



*European Economic and Social Committee*

**INT/815**  
**Services Package**

## **OPINION**

European Economic and Social Committee

- a) **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;**
- b) **Proposal for a Directive of the European Parliament and of the Council on a proportionality test before adoption of new regulation of professions;**
- c) **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]....;**
- d) **Proposal for a Regulation of the European Parliament and of the Council introducing a European services e-card and related administrative facilities**

[COM(2016) 821 final – 2016/0398 (COD)]

[COM(2016) 822 final – 2016/0404 (COD)]

[COM(2016) 823 final – 2016/0402 (COD)]

[COM(2016) 824 final – 2016/0403 (COD)]

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Consultation	<ul style="list-style-type: none"> <li>a) Council, 30/01/2017 European Parliament, 19/01/2017</li> <li>b) Council, 10/02/2017 European Parliament, 01/02/2017</li> <li>c) European Parliament, 01/02/2017 European Commission, 31/05/2017</li> <li>d) Council, 20/02/2017 European Parliament, 01/02/2017</li> </ul>
Legal basis	<ul style="list-style-type: none"> <li>a) Articles 53(1), 62 and 114 of the Treaty on the Functioning of the European Union</li> <li>b) Articles 46, 53(1) and 62 of the Treaty on the Functioning of the European Union</li> <li>c) Articles 53(1) and 62 of the Treaty on the Functioning of the European Union</li> <li>d) Article 114 of the Treaty on the Functioning of the European Union</li> </ul>
Section responsible	Section for the Single Market, Production and Consumption
Adopted in section	04/05/2017
Adopted at plenary	31/05/2017
Plenary session No	526
Outcome of vote (for/against/abstentions)	152/3/7

## 1. **Conclusions and recommendations**

- 1.1 The EESC appreciates and supports the efforts of the European Commission to unleash the full potential of the Single Market in regard to the services sector. However, the EESC would like to draw attention to the fact that – in the current political situation in many Member States – any kind of EU "interventions" relating to the strict remit of Member States' competencies can lead to political controversies. So even in cases where it is legally possible to apply stricter compliance enforcement measures it might not be sensitive in the serious political crisis. The EESC thus recommends following a positive approach enforcing best practices and consultation instead of enforcement measures wherever possible.
- 1.2 The EESC fully shares the Commission's aim of fostering dialogue between EU and the Member States at an early stage in any legislative process in order to prevent the adoption of legal acts on national level that hinder the European integration process. The EESC recommends to broaden this dialogue and not to focus on compliance with the Services Directive only but also with primary EU law, and in particular with the Charter of Fundamental Rights so as to guarantee a fair balance between workers' rights and consumers' protection on one side and economic freedoms on the other side. The composition of the body responsible for compliance control should be specified and would need to be composed in a way that ensures full compliance with the above-mentioned laws and principles.
  - 1.2.1 The EESC suggests choosing a positive approach and establishing the principle that only the positive outcome of a consultation procedure has an effect in form of the award of a "compliance guarantee" for the draft measure. For cases without a positive compliance evaluation the Commission's decision should not be binding and the already available post-adoption procedures should be applied.
- 1.3 The EESC welcomes the introduction of a detailed and thorough proportionality test available to the Member States and based on the case law of the EU Court of Justice. The EESC believes that this concept could improve national proportionality procedures. The EESC stresses that the proportionality check will require a close cooperation of Member States authorities and professional organisations.
  - 1.3.1 The EESC believes that an obligation to use the test before any new professional regulation is not the best approach for enforcing effective and engaged application of such a test. It thus recommends introducing the test only in the form of an offer of services for national regulators.
- 1.4 The EESC welcomes the effort to promote mobility of service providers and believes that research and meeting national requirements for service provision in another Member State can still be difficult for service providers. However, the approach of shifting the main responsibility for the procedure to the home Member State authorities is in conflict with the established host Member State principle whereby enterprises' and workers' activities are regulated by the law of the country in which they are performed.
  - 1.4.1 The EESC stresses that it is necessary to ensure that the country of origin principle is not introduced in any form. It thus underlines that the services e-card would introduce several

elements based on this principle by allowing service providers to deal exclusively with the home Member State as an intermediary and requiring host Member States to accept home Member State decisions on the authenticity of documents thereby limiting control mechanisms and thus harmonising the exchange of data based on the country of origin principle.

