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## PROPOSAL

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From: Secretary-General of the European Commission,  
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 12 January 2017

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of  
the European Union

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Subject: 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]...

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Delegations will find attached document COM(2016) 823 final.

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Encl.: COM(2016) 823 final



Brussels, 10.1.2017  
COM(2016) 823 final

2016/0402 (COD)

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)

{SWD(2016) 437 final}

{SWD(2016) 438 final}

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

With services accounting for around 70% of EU GDP and employment, promoting the competitiveness of EU services markets is central for the creation of jobs and growth in the EU. The Services Directive, adopted in 2006, set general provisions facilitating the establishment of service providers and their ability to offer services cross-border in the single market. The Directive prompted a number of reforms across the EU Member States, adding an estimated 0.9% to the GDP of the EU over ten years.

There is nevertheless still a large potential for growth and jobs that remains to be captured. EU services markets would benefit from faster productivity growth and a more efficient allocation of resources. Cross-border trade and investment in services remain low. Tackling remaining obstacles to more cross-border activities in services will help to strengthen competition, resulting in more choice and better prices for consumers as well as increased innovation. Addressing these barriers under the framework already provided by the Services Directive offers a potential of generating an additional 1.7% to the GDP of the EU.<sup>1</sup> In addition, better functioning services markets will positively affect the competitiveness of industry as the EU manufacturing sector represents an important buyer and final user of services. In fact, services account for 40% in the value of a final manufacturing product in the EU. A competitive manufacturing sector is therefore conditional upon well-functioning services markets.

For these reasons the European Council underlined that "delivering a deeper and fairer Single Market will be instrumental in creating new jobs, promoting productivity and ensuring an attractive climate for investment and innovation".<sup>2</sup> A better functioning internal market is one of the ten priorities for the European Commission. In its Single Market Strategy adopted in October 2015, the Commission announced a series of actions to make the single market without borders for services a reality.<sup>3</sup> The objective is clear: reduce hurdles to make it easier for service providers to pursue new business opportunities, while guaranteeing quality services for consumers. This proposal follows up on the Single Market Strategy.

The Services Directive provides a balanced legal framework to achieve these objectives. It ensures that national regulation is non-discriminatory, justified and proportionate to meet public interest objectives. In addition, it requires Member States to reduce obstacles of administrative nature dissuading in practice service providers to operate cross-border. The Services Directive and the important principles it established will remain unaffected by this proposal.

These principles introduced by the Services Directive have enabled positive progress towards a better functioning of EU services markets. At the same time, obstacles to increased single market integration are still present in a number of key services sectors. This is the case particularly in services sectors such as business services and the construction sector where

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<sup>1</sup> European Commission, "Update of the study on the economic impact of the Services Directive", 2015

<sup>2</sup> European Council Conclusions; 28 June 2016.

<sup>3</sup> Communication from the Commission on Upgrading the Single Market: more opportunities for people and business, 28 October 2015.

service providers can often not easily pursue business opportunities in other Member States. They are faced with administrative obstacles when expanding abroad. This was confirmed through extensive contacts with service providers.<sup>4</sup> This includes a lack of clarity on how to comply with existing rules dissuading companies, notably SMEs, from attempting to exploit business opportunities in other Member States. Service providers find it difficult to obtain information on applicable regulatory requirements and procedures that need to be completed to access another Member State's market. In addition, national rules often account only for national situations without clarifying how they should be applied to service providers from other EU Member States. As a result, service providers trying to establish a permanent presence in another Member State or to provide cross-border services on a temporary basis often find it difficult to understand which rules to apply and how. Administrative formalities in different Member States are often complicated and costly for service providers to complete.

The European services e-card therefore aims to reduce administrative complexity for service providers that want to expand their activities to other Member States. It will at the same time ensure that Member States can apply justified regulation. It would be offered to service providers on a voluntary basis as an alternative route to show compliance with the applicable national rules. It allows service providers to use a fully-electronic EU-level procedure to complete formalities when expanding abroad, hereby offering them increased legal certainty and significantly reducing administrative complexity. Through the e-card they will be able to avoid administrative obstacles such as uncertainty as to which requirements apply, filling-in disparate forms in foreign languages, translating, certifying or authenticating documents and non-electronic procedural steps. Cost savings related to the formalities covered by the e-card procedure would be significant compared to the existing situation, potentially going up to 50% or even more<sup>5</sup>.

Where a service provider plans to provide a service temporarily cross-border, the e-card would be issued by the home Member State. The host Member State would be able to object to issuance of the e-card where the Services Directive already allows them to do so under one of the overriding reasons of public interest listed in Article 16. Once issued, the e-card would allow the service provider to provide services on a temporary cross-border basis in the host Member State. Decision-making powers of host Member States to reject an application for a European services e-card remain accordingly unchanged, in line with Article 16 of the Services Directive.

Where a service provider plans to provide services through a branch, agency or office in another Member State, the e-card is issued by the host Member State. In this case, the service provider would still request the e-card with his home country authorities, who would check that the service provider is established on its territory in line with its applicable rules. But in a second step, the home Member States authorities would initiate a process with the relevant host country administration to allow the latter to decide if the requesting service provider meets its host country regulatory requirements in compliance with the Services Directive. As a result, there would be no unequal treatment between domestic and foreign service providers. Once issued, the e-card would allow its holder to provide services through a secondary establishment (in the form of a branch, agency or office) in the host Member State concerned.

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<sup>4</sup> Including nine workshops organised by the Commission with service providers in cross-border regions.

<sup>5</sup> Commission Staff Working Document, "Impact Assessment accompanying 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", 2017.

The idea of the European services e-card is similar to the European professional card (EPC), which Member States' authorities are already familiar with. The EPC was made available in January 2016 and there has been a significant take-up by the selected professionals covered, showing that this type of simplification tool provides practical benefits to its users. Both the European services e-card and the EPC are voluntary electronic procedures running at EU-level. The use of a European services e-card is voluntary for service providers. The home country authority of the applicant acts as the single contact point. In addition, the functioning of both systems relies on pre-defined and binding workflows of cooperation between home and host Member States implemented via the existing Internal Market Information System (IMI). At the same time, both systems have different objectives. The EPC facilitates provision of services across borders through the recognition of professional qualifications for natural persons as workers or self-employed service providers in accordance with the Professional Qualifications Directive (PQD). The European services e-card addresses a much wider range of requirements. It would be available for both natural persons who are self-employed but also for companies who want to provide services in another Member State. In contrast with the EPC, the European services e-card would also offer technical facilities to facilitate administrative formalities related to posting of staff into the territory of those Member States that have communicated to the Commission that they wish to make use of IMI for this purpose. This possibility to make use of IMI will in no way alter the substance of the applicable rules laid down in Directive [2014/67/EU](#). Rules to facilitate obtaining insurance coverage for services provided across borders are also included.

The e-card would cover requirements falling under the Services Directive and accordingly not areas such as tax, labour and social security. Nevertheless, authorities in Member States shall not require the e-card holders to provide any information which is already contained in the e-card for procedures or formalities imposed on a provider in relation to the award of a public contract, a design contest or a concession, formation of subsidiaries or registration of branches under company law and registration with mandatory social insurance schemes. The European services e-card would apply – in a first stage – to business services and construction services – to the extent the related activities fall already under the Services Directive. Both sectors are of key importance for the EU economy.<sup>6</sup> Service providers of construction or business services often face high administrative complexity when expanding abroad. In addition, productivity growth over the last decade has been very low in both sectors and there is limited cross-border trade and investment. Increased cross-border competition would help preserve and improve the competitiveness of both sectors.

This proposal also includes review clauses for future consideration of the appropriateness to address regulatory barriers, the effectiveness of the European services e-card and its possible extension to other sectors.

- **Consistency with existing policy provisions in the policy area**

This Directive is presented together with a Regulation. The Directive sets out the legal and operational framework of the European services e-card, regulating inter alia the conditions of eligibility, the competences of the home and the host Member States, the validity of the European services e-card and the conditions for revoking or suspending it.. The Regulation sets up tools which are available for service providers throughout the EU. In addition, it facilitates the solution of issues related to insurance coverage of a service provider active cross border.

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<sup>6</sup> Both sectors together cover about 20% of EU GDP and employment (Eurostat).

This Directive fully preserves the existing EU provisions on social issues, employment conditions (in particular posting of workers, workers' rights and the social pillar), health and safety and protection of the environment. It does not change or put into question existing safeguards in this respect. The e-card would provide further information about the company. The Member State's power to carry out on-site inspections would be completely untouched. The rules on posting of workers under Directives 96/71/EC and 2014/67/EU will continue to apply in the context of the European services e-card but further facilities shall be provided in order to comply with these rules. Where Member States have set up procedures that allow for the declaration relating to the posting of workers pursuant to Article 9 of Directive 2014/67/EU to be completed by electronic means, the European services e-card shall direct the card holder to the relevant national procedures. Providers who hold a European services e-card may also submit this declaration through an electronic platform connected to IMI where a host Member State has communicated to the Commission that this possibility should apply for the posting of workers in its territory.

The proposal for a European services e-card is complementary to other policy initiatives in the context of services announced in the Single Market Strategy to prevent the introduction of barriers to cross-border service provision at national level. In this respect, it is complementary to the Commission proposal [XX] for a Directive reforming the procedure whereby Member States must notify authorisation schemes and requirements related to services.

This proposal will also be complemented by the initiative of the Single Digital Gateway, announced in the Single Market Strategy for 2017. The Gateway, on which a public consultation was conducted in autumn 2016, will address the current information gaps for businesses and citizens by integrating, completing and improving the relevant EU and national-level online information. It will also link up with assistance services. Moreover, it will aim to push the further digitalisation of national procedures relevant for citizens and businesses exercising their Single Market rights. The scope of the Single Digital Gateway is intended to go beyond the sectors covered by the present initiative.

