

11 July 2016

## **Public consultation on the ‘Proposal to introduce a services passport and address regulatory barriers in the construction and business services sectors’**

(3 May – 26 July 2016)

### **Comments by the Confederation of Swedish Enterprise**

The Confederation of Swedish Enterprise is Sweden’s largest business federation representing 50 sector organisations and 60 000 member companies with over 1.6 million employees.

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The Confederation of Swedish Enterprise (henceforth Swedish Enterprise) agrees with the view that the Single Market is one of the greatest achievements of the EU. We support the EU Commission’s efforts to revive and modernise the Single Market to enhance its function regarding free movement of goods and services. Swedish Enterprise represents many businesses that already engage in, or could engage in, cross-border trade within the EU, and for these, it is especially important that remaining barriers to trade and free movement in the Single Market are removed.

*Swedish enterprise understands the services passport initiative as: The services passport would enhance cooperation between the home and host Member State(s) in supporting service providers going cross-border. Upon request, the authorities of the home Member State would issue a services passport to help a company demonstrate that it will satisfy the applicable requirements in the host Member State. The host Member State will remain responsible for defining these requirements, as long as these requirements comply with the relevant provisions of EU law. Following the “once only” principle, the services passport would eliminate the need for multiple requests for information and documentation already provided to the home Member State, through the creation of a “common electronic repository” of documents by the home country administration upon the request of a service provider. In combination, the harmonised notification form and the electronic document repository would ease compliance with existing ex ante notification and control requirements. The passport would cover the construction sector and business services.*

Swedish Enterprise has responded to parts of the services passport consultation questionnaire published by the Commission. However, we find that the questionnaire does not give room for discussing different aspects of the proposal for a services passport, nor does it give room for proposing alternative solutions that might help stimulate cross-border trade in services. We also perceive the questionnaire as being quite biased in that it encourages respondents to give answers that favour the current proposal, for example in section B.9 where support for the services passport is assumed.

Swedish Enterprise has, therefore, decided to complement our response to the questionnaire with this paper.

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## Summary

- The Commission should use resources available for reforms in the area of free movement of services in the most efficient way possible. This means focusing on the types of measures that will have the biggest effect in terms of helping companies take advantage of the benefits of the Single Market.
- Swedish Enterprise has doubts that the proposal for a services passport is an efficient use of resources. It would be more efficient to build on already existing structures, such as Points of Single Contact (PSC) and the Internal Market Information System (IMI), than to create an entirely new structure for information sharing and handling of administration. Furthermore, the message received from our members in the construction industry and in business services is that they do not see a need for a services passport.
- The complete and correct implementation and application of the Services Directive in EU Member States would resolve many of the problems faced by service providers within the Single Market. However, simplification of regulation and better law-making is required in many areas, not just in terms of application of the Services Directive.
- We support the Commission's work aimed at creating a transparent, practical notification procedure that is applied by all Member States. The Commission should also stick to its 'zero tolerance policy' and launch infringement procedures in cases of non-compliance with the Services Directive and other relevant EU legislation by Member States.
- Swedish Enterprise fully supports the Commission's initiative to transform the PSCs into fully-fledged online business portals for goods and services and merge them with other points of contacts under a new Single Digital Gateway.
- A statement such as "this consultation looks at the matter from the perspective of the providers and users of services and does not deal with employee issues and posting of workers", found in the consultation document, shows a worrying lack of understanding of what is the core of any successful business that provides services.
- Swedish Enterprise also thinks that efforts to facilitate free movement of services should include all services sectors and types of businesses, which also speaks against the services passport initiative.

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The services sector represents a significant portion of growth and job creation in Sweden and in the EU. However, services traded across borders accounts for only around five percent of EU GDP. Part of the reason for this is that there are still too many administrative and regulatory barriers that discourage companies from providing services across borders.

Resources available for removing barriers to trade in the single market are always scarce. It is, therefore, important that the Commission and Member States use available resources in the most efficient way by focusing on the types of measures that will have the biggest effect in terms of helping companies take advantage of the benefits of the Single Market.

