



March 2017
AK Position Paper

Proposal for a Services e-card,
COM(2016) 823 and 824

About us

The Austrian Federal Chamber of Labour is by law representing the interests of about 3.6 million employees and consumers in Austria. It acts for the interests of its members in fields of social-, educational-, economical-, and consumer issues both on the national and on the EU-level in Brussels. Furthermore the Austrian Federal Chamber of Labour is a part of the Austrian social partnership. The Austrian Federal Chamber of Labour is registered at the EU Transparency Register under the number 23869471911-54.

The AK EUROPA office in Brussels was established in 1991 to bring forward the interests of all its members directly vis-à-vis the European Institutions.

Organisation and Tasks of the Austrian Federal Chamber of Labour

The Austrian Federal Chamber of Labour is the umbrella organisation of the nine regional Chambers of Labour in Austria, which have together the statutory mandate to represent the interests of their members.

The Chambers of Labour provide their members a broad range of services, including for instance advice on matters of labour law, consumer rights, social insurance and educational matters.

More than three quarters of the 2 million member-consultations carried out each year concern labour-, social insurance- and insolvency law. Furthermore the Austrian Federal Chamber of Labour makes use of its vested right to state its opinion in the legislation process of the European Union and in Austria in order to shape the interests of the employees and consumers towards the legislator.

All Austrian employees are subject to compulsory membership. The member fee is determined by law and is amounting to 0.5% of the members' gross wages or salaries (up to the social security payroll tax cap maximum). 816.000 - amongst others unemployed, persons on maternity (paternity) leave, community and military service - of the 3.6 million members are exempt from subscription payment, but are entitled to all services provided by the Austrian Federal Chambers of Labour.

Rudi Kaske
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Executive Summary

According to the European Commission, the legislative initiative on introduction of a European services e-card is designed to increase cross-border activities in the service sector and promote competition. However, **in the view of the BAK**, the legislative proposals do not provide any benefit. In reality, **the proposals make it easier for dishonest companies and pseudo self-employed persons to engage in cross-border activities. Austrian companies and their employees could suffer considerable damage** due to the resulting unfair competition. It also poses a considerable risk in terms of wage dumping and social dumping.

The BAK therefore firmly rejects the Commission's proposal on the introduction of a European services e-card **in its present form.**

Notwithstanding its fundamental rejection of the proposal, the BAK wishes to make the following constructive criticisms:

- The broad scope of the proposed directive and the proposed regulation should be reconsidered, since the construction sector, for example, has proven to be highly prone to abuse and the services e-card could exacerbate the issue.
- Improvement in the cross-border cooperation of the authorities would be important, including **enhancement of the Internal Market Information System**, the cross-border service of authority documents and the enforcement of authority decisions.
- **Article 4 of the proposed directive:** applicants for a services e-card must be obliged to prove that they have already been active in the home Member State as a self-employed person with respect to the service activities covered by the card, otherwise there is a risk that the card holder is a pseudo self-employed person and is actually in a dependent relationship with a company.
- In Article 5 of the proposed directive, it must be ensured that the posting of workers is clearly excluded from the ban on prior registration in order to prevent misinterpretation. In addition, it must be ensured that the reporting and disclosure obligation applies to all forms of company.
- **Article 6 (3) of the proposed regulation**, which allows for **posting of workers** to be included in the services e-card, **should be deleted.**
- **Article 6 (iii) of the proposed directive**, which bans Member States from requiring the provision of information concerning registration with mandatory social insurance schemes, **should be deleted.** That rule would play into the hands of dishonest service providers. It would facilitate the pseudo-posting of workers.

