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The Austrian Federal Economic Chamber (AFEC), Wiedner Hauptstraße 63, 1045 Vienna, Austria, is registered with the number 10405322962-08 in the Transparency Register of the European Parliament and the European Commission.

Remarks on

BETTER REGULATION at european level and the REFIT – SCOREBOARD 2016 (Regulatory Fitness and Performance Programme)

January 2017

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Preface

The Austrian Federal Economic Chamber (AFEC) appreciates all efforts towards smart regulation at European level so as to create a business friendly regulatory environment. All European institutions and Member States have to work together in order for the initiatives on smart regulation to be successful. Overregulation is a stumbling block for growth and employment.

The business structure all over Europe and especially in Austria is dominated by SMEs. Therefore, we believe that it is necessary to increasingly focus on SMEs during the legislative process. "Think Small First" has to be the guiding principle and should be applied to all draft proposals. We very much welcome that the Commission included a compulsory SME-Test in the Impact Assessment via the new tool-box (# 19).

In situations where regulation at European level is needed, it should be analysed case by case which legal instrument (directive or regulation) is more suitable. Differing implementing measures in the different Member States should be avoided.

We appreciate the European Commission's intention to concentrate on REFIT (AFEC prefers "thoroughness" to "speed") especially in areas with a significant European added value in accordance with the principle of subsidiarity. The European institutions should take the principle of subsidiarity better into account and concentrate on measures with a significant evidence of European Added Value.

The Austrian Federal Economic Chamber identified potential improvements in EU-legislation. The present position paper consists of four parts:

1. Part 1: Comments on Better Regulation at european level
2. Part 2: Comments on and assessments of the REFIT - Scoreboard
3. Part 3: Important legislation with need for action which is not yet covered by REFIT
4. Part 4: Gold Plating – Examples providing the view of the Austrian economy 

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Part 1: Comments on Better Regulation at european level

The Austrian Chamber of Commerce deals with the topic of Better Regulation at european level since many years. Surveys show, that Austrian companies face the biggest problems with cutting red tape and cope with the difficulties of bureaucracy. To foster competitiveness, growth and employment we need to create a level playing field.

Since the last decade AFEC gathers and publishes simplification proposals from its members (companies) for cutting red tape. These proposals show concrete measures which describe the difficulties companies - especially SMEs.- are confronted with in their daily practical work.

AFEC welcomes the approach of the European Commission to appoint a Vice President in charge of Better Regulation. Cutting red tape has now become a core principle in the european SME policy.

The REFIT – programme of the Commission is a vital part of assessing existing law and facing difficulties that can be adapted. The REFIT-Programme scopes the review of the existing stock of EU legislation. Therefore, also the REFIT scoreboard has to focus on the existing legislation. It is astonishing, that the 2016 REFIT scoreboard also commends on proposals.

The remarks and propositions we offer do never intend to withdraw directives or regulations as a whole or should lead to general deregulation. We try to publish specific solutions from our members to tackle red tape and we propose amendments that easily can be transposed into better regulation.

1. REFIT – Platform

We appreciate very much the establishment of the REFIT-Platform, this means an encouraging completion of the program. The platform works on concrete proposals to solve specific problems. In its first year it dealt for the most part with considerations on its self-given working methods (that are not finished yet). First efforts of finding recommendations for the work programme of the Commission can be identified.

Unfortunately, these recommendations are very generally drafted and do not contain concrete problem-solving measures for legislation maybe due to the complicated structure of the Platform.

Let us call that initial difficulties for the beginning of work of a very complex system. But now there is urgent need for finding the right and efficient working methods and work hard on common problem-solving proposals.

At national level it seems necessary to establish a structure for exchanging views with the national member of the REFIT-Platform. National input should be well discussed with all relevant stakeholders in advance of the meetings of the platform. Also some sort of briefing and Debriefing of the meetings would be very helpful.

2. Special concerns of SMEs: Binding implementation of the SME Test in the context of Impact Assessments – no general exception for micro-companies, standardisation projects

The SME-test is now a part of the Impact Assessment and should illustrate the effects of new legislation especially for small and medium-sized enterprises.

The outcome of a properly performed SME-test could also be a reason why SMEs are exempted from new legislation. Every single new legislative act shall take small and medium-sized enterprises ("Think Small First"-principle) into account as SMEs are the backbone of European economy.

However a general exemption of SMEs from the scope of EU-legislation is contrary to the "Think Small First"-principle of the Small Business Act. Hence, legislation must be designed in a way that it can be implemented by all enterprises.

A general exemption of SMEs could harm the Single Market as it was the case with the accounting directive. As a consequence, legal uncertainty and 28 different national rules would have an even greater negative economic impact.

Therefore, AFEC appreciates the effort of the Commission to manage necessary simplifications within the existing legal framework, especially for SMEs.

Especially in terms of creating legislation suitable for SMEs we think it is necessary to extend the application of the SME test even on mandated standards, because court will refer to them in case of legal disputes.

3. Stakeholder consultation

An early and comprehensive involvement of all important business representatives as well as transparent procedures for well-arranged consultation processes will raise the acceptance of new legislative acts and will subsequently also facilitate their implementation.

Thus, it is important to ensure the consultation of representative national and European trade associations. Considering the opinion of the respective stakeholders in accordance with their representativity and acknowledging the important role that the representative trade associations play as "managers of change" because of their proximity to the affected businesses and their enormous expertise is the basis for good law-making. Also the EESC as a representative body of the organized civil society could play an important role there.

However, we see a certain risk that public consultations become purely a matter of duty which allows the Commission to pick and choose those answers that suit best whereas others are neglected (e.g. not balanced opinions of the platform "Have your say").

If the opinion of a single person gets the same weight as the opinion of a representative organization, there is a risk that policy formulation follows the quantitative majority. We stress the need to motivate the criteria on which decisions are based. We think that the evaluation reports that have to be produced every 3 to 5 years should first and foremost reflect the positions of the stakeholders and not of the general public. This ensures,

especially in the social field, that only those people have their say who are experts in that matter.

The participation in the surveys requires obtaining expert opinions that are often hard to receive due to language barriers. For instance, in the area of secondary construction, consultations require information in the mother tongue. An internal translation and preparation of the most important information in German requires preparation time that is often not available due to the time limits for responses.

Very often the translation of questionnaires is not or extremely late available, this causes a loss of time.

The complexity of European evaluations is frequently too high and the questions are not specific enough. In order to receive concrete input, in particular from SMEs with limited capacities, the posed questions have to be reformulated in a simpler way and at the same time be more precise. This is even more essential when it comes to consultations on directives, since directives are implemented differently in each Member State, which, for instance, has an effect in the field of waste policy. In this case, falsifications of results can occur, if the questions are formulated too generally, because those subject to the provisions are familiar with the legislation of the Member States and not with EU directives.

4. Transparent consultation on draft delegated acts as well as implementing acts

Often technical rules resulting from EU directives or regulations are very important for daily business practice. Both delegated acts (art. 290 TFEU) and implementing acts (art. 291 TFEU) can have significant impacts on enterprises, in particular SMEs. Therefore the Austrian Federal Economic Chamber appreciates that the European Commission will involve member states and stakeholders, in particular business associations, in the preparation of delegated acts.

