

# Opinion

COM(2016) 820+821+822+823+824

## **PART I – INTRODUCTORY NOTE**

Pursuant to Article 7 of Law No 43/2006 of 25 August 2006 on the scrutiny by the Assembly of the Portuguese Republic of matters relating to the process of EU integration, as amended by Law No 21/2012 of 17 May 2012, and in accordance with the Guidelines for the Scrutiny of EU Initiatives approved on 1 March 2016, the European Affairs Committee has received the following proposals:

- COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS on reform recommendations for regulation in professional services COM(2016) 820.

- Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the enforcement of Directive 2006/123/EC on services in the internal market, laying down a notification procedure for authorisation schemes and requirements related to services, and amending Directive 2006/123/EC and Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System COM(2016) 821.

- Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on a proportionality test before adoption of new regulation of professions COM(2016) 822.

- 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].COM(2016)823.

- 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.

In view of their subject-matter, the above-mentioned initiatives were forwarded to the Committee for Economic Affairs, Innovation and Public Works, which examined them and approved the report attached to this Opinion, which forms an integral part thereof.

## **PART II - RECITALS**

1 - The initiatives concern the 'Legislative Package' implementing the key issue in the European Commission's 2016 Work Programme (ECWP) referred to in the annex to the New Initiatives as '**A deeper and fairer internal market with a strengthened industrial base**', in particular the new initiatives of the 'Single Market Strategy' package that sets out (among others) initiatives on the regulation of professions in order to facilitate the cross-border provision of services and fight discrimination based on nationality or place of residence.

2 - The objective of the initiatives is to remove obstacles to the functioning of the Single Market, since these obstacles can prevent the EU economies from fulfilling their potential for growth and job creation.

3 - In relation to the scope and content of the five above-mentioned initiatives, it is important to point out that the 'Single Market' package is structured around two main themes: regulation of professions and professional services and the European services e-card.

4 The first initiative (the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions (COM/2016/0820)) results from the concern identified by the European Commission to deepen the Single Market, with the aim of creating new jobs, promoting productivity and ensuring an attractive climate for investment and innovation. Consequently, and on the basis of a comparative exercise carried out over the past three years, a series of reform recommendations were formulated. They are intended to support the Member States in creating a regulatory environment for professions that is conducive to growth, innovation and the creation of jobs.

5 - The second initiative is related to the Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL (COM/2016/822) and states that disproportionate regulation of professions represents a significant obstacle to the Single Market in services and has widespread negative economic effects. The objective of this initiative is to clarify minimum criteria by creating a transparent and predictable framework

6 - The third initiative is related to 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 introduced by Regulation - [ESC Regulation] - and proposes the adoption of a legal and operational framework for the European services e-card that requires Member States to accept the European services e-card as valid proof that the holder is established in the territory of his home Member State and is entitled, in that territory, to provide the service activities covered by the e-card.

7 - The fourth initiative is related to the Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL introducing a European services

e-card and related administrative facilities.

The European services e-card aims to reduce administrative complexity for service providers that want to expand their activities to other Member States. It will at the same time ensure that Member States can apply justified regulation.

It allows service providers to use a fully electronic EU-level procedure to complete formalities when expanding abroad, hereby offering them increased legal certainty and significantly reducing administrative complexity.

8 - The fifth initiative concerns the Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the enforcement of the Directive 2006/123/EC on services in the internal market, laying down a notification procedure for authorisation schemes and requirements related to services, and amending Directive 2006/123/EC and Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System.

It follows from the Services Directive (Directive 2006/123/EC) that certain national rules restricting the freedom of establishment and the freedom to provide services must be non-discriminatory with regard to nationality or residence, proportionate and justified by overriding reasons relating to the public interest.

To ensure that new measures imposed by Member States comply with the requirements, the Services Directive provides that Member States start to notify to the Commission new or changed authorisation schemes or certain new or changed requirements falling under the Directive.

It is noted that the Commission hereby hopes to contribute to more competitive and integrated services markets in Europe, benefitting consumers and entrepreneurs alike.

9 - We would also highlight the fact that these five initiatives in the 'Single Market' package aim to remove legal and regulatory obstacles still in place in the different Member States that are clearly unnecessary or disproportionate.

It should be remembered that achieving a deeper and fairer internal market is one of the priorities of the European Commission. Building on its strength and exploiting its full potential is key to promoting jobs and growth in the European Union.

10 - Finally, it should be noted that the Report submitted by the Committee for Economic Affairs, Innovation and Public Works, which was approved unanimously, fully reflects the content of the proposals.

