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German Association  
of Tax Advisers

Mr. Luc Hendrickx  
UEAPME – the European craft and SME  
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## UEAPME-Consultation on the European Services e-card

Dear Mr. Hendrickx,

Please find as follows the replies of the *German Association of Tax Advisers* (DStV) to your consultation regarding the proposed directive on the European services e-card.

1. *Are you aware of any sector that is supporting /interested in the services e-card proposal?*

Speaking for Germany we are not aware of any sector in favor of the services e-card proposal. Representing German tax advisers, the German Association of Tax Advisers **firmly rejects the EU Commissions proposal.**

2. *What are the main barriers for cross border service providers? Please be as specific as possible (concrete legislation / barrier in the other member states; concrete sectors).*

Insofar as the EU Commission takes the view that the single market for services and in particular the services offered by liberal professions does not function as well as the single

market for goods, is according to our opinion **not caused by the diversity of national rules determining the access to or exercise of a certain profession per se.**

A predominant **barrier for the exercise of a liberal profession is the language** spoken. Especially in the services and counselling sector the knowledge of the language of the host state where the delivery of a counselling service is planned is mandatory.

A likewise impediment for the exercise of the profession, in particular when offering tax advisory services for clients in other Member States, are the **different rules of substantive and formal tax law**, which vary from Member State to Member State. For example, German law has a complex system of substantive tax rules that apply at local, state and federal level. The complexity and amount of German tax laws makes it almost impossible to offer qualitative high services in more than one Member State, especially if one considers that professionals are generally organized in small and medium-sized practices.

3. *What could be done to improve the existing tools? (Please indicate which ones and do concrete proposals to improve).*

EU law already provides two instruments that seek to foster the cross-border provision of services: The **Services Directive 2006/123/EC** and the **Directive on the recognition of professional qualifications 2005/36/EC**. From our perspective, the framework developed by the two directives provides a solid procedural framework within which cross-border services can be provided. First and foremost we strongly support the system established since it protects the “host state” standards of the provision of a professional service and requirements regulating the access to a professional service. The introduction of the services e-card would significantly jeopardize and contradict the existing legislative framework.

The current proposals for a service e-card propose procedural rules that are simply not practical and in some cases clearly jeopardize legal certainty and legal procedures, inevitably leading to more fragmentation of the single market for services, and putting at risk the existing quality standards and consumer protection. For example, the current proposals risk the creation of double structures, since a single point of contact is already available for the exchange of information between the competent authorities of the Member States under the Services Directive (cf. Article 6 of Directive 2006/ 123/EC). If there is now planned to introduce a separate tool for the exchange of information regarding the services e-card, this risks the

introduction of an additional system for the exchange of information solely for the purpose of the services e-card.

Furthermore, there is a risk that the procedure for the recognition of a service e-card presumably leads to the introduction of “country of origin” principle through the backdoor. This is caused by the time-frame granted to the host state authority and the fictitious right to object the issuing of a service e-card by the host state authority (Article 12(1) of the draft directive). The key issue here is the fiction of approval (Genehmigungsfiktion) where the host state authority does respond to the request (Article 12(3) of the draft directive).

However, when it comes to access to a foreign market, transparency is key. This means that opening up a national market is not necessarily about deregulating the national standards and professional regulations, but instead, a more effective way of improving the current framework of the internal market for services is to **develop effective information and transparency rules** whereby service provider have access to information about the requirements with which they must comply in the host state.

4. *Apparently there are some cross border initiatives to facilitate cross border service provision (Bavaria-Czech Republic-Austria; Finland-Estland, Belgium,...) what is your experience with these initiatives (if any)?*

No information available.

Without asking, we will be happy to provide further information or explanation if needed.

Kind regards,

RA FAStR Prof. Dr. Axel Pestke  
(Secretary General)

Dr. Jan Trommer, LL.M.  
(European and Professional Law Expert)