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AVOIDING GOLD-PLATING FOR A WELL-FUNCTIONING SINGLE MARKET

Twenty years after its launch, it is high time to complete the single market. One matter that needs attention is the differing ways that EU single market legislation is transposed and implemented at national level. In order for the European single market to function as intended, similar rules for the market are required in the EU Member States and the EEA countries. These rules are decided jointly at EU level, but barriers for businesses to free movement and trade in the single market might arise if Governments at national, regional or local level choose to implement jointly adopted rules in a way that raises costs for enterprises.

EU Member States are bound to transpose EU Directives correctly and by the deadlines set by the European Commission. Directives may give national Governments room to exceed the minimum level that is required to implement EU Directives correctly and on time. The popular expression for situations where national implementation of EU legislation exceeds the minimum level that a legal act requires while staying within legality is 'gold-plating'. While authorised under EU law, decisions by Member States to 'gold-plate' EU-legislation can lead to increased costs, unnecessary regulatory burdens and competitive disadvantages for business, as well as a fractured single market and uncertainty about what rules apply. This in turn negatively impacts on companies' competitiveness.

It is important to note that gold-plating is different from failure to implement Directives or late or incorrect implementation. In such cases the EU Commission may initiate infringement procedures against a Member State for failing to fulfil its obligation under EU law.

Notwithstanding the fact that BUSINESSEUROPE acknowledges Member States' established discretion in terms of implementation of certain EU Directives, Member States should be transparent when they decide to gold-plate and explain the reasons why they are doing it. When gold-plating impacts negatively on enterprise, competition and growth it should in principle be avoided but, as a minimum, a competent authority should explain why there is a necessity to gold plate, even if this could burden businesses. The costs and burdens arising for businesses because of gold-plating should be assessed on a comparable basis. A mandatory explanation should be given to the European Commission, if the impact assessment at national level notices costs and burdens for enterprises that arise from gold-plating. Fixed criteria on the explanation notice should be developed by the European Commission.

At present, it is difficult to specify what precisely should be avoided because it is unclear what more specifically the concept 'gold-plating' covers. There is currently no common understanding of gold-plating between business representatives, politicians and government officials in Member States and the EEA countries or at EU level. To facilitate an objective discussion about gold-plating and its effects and to bring increased clarity and transparency to the process of implementation of EU legislation at national level, BUSINESSEUROPE recommends the following:



- The Governments of EU Member States and the EEA countries should agree on a **generally applicable common understanding** that is clear and usable in discussions of different implementation alternatives that exceed the required minimum level of a Directive.
- Such a common understanding should reflect what the European business community considers to be gold-plating and thus **include six different implementation measures** commonly used at national level. These six measures are:
 1. Extending the scope of the Directive and adding regulatory requirements beyond what is required by the Directive in question.
 2. Not taking (full) advantage of any derogations.
 3. Retaining national regulatory requirements that are more comprehensive than is required by the Directive in question.
 4. Using implementation of a Directive as a way to introduce national regulatory requirements that actually fall outside the aim of the Directive.
 5. Implementing the requirements of the Directive earlier than the date specified in the Directive.
 6. Applying stricter sanctions or other enforcement mechanisms than are necessary to implement the legislation correctly.
- The Governments should **adopt as a principle that the minimum level required for implementation of a Directive shall be determined on a case by case approach and serve as the starting point for implementation.**
- In cases where the politicians and government officials responsible for implementation consider that there are various reasons to exceed this minimum level by using one of the ‘gold-plating measures’ listed above, they should **explain and justify the reasons** for this, **estimate the effects** of the measures on business and **publicly communicate this**. This information could, for example, be included in an impact assessment prepared during the implementation process.

What the European business community wants is business-friendly and transparent implementation of EU legislation in all Member States and EEA countries. EU legislation should be implemented in a way that does not disadvantage companies’ competitiveness.

Effective implementation of EU legislation does not, however, start at implementation stage. Therefore, national Governments and the European Commission must also work to ensure that the legislation adopted jointly at EU level is fit for purpose and effective and can be implemented at national level in a way that supports the functioning of the single market.

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