

Position Paper

UEAPME¹ position on the European Services e-card (COM (2016) 823 and 824)

Executive summary

- UEAPME and its member organisations strongly support the mobility and the ability of smaller companies to conduct cross-border trade.
- UEAPME welcomes measures to reduce the administrative burdens for businesses and service recipients in line with the Services Directive
- The advantages and the reduction of administrative burdens will depend on the implementation of the directive in national law and the content of the delegated acts of the European Commission.
- The e-card proposals have far reaching consequences for some SME sectors, such as in the construction sector, where many companies complain that the proposal does not meet their needs. UEAPME therefore insists that the needs and concerns, of all the relevant sectors are taken into account

Introduction

On 10 January 2017, in the context of its internal market package, the European Commission presented a proposal for a Regulation and a corresponding proposal for a Directive introducing a European Services e-card.

The proposed new regulation is therefore based on two texts. This choice constitutes in itself a source of complexification, especially since the interplay between the regulation and the directive is not clear. In addition, several important technical aspects will be regulated in delegated acts by the European Commission. This could create a context of legal uncertainty for companies. Moreover, the implementation might differ significantly from one Member State to another. This could lead to regulatory gaps that have negative impacts on SMEs.

The interplay between the proposed Regulation/Directive and the existing directives on posting (prior declaration of posted worker) and recognition of professional qualifications (European professional card) is also unclear. It has to be clarified. Regarding posting, the proposed legislation should not restrict the requirements introduced by the 2014 Directive (open list).

At the same time, the impact of the draft texts on public procurement, especially on the European Single Procurement Document (ESPD) remains unclear.

¹ UEAPME subscribes to the European Commission's Register of Interest Representatives and to the related code of conduct as requested by the European Transparency Initiative. Our ID number is [55820581197-35](#).

UNION EUROPEENNE DE L'ARTISANAT ET DES PETITES ET MOYENNES ENTREPRISES
 EUROPÄISCHE UNION DES HANDWERKS UND DER KLEIN- UND MITTELBETRIEBE
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 UNIONE EUROPEA DELL'ARTIGIANATO E DELLE PICCOLE E MEDIE IMPRESE

General remarks

Many small companies in both the manufacturing and service sector operate in the internal market. Consequently further integration of the services sector is crucial for both continued growth and competitiveness. UEAPME and its member organisations strongly support the mobility and the ability of smaller companies to conduct cross-border trade. For export-dependent enterprises, the free movement of goods and services is crucial for their competitiveness.

Consequently, UEAPME supports the idea of the European Commission to reduce administrative burdens for businesses and service recipients in line with the Services Directive (Directive 2006/123/EC). But it is in the first place the already existing regulatory framework for the free movement of services that should be further and better implemented and developed, in order to create a level playing field which promotes fair competition and fair working conditions, as well as in order to reduce unnecessary administrative burdens and obstacles for companies. This could be done by prioritising the most important services, in terms of number of enterprises, which are providing cross border services and on the basis of requests made by the representative associations.

Moreover, it seems that the European Services e-card is not suitable to eliminate the real obstacles in cross-border trade in services: The biggest obstacles to the cross-border provision of services and the establishment of branches or subsidiaries are still language problems, as well as problems with the legal framework (technical requirements, customer relations, cultural differences) in other countries and taxes. But it is also worth noting that regulatory barriers alone do not explain limited trade in services. Within the framework of the Single Market Forum, the workshops organised between 2014 and 2016 with representative organizations and SMEs clearly highlighted the fact that the lack of competitiveness of companies for example when it comes to labour costs and tax burdens is a major obstacle..

For UEAPME the creation of a European Services e-card has to be seen as part of the objective of simplification and the reduction of administrative burdens and this in line with the Services Directive. However, the latter is not the case. The proposals goes into the direction of reintroducing again, the country of origin principle, which risk to breach the delicate compromise agreed upon in adopting the Services Directive.

