costs for public authorities**

As regards costs for public administrations, it follows from the replies provided by public authorities that they expect some features of the new notification procedure to have an impact on costs, but not all.

Most public authorities consider the introduction of the following elements not to lead to a notable increase in costs: an obligation to notify draft legislation (50% approve, 35% disagree), strengthening the obligation to provide a proportionality assessment (38% approve, 35% disagree) and the introduction of a consultation period (46% approve, 38% disagree).

On the contrary, extending the scope of the notification obligation to align it with the scope of the Services Directive will have an impact on costs according to 54% of public authorities' respondents and no impact for 15%.

As regards making notifications transparent for stakeholders, most public authorities do not know the impact on the costs (35%). The remaining respondents are equally split between increase of the costs and no notable impact on costs.

#### **4.4.3. Overall impact**

An overwhelming majority of respondents agree that the Commission proposal will have a positive impact. It will improve the notification procedure (71% approve, 6% disagree), will contribute to a better functioning of services markets overall (69% approve, 12% disagree), Member States will take the

principle of proportionality more seriously (67% approve, 13% disagree) and Member States will notify more measures, more systematically and provide more information (60% approve, 14% disagree).

An overwhelming majority of respondents (72%) who gave their opinion consider that the modified notification procedure will have an impact in practice. The proportion of public authorities, which expressed their views on that point and consider that the new procedure will have a practical impact, reaches 84%.

It also stems from the consultation that the modified notification procedure would result in changes at national level. For 38% of respondents, the new procedure will possibly impact on national procedures for adopting national legislation/regulation, whereas 26% disagree with that conclusion. The proportion of public authorities considering that the modified notification procedure would result in changes at national level is also 38%. Around 30% of businesses share the same view.

## **5. Additional feedback from institutional stakeholders**

Discussions on the evaluation of the current notification procedure with institutional stakeholders started before the launch of the public consultation. Member States contributed to this evaluation in the Expert Group on the Implementation of the Services Directive. Since March 2015, several substantive debates took place within the Expert Group to address specific questions on the notification obligation and possible shortcomings. During these meetings, Member States explained to the Expert Group what arrangements were taken within their government structures to fulfil the obligation to notify. A majority of Member States have appointed a central (contact) point within their government structure.

National experts expressed divergent views in respect of the scope of the current obligation in Article 15 and Article 39 with a majority considering the scope of the obligation clear enough. As to coherence in terms of other types of requirements for which no notification obligation exists the Expert Group was divided with a group in favour of also covering authorisation requirements and a group which considers the current scope sufficient for a proper functioning of the Services Directive. Overall Member States' representatives considered the current procedure sufficient to assess and comment on one and others notifications. Some improvements in the used system (Internal Market Information System, IMI) would be welcomed. It became also clear that one Member State has the obligation to notify draft measures present in its law and another Member State has a provision in place which explains the legal consequence of not notifying.

In addition discussions also tackled issues of a "standstill" period, the national consultation process and transparency, with a clear majority in favour of transparency, but views in respect of a standstill period were divided. Some Member States question the overall necessity of such a period to have a proper functioning notification procedure.

Questions in relation to the consequence of not notifying turned out difficult for the Member States, with hardly any taking a stance on this.

Experts also discussed administrative costs of the notification obligation. Estimated figures on the notification procedure were presented and discussed. National experts provided detailed information on the average man-hour to prepare and process a notification. In addition to the discussions in the Expert Group meetings, institutional stakeholders provided relevant inputs through position papers and

bilateral meetings with the Commission. Most of the countries that shared their views on the notification obligation under the Services Directive stressed the need to ensure that the process applies to draft laws and to make notifications publicly available (i.e. online) so that businesses have the opportunity to react.

Several Member States also called for a proper timeframe allowing all the stakeholders to react to notifications. According to some, proportionality assessment as well as clarifications on the notification obligation and the procedure should also be granted.

