

27 April 2017

COMMENTS ON THE 2017 “SERVICES PACKAGE”

INCLUDING THE PROPOSALS FOR A EUROPEAN SERVICES E-CARD

INTRODUCTION

Following up on the October 2015 Single Market Strategy and the aim to make the single market for services work better, on 10 January 2017, the European Commission adopted a *Services Package* entitled: “**A European services economy that works for Europeans**”.

The package contains the following four main elements:

1. A proposal for a Directive for an [improved notification procedure](#) for (new) requirements that Member States impose on service providers
2. A proposal for a Regulation (set-up and content) and Directive (governance and the operational framework) for a [European services e-card](#)
3. A [proportionality test for regulated professions](#)
4. [Guidance](#) towards reforming and reducing the number of regulated professions

This position paper constitutes BusinessEurope’s comments on all elements of the package, with a focus on the European services e-card proposals.

GENERAL COMMENTS ON THE SERVICES PACKAGE

1. **The Services Package is timely and welcome.** The free movement of services is still underdeveloped in the single market, while this is the area where great growth potential can be unleashed. Not only linked to better implementation and stronger enforcement of existing EU legislation - which can add roughly 1.5% to EU GDP - but also linked to the development of digital services, servicification and the booming of e-commerce.
2. **Businesses still experience many administrative and regulatory barriers** when providing services in another Member State. In fact, while services account for over 70% of EU GDP and employment, cross-border services only make up 5% of EU GDP compared to about 20% for goods. However, in these figures we do not include establishment, where statistics are often lacking and which counts for a large chunk of internationalisation and service market integration. Still, it does show that on a temporary basis services move less freely than goods.
3. Europe needs in particular more **competitive business services** as these are crucial to support European manufacturing and industry, and fundamental for the competitiveness of the EU. Currently, services account for about 40% of the value of a final manufacturing product in the EU. Making services more competitive can be



done by ensuring that services can move more freely throughout the single market. It will enhance competition and spur innovation, which will lead to an overall increase in quality and more choice for consumers and businesses at better prices, to the benefit of the EU economy as a whole.

4. In this context, **BusinessEurope supports the novel approach** that the Commission has taken with some of the proposals included in the Services Package such as the proposal for an improved notification procedure and a proportionality test for regulated professions to move beyond the classic line of ensuring better implementation of the 2006 Services Directive. Although high quality implementation and correct application of existing legislation remains of fundamental importance, BusinessEurope welcomes pragmatic ideas and bold methods to further integrate national services markets, boost cross-border service provision and remove remaining administrative, regulatory and other barriers to the free movement of services in the single market and establishment abroad, as well as to avoid the introduction of new obstacles.
5. **However, BusinessEurope has certain reservations about the impact of a European services e-card (ESC)**, its added value and some of its practical implications. Moreover, we have some concerns with specific elements of the proposals. In general, we believe the ESC proposals need to be improved to make them more precise, for example regarding the issuance of the ESC and the information to be included in the e-card. In this debate, it should be clearer which precise formalities and administrative procedures could be “skipped” with the ESC that have already been fulfilled or complied with in the home Member State. The Commission has to play a leading role here. The responsibilities and procedures for updating the information contained in the ESC also need to be clarified. It remains of fundamental importance throughout the legislative process that the EU institutions listen very carefully to the concerns and views of the sectors and companies specifically targeted by the ESC proposals, namely the construction and business services sectors. We would like to point out that the stakeholders of some of these sectors (i.e. construction, but not only) are critical towards the ESC as proposed. Moreover, many key business stakeholders report that their views were not properly taken on board during the consultation process and the drafting of these proposals.
6. **It is fundamental that the ESC remains voluntary** and does not de facto create an extra “layer” of bureaucracy in addition to existing EU, national, regional, local and sector-specific regulation on services. It must never become mandatory in such a way that authorities in the Member States require an ESC from companies as proof of their good standing. Moreover, to add real value for companies, the e-card must save time and costs, and really make life easier for companies. The card should allow businesses to easily complete a critical mass of administrative procedures and formalities online. The e-card should also create more transparency regarding the differences in national procedures, which must lead to the removal of excessive national requirements and the sharing of best practices. In sum, the benefits of the card must be very clear to ensure its take-up, **otherwise this novel approach will not work** and the anticipated improvement of the single market will not materialise.
7. **Address also regulatory barriers:** While we fully appreciate the sensitivities of the current political climate, BusinessEurope regrets that the focus of the Services



Package is very much on administrative simplification, rather than on addressing persistent regulatory and structural obstacles that businesses of all sizes continue to struggle with when attempting to provide a service in another Member State. **Regulatory divergence is the area where companies experience the most difficulties.** For example, diverse legal form and shareholding requirements, extra authorisation requirements or additional national regulation greatly complicate doing business in another Member State. In this context, we urge the European institutions to commit to addressing the lingering *regulatory* barriers that companies, and in particular SMEs and microenterprises continue to face in the single market and avoid the introduction of new ones. While understanding the political sensitivities that may exist, BusinessEurope strongly calls for a concrete **“European agenda for services”**, which also specifically addresses the apparent but persistent regulatory barriers in the single market for services to the benefit of the EU as a whole.