In comparison, the European services e-card should offer a fully harmonised and standardised instrument for cross-border provision of services, reducing compliance costs for specific services markets largely dominated by SMEs. It is serving the objective of administrative simplification with the involvement of the Member State where the service provider comes from but that (home) Member State has no say on what requirements a service provider has to satisfy in other Member States. Under the European services e-card, it is up to the latter to inform of and ensure compliance in the framework of a predefined and fully standardized workflow. The Single Digital Gateway will link up with this procedure and make it easy to find for its beneficiaries.

The implementation of the European services e-card will be fully aligned with the development of the Single Digital Gateway project and respect the principles outlined in the eGovernment action plan (in particular: digital, interoperable, cross-border, once-only and inclusive by default)<sup>7</sup>.

Finally, this proposal is complementary to the enforcement policy of the Commission, which it pursues in parallel, to tackle unjustified or disproportionate national restrictions to the freedom of establishment and the free provision of services.

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<sup>7</sup> EU eGovernment Action Plan 2016-2020 – Accelerating the digital transformation of government - COM(2016)179.

The implementation of this Directive will be supported by the Internal Market Information System (IMI) established by the IMI Regulation.<sup>8</sup> IMI can be used by around 5000 authorities since 2011; it is subject to constant user surveys and has proven its potential with the European professional card introduced in January 2016.

- **Consistency with other Union policies**

This Directive and the proposed Regulation introducing the European services e-card are fully consistent with a number of other Union policies, in particular other Commission policies on simplification and reduction of administrative burden.

Simplification of formalities regarding documents would follow closely the solutions to be introduced under Regulation (EU) 2016/1191 on the promotion of the free movement of citizens by simplifying the requirements for presenting certain public documents in the European Union.<sup>9</sup>

In the area of recognition of professional qualifications, a similar tool fostering administrative simplification - the above-mentioned European professional card - was introduced in 2013 and is available for a selected number of professions (nurses, pharmacists, physiotherapists, mountain guides and real estate agents) since January 2016. In order to avoid any risk of duplication, the present proposal ensures that professionals who can apply for a European professional card cannot obtain a European services e-card.

In order to avoid any duplication, authorities should make use of all available interconnections of national registers including the interconnection of company registers (BRIS), as required by Directive 2009/101/EC, and of insolvency registers under Regulation (EU) 2015/848 before any other means of obtaining or verifying previously obtained information in the context of a European services e-card.

## **2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY**

- **Legal basis**

This legislative action falls within an area of shared competence in accordance with Article 4(2)(a) TFEU. It aims to facilitate the establishment and the provision of services within the single market, further developing and implementing the general principles of right of establishment and freedom to provide cross-border services enshrined in Articles 49 and 56 TFEU, respectively, as well as in the Services Directive. This Directive is based on Articles 53(1) and 62 TFEU, which are the general legal basis for attaining freedom of establishment and, respectively, the legal basis for provisions concerning access to self-employed activities.

- **Subsidiarity (for non-exclusive competence)**

The overall objective of this legislative proposal is to ensure the smooth functioning of the EU single market for services, which is not limited to the territory of one Member State, but

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<sup>8</sup> Regulation (EU) No 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC ( 'the IMI Regulation' ) (OJ L 316, 14.11.2012, p. 1).

<sup>9</sup> Regulation (EU) 2016/1191 of the European Parliament and of the Council of 6 July 2016 on promoting the free movement of citizens by simplifying the requirements for presenting certain public documents in the European Union and amending Regulation (EU) No 1024/2012 (OJ L 200, 26.07.2016, p.1).

covers the entire territory of the EU. Given the transnational nature of the EU single market, and the necessity to address situations in cross-border contexts in the most coherent manner, making use of an existing IT tool running across the EU – the IMI –, constitutes an efficient response which can only be provided by action at EU-level.

In addition, the Directive provides for rules, in particular those regarding the role of coordinating authorities at Member States level, which leave Member States the responsibility to define the appropriate body to comply with these rules, according to their administrative organisation at national level.

- **Proportionality**

The measures introduced by this Directive are proportionate to its objective of further integrating the services markets at EU level, by enabling increased market dynamics and cross-border competition. They are also proportionate to the objectives of increasing transparency, reducing costs and simplifying procedures that Member States impose to service providers in cross-border situations. In addition, they build on the IMI, an existing EU-level IT instrument funded by the EU budget and already used by national administrations. The EU-level procedure will only bring limited adjustments to IMI, resulting in limited costs at EU and national level. Such limited costs have been assessed with respect to existing similar procedures, such as the European professional card.

These measures do not extend beyond what is necessary to solve the identified problems and to achieve the identified objectives. Although the EU-level procedure requires an active role of Member States' administrations, the financial efforts to be expected by Member States will be limited through the use of the Internal Market Information system, a platform already existing and set in place with EU funds. In addition, prospects brought by the use of the European services e-card of additional competition in services markets with more market players, and additional turnover, shall have a positive effect on Member States' economies.

The use of a European services e-card will be voluntary for service providers.

- **Choice of the instrument**

This Directive is based on Articles 53 and 62 TFEU, which only allow the EU legislator to adopt Directives. It includes provisions on approximation of legislation of Member States regarding access to certain service activities. In addition, it includes clarification on which are the exact effects of the European services e-card when accessing the market of another Member State.

### **3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS**

- **Ex-post evaluations/fitness checks of existing legislation**

In preparation of this proposal, the Commission has carried out an in-depth evaluation of the Services Directive. This evaluation showed that the implementation of the Services Directive has been only partially effective so far. The Services Directive has been able to generate additional growth through Member States' reforms. Nevertheless, service providers in key services sectors (such as business services and construction) still face an important number of barriers. In addition, the system of administrative cooperation between Member States is not



delivering all its benefits. An in-depth analysis carried out on the functioning and usability of the Points of Single Contact (PSCs) in 2015 concluded that most PSCs have not yet led to all the expected simplification in administration in terms of providing temporary cross-border services or setting up a business.

- **Stakeholder consultations**

The Commission has carried out several analyses and consultations to gather evidence on the remaining obstacles to a fully functioning Single Market for services, with a greater focus on the practical effects of the provisions on the ground since 2014. Economic assessment has been conducted to evaluate the effects of national reform in services markets and access to insurance for service providers. In addition, stakeholder workshops have been organised as part of the Single Market Forum in 2014, 2015 and 2016. These looked into the challenges of small and medium-sized enterprises to develop in cross-border regional markets, or into specific challenges in services sectors (in particular business services and construction services) which are hampered by low cross-border trade and investment at the EU level. The contributions and input gathered revealed that despite some progress over the past years, service providers in several economically important sectors still face a range of obstacles when seeking to expand across Member States' borders.

Stakeholders have expressed different views on the possible ways to improve the framework to which the services markets are subject in the EU and at national level. This Directive does not modify any substantive rules on cross-border service provision of services as laid down in the Services Directive, nor any rules related to posting of workers, health and safety or protection of the environment. Stakeholders almost unanimously oppose reopening the Services Directive.

An online public consultation ran from 3 May to 26 July 2016. The consultation gathered further views from stakeholders, as well as first-hand experiences on the remaining barriers in these services sectors in particular, to the cross-border provision of services in the EU.

The results of all these exercises have confirmed that unjustified or disproportionate requirements still persist at national level, to the detriment of service providers and service recipients in the Single Market. In addition, they have given specific indications of what policy responses are expected from stakeholders. The majority of them supported the need to address the remaining barriers to cross-border provision of services, and to facilitate access to insurance coverage in these situations, while maintaining the EU acquis on social, employment, health and safety or the environment, and while pursuing an ambitious enforcement policy. In this respect, the Commission has adopted a comprehensive enforcement package in November 2016 to address disproportionate restrictions introduced in the field of services in nine Member States.

This initiative aimed to enhance the development of cross-border services markets has also been supported by the Competitiveness Council in its Conclusions of 29 February 2016 on the Single Market Strategy<sup>10</sup>, and by the European Council in its Conclusions of 28 June 2016<sup>11</sup>.

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<sup>10</sup> [Council Conclusions on "The Single Market Strategy for services and goods", 29 February 2016.](#)

<sup>11</sup> [European Council Conclusions, 28 June 2016.](#)

It also obtained support from the European Parliament in its resolution on the Single Market Strategy adopted on 26 May 2016<sup>12</sup>.

- **Collection and use of expertise**

The results of a mutual evaluation process with Member States in 2010-11, performance checks carried out in 2011-12 and peer review undertaken in 2012-2013 all contributed to the preparation of this proposal for a Directive. In addition, the results of different public consultations, including the one conducted in summer 2016, have offered a solid basis of expertise.

Furthermore, the Commission relied on regular exchanges at technical level in the context of its Experts Group on the Implementation of the Services Directive.

- **Impact assessment**

An impact assessment was carried out in preparation of this initiative. The resubmitted report takes into account the recommendations made by the Regulatory Scrutiny Board in its initial negative opinion of 14 October 2016<sup>13</sup> as well as the additional points raised by the Board in its final positive opinion of 8 November 2016<sup>14</sup>. In particular, the problem description and the scope of the impact assessment have been clarified, the various policy options have been regrouped into clearly recognizable option packages and administrative cost reductions have been estimated with greater precision.

