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WIRTSCHAFTSKAMMER ÖSTERREICH

SIMPLIFICATION AND BURDEN REDUCTION

WKÖ issues on burden reduction for SMEs

November 2017

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Content

EUROPEAN LAW

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.

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 fact, that the SME-test is now a compulsory part of the Impact Assessment. However, looking at the application of the SME-test shows, that there is an obvious need for improvement. The assessment of the application of the SME-test, the SME-test Benchmark 2017 carried out by EUROCHAMBRES, indicates weaknesses that must be removed urgently.[1]

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.

We appreciate the European Commission's intention to concentrate on REFIT 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 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. The Austrian Federal Economic Chamber identified potential improvements in EU-legislation.

[1] EUROCHAMBRES: SME-Test Benchmark 2017. Brussels, 2017: http://www.eurochambres.eu/content/default.asp?PageID=1&DocID=7733

1. BETTER REGULATION

1. "Think Small First" has to be the guiding principle

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. The SME-test is mandatory since 2015 and has to be carried out thorough and sound.

2. Case by case analysis, which legal instrument is more suitable (directive or regulation)

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.

3. Concentrate on subsidiarity and European Added Value

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 task force subsidiarity shall start its work as soon as possible.

4. No simple deregulation, but focusing on Better Regulation

Better Regulation does not mean „more" or „less" legal acts and pure deregulation, but a more efficient regime. It means to make rules that deliver clear benefits while minimizing the regulatory costs necessary to achieve the desired policy goal. In the sector of environmental law simplification, burden reduction and even to some extent deregulation is necessary.

5. Compulsory application of the SME-test in the Impact Assessment

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.

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.

6. Sound consultation of stakeholders with early and comprehensive involvement of all important business representatives

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.

7. Transparent procedures are necessary for good and thorough consultations within the Impact Asessment

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.

8. 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.

9. Infringement procedures have to become quicker, less bureaucratic and more transparent

Average time from reception of a complaint and the launch of an infringement procedure by the Commission is between 6 and 12 month. Average duration of infringement cases open against Member States is 36,2 month (not yet sent to court). The average duration is calculated in month from the sending of the letter of formal notice.

Infringement procedures are complicated and lengthy and they last many years. Therefore, Infringement procedures have to become quicker, less bureaucratic and more transparent.

10. Strengthening of SOLVIT

SOLVIT is an excellent tool to improve the functioning of the Single Market and has to be strengthened. As a concrete measure, SOLVIT cases which have not been solved but which are apparently in conflict with EU law should be prioritized and sped up by the Commission. Unsuccessful but well-founded SOLVIT complaints should be subject to accelerated infringement procedures.

11. The REFIT Platform has to perform more efficiently

The REFIT Platform works in a very complicated structure and is therefore hindering itself. Unfortunately, the recommendations of the platform are very generally drafted and do not contain concrete problem-solving measures for legislation. The members of the Platform should focus more often on their scope and start to work hard on common problem-solving proposals.

12. Ensure sufficient time for preparation and transposition of european and national legal acts

Appraisal and implementation periods should take complex specific transposition requirements in different sectors into account e.g. the current transposition of the general data protection regulation.

13. Integration of innovation into toolbox „Better Regulation toolbox # 21“

Similar to the precedent version of the Toolbox #18 on Research and Innovation, the Commission still lays the focus on research and not on innovation as regards the revised version of the toolbox. Innovation may also be non-R&D-based, which is why this type of Innovation should also be considered accordingly.

2. REFIT/ SPECIFIC LEGAL ACTS

ENVIRONMENTAL LAW

14. EU chemicals legislation (biocidal products regulation & REACH regulation) – Achieve more fairness for SME

We achieved a lot in terms of fairness for SME. For example, we got clearer rules for mandatory data- and cost-sharing in various chemical approval processes. For the biocidal product legislation, these were specific SME guidelines. For the REACH-regulation we even got a separate implementing regulation. These measures provide the basis that SME are not over-charged in these processes, what could endanger their existence. However, these rules need to be further developed and well monitored.