8. **An improved notification procedure:** Linked to the regulatory framework, we strongly support the proposal to improve the current notification procedure for services. Extra national requirements to be imposed on service providers should always be notified on time and should only be introduced if proportionate and in line with EU legislation and single market principles. Indeed, in the absence of measures to tackle regulatory obstacles, it may well be that the renewed notification procedure best supports the package’s overall goal of improving the single market for services.
9. **Guidance and proportionality test for regulated professions:** We acknowledge the focus on regulatory barriers in the guidance and the proportionality test for regulated professions, but we believe the focus should and could have been stronger in the package as a whole.
10. **The importance of better implementation, correct application and stronger enforcement of existing rules and regulation:** In parallel, the Commission must stick to its *“zero tolerance policy”* by more resolutely launching targeted infringement procedures in cases of non-compliance with the 2006 Services Directive and other relevant EU legislation ensuring the freedom to provide services and freedom of establishment. The Commission should also reintroduce its formal regular reporting on services in the form of *“information notes”* as was carried out in 2009 and 2010 to the Competitiveness Council, as well as to the European Parliament to raise awareness of remaining barriers, to put pressure on national governments to improve and help to create the necessary political momentum to address remaining obstacles. The European Parliament must take stock of progress made through more precise benchmarking, and detailed reporting about which Member States still need to remove barriers in order to put pressure on the Member States that are lagging behind. This EP IMCO Committee started with monthly *“legislative scrutiny time”* sessions for instance on public procurement where MEPs focused on how EU legislation was implemented and works in practice. These sessions are not so frequent and we urge the EP IMCO Committee to reintroduce them and have a regular one on services. In the above context, BusinessEurope was pleased to see that on 25 February 2016 and 17 November 2016, the Commission announced to take further steps in its infringement procedures for lack of compliance with the Services Directive against a number of Member States on the grounds that their national rules include excessive and unjustified obstacles in the area of professional services. BusinessEurope fully supports and encourages such enforcement actions.

THE SERVICES PACKAGE PROPOSALS – SPECIFIC COMMENTS

1) The proposal for an improved notification procedure for services

11. BusinessEurope strongly supports the proposal to improve the current notification procedure for services.
12. Today, extra national requirements in the Member States complicate and hinder market access for service providers from another Member State. As such, these additional formalities, requirements and often burdensome extra procedures create significant obstacles for companies wishing to provide a service in another Member State. The existing notification procedure for additional national requirements laid down in the 2006 Services Directive has proven ineffective, with a scattered and unbalanced landscape of notifications from various Member States. The current procedure is not a proper safeguard against extra national requirements conflicting with the Services Directive and the EU Treaties. About 40% of the structured dialogues that the Commission had to launch with the Member States in 2015 to ensure compliance with the Services Directive concerned such newly introduced national measures.
13. In this context, the Commission proposal for a renewed, stricter notification procedure is very positive. The proposal rightly stipulates that Member States must always notify new national requirements they impose on service providers before the legislation takes effect. The new notification procedure for Member States must be transparent and really ensure that additional national measures and extra requirements are justified and proportionate, while at the same time respecting the principle of subsidiarity.
14. BusinessEurope supports the proposal for a “*standstill period*” of three months (Dir. Article 5) following a notification, in which time the Commission as well as the Member States are able to comment on a notified proposal for new requirements in a Member State, before the regulation in question can take effect. These extra requirements can only be kept if they are proportionate and in line with EU legislation and single market principles to reach a certain (public interest) goal.
15. At the same time, it must be ensured that a stricter and revised notification procedure respects national law-making procedures and should not lead to extra complexity and unnecessary delays in these procedures. Moreover, a well-functioning notification procedure will prevent lengthy infringement procedures that take both time and resources of the Commission and Member States and prevent damage to consumers, citizens and businesses.
16. BusinessEurope also supports the suggested element of transparency that gives stakeholders, such as business organisations, consumer organisations and others equal access to see and alert their respective Member State or the Commission of possible problems with a notified proposal as laid down in the Dir. Article 8. This should, in sum, provide the Commission, the Member States and relevant stakeholders adequate opportunity to raise objections against special national



requirements before they become barriers to cross-border trade in services and before they discourage service providers from seeking to expand their business to other Member States.