Indeed, the Services Directive ensures that the regulation of standards for service provision remains the domain of the country of destination which prevents the undercutting of service quality in the EU. The Services Directive clearly states that the country of destination must be responsible for supervising the service providers operating within their jurisdiction. This is indeed the only effective way to ensure that these businesses will comply with the applicable rules. The host Member States have, in theory, the possibility of opposing the issuance of the electronic card. In practice, given the delays granted, this option will be difficult to implement. In addition, they do not have access to the original documents; an assessment of the equivalence of the legislation requires a thorough knowledge of the rules applicable in the country of origin.

Although the aim of the proposal is to speed up procedures, we are questioning if the introduction of this card will not lead to delays compared to the actual situation under the Services Directive. It is indeed already nowadays possible for service providers to cross the border and to provide a service or to establish. Has the service provider with the introduction of the European Services e-card to wait until there is the approval by the host country or is the service provider allowed to start immediately, as it is already now the case? If the service provider has to wait, how can it be avoided that the introduction of the card does not lead to longer and slower processes?

According to Article 4.1.b, a separate card has to be requested per service and per country. An enterprise that offers different services will consequently be obliged to apply for different cards for the different services it provides. It is possible that for these different services different national rules and regulations apply. This will in practice certainly lead to very complex application procedures for the service provider.

Furthermore the application of the Services e-card shall be facilitated by the use of standard forms. For this purpose, Member States are required to provide existing requirements and approval procedures. There are a number of various situations both for cross-border provision of services and establishment procedures. Accordingly, there are different requirements and formalities. These would have to be conveyed by a form system which would have to take account of the specific characteristics of 28 different legal systems in the Member States.

The proposed concept for a European Services e-card relies on mutual trust between the Member States as well as on the ability and willingness of the Member States to provide precise information about their own requirements. In this regard the Services Directive already established the Points of Single Contacts which follow the host country principle. This is appropriate as the host country can provide comprehensive information on existing requirements and handle administrative procedures efficiently. The experience with the Points of Single Contact has not been particularly encouraging. The implementation of the Points of Single Contact is very low in some Member States: the translations are of bad quality or even only available in the local language, the information is not adequate, etc. Businesses should be able to receive reliable and clear information and this is unfortunately not always happening today. Therefore it is in the interest of all service providers in all sectors to urgently improve the functioning of the Points of Single Contact as already requested by UEAPME in the past. The Points of Single Contact should be transformed under the new Single Digital Gateway initiative.

UEAPME warmly welcomes the provision in article 13 of the proposed directive to apply the “only once principle”. Indeed, UEAPME is advocating for this principle since many years. The question is however if this is the most appropriate way to have this principle introduced. The adaption by the local and national administrations has to be done in a systematic way and also in the most economical way in order that as many enterprises as possible can start benefiting from it.

There are also no guarantees in the text that the proposed scheme will truly lead to administrative simplification for enterprises as on many important issues implementing and delegated acts are to be adopted by the Commission whose content is presently not known.

In addition, no time framework is stipulated for the completion of the procedure and neither is it clear how the language issue will be handled.

We welcome the fact that the European Services e-card will be available on a voluntary basis. We welcome the fact that no certified translation of documents will be required. However other measures to avoid fraud should be incorporated in the system.

Some specific comments on the Directive

Article 5(1)

It should be clarified that the posting of workers in the course of a service must always be reported as foreseen in the posting of workers directive

Article 6 (iii)

According to this article information on compulsory social security schemes may not be required by the host country. It should be clarified that this only applies for self-employed, but not for the social security insurance of posted workers. They still have to proof their insurance.

Art. 7 (2)

According to this article, the European Services e-card shall be valid for an unlimited period of time, subject to a suspension or withdrawal procedure. The procedure is based on mutual trust and self-declaration. These are not realistic requirements for up-dating the e-card. On the contrary, there is a high risk to use easily outdated cards. At the same time, it will facilitate frauds and circumventions. As there are no periodic control mechanisms foreseen there is a high risk of fraud and abuse of the card. Existing control tools need to be strengthened. The draft texts do not mention this. Since the home Member State is only informed when the European Services e-card is issued, a time limit should be set for the validity of the card. An extension should be possible without any problem, provided that in the meantime no reasons for withdrawal have occurred.

