



**2016/0398(COD)**

19.6.2017

**\*\*\*I**

## **DRAFT REPORT**

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)0821 – C8-0011/2017 – 2016/0398(COD))

Committee on the Internal Market and Consumer Protection

Rapporteur: Sergio Gutiérrez Prieto

### ***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

### ***Amendments to a draft act***

#### **Amendments by Parliament set out in two columns**

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

#### **Amendments by Parliament in the form of a consolidated text**

New text is highlighted in ***bold italics***. Deletions are indicated using either the ▬ symbol or ~~strikeout~~. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

## CONTENTS

	<b>Page</b>
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION.....	5
EXPLANATORY STATEMENT.....	19



## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**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)0821 – C8-0011/2017 – 2016/0398(COD))**

**(Ordinary legislative procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2016)0821),
  - having regard to Article 294(2) and Articles 53(1), 62 and 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0011/2017),
  - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
  - having regard to the reasoned opinions submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the German Bundestag and the German Bundesrat and the French National Assembly and the French Senate, asserting that the draft legislative act does not comply with the principle of subsidiarity,
  - having regard to the opinion of the European Economic and Social Committee of 31 May 2017<sup>1</sup>,
  - having regard to Rule 59 of its Rules of Procedure,
  - having regard to the report of the Committee on the Internal Market and Consumer Protection (A8-0000/2017),
1. Adopts its position at first reading hereinafter set out;
  2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
  3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

### **Amendment 1**

#### **Proposal for a directive**

#### **Recital 6**

---

<sup>1</sup> Not yet published in the Official Journal.

*Text proposed by the Commission*

(6) The effective enforcement of the rules governing the internal market for services set out in Directive 2006/123/EC should be enhanced by improving the existing notification procedure established by that Directive in respect of national authorisation schemes and certain requirements concerning both access to self-employed activities and their exercise. ***The prevention of the adoption of national provisions establishing requirements and authorisation schemes that would be contrary to Directive 2006/123/EC should be facilitated.*** This Directive is without prejudice to the Commission's powers under the Treaties and the Member States' obligation to comply with the provisions of Union law.

*Amendment*

(6) The effective enforcement of the rules governing the internal market for services set out in Directive 2006/123/EC should be enhanced by improving the existing notification procedure established by that Directive in respect of national authorisation schemes and certain requirements concerning both access to self-employed activities and their exercise. This Directive is without prejudice to the Commission's powers under the Treaties and the Member States' obligation to comply with the provisions of Union law. ***This Directive does not limit the sovereign right of Member States to regulate service activities provided that they do so in accordance with the provisions of Union law.***

Or. en

## **Amendment 2**

### **Proposal for a directive Recital 7**

*Text proposed by the Commission*

(7) The notification obligation established by this Directive should apply to regulatory measures of Member States, such as laws, regulations, administrative provisions of general nature or any other binding rule of general nature, including rules adopted by professional organisations to regulate in a collective manner access to service activities or the exercise thereof. The notification obligation should on the other hand not apply to individual decisions issued by national authorities.

*Amendment*

(7) The notification obligation established by this Directive should apply to regulatory measures of Member States, such as laws, regulations, administrative provisions of general nature or any other binding rule of general nature, including rules adopted by professional organisations ***and/or associations*** to regulate in a collective manner access to service activities or the exercise thereof. The notification obligation should on the other hand not apply to individual decisions issued by national authorities.

Or. en

### **Amendment 3**

#### **Proposal for a directive Recital 7 a (new)**

*Text proposed by the Commission*

*Amendment*

***(7a) Amendments or modifications to draft measures introduced by legislative assemblies or national parliaments during the parliamentary procedure should not be covered by the notification obligation laid down by this Directive. For the purposes of this Directive, the notification obligation should be considered to have been fulfilled when the draft measure is implemented and finally adopted at the end of the parliamentary procedure.***

Or. en

### **Amendment 4**

#### **Proposal for a directive Recital 7 b (new)**

*Text proposed by the Commission*

*Amendment*

***(7b) Directive 2006/123/EC is a horizontal legal instrument affecting a significant number of laws, regulations and administrative provisions at different levels within a Member State's governance structures. In order to facilitate the competent authorities' compliance with this Directive and to maximise the efficiency of the notification procedure and reduce the administrative burden of that procedure, the Commission should provide guidance regarding the practical aspects of the notification procedure, in particular for municipal and local authorities. In order to ensure that the notification obligations of such authorities are proportionate, draft***