- 1.4.2 The EESC stresses that it has to be guaranteed that host Member States remain fully in charge of deciding what procedures to follow in order to register secondary establishment, including aspects of professional recognition. The fully electronic procedure combined with limited possibilities for host Member States to verify the information provided to the home Member State through the services e-card will make it easier to establish letterbox companies for reasons of tax evasion and social dumping.
- 1.4.3 In order to ensure that information contained in the service e-card is always up-to-date and to prevent the creation of a data graveyard, the EESC recommends reconsidering the once-only principle and introducing time limits on the validity of a services e-card.
- 1.4.4 The EESC also recommends removing restrictive revocation procedures, and in particular the necessity for a final decision by the courts, so that each Member State can conduct effective control on the economic activities performed on its territory.
- 1.4.5 The proposal sets tight deadlines for checking the validity of information provided by an applicant for a services e-card. This should be reconsidered to allow authorities as much time as necessary to process applications.
- 1.4.6 The legislative proposal should mention the need to introduce effective and dissuasive sanctions, both for the Member State and for the applicant company, for abuse of the European service e-card.
- 1.4.7 The EESC recommends stating more clearly that the Professional Qualifications Directive has preference over any aspects of professional recognition in regard to the new e-card. It has to be made explicitly clear that a services e-card cannot be issued for professionals practicing a profession that is regulated in the home and/or the host Member State, no matter if the profession is practiced in the form of self-employment or of a company.
- 1.4.8 In order to avoid abuse of the e-card by bogus self-employed persons, the EESC believes that the e-card should not be issued to natural persons that do not have an organised grouping of persons and of assets enabling the exercise of economic activity.
- 1.4.9 The EESC would like to raise doubts if the existing IMI system in its current form that is based on standardised multilingual questions/forms and manual data exchanges at the request of Member States and relies on optimal cooperation between Member States is up to date with current developments in electronic data sharing. The EESC therefore believes that the IMI system needs to be evaluated with a view to guaranteeing the best possible performance, compatibility and complementarity with existing national and/or social partner data exchange schemes including sectoral initiatives such as Social ID cards.

- 1.4.10 The proposal introduces a harmonised European prior notification system for posted workers based on a voluntary opt-in by Member States that would pave the way for a mandatory expansion at a later point, which is neither desirable nor compatible with the provisions of Directive 2014/67 EU<sup>1</sup>. Therefore the EESC suggests to reconsider the implementation of such a system.
- 1.4.11 Based on the raised concerns and on the fact that the mentioned guarantee requirements might not be attainable using the data exchange system as it stands, the EESC believes that the application of the e-card in the current form could lead to negative effects outlined in this opinion that might not be proportionate and outweigh its benefits. Therefore the EESC suggests consulting in more detail the configuration of this system with involved stakeholders and adjusting it so as to guarantee effective cooperation between Member States before continuing with the procedures. The EESC could be asked to start a discussion with the aim of finding an alternative solution for the services e-card in order to include already existing registration and qualification systems more effectively.
- 1.5 The EESC would like to stress that differences between regulatory concepts do not in themselves indicate a need for reform. It welcomes the new restrictiveness indicator designed by the European Commission as it permits a higher standard of analysis than the OECD PMR. However, it should be made explicitly clear, that the restrictiveness indicator is neutral without any statement on value or justification of regulations.
- 1.6 The EESC notes that the Services Package does not offer an approach for electronic services but believes that this is a new and emerging business field requiring special attention. Given that the potential for mobility is extremely high in this sector, the verification of qualifications and fulfilment of legal requirements and minimum quality requirements is especially difficult to estimate for consumers and might require special tools. An initiative focusing on the Internal Market for electronic services would therefore be welcome. New elements are needed on which to build personal trust without knowing the service provider in person.
- 1.7 With regard to the problem of mutual trust that is an important aspect of the discussion on the Services Package and the services e-card in particular, the EESC suggests evaluating existing systems for the registration of professionals and businesses and related accreditation and quality assurance mechanisms. As the Internal Market for services still raises considerable concerns within the Member States, the EESC would welcome an initiative to gather more information on the impacts of increased cross-border activities. This initiative would consider economic effects, but would chiefly focus on other issues such as employment, working conditions and consumer protection. If problems were identified objectively, they could be tackled in order to increase Member States' confidence in the long run. Without sufficient mutual trust, the Internal Market for services will never be implemented effectively.

