



EUROPEAN COMMISSION

*Brussels, 10.7.2017
C(2017) 4620 final*

*M. Edgar MAYER
President of the Bundesrat
Dr Karl Renner-Ring 3
A – 1017 WIEN*

Dear President,

The Commission would like to thank the Bundesrat for its Reasoned Opinions on the proposals for a Directive on the legal and operational framework of the European services e-card {COM(2016) 823 final} and for a Regulation introducing a European services e-card and related administrative facilities {COM(2016) 824 final}.

These proposals, as well as the other proposals adopted by the Commission as part of the Services Package, should be seen in light of President Juncker's political commitment to unleash the full potential of the Single Market and make it the launchpad for European companies to thrive in the global economy. This goal was confirmed by the European Council in its December 2015, June 2016 and December 2016 conclusions. The proposed measures aim at making it easier for service providers to navigate administrative formalities and to help Member States identify overly burdensome or outdated requirements on professionals operating domestically or across borders. Rather than amending existing rules of the European Union in the area of services, the Commission focuses on ensuring they are applied better, as evidence shows that implementing them to their full potential would provide a significant boost to the economy of the European Union.

The European Parliament¹, the European Council², the Council³ and many stakeholders⁴ have all called for proposals, in order to address the main barriers to cross-border integration of the services markets, and enable entrepreneurs in key sectors to offer their services in other Member States without going through unnecessary procedures.

¹ European Parliament Resolution on the Single Market Strategy (2015/2354(INI)), 26 May 2016 <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP/TEXT+TA+P8-TA-2016-0237+0+DOC+XML+VO//EN>.

² European Council Conclusions, 28 June 2016 http://www.consilium.europa.eu/en/meetings/european-council/2016/06/European-Council-conclusions_pdf/.

³ Council Conclusions on "The Single Market Strategy for services and goods", 29 February 2016 <http://date.consilium.europa.eu/doc/document/ST-6622-2016-INIT/en/pdf>.

⁴ European services e-card - Impact assessment, Annex 2, Stakeholder consultation, p. 81 <http://ec.europa.eu/DocsRoom/documents/20863/attachments/1/translations/en/renditions/native>.

The proposals on the European services e-card establish a procedure at the level of the European Union with enhanced administrative cooperation between Member States, to support and frame the development of cross-border services in the sectors of business services and construction services. Improved functioning of these services markets would have an important positive knock-on effect for the competitiveness of the EU's industrial economy.

The Commission finds that the proposals are in conformity with the principles of subsidiarity and proportionality.

The initiative on the European services e-card includes a Directive and a Regulation, which are based on the provisions of the Treaty on the Functioning of the European Union (TFEU) allowing the Commission to act in the remit of services, especially to guarantee providers the freedom of establishment in Member States and the freedom to provide service across Member States. Action in this remit has already been partially achieved through Directive 2006/123/EC⁵ (hereinafter referred to as the “Services Directive”), but the Commission's analyses have shown that further targeted action, based on the principles of that Directive, was necessary to enhance cross-border provision of services and administrative simplification in two specific sectors currently lacking cross-border integration: business services and construction services.

In accordance with the Treaties, and in particular Articles 53(1) and 62 TFEU, the proposal for a Directive sets out the legal and operational framework of the European services e-card, regulating inter alia the conditions of eligibility, the competences of the home and the host Member States, the validity of the European services e-card and the conditions for revoking or suspending it. The proposal for a Regulation, based on Article 114 TFEU, includes tools which are available for service providers throughout the European Union. In addition, it addresses issues related to insurance coverage of a service provider who is active across borders.

The proposals introduce an Union-level procedure allowing market-access for service providers, based on the rights and requirements in place under the Services Directive, which would remain untouched, including those in place at national level. The proposal does not, in any way, further modify Member States' prerogatives enshrined in the Services Directive. In addition, the proposals leave ample discretion for the Member States to define the most appropriate administrative structure to accomplish the procedure of the services e-card, building where relevant on existing structures, such as the Points of Single Contact.

In response to the more technical comments in the Reasoned Opinions, in particular as regards the principle of proportionality, the Commission would like to refer the Bundesrat to the attached annex.

⁵ Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, OJ L 376, 27.12.2006, p. 36–68.

The points made above are based on the initial proposal presented by the Commission which is currently in the legislative process involving both the European Parliament and the Council. The Bundesrat's Reasoned Opinions have been forwarded to the relevant Commission services and will form part of the briefing files used when they go to the European Parliament or Council to negotiate the proposal.

The Commission hopes that the clarifications provided in this reply address the issues raised by the Bundesrat and looks forward to continuing our political dialogue in the future.

Yours faithfully,

*Frans Timmermans
First Vice-President*

*Elżbieta Bienkowska
Member of the Commission*

ANNEX

The Commission has carefully considered each of the issues raised by the Bundesrat in its Reasoned Opinions and is pleased to offer the following clarifications.

The Bundesrat raises the issue of the complexity of the proposals and in particular their provision to set up a single coordinating authority at national level, which would undermine the current responsibilities of administrative bodies and generate unnecessary costs.

