SVENSKT NÄRINGSLIV
SWEDISH ENTERPRISE

31 March 2017

**COMMENTS BY THE CONFEDERATION OF SWEDISH ENTERPRISE ON:**

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

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

**and**

**Proposal for a Directive of the European Parliament and of the Council on the enforcement of the Directive 2006/123/EC on services in the internal market, laying down a notification procedure for authorisation schemes and requirements related to services, and amending Directive 2006/123/EC and Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System COM(2016) 821 final**

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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.

The Confederation of Swedish Enterprise (henceforth Swedish Enterprise) has considered the European Commission's (henceforth the Commission) proposals for a European services e-card and a notification procedure for authorisation schemes and requirements related to services, and has the following preliminary comments:

**Summary**

- It is welcome that the Commission recognises remaining problems in the Single Market for services in its Single Market Strategy for goods and services from 2015 and through the launch of the Services Package. It is also important that the Swedish Government in different ways continues to act to make free movement of services a reality in the EU. However, resources must be used for measures that have the potential to yield the greatest dividends for companies in terms of fewer trade barriers and lower costs.

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- Swedish Enterprise believes that the complete implementation and application of the Services Directive is necessary to ensure a Single Market for services. It is here important to induce all Member States to remove national rules that hinder the free movement of services; which they have already committed to in adopting the Services Directive.

- Swedish Enterprise's members testify that the regulatory barriers they face in the Single Market are more burdensome than the administrative hassle they also have to deal with.

- Among the three proposals, only one (for an improved notification procedure), albeit welcome, has better regulation and the prevention of introduction of new national regulatory barriers as its main aim.

- Regarding the proposed European services e-card, such co-operation between Member States that is encouraged, must make it easier for companies to do business. Furthermore, it must lead to simplification of rules and regulatory requirements beyond solely administrative co-operation.

- It is important that the proposed services e-card must be **voluntary** for companies to use. It must never become mandatory in such a way that authorities in the Member States require a services e-card from companies as proof of their good standing. If the services e-card is voluntary each company can determine if it is of help and simplification to apply for the card when structures are in place.

- Access to information about the rules and administrative requirements is of crucial importance for companies that wish to benefit from the Single Market. The services e-card Regulation can possibly be a step in getting Member States to provide information that already should have been available through the Points of Single Contact. Nevertheless, Swedish Enterprise would rather see that information is made available to all companies in the services sector – not just the ones targeted in the current proposal - through a channel that is open for businesses (which the Internal Market Information system is not). Therefore, we support the Commission's planned proposal for a Single Digital Gateway. If such a portal can indeed be built, it can become a real "one-way-in" for companies that seek information about what rules apply in different Member States and that want to manage contacts with authorities themselves in different countries.

- Swedish Enterprise supports the proposal for a Directive on a notification procedure for authorisation schemes and requirements related to services (COM (2016) 821 final). However, it is important that the proposal is extended so that also external stakeholders are given the opportunity to not only access information about notifications but also to comment on them on the same conditions as the Member States and the European Commission.

**General Comments**

Swedish Enterprise represents many companies engaged in cross-border trade within the EU and for them it is particularly important that the obstacles of free movement in the Single Market are removed and that freedom of establishment is fully respected.

Sweden and Swedish companies need a well-functioning Single Market and the real free movement of services is a crucial part of it. Swedish Enterprise continues to advocate the full implementation and application of the Services Directive, since we are convinced that it is necessary to ensure a Single Market for services.

It is, therefore, welcome and timely that both the European Commission and the Swedish Government now recognises the need for measures to enable services companies to take advantage of the benefits that the Single Market is supposed to offer. Swedish Enterprise sees the Swedish Government's commitment to a functioning Single Market for services, such as expressed in the letter from ten Member States to President Juncker in November 2016, as an important signal. We hope that the Government will continue to prioritise this work.

However, it is important that resources are used in a way that really pushes through measures that will pay dividends for companies in terms of fewer regulatory barriers and lower administrative costs.

According to the Commission, the measures in the Services Package of 10 January 2017 aim to eliminate the remaining barriers in the Single Market for services by getting EU's Services Directive to work better in practice. Through the Services Directive, EU Member States have committed themselves to only implement national regulations for services providers that are justified and proportionate. However, practice looks different and Swedish Enterprise believes that measures should primarily focus on encouraging Member States to remove national regulations that hinder the free movement of services.