15. Simplification of the EU chemicals regulation REACH - Availability of raw materials

The final phase of the REACH-registration, which ends on June 1st, 2018, and the gradual entry into force of the even more demanding REACH-authorisation, will for many sectors determine, which raw materials will still be available to our enterprises – no matter if big or small - in future. Without a REACH-registration or authorisation, a chemical raw material is neither usable nor marketable. This fact affects virtually all our manufacturing enterprises and by no means solely the chemical industry. These processes require an urgent removal of the existing bureaucratic-overkill. Simplifications in data-requirements, which reduce authorisation- and registration-costs are urgently needed.

16. EU Biocidal Products Regulation - SME urgently need more substantial support

Even though some relevant support was realised, the biocidal product legislation is a very potent SME killer. Therefore, all possible options need to be exploited to the utmost to make this legal area SME-fair. In particular, these include national and EU fees that are right now anything but SME-friendly. Furthermore, the instrument of the biocidal-product-family-authorisation needs to be implemented as flexible and cost-effective as possible in practice.

17. EU chemicals law - Eliminate drag on innovation and production

The REACH-regulation already poses a massive threat to the availability of raw materials. In addition, the effects are even more far-reaching. The bureaucracy introduced by the chemicals legislation drags valuable human resources from research and development. Hundreds of highly qualified employees have to roll through legal texts instead of concentrating on the development of new products and solutions. Even if legal requirements have their rightfulness, they must not mutate into an end-in-themselves. Only with the help of a healthy, innovative corporate landscape will we be able to master future challenges such as optimizing our use of resources and energy or developing efficient drugs against infectious diseases.

18. EU chemicals regulation REACH - Gruelling unclear rules need to be clarified or - even better - deleted

The REACH-regulation provides for articles - ie finished goods such as chairs, laptops, microphones - obligations. These obligations are unworldly and unworkable. No one - neither companies nor public authorities - can clearly say what an article in the regulatory-sense really is. That means, is it a microphone or is it its individual components and if it is the components, then also the components of the components? This unclear situation is a burden for companies that try to act in line with legal requirements. Such rules should be deleted without replacement.

19. Natura 2000: Merging of both Natura directives into one modern Nature Protection Directive is necessary, annexes should become more flexible

A modern EU nature protection policy should establish synergies between consistent nature protection and promoting an attractive business location. Already designated Natura 2000 areas remain protected under a new EU Nature Protection Directive according to the new rules. The annexes of the Birds Directive and the Habitats Directive should be more flexible for adaption, if protected species are increasing massively and disturbing the ecologic and economic balance.

20. Natura 2000: The process of designating protected areas has to fulfil economic and social requirements, the landowners have to be included into the process

Ignoring economic and social aspects when designating new protected areas is not the right way to take account of all society´s requirements. The land users are severely restricted in their management options or have to invest inappropriately high efforts for that. Therefore, the proper involvement of affected landowners before designating protected areas should be foreseen in the Directive following the EU Charter of Fundamental Rights. In nature conservation the basic principle “protection and use” should be taken into account and be harmonized with economic interests of the affected stakeholders.

21. Natura 2000: Protection of species outside representative areas to be eliminated

The Habitats Directive-based species protection, independent of designated areas, is a heavy burden undermining legal certainty and planning security. In terms of proportionality it is not sustainable to allow such an excessive priority for the protection of species.

22. Natura 2000: Enable take-back and change of protected areas

A new right of affected landowners to take back a designated protected area should be established, if the area is not suitable any more to fulfil the protection purpose of the Directives. Existing protected areas must be modifiable in terms of their borders, their extension and their protective provisions, if they are also economically and socially necessary.

23. Natura 2000: Requirements of nature impact assessment are to be simplified

The requirements of the nature impact assessment of projects within or at the immediate borders of designated protection areas are to be simplified. Social and economic aspects as well as compensation concepts must be taken into account during the impact assessment.

24. Circular Economy Package: Priority for the implementation of existing waste standards in all member states before creating new targets and obligations

Within Europe, there is a 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.

25. Circular Economy: Recycling or prevention targets must be based on solid data

Recycling or prevention targets should be based on solid data and should be technically and economically feasible in all Member States. Furthermore, implementation gaps between Member States should not become bigger.

26. Harmonize EU waste and food law

Inflexible EU law on animal feedstuff is preventing the use of innovative waste recovery methods such as through insects and their later use as animal feedstuff.

27. Environmental Liability Directive (ELD): No extension of the scope of ELD

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.