The Austrian Federal Economic Chamber welcomes that Impact Assessments are required for a delegated act with expected significant economic, environmental or social impacts. However, we point out that in the case of significant impacts the Commission also has to check whether the planned measure is an essential amendment to or change of the basic legal act. In that case the delegated act would be the wrong instrument, the basic legal act should be changed instead.

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Part 2: Comments on and assessment of the REFIT Scoreboard

The comments follow the order of topics in the REFIT Scoreboard:

1. REACH (p. 28-29)

Most of the measures foreseen on REACH (pages 6 to 8) are highly welcome. Comments seem to be appropriate on the following:

- **The roadmap published by ECHA** for the registration deadline in 2018 is highly welcome. Many SMEs are affected by this deadline which will be a substantial challenge for them.
- **On Authorisation:** Simplified procedures, streamlining the process and a focus on recycling materials in a balanced and harmonised way are highly supported by AFEC. The authorisation has proven to be a non-proportional regulatory action for some relevant cases.
- **Taking into account socio-economic elements** before substances are considered for authorisation according to Title VII is highly welcome as well. Regulatory action needs to respect the fundamental principle of proportionality. This can only be assessed, if socio-economic aspects are taken into consideration. Furthermore, objectives of the REACH regulation are also to strengthen the competitiveness and innovation power of EU economy. Also to please these objectives, socio-economic aspects must be considered before taking regulatory action.
- **To increase synergies between REACH and other legislation** related to chemicals is highly welcome as well. Neither chemical nor other legislation are a desert-island. Therefore, interaction of different pieces of legislation needs to be improved significantly and synergies have to be exploited.
- **Public consultations launched by ECHA** include summary cover sheets with key information about the restriction proposal – another action which we highly welcome. But we highly recommend that this approach is also extended to other public consultations under REACH and CLP. Restrictions are the minor part of regulatory action taken. More consultations are related to authorisation and harmonised classification. Also for these the same approach (summary cover sheets) should be included. We suggest the following:

  All dossiers published for consultations are usually available only in English. One could claim that also such dossiers must be available in all official languages and that a deadline starts only when all translations are published on the official webpage. However, it is self-speaking that such an approach would not be feasible in practice. Nevertheless, we suggest as a compromise, that would very much improve the situation of SMEs the following:

- Every consultation dossier should be accompanied by a short fact sheet (max. 2-3 pages).
- The fact sheet should include (in order of relevance):
  - Uses (described in an understandable way, no codes)
  - Sectors of use (described in an understandable way, no codes)
  - an (qualitative) estimation to which extend uses and sectors are covered & potentially relevant uses and sectors which are missing in the dossier
  - the RMO (risk management option) propose Chemical identifiers
- The fact sheet could be made available as an online database with a filter option for parameters like use or sector, including an e-mail notification for specific filter-options.

2. Natura 2000 (p. 34-35)

AFEC shares the view of the Commission to define these two directives (FFH and Birds Directive) as a priority. We consider nature protection policy as relevant for Europe as a business location which has to be balanced with nature protection needs and should ideally complement each other in synergy.

AFEC welcomes a fusion of both directives: we think that the union of both directives should be part of the revision to ensure consistent and modern nature protection in the EU. Substantial elements of their construction should be adapted, e.g.

- the designation of protected areas has to meet next to nature conservation criteria also economic and social requirements
- the protection of certain species outside representative habitats should be eliminated
- the Annexes of the Birds and Habitats Directives should be made more flexible and adaptable by the Member States when protected species increase massively and disturb the ecological and economic balance
- introducing a solid right of request for affected landowners to redeem a designated protected area, if the protective purpose foreseen in the directives has not been maintained.

AFEC supports fair participation and involvement of the affected parties (landowners, authorized users) when designating protection areas: this is a big problem in practice since the participation happens after the nomination of the respective area for Natura 2000 instead of before that.

3. New Circular Economy Package - after EC withdrawal in 2015 - (p. 44-48)

Within Europe, there are big gap between the Member States when it comes to the implementation of existing waste standards. It is a fact, that ambitious EU waste targets have been established in EU legislation for decades. However, only a small number of Member States has implemented them adequately. The costs and the administrative burden of waste management lead to competitive disadvantages in these countries.

The implementation of the already existing EU waste legislation in all Member States should therefore be given priority before adopting new targets and obligations which again only a small number of Member States would implement properly. Otherwise the gap between Member States in the field of waste policy continues to become wider. Therefore, in the coming years, the focus should be placed on creating incentives for the implementation of the already existing law and on checking compliance without red tape.

Waste targets on recycling and/or prevention should be based on well-founded data and should be technically and economically feasible in all Member States. Furthermore, the implementation gap between EU Member States should not be widened.

4. Possible revision of the Environmental Liability Directive (ELD) (p. 65-67)

No unreflected extension of scope: A possible extension of the scope of ELD would lead to additional burden especially, for SMEs, with a very questionable benefit. Before extending the scope, an evaluation of the existing provisions has to be made.

Severity thresholds important for SMEs: The severity thresholds are necessary especially for SMEs. Furthermore, the competent authorities would suffer of the high number of cases to be expected, where the ELD provisions would have to apply. There is absolutely no justification to handle light damages under the ELD regime. This would impose a huge bureaucratic burden, especially on SMEs.

Optional provisions such as permit defense & state-of-the-art defense to be maintained: The permit defense and the state-of-the-art defense are very helpful to comply with the ELD. They are fundamental to a system of environmental liability, which promotes prevention by emphasizing the need to show compliance with existing permits and should not be questioned.

A fund to cover ELD liabilities as well as financial security to be avoided: A fund to cover the risks is strictly opposed. This would undermine both the polluter-pays principle as well as the precautionary principle. If there was a fund to cover the risks, the operator would not be as motivated to stick to the highest security levels. Why should operators, who have implemented and maintain high security standards, pay twice? Furthermore, no mandatory financial security should be implemented. This would lead to high costs for SMEs, which, under realistic presumptions, will hardly be up to any ELD case. It should remain in the competence of the MS to choose a practicable system on covering possible future damages!

5. EU Noise Directive 2002/49//EG (p. 72)

Existing legislation is sufficient

The national implementation of the EU Directive on Noise has revealed no controversies whatsoever. Therefore, we do not vote for an amendment or a revision of the Directive – especially we think it is not adequate to add new sources of noise.

In this context we like to state, that noise protection (concerning the quality aspect and not noise emission sources) for health and environment is covered sufficiently in numerous legislative acts following the precautionary principle (such as the Austrian law on industrial installations as well as on transport, spatial planning and construction.

Considering the emission aspect there are some useful EU legislative acts such as the Regulation on noise of vehicles 540/2014.

Subsidiarity is to be preferred

Noise exposure legislative acts are significantly different from other environment and health relevant issues. Noise is local only without transboundary effects as it is the case with e.g. particulate matter. Therefore, national measures for noise protection are sufficient.

National tailor-made solutions have proved to be effective in the past and should not be made more complex by EU intervention.

No binding national limit values at EU level

„Noise happens in the head“ – only 15 to 30% of noise exposure are due to real acoustic parameters, many other aspects have not been understood until now.

Mandatory EU-wide noise limit values would not take sufficient account of regional, cultural or society habits.

There is no unified science-based dose-effect relationship. Therefore, we are not in favour of EU-wide limit values.

