



## EMPLOYERS AND TRADE UNIONS CRITICISE FUNDAMENTALLY FLAWED EUROPEAN COMMISSION PROPOSALS FOR A EUROPEAN SERVICES E-CARD

*The undersigned European social partners of the cleaning, insurance and construction sectors voice fundamental concerns about the legislative proposals for a European services e-card and strongly question their real added-value to strengthen the European Single market.*

On 10 January 2017, the European Commission published a number of legislative initiatives as part of its Single Market Strategy "Upgrading the Single Market: more opportunities for people and business COM(2015) 550 final". They include a Regulation (COM(2016) 824 final) introducing a European services e-card and a Directive (COM(2016) 823 final) on the legal and operational framework of the European services e-card.

We support the principle of a well-functioning Single Market and the freedoms it provides. We are concerned, however, that the proposed services e-card will not contribute to this objective and would even have counter-productive effects. Moreover, it is questionable whether it will strengthen cross-border mobility of service providers or indeed contribute to the creation of a fair Single Market.

We also point out that our industries have not asked for a European services e-card to solve potential administrative problems or overcome legal barriers<sup>1</sup>, as suggested by the European Commission.

Indeed, against the background of the European Commission Communication "better regulation for better results"<sup>2</sup>, we would not consider the proposed service e-card as "a sound policy decision". For businesses and workers in our specific sectors, the services e-card – as it is proposed now – will only have a marginal impact on addressing real barriers while forcing Member States to create an extensive and costly administrative system in parallel with existing systems.

As targeted sectors (i.e. construction and cleaning), we have serious concerns that the services e-card might have the effect of facilitating bogus self-employment, undeclared work and fake posting. We fear that it might jeopardise and hinder legitimate national control measures in the host Member States, essential in our sectors, where genuine companies and workers' rights are regularly confronted with and threatened by fraudulent practices and social fraud. Therefore, we have repeatedly called for better framework conditions for enforcing existing rules and improving employment conditions.

In our view, the provisions on insurance would neither help service providers in our sectors who wish to work cross-border, nor host Member States that must implement the rules. They would also be very difficult

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<sup>1</sup> In three letters (dd. 9th June 2016, 21st November 2016 and 23rd December 2016) FIEC and EFBWW clearly asked the European Commission "to refrain from introducing a legislative proposal on this matter for the construction industry". In a letter dated 7<sup>th</sup> December 2016 the European social partners of the insurance industry asked "to exclude the insurance provisions ..."

<sup>2</sup> Communication "Better regulation for better results - An EU agenda", COM(2015) 215 final

and costly to comply with, while bringing negligible added value.

**Main concerns of the European social partners concerned:**

**1. Practical consequences**

The added-value of the information contained in the services e-card for the purpose of cross-border services remains unclear. In particular, the indefinite validity of the card increases the risk of abuse and there is no convincing or reliable real-time updating procedure.

Moreover, the legislative proposals include no dissuasive penalties for abuse of the services e-card, neither for the Member State nor for the applying company. In addition, no liability rules are set in case the recorded data does not correspond with reality.

**2. The use of IMI and procedural aspects**

However much it may be well intended, in order to prevent host Member States from delaying the procedure, the principle of “tacit approval” of home Member States’ information by the Host Member State creates, in practice, the risk of reintroducing the country-of-origin principle. The system is supposed to rely on the Internal Market Information System (IMI), which does not seem to be suitable for this purpose and is not able to provide reliable real-time data. The legislative proposals introduce complex administrative procedures between Home and Host Member States which, in practice, could be more burdensome than expected. Considering that host Member States have to recognise the services e-card once issued, there is a risk that this will make it harder to carry out ex-post checks on service providers in the host Member State.

**3. Vague broad implementing powers**

The legislative proposals give the European Commission considerable implementation powers through a large number of technical legislative acts, the content of which is unclear and precludes the whole picture of how the services e-card will operate in practice. We fear that the services e-card might impede the monitoring of working conditions and the supervision of service providers.

**4. Insurance**


It is unclear how either service providers or host Member States would benefit from the introduction of a standardised “proof of insurance” document to be provided to the host Member State authorities or from the requirement for insurers to provide a summary of their customers’ “track records” that host insurers must take into account. Implementing such documents would also create many legal, administrative and practical difficulties.

**5. Social issues and posting**

The services e-card risks promoting bogus self-employment as natural persons will also be allowed to apply for a card and there is no guarantee that the recorded data will match the reality. The proposed services e-card threatens the control measures that Member States may have introduced in the framework of the “Enforcement of the Posting of Workers” Directive (Art. 9 Dir 2013/67)



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