Accordingly, it should be deemed to have been reproduced in full in order to avoid repetition of analysis and consequent redundancy.

In the light of the provisions contained in this proposal, the following must be considered:

**a) Legal basis**

Article 26 (internal market), Articles 49 to 55 (right of establishment) and Articles 56 to 62° (services) of the Treaty on the Functioning of the European Union.

Mutual recognition of diplomas in particular is provided for in Article 53 TFEU.

**b) Subsidiarity principle**

Since the objectives of these legislative proposals cannot be sufficiently achieved by the Member States but can rather, by reason of the scale of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union.

The principle of subsidiarity is therefore duly complied with.

In accordance with the principle of proportionality, as set out in that Article, these legislative proposals do not go beyond what is necessary in order to achieve those objectives.

**PART III - OPINION**

In the light of the information set out above, and having regard to the Report by the relevant committee, the European Affairs Committee is of the opinion that:

- 1 – The Proposals do not breach the subsidiarity principle, in so far as the objectives pursued will be achieved more effectively by means of action at Union level.
- 2 – This concludes the scrutiny of the initiatives.

Palácio de São Bento, 14 March 2017

**The Rapporteur**

**(Rubina Berardo)**

**The Committee Chair**

**(Regina Bastos)**

**PART IV - ANNEX**



Opinion

**'Internal Market' package**

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## **PART I – GROUNDS**

### **1. PRELIMINARY NOTE**

In accordance with Article 7 of Act No 43/2006 of 25 August 2006, amended by Act No 21/2012 of 17 May 2012 governing the monitoring, examination and issuing of opinions by the Assembly of the Republic in the context of the process of EU integration, as well as the methodology for providing scrutiny of EU initiatives approved on 20 January 2010, the European Affairs Committee received the 'Internal Market' package made up of the following European initiatives:

1 - COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS on reform recommendations for regulation in professional services (COM(2016) 0820);

2 - Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on a proportionality test before adoption of new regulation of professions (COM(2016) 822);

3 - 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] (COM(2016) 0823);

4 - Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL introducing a European services e-card and related administrative facilities (COM(2016) 0824).

5 - Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the enforcement of the Directive 2006/123/EC on services in the internal market, laying down a notification procedure for authorisation schemes and requirements related to services, and amending Directive 2006/123/EC and Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System (COM(2016) 0821).

Given their subject-matter, the above initiatives were sent to the Committee for Economic Affairs, Innovation and Public Works to draw up the Opinion under the applicable rules.

### **2. OBJECTIVES, CONTENT AND GROUNDS OF THE INITIATIVE**

The scope and content of the five above-mentioned initiatives make it obvious that the 'Single Market' package is structured around two main themes: regulation of professions and professional services and the European services e-card.

In relation to the first main theme, it is important to note that the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on reform recommendations for regulation in professional services (COM/2016/0820) results from the concern identified by the European Commission to deepen the Single Market, with the aim of creating new jobs, promoting productivity and ensuring an attractive climate for investment and innovation. Consequently, and on the basis of a comparative exercise carried out over the past three years, a series of reform recommendations were formulated. They are intended to support the Member States in creating a regulatory environment for professions that is conducive to growth, innovation and the creation of jobs.

The Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE

COUNCIL on a proportionality test before the adoption of new regulation of professions appears in correlation with the earlier Communication (COM(2016) 822). With around 5 600 EU regulated professions directly affecting a large part of the European labour force, the European Parliament and the Council consider that disproportionate regulation of professions represents a significant obstacle to the Single Market in services and has widespread negative economic effects. Through this initiative, these European institutions intend to achieve the objective of clarifying minimum criteria by creating a transparent and predictable framework for Member States to assess proportionality before adopting new regulation. In brief, it aims to prevent disproportionate measures by:

- (I) making proportionality checks more objective, comprehensive and comparable;
- (II) ensuring the rules are applied in an equal manner by all national authorities;
- (III) requiring solid evidence and involvement of stakeholders in policy making;
- (IV) stimulating innovation while ensuring that rules are up to date due to periodic reviews.

Three policy options are considered:

- a) Guidelines and in-depth information exchange between authorities could help Member States to perform proportionality tests;
- b) Creating this proportionality test at EU level for regulated professions (with the establishment of minimum criteria for conducting proportionality checks, based on and complementing case-law and by introducing transparency on Member States' assessments through a binding instrument or in a Recommendation); Additionally, it could further include procedural aspects, such as public consultations and periodic reviews to ensure that proportionality checks are conducted in an objective and independent manner to ensure comprehensive assessments in all sectors of activities;
- c) Approval of a Directive or Recommendation.