*measures implementing authorisation schemes or requirements which have already been notified to the Commission and adopted by the Member State concerned at national level should not be subject to notification.*

Or. en

## Amendment 5

### Proposal for a directive

#### Recital 8

##### *Text proposed by the Commission*

(8) The obligation for Member States to notify draft measures laying down authorisation schemes or requirements referred to in Article 4 of this Directive at least three months before their adoption is designed to ensure that measures to be adopted comply with Directive 2006/123/EC. In order for the notification procedure to be effective, a consultation on notified measures should take place sufficiently in advance of their adoption. This is appropriate to foster good cooperation and transparency between the Commission and Member States and to further develop exchanges between the Commission and national authorities on new or amended authorisation schemes and certain requirements covered by Directive 2006/123/EC, in accordance with Article 4(3) of the Treaty on European Union (TEU). With a view to ensuring the effectiveness of the procedure, breach of the obligation to notify *or to refrain from adopting a notified measure, including during the period following the receipt of an alert*, should be considered to be a substantial procedural defect of a serious nature as regards its effects vis-à-vis individuals.

##### *Amendment*

(8) The obligation for Member States to notify draft measures laying down authorisation schemes or requirements referred to in Article 4 of this Directive at least three months before their adoption is designed to ensure that measures to be adopted comply with Directive 2006/123/EC. In order for the notification procedure to be effective, a consultation on notified measures should take place sufficiently in advance of their adoption. This is appropriate to foster good cooperation and transparency between the Commission and Member States and to further develop exchanges between the Commission and national authorities on new or amended authorisation schemes and certain requirements covered by Directive 2006/123/EC, in accordance with Article 4(3) of the Treaty on European Union (TEU). With a view to ensuring the effectiveness of the procedure, breach of the obligation to notify should be considered to be a substantial procedural defect of a serious nature as regards its effects vis-à-vis individuals.

Or. en



## Amendment 6

### Proposal for a directive

#### Recital 9

*Text proposed by the Commission*

(9) In the spirit of transparency and cooperation, where substantive amendments are made to a draft measure that is subject to an ongoing notification procedure under this Directive, the Commission, other Member States and stakeholders should be made aware of such amendments by the notifying Member State in due time. Modifications of merely clerical nature should not be communicated.

*Amendment*

(9) In the spirit of transparency and cooperation, where substantive amendments are made to a draft measure that is subject to an ongoing notification procedure under this Directive, the Commission, other Member States and stakeholders should be made aware of such amendments by the notifying Member State in due time. Modifications of merely clerical nature should not be communicated. ***In any event, the notification of substantive amendments should not significantly alter the deadlines set for the consultation. In such cases, the notifying Member State should notify those modifications at least one month prior to their adoption.***

Or. en

## Amendment 7

### Proposal for a directive

#### Recital 10 a (new)

*Text proposed by the Commission*

*Amendment*

***(10a) This Directive should allow Member States to act rapidly when urgent matters arise regarding serious and unforeseeable circumstances relating to the protection of public order, public safety, public health or the protection of the environment. This exception to the notification procedure for urgent matters should not be used to circumvent the implementation of the notification procedure laid down by this Directive.***

**Amendment 8****Proposal for a directive****Recital 14***Text proposed by the Commission*

(14) Where following the consultation the Commission still has concerns about the compliance with Directive 2006/123/EC of the notified draft measure, it may alert the notifying Member State, giving it the opportunity to bring its draft measure into conformity with EU law. That alert should include an explanation of the legal concerns identified by the Commission. ***Reception of such an alert entails that the notifying Member State shall not adopt the notified measure for three months.***

*Amendment*

(14) Where following the consultation the Commission still has concerns about the compliance with Directive 2006/123/EC of the notified draft measure, it may alert the notifying Member State, giving it the opportunity to bring its draft measure into conformity with EU law. That alert should include an explanation of the legal concerns identified by the Commission.

Or. en

**Amendment 9****Proposal for a directive****Recital 15***Text proposed by the Commission*

(15) Failure to comply with the obligation to notify draft measures at least three months prior to their adoption ***and/or to refrain from adopting the notified measure during this period and, as the case may be, during the 3 months following the reception of an alert,*** should be considered to be a substantial procedural defect of a serious nature as regards its effects vis-à-vis individuals.

*Amendment*

(15) Failure to comply with the obligation to notify draft measures at least three months prior to their adoption should be considered to be a substantial procedural defect of a serious nature as regards its effects vis-à-vis individuals.