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<sup>1</sup> [OJ L 159, 28.5.2014, p. 11.](#)

## 2. **Overview of proposed measures**

2.1 Services represent two thirds of the EU economy and account for 90% of newly created jobs. A package of measures focusing on making it easier for companies and professionals to provide services to a potential customer base of 500 million people in the EU shall boost the services sector in order to exploit its full potential.

### 2.2 Notification procedure for authorisation schemes and requirements related to services

2.2.1 Stricter requirements for the notification procedure for measures related to the Services Directives shall prevent Member States adopting discriminatory, unjustified and disproportionate national authorisation schemes or requirements related to services.

The procedure broadens the scope of the notification procedure under the Services Directive and defines it more clearly. It establishes a consultation period that provides for a dialogue between the notifying Member State, the European Commission and the other Member States on the compliance of a draft national measure with the Services Directive.

### 2.3 Proportionality test before adoption of new regulation of profession

2.3.1 Member States often have good reasons for professional regulation, based on the need to protect essential public interest objectives. It is for the Member State to assess on a case-by-case basis whether it is necessary to place restrictions on the access to, and conduct of, professional activities.

2.3.2 To prevent a negative impact on the provision of services and the mobility of professionals caused by uneven proportionality assessment of the regulation of professions across the EU, a proportionality test is introduced, to be used by Member States before adopting or amending national regulations on professions.

2.3.3 The directive sets out the main criteria which have to be considered for the assessment, such as for example the nature of the risks, the scope of the reserved activities, the link between qualification and activities, the economic impact of a measure, and so on.

2.3.4 The Treaties specify that regulation must be proportionate; however, beyond this choice as to whether and how to regulate a profession remains the competence of the Member States.

### 2.4 European services e-card

2.4.1 The e-card is a new, fully electronic procedure for self-employed people and companies in a number of areas such as the construction sector, cleaning and business services. It shall replace administrative formalities in different languages, since the service provider follows a procedure in the home country language and with the home country administration.

2.4.2 The e-card procedure shall rely on cooperation between home and host Member States, implemented via the existing Internal Market Information System (IMI). It shall not alter the

substance of the applicable rules on the posting of workers under Directives 96/71/EC<sup>2</sup> and 2014/67/EU<sup>3</sup>.

2.4.3 The European services e-card is similar to the European professional card (EPC). But while the EPC facilitates provision of services through the recognition of professional qualifications for natural persons as workers or self-employed service providers, the e-card addresses a much wider range of requirements.

## 2.5 Reform recommendations for regulation in professional services

2.5.1 As the regulation of professional services is a prerogative of the Member States there are different regulatory models in force. Irrespective of the model applicable in each country or region, the aim of the communication is to assist Member States with the removal of specific unjustified substantive restrictions, and to create a "virtuous" regulatory awareness on the part of Member States.

2.5.2 The reform recommendations address a broad range of requirements and provide a detailed analysis of the regulations which apply to architects, civil engineers, accountants, lawyers, patent agents, real estate agents and tourist guides. Not all of them are regarded as violation of Union law by the European Commission.

2.5.3 The European Commission has designed a new indicator on the restrictiveness of occupational regulation in order to support qualitative analysis of barriers. It covers the aspects of regulatory approach, qualification requirements, other entry requirements and exercise requirements.