- Article 9 of the proposed regulation: The **verification of identity and original documents** plays an important part in preventing the presence of dubious companies on the services market. The submission of mere copies should therefore be rejected.
- The **tight deadline** for assessing card applications pursuant to Article 11 of the proposed directive **must be extended from one to four weeks** in order to allow for extensive verification of the submitted information and accompanying documents.
- Article 12 of the proposed directive: If queries arise, it must be possible for the **host Member State to contact the applicant directly**. If reasonable doubts arise during examination of the application for a services e-card, the host Member State must be entitled to refuse to issue a services e-card.
- In the case of applications for a card for establishment pursuant to Article 13 of the proposed directive, the **documents must be available in a certified translation in the official language of the host Member State** to ensure that the authority can verify the documents properly.
- Articles 15 to 17 of the proposed directive: The **authority of the host Member State must be permitted to intervene in the event of breaches of the law**, including measures extending to immediate revocation of the services e-card. Rules on updating of the services e-card must be integrated into the present legislative proposals.
- **High administrative burden:** A new coordination authority will need to be created in every Member State. Sufficient staff will need to be in place to comply with the tight processing deadlines and the databases will have to be constantly maintained to ensure that they are up-to-date.

The AK's position in detail

Introductory remarks

According to the European Commission, the aim of the proposal for a directive and a regulation introducing a European services e-card is to increase cross-border activities in the service sector by reducing (bureaucratic) barriers. The aim is for authorities of the home Member State to be able to certify that companies and natural persons in possession of such a services e-card comply with the national provisions of the host Member State. One reason given for the new legislative initiative is that cross-border activities are particularly low in the construction sector.

The BAK, however, wishes to note that the above statement is incorrect. **In the construction sector in particular, cross-border activities are relatively high** and have increased substantially in recent years. For example, the cross-border work of individuals within the EU has risen by 37% within the EU as a whole between 2010 and 2014. In absolute terms, that corresponds to more than 1.92 million postings in 2014. The proportion of that accounted for by construction work has remained roughly stable at around 43%.¹

Furthermore, **the European Union is not suffering from too little competition** or supposed barriers on the single market, **but insufficient demand**.² On the contrary, there is reason to fear that the additional competitive pressure could have a negative impact on the wages and working conditions of employees in the service sector.

The **approach** that has been taken in the legislative proposals on the services e-card **recalls** the Commission's plan to introduce a country-of-origin principle in the Services Directive. During work on the directive from 2004 onwards, however, the Council and the European Parliament ultimately decided not to apply the **country-of-origin principle**, because it would have resulted in a race to the bottom for the lowest wages, the poorest working standards and the weakest consumer protection. In the case of the present legislative initiative, the home Member State now has an indirect influence on whether statutory provisions are complied with in the host Member State. The Commission is therefore taking an approach that is similar to the country-of-origin principle that was to be introduced in the Services Directive.

In particular, the question arises as to **why compliance with statutory requirements in another country would be in the interest of the home Member State**. On the contrary, the authority of the home Member State is likely to support the activities of its companies in other EU Member States. The question of whether all requirements are fully met in another EU state might be of secondary importance in that case. It should also be questioned whether all the Member States have the necessary capacity to perform extensive checking. The host Member State is permitted to examine the application, but the authority concerned is likely to encounter problems since the documents are

verified by the home Member State and are not even at the disposal of the host Member State in the respective official language. That may explain why the Commission does not even require original documents to be submitted – copies are sufficient!

Given that highly idiosyncratic construction, there is a risk that **dishonest companies** will abuse the European services e-card to suit their own purposes. Some commercial entities might specifically apply for a services e-card in those EU countries where the administrative structures are weakest. It is conceivable for example, for the services e-cards to be used for establishment of shell companies that merely serve to transfer profits.

In addition, **pseudo self-employment** is also **encouraged** by this system. Individuals could apply for a services e-card and present themselves as self-employed. In reality, however, the card holder might only be working for one company and be in a dependent relationship with an employer. That also poses a considerable risk in terms of wage dumping, social dumping and social fraud.

The **updating of the administrative procedure** and the use of electronic processes are **to be welcomed**. However, under the proposal, new administrative structures would be required, which would result in **considerable extra costs for the Member States**.

No benefits for the Austrian economy **can be identified**. The services e-card even makes it easier for dishonest companies and pseudo self-employed persons to be active across borders. Austrian companies and their employees could suffer considerable damage due to the resulting unfair competition.