17. Scope: BusinessEurope strongly supports that the new notification procedure includes national requirements that go beyond the current scope of the notification obligations laid down in the 2006 Services Directive. The existing obligation to notify merely covers national requirements of an “establishment nature” (Article 15, 2) and is rightly extended to cover a wider set of authorisation schemes and requirements. It is essential that under the revised notification procedure, national requirements concerning the nature, content or performance of the service in question are also subject to the notification obligation. An area where this could prove particularly important is for data location requirements – i.e. when national measures directly or indirectly require a service provider (e.g. cloud services) to keep data within a certain territory (direct barrier) or to comply with certain requirements that have a result that data can only be stored in a certain location (e.g. use of national technical standards or mandatory use of a specific infrastructure). Often these requirements come as a consequence of the incorrect assumption that data is safer if stored in a certain location or that a formal localisation requirement is the only way to achieve a certain objective (e.g. access by national authorities). The free flow of data is important and at the core of many of the services activities covered by the 2006 Services Directive and the new Directive for an enhanced notification procedure, in particular in the area of business services.

18. The new insights in the single market and existing flaws through the collected notifications should put the Commission in a better position to enforce EU legislation and provide opportunities to issue Commission guidance to refrain from “gold-plating” and to avoid the risk of introducing new barriers to the free movement of services.

2) The European services e-card (ESC)

19. For its success, it is essential that there is real added value for a company to ask for a ESC, otherwise the card will not be used, as it is rightly voluntary. This means that the gains in terms of time (and therefore cost) savings need to be substantial and administrative processes need to be easier and shorter, also considering that once requested and issued, there are obligations on companies to constantly update the information contained in the electronic services card. In this debate, it should be made very clear which precise formalities and administrative procedures could be “skipped” with the ESC that have already been fulfilled or complied with in the home Member State. The Commission has the important task to provide stakeholders with this information and concrete examples of the envisaged benefits, which so far have only been provided in a scattered manner. If the ESC does not offer sufficient benefits to ask for one, the anticipated boost for cross-border service provision will not materialise.

20. The benefits of the ESC depend on how much the Regulation and Directive can be improved and made more specific to offer companies real added value and ensure proper take-up. Generally, the Regulation and Directive need to be made more

precise for example regarding the issuance of the card and the information to be included, but also in terms of clarifying the responsibilities for updating the information contained in the e-card. Another challenge is that the validity and authentic nature of the information provided to issue the ESC has to be guaranteed, also to avoid any form of fraud. This is key to foster trust between the different national authorities involved.

21. It is important to note that the purpose of the ESC is not to grant a service provider additional rights or to ease the conditions as such for providing a service or establishment in another Member State. Such rights are already granted by the Treaty on the Functioning of the European Union and cemented by the 2006 Services Directive. Service providers can exercise those rights today, provided that they are able to deal with the practical obstacles of bureaucracy and regulatory requirements in Member States. Accordingly, the sole purpose of the ESC is to better facilitate establishment and the provision of services throughout the single market.
22. Complicated and differing administrative procedures and formalities are still an obstacle to cross-border trade, in particular for SMEs, microenterprises and start-ups, and the ESC could, in principle, help and support businesses in going abroad. However, administrative procedures do not pose as great a disincentive as regulatory barriers. The ESC could facilitate and support companies when going abroad, but diverse national regulation and regulatory obstacles such as varying legal form, multi-disciplinary restrictions, and shareholding requirements, different VAT regimes and additional or different national regulation still pose enormous burdens for companies wishing to go abroad. Furthermore, the ESC does not support mutual recognition of country's rules and regulation, it merely facilitates the administrative part of doing business abroad, nor does it guarantee market access.
23. The ESC represents a new approach compared to the Points of Single Contact (PSCs) that were established under the 2006 Services Directive, where service providers - in theory at least - can use a foreign PSC to find information and complete necessary online procedures. With the ESC, companies could now go to their home Member State authorities. This may facilitate operations, especially for smaller companies, where they can ask for a card in their own language and deal with their own Member State authorities to assist them to operate across borders. Trust is essential for companies that wish to do business in another Member State. This is an important positive element of the ESC concept.
24. While the ESC is rightly voluntary, the PSCs are still highly relevant in providing information to businesses and allow them to already complete certain administrative procedures online. Yet, in practice we see that many PSC portals are not functioning well and that they greatly differ in terms of quality and performance. In this context, BusinessEurope strongly supports the Commission's intention to upgrade the PSCs through the Digital Single Gateway proposal now expected to feature in the Commission "*Compliance Package*" on 2 May 2017.
25. Another positive element of the ESC concept is that the issuance procedure requires the home Member State and the host Member State to cooperate. This will create transparency in Member States about regulations, procedures and barriers in other

countries and hopefully raise awareness of best practices and perhaps even more mutual recognition and/or removal of burdensome and disproportionate regulation.