## 3. General comments

3.1 The EESC appreciates and supports the efforts of the European Commission to unleash the full potential of the Single Market in regard to the services sector. The interlocking measures of the services package undoubtedly provide a solid approach towards this aim. However, the EESC would like draw attention to the fact that – in the serious political crisis in many Member States – any kind of EU "interventions" relating to the strict remit of Member States' competencies can lead to political controversies. Both legislative powers – which might seem to be affected by the new notification procedure and the obligatory proportionality test – and longstanding traditional systems of national professional regulation are often regarded as foundations of national systems and must therefore be treated as sensitive issues. Even if it is legally possible to apply stricter compliance enforcement measures it might not be sensitive in the current situation. A positive approach enforcing best practice or following a consultant approach could prove to be more effective.

3.1.1 The EESC underlines the need to pay due attention to the quality and safety of the services provided in the European Union.

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<sup>2</sup> [OJ L 18, 21.1.1997, p. 1.](#)

<sup>3</sup> [OJ L 159, 28.5.2014, p. 11.](#)

- 3.1.2 Moreover, the EESC wishes to flag up the particular sensitivity attached to the areas of health and patient protection. If the action taken by the Commission can be complementary to that of the Members States, their full responsibility must be respected, as well as the possibility of putting in place more stringent measures for the protection of patients, as provided for in Articles 168 of the TFEU.
- 3.2 Given that it is essential to ensure that the key stakeholders adhere to the new regulations of their profession, in order to ensure that the regulation is sound and effective the EESC proposes to consult stakeholders such as professional organisations, social partners, consumer protection institutions and civil society organisations on the practical application of the measures planned.
- 3.3 We must be aware that the introduction of new obligations and enforcement measures in this context could give the impression that Member States are generally seen as insufficiently capable of understanding the requirements of the Services Directive and the Professional Qualifications Directive, whereas in fact legislative tools such as proportionality tests are basic requirements of any national legislative procedure in the vast majority of Member States.
- 3.4 Many provisions in the Service Package risk blurring the distinction between freedom to provide services and freedom of establishment. The EESC thus stresses the importance of keeping this distinction – clearly defined by both the Services Directive and the Professional Qualifications Directive, as well as by the ECJ jurisprudence –when assessing the results of a proportionality test applied to new national regulations of professions and when implementing the regulation and directive on the European services e-card. Therefore, in order to guarantee fair competition between enterprises, discriminatory measures should be prohibited and working conditions established by laws and collective agreements in the host country as well as consumer rights and health and safety regulations should be respected.
- 3.5 The EESC notes that the growth of the service sector should not entail social dumping and fraud<sup>4</sup>. Therefore, the EESC underlines the lack of sufficient safeguards to keep workers' rights and consumer protection at a high level in all Member States and the risk of introducing the country of origin principle that would violate the fundamental rules according to which enterprises' and workers' activities are regulated by the law of the country where they are performed.
- 3.6 The EESC shares the opinion of stakeholders in the sectors targeted by the proposal for a European services e-card and questions the added value of the legislative initiative and its usefulness.
- 3.7 Unfortunately, the proposed internal market package does not address real life issues faced by some of the sectors targeted by the proposals. The EESC considers it important to reduce the potential for fraud and abuse of the internal market by disreputable firms in order to create a level playing field and mutual trust between Member States and different stakeholders.

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<sup>4</sup> [OJ C 125, 21.4.2017, p. 1.](#)



#### 4. **Specific comments**

##### 4.1 Notification procedure for authorisation schemes and requirements related to services

4.1.1 The EESC shares the Commission's aim of fostering dialogue between itself and the Member States at an early stage in the legislative process in order to prevent the adoption of standards that hinder the Single Market. It should even be considered to broaden this dialogue and not focus on compliance with the Services Directive only but also with primary EU law, and in particular with the Charter of Fundamental Rights of the European Union as this would guarantee a fair balance between workers' rights and consumers' protection on one side, and economic freedoms on the other side. The composition of the body responsible for compliance control should be clarified and would need to be composed in a way that ensures full compliance with the above-mentioned laws and principles as well as its representativeness and independence.

4.1.2 However, the EESC wishes to draw attention to the fact that the direct impact of the proposal on national legislative procedures appears considerable.

4.1.3 The proposal broadens the scope of the notification procedure regulated by the Services Directive and is also quite complex. Combined with a standstill period it thus hinders the ability of national legislators to undertake reforms within a short space of time, even in cases of small legislative amendments.