6. Reform of the EU regulatory framework for electronic communication networks and services (p. 106-109)

As the framework for electronic communications is notably about ensuring connectivity at a high level throughout Europe and setting out the conditions for the best possible development of the Digital Single Market, simple and efficient rules and regulations are urgently needed. A guiding principle for the review of this set of rules should be the creation of an actual level playing field for all market participants (in particular with regard to the “Code”). For this purpose, it is necessary to identify rules which are no longer up-to-date and eliminate them. At the same time, the new provisions to be introduced into the framework should be simpler and clearer. This applies particularly to the sector specific consumer law regime: considering that an extremely far-reaching general European consumer protection framework is in force now, the focus of new legislation should be to

drive back sector specific rules in this field. Moreover, it is necessary to reduce significantly the administrative burden for businesses.

7. Flourinated greenhouse gases (p. 132)

The exemption for 100t is helpful for SMEs and should stay as it is.

8. Eurovignette-Directive (p. 169)

We think that an EU-wide harmonised framework for tolls is needed. Clear and binding rules are necessary to avoid distortion of competition.

- Disadvantages for commercial transport in certain regions and actual competitive disadvantages for Austrian companies must not be further increased in the course of a possible revision of the Eurovignette Directive.
- maximum thresholds for charges (infrastructure and external costs) have to be maintained, possibilities for mark-ups or multiplication factors for mountainous areas have to be deleted
- We are strictly against any additional internalisation of external costs as it would lead to double taxation. On the one hand, congestion charges cannot be considered external costs. In any way, they cannot be discussed without taking into consideration private transport. CO2 costs for example are already internalised by fuel taxation.
- Further one-sided burdens for a mode of transport are just as ineffective as unilateral burdens within a mode of transport.

9. Recording Equipment in Road Transport (p.296-298)

Despite the revision of Regulation (EEC) No 3821/85 on recording equipment in road transport and the partial adaptation of Regulation (EC) No 561/2006 on driving time and rest periods through the adoption of Regulation (EU) No 165/2014 there is still a need to simplify and harmonise EU social rules because they do not correspond to the practical needs of everyday business. Thus, the current legal regime has to be reviewed and ultimately revised.

From a business point of view, the rules lack practicability in a formal way: EU social legislation is characterised by numerous, partly overlapping rules of different legal quality, which make it difficult for companies to keep track:

- Regulation (EC) No 561/2006 sets up rules on driving times, breaks and rest periods for drivers engaged in the carriage of goods and passengers by road.
- Regulation (EU) No 165/2014 determines which vehicles have to be equipped with tachographs and how they have to be used.

- Directive 2006/22/EC sets up rules for checking systems of compliance with the above mentioned regulations.
- In addition to Regulation (EC) No 561/2006, Directive 2002/15/EC lays down rules regarding maximum weekly working times, rest periods, breaks and night work and implements essential definitions such as working time or periods of availability.
- Moreover, the European Commission addressed various decisions and recommendations to Member States, of which some either have not been transposed into national law at all or have been interpreted in a different manner.
- There is a wide range of interpretations regarding various passages in EU social legislation.

Those framework conditions make it nearly impossible for transport companies to manage their daily routines effectively.

Moreover, the provisions in question also lack practicability as regards content:

EU social rules are primarily designed to prevent overtired drivers from driving and thus increase road safety. The corresponding legal provisions prescribing extensive documentation and strict compliance have reached dimensions that make it almost impossible to conduct transport operations in an economically feasible way. Furthermore, it is necessary to develop social rules especially designed for the bus and coach sector to account for the flexibility that is needed and for the different economic circumstances in goods and passenger transport.

The current regime differentiates:

- Daily and weekly driving time
- Breaks:
    - in Art 4 d of Regulation 561/2006 (including complicated and inflexible rules on splitting the break)
    - in Art 5 of Directive 2002/15
    - in Art 34 of Regulation 165/2014 (without any definition, what is exactly meant by it)
- Daily and weekly rest periods (including complicated rules on extension/reduction and complicated separate rules for buses, like the 12 day rule)
- Other work (including a complicated reference to Directive 2002/15)
- Periods of availability (also including a complicated reference to Directive 2002/15)

This lack of practicability in form and content is aggravated by

- the coexistence of digital and analog tachographs
- non-binding recommendations and decisions of the European Commission
- diverging control and enforcement practices in Member States.

Thus, compliance with the social rules is getting more and more difficult for drivers and companies whereas controls regarding the compliance with the rules have become increasingly stringent.

This leads to

- excessive burdens for companies and drivers
- overburdened national authorities and control officers in Member States
- rapidly increasing legal uncertainty for companies and drivers.

Concluding, the following measures are of utmost importance:

- The EU has to decide on obligatory, harmonised rules on working conditions for mobile workers which have to be applied in a uniform way in all Member States.
- The legal framework has to be transparent, clear and comprehensible in order to prevent different interpretation by Member States.
- Key provisions have to be governed primarily by EU law. The leeway for Member States to introduce deviating national rules shall be reduced to a minimum.
- EU wide harmonised rules on tolerances for minor infringements have to be introduced. This could include cases where the driver exceeds the maximum driving time or reduces the minimum rest period or break only by a few minutes.

The implementation of those measures would lead to growing acceptance and more compliance with EU social rules.

10. Access to the occupation of road transport operator and Regulation (EC) No 1072/2009 on access to the international road haulage market (p. 299)

Cabotage:
Cabotage provisions are not clear enough, rules are not enforceable and are interpreted differently in the Member States. We oppose the idea of further liberalisation of cabotage as long as social and economic framework conditions differ throughout the EU. Currently the main problem is the lack of efficient enforcement of existing rules – controls of unauthorized cabotage must be extended.

We ask for

- uniform, clear and binding rules for cabotage operations
- effective rules on controls (cabotage control-form)
- the inclusion of infringements against cabotage provisions in the list of serious infringements according to Art 6 of the Regulation (EC) No 1071/2009
- the promotion of the use of the digital tachograph equipped with Global Navigation Satellite System (GNSS) capability to identify start and end of cabotage operations and periods and target cabotage checks

Access to the profession:
EU rules should lead to real harmonisation, which is currently not the case. Gold Plating has to be avoided, otherwise it leads to the distortion of competition. Rules have to be applied in all Member States in a uniform way: The possibility for Member States to add additional requirements and stricter rules has to be abolished.

Austrian law for example establishes that companies must prove that they have enough parking spaces for all their vehicles in the surrounding areas of their headquarters. Regulation 1072/2009 stipulates that a certified true copy of the Community license shall be kept in each of the haulier's vehicles and shall be presented at the request of any authorised inspecting officer. In Austria you have to carry along a certified true copy of your concession certificate as well. Furthermore, the validity of the Community license in Austria for bus and freight transport operators is limited to 5 years, whereas Regulations 1072/2009 and 1073/2009 allow competent authorities of the Member State of establishment to issue it for a renewable period of up to 10 years. On top of that there are no rehabilitation measures to regain good repute in Austria.

11. DIRECTIVE 2003/59/EC on the initial qualification and periodic training of drivers of certain road vehicles for the carriage of goods or passengers (p. 312)

Scope of the Directive and Exemptions

The scope of the directive and its exemptions have great relevance in practice. Unfortunately there are still unclarities regarding the scope of the directive especially regarding Article 2 (g) of the directive "vehicles carrying material or equipment to be used by the driver in the course of his or her work, provided that driving the vehicle is not the driver's principal activity." This exemption is often interpreted heterogeneously by different parties. The "case-by-case"-evaluation without detailed guidelines as advocated by Austrian Ministry of Transport proves difficult in practice. Therefore we see the need for clarification in the directive. This would also lead to a common set of interpretations within all member states.