Furthermore, during bilateral meetings, two Member States expressed a clear opposition to a "standstill" clause. However, according to one of these two, a consultation mechanism should be found to ensure other Member States, the Commission and stakeholders could react to notified measures and allowing for an interaction with the notifying Member State prior to its adoption of the notified measure.

The European Parliament and the Council of the European Union have also contributed to the reflexion on the notification procedure. The Committee for Internal Market and Consumer Protection (IMCO) of the European Parliament issued the following draft reports including comments on the notification procedure of the Services Directive:

1. The draft report on the Single Market Strategy (2015/2354(INI)).<sup>2</sup> Paragraph 26 indicates the following: the IMCO Committee *"Emphasises, in respect of the single market in services, that there is a clear need to improve the cross-border provision of services; urges the Member States to ensure proper and more effective application of the Services Directive, while avoiding the practice of gold-plating; welcomes the Commission proposal to improve notification under the Services Directive; agrees to extend the notification procedure provided for in Directive 2015/1535 to all the sectors not covered by that directive"*
2. The draft report on Non-Tariff Barriers in the Single Market (2015/2346(INI))<sup>3</sup>. Paragraphs 21 and 23 indicate the following: the IMCO Committee *"21. Draws attention to the problems for service providers, especially in business services and construction, stemming from multiple authorisations, registration or prior notification requirements; [...] 23. Emphasises that the notification obligation contained in the Services Directive could have been effective in reducing or eliminating NTBs, but has been neglected by Member States and the Commission; welcomes, therefore, the renewed focus on the notification procedure in the Single Market Strategy, as through early engagement as regards proposed regulatory measures, disproportionate national measures can be revised to resolve issues before they occur"*

In its Conclusion on 19 February 2015,<sup>4</sup> the Council of the European Union stressed *"the benefits of requiring Member States to notify new requirements on services and service providers, inter alia, such as for legal form and shareholding and authorisation schemes so as to highlight any restrictions that may*

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<sup>2</sup><http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+COMPARL+PE-573.011+01+DOC+PDF+V0//EN&language=EN>

<sup>3</sup> The draft report is available online <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fNONSGML%2bCOMPARL%2bPE-573.111%2b01%2bDOC%2bPDF%2bV0%2f%2fEN>

<sup>4</sup> Council Conclusions on Single Market Policy, Ref. 6197/15, 19 February 2015  
<http://register.consilium.europa.eu/doc/srv?!=EN&f=ST%206197%202015%20INIT>

*be disproportionate or unjustified, and with a view to the phasing out of all such restrictions as soon as possible" and called "upon the Commission, working with Member States, to increase the effectiveness of the notification procedure under Directive 2006/123/EC, including by providing clear guidance as to the notification obligations and making notifications public and transparent as is the case for goods".*

The need for an improved notification mechanism was also highlighted by the European Court of Auditors in its report on the implementation of the Services Directive (Special report No 5/2016; published on 14 March 2016<sup>5</sup>): *"whereas the single market for goods is well developed in terms of intra-EU trade, the services market is widely recognised to have not achieved its full potential. The Services Directive addresses services activities covering approximately 46 % of EU gross domestic product (GDP), with the aim of reducing legal and administrative barriers to both providers and recipients of services. This should be achieved by Member States (MSs) through legal transposition of the Directive, increased transparency and simplified procedures which make it easier for businesses and consumers to provide or receive services in the single market"*. Among its specific recommendations, the Court of Auditors suggests that *"the legislator should introduce a standstill period for the notification of draft requirements and ensure that they are published on a publicly available website to allow better access and timely scrutiny"*.

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<sup>5</sup> [http://www.eca.europa.eu/Lists/ECADocuments/SR16\\_05/SR\\_SERVICES\\_EN.pdf](http://www.eca.europa.eu/Lists/ECADocuments/SR16_05/SR_SERVICES_EN.pdf)