Individual policy options have been considered in the impact assessment and grouped into "packages" of policy options. The following packages of policy options have been examined:

- A first option package would allow the service provider to obtain a certificate regarding legal establishment in the home Member State and confirmation of existing insurance coverage for activities also in the home Member State;
- A second option package would allow the service provider to make use of an EU-level procedure to facilitate access to the market of another Member State, including an advanced electronic mechanism connected to IMI to facilitate compliance with formalities for posted staff which the host Member State can choose to make use of. In addition, it would address practical obstacles related to insurance in cross-border situations;
- A third option package would in addition to package 2 reduce regulatory disparity in a number of key business services (architectural, engineering and accounting services) through harmonisation of a limited number of requirements applicable to service providers in these three services (namely legal form restrictions, requirements laying down the percentage of shareholding that should be reserved for professionals and restrictions to the provision of multidisciplinary activities);

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<sup>12</sup> [European Parliament resolution of 26 May 2016 on the Single Market Strategy.](#)

<sup>13</sup> The main recommendations of the Board in its initial opinion on the impact assessment were to strengthen the problem definition, reconsider the design and articulation of the different options and provide more information on possible costs for Member States and stakeholder views.

<sup>14</sup> [http://ec.europa.eu/smart-regulation/impact/ia\\_carried\\_out/cia\\_2016\\_en.htm](http://ec.europa.eu/smart-regulation/impact/ia_carried_out/cia_2016_en.htm).

- A fourth option package would in addition to package 3 introduce specific solutions to address the regulatory disparities mentioned above in the case of secondary establishment (branches and agencies), exempting foreign service providers from certain requirements while allowing the host Member State to introduce alternative safeguards.

The first package would generate certain simplification effects which are however more limited compared to the other packages. While both packages 3 and 4 would have even stronger effects than package 2 given that they also address regulatory obstacles (in addition to administrative simplification), the Commission decided to go for package 2, based on the following reasoning: The removal of the most restrictive requirements covered by packages 3 and 4 through targeted enforcement action, complemented by specific recommendations tackling the whole regulatory framework applicable to the profession providing the service, appears more proportionate than a legislative proposal introducing minimum harmonisation for a limited number of requirements in a limited number of services sectors. In addition, Package 4 is discarded also because it would give rise to perceptions of introducing a solution driven by a country of origin approach under which foreign service providers are subject to their home member States legislation only, leading to a reverse discrimination of domestic service providers.

The package chosen is expected to lead to increased legal certainty and cost savings for service providers going cross-border. It is liable to generate an increase in market dynamics and competition levels, hereby increasing choice and value added for consumers.

- **Regulatory fitness and simplification**

The proposed Directive will contribute to regulatory fitness regarding market access for service providers and simplification by improving the modalities by which service providers are given access to another Member State's market. This does not alter the prerogatives of host Member States under the Services Directive.

- **Fundamental rights**

This proposal promotes rights enshrined in the Charter of Fundamental Rights. More specifically, protection of personal data shall be ensured in line with Article 8 of the Charter. In addition, the main objective of this initiative is to facilitate the right of establishment and the right to provide services in any Member State, as prescribed by Article 15(2) of the Charter, ensuring no discrimination, even indirect, is in place on grounds of nationality (further implementing Article 21(2) of the Charter). Moreover, the EU-level procedure is envisaged to put in place an impartial, fair and reasonably speedy procedure, also in regards to Commission participation, as required by Article 41 of the Charter. Finally, prohibition of abuse of rights, namely of the freedom to provide service, shall be duly considered, as prescribed by Article 54 of the Charter.

#### **4. BUDGETARY IMPLICATIONS**

The proposal is expected to have implications for the EU budget to the extent that the future European services e-card will use the Internal Market Information System ("IMI") as its operational backbone. The IMI will have to be adapted to support the European services e-card procedure and storage requirements and supplemented with some additional functions, namely a public interface for service providers, interconnections to other relevant systems,

and a back-office functionality for national authorities. This is due to the fact that for the European services e-card purposes IMI will be offered as a tool for the effective exchange of information and mutual assistance between competent authorities within a certain Member State, without prejudice to other solutions put in place by Member States.

The implications for the EU budget will be modest in view of the fact that using the IMI to underpin the European services e-card will provide important economies of scale and scope. In addition, the main existing IMI capabilities and those currently under development are to a large extent compliant with the requirements of the European services e-card. The adaptation and development costs will therefore be substantially reduced.

Any necessary allocations will however be met through redeployment; no budgetary impact is expected on EU budget over and beyond the appropriations already foreseen in the official financial programming of the Commission.

## **5. OTHER ELEMENTS**

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The Directive foresees a first evaluation of the Directive by 36 months after the date for transposition and at the latest every five years thereafter. Member States, service providers, social partners and other stakeholders would also be invited to evaluate the functioning of the initiative. Specific indicators allowing assessing the impacts of the Directive such as the number of service providers using the European services e-card, their experience related to administrative burden, the speed of the procedures used or the number of information exchanges between Member States will be considered.

- **Explanatory documents (for directives)**

This proposal does not require explanatory documents for the transposition of all the provisions into national law. The Commission will, however, present guidance on the application of all the workflows and administrative facilities under the proposed regulation for introducing the European services e-card. Such guidance will be presented when all the necessary delegated and implementing acts foreseen under this Directive and under the proposed Regulation are in place.

- **Detailed explanation of the specific provisions of the proposal**

The proposal is comprised of the following provisions:

Article 1 states the subject matter as that of laying down a legal and operational framework for the European services e-card, introduced by Regulation ...[ESC Regulation]....., setting out the rules governing access and exercise of service activities by holders of an e-card.

Article 2 sets the scope of this Directive as including the business and construction services listed in its Annex . The Annex excludes activities which are also excluded entirely or partially under Directive 2006/123/EC.

It also states that, similar to Directive 2006/123/EC, this Directive does not affect the definition or organisation of services of general economic interest or the rules governed by competition law. It does also not affect cultural or linguistic diversity or media pluralism.

Finally, the Directive does not affect provisions of general criminal law, labour law, tax law or social security law.

As for Directive [2006/123/EC](#), it is clarified that this Directive shall not apply when it conflicts with other Union acts governing specific aspects of access to or exercise of a service activity in specific sectors or for specific professions. It also underlines that this Directive is without prejudice to Directives [96/71/EC](#) and [2014/67/EU](#) in respect of posting of workers.

Article 3 introduces relevant definitions for the Directive.

Article 4 clarifies the evidentiary value, throughout the Union, of a European services e-card in relation to establishment in the home Member States of the provider, from where it expands operations by making use of the e-card.

Article 5 details the effects of the European services e-card as proof of the ability of the e-card holder to provide services in the territory of the host Member State, either temporarily or through a branch, agency or office located therein. Once an e-card is issued, the e-card prevents the host Member State from imposing on its holder service provision related prior authorisations and prior notification schemes under their national laws; as such prior controls will have taken place through the procedure to issue a European services e-card. The procedure to issue a European services e-card cannot accommodate however prior controls presenting a high degree of complexity or involving selection amongst other businesses. Ex post controls remain in place for e-card holders as for other providers.

Article 6 introduces the obligation on the part of authorities in all Member States, while requiring submission of information in the context of any procedures or formalities, not to require the e-card holders to provide any information which is already contained in the European services e-card.

Article 7 determines the validity of the European services e-card to be indefinite in time, unless suspended, revoked or cancelled, and encompassing all of the territory of the host Member State. Authorisations for additional branches, agencies or offices remain in place in so far as Directive [2006/123/EC](#) allows for them.

Article 8 determines that the application for an e-card should be submitted to the coordinating authority of the home Member State.

Article 9 excludes from eligibility to apply for a European services e-card service those service providers for whom a European professional card has already been introduced.

Article 10 safeguards the right of Member States to invoke those overriding reasons of public interest in accordance with Directive [2006/123/EC](#).

Article 11 describes the tasks of verification and completion of the application for a European services e-card which the coordinating authority in the home Member State must perform before forwarding such application to its counterpart in the host Member State. It also includes redress mechanisms of action or inaction by the coordinating authority in the home Member State.

Article 12 describes procedural steps for issuing a European services e-card for temporary cross-border services. The coordinating authority informs of applicable requirements in the host Member State once access is granted to the incoming provider or it informs of a well-

reasoned decision by a host Member State to object to issuance of the e-card, a decision which binds the coordinating authority in the home Member State. If no objection is notified at the latest within two weeks, an alert is sent and the host Member State has two additional weeks to react. At the end of this period the e-card is issued, expressly or tacitly. The provision includes right of redress against decisions by coordinating authorities of the home or host Member States.

Article 13 describes procedural steps for issuing a European services e-card for providing services through establishment in the form of branches, agencies or offices. The coordinating authority of the host Member State informs of requirements applicable on its territory in order for access to be granted. The applicant needs to prove the necessary compliance. If no decision is taken by the coordinating authority of the host Member State after a proper due process with the applicant and despite of an alert to react, the e-card is issued. The provision includes right of redress against decisions by coordinating authorities of the home or host Member States.

Article 14 introduces a once-only principle at domestic level, under which information and documents in the possession of home Member State authorities need not be supplied again by the applicant for a European services e-card.

Article 15 lists events occurring in the host Member State which must trigger suspension or revocation of a European services e-card.

Article 16 lists events occurring in the home Member State which must trigger suspension or revocation of all European services e-card previously issued for the service provider and service activity in question.

Article 17 sets out the role of home and host Member States in suspending, revoking or, at the request of the e-card holder, cancelling European services e-cards. It introduces a consultation procedure for the e-card holders in question.

Article 18 regulates the exercise of delegation by the Commission as provided for in Articles 12 and 13.

Article 19 defines the Committee assisting the Commission in the adoption of implementing acts and the applicable procedure in accordance with Regulation (EU) 182/2011.

Articles 20 and 21 impose on the Commission monitoring and review obligations on the impact of this Directive.

Article 22 deals with transposition and application of the provisions of this Directive. The foreseen dates are the same as those foreseen for the proposed regulation introducing a European services e-card.