Cross border problems

Cross border problems also constitute a major concern in the field of driver training. As mentioned above the interpretations regarding exemptions may differ from member state to member state.

Another issue is the case where a driver attends periodic training in one Member State while applying for a driver qualification card in another (especially encountered in border regions by commuters) or splits the training between two member states (e.g. because of a job change). Although the option to attend training in the member state of the employer is provided in Art. 9 of the Directive, it is in practice often not possible to obtain a driver qualification card neither in the country of residence nor in the country of the employer (e.g. work and training in Austria – residence in Hungary). We see it of utmost importance that the possibilities regarding place of training as provided in Art. 9 are also ensured to be followed and administered in practice. The described current situation is very frustrating for

drivers and companies and induces objection of the training and underlying directive altogether. Drivers trained in Austria experience this problem in different Member States e.g. Czech Republic, Slovakia and Poland beside the already mentioned cases in Hungary. Because of its multi-national dimension this problem needs to be addressed and solved on the European level.

Access to driving profession

The mobility and transport sector already faces the challenge to find and recruit new drivers, therefore the access to the profession should not be unduly made difficult. The initial qualification -besides its positive training effects – also acts as a hurdle to job entry in the sector. Therefore, we propose that the trainee driver may first take up the profession without qualification or basic training (on sole basis of driving licence) for one year and then the initial qualification may be completed within this first year. This would encourage more people to engage in the driver's profession and facilitate their access to the driver's profession. In no case shall access to driver's profession be made more difficult.

Initial qualification

As the majority of truck and bus drivers are within the scope of the directive it only makes sense to combine the initial qualification with education and testing for driving licences. In Austria these two matters are already successfully combined to a small extent. We propose to create the explicit possibility to further integrate education for driving licence and initial qualification in the future.

Periodic training: topics and duration

Concerning the organisation of periodic training over the 5-year period the drivers and companies shall be able to freely decide how to distribute the training over the whole 5-years period according to their individual operational needs. Regarding the topics covered by the current periodic training we repeatedly received feedback that health related content such as proper nutrition finds little acceptance among drivers and employers, and should be replaced by other topics, such as first aid and conduct in case of vehicle fire. The mandatory completion of the same training modules every 5 years is often considered unnecessary. Therefore, we propose to gradually decrease the required amount of training hours for drivers who complete the second, third and further 5-year periods of training as the driver becomes more experienced. Thus, too many repetitions can be avoided.

Periodic training: use of simulators and e-learning

We are confident that modern teaching techniques such as simulators and e-learning can provide a useful contribution to periodic training. Nevertheless, the use of simulators must not be made mandatory and the drivers, companies as well as training institutions shall freely decide how to organise their training schedule. When using e-learning systems and web-based training it has to be ensured that drivers complete the training themselves (e.g. by recording attendance by webcam). E-learning and web-based training are likely to be suitable only for certain topics of training.

12. Occupational Health and Safety (p. 349)

According to the report of COWI there is only minor need for revision. So far, the European Commissions' evaluation has not been finalized.

13. Information and consultation of workers (p. 350-352)

We point out that there is no need to consolidate the three directives by harmonising the terms "information" and "consultation".

14. Working time directive (p. 353)

The revision of the working time directive was already scheduled for 2016. This is why it should be given a priority, particularly to ensure applicability, clarification and legal certainty for example regarding on-call time and compensatory rest. It is not clear if the "interpretative communication", which was announced in the 2017 Scorebord, brings more clarification.

15. Enforcement-directive to the Posting of workers directive (p. 355-358)

The directive was adopted in 2014, but is still listed in the Scoreboard. Moreover, the EC already proposed a revision of the posting directive. This is why we don't see any added value in listing the enforcement-directive in the Scoreboard.

Posting of Workers Directive as concerns transport operations:

Although we support the objective of safeguarding the social protection of workers and creating a level playing field in the internal market, the implementation of the directive raises a lot of questions and poses problems especially when transport operations are concerned.

From our point of view, the Posting of Workers Directive cannot be applied universally to the transport sector, especially not to short-term cross-border transport services. The transport sector needs specific rules that take account of the regular mobility of workers and do not impede daily business by placing additional administrative burden on companies. Rules on posting of workers designed to prevent social dumping should only apply to the transport sector, if there is a close link between the activity of the posted worker and the Member State where the service is performed. This is usually not the case for short-term transport services like regional destination/origin transportation or transit. In contrary, a sufficiently close link can be assumed in the case of cabotage.

We believe that a complete exemption of the transport sector of the Posting of Workers Directive would be the ideal solution. At the same time a sector specific directive for transport complementing the general directive shall be adopted. This sectoral directive shall not leave room for Member States to circumvent the European provisions by again adopting national measures based on the Rome I Regulation.

16. Written Statement Directive (p.359)

A revision of the Written Statement Directive is not needed. One principle of the social pillar deals with the question of written statements and wants to extend it to the time before the beginning of the employment contract. According to us the written statement at the beginning of the employment contract is sufficient.

17. Part-time Work and Fixed Term Work (p. 362)

Social partner agreements to part time and fixed-term contracts: We do not see any necessity for a revision.

18. Personal data protection (p. 404)

1. *The GDPR will help the Digital Single Market realise its full potential through:*

▫ *One continent, one law: a single, pan-European law for data protection, replacing the current inconsistent patchwork of national laws. Companies will deal with one law, not 28. The benefits are estimated at €2.3 billion per year*

We are concerned about the fact, that many clauses (more than 50) allow national regimes. This may lead to a fragmented implementation of EU data protection legislation. As a result, companies will have to verify carefully national legislation before starting cross border operations.

2. *„The same rules for all companies – regardless of where they are established: today European companies have to adhere to stricter standards than companies established outside the EU but also doing business in our Single Market. With the reform, companies based outside of Europe will have to apply the same rules when they offer goods or services on the EU market. This creates a level playing field;“*

Future will tell us, if legal enforcement will lead to the forecasted goals. In general, we are missing exemptions in favour or SMEs (as set down in the Small Business Act).

19. Package Travel Directive (p. 408-411)

The Commission states in its communication "Better results through Better Regulation", that it is important "that every single measure in the EU's overall regulatory framework is tailor-made, that means modern, effective, proportionate, practical and as simple as possible ". "Legislation should provide legal certainty and avoid any unnecessary burden". The Commission further carries out that when drawing up initiatives, the principle 'Think Small First' will count even more.

The Austrian Federal Economic Chamber has to state that these confessions quoted above were apparently ignored with regard to the new Package Travel Directive.

The new directive will lead to a broad and vague definition of 'package travel' and therefore be the basis for excessive bureaucracy, due to inter alia a vast extension of information requirements, and especially legal uncertainty for SMEs in the tourism sector. The Commission's appraisal that this directive will lead to simplifications is not comprehensible.

20. Directive 2011/83/EU on consumer rights (p. 415-417)

Directive 2011/83/EU on consumer rights had to be implemented into national law by the Member States until 13.12.2013. However, the provisions are applied in practice **consistently throughout the European Union since 13.06.2014** to contracts between businesses and consumers.

