



**ECEC opinion on
Proposal for a Directive on the enforcement of the Directive 2006/123/EC on
service in the internal market, laying down a notification procedure for
authorisation schemes and requirements related to services:**

Background: The Proposal would implement stricter notification requirements for draft “laws, regulations or administrative provisions introducing new, or amending existing authorization schemes and certain requirements falling under the scope of Directive 2006/123/EC”. Already now the European Law obliges Member States to notify amendments to national rules on services to the European Commission so that any concerns on possible inconsistencies with EU law can be raised before implementation. A stricter notification procedure shall provide for a better verification of compliance of authorization schemes and certain requirements with the Services Directive already on a draft stage and thus prevent the adoption of discriminatory, unjustified and disproportionate national authorisation schemes or requirements related to services by Member States. The procedure defines the notification obligation more clearly. It establishes a consultation period that provides for a dialogue between the notifying Member State, the European Commission and the other Member States on the compliance of a draft national measure with the Services Directive. Additionally it introduces stricter enforcement measures that can be applied by the European Commission.

ECEC opinion: European law already obliges Member States to notify amendments to national rules on services to the European Commission so already now any concerns regarding possible inconsistencies with EU law can be raised before implementation. The European Commission stresses, in the explanatory memorandum, that the foreseen

measures do not extend beyond what is necessary to solve identified problems and achieve identified objectives.

The ECEC believes that the impact of the proposal on national legislative procedures is considerable. The foreseen consultation procedure would lead to a considerable increase of efforts and costs.

Each notifying Member State has to react to the comments from the European Commission and from other Members States and is obliged to justify when comments are not implemented. Such a procedure is very time effective and as a consequence also cost effective.

In contrary to the current situation it is now possible to prevent the adoption of the measure. During the proposed notification procedure the adoption is not allowed. Additionally to this delay the EC can further delay the procedure by alerting the Members States about any concerns they have in regard to the compatibility with the Services Directive and thus prevent the adoption of the measure for a further three months after the consultation period.

The proposed procedure leads to considerable restrictions for national legislators prevents lean, effective and fast legislative reforms.

When seen in connection with the proposal for a “Directive on a Proportionality Test before adoption of new regulation” the impact is even stronger. Practically, where professional regulations are concerned - measures would also fall under the scope of both Directives in many cases. The notification obligation – in Art. 3 Point 5 – also requires provision of information demonstrating compliance with the Services Directive, including overriding reasons of public interest, proportionality and an assessment as to why less restrictive means are not available. So where both Directives apply, this would in fact be the result of the proportionality test – and seen in this context, no legislative freedom remains whatsoever.

The ECEC believes that there is a very practical danger that this new procedure causes disproportionate costs / efforts for Member states.

The ECEC also believes that it is in contradiction with the proportionality principle to interfere in national legislative procedures to such a high degree when there are already adequate

procedures foreseen for cases when a Member State is not in compliance with the Services Directive, such as Decision to require abolition of a regulation / infringement procedure.

The ECEC believes that in general Member States are fully able to understand sufficiently well the requirements of the Directive and do not need “legislative support” from the European Commission to implement European law correctly. Controversies are mostly based on the fact that the interpretation of the Member States often differs from the interpretation of the EC. Current regulations already ensure that where interpretations differ, the final decision is taken by an independent jurisdiction.

The ECEC does not see the added value of additional ex-ante measures - that are not even based on independent juridical assessments - and therefore sincerely questions the proportionality of such substantial interference in national legislative procedures. Especially in the case of intellectual services such ex-ante measures could bring considerably more problems/complications than improvements.

The ECEC would also ask the European Commission to consider that such a – not clearly proportionate – regulation restricting the freedom of national legislators could also be problematic in the current political situation, where unnecessary interventions of the European Union and additional bureaucratic requirements with an impact on costs and efforts could contribute to strengthen anti-European movements.