26. BusinessEurope supports the “*once only principle*”, where the ESC would eliminate the need for multiple requests for information and documentation already provided to the home Member State. Moreover, Dir. Article 6 includes that the once only principle includes information already provided for the e-card when it concerns the award of a public contract, a design contest or a concession, formation of subsidiaries or registration of branches under company law, or registration with mandatory insurance schemes. This is positive as it could save a company time and therefore costs.
27. It is positive that the ESC is meant to be fully electronic and that the provision of the information, issuing and updating can be done online and the internal communication via the Internal Market Information (IMI) system. We stress again that for the success of the ESC it is essential that the IMI System functions properly and that sufficient resources are allocated to achieve this.
28. It is helpful that the ESC would automatically solve many translation / language issues and fosters more mutual recognition through electronically standardised and harmonised forms and formats, provided it takes into account the specificities of the targeted sectors. This saves translation costs of for instance certificates.
29. Governance: Further reflection is required when it comes to how the ESC relates to and in some cases complements the [Points of Single Contact](#) (PSCs) that were set up under the 2006 Services Directive, which were also meant to streamline administrative procedures and save time and costs for companies and assisting them to operate across borders. In particular, as the PSCs should be transformed into fully-fledged online business portals (for goods and services) under the new Single Digital Gateway initiative now expected to feature in the Commission “*Compliance Package*” on 2 May 2017, offering companies all the information and assistance they need to operate across borders and on the home market, including offering the possibility to complete procedures entirely online. In essence, the covered scope of the PSCs (and now the expected Single Digital Gateway) is much broader than the services activities that would be covered by the ESC. It is absolutely essential to ensure seamless coordination and a strategic approach in terms of different Commission work-streams such as the work on the Single Digital Gateway and the ESC. Coordination and the end of the “silo-mentality” are both of fundamental importance to truly improve the functioning of the single market. Further clarification is also needed as to how the ESC relates to existing initiatives such as the European Professional Card, the VAT mini One Stop Shop and the European Single Procurement Document (ESPD). It is important that at the EU level, various initiatives are launched and undertaken in parallel and in a coordinated fashion. However, resources must be used for measures that have the greatest potential to reduce administrative burden and remove persistent and new regulatory barriers for businesses.

Scope and application of the ESC

30. For the impact of the proposals, we welcome that the ESC covers both temporary cross-border provision and establishment abroad.
31. At the moment, the ESC covers the construction sector and so-called “business services”, so all services provided by any organisation to other public, private or third sectors organisations. Business services (12,8% of EU GDP) and construction (5,3% of EU GDP) represent a large part of the European economy. Together these service activities cover about 18% of EU GDP and 20% of total employment, representing 45 million jobs. The two sectors cover about 40% of all activities under the Services Directive. In addition, more than 9 million companies are active in these sectors with 1 million start-ups per year.¹
32. Companies within the construction sector deliver a very wide variety of services, and this is even more the case for business services. Generally, business services range from technical services such as engineering, architecture and IT, to other professional services such as legal services, employment services and facility management.
33. It remains of fundamental importance throughout the legislative process that the EU institutions listen very carefully to the concerns and views of the sectors and companies specifically targeted by the ESC proposals, namely the construction and business services sectors. We would like to point out that the stakeholders of some of these sectors (i.e. construction, but not only) are critical towards the ESC as proposed. Moreover, many key business stakeholders report that their views were not properly taken on board during the consultation process and the drafting of the ESC proposals.
34. When implemented and up and running and the ESC turns out to be a success, BusinessEurope would welcome further consideration of the extension of the scope of the ESC to other services sectors, if the companies in these sectors indeed indicate that they wish to be covered and have the possibility to make use of the card. When assessing its scope and the covered sectors during such a review, it should also be equally considered to exclude certain service activities if the added-value of the card is not proven or considered suitable for a specific service.
35. It is positive that the Reg. Article 2 clearly indicates the areas not covered by the ESC referring to the 2006 Services Directive. In particular, through this reference it highlights that the ESC does not affect labour law, that is any legal or contractual provision concerning employment conditions, working conditions, including health and safety at work and the relationship between employers and workers, which Member States apply in accordance with national law which respects Community law. Equally, according to Reg. Article 2, it does not affect the social security legislation of the Member States.
36. Moreover, Reg. Article 2 (3) states specifically that the ESC Regulation shall be without prejudice to the rights of workers, the obligations of service providers and

¹ Source: European Commission, Impact Assessment for the ESC Regulation, 10 January 2017

related controls in Member States laid down in Directives 96/71/EC (“Posting of Workers Directive”) and 2014/67/EU (“Enforcement Directive”). BusinessEurope supports this approach.

37. The Reg. Article 4 (1) states that a service provider must use a standard form when applying for an ESC. Procedural steps and requirements in the Member States will determine the standard form as stipulated in the Reg. Article 4 (4). Since procedural steps and requirements vary from Member State to Member State, it appears - although not explicitly - that the standard form will vary from country to country. Consequently, it is unclear at this point what information the service provider must submit and what information the ESC will eventually contain about the service provider. The ESC proposals need to be clear, also considering that stakeholders are to be the “users” of the ESC they need to know precisely what the ESC would entail and not leave it to the technical level without a say on what is included and what is not.
38. We strongly oppose that the Commission chose to leave further specification of the categories of information that a service provider must submit and the categories of documents that can be supporting evidence to delegated acts to specify. This should be specified in the Regulation itself.
39. The Reg. Article 4 requires the identification of the service activity. The question is how detailed this should be, also considering that the service activity with the company can change over time. At the same time, the ESC is valid indefinitely. It is also unclear what happens in the case that a company provides a variety of (linked) services. It has to be clarified if the ESC can cover several (related) service activities or if the provider needs to ask for a different ESC for each of its service activities.