28. Environmental Liability Directive (ELD): severity thresholds necessary for SMEs

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. It must be ensured, that only severe damages will be handled under the ELD regime. There is no need for extending this regime for light damages, this would impose huge bureaucratic burdens, especially on SMEs.

29. Environmental Liability Directive (ELD): 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.

30. Environmental Liability Directive (ELD): No fund to cover ELD liabilities

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.

31. EU Noise Directive: 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.

32. 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.
- European Added Value could be much more developed 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.

33. Fluorinated gases: reduction of burden for SME urgently needed

The quota-system of the EU-f-gases-regulation effects a concentration of f-gas-suppliers to only few companies. The consequence of that are growing prices for resources and a growing trade with quotas. Small handcraft-enterprises in the cooling- and heatpump-sector are suffering to a very high extent due to these massively growing prices and supply-shortcuts. This imbalance needs an urgent fix. Furthermore, suppliers of pre-filled equipment/articles are effected of the same situation comparable. It is that fore important that the existing exemption for 100 t CO2-equivalents stays in force as a modest relief.

34. Emissions Trading Directive: Radical simplification of bureaucratic procedures and increased transparency necessary

For the Emissions Trading System, a radical simplification of bureaucratic procedures and increased transparency is 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).

TRANSPORT LAW

35. Eurovignette Directive: harmonised and uniform framework for tolls is needed, clear and binding rules are necessary to avoid distortion of competition in the single market

A number of optional provisions in the directive lead to distortion of competition in the single market. 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 have to be maintained, possibilities for mark-ups or multiplication factors for mountainous areas have to be deleted. We are strictly against any additional inclusion of cost factors 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.

36. No additional reporting obligations for cross-border parcel delivery services

The initial aim of the proposal for a regulation on cross-border parcel delivery services to create a level playing field for e-commerce within the EU is acknowledged. However, imposing additional and comprehensive reporting obligations (e.g. on revenue, number of deliveries, employees etc.) has to be rejected.

37. Social legislation in road transport: establish sector- specific working time regimes for bus drivers

- an extension of the application of the 12 days-scheme
- the application for national bus transports only
- weekly rest periods of 45 hours before and after the application
- more flexibility with regards to the daily rest periods: between two weekly rest periods, it should be allowed to reduce the daily rest period twice to eight hours and once to nine hours (currently: three times to nine hours)
- extension of the compensation period for reduced weekly rest periods from three to 13 weeks

38. Social legislation in the road transport: re-introduce flexible breaks

More flexible division of breaks to 3 x 15 minutes, instead of the rigid division of the applicable directive of 1 x 30 and 1 x 15 minutes.

39. Recording equipment in the road transport: just in exceptional cases, authorisation for Member States to establish different national rules

In order to ensure legal security and a level playing field within the EU, social legislation has to be applied identically in all Member States. Thus, the law should not allow for various national exceptions.

40. Recording equipment in the road transport: EU wide harmonised rules on tolerances for minor infringements

The penalties for infringements of the recording equipment obligations is regulated by Member States. This not only leads to different levels of penalties, but - according

to different administrative practices in the Member States – to arbitrary and disproportionate fines for minimum infringements (for example minute violation). Key provisions should therefore be included in EU-law directly.

41. Cabotage: Creating a uniform and clear definition for cabotage on EU-level and effective rules on controls (cabotage control-form)

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 for transport sector differ throughout the EU. In addition, effective and more intensive control of the rules must be ensured.

42. Cabotage: the inclusion of infringements against cabotage provisions in the list of serious infringements according to Art 6 of the Regulation (EC) No 1071/2009

This EU-list in the annex 1 of the directive (EU) 2016/403 contains a classification of serious infringements of Union legislation in the field of commercial road transport by type, category and degree of severity. Depending on the degree of severity and the frequency of the occurrence of infringements, the latter may inevitably lead to an administrative procedure in the state of establishment in which the question of reliability is to be examined by the authorities. In the proposal of the directive for the revision of the directive (EC) No. 1071/2009 provides that the commission may include additional infringements on the list, which should in any case include infringements against cabotage-provisions.

