



EUROPEAN COMMISSION

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*C(2017) 5952 final*

*Ms Malu DREYER  
President of the Bundesrat  
Leipziger Straße 3 - 4  
D – 10117 BERLIN*

*Dear President,*

*The Commission would like to thank the Bundesrat for its Opinions on the proposal for a Directive of the European Parliament and of the Council on the legal and operational framework of the European services e-card {COM(2016) 823 final} and on the proposal for a Regulation of the European Parliament and of the Council introducing a European services e-card and related administrative facilities; {COM(2016) 824 final}. The Commission is pleased to have this opportunity to provide a number of clarifications regarding its proposals and trusts that these will allay the Bundesrat's concerns.*

*The Commission would like to recall that the initiative for a European services e-card (the above-mentioned Directive and related Regulation) was called for by the European Parliament<sup>1</sup>, the European Council<sup>2</sup>, the Council<sup>3</sup> and many stakeholders<sup>4</sup>, in order to address the remaining barriers to the 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.*

*The proposals for a European services e-card establish a Union-level procedure 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.*

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<sup>1</sup> 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+V0//EN>.

<sup>2</sup> European Council conclusions, 28 June 2016: [http://www.consilium.europa.eu/en/meetings/european-council/2016/06/European-Council-conclusions\\_pdf](http://www.consilium.europa.eu/en/meetings/european-council/2016/06/European-Council-conclusions_pdf).

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

<sup>4</sup> European services e-card - Impact assessment {SWD(2016) 438 final}, Annex 2, Stakeholder consultation, p. 81: <http://ec.europa.eu/DocsRoom/documents/20863/attachments/1/translations/en/renditions/native>.

*The framework in which services are operated and regulated across the European Union has been enshrined in the Services Directive<sup>5</sup>. By 28 December 2009, all Member States had to transpose the Directive into national law. Analyses from the Commission, in particular on the implementation of the provisions of the Services Directive since 2009, have shown that obstacles have been introduced at national level that have an impact on the possibilities for service providers in particular to trade or invest in Member States other than their own. All these obstacles hamper the further integration of services markets at the level of the European Union.*

*The Commission has decided to take action to reverse this situation, thanks to a series of initiatives, including the European services e-card, to address existing barriers to the single market for services. This proposal needs to be considered within the current political context in which trust in services markets is clearly undermined, and therefore additional confidence between national authorities in this field is more than necessary. The initiative for a European services e-card addresses just this issue by focusing on a greater administrative cooperation between Member States, to support and stimulate cross-border investment and trade in the field of services.*

*The initiative for a European services e-card builds on existing structures at the level of the European Union and does not replace either the requirements in place under the Professional Qualifications Directive<sup>6</sup> and the European Professional Card<sup>7</sup>, the Points of Single Contact, nor the Internal Market Information System.*

*The European services e-card and the European Professional Card have different objectives. The European Professional Card facilitates the provision of services across borders through the recognition of professional qualifications for natural persons as workers or self-employed service providers in accordance with the Professional Qualifications Directive. The European services e-card would be available both for natural persons who are self-employed but also for companies wishing to provide services in another Member State. In contrast with the European Professional Card, the European services e-card would also offer technical facilities to facilitate compliance with administrative formalities related to the posting of staff to the territory of those Member States that have communicated to the Commission that they wish to make use of the Internal Market Information System for this purpose. This possibility to make use of the Internal Market Information System will in no way alter the substance of the applicable rules laid down in Directive 2014/67/EU.<sup>8</sup> Rules to facilitate obtaining insurance coverage for services provided across borders are also included.*

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<sup>5</sup> 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.

<sup>6</sup> Directive 2013/55/EU of the European Parliament and of the Council of 20 November 2013 amending Directive 2005/36/EC on the recognition of professional qualifications and Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ( ‘the IMI Regulation’ ), OJ L 354, 28.12.2013, p. 132–170.

<sup>7</sup> Commission Implementing Regulation (EU) 2015/983 of 24 June 2015 on the procedure for issuance of the European Professional Card and the application of the alert mechanism pursuant to Directive 2005/36/EC of the European Parliament and of the Council, OJ L 159, 25.6.2015, p. 27–42.

<sup>8</sup> 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.

*The European services e-card would cover requirements falling under the Services Directive and therefore not areas such as fiscal legislation, labour laws and social security. The rights of workers, obligations for companies and related national controls on payment of the necessary remuneration to posted staff would remain subject to the rules governing the posting of workers (Directive 2014/67/EU).*

*The European services e-card would apply – in a first stage – to business services and construction services – to the extent the related activities already fall under the Services Directive. Both sectors are of key importance for the European Union's economy. Service providers of construction or business services often face high administrative complexity when expanding abroad. In addition, productivity growth over the last decade has been very low in both sectors and there is limited cross-border trade and investment. Increased cross-border competition would help preserve and improve the competitiveness of both sectors.*

*Discussions between the Commission and the co-legislators concerning the initiative are now underway and the Commission remains hopeful that an agreement will be reached in the near future.*