Or. en

## Amendment 10

### Proposal for a directive

#### Recital 16

*Text proposed by the Commission*

(16) To ensure the efficiency, effectiveness and coherence of the notification procedure, the Commission should retain the power to adopt Decisions ***requiring the Member State in question to refrain from adopting notified measures or, if already adopted, to repeal them, where they violate Directive 2006/123/EC.***

*Amendment*

(16) ***The Commission should have the power to issue alerts that bind Member States to comply with the requirements specified therein within one month and to indicate whether the necessary measures to correct the draft measure in compliance with the Commission's alert have been implemented. Alerts should not hinder the adoption of any laws, regulations or administrative provisions of the notifying Member State.*** To ensure the efficiency, effectiveness and coherence of the notification procedure, the Commission should retain the power to adopt Decisions. ***In any event, if, after the adoption of a draft measure, the Commission considers that it does not comply with Directive 2006/123/EC and if the Commission subsequently decides to bring the matter before the Court of Justice of the European Union pursuant to Article 258 TFEU, that decision should result in the immediate suspension of any legal, regulatory or administrative effects of the disputed text.***

Or. en

## Amendment 11

### Proposal for a directive

#### Article 1 – paragraph 1

*Text proposed by the Commission*

This Directive ***lays*** down rules on the notification by Member States of draft

*Amendment*

This Directive ***aims to improve the functioning of the internal market by***

laws, regulations or administrative provisions introducing new, or amending existing authorisation schemes and certain requirements falling under the scope of Directive 2006/123/EC.

*laying* down rules on the notification by Member States of draft laws, regulations or administrative provisions introducing new, or amending existing authorisation schemes and certain requirements falling under the scope of Directive 2006/123/EC.

Or. en

## Amendment 12

### Proposal for a directive

#### Article 2 – paragraph 2 – point b

*Text proposed by the Commission*

(b) 'adoption' means the decision in a Member State making the *law, regulation or administrative provision of a general nature* final *according to* the applicable procedure.

*Amendment*

(b) 'adoption' means the decision in a Member State making the *draft measure* final *in accordance with* the applicable procedure.

Or. en

## Amendment 13

### Proposal for a directive

#### Article 3 – paragraph 1

*Text proposed by the Commission*

1. Member States shall notify to the Commission any draft measure that introduces new requirements or authorisation schemes referred to in Article 4, or modifies such existing requirements or authorisation schemes.

*Amendment*

1. Member States shall notify to the Commission any draft measure that introduces new requirements or authorisation schemes referred to in Article 4, or *substantially* modifies such existing requirements or authorisation schemes.

Or. en

## Amendment 14

### Proposal for a directive Article 3 – paragraph 2

*Text proposed by the Commission*

2. Where a Member State modifies a **notified** draft measure **with the effect of significantly** extending its scope or content, **or** shortening the timetable **originally envisaged** for implementation, or adding **requirements or authorisation schemes, or making those** requirements or authorisation schemes **more restrictive** for the **establishment, or the** cross-border provision of services, **it** shall notify **the modified draft measure previously notified under paragraph 1 again**, including an explanation of the objective and content **of the modifications. In such a case, the previous notification shall be deemed to be withdrawn.**

*Amendment*

2a. Where a Member State **substantially** modifies a draft measure **that has already been notified**, extending its scope or content, shortening the timetable for implementation, or adding **or tightening** requirements or authorisation schemes for the cross-border provision of services, **the Member State** shall notify **those modifications to the Commission**, including an explanation of the objective and content **thereof**.

**2b Member States shall not be obliged to notify the changes made during the parliamentary procedure to a draft measure that has been already notified. However, Member States shall notify the draft measure containing those changes to the Commission once it has been adopted..**

Or. en

## Amendment 15

### Proposal for a directive Article 3 – paragraph 3

*Text proposed by the Commission*

3. Draft measures referred to in **paragraphs 1 and 2** shall be notified to the Commission at least three months prior to their adoption.

*Amendment*

3. Draft measures referred to in **paragraph 1** shall be notified to the Commission at least three months prior to their adoption.