43. Cabotage: technical link between employment and driver card; establish controlling mechanisms, whether carriers, license holders, and companies employing drivers, fit (application of smart tachograph for the cabotage control)

The proposal for revision of the directive (EC) No. 1072/2009 should include a provision stating that cabotage constitutes posting. Compliance with posting provisions should be included in relevant cabotage checks. The technical link between employment and the driver card would, at the time of reading the driver card, provide the opportunity to identify the carrier, license holder and the company, employing the driver. To establish the beginning, end and the duration of the cabotage transport, the digital tachograph could also be used.

44. Professional driver directive: trainee driver without qualification (on sole basis of driving licence) should be able to practice the profession for one year if the initial qualification may be completed within the first year

The transport sector already faces the challenge to find and recruit new drivers. Access to his profession should not be made unduly difficult. In this regard we propose that the trainee driver may first take up the profession without qualification or basic training (only equipped with a 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.

45. Professional driver directive: extended possibilities for the combination between driving licence and initial qualification

As the majority of truck and bus drivers are obliged to fulfil the requirements of initial qualification it only makes sense to combine the initial qualification with education and testing for driving licences. We propose to create in the future the explicit possibility to further integrate education for driving licence and initial qualification in the future. A strict distinction between initial qualification and the

education for driving licence would increase the expenditure of time and the costs for the candidates. This may influence their choice of occupation to the disadvantage of the driver´s profession.

46. Professional driver directive: Avoid repetition of further training by gradually reducing the duration of further education for the 2nd and 3rd, as drivers have already gained more experience

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.

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.

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.

47. Professional driver directive: remove uncertainties with the scope specially to article 2(g) of the directive

Registration of code 95, continuing education in different Member States

SOCIAL LAW

48. Working Time Directive: Priority to the revision of the working time directive to ensure applicability, clarification and legal certainty regarding on-call time and compensatory rest

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.

49. Posting of Workers Directive: specific rules for the transport sector needed

The implementation of the Posting of Workers 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. We believe that a complete exemption of transit operations from the Posting of Workers Directive would be the ideal solution.

The way of calculating the 3-days- delay needs to be revised in order to adapt it to the costs of living (12 hours make a day and not just 6 as proposed). Wage controls should take place in the enterprise and not during roadside controls. It should be possible to collectively declare postings for 6 months in advance. Touristic passenger transports with closed groups of travelers (eg. by coach and ship, services for skiing tourists) as well as short term passenger services (Taxis,etc) should be exempted from the scope of the directive.

CONSUMER LAW

50. Evaluation of the Package Travel Directive

As already stated during the European legislative process as well as during the implementation processes within Austria, the massively extended specifications by the new EU Directive on Package Travel and Linked Travel Arrangements pose many legal questions and problems. The directive's text and the clauses that have been implemented practically verbatim on national level not only lead to excessive bureaucracy but also to considerable legal uncertainties due to the numerous imprecise clauses and definitions. It is necessary to amend the directive, particularly regarding the obligation to inform customers before signing a contract and the question of when which standard information sheet is to be provided to customers. As mistakes in this phase of contract initiation may involve extensive liabilities later on, it is absolutely imperative for the industry to be provided with concise and comprehensible clauses. Unfortunately, the directive in its current form does not comply with this requirement. Hence, it is essential that it be re-evaluated.

51. Regulation on acrylamide

The European Commission recently adopted a regulation on acrylamide which is still quite unclear in some aspects. Therefore, the Commission agreed to amend the regulation with guidelines addressed to national authorities to ensure unbureaucratic enforcement and to prevent exceeding the scope of application. The regulation itself does not provide for any penalties, hence creating an administrative offense in the LMSVG would be disproportional and could be considered as gold plating. Emphasizing on the recommendation character of the regulation is urgently necessary.

52. EU regulatory framework for electronic communication networks and services: Eliminate rules which are no longer up-to-date and ensure that new provisions are simpler and clearer and create a level-playing-field

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.

53. Make the Consumer Rights Directive practicable – exemption for contracts under the provisions on contracts negotiated away from business premises, if the consumer himself has initiated the business contact with the entrepreneur (e.g. he has called the craftsman into his flat)

The provisions on contracts negotiated away from business premises do also apply if a craftsman is called into a customer´s flat because of an order (e.g. paintwork, electrical installations, hairdressing in a flat, etc.) and the contract is concluded

there. The complex provisions (enormous information obligations which must be given on paper) can not be accomplished by SMEs and are connected to an enormous bureaucratic effort but also to potentially totally disproportionate sanctions. Also consumers do have no comprehension for this bureaucracy (if the consumer wants a service to be provided quickly meaning during the withdrawal period, he must explicitly "request that on paper").

