

The European services e-card sent into limbo

The celebrated rejection of the legislative proposal came at the end of a long period of lobbying by FIEC and other interested parties

The European Commission's legislative proposal for introducing a European services e-card was rejected by the Committee for Internal Market & Consumers (IMCO) of the European Parliament on 21 March, 2018, with a comfortable majority. This vote put an end to the suspense on this very controversial issue which was, first and foremost, targeting the construction industry, but never supported by the sector.

After a chaotic consultation process, it all really began in January 2017, when the European Commission presented a legislative package composed of legislative and non-legislative initiatives, all aimed at improving the functioning of the Internal Market for services. The European services e-card was part of this.

The initial reasons for the European Commission to introduce such an e-card were reasons that we also share, namely achieving a better functioning of the Internal Market; tackling remaining obstacles in order to facilitate cross-border activities; and reducing hurdles in order to make it easier for service providers to pursue new business opportunities.

The idea behind this initiative was to get rid of administrative barriers and make it easier for companies to work abroad.

Such an e-card would be applied for by a company in its home Member State, which would issue the card – following a joint assessment with the host Member State targeted. The card would contain a series of details about the company and it would be used by the company to go to provide construction services in the targeted host Member State.

All of this sounded very nice at first sight.

PROBLEMS

However, from the beginning, FIEC identified a number of problems with this proposed instrument, and felt that it was not the right instrument at the right moment for the right target.

The initial problem was that in trying to achieve these Internal Market objectives, the European Commission benchmarked our sector with others, without taking into account our specificities and our differences compared with other industries – that is that it is mostly local business, and vast majority are very small companies – and concluded that construction was one of the sectors with the most obstacles to mobility left.

On the content of the proposal itself, FIEC's main concerns were that, first of all, we saw that the proposal as such would bring very little added value to contractors in terms of administrative simplification, while it was supposed to be its main purpose.

The e-card was, in principle, voluntary for the company, but the receiving Member State was obliged to accept it, making it de facto non-voluntary, at least from the host country's perspective.

If the host Member State did not provide an answer to the e-card applicant within a certain time limit, which was quite short, then

the principle of tacit approval applied. But in case of doubts regarding the application, the host country had to rely on the answers or feedback from the home country.

The e-card had an indefinite period of validity, associated with an update mechanism which was deficient by design. There was no convincing guarantee that the data provided would be still correct and up to date at any moment.

This would have led to unfair competition on the Internal Market between e-card holders – who would have benefited from a presumption of legality – and the others.

It was supposed to be based on the IMI (Internal Market Information) system, which is a European system for exchanges of data between administrations of different Member States. But this system is criticised for inefficiency, such as long waiting periods before receiving an answer. Consequently, the administrative mechanism proposed was not adapted to the needs.

FRAUD

Moreover, the fact that fraud is unfortunately frequent in the construction industry was completely ignored – and even facilitated – by the Commission. It might have increased practices like bogus self-employment and letterbox companies.

Finally, the European Commission granted itself large legislative powers through the recourse of delegated and implementing acts.

All of these shortcomings led FIEC to ask the European Parliament and the Council to exclude construction from the scope of this proposal.

It followed a very active lobbying campaign from FIEC, with the strong involvement of its national Member Federations

towards their own national decision-makers.

In parallel, FIEC also joined forces with the construction trade unions (EFBWW – the European Federation of Building and Woodworkers), as well as with the social partners – both employers and employees – of other sectors negatively impacted by this legislative proposal, for example, the cleaning industry and the insurance business.

A series of meetings took place with all players involved, Members of the European Parliament, national representatives of EU countries in Brussels involved at Council level, and the services of the European Commission.

Public hearings were organised. FIEC and its partners made a lot of noise and it clearly had a strong impact on the discussions within the various EU institutions.

We can see that these continuous and co-ordinated lobbying actions, within FIEC and together with external partners, have been a success.

In the European Parliament, before the IMCO vote, four other Committees voted on this same legislative proposal and also rejected it. This unanimous rejection is rare enough to highlight.

In the Council, there has been a lot of criticisms of the proposal and the discussions are at standstill now – even more so since the IMCO Committee rejected the legislative proposal.

From a procedural point of view, the European services e-card is not yet dead and buried. In particular, this is because Commissioner Elżbieta Bieńkowska, in charge of Internal Market, declared that she would not withdraw it.

It is expected to stay in limbo until the end of the current mandates of the European Commission and of the European Parliament, which will both come to an end in 2019. **ce**



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