Urgent need to pause burdens on businesses caused by EU legislation

Concrete proposals for a regulatory moratorium in this period of polycrisis

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EU legislation needs to turn a corner now: the European Union legislators need to measure and evaluate in advance and to the greatest extent possible the possible impacts on businesses operating in the single market. Without such a holistic overview, all-encompassing bureaucratic requirements imposed by individual directives and regulations or the cumulative effects of parallel legislative acts lead to unexpected and unwanted consequences for competitiveness, jobs and prosperity in Europe.

An EU regulatory moratorium made necessary by the polycrisis currently being endured would strengthen the resilience of the European economy. Many relevant players have already signalled first right steps: the German federal government and the European Parliament want to ease the burden on businesses immediately, the European Commission wants to bring in a competitiveness check for new legislation.

Proposals regarding the fundamental approach:

1) Upstream phase of the European Commission's legislative preparations

- **Break the general trend in favour of new EU regulation**: a new EU legislative act is not always the only solution, many issues can also be coordinated differently at European level, for instance through EU advisory committees (e.g. for social security rules) or through non-legislative initiatives (e.g. Commission initiative for a common electronic posting declaration).

- **Principle of subsidiarity**: a Commission legislative proposal must always comprise a robust and detailed justification for EU action. A blanket, unsubstantiated assertion that action at national level is inappropriate or that the problem could be tackled better at EU level is insufficient.

- **National subsidiarity check**: more concrete review obligations on the Commission should apply when national parliaments issue a "yellow" or "orange" card. Unfortunately, the Commission is not currently required to take follow-up measures. In addition, national parliaments need longer deadlines to verify that European legislative proposals respect subsidiarity and to draw up a reasoned opinion.

- **Regulatory Scrutiny Board**: the findings of the Regulatory Scrutiny Board must be given stronger follow-up. The Board should also pay greater attention to the cumulative effects of related legislative acts. With the important goal of preventing unnecessary red tape, the Board scrutinises the Commission's impact assessments and proposes improvements ahead of publication of the legislative act. Nevertheless, the Commission has disregarded the Board's recommendations in some cases and gone on to present legislative acts whose concrete economic and administrative consequences are thus completely unclear.

- The **"one in, one out" principle** is the right approach to ensure that the weight of the burden is not increased by red tape: if new legislation introduces new burdens, these must be offset elsewhere. The principle must be enshrined for all EU policy fields, derogations from the scope must be framed as narrowly as possible. Unfortunately, the "one in, one out" principle announced at the start of the Commission's term of office has yet to deliver any positive results. To dismantle bureaucratic burdens, EU legislation should be examined more regularly in the framework of evaluations and fitness checks.

- **The "think small first" principle** must once more be paid greater heed in the drafting of new legislative acts. The impact of planned regulation on small and medium-sized enterprises must be considered by default and from the outset.

- **Legislative own-initiative reports by the European Parliament** (article 225 TFEU): as with Commission proposals, the EP's legislative own-initiative reports should comprise a justification for action by the EU, an impact assessment as well as an analysis of cumulative effects. Hitherto they have potentially led to more legislation without an evidence-based consideration of the legislation's impacts in the corresponding EP initiative.

2) Negotiating phase with EU co-legislators

- **Impact assessment**: a concrete examination of possible impacts of legislation must become the standard procedure – not only by the Commission but also by EP and Council as legislative texts are developed and redrafted. This applies for the negotiating mandate of the two institutions as well as for conclusion of the subsequent trilogue negotiations.

- The **Commission** should **withdraw legislative proposals** as a last resort. Article 293 (2) TFEU states that the Commission may alter its proposal as long as the Council has not acted; according to CJEU ruling C-409/13, this also applies for complete withdrawal of the Commission's proposal. The Commission must use this possibility more frequently – in particular when the framework conditions under which the proposal was made have changed completely with the result that the consequences of the legislation can no longer be reliably assessed.