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)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 53(1) and 62 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>15</sup>,

Having regard to the opinion of the Committee of the Regions<sup>16</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The Treaty on the Functioning of the European Union (TFEU) guarantees service providers the freedom of establishment in Member States and the freedom to provide services across Member States.
- (2) Directive 2006/123/EC of the European Parliament and of the Council<sup>17</sup> establishes general provisions facilitating the exercise of the freedom of establishment for service providers and the free movement of services. It provides inter alia that Member States should provide for administrative simplification, for instance offering electronic procedures via Points of Single Contact, simplifying existing procedures and the need for certified documents and making best use of a system of tacit approval. The Directive also sets a framework furthering the freedom to provide services on a temporary basis in another Member State.

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<sup>15</sup> OJ C , , p. .

<sup>16</sup> OJ C , , p. .

<sup>17</sup> Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ L 376, 27.12.2006, p. 36).

- (3) Directive 2006/123/EC requires Member States to put in place and keep constantly updated Points of Single Contacts where a service provider wishing to establish or to provide services can find all relevant information about requirements to be complied with and e-procedures in respect of all formalities, authorisation and notifications to go through. However, costly information challenges and difficulties complying with national procedures at a distance remain to date for service providers, namely for sector-related requirements. Cooperation between authorities in different Member States should in principle take place via the Internal Market Information System (IMI), an IT-platform offered for cross-border exchange of information and mutual assistance under that Directive. Despite the fact that authorities sometimes have doubts with regard to the legal establishment of a provider in another Member State, the possibilities for cooperation currently provided in IMI are not exploited to their full potential. Formalities associated with authorisations and notifications often require paper documents to be submitted and to be translated at a significant cost. Information regarding these obstacles is either not available online or is scarce, incomplete, dispersed and difficult to interpret in relation to the particular circumstances of a provider expanding across borders, as national rules often target purely domestic situations. Service providers often risk resubmitting information and documents.
- (4) Requirements remain in place which make expansion of service providers' operations across the internal market burdensome and unappealing, such as multiple and disparate authorisation schemes before different authorities, which, regarding establishment, fail to achieve mutual recognition of conditions previously complied with in other Member States or, regarding temporary cross-border provision of services apply disproportionate or unjustified restrictions. As a consequence, service providers face multiple and disproportionate compliance costs when going cross-border.
- (5) Cross-border trade and cross-border investment in certain business and construction services are particularly low showing a potential for better integration of services markets with significant negative repercussions for the remaining part of the economy. This underperformance leads to situations where the potential for more growth and jobs in the Single Market has not been fully exploited.
- (6) This Directive aims to facilitate the establishment and the free movement of services within the single market, further developing and implementing the general principles of right of establishment and freedom to provide cross-border services enshrined in Articles 49 and 56 TFEU, respectively, as well as in Directive 2006/123/EC. It should be based on Article 53(1) TFEU, concerning freedom of establishment and access to self-employed activities, as well as on Article 62 TFEU, which makes that provision applicable to services.
- (7) In order to make it easier to take up and pursue service activities, this Directive builds upon Directive 2006/123/EC but does in no way amend its rules. The scope of this Directive is even more limited compared to the scope laid down in the Services Directive. It specifically targets business and construction service sectors, where many obstacles to cross-border activities still remain. In addition, cross-border trade and investment in construction and several business services are low and both sectors have seen weak productivity growth over the last decade.
- (8) All matters, activities and fields excluded from the scope of Directive 2006/123/EC should remain excluded from the scope of this Directive. In particular, this Directive



does not affect matters, activities and fields such as those deriving from taxation, social security and labour law, including any legal or contractual provision concerning employment conditions, working conditions, including health and safety at work and the relationship between employers and workers. Equally this Directive does not affect the social security legislation of the Member States. This Directive is also without prejudice to any provision stemming from competition law as well as any rule on the applicable law or jurisdiction pursuant to private international law.

- (9) For reasons of coherence, possible conflicts between the present Directive and other EU acts governing specific aspects of access to or exercise of a service activity in a specific sector should be solved as provided for in Article 3 of Directive 2006/123/EC for conflicts between that Directive and such acts, with the application of those other acts. As a result, the provisions in the present Directive cannot be relied upon in order to justify prior authorisation schemes, prior notification schemes or establishment requirements which are prohibited by other EU acts governing specific aspects of access to or exercise of a service activity in a specific sector such as Directive 2000/31/EC of the European Parliament and of the Council<sup>18</sup>. As a further result, this Directive does in no way affect the obligations service providers should respect in accordance with Directive 96/71/EC of the European Parliament and of the Council<sup>19</sup> and Directive 2014/67/EU of the European Parliament and of the Council<sup>20</sup>.
- (10) This Directive clarifies the conditions under which service providers concerned can benefit from the European services e-card introduced by Regulation ...[ESC Regulation]..., which respective role the home and the host Member State should have and which actions of the home Member State should be accepted by a host Member State. The European services e-card is a voluntary instrument for the service provider.
- (11) This Directive also includes a framework for the validity and the reasons for suspending or revoking a European services e-card throughout the European Union. Whenever a service provider cannot legally continue to provide services across borders, the reason for which it initially applied for an e-card, that same e-card should be suspended or revoked, accordingly.
- (12) The main purpose of the European services e-card is to introduce a uniform and simplified procedure for service providers wishing to expand provision of services across internal market borders. The e-card represents an electronic certificate stating that a service provider is legally established in a Member State (the home Member State). Host Member States where a service provider is interested in expanding to should furthermore not apply, to holders of an e-card, their prior authorisation or notifications schemes put in place under national law to control access to or exercise of service activities, which is already the object of control before issue of a European services e-card.

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<sup>18</sup> Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce in the internal market (OJ L178, 17.7.2000, p. 1).

<sup>19</sup> Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (OJ L 18, 21.1.1997, p. 1).

<sup>20</sup> Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ( 'the IMI Regulation' ) (OJ L 159, 28.5.2014, p. 11).

- (13) The procedure introduced by this Directive seeks to implement general rules and principles of Directive 2006/123/EC in the context of cross-border establishment and temporary provision of certain services.
- (14) Certain requirements and related authorisations and notifications governed by Directive 2006/123/EC should not be the object of controls in the context of issuing a European services e-card given their complexity or the involvement of third actors which the uniform procedural workflow of the European services e-card cannot suitably accommodate. This concerns selection procedures for granting authorisations limited in number and controls of site-specific conditions, be it for the site of actual provision of services or for the site where the provider establishes its operations. Similarly a European services e-card is also not suited to accommodate selection procedures for the performance of public contracts, design contests or concessions.
- (15) In the same vein, controls applicable to service providers which are already the object of other horizontal EU legislation should remain excluded. This is the case of requirements and controls related to recognition of professional qualifications under Directive 2005/36/EC of the European Parliament and of the Council<sup>21</sup>, even if mentioned in sector-specific legislation.
- (16) Furthermore, the requirements for service providers who are limited liability companies to disclose certain company information according to Directive 2009/101/EC of the European Parliament and of the Council<sup>22</sup> and Council Directive 89/666/EEC<sup>23</sup>, and any requirements or controls imposed by national rules on registration of branches of companies registered in another Member State under company law should not be covered by a European services e-card procedure, which is meant to address sector-specific matters in the framework of Directive 2006/123/EC.
- (17) A European services e-card provides several advantages. It offers a proof of legal establishment in the home Member State. As long as a European services e-card remains valid, it should constitute a valid means of proof throughout the EU of legal establishment in the home Member State for the services covered by that e-card. Such proof should even be accepted in a domestic context, across all levels and administrative divisions of public administration. A valid European services e-card includes information which is often required in different contexts, such as controls applicable during or after the performance of services, the award of a public contract, a design contest or a concession, formation of subsidiaries or registration of branches under company law and registration of the service provider with mandatory social insurance schemes. Since that information is already available in a valid European services e-card, Member State authorities should not request this information from e-card holders for these other purposes.

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<sup>21</sup> Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (OJ L 255, 30.9.2005, p. 22).

<sup>22</sup> Directive 2009/101/EC of the European Parliament and of the Council of 16 September 2009 on coordination of safeguards which, for the protection of the interests of members and third parties, are required by Member States of companies within the meaning of the second paragraph of Article 48 of the Treaty, with a view to making such safeguards equivalent (OJ L 258, 1.10.2009, p. 11).

<sup>23</sup> Council Directive 89/666/EEC of 21 December 1989 concerning disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another State (OJ L 395, 30.12.1989, p. 36).

- (18) In addition, Member States should not be allowed to impose on holders of a European services e-card any service provision related authorisation or notification schemes prior to a service provision. Member States should not repeat, wholly or partially, controls previously performed in the context of issuing the European services e-card once provision of services has started in the host Member State. Authorisation or notification schemes such as those deriving from taxation, social security and labour law shall remain applicable as such matters are excluded from the scope of this Directive. Ex-post checks, inspections and investigations initiated by competent authorities should however remain admissible to control service performance, as under current EU Law. If such controls reveal serious breaches of requirements applicable in a host Member State, this could lead to the suspension or revocation of the European services e-card.
- (19) Directive 2013/55/EU, of the European Parliament and of the Council, of 20 November 2013<sup>24</sup> introduced a legislative framework for the European professional card, meant to grant to professionals who obtain the right to pursue the same profession for which they previously established in a (home) Member State in another (host) Member State, either temporarily or through a secondary establishment. The European services e-card, as a procedure meant for a wide variety of services and not addressing issues related to professional qualifications, should thus not apply to those services for which a specific European professional card was introduced, except if sector-specific requirements and their controls, unrelated to recognition of professional qualifications, are left in place for secondary establishment of a particular profession.
- (20) In order to concentrate actions and decisions within a Member State and facilitate cooperation between different competent authorities in home and host Member States, a coordinating authority in the home Member State and in the host Member State should ultimately be responsible for handling issues related to the European services e-card, thus coordinating the input from the different competent national authorities and acting as a contact point with its counterparts in other Member States. The application for a European services e-card should thus be submitted to the coordinating authority of the home Member State.
- (21) There are two types of European services e-cards offered to service providers: a simpler procedure for temporary cross-border provision of services into other Member States, essentially controlling their previous establishment in the home Member State and allowing a host Member State to object to temporary provision of cross-border services only due to overriding reasons of public interests, and a more complex one, framing the control by host Member States of an economic activity in their territory for an indefinite period through secondary establishment in the form of branches, agencies or offices, in order to ensure, in a simplified workflow, mutual recognition is performed properly and expeditiously.
- (22) The European services e-card is available to providers previously established in a Member State. While subsidiaries of companies from third countries should be able to apply for an e-card, branches, agencies or offices of such companies should not, in accordance with Article 48 of the TFEU which reserves freedom of establishment and

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<sup>24</sup> Directive 2013/55/EU, of the European Parliament and of the Council, of 20 November 2013, amending Directive 2005/36/EC on the recognition of professional qualifications and Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation') (OJ L 354, 28.12.2013, p. 132).

free movement of services to companies and firms constituted in accordance with the laws of a Member State and having their registered office, central administration or principal place of business within the Union.

