



25 November 2014

### **Pending legislation 2014**

#### **Business input to the screening exercise by vice-president Timmermans**

BUSINESSEUROPE and its members welcome that the new European Commission has a first vice-president in charge of better regulation. We support the tasks laid down in the mission letter “to drive the Commission’s work on better regulation in order to maximise its contribution to the growth and jobs agenda”, and “to remove unnecessary red tape”. Better Regulation is about devising proportionate legislation which supports business growth and we are therefore pleased that president Juncker has asked the first vice-president to screen pending legislative proposals in order to identify which proposals should be pursued and which should be withdrawn.

This exercise is part of the overall better regulation policy which comprises the use of additional tools such as impact assessments, stakeholder consultation and evaluations to avoid disproportionate legislative proposals and remove unnecessary burdens taking into account the cumulative and unintended effects of legislation. The EU must improve its competitiveness to hold its own against both developed and emerging economic blocs around the world. Taking a smart approach to regulation should enhance growth and investment. The EU must avoid legislative proposals with a disproportionate impact on competitiveness and that add no real value to the single market and growth. This is also in line with the approach for the EU to focus on the big issues and respecting the principles of subsidiarity and proportionality. Boosting competitiveness and developing the single market through the use of smart regulation tools to cut red tape and devise proportionate legislation which enhances the EU business environment should be a mindset of all decision-makers.

In particular, a continuous sharp focus is required on an effective and well-functioning impact assessment system which ensures that business organisations can contribute at an early stage to all aspects of the process. The vice-president in charge of better regulation should be involved at an early stage to assess the need of initiatives in the light of their added value to growth, jobs and competitiveness on the basis of solid quantitative data. Proposals which would impose unnecessary burdens or have a disproportionate impact on growth and jobs should be halted by the vice-president and not be adopted by the college of Commissioners. An example where such early involvement would have been useful is the issue of extending EU merger control to non-controlling minority shareholdings as set out in the Commission white paper “towards more effective EU merger control” as this would lead to an unnecessary rise in notifications increasing burdens and delaying transactions.

For BUSINESSEUROPE, proposals which would impose unnecessary burdens or have a disproportionate impact on growth and jobs must be withdrawn or revised to remove these unnecessarily burdensome provisions. Other criteria are subsidiarity and overlap or inconsistencies with other rules so that EU rules are consistent and coherent.

In order to contribute to this exercise, we have carried out our own screening. Out of the roughly 130 pending proposals, we have identified a number of special interest to European companies.



In the below statements, we have summarised our position on the current state of play of the legislative proposals in question.

We have split them in 3 categories:

1. There are proposals where business has said from the outset that they would impose disproportionate burdens for European companies or are not in line with subsidiarity and/or better regulation principles and can therefore not be supported by us. These proposals should be withdrawn.
2. Then there are proposals that we believe are useful in principle, but contain problematic provisions and should therefore be comprehensively improved.
3. And lastly, we have identified proposals for which we would ask for rapid adoption by the institutions.

We call on the Commission to evaluate the political situation and take clear and courageous decisions on the above proposals, taking into account the more detailed comments set out below.

## **Proposals to be withdrawn**

### **Financial Transaction Tax (FTT)**

The introduction of an FTT will undermine the overall aim of financial stability and damp (even more) investment and confidence. It is also likely to drive an overall market-wide volume decline which will increase the costs of raising capital.

Evidence has shown that the FTT could lead to annual costs of €8-10 bio. for corporations, equivalent to 4–5% of their post-tax profits and could lead to a 2% fall in corporate investment. Previous experience (eg in Sweden) have already shown that it will encourage financial services relocation and significantly undermine firms' investment and competitiveness.

Therefore, this proposal should be withdrawn.

### **Reduction of national emissions of certain atmospheric pollutants**

Air quality in Europe consists of a number of different legal and regulatory measures. In addition to the Industrial Emissions Directive, it encompasses local air quality standards, motor vehicle and fuel legislations, shipping regulations and agreements under the United Nations.

This proposal puts obligations on Member States to comply with ambitious air quality objectives. As experience in the past has shown already, the risk is high that the industrial sectors will be held accountable if non-industrial sectors (eg agriculture) do not deliver their share.



### **Gender balance in boards**

BUSINESSEUROPE is in favour of promoting better gender balance in boards. However, we should avoid one-size-fits-all quotas which disregard the highly diverse conditions in different sectors/companies and do not take into account the way corporate boards function and are renewed.

Instead of going for full harmonisation of gender quotas in board, it would be better to have a recommendation and leaving the choice of means to be used to promote better gender balance to Member States. We therefore believe it would be better to withdraw this particular proposal.