Issuing of the ESC

40. It is positive that the host Member States as part of the issuing process must inform the home Member State - and thereby also the applicant - precisely which preconditions and formalities must be complied with by the services provider before being able to offer its services in that other Member State. Since it is imperative that the ESC adds value for service providers, this obligation (Dir. Article 12 (1) for host Member States should encompass all requirements that the applicant must comply with in that country. Provided that the applicant is informed of any requirements applicable, it would truly relieve service providers of the administrative burden they face today where information about applicable rules in the host Member State can be difficult to find. Such an obligation would not only create transparency, which could lead to more convergence in the single market, it would also act to reconfirm that a company complies with all foreign regulation and requirements before operating in the host Member State.
41. It is positive that the Commission will have access to decisions where a host Member State objects to issue the ESC for temporary services provision as stipulated in the Dir. Article 12 (1) paragraph 3. This will provide more transparency and help the Commission identify where national requirements cause flaws in the single market.

Additionally, transparency will hopefully discourage Member States from objecting to the issuing of the ESC, unless for valid reasons.

42. BusinessEurope supports the “*once only principle*” stipulated in Dir. Article 5 (1) and (2). It specifies that a host Member State shall not impose any prior authorisation scheme, prior notification scheme (or an establishment requirement) on the holder of a previously issued ESC for temporary cross-border provision/establishment as a condition for service provision of services in its territory, including through a branch, agency or office located in its territory. It is positive that the once only principle also applies with respect to the award of a public contract, a design contest or a concession; formation of subsidiaries or registration of branches under company law; or, registration with mandatory insurance schemes (Dir. Article 6). This would save the holder of a ESC time and therefore costs.
43. Once the ESC is issued, the host Member State can rightly not impose prior authorisation schemes on the card holder. However, except those mentioned in the Directive Article 5 (4). It has to be clarified how this affects the Member States’ possibilities of adopting new legislation and new authorisation schemes. It is unclear how a service provider would be affected in this case.
44. BusinessEurope supports that once issued, unless the host Member State has good reasons to revoke or suspend the card, the ESC is valid for the lifetime of the company, for that specific service (Dir. Article 7).

ESC - timeframes

45. BusinessEurope generally supports the set timeframes and communication deadlines for coordinating authorities (Dir. Articles 11, 12 and 13) – *see table I below*. It is fully justified that when procedures are correctly followed, tacit approval comes into effect to ensure that companies do not wait needlessly until they have the ESC to facilitate cross-border service provision and establishment.

Table I - specific comments on the timeframes

- *As specified in the Dir. Article 11 the coordinating authority of the home Member State shall within one week of having received an application for a ESC assess it and determine whether more information is required OR “communicate” without delay the application to the coordinating authority of the host Member State, with information to the applicant. This set timeframe is good and it is positive that it is specifically stated that without delay more information is requested or the host Member State is informed with the company being aware of the process. However, we would like to change the word “communicate” and make it clearer by stating “transferred”.*



- We support Article 12 (1) of the Dir. which states that regarding temporary cross-border provision within two weeks from receiving the application the coordinating authority of the host Member State shall examine it and inform the applicant and the home Member State of any requirements applicable to temporary cross-border provisions under the legislation of the host Member State with the exception of those referred to in Article 5(4).
- In terms of process, for temporary cross-border service provision, it is welcome that if the host Member State does not respect the 2-week timeframe, that the time limit will be automatically extended with two additional weeks and that an alert is issued that the deadline has passed (Dir. Article 12(2)).
- When it concerns establishment, the coordinating authority of the host Member State shall, within four weeks from receiving the application, identify which, if any, prior authorisation scheme or prior notification scheme is applicable, in compliance with EU law, to such establishment. Yet, Dir. Article 13(1) has to be improved to be clearer in terms of immediately informing the applicant and home Member State of the schemes and conditions to be fulfilled. It would be better to state that the host Member State shall inform the applicant and home Member State of schemes and conditions “no later than 4 weeks from receiving the application”.
- Also for establishment, it is very positive there is an obligation (Dir. Article 13) on the host Member State to identify the conditions which the applicant is required to comply with. The host Member State has to justify why the application of such a prior authorisation scheme or prior notification scheme is necessary and proportionate for the pursuance of overriding reasons of public interest.
- Also for establishment, it is welcome that if the host Member State does not respect the 4-week timeframe, the time limit will be automatically extended with two additional weeks and an alert is issued that the deadline has passed (Directive Article 13(2)).
- Article 13(4) specifies that the coordinating authority of the host Member State shall assess, within one week upon receipt of proof of compliance with the conditions identified, whether to issue the European services e-card or reject the application for the ESC. If the assessment is positive, the host Member State has to issue the ESC, without delay. These clear timeframes - also concerning intention to reject (1 week) - are important for clarity and the attractiveness of deciding to ask for a ESC.

