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Brussels, 22 June 2017

Subject: Comments on the European services e-card

Dear Mrs. Anneleen Van Bossuyt,

Dear Mr. Morten Løkkegaard,

Accountancy Europe is pleased to provide comments on the proposals of Directive and Regulation for a services e-card<sup>1</sup> that is part of the so-called Services Package issued by the European Commission on 10 January 2017.

Accountancy Europe appreciates all attempts to facilitate the cross-border provision of services and therefore welcomes the initiative adopted by the Commission to further develop and enhance the single market for services.

We appreciate that the services e-card can help service providers and competent authorities to complete the administrative formalities required to provide services abroad. Services providers will simply have to liaise with a single authority in their home country and in their own language when applying for a services e-card. The home country authority would then verify the necessary data and transmit it to the host Member State. The host Member State retains the current power to apply domestic regulatory requirements and to decide whether the applicant can offer services on its territory.

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<sup>1</sup> Proposal for a Regulation of the European Parliament and of the Council introducing a European services e-card and related administrative facilities – COM (2016) 824 (the proposed Regulation) and Proposal for a Directive of the European Parliament and of the Council on the legal and operational framework of the European services e-card introduced by Regulation .... [ESC Regulation] .... - COM (2016) 823 (the proposed Directive).

Nevertheless, we identified some critical points and shortcomings about which we would like to inform you. They are explained in Annex I, whereas Annex II and III contain suggestions for the wording in the Directive and Regulation. In brief, the following issues may require further consideration:

The scope of the services e-card should be aligned with the Professional Qualifications Directive and the Statutory Audit Directive, so that all reserved services are excluded, as they vary broadly across Member States.

The services e-card should have a validity period instead of being issued for indefinite duration, so that authorities can check whether the service provider continues meeting the requirements.

The deadlines for administrative procedures appear too short, both for authorities and for the applicant.

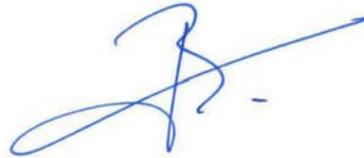
The conditions for suspension or revocation of the services e-card should be based on objective criteria for reasons of legal certainty.

We will be pleased to provide any clarification that may be required.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Edelfried Schneider'.

Edelfried Schneider  
President

A handwritten signature in blue ink, appearing to read 'Olivier Boutellis-Taft'.

Olivier Boutellis-Taft  
Chief Executive

## ANNEX I

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### 1. ACTIVITIES RESERVED TO A PARTICULAR PROFESSION (RESERVED ACTIVITIES)

The proposed Directive and Regulation each define their respective scopes in articles 2 paras 1 by reference to the annex of the proposed Directive. According to the annex, the proposed Directive applies to “accounting, bookkeeping and auditing activities; tax consultancy, with the exclusion of statutory auditing as defined in Article 2(1) of Directive 2006/43/EC” (annex, section M, division 69, group 69.2). Excluded is statutory auditing as defined in the Statutory Audits Directive (Directive 2014/56/EU).

Excluding only statutory audits (and not other reserved activities) contradicts the requirements laid down in the Directive 2006/123/EC<sup>2</sup> (the Services Directive) which shall not be amended or contradicted by the provisions of the proposed services e-card as explicitly stated in recital 7 of the proposed Directive. On the contrary, recital 8 of the proposed Directive and recital 11 of the proposed Regulation state that “all matters, activities and fields excluded from the scope of Directive 2006/123/EC should remain excluded from the scope of [the proposed] Directive [respectively Regulation].”

The above-mentioned contradiction to the Services Directives stems from the fact that article 17 para 6 of the Services Directive excludes all reserved activities from the freedom of services – not only statutory audit.

Therefore, we advocate to adjust the scope of the proposed Directive and Regulation to the effect that they exclude all reserved services from the scope of the services e-card.

According to the Commission, several Members States regulate the accountancy/tax advisory by way of reserve of activities<sup>3</sup>. Reserved services are in Germany, for example, audits due to specific laws such as the Renewable Energy Act (§ 75), the Securities Trading Act (§ 36) or the Combined Heat and Power Act (§ 30).

### 2. VALIDITY OF THE E-CARD

According to the proposed Directive, the services e-card shall be valid for an indefinite duration (article 7 para 2 sentence 1 of the). It is not clear why the services e-card should follow other rules than the European Professional Card in this respect (article 4a of the Directive 2005/36/EC<sup>4</sup> – the Professional Qualifications Directive). The European Professional Card is valid for 18 months. An adequate time limitation of the validity allows competent authorities to check periodically whether the conditions for the e-card are still met. Additionally, the services e-card for establishments should have longer validity periods than the card for the provision of temporary cross-border services.

The renewal of the card must, however, not be more burdensome than the initial application process. It must not be used as a pretext for Member States to add discretionary criteria.