- (23) The European services e-card for secondary establishment should allow for provision of services in the host Member State through branches, agencies but also any form of office located in its territory. However, for the purposes of the European services e-card, secondary establishment should not include provision of services in the host Member State through subsidiaries of companies established in the home Member State. The fact that a subsidiary is a separate legal entity requires more complex controls than those pertaining to provision of services through a branch, agency or office without separate legal personality. The European services e-card procedure is not suited to cover those complex controls.
- (24) The coordinating authority of the home Member State should, upon receiving an application for a European services e-card, complete it and validate its contents in order to accurately demonstrate legal establishment of the provider in its home Member State and describe its circumstances in a manner conducive for host Member State's authorities to pursue their own controls. While inaction on the part of the applicant should lead to a halt in the procedure, inaction on the part of the home Member State's authorities should give way to judicial redress.
- (25) In order to ensure uniform implementation of this Directive in relation to the technical aspects of handling and processing applications for European services e-cards, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>25</sup>. These implementing rules should determine the automatic cancellation of an application for a European services e-card if the respective procedure is suspended for a considerable lapse of time due to inaction on the part of the applicant.
- (26) A coordinating authority of the host Member State should provide clarity as to which requirements apply to the incoming service provider, considering the latter is already established in another Member State. The coordinating authority of the host Member State should ensure the provider knows which requirements govern performance of services in the host Member States, including those applicable once it obtains the European services e-card. For establishment, i.e., provision of services through branches, agencies or offices, the identification of applicable requirements by the coordinating authority of the host Member State fulfils a different purpose: it lists the requirements the compliance of which the incoming service provider is required to prove before the e-card can be issued.
- (27) In case a host Member State has put in place a comprehensive and updated information database in its point of single contact, its coordinating authority can simply refer to the relevant webpage from where the information can be retrieved in the context of the European services e-card procedure.

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<sup>25</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

- (28) A European services e-card should not alter the current regulatory environment, under Directive 2006/123/EC and other EU legislation concerned, setting the underlying conditions which a service provider must meet when starting to provide services in a host Member State. Consequently, host Member States should be able, in accordance with current EU Law, to have consideration for compliance with their own requirements by incoming providers before these are allowed to start provision of services in their territory. The procedure for issuing a European services e-card should thus account for a suitable role of control by the host Member State both for temporary cross-border provisions and for establishment.
- (29) For provision of temporary cross-border services, given that Article 16 of Directive 2006/123/EC admits requirements for the generality of services covered by this Directive, host Member States should be allowed to object to the issue of a European services e-card by the home Member State in those cases where the circumstances of the applicant give rise to genuine and sufficiently serious threats to public interests related to public policy, public security, public health or the protection of the environment, in a manner which cannot be suitably and sufficiently addressed by requirements and controls applicable once service provision starts. This should be the case when a prior authorisation scheme or prior notification for temporary provision of the services in question is in place, justified in proportionate terms under one of those four overriding reasons of public interest safeguarded under Article 16 of Directive 2006/123/EC and when the conditions met by the applicant in its home Member State cannot be considered equivalent to the ones required in the host Member State for the granting of that prior authorisation. The possibilities and prerogatives of host Member States under Article 16 of Directive 2006/123/EC apply in the context of issuing a European services e-card.
- (30) IMI should enable the Commission to become aware of objections raised by host Member States before the issue of European services e-card procedures for temporary cross-border provision of services, in the context of prior authorisation or prior notification schemes that should also have been previously notified under Directive .....[forthcoming Notification Directive]..... This information on the effective application of the notified authorisation schemes may be used by the Commission to trigger any enforcement action or to launch any enquiries. It is without prejudice to the rights of applicants to submit a complaint to Commission services alleging a potential breach of EU law by way of the objection in question.
- (31) For establishment, host Member States should be allowed to impose on e-card applicants their own requirements, non-discriminatory, justified under overriding reasons of public interest and proportionate in compliance with Directive 2006/123/EC and other EU legislation concerned. Sector-specific EU legislation governing certain services covered by this Directive, such as services of travel agencies under Directive (EU) 2015/2302, of the European Parliament and of the Council<sup>26</sup>, and services of installation of energy-related building elements under Directive 2012/27/EU of the

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<sup>26</sup> Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC (OJ L 326, 11.12.2015, p. 1).

European Parliament and of the Council<sup>27</sup>, in so far as the controls do not pertain to recognition of professional qualifications in the framework of Directive 2005/36/EC, should be taken into consideration.

- (32) Equivalence between requirements of a host Member State and those requirements of the home Member State the applicant has already complied should be an integral part of this assessment. In order to facilitate the assessment of the equivalence of requirements in home and host Member States, where the authority of the host Member State declares its intention to refuse an e-card for establishment, the applicant should have a renewed possibility to prove that it meets the conditions laid down in the prior authorisation or prior notification on the basis of which the authorities of the host Member States base their intention to refuse the e-card, including through requirements to which the applicant is subject in the home Member State and which they deem to be equivalent.
- (33) Host Member States should be allowed to request clarifications or additional information from the home Member State before the issue of a European services e-card, essentially relevant for the assessment of whether there is a justified and proportionate need to object to temporary provision of services by the applicant in its territory or, for establishment, to assess just how many of its regulatory concerns are already suitably addressed by compliance of the applicant with home Member State's requirements. Over time, it is expected that Member States will gain a better knowledge of their respective regulatory frameworks in the sectors covered by the e-card that should lead to enhanced mutual trust and thus allow for a more expedient assessment to the benefit of applicants.
- (34) In order to lay down the procedure for requesting such information, the power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission in respect of specifying the procedural workflow and its impact on the applicable time-limits for decisions to be made in the context of issuing a European services e-card. It is of particular importance that the Commission carries out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.
- (35) The host Member State should no longer control whether the applicant for a European services e-card is legally established in another Member State. Nor should it put into question the veracity and validity of the data and documents included in an application, once validated by the coordinating authority of the home Member State. Conversely, the coordinating authority of the home Member State should not assess whether it issues a European services e-card for temporary cross-border provisions of services based on compliance by the provider of host Member State requirements, rather it should only assess of whether the applicant is legally established in its

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<sup>27</sup> Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC (OJ L315, 14.11.2012, p.1).

territory for the provision of the service in question at the time the decision to issue is made.

- (36) Relevant actions and decisions of the coordinating authorities involved in the procedure for issuing the European services e-card, in the host as well as in the home Member State should be subject to judicial remedies in accordance with national law. This should include appropriate remedies in the event of failure to act of the coordinating authority in the home Member State in accordance with the procedure to issue the e-card.
- (37) Prior to the issuance of the European services e-card, a host Member State should be allowed to invoke legitimate policy concerns. Nevertheless, in the interest of allowing for a simplified and swift procedure, the principle of tacit approval should be observed in issuing a European services e-card. That is the general principle introduced under Directive 2006/123/EC. An alert of impending tacit approval and the extension of the applicable deadlines by two additional weeks should ensure that the host Member State has the appropriate time and means to consider applications for a European services e-card. A lack of information from the host Member State on applicable requirements should also not impede automatic issue of a European services e-card.
- (38) Service providers should not be required to provide information and documents which are already in the possession of other authorities in the home Member State, irrespective of administrative levels or divisions. It should also be the case when interconnection of national registers (e.g. central, commercial and companies' registers as required by Directive 2009/101/EC or insolvency registers under Regulation (EU) 2015/848 of the European Parliament and of the Council<sup>28</sup>) allows for information and documents to be retrieved by the administration of the home Member State from other Member States. In all instances when personal data are processed under this Directive, rules on protection of personal data of Directive 95/46/EC of the European Parliament and of the Council<sup>29</sup> [, Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>30</sup>] and national legislation should be observed.
- (39) A service provider should be allowed to apply for a European services e-card in the home Member State and have that application assessed by the host Member State regarding the applicable conditions to provide services through a branch in the territory of that host Member State before that applicant is required to apply for registration of the future branch in that same host Member State. Thus, the applicant will be certain of the applicable sector-specific conditions and ultimately that it complies with them in a manner satisfactory to the host Member State before spending time and resources on requesting the registration of a branch in that host Member State for company law purposes. At the same time, the applicant will need to comply with

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<sup>28</sup> Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (OJ L 141, 5.6.2016, p.19).

<sup>29</sup> Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281 , 23.11.1995, p. 31).

<sup>30</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

national rules on registration of branches under company law to provide services through such a branch in compliance with EU law.