Analysis of the proposed directive and regulation

Scope

The scope defined in Article 2 (1) of the proposed directive and proposed regulation is very broad and comprises the services listed in Annex 1 to the proposed directive. The scope of the legislative proposals extends, for example, to the cleaning of buildings, computer programming, travel services, advertising, renting and leasing of motor vehicles and machinery, and the construction sector.

The **construction sector**, in particular, has proven to be problematic in recent years, as experiences in many Member States have shown. Illegal employment, social fraud, wage dumping and social dumping are particular widespread in that sector. Such irregularities are particularly prevalent in the case of cross-border activities.

For example, during inspections conducted by the Construction Workers Leave and Severance Pay Fund (BUAK) in Austria at 7,238 **domestic companies**, suspicion of **underpayment** of workers pursuant to the Act on Combating Wage Dumping and Social Dumping was established in 38 cases. That meant that **0.53%** of cases were suspicious. During the same period, 1,481 companies that are active in Austria, but have their registered office in another EU country, were investigated. In 398 cases, there was suspicion of underpayment or **wage dumping affecting employees**. That corresponds to a rate of **26.87%**.³

One of the reasons for that unsatisfactory situation is the fact that the hands of the authority of the Member State

where the service provider is active are often tied, owing to lack of information or enforcement options. It would be important, therefore, to improve the underlying conditions for cross-border cooperation among the authorities. The **Internal Market Information System (IMI)**, in particular, **should be enhanced**. Additionally, the practical possibilities for the cross-border service of authority documents and the cross-border enforcement of authority decisions need to be established and improved. For example, the framework decision 2005/214/JHA on the application of the principle of mutual recognition to financial penalties of 2005 (!) has not yet been implemented in all Member States. Moreover, in those Member States where it has been implemented, it is by no means ensured that cross-border enforcement actually works in practice. The enforcement directive on the Posting of Workers Directive 2014/67/EU has not yet been implemented in all Member States either, despite the deadline for doing so expiring more than seven months ago.

Although the Austrian market is saturated with respect to providers of **cleaning and facility management services**, a rise in pseudo self-employment might nevertheless occur. Since natural persons can also apply for a services e-card, there is high potential for abuse in the case of self-employed cleaning work. Moreover, inspection is hardly possible in the case of services that are often performed in households.

That could also become a problem in the **facility management industry**. Major, well-established facility management and cleaning companies with large workforces are less at risk than small companies that could rap-

idly come under pressure owing to the activities of pseudo self-employed persons.

The BAK is calling for **revision** of the broad **scope of the legislative proposal**. The construction sector, for example, is highly prone to abuse and inclusion of that sector could further facilitate the actions of dishonest construction companies. Improvement of cross-border cooperation and exchange of information among the authorities would make far more sense. The cornerstones of that should be enhancement of the Internal Market Information System, the cross-border service of authority documents and the enforcement of authority decisions. Furthermore, the BAK urges the Commission to respond quickly with respect to Member States that have not yet implemented the enforcement directive on the Posting of Workers Directive despite expiry of the deadline.

Fields excluded from the scope of the legislative proposal

The proposed directive and proposed regulation expressly state that the subject matter defined in Article 1 (2) to (7) of the Services Directive is not affected and that the draft legislation is not applicable to the activities and matters stated in Article 2 (2) and (3) of the Services Directive.

The **scope**, therefore, **does not extend to** fields including **labour law, social security, health services and social services**. Posting of workers is therefore also excluded (see the last sentence of Article 2 (3)). We welcome this. Application of the services e-card to those fields would have unforeseeable and possibly severe impacts.

However, the exclusion of social security from the scope of the legislative proposal is not consistent, since **Article 6 (3)** of the proposed regulation provides for the possibility of integration of information on **posted employees** into the services e-card.

In addition, Article 6 (iii) of the proposed directive states that the **authorities** in the Member States are not permitted to **require any information** from the service provider **with respect to registration with mandatory social insurance schemes**.

That ban on national authorities requiring any information from the service provider with respect to registration with mandatory social insurance schemes is also **highly problematic** as experiences in **connection with the posting certificate** (A1 certificate) show. According to the current legal situation, posting certificates are binding, unless they are declared invalid or withdrawn by the issuing Member State. In the case of doubt about the correctness of the certificate, the only option available to the authorities in the Member State where the work is performed is to contact the issuing authority or, if agreement cannot be reached, to involve the Administrative Commission.

