

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 Regulation of the European Parliament and of the Council introducing a European services e-card and related administrative facilities

A. Reasoned Opinion

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

B. Grounds for Reasoned Opinion

The proposed regulation 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.

The regulation applies to clearly defined service activities, for instance in the construction sector. Certain areas covered by the Services Directive 2006/123/EC are exempted from its scope, such as labour law and services provided by temporary employment agencies. One of the reasons given for the new legislative initiative is the particularly low cross-border trade in the construction sector.

First of all, the Federal Council wishes to point out that cross-border activities are relatively frequent, especially in the construction sector, and have increased significantly in recent years. The percentage of cross-border workers within the European Union (posting certificates issued for one or several EU Member States) increased by about 64% between 2010 and 2015. In absolute terms, this corresponds to more than 2.05 million postings in 2015. Construction activities accounted for approx. 41.5% of workers posted pursuant to Article 12 of the Posting of Workers Directive.

Generally speaking, the Federal Council welcomes measures intended to reduce administrative formalities. However, from the Federal Council's point of view, this 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.

The services e-card 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 procedure 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 appears to be disproportionate.

As regards compliance with the principle of proportionality, the question arises whether the proposed coordinating authority in the home Member State is at all necessary. It will have to be examined if 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. At any rate, The Federal Council wishes to point out that the notification of service provision required in Austria ensures the necessary legal certainty for service providers.

In addition to its comments on the proportionality check, the Federal Council also wishes to refer to the following substantive issues raised in the regulation:

According to Article 6 para.3 of the proposed regulation, holders of a European services e-card can use a standard form to notify posted workers in IMI. It is appropriate to make the notification of workers to be posted as simple as possible and easily accessible for service providers. The administrative burden should be reduced to the necessary minimum, both for service providers and the workers to be posted, as well for as the competent authorities. In principle, the use of IMI is to be welcomed, as this is an existing IT tool for cross-border services. However, a certain degree of freedom should be allowed to Member States in the design of their notification requirements.

Article 2 para.3 states that the regulation is to be without prejudice to the rights of posted workers as laid down in the Posting of Workers Directive 96/71/EC and the Enforcement Directive 2014/67/EU as well as to the right of Member States to regulate service providers. In the Federal Council's opinion, this important provision is put into question by the proposed regulation, which allows Member States to integrate information on posted workers into the European services e-card (see Article 6 para.3).

Article 19 contains a review clause according to which the review mechanisms of the Directive on the Enforcement of the Posting of Workers Directive (see Article 24 of Directive 2014/67/EU) are to be used for the assessment of positive contributions of the electronic procedures of the services e-card to the registration and control measures pursuant to Article 9 of Directive 2014/67/EU. This means that, in the long term, data of posted workers will be included in the services e-card, which the Federal Council regards as unacceptable.

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.

In the Federal Council's opinion, the scope of the regulation should be reconsidered, as the application of the regulation to the construction sector appears to be inappropriate. Moreover, care must be taken to prevent any abuse of the card. The interests of domestic businesses, employees and consumers must not be impaired.

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.