Although the options are not mutually exclusive, the selected option is Option 3, as it addresses most adequately the problems at all levels of regulation (ex-ante effect) and generates the most benefits.

As regards the third European initiative included in the 'Single Market' package - 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], the initiative approves the legal and operational framework of the European services e-card and requires Member States to accept a valid European services e-card as proof that the holder is established in the territory of his/her home Member State and is entitled, in that territory, to provide the service activities covered by the e-card.

The fourth initiative is related to the Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL introducing a European services e-card and related administrative facilities. The objective of this initiative is to enhance market integration in business services and construction and stimulate productivity growth in both sectors. The specific objectives to be achieved are:

- a) make it easier and less costly for companies to provide services in other Member States;
- b) inspire more confidence in the market towards service providers by increasing

transparency and available information;

c) inject increased market dynamics and competition leading to more choice and lower prices for customers, including industrial customers.

Finally, the Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the enforcement of the Directive 2006/123/EC on services in the internal market, laying down a notification procedure for authorisation schemes and requirements related to services, and amending Directive 2006/123/EC and Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System should be noted.

It follows from the Services Directive (Directive 2006/123/EC) that certain national rules restricting the freedom of establishment and the freedom to provide services must be non-discriminatory with regard to nationality or residence, proportionate and justified by overriding reasons relating to the public interest.

To ensure that new measures imposed by Member States comply with the requirements, the Services Directive provides that Member States start to notify to the Commission new or changed authorisation schemes or certain new or changed requirements falling under the Directive.

However, the Commission's opinion is that the current notification procedure does not always achieve its objective, despite efforts undertaken to improve its implementation.

The Commission therefore presents this initiative to create a self-standing legislative instrument modernising the current notification procedure under the Services Directive in order to improve the enforcement of the existing provisions of that Directive, by establishing a more effective and efficient procedure preventing the adoption by Member States of authorisation schemes or certain requirements not complying with the Services Directive.

In practical terms, the objectives of this legislative instrument are to:

- a) increase the effectiveness of the notification procedure;
- b) improve the quality and content of the notifications presented;
- c) cover additional requirements that the implementation of the Services Directive has shown can constitute major obstacles to the internal market of services; and
- d) increase effective compliance of the notification obligation.

Through this new legislation, the Commission hopes to contribute to more competitive and integrated services markets in Europe, benefiting consumers and entrepreneurs alike.

## **PART II – OPINION OF THE RAPPORTEUR**

The deepening of the European Single Market constitutes an objective to be achieved in order to boost the European economy, which is an essential condition to maintaining a European Social State and creating more sustainable and long-term jobs.

The five initiatives included in the 'Single Market' package are very much in line with this objective and seek to remove legal and regulatory obstacles that still exist in the different Member States and which are clearly unnecessary or disproportionate with regard to the regulation of professional services or professions – without being detrimental to certain professions and services that need to be regulated – and to the establishment of companies in the European Economic Area.

In practical terms, the creation of the European services e-card appears to be specifically geared to SMEs since they are the most affected by administrative complexity when they want to expand abroad. It provides a one-stop shop for providers in the sectors of business services and construction, while increasing legal certainty about the requirements applicable to them. We cannot forget that reducing the administrative burden allows them to save time and money when expanding abroad.

In short, we are dealing with five initiatives designed to deepen the Single Market, which is, historically, one of the fundamental bases of European integration: the Treaty of Rome already provided for the setting-up of a 'common market' based on the free movement of goods, persons, services and capital. The Lisbon Treaty continued this connection between these freedoms with the Internal Market. It referred to it as 'an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaties' (Article 26 TFEU).

### **PART III - CONCLUSIONS**

Accordingly, the Committee for Economic Affairs, Innovation and Public Works has issued the following opinion:

1 - The five European initiatives making up the 'Internal Market' package are aimed at deepening the Single Market and are based on the free movement of goods, persons, services and capital;

2 - the flow of economic activity constitutes an essential condition for the national economies, integrated in the European Area, which makes it necessary to remove all disproportionate legal obstacles to the free circulation of professionals and to the establishment of companies, without, however, calling into question certain professions and sectors which, given their specificity, continue to warrant the existence of rules on access and exercise.

3 - the initiatives do not breach the principle of subsidiarity in so far as the objective to be attained will be more efficiently achieved through EU action;

4 - consequently, we would consider that the initiatives in question merit the Committee's approval and this opinion should be referred to the Committee for European Affairs after it has been duly approved.

Palácio de S. Bento, 24 February 2017

The Rapporteur

[signed]

António Costa Silva

The President of the Committee

[signed]

Hélder Amaral