



DECISION

The German Bundestag, at its 234th sitting, held on 18 May 2017,
acting on the basis of Bundestag printed paper 18/12426,
decided,

**(a) on the notification by the Federal Government
– printed paper 18/11229, point A.8 –**

of the 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

COM(2016) 821 final; Council Document No 5278/17

Opinion addressed to the Federal Government under Article 23(3) of the Basic Law

**(b) on the notification by the Federal Government
– printed paper 18/11229, point A.9 –**

of the proposal for a Directive of the European Parliament and of the Council on a proportionality test before adoption of new regulation of professions

COM(2016) 822 final; Council Document No 5281/17

Opinion addressed to the Federal Government under Article 23(3) of the Basic Law

**(c) on the notification by the Federal Government
– printed paper 18/11229, point A.10 –**

of 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) 823 final; Council Document No 5283/17

Opinion addressed to the Federal Government under Article 23(3) of the Basic Law

**(d) on the notification by the Federal Government
– printed paper 18/11229, point A.11 –**

of the proposal for a Regulation of the European Parliament and of the Council introducing a European services e-card and related administrative facilities



COM(2016) 824 final; Council Document No 5284/17

Opinion addressed to the Federal Government under Article 23(3) of the Basic Law

in awareness of the communication contained in points A.8, A.9, A.10 and A.11 of printed paper 18/11229, to adopt the following resolution in accordance with Article 23(3) of the Basic Law:

I. The Bundestag notes:

On 10 January 2017, the European Commission presented a services package, comprising three individual measures designed to be legally binding, namely a notification procedure (COM(2016) 821 final), a proportionality test for new rules regulating professions (COM(2016) 822 final) and the European services e-card (COM(2016) 823 final and 824 final). An additional component of the package is a recommendation on the regulation of professions (COM(2016) 820 final), which is not legally binding.

The aim of the services package is to remove obstacles to the cross-border provision of services and so deepen the single market in services. To this end, the Member States' provisions relating to the service sector are to be examined more closely for their compatibility with the single market. At the same time, a European services e-card is to be introduced to facilitate cross-border service provision.

Accordingly, the proposal for a Directive laying down a notification procedure contains provisions on Member States' notification of proposed measures that fall within the scope of Directive 2006/123/EC on services in the internal market (the Services Directive). The procedure would apply whenever the Federation, *Länder*, local authorities or self-governing bodies (Chambers of Industry and Commerce and Chambers of Skilled Crafts) introduced new authorisation requirements or amended existing provisions relating to matters covered by the Services Directive.

The proposal for a Directive on a proportionality test provides for a binding requirement to apply a proportionality test based on various prescribed criteria before the adoption of any national provisions that would restrict access to regulated occupations or their exercise or amend existing provisions. In manual trades in particular, this would significantly complicate the adaptation and updating of training regulations and of master craftsmen's examination regulations. When it introduced the Services Directive, Germany demonstrated, by means of comprehensive screening of standards, that the proportionality of its legislation was already ensured. The same was demonstrated in the context of the transparency initiative. Another proportionality test would therefore create superfluous additional red tape.

By means of proposals for a Directive and a Regulation, a new instrument, the European services e-card, is to be introduced. Member States are to accept this card as evidence that its holder is established in the territory of his or her home Member State and is authorised to provide the service indicated on the card within that territory. The services card is intended to apply in the initial stage to providers of selected business-related services, such as architects, engineers, auditors and tax consultants, building services, including individual manual trades, and other service occupations that are not specifically regulated in Germany, such as travel agents. To implement the