Complex regulatory requirements that companies must meet in various EU Member States is often so overwhelming and costly that it makes more business sense to avoid cross-border activities.

Member States need to once again look at the regulatory requirements in relation to Articles 15 and 16 in the Services Directive and evaluate where there are cases of inadequate proportionality assessment and where it is possible to simplify or remove regulatory requirements that prevent the free movement of services. It is well known that national regulations still have a discriminatory effect and in many cases can be considered to be unjustified.

Swedish Enterprise had hoped that the Services Package would include targeted measures to persuade Member States to remove such national special regulations.
These could then have complemented the Commission's policy of zero tolerance and more purposeful use of infringement proceedings against Member States that have not fully applied the Services Directive and other EU related legislation.

Among the proposals commented on in this paper there is only one (regarding an improved notification procedure), albeit welcomed, directly aimed at better regulation and to prevent new trade restrictive rules introduced nationally.

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That the proposed European services e-card is designed to enable a bilateral exchange of information between Member States, instead of being a truly European card to be used throughout the Single Market, emphasises clearly the divisions that remain on the market.

***A voluntary services e-card***
It is important that the proposed service e-card must be **voluntary** for companies to apply for.

Therefore, it is important that the service e-card must never become mandatory in such a way that authorities in the Member States view the e-card as a company's proof of good standing. The services e-card must be a simplification for companies and has never been presented as a control mechanism to be used by authorities to determine which companies that can enter a market. If that would happen, it will be difficult for companies that do not want to apply for the services e-card, since this can be interpreted as these companies not having their home authorities' approval.

For the service e-card to be attractive for companies, it is necessary that it really leads to lower costs and less bureaucracy, especially since the proposed Regulation allows for the collection of fees for issuing an e-card. If the services e-card is helpful in cross-border trade or for establishments, will, of course, be up to each company and entrepreneur to determine when the structures of the e-card are in place.

***Better regulation is necessary***
To really simplify the situation for companies, the type of co-operation between Member States that is encouraged via the e-card must also lead to better regulation and simplification of national rules. The proposals for a Regulation and a Directive on the services e-card now contains few such direct measures, which unfortunately makes the proposals weaker than they could have been.

The message that Swedish Enterprise has received from members within the construction industry and the business service sector is that the regulatory barriers they face in the Single Market are more difficult to deal with than purely administrative burdens in cross-border trade or establishments in other countries. In the construction sector, national technical standards and licensing procedures, along with language barriers and cultural differences, are aspects that affect the decision to forego doing business in the Single Market. The construction sector is one of the most heavily regulated sectors in the EU.

For business services, the situation is that some such services need to be performed locally or regionally, and companies must thus be established where they will perform the service. Then factors such as national professional qualification requirements and licensing procedures come into play.

The proposal for a services e-card for establishments might possibly help to avert discrimination against foreign operators since the host country's authorities must be transparent towards the home country's authorities regarding what the national requirements are and why.

***Information sharing***
It is naturally a good thing if the authorities in different Member States can have a closer co-operation and use the "Internal Market Information System '(IMI) in a better way than today. Swedish Enterprise finds this important since better regulation and streamlining of administrative procedures to some extent requires that authorities in different countries understand each other’s structures better and that they can share good practice.

It is overall welcome that the Commission now encourages the use of common systems for information sharing, including the new system for the interconnection of business registers (BRIS) when this will implemented and used.

Connections should also be made to the initiatives under Horizon 2020 that aim to create the portal "The Once Only Principle, TOOP" which focuses on transnational digital exchange of data about businesses among authorities in the EU and would allow companies to provide information only once. This type of initiative is something that really has the potential to reduce the administrative burden for businesses.

The services e-card Regulation also requires Member States to provide all information about the requirements for service providers, as well as the administrative procedures they have to go through to perform services, temporarily or by establishment. Any such information that has not already been provided by the current notification procedure shall be notified through the IMI.

According to Swedish Enterprise, it is essential if the Commission will have further opportunity to put pressure on Member States to provide all the information they already should have shared in the implementation and application of the Services Directive. This also gives the Commission new opportunities to initiate infringement proceedings if the Member States do not apply the new regulation.

