



31.3.2017

NATIONAL PARLIAMENT REASONED OPINION ON SUBSIDIARITY

Subject: Reasoned opinion of the EU Committee of the Bundesrat of the Republic of Austria on the proposal for a directive of the European Parliament and of the Council on the legal and operational framework of the European services e-card introduced by Regulation ... [ESC Regulation]
(COM(2016)0823 – C8-0013/2017 – 2016/0402(COD))

Under Article 6 of the Protocol (No 2) on the application of the principles of subsidiarity and proportionality, national parliaments may, within eight weeks of the date of transmission of a draft legislative act, send the Presidents of the European Parliament, the Council and the Commission a reasoned opinion stating why they consider that the draft in question does not comply with the principle of subsidiarity.

The EU Committee of the Bundesrat of the Republic of Austria has sent the attached reasoned opinion on the aforementioned proposal for a directive.

Under Parliament's Rules of Procedure the Committee on Legal Affairs is responsible for matters relating to compliance with the subsidiarity principle.

REASONED OPINION

of the EU Committee of the Bundesrat of the Republic of Austria drawn up pursuant to Article 23(g)(1) of the Constitution, in conjunction with Article 6 of the Protocol (No 2) on the application of the principles of subsidiarity and proportionality of 15 March 2017

COM(2016) 823 final

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] (text with EEA relevance)

A. Reasoned Opinion

The proposal under consideration is incompatible with the subsidiarity principle.

B. Justification

The purpose of this proposal for a directive is to introduce a European services e-card and an operational framework for its use by service providers throughout the EU. According to the Commission, the introduction of the European services e-card will boost cross-border activities in the services sector, by doing away with red tape, and foster competition.

In the Bundesrat's view, the proposal is not compatible with the principles of subsidiarity and proportionality. As regards proportionality in particular, the Bundesrat has serious reservations:

The aim of the European services e-card is to reduce administrative complexity for service providers wishing to expand their activities to other Member States. The additional benefits which cross-border service providers expect the European services e-card to bring are dubious and out of proportion to the administrative burden which the introduction of the e-card will impose on the Member States. Against this background, and in the light of the limited added value the new instrument will generate, the proposal to introduce a European services e-card cannot be seen as proportionate.

The existing Internal Market Information System (IMI) will be used to implement the directive. The IMI would have to be revised so that it can support the procedure for applying for and issuing the European services e-card and a number of additional functions would have to be performed. These would be carried out by the competent national authorities, through a coordinating body to be set up; each national authority would liaise with its counterparts in the other Member States, thereby improving administrative cooperation.

This is likely to impose a considerable additional burden on national authorities. Issuing a European services e-card would involve a range of complex and detailed procedures to be carried out in accordance with a tight timetable. When set against the limited value of the European services e-card, the complex procedure, and the strict timetable for completing it, are not proportionate.

In the context of compliance with the principle of proportionality, the role of the coordinating body should also be examined. The question is whether setting up such a body would be consistent with the ‘point of single contact’ approach followed under the Services Directive and whether unnecessary parallel structures would be created.

In addition to the issue of compatibility with the principle of proportionality, the Bundesrat would like to address the following substantive aspects of the proposal for a directive, which, in its current form, it regards as problematical:

- The broad scope of the directive should be reconsidered, in particular the issue of whether it should cover the construction sector, in which abuses of the rules are rife. Steps must therefore be taken to ensure that the e-card is not misused. Domestic firms, workers and consumers must not be placed at a disadvantage.
- Better cross-border cooperation between national authorities would be essential. This would include the further development of the IMI, cross-border provision of relevant documents and the enforcement of decisions taken by the competent authorities.
- Article 4 stipulates that the European services e-card constitutes proof that its holder is established in the territory of his home Member State and is entitled, in that territory, to provide the service activities covered by the e-card. The Bundesrat points out that in the event of a check the e-card could be used as false proof of self-employment.
- In the context of Article 5, steps must be taken to ensure that the posting of workers is excluded from the scope of the ban on prior notification, in order to rule out misinterpretations.
- The Federal Council proposes that Article 6(iii) of the proposal for a directive should be deleted, because it bans Member States from requesting information about registration with mandatory social insurance schemes. In this context it must be made clear that this provision concerns only proof that self-employed persons have social insurance, not that posted workers have social insurance in their home country; the possibility of bogus posting should be ruled out.
- According to Article 7, natural persons can also apply for a European services e-card. In many sectors of the EU economy, the proportion of self-employed persons and one-person enterprises is high. Steps should therefore be taken to ensure that the e-card is not misused to provide services in another Member State on the basis of bogus self-employment.
- As regards the application procedure for an e-card, as set out in Article 11 of the proposal for a directive, the Bundesrat calls for the period for processing applications to be extended to four weeks. Only in this way can comprehensive assessment of the information and background documents submitted be guaranteed.
- Should justified doubts arise when an application for European services e-card is assessed, it must be possible for the host Member State to refuse to issue an e-card (Article 12 of the proposal for a directive).
- As regards Articles 15, 16 and 17 of the proposal for a directive, the Bundesrat points out

that it must be possible for the competent authority in the host Member State to intervene in the event of a breach of the law. That intervention should take the form of measures up to and including the immediate withdrawal of the e-card. Provisions on the updating of the e-card must be incorporated into the current legislative proposal.

The Bundesrat sees insufficient added value in the introduction of a European services e-card in the form currently proposed.