54. Make the Consumer Rights Directive practicable – Create a "comprehensive model withdrawal form"

Companies must inform consumers about their legal right of withdrawal in case of distance contracts and contracts negotiated away from business premises, before the conclusion of the contract. Although a model withdrawal form is contained in the annex of the directive, however it contains many text modules which must be selected correctly for each case. This model withdrawal form with its many varieties to choose from is therefore because of its complexity unusable for SMEs. The EU legislator must be able to provide companies with a legally watertight and standardized model withdrawal form, which represents all case variants. For example, the expertise of ELI (the European Law Institute based in Vienna) could be used to design such a form.

55. Make the Consumer Rights Directive practicable – no right of withdrawal, if the consumer not only checks goods purchased at a distance, but also uses them

Ball gowns are e.g. ordered at distance, worn at the ball and only then the right of withdrawal is exercised. The entrepreneur can theoretically claim the depreciation in value, but the calculation of the same is difficult and the expense of exercising it is big. It is also hard to understand, that abusive behaviour should be at the expense of companies. Consumer protection should not consist in the protection of abusive behaviour, which in the end also has a negative impact on consumers acting correctly.

56. Make the Consumer Rights Directive practicable – no double information obligations

Clarification (in article 8.2 of the directive) is required that in the order overview before the button "BUY", not all essential characteristics of the goods/services have to be displayed again, but rather the identifiability of the goods must be ensured. If, according to article 8.2, information on all essential characteristics was again to be provided to the same extent as in article 6.1a, this overview would lead to bureaucracy and total confusion, especially if several goods are ordered. However, there are judicial decisions in Germany, that represent the latter opinion.

57. Make the Consumer Rights Directive practicable – exemption from the right of withdrawal for downloads of digital content

The fact that in the case of digital content a right of withdrawal is not appropriate, is recognised by the possibility of its loss (Art 16 point m of the directive). But the requirements for an effective loss of the right of withdrawal are intensely complex and make downloads highly bureaucratic. It is therefore necessary and conducive to digitalisation, to exclude digital content from the right of withdrawal in general.

58. Make the Consumer Rights Directive practicable – exemption of certain professional groups necessary

The provisions for distance selling contracts typically keep e-Commerce as a business model in sight or are rather tailored to it. They do not fit for certain professional groups (for example real estate agents, undertakers) which are not online retailers,

but only legally turned into such due to the wide definition of distance selling contracts.

59. Achieve well balanced Consumer protection

Initiatives for further specific provisions by EU-law should be considered critically. The principle of subsidiarity, the maintenance of scope for entrepreneurial competition, the protection of entrepreneurial freedom and the principle of freedom of contracts must be the guiding principles of this examination. This is to ensure that new binding consumer protection rules comply with the principle of proportionality and are only enacted, if there is a special need for protection and if objective justification is given. The existing guarantee law for goods (two years of guarantee period, option to shorten it for used goods, six months period of reversed burden of proof) must be maintained as a balanced solution.

3. ADDITIONAL TOPICS

60. Single Market Information Tool: No additional administrative burdens for companies

Relating to an 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. Any provisions granting the European Commission investigative powers as foreseen within the SMIT could mean to allow requests for confidential information.

61. Business Statistics (FRIBS): Swift adoption of the regulation to implement the Single-Flow-System for Intrastat; no further extension of service statistics

The centrepiece of the dossier Regulation on European Business Statistics (2017/0048(COD)) is the radical simplification of the statistics on intra-EU-trade („Intrastat“) by implementing the Single-Flow-System. This will significantly reduce administrative burden on enterprises. At the same time, service statistics shall be further extended, what would lead to a disproportionate burden on enterprises. It has to be noted that this extension cannot be immediately derived from the Regulation, as it shall be regulated by way of Commission regulations. The WKO's position on the Regulation on European Business Statistics is as follows:

- Refusal of a general reporting obligation for all European Business Statistics. It's up to the member states to decide if a reporting obligation is necessary.
- Scientific estimation methods shall be an equivalent data source, not a subordinated one.
- Surveys on Global Value Chains shall be restricted due to methodological deficits.
- Binding specifications for burdening Commission regulations (5% limit).
- Deletion of the new variables "labour costs" and "gross investment" that parent companies would have to report on their subsidies abroad ("outward FATS").
- Change the periodicity of the survey on ICT usage and e-commerce from annually to biennially.