## **1. Proposed Measures To Strengthen Free Movement of Services**

Swedish Enterprise is of the opinion that if the Commission and Member States truly want to strengthen the free movement of services, they should focus efforts on simplifying the regulatory and administrative environment for business by primarily building on measures that should already have been in place and functioning.

### ***Complete and correct implementation and application of the Services Directive***

Swedish Enterprise thinks that the complete and correct implementation and application of the Services Directive in EU Member States would resolve many of the problems faced by service providers within the Single Market. Measures planned by the Commission in this regard should, therefore, support the process of achieving the complete and correct implementation and application of the Directive.

The Commission should first and foremost carry on with the work it has committed itself to doing in response to the eight recommendations set out in the Court of Auditors Special Report no 5/2016 "Has the Commission Ensured Effective Implementation of the Services directive?" Once this work is completed, a gap analysis can be carried out and be the basis for decisions about the need for further action to support businesses' trade in the Single Market, and also Member States administrations in creating the right framework for a thriving services sector in the EU.

Member States need to revisit national requirements under the Services Directive's Article 15 and 16 and evaluate where there may have been cases of poor proportionality analyses and also adapt or remove burdensome requirements where possible and assess if there are less restrictive measures that could be taken. National requirements that in some cases are still discriminatory and unjustified include:

- Discriminatory residence requirements;
- Restrictions on multidisciplinary activity;
- Burdensome requirements on legal form and shareholding requirements, and
- Economic needs testing for establishment.

These are all examples of regulatory aspects that should have already been removed when the Services Directive was implemented.

### ***Notification and infringement procedures***

Member States must also avoid the introduction of new national requirements that hinder the free movement of services. Swedish Enterprise shares the Commission's view that the current notification procedure for services has many shortcomings, and must be improved. We, therefore, support the Commission proposals in this regard. A transparent, practical notification procedure that is applied by all Member States is highly important in ensuring that national special rules governing services can be questioned and avoided.

Swedish Enterprise is also of the opinion that the Commission should stick to its 'zero tolerance policy' by more resolutely launching targeted infringement procedures in cases of non-compliance with the Services Directive and other relevant EU legislation by Member States. A welcome example of Commission action in this regard is that it decided earlier in 2016 to take further steps in its infringement procedures for lack of a compliance with the Services Directive against a number of Member States on the grounds that their national rules include excessive and unjustified obstacles in the area of professional services.



***Provision of information and electronic means of handling administration***

Generally, lack of access to information about the laws and rules that apply in the Single Market and in different Member States, prevents companies from making use of all the opportunities that the Single Market offers. Under the Services Directive, Member States should already provide information about which requirements companies need to comply with in a host Member State and how they can demonstrate compliance through the Points of Single Contact (PSC).

It is, however, well-known that there is ample room for improvement of many of the national PSCs. Further work is necessary to ensure that the PSCs are indeed established in all Member States and contain all the information as provided for in the Services Directive regarding the rules, laws, and procedures that apply to service providers and their capability to process administrative formalities. All current information should be accessible in national language or languages, and importantly, in a more internationally spread language, such as English. It is also important that the information provided must maintain the same quality regardless of language.

Swedish Enterprise would also argue that PSCs should be expanded to also include information regarding trade with goods. Swedish Enterprise also agrees with the 2013 Charter for the Electronic Points of Single Contact under the Services Directive that to meet the needs of businesses, the PSCs should not only meet the obligations of the Services Directive but go beyond them, in terms of scope and functionality. Swedish Enterprise, therefore, supports the ambition that the PSCs should live up to the key features of a successful PSC set out in the Charter.

The services passport is presented by the Commission as a way of streamlining administrative procedures and thus save time and costs for business and assist them in operating in the single market. However, the PSCs are meant to already have provided this and should be e-government portals designed for service providers to obtain all relevant information on the formalities they need to comply with to provide their services in another Member State, using electronic means via one single point of contact. It is Swedish Enterprise's view that it would be more efficient to build on this already existing structure than to create something entirely new.