The directive establishes **new provisions for distance contracts** (e.g. mail order companies, web shops, hotel bookings), but **especially also for contracts negotiated away from business premises** (in Austria called "Außergeschäftsraumverträge" – AGV).

Unfortunately, the directive is a **particularly negative example** that REFIT´s **aspiration, to establish a simple, clear and predictable legal framework, is not met.** Instead, it created **massive legal uncertainty, enormous bureaucracy and unnecessary and excessive regulatory burden for the affected companies** in many areas. Thus, there is urgent **need to evaluate and amend** the directive.

Contracts negotiated away from business premises:

The provisions on contracts negotiated away from business premises do **not only apply if,** e.g. **a business is collecting unrequested orders by doorstep selling**, **but also if**, e.g. **a craftsman is called into a customer´s flat because of an order** (e.g. paintwork, electrical installations, manufacturing of a cupboard, hairdressing in a flat, etc.), and if the contract is concluded there.

Businesses – an overwhelming majority of them are SMEs or even single-person companies – are in such cases affected by **enormous information obligations** (see also distance contracts below), whereas the information must be given to the customer beforehand principally on paper. If there is no exception from the right of withdrawal (e.g. in the case of urgent repair and maintenance works; however, the consumer must be precontractually informed about the non-existence of the right of withdrawal by writing), the consumer has a **period of 14 days to withdraw from an off-premises contract**. If the **consumer wants a service to be provided during the withdrawal period, he must explicitly request that (principally on paper).** Because the **burden of proof that the information has been provided is always on the business**, it has no other option than **have the consumer sign enormous contract forms in duplicate**.

Given the case that, for example, a hairdresser is called into a flat or a care home for an aged client´s more extensive hairdressing, it can be estimated that the 50 Euro limit will be exceeded regularly. The example shows, how **bureaucratic and exaggerated the new standards are**. But also **regarding all other crafts** (e.g. electrical installation, sanitation

and heating, paintwork), first experiences show that the new provisions are an **entire overextension and an unacceptable bureaucratic burden**. Notably, first reports from our members show, that also consumers are overcharged with the new provisions and react wary of getting forms filling pages that they have, for example, to sign before the work begins during the withdrawal period.

Besides the enormous bureaucratic effort, **mistakes concerning the information about the right of withdrawal are sanctioned with liberation of the consumer´s duty of payment** if he withdraws from the contract. So, he would get the service for free.

A **model withdrawal form** which businesses can use is contained in the directive´s annex, however, with many design tips, even for jurists it is challenging. Among other things, a craftsman without legal education must decide, whether it is a service contract or a sales contract, so that he can give the right information about the right of withdrawal. In the case of a service contract, the withdrawal period starts with conclusion of the contract, while in the case of a sales contract it starts with receipt of the goods. Therefore, he must give divergent information depending on the kind of the contract. If the craftsman assesses the contract wrongly, also the information on the right of withdrawal will be wrong. Thus, the withdrawal period is extended by 12 months. In case of a withdrawal, the consumer can call his money back or does not need to pay. This sanction is also critical with regard to the Fundamental Rights Charter.

Assessing whether it is a sales contract or a service contract is not easy. This is especially shown in the craftsman's trades, where many contracts are so called **mixed purpose contracts**, which contain both goods and services. This also shows in the guidance document published by the DG Justice on 13 June 2014, which, unfortunately, has been published quite late and was firstly only available in English. According to this document, the purchase of specific construction elements, such as windows, including their installation in the consumer's house would be a sales contract. The period of withdrawal would begin after receiving the last window (it must be mentioned that this is factually and economically inappropriate). However, must there be an explicit claim from the consumer before the installation of the windows? What about the construction of a partition to divide a room, where also a door is installed? Here, both the goods (bricks, doorframe and door) and services are part of the contract. There are good reasons that this is a service contract. Otherwise, the withdrawal period would begin with the delivery of the last construction material. However, would the assessment even be different if it would not be a brick wall but a standard drywall?

These questions only illustrate some examples of **legal issues**, which SMEs from the crafts sector have to cope with since 13 June 2014 in addition to the **enormous battle with red tape,** in order to act in conformity with the law and, especially, to keep the claim for remuneration.

During the negotiations, AFEC has opposed the, especially for SMEs, excessive and bureaucratic provisions and has called for an exception for contracts, where the consumer himself has requested the business' visit. This exception was also supported in the Council

by Austria; however, to our knowledge there was no support from other Member States (except for Germany).

An improvement of the companies´ situation on national level is not possible, because the Austrian legislation is largely oriented on the directive. The scopes provided in the directive (e.g. the exception for contracts negotiated away from business premises up to 50 Euro), have been implemented by the national lawmaker. Therefore, **an amendment of the directive is necessary**. In all cases where the consumer has requested the entrepreneur´s visit, no use shall be made of the complicated information and guidance system. In these cases, the initiative came from the consumer; therefore, nobody is taken in surprise as in a doorstep selling situation.

Distance contracts and pre-contractual information requirements

However, also the new provisions on distance contracts have brought severe burden to the affected companies. Here, the **excessive extension of pre-contractual information requirements** must be mentioned. EU legislation is following a questionable strategy of extending information requirements, without the existence of a scientific study on the effectivity of this model. Especially with the new Directive on consumer rights, this **is getting more and more absurd**. Information requirements, which moreover also exist in parallel in various directives, are regularly extended, as in the case of the Directive on consumer rights.

Every new information requirement means burden and legal uncertainty for the affected companies. Just as an example, the **pre-contractual information requirements on warranties** are pointed out. The obligation of traders, of providing pre-contractual information about the conditions of the manufacturer´s warranty means an **enormous effort** for traders with a wide range of products. It has also not been considered that the information requirements are also in effect for the traditional mail order business. Here, it makes no economic sense to print the complete warranty conditions. Maybe, the clause of Article 8(4) can be used; however, there is no legal certainty for the affected companies.

Particularly, it cannot be the task of the companies, to i**nform consumers increasingly extensive about the legal situation**. In the directive, the **information obligations on the right of withdrawal have been expanded substantially**. Moreover, an information obligation on the **legal guarantee has been introduced,** which causes confusion. Whereas the directive requests "a reminder of the existence of a legal guarantee of conformity for goods" (Article 6(4)(l)), the guidelines of the commission state that "the seller should specify that, under EU law, he is liable for any lack of conformity that becomes apparent within a minimum of two years from delivery of the goods and that national laws may give the consumer additional rights" (p. 27).

Moreover, there is a **massive legal uncertainty** how the pre-contractual information requirements can be **accomplished correctly,** especially because the directive differentiates the run of the withdrawal periods. If goods are, for example, ordered in one order but are delivered separately, the period for all goods begins with receipt of the last good. However, if a separate delivery will happen, is not known to the entrepreneur in

advance. Therefore, **generally, the model instructions on withdrawal cannot be used**. To cover all possibilities, various model instructions on withdrawal must be provided on the website. This seems bureaucratic.