Or. en

## Amendment 16

### Proposal for a directive Article 3 – paragraph 3 a (new)

*Text proposed by the Commission*

*Amendment*

**3a.** *Substantial modifications referred to in paragraph 2 shall be notified to the Commission at least one month prior to their adoption.*

Or. en

## Amendment 17

### Proposal for a directive Article 3 – paragraph 3 b (new)

*Text proposed by the Commission*

*Amendment*

**3b.** *Member States shall not be obliged to notify draft measures implementing authorisation schemes or requirements which have already been notified to the Commission and adopted by the Member State concerned at national level.*

Or. en

## Amendment 18

### Proposal for a directive Article 3 – paragraph 4

*Text proposed by the Commission*

*Amendment*

4. The breach of one of the obligations set out in Article 3(1), (2) and (3) **or in Article 6(2)** shall constitute a substantial procedural defect of a serious nature as regards its effects vis-à-vis individuals.

4. The breach of one of the obligations set out in **paragraphs** 1, 2, 3 **and (3a)** shall constitute a substantial procedural defect of a serious nature as regards its effects vis-à-vis individuals.

## Amendment 19

### Proposal for a directive Article 3 – paragraph 5 – subparagraph 2

*Text proposed by the Commission*

That information shall identify the overriding reason relating to the public interest pursued and ***give the reasons*** why the ***notified authorisation scheme or requirement is non-discriminatory on grounds of nationality or residence and why it is proportionate.***

*Amendment*

That information shall identify the overriding reason relating to the public interest pursued and ***clarify*** why the ***measure is proportionate with regard to the objective.***

Or. en

## Amendment 20

### Proposal for a directive Article 3 – paragraph 8 a (new)

*Text proposed by the Commission*

*Amendment*

***8a. Paragraphs (3) and (3a) shall not apply when a Member State has to adopt urgent measures related to protection of public order, public safety, public health or the protection of the environment. The Member State shall notify the Commission of the content of an urgent measure and the reasons for the urgency that triggered its adoption not later than the day on which that urgent measure is adopted.***

Or. en

## Amendment 21

### Proposal for a directive Article 5 – paragraph 2

*Text proposed by the Commission*

2. ***As from the date of the Commission informing the notifying Member State of the completeness of a notification received***, a consultation of maximum three months shall take place among the notifying Member State, other Member States and the Commission.

*Amendment*

2. ***Once the draft measure has been notified***, a consultation of maximum three months shall take place among the notifying Member State, other Member States and the Commission.

Or. en

## **Amendment 22**

### **Proposal for a directive Article 5 – paragraph 5 a (new)**

*Text proposed by the Commission*

1. Before the closure of the consultation period referred to in Article 5(2), the Commission may alert the notifying Member State of its concerns about the compatibility with Directive 2006/123/EC of the draft measure notified and of its intention to adopt a Decision referred to in Article 7.

*Amendment*

***5a. Modifications to a notified draft measure shall be subject to a brief consultation period the duration of which shall not exceed one month.***

Or. en

## **Amendment 23**

### **Proposal for a directive Article 6 – paragraph 1**

*Text proposed by the Commission*

1. Before the closure of the consultation period referred to in Article 5(2), the Commission may alert the notifying Member State of its concerns about the compatibility with Directive 2006/123/EC of the draft measure notified and of its intention to adopt a Decision referred to in Article 7.

*Amendment*

1. Before the closure of the consultation period referred to in Article 5(2) ***and (5a)***, the Commission may alert the notifying Member State of its concerns about the compatibility with Directive 2006/123/EC of the draft measure notified and of its intention to adopt a Decision referred to in Article 7.

Or. en



## Amendment 24

### Proposal for a directive Article 6 – paragraph 2

*Text proposed by the Commission*

2. *Upon* receipt of such an alert, the notifying Member State shall ***not adopt*** the draft measure ***for a period of three months after the closure of the consultation period.***

*Amendment*

2. ***Within one month from*** receipt of such an alert, the notifying Member State shall ***submit to the Commission an explanation of the adequacy of*** the draft measure ***with Directive 2006/123/EC, or shall amend the draft measure so as to ensure compliance with that Directive.***

Or. en

## Amendment 25

### Proposal for a directive Article 6 – paragraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

***2a. An alert sent by the Commission to a Member State shall not prevent the adoption of laws, regulations or administrative provisions by that Member State.***

Or. en

## Amendment 26

### Proposal for a directive Article 7 – paragraph 1

*Text proposed by the Commission*

*Amendment*

Where the Commission ***has*** issued an alert in accordance with Article 6(1), ***it may, within a period of three months after the date of the closure of the consultation period referred to in Article 5(2), adopt a***