The Commission wishes to underline that the proposals aim to make use of information technology infrastructure put in place at the level of the European Union, such as the Internal Market Information System, with no added cost for national administrations. The Internal Market Information System is already known and used by national administrations including in Austria (at federal, regional and local levels). No further investments in information technology platforms will be requested from Member States. This said, in order to make the services e-card procedure work in the Internal Market Information System and to deliver for the service providers that apply for it, the proposals envisage an active involvement of national administrations of the Member State of establishment of a service provider, namely its home Member State, but also of those in the Member State where he or she wants to expand his or her activities, either on a temporary basis or for a secondary establishment (via an agency or a branch). To keep the procedure streamlined, a single coordinating authority must focalise cross-border contacts between home and host Member State.

Such involvement is essential in order to keep in place an appropriate level of control at Member State level, introducing administrative simplification but leaving regulatory requirements untouched. All levels of administration in Member States need to be active in the European services e-card procedure in controlling incoming service providers, in order to leave allocation of competences untouched. However, since the initiative does not affect the allocation of competences across authorities in Member States, a Member State may choose to designate a single coordinating authority as a mere focal point, an information hub, leaving the allocation of substantive decision powers allocated to the competent authorities controlling incoming service providers today.

Member States remain fully free to define the appropriate body to perform this role, according to their administrative organisation at national level, including Member States with a federal structure, such as Austria. In this sense, Member States also remain fully free to make the best use of their existing administrative bodies. The Points of Single Contact could also be used, if identified by Member States as being the relevant administrative structure to operate this advanced administrative cooperation procedure. The Commission will maintain, in parallel, its efforts for Member States to complete the setting-up of Points of Single Contact, which will remain relevant and necessary for all services activities as laid down in the Services Directive.

The Commission wishes to recall, too, that the procedure at the level of the European Union will only bring limited adjustments to the Internal Market Information System, resulting in limited costs at both the levels of the European Union and of the Member States. Such limited costs have been assessed by the Commission with respect to existing similar procedures, such as the European professional card. In addition, although the procedure at the level of the European Union requires an active role of Member States' administrations, the financial efforts to be expected by Member States will be limited through the use of the Internal Market Information system, a platform already existing and set in place with funds from the European Union. In addition, prospects brought by the use of the European services e-card of additional competition in services markets with more market players, and additional turnover, shall have a positive effect on Member States' economies.

The Bundesrat also raises concerns that the European services e-card proposal would undermine the current situation for domestic companies, employees and consumers by raising risks of fraud in particular on bogus self-employed. The Bundesrat considers that the construction sector should not be covered by the proposals for a European services e-card, as it has proven to be subject to fraud.

The Commission believes, on the contrary, that these proposals lay down clear provisions to improve the current environment for service providers and customers of services by enhancing legal certainty and trust, but also to contain any attempt of fraud. The proposal relies on increased administrative cooperation at the level of the European Union, which is on a clear shortcoming in today's situation. Through this streamlined procedure at the level of the European Union, the e-card will gather valuable information on a service provider aiming to perform services in another Member State, in particular its identity, its proof of legal establishment and its good repute. Only very few of these elements are today in the possession of home and host Member States authorities, therefore the proposals for an e-card would increase transparency and make it even more relevant for public authorities to undertake controls on providers when necessary, as already allowed by the Services Directive. In addition, these proposals contain a thorough supervisory mechanism making it possible at any time to engage into revocation/cancellation procedures of an e-card. All these elements are particularly relevant for service providers from the construction sector, which as the Bundesrat recognizes, is subject to important fraud. The aim of the e-card proposal is to enhance transparency about service providers wanting to engage in cross-border activities in this field, with a view to reaching more cross-border trade and investment in all lawfulness.

The Commission wishes to recall that the proposals for a European services e-card fully build on the provisions of the Services Directive as regards host Member States prerogatives to decide if a service provider complies with requirements to be able to provide services in its territory, therefore by no means are these proposals introducing a country of origin principle. The e-card will have no impact on rules concerning e.g. social protection (including workers' rights and employer obligations), consumer rights, health and safety or the environment.

The Bundesrat eventually questions the provisions of the proposal, and in particular in the regulation, regarding administrative facilities linked to secondment of staff and in particular posting of workers. The e-card initiative will not change any rules and obligations in these areas. For instance, rights of workers, obligations for companies and related national controls on payment of the necessary remuneration to posted staff remains subject to the rules governing posting of workers (Directive 96/71/EC⁶ and Directive 2014/67/EU⁷). The e-card in no way limits control possibilities of host Member States, such as inspections on building sites. On the contrary, Member States accepting advance declarations of posted workers via the Internal Market Information System (from e-card holders) will get more information about the company posting staff. Member States are not forced to use the Internal Market Information System for this purpose but can continue to use their national system.

⁶ Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services, OJ L 18, 21.1.1997, p. 1–6.

⁷ Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System (‘the IMI Regulation’) OJ L 159, 28.5.2014, p. 11–31.