3) Implementing phase at national level

- Where necessary and in well-justified cases, **longer deadlines for national transposition** should be possible (e.g. through a new EU legislative proposal setting a new deadline). This can prevent additional burdens in critical situations.

- In the event that Member States fail to fulfil EU transposition obligations on time due to economic emergency situations, e.g. among companies, the Commission can also avoid additional burdens by halting the **infringement procedure** (article 258 TFEU).

- On transposition by the Member States, greater attention must be paid that **no additional national provisions** are incorporated as compared with the EU legislation. Member States

often go beyond the EU requirements (a practice known as “gold-plating”) – this must always be avoided.

- The Member States should bear in mind that **last-minute national transposition** immediately ahead of the transposition deadline leads in practice to a disproportionate implementation effort. Businesses need time to take the requisite implementation steps.

Examples (focus on labour and social legislation): additional burdens in preparatory phase, legislative process or national implementation

Cumulative effects in reporting obligations

- **Taxonomy Regulation**: comprehensive reporting obligations, sometimes with very broadly formulated criteria such as a reference to the OECD guidelines for multinational enterprises and the UN guiding principles for business and human rights; in addition, discussion on a possible social taxonomy

- **Corporate Sustainability Responsibility Directive (CSRD)**: expansion of reporting requirements (inter alia working conditions, working time, appropriate pay, freedom of association, existence of works councils, collective bargaining, work-life balance); moreover, EFRAG is developing concrete reporting standards (sometimes sector-specific) for which the drafts are unduly complex

- **Proposal for a Corporate Sustainability Due Diligence Directive (CS3D)**: extensive human rights due diligence obligations in relation to value chains; drafting of stand-alone reporting standards to be adopted by delegated act for companies which fall outside the scope of CSRD

- **Proposal for a Regulation on prohibiting products made with forced labour**: information and due diligence obligations along the entire value chain; obligations in the single market with regard to the product in question (sometimes involving costs for companies)

Further obligations on companies

- **Proposal for a Pay Transparency Directive**: large number of information and reporting obligations, including reporting on gender-specific pay gap (cumbersome bureaucratic effort), evaluation of equivalent work (almost impossible to ascertain reliably), comprehensive right to information for employees (unnecessary to go beyond rules laid down in the German law on transparency in wage structure). The scope is very widely framed and does not contain any real derogations for SMEs, or companies covered by or voluntarily applying collective agreements

- **Proposal for a Directive on platform work**: vaguely formulated criteria for the assumption of an employment relationship, legal uncertainty between EU criteria and national benchmarks for establishment of an employment relationship

- **Proposal for a Single Market Emergency Instrument Regulation**: binding targeted information requests and obligation to prioritise orders are an additional burden for companies in a crisis situation

- **Proposal for an Artificial Intelligence Regulation:** disproportionate effort, since entire sectors and areas (such as education and HR) are classified as being high-risk in themselves, legal uncertainty due to broad definition and verification and conformity obligations along the value chain; acts as a brake on AI in business location Europe

Take findings of Regulatory Scrutiny Board fully into consideration

- In the following cases, the Regulatory Scrutiny Board has issued a **negative opinion or a positive opinion with reservations**: corporate sustainability due diligence (CS3D), sustainability reporting, pay transparency, single market emergency instrument, working conditions in platform work

Legislative own-initiative reports: additional legislation

- The proposal for a **Corporate Sustainability Due Diligence Directive (CS3D)** was preceded by an EP legislative own-initiative report

- **European works councils**: work on a legislative own-initiative report is under way in the EMPL Committee, even though there is no need for a revision. The Commission's self-commitment to take follow-up measures can lead to a legislative proposal

Germany: national gold-plating

- **National transposition of transparent and predictable working conditions directive**: in accordance with the national transposition law, provision of information allowed only in paper format, although the Directive also leaves open a digital option

Contact:

BDA | DIE ARBEITGEBER
Bundesvereinigung der Deutschen Arbeitgeberverbände
Confederation of German Employers' Associations

European Affairs
T +49 30 2033-1050
europa@arbeitgeber.de

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