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<sup>2</sup> Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market.

<sup>3</sup> Communication on reform recommendations for regulation in professional services -COM (2016) 820, page 15.

<sup>4</sup> Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications

### **3. DEADLINES FOR ADMINISTRATIVE PROCEDURES**

The proposed Directive allows only very short deadlines for administrative procedures (articles 12 and 13). We doubt that the given periods grant authorities sufficient time to fulfil their tasks thoroughly. Failure to react within the deadline leads to the presumption that the competent authority does not have objections and the card is deemed to be issued. This legal fiction bears the risk of un-scrutinised and illegal cards circulating in the Internal Market. We would, therefore, propose to allow more time to the competent authorities and extend the deadlines.

### **4. DEADLINE FOR THE APPLICANT**

Similar to our position in 3., we would also suggest extending the deadline for reactions by the applicant (article 13 para 4 sentence 3 of the proposed Directive).

### **5. DELEGATED POWERS**

The proposed Directive empowers the Commission to modify the above-mentioned time-limits (points 1.3. and 1.4) through delegated acts (article 12 para 4 and article 13 para 7). Since the time-limits are already very tight, the Commission should not be empowered to reduce the limits even further. Therefore, the Directive should clarify that the Commission may modify the time-limits in a way to extend but not to reduce them.

### **6. REVOCATION OF THE CARD**

The proposed Directive lays down the conditions for the suspension and revocation of the card. In case the card holder does no longer meet the conditions for holding the card, the card shall, however, only be revoked if compliance of the non-fulfilled conditions “is essential to continued legal provision of the services in question” in the host Member State (article 15 para 2 numbers iii and iv of the proposed Directive).

Linking objective criteria (fulfilment or non-fulfilment of conditions) with an assessment as to whether the broken rules are essential in a particular Member State is highly questionable. Objective criteria can be examined with legal certainty. Watering down these objective criteria with an “essentiality test” does not even help the person who holds a card illegally. It only creates legal uncertainty in the Internal Market.

### **7. COORDINATING AUTHORITY**

The proposed Regulation asks Member States to designate a coordinating authority (article 17). In order to avoid double or multiple administrative structures, it should be clarified (in a recital) that Member States can use existing structures for establishing the coordinating authority as it is the case, for example, for the single point of contact (cf. article 6 of the Services Directive).

## ANNEX II

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Proposal for a Directive of the European Parliament and of the Council on the legal and operational framework of the European services e-card introduced by Regulation... (ESC Regulation) ...COM (2016)823

### **Recital 20**

#### *Text proposed by the Commission*

(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.

#### *Amendment*

(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. **When establishing the coordinating authority, the Member States may build on existing structures.** The application for a European services e-card should thus be submitted to the coordinating authority of the home Member State.

#### *Justification*

*The addition shall clarify that existing structures may be used for the establishment of the coordinating authority, as it is the case for the single point of contact (cf. Article 6 of the Services Directive 2006/123). With a view to keeping administrative structures lean it should be possible to entrust the single point of contact with tasks of the coordinating authority.*

### **Recital 42**

#### *Text proposed by the Commission*

(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.**

#### *Amendment*

(42) A European services e-card should be valid for a **definite** period in time.

#### *Justification*

*In the interest of ensuring legal unity in the EU internal market the rules as regards the European professional card and the services e-card should be identical to the greatest possible extent.*

### **Article 2 – paragraph 2 - sentence 2**

#### *Text proposed by the Commission*

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

#### *Amendment*

It shall not apply to the activities and fields mentioned in Article 2(2) and (3) **and in Article 17(6)** of Directive 2006/123/EC

#### *Justification*

*Reference in Article 2(1) of the proposed directive to the annex shows a mismatch with the requirements of the Services Directive (Directive 2006/123), whose regulations shall not be amended according to recital 7 of the proposed directive (sentence 1 of recital 7); according to recital 7 (sentence 2), in comparison with the service directive, the scope of the proposed directive is more limited. Article 17(6) of the Services Directive excludes activities that are reserved to a particular profession (“reserved activity”) from its scope of application (Article 16). Whereas the annex to the proposed directive only excludes the statutory audit from its scope of application as an example for a reserved activity, but no other reserved activity. Therefore, Article 2 – paragraph 2 – sentence 2 needs to be adjusted.*

**Article 7 – paragraph 2 - sentence 1**

*Text proposed by the Commission*

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

*Amendment*

1. A European services e-card **for the provision of temporary cross-border services** shall be valid for **18 months, the services e-card for establishment for 3 years**, unless suspended, revoked or cancelled, in accordance with Articles 15 to 17.