4.1.4 Enforcement measures such as the standstill period, the alert mechanism and the Commission's decision requiring the Member State to refrain from adopting the draft measure considerably slow down national legislative processes and become considerable restrictions on the national legislator's freedom. In order to guarantee a democratic legislative procedure, it is necessary to fully preserve the legislative power of the national Parliaments. The EESC very much doubts if it is proportionate – or sensitive - to interfere in national legislative procedures by introducing stricter enforcement measures even in matters covered by the subsidiarity principle when perfectly adequate post-adoption procedures are available.

4.1.5 Negative decisions regarding the compliance of draft national laws, regulations or administrative provisions should not be binding. The EESC suggests that only the positive outcome of a consultation procedure would have an effect in form of the award of a "compliance guarantee" for the draft measure. Such a positive approach would bring considerable benefits for Member States and would be a motivation to fully engage in the foreseen consultation procedure and to accept the related efforts. For cases without a positive compliance evaluation the already available post-adoption procedures should be applied.

4.1.6 The EESC underlines that, as established by the Services Directive, the notification procedure will not affect the right to negotiate, conclude and enforce collective agreements.

## 4.2 Proportionality test before adoption of new regulation of profession

4.2.1 The EESC welcomes the introduction of a detailed and thorough proportionality test available to the Member States and based on the case law of the Court of Justice of the European Union. It believes that this concept could improve national proportionality procedures.

4.2.2 The EESC stresses that the proportionality check which focuses on professional requirements will require close cooperation of Member State authorities and professional organisations with competencies for quality assurance of the regulated profession in question. It should also provide for the right of social partners and consumer protection organisations to be consulted in order to assure full compliance with workers' and consumers' rights. The structures of these organisations must remain strictly in the hands of the Member States.

4.2.3 However, the EESC doubts whether a directive implementing an obligation to use the test before any new professional regulation is the best way of enforcing this test. For this reason it would prefer the introduction of guidelines that would enable Member States to adapt the test to best fit into their legislative systems.

4.2.4 Many of the proportionality proposed criteria that need to be considered are quite broad and open, allowing for various answers depending on the chosen testing approach, testing persons/bodies and so on. As such, they are usable as supporting guidelines, but less so as an obligatory procedure with a considerable impact on the whole legislative process. Additionally, to avoid the impression that the mentioned criteria are regarded as obstacles in general it should be guaranteed that the list is neutral without any statement on value or justification of regulations. In any case, wherever possible the criteria should be as concrete and objective as possible in order to function as landmarks.

4.2.5 Proportionality tests are already basic requirements in any national legislative procedure in the vast majority of Member States. Harmonising proportionality criteria would interfere in national legislative competences and could lead to the creation of disproportionate obligations in some Member States and further distortions in the market.

4.2.6 The directive only addresses ex-ante regulation (such as title protection, compulsory registration, qualification requirements and so on), even though ex-post regulation (such as professional certification schemes, local regulations or building permissions) can impose significant restrictions in regard to service provision. For this reason an objective comparison of regulatory systems appears difficult.

4.2.7 The obligation to provide proportionality reports based on the rather complex – and in part even scientific – test system could considerably slow down or even hinder any reforms in regard to professional regulation.

4.2.8 Although the European Commission stresses that the choice as to whether and how to regulate professions remains in the Member States, this freedom is very theoretical. Should the obligatory test be negative, it will hardly be possible for the legislator to argue the compliance with the Services Directive anyway. In addition, the proposal has to be seen in connection with

that for a new notification procedure under the Services Directive because where professional regulations are concerned measures would often fall under the scope of both directives. The leeway of the legislator is virtually zero, since the notification obligation also requires the provision of information demonstrating compliance with the Services Directive, which would – for such overlapping measures – mean the results of the proportionality test.

4.2.8.1 The EESC therefore doubts that the negative impacts of implementing an obligation to apply a harmonised proportionality test would have in terms of restricting the national legislator – especially seen in the framework of the proposed stricter notification procedure – could be justified by its benefits. It believes that non-obligatory guidelines or a consultancy offer might lead to similar effects without the negative impacts.