46. Tacit approval: It is positive that Directive Article 13 (6) states that upon expiration if the periods for its reaction, the ESC shall have been deemed to have been issued by the host Member State. However, it is unclear how the actual card will be received in this case:
- The Dir. Article 12 and 12(3) concern the situation for temporary cross-border service provision where both the host and home Member State are inactive and do not object (host) and do not react to this (home) when an ESC is being requested. It appears that inactivity on the side of both home and host means that the European services e-card shall be deemed to have been issued by the home Member State. The question is then how the service provider should obtain the ESC, where the home Member State is inactive, and especially if the home Member State has not completed all administrative steps.
 - Dir. Article 13 concerns the issue of the ESC in the case of establishment. If the host Member State does not react within the set time limits (Directive Article 13(6)), the ESC is rightly issued by tacit approval. However, in this situation it is unclear how the service provider would obtain the ESC, where the host Member State is inactive, and especially if not all administrative steps are completed.

Refusal or revoking the ESC

47. The Dir. Article 15(2) elaborates on a number of situations that initiates revocation of the ESC in case the service provider does not meet the conditions prescribed in the first subparagraph of Article 11(1), which are essential for legal service provision in the host Member State. It is unclear why there is a reference to Article 11 (1) as it concerns obligations of the home Member State after having received an application for a ESC. It is unclear how this relates to the essential conditions. In Dir. Article 15(2) it should be clearly stated who is responsible for the revocation of the ESC in this situation, either the home or host Member State.
48. Dir. Article 16 (1) and Article 16 (2) state that in case the service provider for some reason is banned from providing a service in the home Member State, his ESC for other Member States will be revoked or suspended. This might deprive the service provider of his source of income completely. Accordingly, it needs further scrutiny whether there are cases where this might be disproportionate, of course depending on the severity of the neglect or action that has led to the ban in the home Member State.
49. Dir. Article 17 concerning the procedure for suspension and revocation of the ESC needs to be rephrased. This provision needs to be compatible with national rules of due process and protection of legal certainty for companies. Especially taken into consideration that the service providers' source of income is at stake. Immediate suspension or revocation (Dir. Article 17(2)) could interfere with due process in the Member States.

Updating obligations

50. Dir. Article 17 concerns the updating obligations for companies. It is fundamental that this process is not too time-consuming, heavy and burdensome, otherwise it will be at the expense of the attractiveness and influence the choice for a company to ask for the card in the first place.
51. In this context, Dir. Article 17 (4) point e) is unclear. It states that service providers have the obligation to update “*any significant change*” as regards requirements that the ESC holder is subject too. This includes under f) changes in the “*factual information or any other elements of information regarding the holder, which are reflected in its content*”. Here the issue is as well that Regulation Article 4 is unclear concerning the precise information to be included in the ESC and a lot of the details are left to implementing and delegated acts (Dir. Article 17 (7)). The result is that the updating requirements are also unclear and that for the design of the implementing acts, stakeholders and end-users of the ESC will hardly be involved. We prefer the clarity to be established directly in the Directive.
52. BusinessEurope would like to see that the ESC corresponds with national registers so that decisions and changes regarding the service provider, which are registered by authorities in the home Member State, are automatically reflected in service provider’s ESC.
53. In the light of the above, obligations need to be made clearer, and as last resort, Dir. Article 17 (6) states that the holder of the ESC may request the cancellation of its issued card at any time. However, it should not come to this in the first place (at least not because of updating obligations).

Fees and translation

54. It is essential that ESC remains voluntary for businesses. It is clear that the card should not be allowed to become *de facto* obligatory in the event that Member States begin to favour or prioritise cardholding companies in any way.
55. We welcome Reg. Article 9 (3)’s stipulation that a certified translation shall not be requested for documents used in the context of procedures to issue, update, suspend or revoke a ESC.
56. We stress that the entire process should be free of charge to applicant companies. To do otherwise may limit the attractiveness and ultimate success of the initiative further negating any improvement in the single market in services. That said, as the Reg. Article 10 (1) rightly stipulates, any fees which are ultimately necessary in the context of issuing the ESC must be reasonable, proportionate and not exceed the direct issuing cost. Moreover, we strongly support the prohibition on any fees relating to the updating, suspension, revocation or cancellation of an ESC.
57. BusinessEurope also welcomes that Regulation Article 10 (1) stipulates that providers shall have the right to be reimbursed of fees paid in advance to either home or host Member State in relation to applications that have not been examined, verified and completed by Member States.