Also the obligation that the **"trader shall make the consumer aware in a clear and prominent manner, and directly before the consumer places his order" of the main characteristics of a good or a service, is a regulatory overreach**. However, the directive regulates also the labelling of the button for the order of clothes or the booking of a hotel and the trader shall ensure, that the consumer "explicitly acknowledges that the order implies an obligation to pay". Therefore, all over Europe, millions of enterprises are forced to give their websites a new layout – without any Impact Assessment. This is another example how **easily new administrative burdens for companies are created** just because it is not possible to come to grips with rip-offs on the internet (supposed free offers of horoscopes, prognosis of lifespan or recipes) by effective enforcement of existing legislation in some Member States.

There is massive legal uncertainty regarding the **extent, to which the main characteristics of a good or a service must be outlined before placing the order**. The guideline in article 8(2) is quite vague and is causing problems with the interpretation. However, every entrepreneur will have an interest to present and describe his products in a way that the consumer can get an idea of it. If, according to article 8(2), the information must be provided in the same way as in article 6(1)(a), this overview would lead to an entire confusion, especially if several goods are ordered.

The provisions on the design of distance **contracts on digital content** are **completely confused, wrongheaded and bureaucratic**. Apparently, they have been attached to the directive at the last minute, thus without any profound discussion and coherent coordination. To go into detail would take us too far afield. However, it must be mentioned that the content of Article 16(m), about the loss of the right of withdrawal, combined with all the other provisions (information on the right of withdrawal, information on the content) **bears a high legal uncertainty and makes downloads bureaucratic**.

Obviously, the Commission is aware of the problem and tries to clarify some aspects in the guidelines (p. 64ff). However, it is questionable, whether the well-intentioned remark that the use of the example consent and acknowledgement statement (p. 66) would also contain the information on the right of withdrawal and is in accordance with the directive.

The **legal uncertainty concerning contracts on digital content is problematic**, and questionable with regard to the Fundamental Rights Charter, because **infringements are sanctioned similar to those by contracts negotiated away from business premises**. Article 14(4)(b) entitles the consumer either not to pay for the content received or be reimbursed for the amounts paid.

Another example for a professional group especially affected by the directive are real estate agents. These are affected by both the provisions for distance contracts and for contracts negotiated away from business premises. If the real estate agent wants to protect his brokerage, he must overwhelm the consumer with enormous information materials before

beginning his service. The consumer is facing a raft of information and must confirm the receipt before getting information on the realty.

The new provisions lead to a situation where either the whole procedure is clearly slowed down (awaiting the 14-days withdrawal period) or the consumer loses his right of withdrawal if he wants services and information immediately (in the case of complete fulfilment of the contract within the withdrawal period). The intention of the directive, consumer protection, is completely lost. Often, consumers are angry about the new provisions and refuse any further contact with the real estate agent. The companies report up to 50% less requests from prospects and many severances after the initial contact.

As part of the urgently needed amendment of the Directive on consumer rights, we ask for an exception for the professional group of real estate agents. Not only contracts on real estates should be excluded, but also contracts on services by real estate agents.

General remarks on the fitness check of the consumer law regime

Insufficient execution of the consultation

With an extensive questionnaire this consultation tested primarily the benefits of the respective Directives for consumers. However, the question of their effective practicability for businesses unfortunately remained neglected. The contractual freedom of companies is already reduced to a minimum. Businesses have to face a flood of legal provisions, which are particularly for SMEs, hardly manageable. Moreover, the formulation and possible responses of the questionnaire were tendentious and unclear. A further problem was the limitation of characters when submitting additional comments. Furthermore, on the day of its publication in May 2016 the consultation was only available in English. It took nearly one month until other language versions followed.

Unfortunately, some criticism on the consultation to assess the consumer right directive needs to be expressed, as some Member States were a priori excluded from participating in this consultation. Moreover, the questionnaire did not provide any response options differentiating between distance selling and contracts negotiated away from business premises, even though this would have been necessary.

Presenting new legislative proposals before evaluating existing directives stands in contradiction with the commitment to “better regulation”

Presenting new proposals for directives, namely the directive on online and other distance sales of goods and the directive on contracts for the supply of digital content, before evaluating the existing legislative framework, particularly the consumer sales directive, is a contradiction to the Commission’s declared commitment to “better regulation”. The proposal for a directive on online and other distance sales of goods comprises numerous intensifications for companies, e.g. in particular extending the assumption period to 2 years, which is from a business point of view completely inadequate and should be dismissed, just

like the shift of burden of proof for an unlimited period of time, proposed by the directive on contracts for the supply of digital content. The proposal for a regulation addressing geo-blocking, which restricts the freedom to conduct businesses by imposing an obligation to contract, will further increase the complexity of the existing set of rules. Consequently, this proposal stands in contradiction with the Commission's commitment to "better regulation" and should, thus, be rejected.

21. Regulation 2016/ 283 on cooperation between national authorities responsible for the enforcement of consumer protection laws (p. 418-421)

Changing the EU consumer protection rules referred to by this regulation in substance by way of this Regulation on the "cooperation of authorities" is clearly contradicting the Commission's declared commitment to "better regulation". The excessive and disproportionate investigation and enforcement powers are vastly expanded in such a way that the authorities would be given powers which they - by far - do not have under existing national law. The existing rules should therefore be maintained.

22. Proposal for a Directive on gender balance among non-executive directors of companies listed on stock exchanges (p. 433-435)

This proposal has been blocked by the Council for quite some time and was not a priority for the Slovene Presidency either. The WKÖ-points remain as follows:

The situation is usually different depending on each sector; the share of women for example varies between the banking and service sector or industry.

Legally determined quotas for women harm entrepreneurial flexibility. Determining quota might be reasonable for statistical purposes but are not useful setting specific and flexible objectives or measures of businesses. Similarly, the designated flexibility- opportunities in Art 4b can only be used if certain specifications have been met.

Defining quota will not solve any disproportionality in Gender mainstreaming. Most needed in order to encourage women to take on responsibilities in management boards would be a change of infrastructure. In particular women with caregiving duties need support through an enlargement of day-care and nursing mostly because fulfilling management is usually not done within a nine to five routine. Art 157 (3) cannot be used as legal basis, which has been confirmed by the legal service of the Council.

23. Fitness Check legal mirgration (p. 442-460)

Generally we think it useful to conduct a Fitness Check in this sector, because the legislation concerning migration is relatively extensive and not updated. We do not understand why some directives are being considered, even though they have just been adopted very recently and have not even been ratified by all MS. Moreover, it is remarkable that the Fitness Check also includes the "Blue-card-Directive" – as the European Commission has

already conducted an evaluation and made a proposal which is currently being discussed by the Council. From our point of view the content of this proposal is going in the right direction, even though it is unacceptable that the Blue Card overrules national regimes. This would hamper highly qualified staff to access the Austrian labour market.

24. Asylum package (p. 464)

We appreciate the proposed asylum package; we particularly welcome the provisions on mandatory residence and on access to the labour market after 6 months.

WIRTSCHAFTSKAMMER ÖSTERREICH

Part 3: Important legislation with need for action not covered by REFIT yet

1. Emissions Trading Directive (2003/87/EC)

For the Emissions Trading System, a radical simplification of bureaucratic procedures and increased transparency are necessary. Carbon leakage exposed sectors should be continued to be protected by 100% free allocation. Furthermore, financial burden for ETS businesses must be reduced.

Regarding the benchmarking system, these benchmarks must be technically and economically realistic and feasible. Our proposal: the average emissions of the 10 to 15 percent most efficient installations (best performers) should be counted for the benchmarking exercise.