### **Pregnant workers**

BUSINESSEUROPE has opposed the Commission's 2008 proposal to revise the existing directive in order to increase maternity leave from 14 to 18 weeks from the outset. The extension proposed by the Commission is not based on evidence concerning health and safety requirements (the legal basis of the original directive), and 14 weeks have proved to be sufficient. The EP then asked an even more far reaching extension to 20 weeks of fully paid maternity leave, which is not acceptable to the Council. The proposal is therefore blocked since 2009.

In June 2014, the Commission proposed to withdraw this draft directive in a REFIT staff working document. BUSINESSEUROPE strongly supports this withdrawal. Pregnant workers are already adequately protected by Directive 92/85/EEC. Given the economic situation, it is not reasonable to come up at European level with rules which would significantly increase costs for companies and public finances.

## **Proposals that need to be substantially improved**

### **Data protection**

BUSINESSEUROPE is in favour of an updated framework for data protection, however, the current proposal does not strike the right balance between the need to protect citizens against risks and preparing the EU to seize the opportunities offered by the efficient processing and use of data. The EU framework on data protection should encourage European companies to build their competitive advantage in digital markets. The proposal should be reassessed in the light of better regulation and proportionality principles. If it remains as prescriptive as in the European Parliament position, it will be outdated by the time it enters into force. The proposal therefore would impose burdens on companies without reaching its goals.

### **Regulation on Structural Measures Improving the Resilience of EU Credit Institutions**

Although BUSINESSEUROPE supports making EU credit institutions more resilient, the Commission proposal for a Regulation on Structural Measures Improving the Resilience of EU Credit Institutions goes too far and overlaps with other financial reform measures the combined effect of which should be thoroughly assessed.



It will significantly reduce the availability of financing for large transactions such as debt and equity capital raising and increase the costs of several corporate and investment banking services such as cash flow management, trade finance and commercial papers programmes. It will also reduce access to hedging and derivative products for non-financial companies which are necessary for managing corporate risk, for example related to currencies or commodities. Proposals in the area should also seek to work with reforms currently being implemented in a number of Member States where banks have undergone costly restructuring to comply with domestic rules.

### **Shareholders' rights**

BUSINESSEUROPE is in favour of adequate protection of shareholders rights at EU level. However, the current Commission proposal is far too prescriptive; the principles of subsidiarity and proportionality are not respected. The proposal will also blur the role and repartition of competences between the board and shareholders and significantly increase administrative burdens for listed companies. Some provisions will require publication of commercially sensitive information which will further undermine the competitive position of these companies.

### **Emissions of certain pollutants into the air from medium combustion plants**

BUSINESSEUROPE is in favour of further improvement of air quality in Europe and our members do commit to these efforts. However industry and addresses of the proposal on medium combustion plants are left with significant number of concerns, especially because of the lack of proportionality between costs and benefits. We believe the burden this proposal puts on industry will undermine growth and jobs creation.

The emissions limit values must be better assessed from a technical and economic point of view, ensuring that they are proportional and compatible with the use of "realistic" technologies. In addition, double regulation and overlaps with existing EU legislation such as the Industrial Emissions Directive should also be removed. We would therefore favour substantial changes to the Commission proposal to bring it in line with better regulation and proportionality principles and address concerns of the industry.

### **Establishment of a market stability reserve for the EU ETS**

We need a fully-fledged reform of the EU Emissions Trading system (ETS) post-2020 so that it becomes the only EU instrument for delivering on emissions reduction, renewables growth and energy efficiency from industry.

To maintain confidence in the system, it is crucial to show that it can work for all industrial sectors. Rather than tweaking the system with isolated measures, a deeper reform post-2020 is necessary. Therefore the new Commission should propose, in the first six months of its mandate, a full reform package, including a legislative proposal for a carbon leakage regime addressing both direct and indirect costs as well as incorporating the current market stability proposal. It is essential that the most CO<sub>2</sub>-efficient installations at risk of carbon leakage do not face additional carbon costs.



### **Circular economy (in particular legislative proposals on waste, packaging and packaging waste, landfill of waste, end-of-life vehicles, (waste) batteries and accumulators, waste electric and electronic equipment)**

Moving Europe towards a more circular economy model is important from an economic as well as environmental perspective. This is the reason why the six legislative proposals that are part of the circular economy package should be approached as an economic piece of legislation rather than from a purely environmental perspective. The proposal should be withdrawn and re-tabled as an economic piece of legislation. The circular economy dossier should take account of issues of wider economic interest (including manufacturing and product design, consumer affairs, research & innovation, security of supply and raw materials) as well as markets beside the environmental dimension which includes recycling, reuse or land-filling.