*In response to the more technical comments in the Opinion, the Commission would like to refer the Bundesrat to the attached annex.*

*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,*

*Christos STYLIANIDES  
Member of the Commission*

## ANNEX

*The Commission has carefully considered the concerns expressed by the Bundesrat and is pleased to offer the following clarifications.*

*The proposal aims to make use of information technology infrastructures put in place at the level of the European Union (such as the Internal Market Information System) with no added-cost for national administrations. Nevertheless, in order to make this e-card procedure work in the Internal Market Information System and deliver for the service providers that apply for it, the proposal envisages an active involvement of national administrations of the Member State of establishment of a service provider, namely its home Member State, but also those in the Member State where they want to expand their 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 the home and host Member State. 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 Germany. Member States are also free to decide on the allocation of competences between bodies and there is no requirement to attribute them to this single coordinating authority. In this sense, Member States also remain fully free to make the best use of their existing administrative bodies. The existing Points of Single Contact that were set up under the Services Directive could also be used for this purpose, 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 fully relevant and necessary for all services activities as laid down in the Services Directive.*

*The European services e-card in no way limits the possibilities of host Member States to ensure or monitor compliance with applicable requirements in line with EU law, such as by means of inspections on building sites. On the contrary, Member States accepting advance declarations of posted workers via the Internal Market Information System (from service 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. There is no contradiction or overlap with the revision of the Posting of Workers Directive and the European Pillar of Social Rights. The proposal introduces the following facility: if a Member State allows the declaration relating to the posting of workers to be completed electronically, the European services e-card shall direct the card holder to the relevant national procedures. Providers who hold an e-card may also submit this declaration through an electronic platform connected to the Internal Market Information System if this possibility applies for the posting of workers in the host Member State. In the latter case, the service provider would fill in details on posted workers in a pre-defined, multilingual form appearing in the home Member State language(s). In the host Member State, information would appear in the local language(s).*

*In addition, the services e-card is designed to ensure the least costs for companies and authorities in daily practice, and promote the “once-only” principle: authorities in Member States shall not require the services e-card holder to provide any information which is already contained in the services e-card for procedures or formalities imposed on a provider in relation to the award of a public contract, a design contest or a concession, formation of subsidiaries or registration of branches under company law and registration with mandatory social insurance schemes.*

*The short deadlines of 3 to 5 weeks for temporary cross-border provision and 7 to 10 weeks for secondary establishment in the proposal seek to ensure that procedures are effective and quick in practice. However, the Commission wishes to add that such short deadlines are compensated by two elements.*

*First, the proposal for a European services e-card fully builds on the provisions of the Services Directive as regards host Member States' prerogatives to decide if a service provider complies with the applicable requirements to be able to provide services in its territory. Therefore, this proposal does not introduce a country of origin principle. The European services 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.*

*Second, this proposal contains a supervisory mechanism making possible at any time to engage in revocation/cancellation procedures of a European services e-card. The Commission believes that this proposal lays down clear provisions for improving the current environment for service providers and customers of services by enhancing legal certainty and trust, but also limiting any attempt of fraud. The proposal relies on increased administrative cooperation at the level of the European Union. Through this streamlined Union level procedure, the European services 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. Consequently, the proposal for a services 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. The aim of the European services e-card proposal is to enhance transparency about service providers wanting to engage in cross-border activities in this field, with a view to facilitating more cross-border trade and investment.*

*The Commission also would like to comment on the concerns of the Bundesrat on how the design of the e-card instrument would fit to the specificities of each Member State and in particular Germany. The Commission has chosen to define the scope of the Directive according to the Statistical Classification of Economic Activities in the European Community (NACE) because the regulatory environment for cross-border expansion of construction and business services covered by the services e-card is not (positively) harmonised and the definition of which activities specifically fall within certain broad categories of services or service sectors varies greatly across Member States. A comparison and equivalence*

*mechanism is therefore required. The codes of the Statistical Classification of Economic Activities in the European Community have been used extensively for such purposes, not only for statistical ones but also regulatory ones, for instance in the Public Procurement Directives.<sup>9</sup> The Professional Qualifications Directive follows the same approach for activities related to the categories of professional experience (see its Annex IV), making use of the codes of the International Classification of Goods and Services (NICE) and the International Standard Industrial Classification of All Economic Activities (ISIC). Codes of the Statistical Classification of Economic Activities in the European Community are the most advanced and up to date European-wide classification of economic activities, including services.*

*The Commission has planned a more granular approach to national specificities in the design of the European services e-card form in delegated acts to the Directive. These delegated acts will indeed allow the collection and mapping of all requirements in place for each sector covered by the proposal and by Member State, refining each activity and sector initially falling under the Statistical Classification of Economic Activities in the European Community in the annex to the Directive. The choice of delegated acts for this has been made specifically because Member States are the best placed, not the Commission, to provide such specificities.*

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<sup>9</sup> Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC, OJ L 94, 28.3.2014, p. 65–242, and Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC, OJ L 94, 28.3.2014, p. 243–374.