scheme, a coordinating authority is to be designated or established in each Member State. Applications to obtain a service card are to be made to the coordinating authority in the home Member State. The latter is to examine the application to ensure, for example, that it is complete and that the supporting documents are genuine, then forward it to the coordinating authority in the host Member State. The coordinating authority in the host Member State will examine the application. For the temporary provision of services, the services card is to be issued by the coordinating authority of the home Member State if the host Member State does not object within four weeks after receiving the application. For an application to establish a permanent presence, the host Member State has six weeks to ascertain which authorisation and registration requirements apply, if any, and to ask the applicant to present the appropriate substantiating documents. In so doing, the host Member State must take account of requirements that applicants have already fulfilled in their home country where these are equivalent to its own authorisation and regulation requirements. After receiving the evidence, the host Member State has one week to examine the documentation. If the host Member State does not respond within the stated time limits, the services card is deemed to have been issued as requested (assumption of approval). In this way, the provisions of the home Member State would assume great importance as a key to market access in the host country. At the same time, the supervisory powers vested in the authorities of the host Member State would be weakened. Because of excessively tight time limits for examination and the assumption of approval on expiry of these time limits, the services card could even be issued without an actual examination by the host Member State, which would be tantamount to introducing a country-of-origin principle by the back door. Once the services card has been issued for an indefinite period, it will not be possible to withdraw it in the light of circumstances that could have been checked at the time of application. Holders of an issued services card cannot be subjected to any further requirements, such as prior authorisations or registrations. The use of the card by service providers is to be voluntary. It will apply to the entire territory of the host Member State.

The services card can be applied for by natural persons (see Article 7 of the draft Regulation) and also serves as proof of establishment in the holder's home Member State (see Article 4 of the draft Directive). There is therefore a danger that this information will be regarded in court proceedings as an indicator of self-employment and will thus help to conceal employment disguised as independent contracting.

Indications on the services card regarding the holder's service activity may possibly be used to circumvent minimum wages that apply to specific service industries. Frequent difficulties have already been encountered in classifying the activity of service providers, resulting in seconded workers not receiving the industry-wide minimum wage to which they are entitled.

The introduction of the services card will create an additional legal basis for the secondment of workers. The services card will make it more difficult in the host Member State to check whether the company concerned actually engages in relevant economic activity in the home Member State or whether it hires employees for the sole purpose of secondment. The latter case would amount to disguised contract staffing, which is prohibited in the construction industry in Germany.

On 9 March 2017, in Bundestag printed paper 18/11442, the Bundestag stated its position on the compatibility of the measures proposed in the services package with the principles of subsidiarity and proportionality in a reasoned opinion addressed to the European Commission, noting that:



- exercising its right under Article 6 of Protocol No 2 to the Treaty of Lisbon, the Bundestag held that the Commission's proposal for a Directive laying down a notification procedure infringed the principles of subsidiarity and proportionality;
- exercising its right under Article 6 of Protocol No 2 to the Treaty of Lisbon, the Bundestag held that the Commission's proposal for a Directive on a proportionality test infringed the principles of subsidiarity and proportionality;
- the proposed Directive and Regulation on the European services e-card raise questions about their compatibility with the proportionality principle.

With the services package the European Commission is implementing its strategy of upgrading the single market (COM(2015) 550 final; Council Document No 13370/15). In its opinion of 23 June 2016 on the single-market strategy (Bundestag printed paper 18/8867), the Bundestag welcomed in principle the Commission's aim of deepening the single market but at the same time called on the European Commission:

- to ensure that the proposed assistance of the European Commission in the transposition of single-market provisions into national law was left on a voluntary basis;
- not to present any legislative proposals that amounted to the introduction of the country-of-origin principle;
- in reforming the notification procedure in the framework of the Services Directive, to provide full justification for the introduction of a consultation period in the notification procedure and to elucidate its implications together with the Member States; the legislative process, moreover, must not be unduly slowed down or generate more bureaucracy;
- to design the card scheme in such a way that it will result in a reduction of bureaucratic formalities in the context of cross-border activities; the services card must not lead to more bureaucracy or make it impossible for host Member States to set legitimate requirements for service providers.