Insurance

58. BusinessEurope believes that the inclusion of an insurance certificate (Reg. Article 5) in the ESC application *could* provide transparency and clarity to a service provider concerning - where relevant - the details of a professional liability insurance for the services concerned, including the territorial scope of such cover in other Member States, the insured risks, the duration, the insured sums per claim and for all claims in a year, and possible exclusions. A company, and especially smaller businesses, could benefit from clear information and a “confirmation” of whether or not the company is covered to provide its services across borders. If not, the company knows that it needs to obtain additional insurance cover.
59. At the same time, the burden on insurance distributors has to be taken well into account and requires further reflection. In particular, the harmonisation of a standard format for an insurance certificate and a claims history track record must not result in an unfeasible burden for the insurance distributors. In particular, the following needs to be taken into account:
- The obligation on insurance providers to provide detailed information for the insurance certificate can be burdensome.
 - It will be complicated to design a standard format for an insurance certificate with the wide variety of service activities, differing policies, insurance regimes, coverage, etc. There is a risk of defining a standard format on the lowest common denominator, which will decrease the information included in the certificate, and thus risk losing its added value.
 - National authorities might still continue to require additional proof of insurance besides that provided through the ESC, following local regulations.
 - The establishment of a track record is difficult with different criteria for risk assessment and premium calculations in each Member State or even within countries.
60. Reg. Article 5 (1), subparagraph 2, is unclear in terms of whether the request for an insurance certificate is made by the service provider or by the home Member State. This needs to be clarified.
61. It should be added in the Reg. Articles 5 and 11 that the request for an insurance certificate or statement relating to third party liability claims should be free of charge for the insured (i.e. the service provider).

The Internal Market Information (IMI) System and governance

62. To save costs and ensure efficiency, we very much welcome the ESC's use of existing platforms, in particular the Internal Market Information (IMI) System. That said, significant investments in the IMI system need to be made and its use by public authorities enhanced in order to ensure the ESC's proper functionality within the set time limits (see above).
63. The ESC has potential to build trust through facilitating better interaction between home and host Member States. Also, as public authorities become more aware of each other's administrative procedures and follow best practices, it would hopefully also lead to voluntary simplification of rules and (national) regulatory requirements beyond solely the facilitation of existing administrative procedures and formalities. It is overall welcome that the Commission now encourages the use of common systems for information sharing, including the new system for the interconnection of business registers (BRIS) when this will be implemented and used.
64. It is positive that Member States decide which national body should be responsible for issuing the ESC. At the same time, it should be clear to businesses where they can request a card.
65. The proposals foresee many implementing and delegated acts to define the precise implementation and practical functioning of the ESC. It is essential that stakeholder views are well taken into account to get the details of the e-card right. Again, if the card does not offer sufficient benefits compared with existing or other channels, the take-up will remain insufficient and the ESC concept will not work.
66. It is crucial that as laid down in the Reg. Article 8, in its implementing act, the Commission adopts strict technical specifications for the electronic handling and processing of the electronic procedures and company data to ensure the integrity, confidentiality and accuracy of the information, as well as the conditions and the procedures for the holder of a ESC to download such information, to allow third parties to access such information and for those third parties to verify that same information.
67. Promotion and awareness: It is positive that the Reg. Article 8 imposes an obligation on Member States to inform the public about the existence and advantages of the ESC. Together with promotion and awareness raising activities by the European Institutions, business organisations and other relevant stakeholders, this is critical to ensure proper take-up of the ESC once in place.
68. Review: We welcome the stipulation that five years after the entry into force of the legislation, and at the latest every five years thereafter, the Commission will carry out an evaluation of the Regulation and submit a report to the European Parliament and the Council on its performance, including an analysis of the impact on administrative burdens incurred by service providers active across borders. As such, BusinessEurope welcomes that an assessment of the appropriateness of extending the ESC to *other* service activities will be carried out as part of this process. When assessing its scope and the covered sectors during such a review, it should also be

equally considered to exclude certain service activities if the added value of the card is not proven or considered suitable for a specific service.

69. It is confusing why the evaluation of the Directive will be done three years after the date for transposition (considering the evaluation timetable laid down by the Regulation – see point 60 above).
70. If the proposals are improved to ensure sufficient added value and agreed at EU level, it will be fundamental that the Commission ensures strict and strong enforcement, and guards the quality of the ESC at a high level in all Member States in order to ensure smooth cooperation between different countries and to make sure that companies in the targeted sectors can truly benefit from a well-functioning card.