#### 4.3 European services e-card

4.3.1 The EESC welcomes the effort to promote mobility of service providers and believes that researching and meeting national requirements for service provision in another Member State can still be difficult for service providers.

4.3.2 However, the approach of shifting the main responsibility for the procedure to the home Member State authorities is in conflict with the established host Member State principle. The service e-card should not prevent or hinder controls that the host Member State must conduct on economic activities performed in its territory. Therefore, the proposed services e-card shall not include elements of the country of origin principle. However, the EESC expresses its support for initiatives to increase confidence between Member States, inter alia by clear engagements on adequate and correct data exchange and control systems.

4.3.3 There is reason to believe that some features of the services e-card such as the "once only" principle for submitting information, its indefinite validity period, the obligation for the Member States to use information contained in the services e-card without the possibility of requesting proof of the validity of information provided at a later stage, as well as restrictive revocation procedures that may require a final decision by the courts could significantly endanger the control of compliance with national laws and the enforcement of workers' rights and consumers' rights.

4.3.4 The EESC also stresses the importance of ensuring that the use of the IMI system does not alter the substance of the applicable rules on the posting of workers under Directive 2014/67/EU and that the revision of the Posting of Workers Directive, currently examined by the European Parliament and the Council, clearly states the principle of "equal pay for equal work in the same place", respecting working conditions established by laws and collective agreements in the host Member State, health and safety and consumer and environmental protection.

4.3.5 It is unclear what the impact of the proposal for a European services e-card would be on existing sectoral social ID cards that are initiated by national authorities or social partners, and how they would interact with the proposed extension of the IMI system. Furthermore, there is evidence, including a Special Report of the European Court of Auditors, suggesting that the current IMI system has some shortcomings that need to be addressed, for example due to the

associated workload and the lack of clarity of the responses to requests.<sup>5</sup> The EESC therefore believes that the IMI system needs re-evaluation and is currently not yet ready to guarantee an optimal cooperation between Member States. Improvements to the IMI system should be made with a view to facilitating better controls in the country where the economic activity is carried out and complementarity with existing systems, and taking account of the possibilities of real-time data sharing (direct access to data banks) in addition to the manual exchange of data that is currently possible under the IMI system.

4.3.6 The EESC is concerned that the country of origin principle could be introduced "through the back door". The services e-card would introduce several elements based on the country-of-origin principle by allowing service providers to deal exclusively with the home Member State as an intermediary, requiring host Member States to accept home Member State decisions on the validity of documents and the veracity of their content, thereby limiting control mechanisms and thus harmonising the exchange of data based on the country-of-origin principle.

4.3.7 The fact that – as is proposed – a coordinating authority has to check national requirements in the shortest time possible seems particularly problematic. Such time limits should be reconsidered as the competent authority in charge of the services e-card has to coordinate each case with the other relevant competent authorities regarding different aspects of the legal requirements. Additionally it should be stated more clearly that the Professional Qualifications Directive has precedence for any aspects of professional recognition in regard to the new e-card.

4.3.8 The fully electronic procedure combined with limited possibilities for host Member States to verify the information provided to the home Member State through the services e-card will make it easier to establish letterbox companies for purposes of tax evasion and social dumping. The EESC therefore believes that the procedure needs further adjustments in order to guarantee that such developments can be prevented.

4.3.8.1 Moreover, the proposal does not clarify which elements should be assessed by the home State to declare that a service provider is legally established in the State. In particular, there is no reference to the factual elements listed by Directive 2014/67/EU for determining whether an undertaking genuinely performs substantial activities in the Member State.

4.3.9 Verification of identities and detailed examination of original documents are key to preventing disreputable and criminal undertakings from gaining entrance (a similar discussion blocked the SUP Directive<sup>6</sup>). Therefore, the host Member State must be fully in charge of the procedure to release a European service e-card.

4.3.9.1 Host Member States must be in charge of deciding what procedures to follow in order to register secondary establishments, including aspects of professional recognition. Involving home Member States as intermediaries in a procedure for establishing a branch will add an additional administrative burden to the authorities of home and host Member States and could

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<sup>5</sup> European Court of Auditors, 2016 special report, Has the Commission ensured effective implementation of the Services Directive? p. 25.