- (40) A European services e-card should allow for provision of services throughout the territory of the host Member State. A service provider, once established in a Member State in the form of a branch, agency or office, should not, in principle, need to apply for another e-card in order to expand provision of services already covered by the existing e-card domestically through additional branches, agencies or offices there, as the case may be. However, as Directive 2006/123/EC expressly provides for, authorisations for each individual branch, agency or office may be justified by overriding reasons of public interest. In that case, service providers should continue to have the choice of expanding operations domestically by obtaining those authorisations under national law or applying for additional European services e-cards, for each additional branch, agency or office, as the case may be.
- (41) This Directive should not interfere with the division of regional or local competences within the Member States, including regional and local self-government. This notwithstanding, administrative cooperation between different national authorities within strict time-limits may be necessary in order to meet the obligations laid down in the Directive. In order to help Member States meet their obligations and considering the decentralised structure of many of them, IMI could also be used as a tool for the effective exchange of information and mutual assistance between competent authorities within a certain Member State, without prejudice to other solutions put in place by Member States.
- (42) A European services e-card should be valid for an indefinite period in time, without prejudice to, in relation to temporary cross-border services, the effects of case-by-case derogations in accordance with Directive 2006/123/EC.
- (43) A European services e-card should however be suspended by the issuing coordinating authority if, temporarily, the service provider is banned from providing the services in question. The suspension should last as long as the ban is in place. A European services e-card should be revoked by the issuing coordinating authority if the conditions for issuing it or for it to remain valid, as a testament of legality of service provision in the host Member State, are no longer met. A final decision establishing that an e-card holder misrepresented him or herself as a service provider and that, under national law of either home or host Member State he or she is considered to be a worker, should lead to the revocation of the European services e-cards in question. Similarly, cases of fraudulent, inaccurate or falsified information or documents used in the context of issuing a European services e-card should impact the validity of the e-card.
- (44) Administrative cooperation between home and host Member State authorities should ensure observance of conditions of validity of a previously issued European services e-card. To further ensure no European services e-card misrepresents the situation of its holder at any given moment, its holder and competent authorities should be obliged to inform the coordinating authority who issued it of changes in the situation of the holder which may impact the validity of the e-card.
- (45) In any case, before adopting the decision to revoke or suspend the e-card, the competent coordinating authority should consult the e-card holder and any decision



should be duly justified and subject to appeal, in accordance with the applicable national law of the Member State which issued it. Interim measures signalling a pending procedure for suspension or revocation of a European services e-card should be allowed, signalling a link with alerts triggered under Directive 2006/123/EC.

- (46) In order to ensure uniform conditions for the implementation of this Directive in relation to the technical aspects of processing suspensions, revocations and cancellations of European services e-cards, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council.
- (47) The application of this Directive should be monitored and assessed in order to determine its impact on the costs of expanding operations cross-border, particularly in relation to service providers, on consumer perception regarding such providers, particularly those holding a European services e-card, and on competition, prices and quality of services. The effects of the provisions contained in this Directive should be evaluated regularly, in particular in order to assess whether it would be appropriate to introduce a European services e-card for other service activities. This monitoring will take place in cooperation with Member States, social partners and other relevant stakeholders.
- (48) Since the objectives of this Directive cannot be sufficiently achieved by the Member States in view of the complexity and inconsistency of approaches of controlling certain services across Member States but can rather, by reason of enhanced administrative coordination across the Union, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (49) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular, this Directive, through the establishment of the legal and operational framework for the European Service e-card and the coordination of some requirements concerning the freedom of establishment and the provision of services for certain service, seeks to promote the rights of establishment and the right to provide services in any Member State, preventing any discrimination on grounds of nationality and ensuring impartial, fair and reasonably speed procedure, in accordance with Articles 15, 21 and 41 of the Charter of Fundamental Rights of the European Union, while ensuring full respect of the protection of personal data, including in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council<sup>31</sup>, Directive 95/46/EC [Regulation (EU) No 2016/679], and giving due consideration to the risk of abuse of rights provided for respectively in Articles 8 and 54 of that Charter,

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<sup>31</sup> Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

HAVE ADOPTED THIS DIRECTIVE:

## **CHAPTER I GENERAL PROVISIONS**

### *Article 1 Subject matter*

This Directive lays down the legal and operational framework for the European services e-card introduced by Regulation .....[ESC Regulation].....

### *Article 2 Scope*

1. This Directive applies to the services listed in the Annex.
2. This Directive does not affect the matters mentioned in Article 1(2) to (7) of Directive 2006/123/EC.

It shall not apply to the activities and fields mentioned in Article 2(2) and (3) of Directive 2006/123/EC.

3. If the provisions of this Directive conflict with a provision of another Union act governing specific aspects of access to or exercise of a service activity in specific sectors or for specific professions, the provision of the other Union act shall prevail and shall apply to those specific sectors or professions.

This Directive shall be without prejudice to the rights of workers, the obligations of service providers and related controls in Member States laid down in Directives 96/71/EC and 2014/67/EU.

### *Article 3 Definitions*

For the purposes of this Directive the following definitions shall apply:

1. "home Member State" means the Member State to which a provider addressed the application for a European services e-card;
2. "host Member State" means the Member State in which a provider declared the intention to provide services making use of a European services e-card;
3. "requirement" means a requirement as defined in Article 4 (7) of Directive 2006/123/EC;
4. "coordinating authority" means an authority designated in accordance with Article 17 of Regulation .....[ESC Regulation].....;

5. "competent authority" means any of the following without prejudice to the third subparagraph of Article 16(5) :
  - (a) a competent authority as defined in Article 4 point 9 of Directive 2006/123/EC;
  - (b) a competent authority as defined in Article 3(1)(d) of Directive 2005/36/EC;
  - (c) any authority or body in charge of a central, commercial or company register in a Member State;
  - (d) any tax authority in a Member State;
6. "public contract" means a contract as defined in Article 2(5) of Directive 2014/24/EU of the European Parliament and of the Council <sup>32</sup>;
7. "design contest" means a design contest as defined in Article 2(21) of Directive 2014/24/EU;
8. "concession" means a concession as defined in Article 5(1) of Directive 2014/23/EU of the European Parliament and of the Council <sup>33</sup>;
9. "authorisation scheme" means an authorisation scheme as defined in Article 4 (6) of Directive 2006/123/EC;
10. "service" means a service as defined in Article 4(1) of Directive 2006/123/EC;
11. "provider" means a provider as defined in Article 4(2) of Directive 2006/123/EC;
12. "Member State of establishment" means a Member State of establishment as defined in Article 4(4) of Directive 2006/123/EC;
13. "establishment" means establishment as defined in Article 4(5) of Directive 2006/123/EC;
14. "notification scheme" means any procedure under which a provider is required to take steps towards a competent authority, giving information or submitting documents concerning access to a service activity or the exercise thereof, without the need for a formal or implied decision by that authority.

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<sup>32</sup> Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65).

<sup>33</sup> Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts (OJ L 94, 28.3.2014, p. 1).

## CHAPTER II

# EUROPEAN SERVICES E-CARD

### *Article 4*

#### *European services e-card as proof of establishment*

Member States shall accept a valid European services e-card as 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.

### *Article 5*

#### *Effects of a European services e-card in the host Member State*

1. 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 European services e-card for temporary cross-border provision of services as a condition for such provision of services in its territory.
2. A host Member State shall not impose any prior authorisation scheme or prior notification scheme on the holder of a previously issued European services e-card for establishment as a condition for establishment in its territory through a branch, agency or office located in its territory.
3. A host Member State shall refrain from imposing on holders of a previously issued European services e-card requirements other than those referred to in paragraphs 1 and 2 the compliance of which has been or is deemed to have been verified under Articles 11 to 13.
4. Paragraphs 1, 2 and 3 are without prejudice to:
  - i) requirements imposed on providers in the context of selection procedures of candidates for authorisation schemes limited in number in accordance with EU law;
  - ii) requirements and other obligations, prohibitions, conditions or limits imposed on providers in the context of selection procedures of candidates for the provision of services under a public contract, a design contest or a concession;
  - iii) authorisation schemes, notification schemes or requirements concerning conditions specifically related to the site where the service is provided or to the site where the provider is established;
  - iv) requirements regarding recognition of professional qualifications as provided for by Articles 4 and 4f of Directive 2005/36/EC;
  - v) disclosure obligations as provided for by Article 2 of Directive 2009/101/EC and Article 2 of Directive 89/666/EEC or obligations, prohibitions, conditions or limits imposed by national rules on registration of branches of companies registered in another Member State under company law.

5. Paragraphs 1, 2 and 3 are without prejudice to reporting obligations imposed on the holder of a European services e-card or the performance of checks, inspections or investigations from competent authorities during the provision of the service, in compliance with EU law.

#### *Article 6*

#### ***Use of information contained in the European services e-card***

Authorities in Member States shall not, in the context of any procedures or formalities imposed on a provider in their territory and in accordance with the rules on the protection of personal data as provided for in Directive 95/46/EC [, Regulation (EU) No 2016/679] and national legislation, require the holder of a European services e-card to provide any information which is already contained in the European services e-card, including for:

- (i) the award of a public contract, a design contest or a concession;
- (ii) formation of subsidiaries or registration of branches under company law;
- (iii) registration with mandatory social insurance schemes.

#### *Article 7*

#### ***Validity of a European services e-card***

1. A European services e-card for temporary cross-border provision of services concerned by that e-card shall be valid throughout the territory of the host Member State.

A European services e-card for establishment shall be valid, as regards the service activities covered by that e-card, throughout the territory of the host Member State through one or more branches, agencies or offices located in the territory of this Member State except where an authorisation for each additional branch, agency or office is justified in accordance with Article 10(4) of Directive 2006/123/EC.

This shall be without prejudice to the obligation of the holder of a European services e-card to comply with obligations, prohibitions, conditions or limits imposed by national rules on registration of a branch under company law in order to provide services through such branch.