Article 11 (1) (d) and (g)

The one-week deadline for the assessment in the host country - according to article 11 - is too short. In any case, it must be ensured that the tests can be carried out correctly. The actual deadline does not allow for proper evaluation of the application. At the same time, no reaction during this short delay means a tacit approval. The time limit must therefore be extended.

Article 12

Enterprises welcomes short deadlines but this deadline appears to be too short to be feasible. If the host Member State decides to object to the issuance of the e-card, this has to be done within 2 weeks. Although we welcome clear and fast information for service providers, it must at all events be ensured that an in-depth examination can be carried out and that there is no administrative overloading of the host Member State.

Article 13(6)

UEAPME has always stressed that slow administrative procedures are unacceptable and in the case of foreign service providers they can indeed have a persuasive effect. This is, however, a complex problem that cannot be solved by imposing simple rules.

The idea already enshrined in the Services Directive to consider an authorisation granted if no reaction is received within a certain reasonable period of time is a positive step forward and seems logical. However it has to be stressed that this rule can also be abused, e.g. in the case that authorities deliberately do not react and it would mean the reintroduction of the country of origin principle through the backdoor.

Some specific comments on the Regulation

Art 4. 1.

The proposals states that *"1. Providers may choose to apply for a European services e-card.*

Any applications for a European services e-card shall be submitted in an electronic platform connected to IMI using a multilingual standard form.

The standard form shall consist of the following elements:

- (a) identification of the provider, including, where applicable, registration numbers in central, commercial or company registers and for tax purposes;"*

In order to prevent fraud, UEAPME² proposes to connect with the social security as follows:

"1. Providers may choose to apply for a European services e-card.

Any applications for a European services e-card shall be submitted in an electronic platform connected to IMI using a multilingual standard form.

² With the exception of CPME.

The standard form shall consist of the following elements:

*(a) identification of the provider, **including the social security number and**, where applicable, registration numbers in central, commercial or company registers and for tax purposes;”*

Art 10 (1)

This article stipulates that any fees charged to issue a European Services e-card shall be “reasonable and proportionate”. It is unclear what is exactly covered by “reasonable and proportionate”. In addition, an analysis of the possible costs is missing. There is no safeguard at all to avoid that possible fees will lead to disproportionate or unreasonable costs for the enterprises.

Art 11.1 and art 12

In art. 11.1 (information on third party liability claims) and in art 12 (taking into account the claims experience in the acceptance policy and in the calculation of premiums), reference has to be made to the insurance undertaking and not to the distributor. The only person who can give this information is the insurer, not the intermediary.

In addition, while UEAPME welcomes in principle the use of standardised forms, the introduction here is nearly impossible. It cannot be compared with the so called green card in the car insurance where it applies to a compulsory insurance. A standardised form for non-compulsory insurances cannot reflect the sectorial differences and the qualitative differences in the insurance.

Conclusion:

The Single Market for Services is not living up to its full potential. UEAPME therefore welcomes a deepening of the services market and harmonisation of procedures in order to improve and facilitate the free movement of services within the EU. However, the e-card proposals have far reaching consequences for some SME sectors, such as the construction sector, whereas they are not in favour of this regulation which does not meet their needs. UEAPME insist that the needs and concerns, especially of the construction sector, but also the needs of all the sectors concerned, will be taken into account.

Pursuant to Annex 1 of the proposed directive, many other sectors are involved. However, this is only a first list. As indicated in the recitals of the draft regulation, this first step will be followed by others. From now on, it is of the utmost importance to have a complete view of the other professional sectors that will be affected by these provisions. A precise timetable for future work is also essential.

The proposal is based on the presumption that a service provider is willing to provide his services also in another country. This is not necessarily the case as most of them are only active at local level. It is of utmost importance that all service providers (local and new ones) can operate at the national markets under the same conditions and that there is a correct enforcement and application of the existing regulations.

Brussels, 20th July 2017

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