Such procedures, however, are highly burdensome and are only very rarely successful, so usually they are not carried out. **That legal situation is highly conducive to the pseudo posting of workers** and has taken absurd forms as cases C-474/16 and C-527/16, which are pending before the CJEU, show.

Instead of improving that highly unsatisfactory legal situation, the proposed amendment would further exacerbate matters. The authorities would not

merely be bound by the posting certificate, but would not even be allowed to require information from the service provider to verify the correctness of the social security registration. That would take the situation to the point of absurdity. It is already barely possible to rectify a false posting certificate (in the case of a pseudo posting) due to the binding effect of such certificates, since usually the Member State that issued the posting certificate has no interest in such rectification. That problem will be exacerbated in the future. The authorities of the Member States would not even be able to question the service provider in that regard. As a result, the pseudo posting of workers would further increase. In the medium term and long term, that would pose the risk of a race to the bottom among the European social security schemes.

The BAK considers the proposal to **integrate the posting of workers into the services e-card pursuant to Article 6 (3)** of the proposed regulation and to ban Member States from requiring information concerning obligatory registration with the social security schemes pursuant to Article 6 (iii) of the proposed directive a serious error, because it would further facilitate the pseudo posting of workers. The BAK is therefore calling for Article 6 (3) of the proposed regulation and Article (6) of the proposed directive to be deleted without replacement.

Ambiguity concerning the scope of the legislative proposal

The second sentence of Article 2 (2) of the proposed directive on the services e-card excludes activities and fields that are listed in Article 2 (2) and (3) of the Services Directive 2006/123/EC from the scope of the proposed directive.

That includes, for example, the **services of temporary work agencies**. However, in the Annex to the proposed directive on the services e-card, they are listed as coming under the scope of the proposed directive. The inclusion of temporary work agencies, however, would be particularly problematic. Owing to its specific construction, that industry particularly lends itself to wage dumping. In view of the large wage gap between Austria and the new Member States and in view of more recent CJEU case law (case C-91/13, Essent), which no longer permits labour market restrictions in the case of the cross-border temporary work of third-country nationals, the temporary work industry particularly lends itself to wage dumping. Just like the construction sector, that industry is one of the least suited to experimenting with new instruments for cross-border services whose impact is highly unpredictable.

Private security services are also expressly excluded from the scope of the legislative proposal. However, in the Annex to the proposed directive on introduction of the services e-card, they are treated as though they come under the scope of the legislative proposal. The scope is defined in a contradictory way here too.

The BAK assumes that an **error was made when drafting the text of the legislative proposal** and is calling for the deletion of temporary work agencies and private security services from the Annex to the proposed directive on the services e-card.

The services e-card could encourage pseudo self-employment

According to Article 4 of the proposed directive, the services e-card serves as

proof that its holder is established in the territory of its home Member State and is entitled to provide the service activities covered by the card. It remains unclear, however, whether **the service provider was ever active in the home Member State** with respect to the activities listed in the services e-card.

The services e-card would allow the holder to present itself as self-employed, for example in the case of inspections. It should also be noted that, according to Article 7 of the proposed regulation, individuals can also apply for a services e-card. The proposed rule therefore poses the very real risk of the card holder being pseudo self-employed and actually being in a dependent relationship with a company.

The BAK therefore maintains that it is **essential for applicants for a services e-card** to have to prove that they have already been active **as a self-employed person** in the home Member State with respect to the services listed on the card.

Impact of a services e-card on the host Member State

Article 5 (1) of the proposed directive bans the host Member State from imposing any prior authorisation scheme, prior notification scheme or an establishment requirement on the holder of a previously issued European services e-card for temporary cross-border provision of services as a condition for such provision of services in its territory.

According to Article 5 (2), such a ban also applies to establishment. That, however, revives the problems discussed in connection with the establishment of one-person companies – see also the position of the BAK on the

proposed directive on single-member private limited-liability companies⁴.