2. A European services e-card shall be valid for an indefinite duration, unless suspended, revoked or cancelled, in accordance with Articles 15 to 17.

This shall be without prejudice to measures put in place in accordance with Article 18 of Directive 2006/123/EC.

## **CHAPTER III**

### **EUROPEAN SERVICES E-CARD SCHEME**

#### *Article 8*

#### ***Application for a European services e-card***

Member States shall ensure that providers with establishment in the territory of one Member State shall have the right to submit an application for a European services e-card to the coordinating authority of that same Member State.

The application shall consist of the elements and supporting documents as prescribed by Articles 4 and 5 of Regulation .....[ESC Regulation].....

#### *Article 9*

#### ***Eligibility***

1. Providers of service activities for which a European professional card for the temporary and occasional provision of services has been introduced, in accordance with Directive 2005/36/EC, shall not be eligible for a European services e-card for the provision of temporary cross-border services.
2. Providers of service activities for which a European professional card for establishment has been introduced, in accordance with Directive 2005/36/EC, shall not be eligible for a European services e-card for establishment. Those providers shall be eligible for a European services e-card as regards requirements and provisions referenced in the second subparagraph of Article 4a(5) of Directive 2005/36 EC.

#### *Article 10*

#### ***Right of Member States to invoke overriding reasons of public interest***

In assessing applications for the European services e-card, Member States shall retain the right to invoke those overriding reasons of public interests recognised under Directive 2006/123/EC, in particular Article 16 thereof, or other acts of EU law.

#### *Article 11*

#### ***Assessment of the application by the home Member State***

1. The coordinating authority of the home Member State shall within one week of having received an application for a European services e-card:
  - (a) examine the application;
  - (b) verify the completeness and accuracy of the information provided;
  - (c) verify whether European services e-cards issued in relation to other home Member States for the same provider and service activity have been revoked or

cancelled, or that cancellation has been requested to allow replacement of those e-cards by the European services e-card to which the application refers to;

- (d) verify the content and validity of accompanying documents, if any, that prove compliance with requirements applicable to the service provision to which the applicant is subject in the home Member State;
- (e) request supplementing of the application from the applicant, where necessary;
- (f) complete the application form with the information obtained in accordance with Article 14(2);
- (g) upload to the electronic platform where the standard form for application is made available the necessary documents, if any, obtained in accordance with Article 14(2).

Where the coordinating authority of the home Member State requests supplementing of the application from the applicant, the time-limit is suspended until that information is provided.

- 2. The coordinating authority of the home Member State shall, upon completion of the tasks referred to in paragraph 1, communicate without delay the application to the coordinating authority of the host Member State, with information to the applicant.
- 3. The decisions and actions by the coordinating authority of the home Member State, notified to the applicant through the electronic platform where the standard form for application is made available, or the absence of a decision or action within the time-limit shall be subject to appeal under national law of the home Member State.
- 4. The Commission shall adopt technical rules for the handling and processing of the application by means of implementing acts. These rules shall include time-limits on the expiration of the application due to inaction of the applicant.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 19(2).

#### *Article 12*

#### ***Assessment by the host Member State of the application for a European services e-card for the provision of temporary cross-border services***

- 1. 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 line with the rights of Member States as referred to in Article 10, the coordinating authority of the host Member State may within the same time-limit, decide to object to the issue of the European services e-card by the coordinating authority of the home Member State where it demonstrates that the application of a prior authorisation scheme, prior notification scheme or requirements to the applicant is justified for one of those overriding reasons of public interest set out in Article 16 of Directive [2006/123/EC](#) or is admissible in accordance with other acts of EU law.

The host Member State shall take due account in that assessment of the requirements that the applicant already meets in its home Member States. For the purpose of that assessment and within the above-mentioned time-limit, the coordinating authority of the host Member State shall be allowed to request necessary clarifications or necessary additional information from the home Member State or the applicant which is not yet contained in the application. In that case, the time limit referred to in this paragraph is suspended until the requested necessary clarification or necessary additional information is supplied. The procedure for requesting clarifications or additional information will be laid down by way of the delegated acts referenced in paragraph 4.

An objection to grant a European services e-card may not be based on non-compliance with one of the requirements listed in Article 5(5). The Commission shall have access, via IMI, to the decision of objection by the coordinating authority of the host Member State.

2. Taking into account the rights of Member States as referred to in Article 10, if the coordinating authority of the host Member State does not react within the time-limit referred to in paragraph 1, that time limit shall automatically be extended by two additional weeks and the electronic platform where the application for a European services e-card has been submitted shall issue an alert to the coordinating authority of the host Member State to the effect that failure to react shall imply that there is no objection to the issue of the European services e-card to the applicant.
3. If the host Member State does not object in accordance with paragraph 1, the coordinating authority of the home Member State shall issue the European services e-card without delay upon expiration of the extended time-limit resulting from the application of paragraph 2. In the absence of any objection under the second subparagraph of paragraph 1 and failing a decision by the coordinating authority of the home Member State upon expiration of the extended time-limit resulting from the application of paragraph 2, the European services e-card shall be deemed to have been issued by the home Member State in the terms communicated to the host Member State in accordance with Article 11(2).

Upon receipt of the decision of the host Member State to object under paragraph 1 the home Member State shall refuse, without delay, the application for a European services e-card.

4. The Commission is empowered to adopt delegated acts in accordance with Article 18 in order to specify the procedure for the coordinating authority of the host Member State to request clarifications or additional information from the home Member State or the applicant, and to modify, if necessary, the time-limits laid down in paragraph 1.
5. The decisions and actions of the coordinating authority of the home Member State, notified to the applicant through the electronic platform where the standard form for application is made available, shall be subject to appeal under national law of the home Member State.

The decision by the coordinating authority of the host Member State to object to the issue of the European services e-card, notified to the applicant through the electronic



platform where the standard form for application is made available, shall be subject to appeal under national law of the host Member State.

6. The Commission shall adopt technical rules for the handling and processing of the application under paragraphs 1 and 2 by means of implementing acts. These rules shall include time-limits on the expiration of the application due to inaction of the applicant.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 19(2).

### *Article 13*

#### ***Assessment by the host Member State of the application for a European services e-card for establishment***

1. In the context of a procedure for issuing a European services e-card for establishment in the form of a branch, agency or office, 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 as referred to in Article 5(2) is applicable, in compliance with EU law, to such establishment. If such a prior authorisation scheme or prior notification scheme has been identified, the host Member State shall also identify the conditions which the applicant is required to comply with, with the exception of those referred to in Article 5(5). The host Member State shall indicate 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.

The host Member State shall immediately inform the applicant and the coordinating authority of the home Member State of the prior authorisation or prior notification scheme in question, the conditions which the applicant is required to comply with and of the necessity and proportionality thereof.

2. Taking into account the rights of Member States as referred to in Article 10, if the coordinating authority of the host Member State does not react within the time-limit referred to in paragraph 1, that time limit shall automatically be extended by two additional weeks and the electronic platform where the application for a European services e-card has been submitted shall issue an alert to the coordinating authority of the host Member State to the effect that failure to react shall imply that the European services e-card shall be issued to the applicant.
3. Upon receipt of the reaction by the coordinating authority of the host Member State to the application, the applicant shall be allowed to provide proof of compliance with the conditions identified by the coordinating authority of the host Member State under the paragraph 1.

The applicant shall describe which specific conditions are complied with by previous compliance with equivalent requirements in the home Member State.

Member States shall ensure that the coordinating authority of the home Member State shall assist the applicant in proving compliance with host Member State conditions, in accordance with Article 14.

4. The coordinating authority of the host Member State shall assess, within one week upon receipt of proof of compliance with the conditions identified in accordance with paragraph 1, whether to issue the European services e-card or reject the application for the European services e-card.

In case the coordinating authority of the host Member State decides to issue the European services e-card, it shall do so without delay.

Alternatively, the coordinating authority of the host Member State may inform the applicant and the coordinating authority of the home Member State of its intention to reject the application, in which case the applicant shall have a week to present its observations.

Upon receipt of the observations of the applicant or, where no observations have been made, upon expiration of the time-limit to present those observations, the coordinating authority of the host Member State shall decide, within one week, whether to issue the European services e-card or reject the application for the European services e-card.

5. The coordinating authority of the host Member State shall be allowed to request necessary clarifications or necessary additional information from the home Member State or the applicant which is not yet contained in the application. In that case, the time limits referred to in paragraphs 1 and 4 are suspended until the requested necessary clarification or necessary additional information is supplied.

Clarifications and additional information shall be requested in accordance with the procedure laid down in accordance with paragraph 7.

6. In case the host Member State, upon expiration of the periods for its reaction mentioned in paragraphs , 2 and 4, does not request compliance with any condition under paragraph 1 or does not take the decision to issue the European services e-card under paragraph 4, the European services e-card shall be deemed to have been issued by the host Member State in the terms communicated to the host Member State in accordance with Article 11(2).
7. The Commission shall be empowered to adopt delegated acts in accordance with Article 18 in order to specify the procedure for the coordinating authority of the host Member State to request clarifications or additional information from the home Member State as referred to in paragraph 5, and to modify if necessary the time-limits mentioned in paragraphs 1 and 4.
8. The decisions and actions by the coordinating authority of the home Member State, notified to the applicant through the electronic platform where the standard form for application is made available, shall be subject to appeal under national law of the home Member State.

The decisions of the coordinating authority of the host Member State to request compliance with conditions under paragraph 1 and its decision on issue of the European services e-card, notified to the applicant through the electronic platform where the standard form for application is made available, shall be subject to appeal under national law of the host Member State.

9. Member States shall not require application for a registration of a branch under company law as a precondition to assess the application for a European services e-card for establishment.