To decrease the administrative burden and increase planning security for participating companies, benchmarks and fall-backs should only be updated once at the beginning of the new trading period. This update should rely on data provided by the companies. If there have not been any significant technological changes in a certain sector, a simplified procedure to gather and submit data should be accepted by the Commission.

The application of the cross-sectoral correction factor (CSCF) should be avoided through system adaptations. Not only is this necessary to create a fair and level playing field within Europe, doing away with the CSCF would also dramatically increase the planning and investment security for businesses. Currently, the CSCF punishes the best performers with a reduction of their free certificates by up to one fifth. Scrapping the CSCF would furthermore ease the carbon leakage problem. By making the allocation system more dynamic and fair, the CSCF could become redundant without jeopardising the long-term climate objective (i.e. the overall EU greenhouse gas cap).

2. Biocidial Product Regulation (BPR) - (EU) No 528/2012

A particular provision of the biocides regulation No 528/2012 (article 95) became relevant on 1. September 2015. This new provision requests from all suppliers of active substances, who want to stay on the market after the mentioned date, to perform an extensive and costly dossier-submission.

In particular SMEs were not aware of the deadline in September 2015. In general awareness about the recent changes in the area of biocides legislation is very low in the SME sector. Due to intense communication efforts of SME associations it seems that it is not ignorance that causes this lack of information and activity, rather it is caused by the complexity of the biocides regulation and all other heavy pieces of chemical legislation (e.g. REACH and CLP), which are also relevant for a supplier of biocides. Because of that a fall-back option for all those companies, who fail to comply with their obligations on 1 September this year

should be established. We further suggest a tolerance period of 2 years, in which companies are not fined and can take the necessary action.

3. Better coordination of EU policies on water, renewable energy and nature protection

The EU water acquis is currently counteracting the push-forward on renewable energy. Hydropower can induce enormous economic effects. Synergies between water policy and the renewables have to be found and exploited:

- The development of hydropower is an important economic factor for example for the construction sector, which is very labour and material intensive. Compared to other renewable energies the economic effect is substantially higher.
- Added value could be much more developed in Europe, where know-how is being established in leading water technology companies. This is a contribution on further growth within the dynamic sector of environmental technologies.
- Hydropower is also quite convincing through its cost-effective production of electricity.
- Therefore, it would be suitable to use REFIT to develop better financing options for better coordination of water and energy policy to induce positive economic effects.

Furthermore, REFIT can contribute to accelerate and simplify water-related licences for industrial installations – especially by eliminating contradictions between EU legislation on water, nature protection and energy. That would have positive effects on affected parties such as industry, energy producers and communities without any loss of water quality, biodiversity or security of energy supply.

4. SMIT

The European Commission is proposing a Single Market Information Tool (SMIT), as outlined in the Single Market Strategy of October 2015, that would enable it to gather information directly from selected market players.

The goal is to improve the enforcement of existing Single Market rules and to prepare proposals for effective policy intervention. The tool would be used to request information - in cases of serious Single Market malfunctioning - from firms such as cost structure, pricing policy, profits or employment contracts.

Relating to a Single Market Information Tool WKÖ is against any direct access to companies through the European Commission. Any reporting or information obligations as explained with regards to the Single Market Information Tool would mean an additional administrative burden for companies. Thus, such a provision is inconsistent with the European Commission's own claim to cut red tape/ to avoid any further bureaucracy. Any provisions granting the European Commission investigative powers as foreseen within the SMIT could mean to allow requests for confidential information.

In addition, it is not at all clear which market participants would be addressed by the Commission and at which stage. Thus the way of selecting companies for requests for confidential information is nether clear nor acceptable. In this regard any further questions

regarding sanctions for companies not complying with the Commissions requests for providing information have not been tackled.

All in all, introducing the SMIT in the way it is explained by the Commission the competences between the European Union level and national levels would not be respected because usually Member States are responsible for implementing and enforcing internal market provisions. In addition to that there are already existing instruments which could and should be uses in cases of breaches of infringements of EU-law relating to the internal market (such as the EU-pilot procedure, infringement procedures).

5. Fourth **Anti-money Laundering Directive** (Directive (EU) 2015/849) on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing

The aim of the directive (fight against money laundering and terrorist financing) is naturally supported and welcomed by the Austrian Federal Economic Chamber. Nevertheless, compliance with several provisions of the directive is extremely difficult, especially for smaller enterprises:

There are, for example, enhanced due diligence measures with regards to politically exposed persons (PEP = politicians as well as their close relatives), for both national as well as foreign PEPs. Obliged entities have to take adequate measures to establish the source of wealth and source of funds that are involved in business relationships or transactions with such persons. It is, however, virtually impossible to comply with this provision. The obliged entity can solely rely on the information provided by the consumer. The provision should therefore be deleted.

In addition, it would be unreasonable, especially for small enterprises, to be forced to acquire access to a "PEP-database" in order to identify in particular foreign PEPs. The European Supervisory Authorities (EBA, ESMA and EIOPA) should therefore operate such a database, and obliged entities and authorities should have free access to such a database. Otherwise, small enterprises would again only be able to rely on the information provided by the customers.

Overall, the provisions of the directive should be examined to reveal potential simplifications, so that they can be applied by smaller enterprises without any legal uncertainty. Recommendations by the Financial Action Task Force (FATF) should not be the reason to hold on to bureaucratic provisions that are virtually impossible to comply with.

The Commission should at the same time initiate a REFIT-dialogue with the FATF in order to find possibilities for simplification and pursue a more pragmatic approach. This could eventually be more effective to achieve the objective (fight against money laundering and terrorist financing) of the directive.

6. Open Research Data Pilot in Horizon 2020

In summer 2016 in its plans for the 2017 Work Program the Commission announced that the open research pilot running at that time would be extended to cover all topics in Horizon 2020 ("open science the default option in H2020").

While before only project partners in certain areas of the Horizon 2020 program participating in the „open research data pilot" were obligated to accept additional requirements (e.g. the right of third parties to reuse of results without payment, automated analysis, exploitation, copying & dissemination, including the obligation to supply software, software-code, algorithms, and data analysis), it has since become a measure blanket-covering the entirety of H2020 programs.

While an opt-out possibility for project participants is foreseen under certain circumstances, this means an additional administrative burden even for projects that eventually are exempted from the obligations associated with the open science approach. It is evident that the open science approach (which can suitably can be implemented in basic research, system research, supporting meta research or in the humanities) is not suitable for applied research where companies drawing in part on their own resources endeavour to establish a competitive edge over the competition. If companies in a competitive environment were obliged to adhere to open science obligations their interest in cooperation with the scientific community would be much reduced as these obligations interfere with the firms competitive R&D&I efforts and the potential for exploitation the results.

The generalizing policy approach chosen by the commission and the extension in scope of its Open Research Data Policy unfortunately cannot be considered just merely „nudging" or a „comply or explain approach", but foreseeably requires an additional administrative burden ("explain anyway – even if it the open research data concept does not fit applied research & innovation"). The open data regime to be applied from 2017 onward runs directly against the simplification sought everywhere else and sets in stone a high level of "complexity by default" while it is "simplicity by default & simplicity by design" we should strive for. The main goal of EU instruments in H2020 is to strengthen R&D capabilities and performance. Secondary or tertiary goals should not keep researchers, innovators and firms from doing what they do best: innovate and advance the state of technology and science.