<sup>6</sup> COM(2014) 212 final and [OJ C 458, 19.12.2014, p. 19](#).

prevent detailed checks in the country where abuses, for instance of workers' and consumers' rights, would manifest.

- 4.3.10 Although the proposed regulation states that prior notification systems for posted workers are excluded from its scope, the proposal introduces a harmonised European prior notification system for posted workers based on a voluntary opt-in by Member States. This would pave the way for a mandatory expansion at a later point, which is neither desirable nor compatible with the provisions of Directive 2014/67 EU. In the course of the political discussions on Enforcement Directive 2014/67 it was clearly agreed that the host Member State was the competent national authority to set up enforcement tools (Article 9 Directive 2014/67).
- 4.3.11 The procedures for cancelling the services e-card can require a final court decision to take effect and provide service providers with several mechanisms for continuing their services in the meantime. This prevents effective ex-post controls by the host Member State, hindering the enforcement of workers' rights and existing legislation. Moreover, the legislative proposals include no dissuasive penalties – either for the Member State or for the applicant company – for abuse of the European services e-card.
- 4.3.12 The regulation entitles natural persons to apply for a services e-card. There is a significant risk in some sectors that the card will be abused, thereby facilitating bogus self-employment.
- 4.3.13 Given that whether a person qualifies as self-employed or an employee depends on how the activity is performed, the issuing home Member State authority cannot issue an e-card that declares that a person operates as self-employed according to the host Member State rules.
- 4.3.14 In some cases revocation of the services e-card for the self-employed requires a final decision by a court. This would prevent swift cancellation in cases of abuse and could enable bogus self-employed persons to continue their activities until a final court decision has been reached. This would create a major loophole that would frustrate efforts to combat undeclared work such as the European Platform tackling Undeclared Work.
- 4.3.15 The EESC would like to draw attention to the fact that at EU level a similar procedure of issuing PD A1 forms related to the posting of workers has already indicated potential pitfalls involved in relying exclusively on the home Member State to validate data on incoming service providers, especially in the case of bogus self-employment. Here, the Impact Assessment accompanying the proposal amending Directive 96/71/EC concerning the posting of workers suggests: "The accuracy of the information contained in PD A1 documents cannot be guaranteed due to the lack of formal controls by the authorities in the sending countries, among other things."<sup>7</sup>
- 4.3.16 The proposal introduces a harmonised tool for providing information about insurance coverage. However, since this will be linked to the services e-card, the information will only have to be provided once, which will make inspections and controls in the host Member States potentially less effective.

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SWD(2016) 52, p. 8.

4.3.16.1 Furthermore, insurers will be compelled to calculate premiums based on the track record in the home Member State, which would interfere with the right and responsibility of insurance companies to evaluate risks.

4.3.17 The Commission reserves a wide range of implementing powers to design the content and technical parameters of the services e-card, However, harmonisation in this area may limit the capacity of Member States to carry out efficient controls of incoming service providers on health and safety workers' rights.

#### 4.4 Reform recommendations for regulation in professional services

4.4.1 The EESC would like to stress that differences between regulatory concepts do not in themselves indicate a need for reform. Many regulations are based on traditions and experience. They are important to customer protection and must be preserved. The principle of "equivalence" is based on the fact that these different systems exist. The EESC takes into consideration the fact that national professional systems are based on long traditions. The research project shows quite different results in regard to the benefits of deregulation measures.

4.4.2 The EESC welcomes the new restrictiveness indicator as it permits a higher standard of analysis than the OECD PMR. There are still details worth reconsidering (e.g. listing Continuing Professional Development as a negative restriction seems inappropriate). The EESC would like to stress that in order to provide a non-discriminatory view of different regulatory systems it would be necessary to include not only ex-ante regulation (e.g. title protection, qualification requirements) but also ex-post regulation (e.g. requirements in building codes and planning permission). Additionally it should be made explicitly clear, that the restrictiveness indicator is neutral without any statement on value or justification of regulations.

Brussels, 31 May 2017

Georges DASSIS

The president of the European Economic and Social Committee

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