Where the Commission issues an alert in accordance with Article 6, ***the Member State concerned adopts the measure concerned without the modifications necessary to ensure its compliance with***

*Decision finding the draft measure to be incompatible with Directive 2006/123/EC and requiring the Member State concerned to refrain from adopting the draft measure or, if such measure has been adopted in breach of Article 3(3) or Article 6(2), to repeal it.*

*Directive 2006/123/EC, and the Commission subsequently decides to bring the matter before the European Court of Justice pursuant to Article 258 TFEU, that decision shall, once notified by the Commission to the Member State concerned, result in the immediate suspension of the legal, regulatory or administrative effects of that measure.*

Or. en

# EXPLANATORY STATEMENT

## Introduction

On 10 January 2017 the Commission tabled 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. This proposal is a part of a range of actions by the Commission aiming at improvement of functioning of the Single Market in services. It focuses on procedural aspects to improve the implementation and enforcement of the notification obligation established in the Directive 2006/123/EC (the “Services Directive”).

## Context of preparation of the proposal

The existing notification procedure for requirements on the services providers under the Services Directive has not adequately contributed to the Directive’s correct and full implementation, failing to be implemented as procedure. This consequently leads to both consumer and business costs of the fragmented Single Market in services, as well as high administrative costs of infringements for national administrations and the Commission when it takes action (40% of the infringement cases are invoked due to *newly* adopted national regulations non-compliant with the Services Directive).

The proposal is supported by an impact assessment, whereby the Commission concludes that with the existing notification procedure failing to reach its objectives, EU action is considered necessary to address identified shortcomings to turn the notification procedure into an effective and efficient instrument for a better application of the existing Services Directive.

The purpose of this Directive is to ensure the compliance of national rules introducing authorisation schemes or certain requirements with the Services Directive, as applicable under the scope of the latter, and to aim at prevention of infringements.

Therefore, the objectives of this proposal are to increase the efficiency of the notification procedure, improve the quality and content of the notifications submitted, cover additional requirements which the application of the Services Directive has shown can constitute important barriers to the Single Market for services, and to clarify legal consequences of non-notification. The ultimate result would be better implementation and enforcement of the Services Directive as it stands.

## General comments

The Rapporteur welcomes the proposal as part of the Services Package. It amplifies procedural steps of the notification obligation, clarifies procedures and aims at greater transparency in order to improve the implementation of the Services Directive.

## 1. Notification obligation

Whereas the proposal builds on the notification obligation set out in the Services Directive, it provides for a specific obligation for Member States to notify *draft* measures, including those amended by national parliaments in the course of their consideration, together with

accompanying information. It also specifies the consequences of not respecting the notification obligations. In order to make the notification procedure efficient and effective, strict time limits are set. The Rapporteur sees the need to secure the legislating powers of Member States, especially procedures of their national parliaments, therefore proposes changes in this regard.

Moreover, the notification procedure, if applied in absolute terms, would create additional administrative burden that may not be proportionate to the objectives pursued, especially for the municipal and local authorities. To safeguard proportionate procedure with regard to such authorities, the Rapporteur considers that draft measures *implementing* authorisation schemes or requirements which are already notified to the Commission and adopted by that Member State at national level should not be subject to notification.

## **2. National parliaments**

The proposed Directive further establishes a 3-month consultation procedure among the notifying Member State, other Member States and the Commission, allowing to submit comments related to the notified measures. In case the Commission expresses its concerns (“alert”) about the compatibility of the notified draft measure with the Services Directive, the notifying Member State would not adopt the measure in question for a period of 3 months after the closure of the mentioned consultation period. The Commission may in this instance issue its decision and relevant modalities are foreseen, *inter alia* covering the parliamentary amendments. The Rapporteur considers that, while the power of the Commission to adopt a decision as established in the Services Directive should be maintained, the national parliaments cannot be precluded from adopting the measure in question. This new element in the Commission’s proposal should therefore be dropped and only *ex-post* actions be foreseen.

## **Conclusions**

The Rapporteur believes that this proposal will lead to better compliance with the notification obligation established by the Services Directive, increase transparency and strengthen dialogue among the Member States and the Commission, and, consequently, improve implementation of that directive.

The Rapporteur also finds that the reinforced approach to notifications taken by the Commission in certain cases could lead to interferences with the national legislating powers and put administrative burden on national administrations, especially local and municipal authorities. In this regard, the Rapporteur sees the need for a number of amendments in order to secure an improved notification procedure that meets the concerns expressed.