This shall be without prejudice to the obligation of the holder of a European services e-card to comply with national obligations, prohibitions, conditions or limits imposed regarding registration of a branch under company law in order to provide services through such a branch in compliance with EU law.

10. The Commission shall adopt technical rules for the handling and processing of the application under paragraphs 1, 2, 3 and 4 by means of implementing acts. These rules shall include time-limits on the expiration of the application due to inaction of the applicant.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 19(2).

#### *Article 14*

#### ***Once-only principle in the home Member State***

1. Coordinating authorities in the home Member State shall not require providers to provide information and documents which are available to those authorities in accordance with paragraph 2 of this Article or Article 14(3) of Regulation ...[ESC Regulation].... when applying for a European services e-card or to prove compliance, in the context of a European services e-card for establishment, with conditions identified by the coordinating authority of the host Member State in accordance with Article 13(1).
2. The coordinating authority in the home Member State shall obtain the information and documents required for the purposes referred to in paragraph 1 which are available to other authorities in the home Member State or originate from those authorities, in accordance with the rules on the protection of personal data as provided for in Directive 95/46/EC, Regulation (EU) No 2016/679 and national legislation.

#### *Article 15*

#### ***Suspension and revocation of a European services e-card in relation to a host Member State***

1. Member States shall ensure that the coordinating authority who issued a European services e-card suspends its validity or revokes it in case, respectively, of a decision, in accordance with EU law, determining a temporary or permanent ban on provision of the service activities in question by the European services e-card holder in the host Member State.
2. Member States shall ensure that coordinating authorities who issued a European services e-card revoke it in case the e-card holder:
  - (i) made use of information or documents in the context of the procedure to issue the e-card which have been ascertained to be fraudulent, inaccurate or falsified by

a final decision of either home or host Member State, not subject to appeal under the applicable national law;

- (ii) is subject to a final decision, in compliance with Article 4(5) of Directive 2014/67/EC, not subject to appeal under national law, by the host Member State that it considers the holder of a European services e-card to be a worker and not a self-employed person, in accordance with Article 2(2) of Directive 96/71/EC of the European Parliament and of the Council<sup>34</sup>;
- (iii) does not meet one or more conditions applicable for temporary cross-border provision as prescribed by the first subparagraph of Article 11(1), the compliance of which, under the national law of the host Member State, is essential to continued legal provision of the services in question in its territory;
- (iv) does not meet one or more conditions imposed in the context of a prior authorisation or prior notification scheme applicable for establishment as prescribed by the first subparagraph of Article 12(1), the compliance of which, under the national law of the host Member State, is essential to continued legal provision of the services in question in its territory.

#### *Article 16*

#### ***Suspension and revocation of all European services e-cards of a service provider for a certain service activity***

1. Member States shall ensure that, in case of a decision, in accordance with EU law, determining a temporary or permanent ban on provision of the service activities by the European services e-card holder in the home Member State, the coordinating authorities who issued a European services e-card suspend the validity of or revoke, respectively, all European services e-cards issued for the same provider and service activity in question.
2. Member States shall ensure that, in case of a decision determining a temporary or permanent ban on provision of the service activities by the European services e-card holder in the host Member State, coordinating authorities who issued a European services e-card suspend the validity of or revoke, respectively, all European services e-cards issued for the same provider and service activity in so far as the national law of the home Member State determines, in accordance with EU law, the suspension or termination of service activities in its territory due to, respectively, the temporary or permanent ban in question in the host Member State.
3. Member States shall ensure coordinating authorities who issued a European services e-card revoke all European services e-cards issued for the same provider and service activities in case that provider:
  - (i) permanently ceases to provide the services in question in the home Member State;
  - (ii) is wound-up and dissolved;

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<sup>34</sup> Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (OJ L 18, 21.1.1997, p. 1).

- (iii) changes its main centre of activities relevant for issue of the e-cards in question from one Member State to another Member State;
- (iv) changes its main centre of activities relevant for issue of the e-cards in question to a third country;
- (v) is subject to a final decision not subject to appeal under national law, by the home Member State that it considers the holder of a European services e-card to be a worker and not a self-employed person;
- (vi) is no longer established in the home Member State, for any other reason.

#### *Article 17*

#### ***Procedure for the suspension, revocation, update and cancellation of European services e-cards***

1. A Member State which detects a reason to trigger the suspension or revocation of a European services e-card, in accordance with Articles 15 or 16, occurring in its territory shall communicate via IMI to the holder of the European services e-card in question the motivation therefore and shall give it the opportunity to be heard.

This shall be without prejudice to an alert under Article 32 of Directive 2006/123/EC.

2. Once a Member State concludes on the need to suspend or revoke a European services e-card it shall do so without delay, in case its coordinating authority is the issuing authority of the e-card in question, or it shall communicate without delay to the issuing coordinating authority its conclusion on the need to suspend or revoke the European services e-card in question.

The issuing coordinating authority which receives the communication of a conclusion on the need to suspend or revoke the European services e-card from another Member State shall immediately suspend or revoke the European services e-card in question, as appropriate.

Member States shall ensure that, as soon as the conditions which led to the suspension of a European services e-card are no longer valid, the issuing coordinating authority reactivates, without delay, the suspended European services e-card.

3. A decision to suspend or revoke a European services e-card, notified to the applicant through the electronic platform where the standard form for application is made available, shall be duly motivated and be subject to appeal under national law of the Member State concerned.

The absence of a decision to reactivate a suspended European services e-card in accordance with the last subparagraph of paragraph 2 shall be subject to appeal under national law of the Member State concerned.

This paragraph shall be without prejudice to the second subparagraph of paragraph 2.

4. Member States shall oblige the holder of a European services e-card to inform the coordinating authority which issued its European services e-card of the following:
- (a) decisions restricting or prohibiting, even temporarily, in either home or host Member State the provision by the holder of the European services e-card of service activities covered by that same e-card;
  - (b) permanent cessation of activities covered by the European services e-card in the territory of the home Member State;
  - (c) winding-up and dissolution of the holder of the European services e-card or change of its main centre of activities within the territory of the European Union or to a third country;
  - (d) final decisions not subject to appeal under national law, by either the home or, in compliance with Article 4(5) of Directive 2014/67/EC, by the host Member State that it considers the holder of a European services e-card to be a worker and not a self-employed;
  - (e) any significant change as regards the requirements that the holder of the e-card is subject to in its home Member State to the extent that information on compliance with these requirements had been communicated to the host Member State together with the e-card application;
  - (f) changes in the factual situation or any other elements of information regarding the holder of a European services e-card which are reflected in its content.
5. Coordinating authorities shall exchange information on their own initiative and give assistance to other coordinating authorities in relation to events that have come to their knowledge which may determine a suspension or revocation of the European services e-card in question or the need to otherwise update its content.

Member States shall ensure that their competent authorities inform the coordinating authority they designated in accordance with Article 17 of Regulation ...[ESC Regulation]... of the events listed in paragraph 4 that have come to their knowledge.

In relation to point (d) of paragraph 4, this paragraph shall also apply to competent authorities as defined in Article 2(a) of Directive 2014/67/EU.

This paragraph shall be without prejudice to Article 2 of Directive 2009/101/EC and Article 2 of Directive 89/666/EEC.

6. The holder of a European services e-card may request the cancellation of its previously issued European services e-card to the issuing coordinating authority at any time.
7. The Commission shall adopt technical rules for the processing of suspensions, revocations, updates and cancellations of European services e-cards by means of implementing acts, including provisions on the introduction and withdrawal of alerts of possible suspension and revocation and on the interconnection between these procedures and the alert mechanism set up under Article 32 of Directive 2006/123/EC as well as the interconnection between a valid European services e-card

and the procedure for case-by-case derogations in accordance with Article 18 of Directive 2006/123/EC.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 19(2).

## **CHAPTER IV FINAL PROVISIONS**

### *Article 18*

#### ***Exercise of the delegation***

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 12(4) and Article 13(7) shall be conferred on the Commission for a period of five years from [...]. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.
3. The delegation of power referred to in Article 12(4) and Article 13(7) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Article 12(4) and Article 13(7) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

### *Article 19*

#### ***Committee procedure***

1. The Commission shall be assisted by the Committee referred to in Article 40(1) of Directive 2006/123/EC. That Committee shall be a committee within the meaning of Regulation (EU) 182/2011.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) 182/2011 shall apply.

*Article 20*  
**Monitoring of implementation**

The Commission, with Member States, social partners and other relevant stakeholders, will establish monitoring arrangements to monitor and assess the implementation and impacts of this Directive, in particular how it impacts freedom of establishment and freedom to provide services across Member States for the service activities covered, namely by reducing costs for providers, enhancing transparency about providers expanding cross-border and increasing competition, and how it impacts prices and quality of the services concerned, considering relevant indicators.

*Article 21*  
**Review clause**

By [24 months after the date for transposition of this Directive] the Commission shall carry out an assessment of the appropriateness of additional measures to coordinate provisions concerning the freedom of establishment and the freedom to provide services for which a European services e-card has been introduced.

By 36 months after the date for transposition of this Directive and at the latest every five years thereafter, the Commission shall carry out an evaluation of this Directive and submit to the European Parliament and the Council a report on its performance. That report shall consider the need to adapt the procedures for issuing, updating, suspending or revoking a European services e-card taking into account the latest developments in e-Government and shall be included in the report assessing the overall performance of Regulation ...[ESC Regulation]... in line with its Article 19.

*Article 22*  
**Transposition**

1. Member States shall adopt and publish, by [two years after entry into force of this Directive] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those provisions from [two years after entry into force of Regulation ....[ESC Regulation].....].

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.



*Article 23*  
***Entry into force***

This Directive shall enter into force on the [twentieth] day following that of its publication in the Official Journal of the European Union.

*Article 24*  
***Addressees***

This Directive is addressed to the Member States.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*