***Desirable with a wider channel for information about the rules in the Single Market***
The Commission has decided to limit the possibility of applying for a services e-card to certain parts of the services sector. However, companies in all areas of the services sector demand more and better information on regulatory requirements applicable in the Single Market. If the information is only shared between authorities and the Commission via IMI, companies do not have access to it. Swedish Enterprise would rather see that an expanded structure was put in place, which could benefit all service companies seeking to do business in the Single Market.

According to the Commission the services e-card supplements the planned initiative to build a "Single Digital Gateway". This is an initiative that Swedish Enterprise supports if it can be realised. SDG could become a "one-way-in" for companies seeking information about what rules apply in Member States and that want to manage their contacts with authorities in different countries themselves.

Needless to say, it necessitates that the Member States can meet the requirements already

placed under the Services Directive and the "Charter for the Electronic Points of Single Contact" from 2013, about the information to be provided in the Points of Single Contact on what rules, laws and procedures that apply to service activities and opportunities to manage administrative formalities. Swedish Enterprise requests that the PSCs for services should be extended to also include information about trade with goods. The accessible information must also be available in both the national language/languages and in an international language, preferably English, and the information must be the same and of the same quality regardless of language.

To create a more comprehensive Single Digital Gateway would also be a way to "future-proof" systems to allow companies with new business models and who are using new technology to also benefit from the information about regulatory requirements in the Single Market. It is important that measures to promote the free movement of services do not exclude neither existing nor future industries and business models.

It is, therefore, important that policy makers take into account the changes taking place in the services sector. Many service companies are part of global value chains. Their contribution to the development of a product may be local but this does not mean they are not part of a larger international operation. Measures to support these kinds of service companies must, of course, look different than traditional measures for cross-border activities. These types of value chains are an important and growing part of the Swedish economy. Swedish Enterprise’s members state that nearly one third of all employment in the private sector in Sweden is within companies that provide services in global value chains.

Moreover, the production of goods and services becomes more and more intertwined with interdependence between the manufacturing and services sector. This development also requires a broader discussion regarding the promotion of the Single Market for services that Swedish Enterprise does not find in the Services Package.

***Posting of workers***

The Commission has decided to completely decouple the proposals for the services e-card from the issue of posting of workers. However, Member States will be offered to make use of an electronic platform linked to IMI to allow companies that wish to apply for the services e-card to also manage the notifications according to the Posting of Workers Directive through it. It will be voluntary for the Member States to decide whether they want to use the new platform for notifications in their country or not. Such a solution could make it easier for companies to comply with the Posting of Workers Directive.

However, it is not only in the host country that administrative burdens can arise. Simplifications are also necessary in the home country. One example is the Form A1 that should be issued by the authority in the home country for posted workers/seconded staff to bring with them during short-term postings/secondments in order to remain in the social security system in the home country. Delays regarding the issuance of Form A1 hinders companies because they are often under time pressure to compete for contracts. In addition, some workplaces, for example, ports in among others France, Italy and Finland, do not accept workers who do not already have a Form A1 with them.

For clarity, it should in this context be emphasised that Swedish Enterprise does not see any need for revision of the Posting of Workers Directive. What we would like is, however,

effective implementation of the rules already put in place, and especially the Enforcement Directive from 2015 that is still not implemented in a number of Member States.

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As already, Swedish Enterprise considers it very important that the EU institutions and Member States continue working with the simplification and improvement of existing rules. However, it is equally important to prevent new regulatory barriers being put up in the Single Market.

Therefore, Swedish Enterprise welcomes and supports the Commission’s proposal aiming to improve the notification procedure for services.

Swedish Enterprise shares the Commission's view that the current notification procedure has many shortcomings and needs improvement. A well-functioning and transparent notification procedure applied by all Member States is very important in order for the national rules and regulations concerning companies in the services sector to be challenged and avoided.

It is particularly important that the Commission intends to take direct action against Member States that do not respect the new notification requirements. Moreover, the introduction of a three-month consultation period between the notifying Member State and the other Member States and the Commission in Article 5 is important. We also welcome Article 8, which states that information on notifications and rules adopted should be published on a public website. However, Swedish Enterprise believes that external stakeholders should be given the opportunity to comment on notifications on the same conditions as Member States and the Commission, as is the case in Directive 2015/1535-procedure.

Effective co-operation between EU institutions and the Member States regarding the improvement and completion of the Single Market will be especially urgent as the EU is now facing both great external and internal challenges. Political weight must be given to the common Single Market, which is both the core and the key to success in the EU partnership and thus crucial for the EU's development and economic growth.

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