62. Open Data-Principle in Horizon 2020: degree of openness concerning the handling of data and the connected risks and advantages at different levels has to be more balanced

In summer 2016 the European Commission announced to extend the current "Open Research Data Pilot" to all Horizon 2020 topics with its Horizon 2020 Work Program 2017. Although enterprises have in principle the possibility to opt out of the Pilot, they have to provide a justification in each single case for doing so, which constitutes a significant administrative burden – even in cases, which are finally not subject to additional obligations. It is clear that access to open data (which does not pose a lot of difficulties in the areas of fundamental, accompanying and systemic research as well as the humanities) is totally unsuitable for applied research and development (R&D), where businesses aim for competitive advantages by also using their own resources. For businesses competing on the free market, these requirements reduce

the interest to cooperate with actors from the research side and interfere with the operational innovation process and, eventually also the commercialization logic. Widening the "Open Research Data Policy", unfortunately, does neither constitute a mere "nudging" nor a simple "comply or explain", but an additional burden (explain anyway – even if it the open research data concept does not fit applied research & innovation). Since beginning 2017, this requirement runs counter the objective of further simplification and establishes a high degree of complexity "by default". However, the contrary should apply: "simplicity by default". The main objective of funding is finally the strengthening of the research and innovation performance. Secondary and tertiary objectives should not keep researchers and technicians from doing research and innovation.

63. Establish a horizontal Common Research, Technology and Innovation Policy (CRTIP) within the EU

At EU level, a horizontal Common Research, Technology and Innovation Policy (CRTIP) should be established, which should constitute the framework for the 9th Research and Innovation Framework Programme (FP9). A CRTIP should be closely interconnected and coordinated with the sectorial policies of the relevant Directorates-General. The CRTIP would not only be the responsibility of a sole Commissioner but would integrate the objectives and contents of all relevant partial EU strategies for research and innovation. Appropriate governance structures for its operationalization have to be established, which enable an efficient and aligned action for achieving the objectives of European sectoral policies. In addition, these structures have to guarantee an integration of the Member States as well as the European business community, which accounts for more than 60% of the pan-European investments, also in the area of research in the programming process. A CRTIP should go beyond mere research policy and follow an innovation policy, which focuses more on the impact and thus practically enables a change from an input-orientation to an output- and impact-orientation. In addition, it is important that a CRTIP ensures a clearly-defined division of work between the Commission and the Member States (resp. the regions). Based on the principles of subsidiarity and complementarity, a clear division of work is a precondition for a simpler structure of the FP9 and the concentration on tasks and objectives with a European added value as well as an efficient handling.

64. Simplification of the European VAT system

Simplification must represent an essential requirement within the reform of the current European VAT system, which would benefit all companies and especially SMEs. Simple and clear rules can be comprehended and followed more easily. Thus, a simple VAT system leads to a reduction of the European VAT gap automatically.

65. Abolition of the certification for air-conditioning equipment in motor vehicles (Art 10 Regulation (EU) No 517/2014)

Since 2000, each assignment of such a task (listed in Art 10 Regulation (EU) No 517/2014) requires relevant vocational training. The respective educational certificates are recognized EU-wide. Therefore, a special certification for air-conditioning equipment in motor vehicles is neither necessary nor does it imply a particular benefit. Virtually all employees working in this realm are sufficiently

qualified. Imposing the requirement of another certificate (besides the final apprenticeship examination and the examination for the master craftsman's certificate) on the enterprises is, thus, incomprehensible.

4. GOLD PLATING

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. If there are stricter rules put into place at national level, they should be removed in the next revision.

66. 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.

67. Austrian Environmental Impact Assessment (EIA) Law

The shortcomings of the Austrian EIA Law, which are mainly home-made are causing enormous problems.

