



Brussels, 26 July 2016

Mr. Jean-Claude Juncker President of the European Commission  
Mr. Valdis Dombrovskis Vice-President of the European Commission  
Mr. Jyrki Katainen Vice-President of the European Commission

-----

Dear President,

Dear Vice-Presidents,

## **"Services Passport" not suitable for posting of workers**

The European Association of Paritarian Institutions (AEIP) thoroughly assessed the Communication on the Internal Market Package of the European Commission (COM (2015)550) which was presented on 28 October 2015. AEIP also took note of the Public Consultation on the introduction of a "Services Passport" launched by the European Commission on 2 May 2016 in preparation of a respective legislative proposal, initially dealing with the construction industry and business services. AEIP would like to take the opportunity to express its view on the proposals.

AEIP represents the social protection institutions jointly set-up and managed by social partners (paritarian institutions). Paritarian institutions are based on a balanced representation of employers and employees. They are engaged in pension schemes, pension funds, healthcare, and unemployment schemes, local investments, vocational education as well as paid holiday funds. Paritarian institutions therefore play a major role in safeguarding social protection in various sectors in many EU Member States and are of particular importance in the construction industry.



AEIP acknowledges that strengthening the Single Market can be an achievement if a level playing field for fair competition and fair work is established. The instrument of the "Services Passport" however seems to thwart this aim, as far as the information available allows for a preliminary assessment. The "Services Passport" in particular does not seem to be suitable to document compliance of service providers with the labour and social security regulation in a host Member State.

It has to be recalled that the European legislator abstained from introducing the country of origin principle in the Services Directive. Art. 3 para. 1 and Art. 17 of Directive 2006/123/EC even explicitly exempt the application of the Services Directive on the posting of workers with regard to labour and social security regulation. In this regard AEIP would like to highlight once more that by adopting the Services Directive in 2006 the European legislator explicitly decided against including the country of origin principle in the directive. Directive 96/71/EC as well as Regulation (EC) No. 883/2004 therefore precede the Services Directive. This principle has only recently been reinforced by Directive 2014/67/EU which had to be implemented by 18 June 2016. In its Art. 9 para. 1 Directive 2014/67/EU therefore i.a. upholds the principle of prior notification in the course of posting of workers. Furthermore, Art. 10 emphasizes the need for effective checks and monitoring mechanisms.

The proposed measures with regard to the "Services Passport" raise deep concern on behalf of the paritarian institutions that their functionality will be significantly constrained. They fundamentally depend on the availability of the relevant information. This includes especially documentation such as wage records, records on working hours, social security contributions etc. It is virtually impossible to safeguard even a basic level of monitoring with regard to the social rights mentioned in Directive 96/71/EC and Regulation (EC) No. 883/2004 without reliable information and especially without an effective procedure of prior notice. Restricting the existing mechanisms of control would even increase fraudulent behaviour in the cross-border provision of services. On the contrary, effective checks and monitoring mechanisms should be enhanced. This includes i.a. a better exchange of social security information.



Finally, it shall be recalled that the establishment of paritarian institutions is based on collective agreements and therefore a result of exercising the right of freedom of association protected under Art. 28 of the Charter of Fundamental Rights (CFR). Paritarian institutions are very much interlinked with the specific context of the national labour law systems and they play a key role in safeguarding social standards in various sectors including the construction industry. The proper functioning of paritarian institutions would be hindered by interferences that would call into question the principle of subsidiarity as well as the rights protected under the CFR. The good functioning of the internal market is dependent on the appropriate consideration of the differences between the national contexts of the 28 Member States. Considering the outstanding position of paritarian institutions, that ensure a balanced and inclusive approach in defining provisions regulating national social protection system, any limitation imposed to their functioning would directly affect the functioning of the internal market.

Taking into account these concerns, we would like to emphasize that a "Services Passport" is not an appropriate instrument to include any aspects with regard to the posting of workers and should in no case constrain the functionality of paritarian institutions.

Sincerely yours,

Bruno Gabellieri  
AEIP General Secretary

Copy:

Mrs. Marianne Thyssen, EU Commissioner Employment, Social Affairs, Skills and Labour Mobility  
Mrs. Elżbieta Bieńkowska, EU Commissioner Internal Market, Industry, Entrepreneurship and SMEs  
Mr. Jurgen Tiedje, Head of Unit, DG GROW, Unit E1