

*May 2017*

**Statement  
of the European Tax Adviser Federation  
ETAF**

**on the  
Proposal for a Directive on the legal and operational  
framework of the European services e-card**

**and a**

**Regulation introducing a European services e-card and  
related administrative facilities**

ETAF [www.etaf.tax](http://www.etaf.tax) is a European umbrella organisation for 230,000 tax professionals from France, Germany and Italy. ETAF was launched in January 2016 as an international non-profit organisation (AISBL), governed by Belgian law and located in Brussels. The main role and mission of ETAF is to represent the tax profession at European level in liaising closely with European policy makers to promote good legislation in tax and professional matters.

ETAF is a registered organisation in the EU Transparency Register with the register identification number 760084520382-92.

## **I. Background**

The Proposals for a directive on the legal and operational framework of the European services e-card and for a regulation introducing a European services e-card and related administrative facilities are part of the Services Package proposed by the Commission on 10 January 2017.

According to the European Commission, the services e-card aims at facilitating selected administrative procedures required from various professions to provide services in EU countries other than the home country. The proposed services e-card shall consist of the following elements: the identity of the applicant, proof of establishment in the home country and specific requirements on the relevant service, for example information about good reputation and professional indemnity insurance.

## **II. Content**

The Commission proposes two different types of services e-cards that service providers shall be able to choose from: one for temporary provision of services in other Member States than the home country and one for the establishment of a branch in another Member State. Each Member State shall designate a coordinating authority. The coordinating authorities of the home and the host Member State shall manage the whole communication regarding the administrative process. The service provider shall thus be spared the necessity of communicating in foreign languages or searching for responsible contact persons.

The legislative proposals only allow for very short deadlines for examination and reaction during the application procedure. The services e-card shall be deemed as approved if no action is taken by the host Member State within the time limits. In the event of an objection to the issue of a services e-card, the host Member State would also have to explain why the national requirement of professional regulation is justified by an overriding reason of public interest and why the measure is proportionate.

### **III. Evaluation**

In a first step, ETAF welcomes the goal of the European Commission to reduce the administrative burden for service providers in the European Union. First of all, there is no doubt that the acquisition of information about certain requirements in other Member States and the lack of knowledge about administrative procedures can constitute barriers for an intended provision of services in other Member States.

However, the current proposal, and especially the very tight verification deadlines, bears the risk of undermining justified professional regulation and of introducing the country of origin principle “through the backdoor”.

### **IV. ETAF Positions**

#### **1.) The examination periods for the Member States are too short and may lead to the introduction of the country of origin principle through the backdoor**

The administrations of the host Member States would be bound to very short authorization periods, both for the cross-border provision of services and the establishment in another Member State. However, several authorities may be involved in the examination of the prerequisites for the issuance of a services e-card, to the effect that the assessment period would be far too short to allow for a comprehensive examination.

In combination with the assumption of approval in the event of non-compliance with these deadlines, there is a risk that service providers in the host Member State that do not comply with the national occupational regulations will be approved. This is a threat to consumer protection and, in the case of tax consultants, to tax administration and public policy. It is therefore urgently required to revise the administrative procedure for issuing a services e-card.

#### **2.) Further supervision of the temporary provision of services must be possible**

Once the services e-card has been issued for cross-border services, the service provider may offer services in the other Member State. In our view, the competencies to verify and supervise temporary service provision are not sufficiently clarified. Since the services e-card

is valid for an unlimited period of time, there is the risk of introducing the country of origin principle "through the back door" as national regulations would be undermined. The validity of the services e-card must be limited in time and an examination authority in the host country must be established in order to limit the risk.

### **3.) Proof of coverage for professional indemnity insurance**

Article 4 (1) g and Article (5) of the Regulation proposal sets rules for the proof of professional indemnity insurance. It is unclear how the comparability of insurance in the Member States should be achieved in practice.

Currently, there are different models of professional liability in different Member States which are regulated by insurance companies. In some Member States, it's the causality between a consultancy error and a loss, and/or the occurrence of a factual property damage to the client which justify a liability of the tax consultant. In other Member States, there is only the erroneous advice and a damage needed. If conditions in the Member States are different, the insurance policies are not comparable and there is a need for a deeper analysis to safeguard consumer protection. Automatic recognition may not take place in this case.

### **4.) Public legitimation questionable**

The European Commission had carried out a public consultation on the introduction of a services e-card by means of the impact assessment. However, the published responses in the accompanying documents on the legislative proposals (SWD (2016) 434 and 439 final) do not support the introduction of the services e-card. Only a small minority (21%) favors the use of a services e-card in the field of business services, 23% are in favor of the inclusion of tax advice services in the initiative, 19% want to include accounting and accounting tasks.

Only minorities see positive effects in reducing administrative or regulatory hurdles. A small majority (51%) sees the introduction of the services e-card as a threat for equal treatment of service providers from the host and other Member States.

## **V. Conclusion**

We welcome the objective of relieving businesses from red tape in providing cross-border services and founding establishments in other Member States. Language barriers in communication with authorities could be reduced. It is also often difficult for service providers to identify the right addressees in authorities of the host country, which can lead to increased time consumption and costs.

There is, however, a considerable need for revising and amending the legislative proposals for the introduction of a European service e-card in order to prevent the existing national occupational regulation from being overridden by the introduction of the county of origin principle "through the back door". The proposal must furthermore match the practical work in the Member States' authorities. In our view, it is imperative to widen the verification deadlines, to limit the validity of the services e-card and to give the host Member States more supervisory options.

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