7. Long-term supplier's declarations (LTSD)

Compared to the former legal framework changes have occurred concerning the making-out of long-term supplier's declarations (LTSD). Under the current legislation Article 62 (1) and (2) UCC-IA it is no longer possible

a) to issue one single LTSD that covers a period prior and after the date the LTSD is issued. Unlike in the past, a combination of overlapping time periods in order to cover a full fiscal year is no longer possible. This has been a common practice amongst businesses. Instead, two LTSDs have to be issued. One LTSD covering supplies in the future, and one LTSD covering supplies in the past.

b) to issue LTSDs that date back further in time than just one year.

Due to this new regulation the issuance of LTSD is becoming increasingly bureaucratic, not only for businesses (two documents instead of one; complexity to monitor the validity period of LTSDs increases), but also for custom authorities (verifying two documents instead of one, monitoring the validity period).

As a result, LTSDs will be used less often, which leads to a reduction of preference usage for EU-Free Trade Agreements (EU-FTAs). This is again decreasing the attractiveness of EU-FTAs for SME's (e.g. a possible TTIP), which are already struggling with the calculation and documentation of preferential rules of origin.

The current legislation Article 62 (1) and (2) UCC-IA on LTSD refers to "date on which it is/was made out". Instead both articles should refer to "date on which it comes/came into effect" (as it was the case in the former Regulation (EC) 1207/2001).

Currently the Commission (DG TAXUD) is not willing to change this regulation, as COM and a couple of Member States fear an abuse of LTSDs by the business community. Taking this into account and to maybe reach a compromise, priority could be given to changing paragraph (1), while neglecting paragraph (2) of Article 62 UCC-IA.

8. Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on cross-border parcel delivery services COM (2016) 285 final

Unfortunately, the Commission herself released a new proposal for a Regulation on cross-border parcel delivery services which totally contradicts the principle of "better regulation".

The additional information requirements, which shall be imposed on companies conducting parcel delivery services would lead to enormous administrative burden. Furthermore, the proposal does not explain how it intends to increase price transparency.

The regulatory framework for postal services ("Postal Directive") already sets rules for cases in which companies have to disclose information. These are not as comprehensive and have only be met at explicit request of the competent authority.

Furthermore, the Commission intends to introduce an additional assessment of affordability of tariffs, which would lead to additional bureaucratic burden for the competent authorities and which puts parcel service delivery operators under general suspicion.

Even in the explanatory memorandum of the proposal, the Commission states that only in some Member States price anomalies were detected. In addition, action was taken on the basis of unsubstantiated assumptions, which are suited to negatively affect an entire industry. Such unfounded assumptions must not be part of any legislative proposals.

Part 4: Gold Plating – Examples from the perspective of the Austrian economy

Gold Plating means adding stronger rules at national level when transposing EU-directives into national law. Very often at national level stricter rules than originally intended in the European legislative act are implemented. In these cases, it is often argued that stronger consumer rights are needed. However, if there are stricter rules put into place at national level, the European legislator cannot be blamed. Gold Plating would also lead to a higher fragmentation of the internal market. This is why Gold Plating should be avoided when EU-legislation is transposed.

Processing of EU-funds

Pronounced bureaucracy in the area of regional development (Structural Funds) is an obstacle to the achievement of the objectives of cohesion policy. Due to the principle of "shared management" requirements for project execution are defined on EU as well as on national/regional level. Audit authorities who examine at national level, define additional standards on the basis of their interpretation of eligibility rules. The European Court of Justice has already found that excessive complexity of the system results in high error rates.

Implementation of energy efficiency

The Austrian Energy efficiency law is occasionally mentioned as an example for gold plating – a point of view that is not shared by the respective Ministry of Economic Affairs which is in charge of the dossier. When assessing this piece of legislation one has to differentiate: As far as the general target is concerned, Austria sticks to the requirement laid down in the Directive, which is the obligation to prove energy efficiency measures summing up to 1.5% based on the amount of energy sold to final customers the year before. Furthermore, Austria made use of the possibilities offered by the Directive to exclude certain sub-segments and to account for early actions taken. For this reason, no Gold Plating measures have been undertaken at the level of the Directive's general target.

Gold Plating can, however, be observed when we look at the instruments and individual obligations applied in order to achieve the general target. If we compare the Austrian transposition to the German legislation, the differences are striking: In Germany elements like obligations for energy suppliers, a monitoring body or a compulsory registration for energy auditors and energy consultants do simply not exist. Furthermore, in Germany internal auditors are allowed to perform audits and the deadline for the introduction of an energy management law is longer.

Plant protection laws

EU plant protection legislation mainly consist of a Regulation concerning the placing of plant protection products (PPP) on the market and two Directives – one establishing a

framework for Community action to achieve the sustainable use of pesticides and another one on statistics in this sector. In Austria these legal acts have been transposed via the national Plant Protection Products Law 2011 as well as via a separate national act of secondary legislation ("PflanzenschutzmittelVO 2011").

In addition to the requirements established by European law, the Austrian legislation provides for the following restrictions:

- total ban on the sale of PPP in self-service manner (PSM-VO 2011, § 1 Abs. 8)
- total ban on the sale of PPP in food retail stores (PSM-VO 2011, § 1 Abs. 8)
- extension of the ban on the use of neonicotinoid compared to EU-law (PSM-G 2001, § 18 Abs. 11), which means in practice a total ban

Furthermore, the European plant protection legislation requires that three groups of persons that deal with PPP (distributors, users and consultants), are especially trained. The according training requirements were transposed very inefficiently in Austria. For example: in Austria the requirements for distributors are regulated by federal law. The two remaining groups are regulated by regional laws. A clear and uniform system of mutual recognition does not exist which is why we observe an unnecessary duplication of trainings.

Arbitration proceedings in the area of transport operations

The national laws regulating transport operations in different modes of transport (be it rail, road, air or water borne transport) provide for an obligation for business organizations to cooperate in respective arbitration proceedings. The underlying European legislation, however, does not provide for an obligation for companies to cooperate in case of proceedings which might result in non-binding settlements.

Environmental impact assessments

Regarding environmental impact assessment legislation, Gold Plating leads to a higher number of environmental impact assessments than required by European law. From a business location point of view, the Austrian environmental impact assessment law should resort to the European limit values which are less strict than the limit values set in the national legislation when areas with a high degree of air pollution are determined. The relevant air pollution control law already applies these EU limit values when an authorization request for a new installation is examined. The Austrian environmental impact assessment law, however, applies stricter limit values which causes the necessity of an increased number of time- and cost-intensive environmental impact assessments.

Reporting of pollutant and waste quantities

Even if the threshold values are not exceeded, Austrian companies are obliged to report to the Pollutant release and transfer register, although this is not prescribed by European

law. In addition to this report a registration is always necessary during the first year of operation. To avoid unnecessary reporting, the registration duty should only apply when the threshold values are exceeded.

Social Legislation

The obligatory information on minimum salaries in job advertisements is not requested by European law.

The transposition of the EU-posting of workers directive is far stricter for cross-border posting of employees with regard to wage dumping and liability than foreseen in EU law.

Scopes of the working time directive are not used in Austria, these on the detriment of the business location and the workplaces.

For further information we stay at your disposal!

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