*Justification*

*A definite duration of the services e-card for the temporary provision should be aligned with the regulations of the European professional card (cf. Article 4a, Professional Qualifications Directive 2005/36) to give the authorities of the host member state sufficient control options. As for the services e-card for establishment the duration shall be respectively longer considering the complex planning and setting up of an establishment (branch, agency or office). In any case, the renewal process must not be more burdensome than the initial application process.*

**Article 12 – paragraph 2 - sentence 1**

*Text proposed by the Commission*

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).

*Amendment*

1. Within **four** 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).

*Justification*

*The coordinating authority shall be given a period of consideration that allows an appropriate assessment, in particular with regard to the effect that failure to react shall imply that there is no objection to the issue of the card (cf. Article 12, paragraph 2).*

**Article 12 – paragraph 4**

*Text proposed by the Commission*

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.

*Amendment*

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 **extend**, if necessary, the time-limits laid down in paragraph 1.

*Justification*

*The Commission should not be able to reduce even further the already short time limits.*

**Article 13 - paragraph 4 - sentence 1**

*Text proposed by the Commission*

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.

*Amendment*

4. The coordinating authority of the host Member State shall assess, within **three weeks** 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.

*Justification*

*The coordinating authority shall be given a period of consideration that allows an appropriate assessment, in particular with regard to the effect that failure to react shall imply that there is no objection to the issue of the card (cf. Article 12, paragraph 2).*

**Article 13 - paragraph 4 – sentence 3**

*Text proposed by the Commission*

Alternatively, the coordinating authority of the host Member State may inform the applicant and the

*Amendment*

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.

coordinating authority of the home Member State of its intention to reject the application, in which case the applicant shall have **three weeks** to present its observations.

*Justification*

*The deadline for the applicant has to take into account the effort the applicant has to apply. Therefore, the deadline should be extended.*

**Article 13 - paragraph 4 - sentence 4**

*Text proposed by the Commission*

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.

*Amendment*

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 **three weeks**, whether to issue the European services e-card or reject the application for the European services e-card.

*Justification*

*The coordinating authority shall be given a period of consideration that allows an appropriate assessment, in particular with regard to the effect that failure to react shall imply that there is no objection to the issue of the card (cf. Article 12, paragraph 2).*

**Article 13 – paragraph 7**

*Text proposed by the Commission*

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.

*Amendment*

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 **extend** if necessary the time-limits mentioned in paragraphs 1 and 4.

*Justification*

*The Commission should not be able to reduce even further the already short time limits.*

**Article 15 - paragraph 2 - item (iii)**

*Text proposed by the Commission*

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;**

*Amendment*

iii) does not meet one or more conditions applicable for temporary cross-border provision as prescribed by the first subparagraph of Article 11(1);

*Justification*

*To link the existence of objective criteria to an analysis of materiality reduces the legal certainty. Therefore, an analysis of materiality should be waived.*

## ANNEX III

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Proposal for a Regulation of the European Parliament and of the Council introducing a European services e-card and related administrative facilities – COM (2016)824

### **Recital 33**

*Text proposed by the Commission*

A single coordinating authority should be designated by each Member State to carry out the tasks provided for in this Regulation, without prejudice to the competences set out in applicable national legislation. Such authorities should be registered as a competent authority in the Internal Market Information system for the purposes of Regulation (EU) 1024/2012 and communicated to the Commission.

*Amendment*

A single coordinating authority should be designated by each Member State to carry out the tasks provided for in this Regulation, without prejudice to the competences set out in applicable national legislation. Such authorities should be registered as a competent authority in the Internal Market Information system for the purposes of Regulation (EU) 1024/2012 and communicated to the Commission. **When establishing the coordinating authority the Member States may build on existing structures.**

*Justification*

*The addition shall clarify that existing structures may be used for the establishment of the coordinating authority, as it is the case for the single point of contact (cf. Article 6 of the Services Directive 2006/123). With a view to keeping administrative structures lean it should be possible to entrust the single point of contact with tasks of the coordinating authority.*

### **Article 2 – paragraph 2 - sentence 2**

*Text proposed by the Commission*

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

*Amendment*

It shall not apply to the activities and fields mentioned in Article 2(2) and (3) **and in Article 17(6)** of Directive 2006/123/EC.

*Justification*

*Reference in Article 2(1) of the proposed directive to the annex shows a mismatch with the requirements of the Services Directive (Directive 2006/123), whose regulations shall not be amended according to recital 7 of the proposed directive (sentence 1 of recital 7); according to recital 7 (sentence 2), in comparison with the service directive, the scope of the proposed directive is more limited. Article 17(6) of the Services Directive excludes activities that are reserved to a particular profession (“reserved activity”) from its scope of application (Article 16). Whereas the annex to the proposed directive only excludes the statutory audit from its scope of application as an example for a reserved activity, but no other reserved activity. Therefore, Article 2 (2), sentence 2, needs to be adjusted.*