Exceptions are listed in Article 5 (4). However, Article 5 lacks any remarks concerning the treatment of posted employees. Article 5 (4) v) states that disclosure obligations, as set out in Article 2 of Directive 2009/101/EC and Article 2 of Directive 89/666/EEC or obligations, prohibitions, conditions or limits imposed by national rules on registration of branches of companies registered in another Member State under company law remain in effect. However, only companies limited by shares or otherwise having limited liability are listed in Directive 2009/101/EC.

The services e-card is also closely related to the provisions of the Austrian Trade, Commerce and Industry Regulation Act (GewO). In the view of the BAK, it should be noted that the Austrian Trade, Commerce and Industry Regulation Act contains provisions (requirements) that **serve to protect the interests of consumers and safeguard employee rights**, including not only rules on trade registration (e.g. verification of trustworthiness in the case of sensitive trades), but also, for example, rules on the exercise of trades. Whether the present proposed directive allows for holders of a services e-card to be subject to the rules and requirements on exercise of trades pursuant to the Austrian Trade, Commerce and Industry Regulation Act in the context of cross-border services is unclear, owing to the ambiguous phrasing of the legislative text. For example, does the statement in Article 5 (3) mean essentially that no further requirements may be made of holders of issued services e-cards (such as restrictions or rules on exercise of trades)?

The BAK is calling for **the posting of workers to be clearly excluded from the ban on prior registration** in order to prevent misinterpretation. In addition, it must be ensured that the reporting and disclosure obligation applies to all forms of company. The introduction of the services e-card must not be permitted to mean that protective provisions, such as provisions on exercise of trades in the case of temporary cross-border services or establishment in Austria, do not apply to holders of services e-cards. When assessing the draft directive, a detailed review must be performed of the extent to which the rules of the planned directive could impact on protective provisions with regard to foreign holders of services e-cards.

The ban on obtaining information will open the flood gates to abuse of the system

According to Article 6 of the proposed directive, Member States would not be permitted to require the holder of a European services e-card to provide any information which is already contained in the European services e-card.

Article 6 (iii), for example, sets out a **ban on obtaining information concerning social security registration**. As described above, social security is not included in the scope of the proposed directive. However, the ban on verifying registration with the obligatory social security systems evidently does bring this field into the scope of the proposed directive. That raises the question, among other things, of how the authority should check whether holders of the card are still registered with the respective social security scheme. Theoretically the service providers could cancel their registration with the social security scheme immediately after issue of the card. **This rule leaves the system wide open to abuse.**

The fact that it is highly problematic is also shown by **practical experiences** to date in connection **with** the binding effect of **posting certificates** (A1 certificates). According to the current legal situation, posting certificates are binding, unless they are declared invalid or withdrawn by the issuing Member State. In the case of doubt about the correctness of the certificate, the only option available to the authorities in the Member State where the work is performed is to contact the issuing authority or, if agreement cannot be reached, to involve the Administrative Commission. Such procedures, however, are highly burdensome and are only very rarely successful, so usually they are not carried out⁵. **That legal situation is highly conducive to the pseudo posting of workers** and has taken absurd forms as cases C-474/16 and C-527/16, which are pending before the CJEU, show.

Article 9 of the proposed regulation is closely related to Article 6 of the proposed directive. According to Article 9 of the proposed regulation, it is sufficient for the applicant to submit documents in the form of copies. The verification of identity and original documents, however, plays an important part in preventing the presence of dubious companies on the services market. That rule could, for example, lead to the **establishment of shell companies** that only serve to transfer profits. The legislative initiative is therefore also in conflict with the Commission's aim of combating tax havens and ensuring tax fairness.

In order not to encourage the pseudo posting of workers, the **BAK is calling for deletion of Article 6 (iii)** to enable the authorities to verify information concerning registration with social security systems. The BAK rejects the Commis-

sion's proposal that only copies of documents be required for services e-card applications, since that rule could result in abuse of the system.