Even DG Environment officials – during a visit in the Austrian Environmental Ministry in spring 2017 - have judged Austrian EIA procedures as heavily burdensome in comparison to other EU Member States. Therefore the following measures are urgently needed to secure an attractive business location in Austria:

- Fair balancing of interests, clear legal provisions - establishment of a business location attorney: to balance public interests touched by a project up to EIA Law against each other, such an attorney is to be established. He should have the right to speak as a legal party in the EIA procedure in favour of the public interest "attractive business location".
- Better EIA structure and faster procedure: a "deadline" for motions to take evidence or new applications until the end of the oral hearing.
- Avoid in-effective procedures and fast application: practicable provisions for addition of several EIA installations of the same project; avoid procedure lines by fast authority orders to eliminate shortcomings
- Adequate limitations for interventions and delay options: NGO participation rights are to limited to legal EU requirements.
- Reducing costs: saving of publication costs by enforced use of the world-wide web.
- Simplified procedures to applied in general: all EIA procedures (including infrastructure and industry) should be up to the simplified procedure (which means: no EIA certificate, no legal party status but participant status of civil initiatives).

68. 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.

69. 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.

70. Abolish the system of guarantees of origin as it currently lacks added value

Guarantees of origin (GOs) are precisely defined instruments to prove the origin of electricity. The purpose is to provide to final customers the share or quantity of energy from renewable sources in an energy supplier's energy mix.

In Austria, the suppliers have been obliged by law since 2001 to report their primary energy sources share and their environmental impacts. These provisions followed the implementation of the Renewable Energy Directive and the Electricity Directive. Austria was the first European Member State to establish a complete electricity labelling.

Since 2015, all energy suppliers have been obliged to label 100% of their energy supply, which is unique in Europe. In order to work properly a system of guarantees of origin for energy generated from renewable sources requires a certain volume (and ideally a global scope) which is not attained in the EU. Hence, GOs must be bought wherever they come from – this is not ecologically sustainable at all. Fossil or nuclear energy can be sold easily with the label of renewable energy. As a consequence, the current system lacks added value. It causes, however, significant costs to energy producers, energy suppliers and energy consumers. Therefore, WKO pleads for the abolition of the current guarantee of origin system

71. 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.

72. No extension of the requirements for train driver education to non-EU scope

The Austrian draft regulation of the "Eisenbahn-Eignungs- und Prüfungsverordnung" (*railway qualificiation and examination regulation*) extends requirements for the education of train drivers (for the TEN-net) to the non-EU scope (trams and non-interconnected railways). This would lead to additional administrative requirements as well as additional costs.

73. No implementation of the Aarhus-Convention without relevant EU legislation

A national implementation of the Aarhus-convention without relevant EU legislation means Gold Plating (even at an early stage). Implementation would lead to obstacles within the authorization procedure, which contradicts all efforts for deregulation. Art. 9 (3) of the Aarhus-Convention is drafted in a general and open way. Therefore, any national implementation bears the risk of not being implemented on the basis of EU law. Additionally, unilateral implementation leads to competitive disadvantages for the respective Member States.

74. 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.

75. Waste Law

Elimination of the Austrian „EDM" (electronic data management) or limitation to EU requirements.

76. 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.

77. Imminent Gold Plating with the Security of Network and Information Systems Act to be avoided

The Directive 2016/1148 concerning measures for a high common level of security of network and information systems across the Union has to be transposed by the member states until May 8th 2018. Annex II of the Directive specifies operators of essential services, which are affected by the Directive. In the draft of an Austrian Security of Network and Information Systems Act, the food sector is included as an essential service, although the food sector is not determined by the Directive 2016/1148.

78. Modification regarding parking areas in the "Güterbeförderungsgesetz" (Austrian freight operations regulation)

A specific requirement to provide for suitable parking areas in accordance with the granted concession (geographic restriction) leads to additional administrative and bureaucratic costs, in particular for the transport sector. Thus, we explicitely call for a revision of §5 (1) Güterbeförderungsgesetz (Austrian freight operations legislation), especially as this article is not foreseen within EU-regulation 1071/2009. Additionally, the European Commission proposed a revision of EU-regulation 1071/2009 in May 2017, in which additional national requirements regarding the access to profession are not foreseen.

For further information we stay at your disposal!

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