

REASONED OPINION

of the European Affairs Committee of the Federal Council

pursuant to Article 23g (1) of the Austrian Constitution in conjunction with Article 6 of Protocol No.2 on the application of the principles of subsidiarity and proportionality

15 March 2017

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Proposal for a Directive of the European Parliament and of the Council on the legal and operational framework of the European services e-card introduced by Regulation ... [ESC Regulation]

A. Reasoned Opinion

The project under consideration is incompatible with the principle of subsidiarity.

B. Grounds for Reasoned Opinion

The proposed directive is intended to introduce an electronic European services card and related administrative facilities for use by service providers throughout the European Union. According to the European Commission, the proposal for a directive and a regulation governing the introduction of a European services e-card serves the purpose of promoting cross-border activities in the service sector by eliminating bureaucratic obstacles and is intended to strengthen competition.

From the Federal Council's point of view, the proposal is incompatible with the principles of subsidiarity and proportionality. In particular, the Federal Council wishes to express its concerns arising from the proportionality check:

The objective of the European services e-card (ESC) is to reduce administrative complexity for service providers who want to expand their activities to other Member States. The added benefit which cross-border service providers hope to derive from the introduction of the services e-card is questionable and out of proportion with the bureaucratic burden imposed upon Member States through the introduction of the European services e-card. Against this background and in view of its limited added value, introduction of the European services e-card appears to be disproportionate.

The ESC is to be implemented via the existing European Internal Market Information System (IMI). To this end, IMI has to be adapted so as to support the procedures of applying for and issuing the services e-card and to perform a number of additional functions. The tasks of the competent national authorities are to be assigned to a newly established coordinating authority, which serves as a point of contact for the other Member States and is thus expected to facilitate administrative cooperation.

The work load of the national authorities is likely to increase considerably. Issuing a services e-card involves numerous complex and clearly defined procedures to be completed according to a strict time schedule. Considering the limited benefit to be derived from the services e-card, the amount of administrative work required for compliance with this complex procedure and its strict timeline is disproportionate.

With a view to compliance with the principle of proportionality, the task of the proposed coordinating authority should also be thoroughly reviewed. It should be examined if the establishment of such authority is in conflict with the concept of a point of single contact provided for in the Services Directive, as there is a risk of double structures being created.

In addition to its comments on the proportionality check, the Federal Council also wishes to refer to the following substantive issues addressed in the proposed directive, which it regards as problematic:

- The broad scope of the directive and the regulation should be reconsidered, as their application to the construction sector appears to be inappropriate. The construction sector has been found to be particularly prone to abuse. Care must therefore be taken to prevent any abuse of the services e-card. The interests of domestic businesses, employees and consumers must not be impaired.
- Cross-border cooperation among public authorities should be improved. This includes the further development of the European Internal Market Information System, cross-country service of official documents, and the enforcement of decisions of public authorities.
- According to Article 4 of the directive, a valid European services e-card is to be accepted as proof that its holder is established in the territory of his home Member State and is entitled to provide certain service activities. The Federal Council wishes to point out that during an inspection the services e-card could be presented as false evidence of self-employment.
- In Article 5 of the directive it should be clarified that posting of workers is explicitly exempted from the prohibition to impose a prior authorization regime, in order to avoid misinterpretations.
- The Federal Council suggests that Article 6 (iii) of the directive, which forbids Member States to require information regarding registration with mandatory social insurance schemes, be deleted. It has to be clarified that this exclusively refers to social insurance of self-employed persons, but not to evidence of registration of posted employees with social insurance schemes in their home country. The risk of pseudo postings is to be prevented.
- According to Article 7 of the regulation, natural persons can apply for a European services e-card. In numerous sectors, there are high percentages of self-employed persons and single-member companies in the European Union. Attention should therefore be paid to the risk of the services e-card being abused for the provision of services in another Member State by “pseudo self-employed” persons.
- Within the framework of the application for a services e-card through the procedures outlined in Article 11 of the directive, the Federal Council advocates an extension of the deadline to four weeks in order to allow enough time for a thorough examination of the information and supporting documents received.
- If justified doubts arise in the course of the examination of the application for a services e-card, it must be possible for the host country to refuse the issue of a services e-card (Article 12 of the directive).
- As regards Articles 15, 16 and 17 of the directive, the Federal Council notes that the competent authority of the host country must have the right to act of its own accord in the event of infringements of the law. This includes measures such as the immediate revocation

of the services e-card. Provisions regarding the updating of the services e-card have to be integrated into the proposed legislation.

From the Federal Council's point of view, the introduction of a services e-card in its present form does not generate sufficient added value.