Applications for a European services e-card

Article 11 of the draft directive states that the coordinating authority of the home Member State is in charge of handling applications for issue of the services e-card. Within one week, the authority must verify that the application is complete and correct and check the content and validity of the accompanying documents. In addition, the coordinating authority has to verify whether European services e-cards issued in relation to other home Member States for the same provider and service activity have been revoked or cancelled, or whether cancellation has been requested.

It should be seriously questioned whether the authority will actually be able to obtain all the necessary information and properly check the accompanying documents in the scope of the verification within the **tight deadline of just one week**. The tight deadline could tempt the authorities in some Member States to dispense with more in-depth verification and to issue the services e-card nonetheless. Ultimately, **negative consequences** of a services e-card that has been issued overhastily **will affect** not the home Member State itself, but the **host Member State**.

After completing the verification, the home Member State will forward the application to the host Member State, pursuant to Article 11 (2). According to Article 12 (1), the host Member State has two weeks to examine the information. If the host Member State does not respond within the specified deadline, it

will automatically be extended by two weeks. When examining the information, the authority of the host Member State is reliant on the coordination of office of the home Member State, since the former is not in direct contact with the applicant.

The proposed directive does not clearly explain what happens if the host Member State expresses concerns. The possibility of rejection by the host Member State has evidently not been provided for. The Commission, however, intends to set out the details of the procedure in the form of delegated acts.

The BAK is calling for the **tight deadline** for assessment of applications **to be extended** from one to four weeks to allow for extensive verification of the information received and the submitted accompanying documents. If queries arise, it must also be possible for the host Member State to **contact the applicant** directly. If reasonable doubts arise during examination of the application for a services e-card, the host Member State must be entitled to refuse to issue a services e-card. It is, after all, the host Member State that would be directly affected by the negative consequences of an over-hastily issued services e-card. The procedure should be not defined in the form of delegated acts. The rules should be established through the ordinary legislative procedure, because important social policy standards, in particular rules on employee protection and consumer protection, could be affected by the procedure.

If an application is made for a European services e-card for establishment in a host Member State, the host Member State conducts the procedure pursuant to Article 13. The host Member

State must examine the application within four weeks (or six weeks if the deadline is extended pursuant to Article 13 (2)).

As mentioned above, according to Article 9 of the proposed regulation, it is sufficient for the applicant to submit copies of documents. Certified documents are not required. It is unclear how authorities are supposed to assess documents if they are not available in their own official language. The general question of what language the host Member State and the applicant should communicate in should also be asked. That is not specified in the legislative acts.

In the context of Article 13 of the proposed directive, the BAK considers it a fundamental requirement for the documents to be available in a certified translation in the official language of the host Member State to ensure that the authority can examine the documents properly. It would be unreasonable for the authority to be required to have the documents translated or have to employ its own specialist staff with extensive (legal) linguistic skills to examine the documents. The costs of the cross-border activities of commercial entities would be passed on to the general public. Moreover, as mentioned above, the procedure should be defined not in the form of delegated acts, but through the ordinary legislative procedure.

Validity, updating and revocation of the services e-card

According to the proposal, the services e-card is to be valid until it is suspended, revoked or cancelled in connection with Articles 15 to 17 of the proposed directive (Article 7 (2)). Accordingly, the services e-card can only be suspended, revoked or cancelled by the issuing au-

thority. In practice, it is likely that months and, in many cases, even years would elapse between identification by the inspection authorities of breaches, such as serious cases of wage dumping, provision of false information to the authorities and pseudo self-employment, and declaration of the invalidity of the services e-card. Following an inspection, due process must be followed, which takes weeks or months. The card can only then be revoked by the issuing authority. In the meantime, the service provider can continue to do business despite the identified breaches. **That promotes unfair competition.**

It should also be taken into account that the operative lifetime of many small construction companies is just a few months and it would be **very easy** to **establish a new company** following the revocation of a services e-card. That makes clear how easy it would be for those engaging in such dubious schemes to play a cat-and-mouse game with the authorities.

It may be presumed that the issuing authority (in the home Member State) has very little interest in compliance with the legal provisions of another Member State. It can even be assumed that dishonest companies will have the services e-card issued in a country where the authorities are slowest or least co-operative.