The social dimension

71. We observe that the ESC proposals fully preserve and do not touch upon the existing EU provisions on social issues, employment conditions (in particular regarding the posting of workers and workers' rights), health and safety and protection of the environment. And that the proposals do not change or put into question existing national safeguards in this respect. BusinessEurope fully supports this approach. Similarly, we support that the proposals do not affect existing national requirements concerning registration of foreign service providers, and that these can be kept in place alongside the ESC. BusinessEurope observes that as specified in the Regulation Article 6 (2), the procedures to post workers remain the same.
72. In parallel, the enforcement of existing social legislation, such as the Posting of Workers and the Enforcement Directive is essential.
73. As the proposals for an ESC do not touch upon social rules and regulation, it is questionable why Article 4 (1) of the Regulation refers to “social security purposes”. This requires further clarification.
74. Often a service provider needs to post workers in the host Member State in order to deliver/perform a service. In such cases, and in accordance with the Enforcement Directive, most Member States require that the service provider submits a declaration relating to the posting of workers. For service providers who hold an ESC, the proposal (Reg. Article 6) puts in place two methods, both of which give the service provider digital access to the declaration procedure through the electronic platform connected to the IMI system. This access should be designed to work as smoothly as possible for holders of an ESC. Since service providers deal with procedures for posting of workers on a case-by-case basis, they would need to access this system more frequently than the service card procedure. Accordingly, the access cannot be linked to the procedure related to the application of a ESC, since this procedure is (in principle) dealt with only once.

3) A proportionality test for regulated professions

75. BusinessEurope believes that in certain cases there may be valid policy reasons to justify regulated professions, such as to ensure access to a profession to people with the required skills level to perform well, or for security or safety reasons. However, this does not always seem to be the case. Therefore, setting up a proportionality test before adopting or reforming national regulations of professions is justified and can help identify and remove unnecessary regulatory barriers to free provision of cross-border services.
76. Regarding Article 6, BusinessEurope does not oppose the introduction of common criteria to assess the proportionality related to national legal, regulatory and administrative rules, as long as they still guarantee that for certain professions, national requirements are justified (e.g. to guarantee consumer protection and public health and safety).
77. Regarding Article 7, BusinessEurope welcomes the involvement of stakeholders. Again, this element of transparency gives stakeholders, such as consumer organisations and representative business associations, access to give their perspective of possible problems with a new legislative, regulatory or administrative provision restricting access to or pursuit of regulated professions, or amending existing ones. This should prevent special national requirements to become barriers to cross-border movement of professional services and before they could discourage professional service providers to go cross-border. Stakeholder views are needed to assess whether the Member States are applying the right regulation in terms of proportionality, but also in terms of correctness and in terms of consumer protection.

4) Guidance towards reforming and reducing the number of regulated professions

78. BusinessEurope supports all efforts to ensure that Member States review, and where appropriate reduce the number of regulated professions on the basis of a clear overview of all the regulated professions in the Member States provided by the Commission. This guidance will help to further achieve these aims.
79. It is positive that the guidance also addresses some of the regulatory obstacles that companies experience, broader than strictly those linked to professional qualifications.
80. 8.1 million EU citizens out of over half a billion live and work in a member country other than their own. That is just 3.3% of the total European workforce. There are several barriers to intra-EU mobility: language, information about being mobile within the EU, heavy bureaucracy, transfer of social security provisions, heavily regulated professions and overregulated specialisations. However, one of the most prominent ones is the worry that professional and academic qualifications will not be recognised in another Member State.



81. Another issue is that many Member States restrict access to certain professions by asking for additional qualifications or diplomas. There are about 5,000 of these regulated professions in Europe. Whilst in certain cases there may be valid policy reasons to justify this practice - for complexity, security or safety reasons - this does not always seem to be the case. Many activities are regulated in only a few Member States and more than 25% of them are regulated in just one Member State. The high number of regulated professions and specialisations is fragmenting labour markets and hampering service provision or establishment across borders.

REMAINING REGULATORY BARRIERS - THE REAL PROBLEM

82. While we acknowledge the political challenges, BusinessEurope regrets that the focus of the Services Package is very much limited to administrative simplification and streamlining formalities rather than addressing regulatory and structural obstacles that businesses throughout Europe struggle to overcome when providing a service in another Member State.

83. In this context, we urge the European institutions to continue to address the lingering disproportionate and unjustified regulatory obstacles that companies, and in particular SMEs and microenterprises continue to face in the single market and avoid the introduction of new ones. While understanding the political sensitivities that may exist, **BusinessEurope strongly calls for a concrete “European agenda for services”**, which also specifically addresses the apparent but persistent regulatory barriers in the single market for services to the benefit of the EU as a whole.

84. As mentioned above, in this light, we warmly support the proposal to improve the current notification procedure for services. Extra national requirements to be imposed on service providers should always be notified in advance and should only be ultimately introduced if proportionate and in compliance with EU legislation and single market principles. This must be accompanied by a tougher stance on the side of the Commission to oppose breaches with EU legislation, slow transposition and low quality implementation and incorrect application of agreed EU rules. In the face of a worrying rise in protectionism, European business deserves a visionary custodian of the single market in services and there now exists an opportunity to do more.

85. BusinessEurope reiterates its call on the European institutions to demonstrate a strong commitment to minimising obstacles related to divergent legal forms, ownership structures, shareholding criteria and tariffs. Only then will the very best conditions exist for European service providers to invest and grow.

86. BusinessEurope and its member federations stand ready to assist the Commission in properly identifying these obstacles and in proposing effective measures to address them once and for all.

* * *