Furthermore, Swedish Enterprise fully supports the Commission's initiative to transform the PSCs into fully-fledged online business portals for goods and services and merge them with other points of contacts under a new Single Digital Gateway. The new Gateway should provide companies with all the information and assistance they need to operate in the Single Market including the possibility to complete administrative procedures entirely online.

Swedish Enterprise noted also the support for the Single Digital Gateway expressed by 14 Member States in a letter to the Dutch presidency ahead of the Competitiveness Council 26 May 2016 in which they said "efforts should be made to provide consumers and businesses with regulatory certainty and easy access to information about existing rules. The Single Digital Gateway should contribute to this through a user-friendly architecture and an improvement of the underlying instruments and online procedures at Member State level."

The Single Digital Gateway could be the 'one-way-in' for companies seeking information about what rules apply in which Member States and wanting to manage administration related to establishment or cross-border trade of both services and goods that the services passport is meant to be for the construction and business services sectors. The added

benefit of putting resources into creating the Single Digital Gateway would, of course, be that it would be built on and improve systems that are already partly in place and it is a system open to all businesses in all sectors that see the potential of doing business in the Single Market.

### ***Better regulation***

Simplification of regulation and better law-making is required in many areas, not just in terms of application of the Services Directive. The construction sector, for example, is indeed one of the most regulated services sectors in the EU so arguably simplification is needed. However, under the services passport initiative “the host Member State will remain responsible for defining national requirements” so it will not solve the challenges for companies related to diverse national requirements for providing services in a different Member State.

### ***Regulation of professional qualifications and reduction of regulated professions***

Swedish Enterprise thinks that simpler and faster recognition of professional qualifications across borders, and a reduction in the number of regulated professions within the EU, is needed and important. Free movement of employees is a prerequisite for service providers to be able to offer services in other Member States and also to establish a presence in other Member States than the one where the company is based.

Existing initiatives such as the European Professional Card and the European Single Procurement Document (ESPD) also need to be taken into account and there should not be any duplication of efforts, which may be a risk with the services passport.

### ***Better co-operation between Member States' administrations and authorities***

The services passport initiative seems to be partly about encouraging more and better contacts and co-operation between public authorities in Member States. Swedish Enterprise believes that this is important as regulatory simplification and streamlining of administrative procedures is to some extent dependent on public authorities becoming more aware of each other's procedures and sharing best practices. Swedish Enterprise would support the Commission if it attempts to promote an upgrade and more use of the Internal Market Information System (IMI).

## **2. Specific Comments on the Services Passport Initiative**

Based on the above, Swedish Enterprise would like to take this opportunity to express our doubts as to whether the Commission's proposal for a services passport is an efficient use of resources to encourage free movement of services in the Single Market.

### ***Commitment to legislate before there is an evidence-base***

Swedish Enterprise is concerned that the Commission already has committed itself to presenting a legislative initiative to introduce a services passport before public consultation has taken place and before there is a complete evidence-base supporting such an initiative. This is surely contrary to the adopted principles of better regulation at EU level.

### ***Swedish Enterprise's members do not see a need for a services passport***

Perhaps most importantly, the message that we have received when analysing the Commission's plans with our members in the construction industry and in business services is that they do not see a need for this type of measure. The general perception expressed to us is that the Commission lacks in understanding of how companies in these sectors operate.

For example, construction companies tend to operate mainly at a local and regional level. Larger companies that are active in several countries tend to do so by establishment not by providing their services cross-border on a short-term basis. Smaller suppliers to construction companies, specialised, for example in heating, ventilation, sanitation, plumbing or electrical installation, are often part of larger-scale projects working closely with their client that manages logistics and administration for the entire project. Important for the Commission to note is that the explanation for this picture is not necessarily related to the type of administrative obstacles that the services passport would be designed to address. National technical and license requirements, as well as language and cultural differences including preferred ways of payment, are as important and these would not be dealt with.