BUSINESSEUROPE also consistently raised concerns about the resource productivity headline target and the respective indicator (RMC/GDP). These should not be proposed or considered, and the whole package should be consistent with the EU growth and jobs agenda and the competitiveness programme.

### **Conflict Minerals**

BUSINESSEUROPE is in favour of promoting responsible mining in conflict regions. The EU initiative should be part of a comprehensive approach, integrated with other policies and actions on the ground, with positive incentives without putting too much emphasis on companies' responsibilities. Furthermore, an efficient and sustainable solution to the problem requires the involvement of other regions in the world, besides the EU and the US and more generally the OECD area. However, we have concerns about the possibility of the EU initiative becoming binding and about the possible inclusion of more minerals under the scope of the draft Regulation. We therefore hope that the Commission can play an active role in the legislative process to make sure that it's final outcome matches the objective sought while maintaining the substance of the original Commission proposal.

### **Product safety / market surveillance**

BUSINESSEUROPE is in favour of adequate product safety and market surveillance rules at EU level. However, the proposal, with some of the amendments introduced by the EP, are unnecessarily burdensome for business. The EU is now going too far towards full alignment with Decision 768/2008: applying high-risk requirements (harmonised) to low-risk products (non-harmonised) at no benefit to consumer safety. The text should be reassessed in the light of proportionality and legal clarity.

### **Institutions for Occupational Retirement Provision (IORP)**

BUSINESSEUROPE is in favour of further development of the internal market in the area of occupational pensions and in the principle of ensuring good governance and transparency of pension schemes. However, the current proposal to revise the IORP directive goes too far in harmonising aspects of occupational pension provision and sets overly detailed requirements which would bring excessive administrative burdens and costs for pension funds, and introduce a framework for further EU-level quantitative solvency requirements in future. It also neglects to adequately recognise



the specificity of occupational pensions provided by pension funds, in particular the role of social partners. Furthermore, the Commission came forward with a proposal despite the Impact Assessment Board giving a negative opinion on the impact assessment accompanying the proposal. Work in Council in general is going in the right direction, however the changes to the Commission proposal do not go far enough. A thorough overhaul of the proposal is needed by the Council and European Parliament to ensure that it does not have a detrimental effect on the provision of occupational pensions in the future. In particular, quantitative capital requirements for pension funds should not be introduced at EU level at any stage.

### **Trade secrets**

BUSINESSEUROPE supports the EU proposal for a directive against misappropriation of trade secrets. Protecting the “know-how” of companies through harmonised EU legislation is essential, urgent and strategic, especially for SMEs. Lack of harmonisation in Europe translates into more red tape, less protection for companies, more costs, impossibility to stop product/equipment resulting from theft of trade secrets entering the internal market (with direct consequences on jobs). For 59% of companies, the current situation discourages cross-border R&D. 40% of EU companies refrain from sharing trade secrets because of the risks involved. Adoption of the proposal will be a positive first step for European innovative companies. This proposal has positive effects on knowledge-sharing by making know-how transfer, licensing agreements and collaborative research between partners more secure.

However, there are still some issues that need to be improved in the proposal. BUSINESSEUROPE has already warned that the provisions on exceptions (Article 4.2) could potentially impact adversely existing national regulations on employer-employee relations regarding trade secrets. BUSINESSEUROPE will seek to work together with the EP and Council to avoid legal unclarity and unintended consequences.

## **Proposals for rapid adoption**

### **4<sup>th</sup> railway package**

The cost and efficiency of transport services and the quality of Europe’s infrastructure networks directly affect trade flows, mobility and the competitiveness of European companies as users of these services. The 4<sup>th</sup> Railway Package contains important proposals that can improve quality, provide more choice and reduce costs of railway services in Europe and can contribute to creating a true single market for transport.

### **Single European Sky**

Effective coordination and management of European airspace is key to ensure the safe and cost-efficient flow of air traffic, thereby minimising fuel usage and costs, carbon emissions and flying times. In this context, BUSINESSEUROPE supports the Single European Sky 2+ Package proposed in June. The package can further reform Europe’s air traffic control system to make it more efficient and future-proof. This is not only



important for airports and airlines, but also for the wider economy and European companies and citizens as users of air transport services.

## **Trademark package**

The modernisation of the EU trade mark framework should be concluded with the adoption of the EU trade mark package. BUSINESSEUROPE supports more harmonisation of rules and practices at EU and national level, closer cooperation between IP offices and spreading of best practices. It is also key to ensure effective action against counterfeiting through better control of counterfeits stopped in transit in the EU.

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