Finally, there is **not even** the possibility for the services e-card to be **declared invalid** immediately in the case of **imminent risk**. The mechanism of alerts pursuant to Article 32 of the Services Directive, which is referred to in the last sentence of Article 17 (1), does not change that. That in itself does not enable any immediate action with respect to the service provider.

It should also be borne in mind that verification of whether the requirements are met is only performed upon application for the card. It is, however, conceivable, that at the time of acceptance of a public contract in Austria, the posting company no longer meets the conditions that resulted in issue of the card in the home Member State. The card therefore needs to be updated on an ongoing basis. Article 7 of the proposed directive merely states that the services e-card is to be valid for an indefinite term. As yet there is a **lack of information concerning updating of the services e-card**. That matter is to be detailed in the form of implementing acts. That approach is unsatisfactory. The planned updating measures should already be set out in the current legislative proposals.

The BAK **considers it essential** for the authorities of the host Member State to be permitted to intervene in the case of breaches of the law, including measures extending to immediate revocation of the services e-card. Rules on updating of the services e-card must be integrated into the present legislative proposals.

High administrative burden

In recent years, the European Commission has repeatedly committed itself to reducing bureaucracy. The present proposals on introduction of the services e-card, however, take precisely the opposite approach. According to Article 17 of the proposed regulation, a separate coordination authority should be established to perform administrative activities concerning the services e-card. Given the tight deadlines and the high requirements of the application procedure, the relevant offices will need to have a sufficient number of specialist staff to avoid

failure to comply with the deadlines. The collected data need to be regularly maintained to ensure that the information remains relevant and no data graveyard results. **Overall, considerable additional administrative costs can be expected.** It should be questioned whether every Member State will be in the position to bear those costs given the aim of reducing bureaucracy.

The **BAK considers** that the expected additional costs of the required administrative activities are completely disproportionate to the easing of formalities for companies. The BAK is critical of the fact that, according to the plans of the Commission, the costs of the cross-border activities of companies would be passed from service providers to the general public. While the Commission anticipates cost savings of “up to 50%” for companies, because they no longer have to fill out foreign-language forms and submit translated and certified documents, the public purse would have to bear the additional costs of creating new administrative structures. The BAK is calling for **public budgets not to be further burdened** by such proposals that evidently have not been properly considered.

Summary

In the view of the **BAK**, introduction of a European services e-card would not provide **any benefit** to the Member States. On the contrary, the services e-card actually **makes it easier for dishonest companies and pseudo self-employed persons to be active across borders.** **Austrian companies** and their **employees** could suffer **considerable damage** due to the resulting unfair competition. In addition, the **Member States** are likely to incur **extra costs** because of the need to establish new administrative structures.

The BAK therefore rejects the Commission’s proposal on the introduction of a European services e-card in its present form, and requests that its concerns be taken into consideration during work on the proposal at the national and EU level.

Footnotes

¹ Source: PACOLET, J. and DE WISPELAERE, F., Posting of workers: Report on A1 portable documents issued in 2012 and 2013, Network Statistics FMSSFE, European Commission, December 2014, pages 20 and 27, and Posting of workers in the European Union and EFTA countries: Report on A1 portable documents issued between 2010 and 2014, European Commission

² Cf. AMECO database of the European Commission, DG ECFIN, Chapter 4.3 on “Final demand”

³ Cf. Annual Construction Workers Leave and Severance Pay Fund, annual statistics for 2015

⁴ Cf. the position of the BAK on the directive on single-member private limited liability companies, http://www.akeuropa.eu/_includes/mods/akeu/docs/main_report_de_341.pdf, June 2014

⁵ For further details, see, for example Reindl-Krauskopf, Kirchmayr-Schliesselberger, Windisch-Graetz, Meiss-nitzer, final report on the research project titled “Sozialbetrug, auch im Zusammenhang mit Lohn- und Sozialdumping” (“Social fraud, including in connection with wage dumping and social dumping”), on behalf of the Federal Ministry of Labour, Social Affairs and Consumer Protection (BMASK), 15.03.2012, 62 et seq.

Should you have any further questions
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