Looking at business services, this is, of course, a generic term that includes a wide variety of companies operating under different market conditions and Swedish Enterprise finds it surprising that the Commission is grouping them all together. The term 'business services' could include companies specialising in technology and engineering, IT, R&D, advertising, architecture, consulting, legal services, logistics and shipping, human resources and staffing, facility management et cetera. Again the reasons for engaging or not engaging in trade in the Single Market are varied and not necessarily linked to administrative obstacles. Some business services need to be provided locally or regionally, thus the company needs to be established where it has its operations. This may be related to the type of services provided, to national requirements in terms of recognition of professional qualifications, licenses needed to practice and other various national requirements that differ between member states.

The fact that many business services are regulated under Directive 2013/55/EU on the recognition of professional qualifications and linked to the IMI Regulation (Regulation (EU) No 1024/2012) also has to be taken into account when the Commission moves forward with measures to facilitate services provision in the internal market.

#### ***Establishment or cross-border provision***

It needs to be clear in the Commission's description of the services passport if it is about the needs of companies looking to establish themselves in more than one Member State or companies that would be interested in shorter-term cross-border provision of services. The types of barriers and administrative and regulatory challenges that companies have to deal with vary widely depending on whether it is a question of establishment or cross-border provision.

#### ***Obstacles can be found in both home and host Member States***

Furthermore, administrative obstacles are not always found on the side of the host Member State but are sometimes created by the home Member State. One such example is the issuance of A1 forms that posted employees need to take with them when completing short-term cross-border assignments to stay covered by the home Member State's social security system. Delays in issuing A1 forms hinders companies since they are often under time-pressure to be able to compete for contracts and some work places, for example dockyards in France, Italy and Finland, will not grant access to workers lacking the A1 form.

#### ***Employee related issues and posting of workers***

The last point above is related to another of Swedish Enterprise's reservations against the services passport namely that the Commission is proposing to move forward with this initiative separately from employee issues and posting of workers. A statement such as "this



consultation looks at the matter from the perspective of the providers and users of services and does not deal with employee issues and posting of workers”, found in the consultation document, shows a worrying lack of understanding on the part of Commission of what is the core of any successful business that provides services. Without those that actually carry out the work a company cannot provide its services. Thus, any discussion about how to facilitate provision of services in the Single Market has to link to the ongoing discussions on the posting of workers. Furthermore, there must not be any confusion regarding existing rules for notification related to posting of workers as laid out in Directive 2014/67/EU on the enforcement of Directive 96/71/EC concerning the posting of workers.

#### ***Future-proof systems fit for new business models***

There is currently ongoing discussions both at EU and Member State level about how to create ‘future-proof’ regulation and systems i.e. that market frameworks should allow for the development of new business models and use of new technology. Swedish Enterprise does not think that the services passport proposal is future-proof since it is limited to an already set number of sectors, thus excluding other existing and future sectors and types of businesses. It is not enough that the Commissions says that the services passport may eventually be extended to cover more sectors. Measures taken to strengthen the free movement of services should include all existing and future companies that have the will and potential to operate in several Member States.

It is also important to take into consideration the changes that are taking place in the services sector. Many services companies are part of global value chains. Their contribution to the development of a product may be done locally but that does not mean that they are not part of a wider international operation. But the types of measures to support this type of services providers are different from traditional thinking around cross-border services provision or establishment. This type of global value chains are an important and growing part of the Swedish economy. Swedish Enterprise’s members report that almost one third of all employment in the Swedish private sector are in companies active in delivering services in global value chains.

Furthermore, goods production and services production are more and more interlinked with interdependency between industry and the services sector. This development also requires new ways of thinking about policy measures, which Swedish Enterprise does not see that the services passport fits into.

#### ***Risk of services passport becoming de facto obligatory***

A last concern is that even if the services passport is meant to be a voluntary process for businesses to engage in, it easily risks becoming de facto obligatory. If it becomes a mark of good standing then it will be difficult for companies to not apply for a services passport as they risk being seen as not having the approval from their national authorities without it.

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