II. While maintaining its existing position on the services package and on the single-market strategy, the Bundestag calls on the Federal Government to pursue the following course of action in the Council of the European Union:

1. to base its negotiation on the criticisms expressed by the Bundestag in its subsidiarity objection and, in particular:
 - a. to endeavour to ensure that the entire services package is shaped in such a way that it adheres to the principles of subsidiarity and proportionality enshrined in Article 5 TEU;
 - b. to insist on preservation of national spheres of competence;
 - c. to urge the European Commission to revise the services package.
2. to canvass support from the other Member States with a view to ensuring that the proposal for a proportionality test is not approved until it has been amended to take account of the reservations expressed by the Bundestag in its subsidiarity objection; in particular:



- a. it must be clearly established that decisions on the regulation of trades and professions are a matter for the Member States and that the harmonisation ban in the realm of education policy imposed by Article 165(4) TFEU must be respected;
 - b. it must be clearly established that the criteria for proportionality testing laid down in the Directive on the recognition of professional qualifications, namely suitability, necessity and adequacy, which are derived from the relevant case law of the European Court of Justice, are sufficient;
 - c. it must be clearly established that there can be no linkage between the question of the proportionality of rules regulating trades and professions and other requirements relating to the provision of services and therefore that cumulative requirements must not be considered;
 - d. care must be taken to ensure that the amendment of a single rule concerning a particular occupation does not necessitate a review of the entire profile of that occupation;
3. to canvass support from the other Member States with a view to ensuring that the proposal on the notification procedure is not approved until it has been amended to take account of the reservations expressed by the Bundestag in its subsidiarity objection; in particular, a preventive subjection of service-related authorisation procedures to review, which essentially boils down to banning every procedure unless it is specifically approved, is unacceptable;
4. with regard to the European services e-card, to endeavour to ensure that:
 - a. the rules do not effectively amount to the introduction of the country-of-origin principle and to the amendment of applicable law in the Member States; in particular, the short examination periods available to host Member States and the assumption of approval on expiry of the time limits are not acceptable; the proposed rules would regularly lead to services e-cards being issued without an actual examination by the host Member State, which would result in the erosion and circumvention of national requirements, including social standards; in this context, care must be taken to ensure that both the insurance and prevention aspects of social insurance are entirely excluded from the scope of the proposed Directives and Regulation;
 - b. only the host Member State may issue a services card;
 - c. no new instrument is created through which labour inspections could be hampered or disguised and unregistered employment made easier;
 - d. potential entries on the card concerning the cardholder's service activity and particularly on his or her self-employed status cannot be used to circumvent minimum wages that apply to particular service industries; frequent difficulties have already been encountered in classifying the activity of service providers, resulting in seconded workers not receiving the applicable industry-wide minimum wage, even though they are entitled to it;
 - e. the rules regarding the services e-card are entirely without prejudice to the provisions of Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 (Directive on the posting of workers), including the scope for conducting effective checks to identify abuses such as disguised employment, in accordance with the intention declared in recital 9 of the proposed Directive;



- f. the obligation to establish a national coordinating authority is formulated in such a way that the rules are compatible with the federal system in Germany and with the constitutionally prescribed separation of powers; in principle, responsibility for implementing laws and issuing authorisations lies with the *Länder*;
 - g. the proposed coordinating authority in the home Member State and in the host Member State is organised in such a way that it does not conflict with the 'points of single contact' strategy pursued in the Services Directive; there should be no duplication of structures; even though the 'points of single contact' strategy may not always have been followed to best advantage, it is essential that the authorities of the host Member State should be responsible for issuing authorisations; their administrations can obtain full information on existing requirements and follow administrative procedures efficiently;
 - h. clarity is established on the relationship between the planned services card and the European Professional Card introduced by Directive 2013/55/EU (Articles 4a to 4e of the Directive on the recognition of professional qualifications); in this respect too, duplication of structures must be avoided;
 - i. clarity is established as to how to shape a sanctions mechanism which will quickly and comprehensively penalise the infringement of requirements relating to the services card;
 - j. clarity is established on the extent to which services e-cards are personal and to which transfers of business ownership will influence their use;
5. to point out that the Bundestag supports the European Commission's aim of easier cross-border trade in services but considers that the services package presented by the Commission is in need of revision.
- III. The Bundestag asks its President to bring this decision to the attention of the European Commission, the European Parliament and the parliaments of the Member States.