President Jean-Claude Juncker

First Vice-President Frans Timmermans

4 December 2014

Civil Society view regarding pending EU legislation 2014 – response to BusinessEurope

We, the undersigned organisations, representing diverse public interests, strongly oppose the worrying deregulatory tendency under the headline of 'cutting red tape'. With this open letter we specifically respond to the statement issued by BusinessEurope on 25th November under the heading 'Business input to the screening exercise by vice-president Timmermans'[1].

[1] http://www.euractiv.com/files/businesseurope_statement_to_the_new_commission_-_business_input_to_the_screening_exercise_by_vice-president_timmermans.pdf

We are of the opinion that the merit of the policy initiatives BusinessEurope refers to in its statement deserves a balanced discussion. We object to the narrow assertion that business competitiveness 'would be hampered by legislation protecting people and the environment'. To the contrary, we believe, as do a vast number of progressive companies, that the only way for European industry to be competitive is to innovate within the limits of a low carbon and resource efficient economy and to embrace strong social, labour, consumer and environmental protection measures.

We call on President Juncker and First Vice-President Timmermans as well as the whole Commission college to ensure that any legislative 'screening' takes into account, not only costs and benefits to businesses, but also environmental, social and health related costs and benefits to society at large. Rights and commitments enshrined in the EU treaties, such as women's rights, workers' rights and environmental protection must be upheld.

At a time of increasing inequality, and ecological and climate crisis, the European Union needs to demonstrate bold and forward looking leadership to protect European values, ensure social inclusion and encourage sustainable development.

Our organisations are ready to engage in constructive dialogue with the European institutions on how to ensure that legislation necessary to protect European women and men, workers, consumers, and the environment, and to support the long-term wellbeing of all people, is at the core of the EU agenda.

Impact assessment:

An effective and well-functioning Impact Assessment (IA) system requires that costs and benefits (for industry as well as society) are genuinely assessed. This includes assessing the societal costs of inaction (i.e. health costs related to NOT setting appropriate limits for air pollution, for example). The IA process needs to be genuinely objective and free from vested interests. We therefore strongly disagree with BusinessEurope's suggestion to *''ensure that business organisations can contribute at an early stage to all aspects of the process''*. Proposals that protect human health, consumers, women and workers' rights or contribute to the implementation of EU environmental and climate commitments cannot be assessed purely on the grounds of their contribution to *"growth and jobs"* as they serve a far broader purpose.

Specific response to the proposals by BusinessEurope

Legislation BusinessEurope proposes should be withdrawn

Financial Transaction Tax (FTT)

The proposal should not be withdrawn but speeded up. Contrary to BusinessEurope's claims, financial stability will actually be enhanced by the FTT. As stated by the Commission, its goal is to create "*appropriate disincentives for transactions that do not enhance the efficiency or stability of financial markets thereby complementing regulatory measures to avoid future crises*". The FTT will therefore affect short-term and high-frequency speculative transactions and would help to reduce rent-seeking and excessive risk taking by financial institutions. Such a system will be more transparent and more attractive to investors in the long-term.

Some of the positive economic effects of the FTT as highlighted in the Commission Impact Assessment include:

- public investment as a result of increased revenues;
- improvements in competitiveness and corporate compliance savings compared to the existing regime of individual and non-harmonised national initiatives;
- a shift from speculative investment to investment in fighting poverty, inequality and climate change globally.

It should be remembered that the financial sector has played a central role in the recent financial crisis which has resulted in huge financial and social costs for European taxpayers, and remains undertaxed to date. The crisis has also had a significant impact in developing countries. In both cases, it is vulnerable and poor people who have suffered the most. As recognised by the Commission, the FTT proposal can help discourage some of the most risky behaviour so that a similar crisis does not happen again. It is also a source of finance to address poverty, inequality and climate change both in Europe and in developing countries.

Reduction of national emissions of certain atmospheric pollutants

The proposal should not be withdrawn but speeded up. 400,000 Europeans die prematurely each year as a result of air pollution, and external health-related costs to society are in the range of €330-940 billion per year. The situation is especially severe in urban areas, which are now home to a majority of Europeans, almost all of whom are exposed to harmful levels of particulate matter and ozone. Air pollution furthermore does not respect national boundaries, thus requiring EU-level action. The BusinessEurope position to withdraw the proposal has no rational justification in the light of public benefit from introducing the legislation.

In fact, many EU Member States are still falling short of agreed EU air quality limit values and guidelines from the World Health Organization reflecting the level at which health is no longer substantially harmed.

Gender balance in boards

The proposal should not be withdrawn but speeded up. Not only is parity in decision-making right because it is essential that the opinions, needs and wishes of women and men in their diversity are taken into account, but a huge range of studies have shown that gender balance in the boardroom has proven to be competitively and financially better for the company.

BusinessEurope opposes EU action to increase the proportion of women on non-executive boards in large listed companies. It claims that the proposed legislation and quotas *''disregard the highly diverse conditions in different sectors/companies and do not take into account the way corporate boards function and are renewed"*. However, these are precisely the key reasons why the legislation is necessary in the first place.

Pregnant workers

The proposal should not be withdrawn but speeded up. The inadequate rights and low level of pay enjoyed by women during maternity leave currently represent a large driving factor of the gender pay gap (EU average is 16%), the gender pension gap (EU average is 40%), and low female participation in the labour market (EU average is 62%). Women in the European Union demand and deserve full pay throughout their leave (which should be at least 18 weeks) and without work-related conditionality.

Abandoning the Maternity Leave Directive will have serious negative consequences for pregnant workers across the European Union with direct impact on women's contribution to the economy and on the future labour force.

Legislation BusinessEurope proposes should be substantially improved

Data protection

This proposal should be put forward to the legislative process. The proposal for a Regulation on Data Protection constitutes a major improvement for individuals, particularly in light of the ever-increasing use of personal data in the internet environment. The proposal strikes the right balance between an effective system of data protection and business needs. The draft regulation has abolished the burdensome notification procedure while establishing the principle of accountability according to which the data controller will adopt policies and implement appropriate measures to ensure and be able to demonstrate compliance with the Regulation.

The new provisions will allow controllers to adopt the measures most appropriate to the nature of their activities, thus providing a high degree of flexibility. In parallel, the proposal will help restore consumer control over personal data and enhance consumer trust. A solid framework for data protection would help boost consumer confidence, especially in the complex online environment. Innovation will only be able to be rolled out on a large scale if people trust the way their data is being handled.

Regulation on Structural Measures Improving the Resilience of EU Credit Institutions

This proposal should be put forward to the legislative process. BusinessEurope argues that reforming banks would *"significantly reduce the availability of financing"* for several financial operations that the largest corporates in Europe are involved in these days. Empirical evidence suggests the opposite: well capitalized, separated commercial banks would be less risky and so would benefit from cheaper funding than existing megabanks. Large banks' trading operations should bear their true cost of capital, the same as any other business in a market economy. Separation should therefore lower the cost of lending by big banks, not handicap it. And capital market end-users including BusinessEurope members would then benefit from greater diversity, market discipline and competition.

Creating one European Bank Structure regime instead of different and partly implemented national regimes is also necessary to ensure a level playing field for banks and corporates in Europe, and to avoid unfair competition and inappropriate regulatory arbitrage between the largest European banks.

Emissions of certain pollutants into the air from medium combustion plant

This proposal should be put forward to the legislative process. The air package, including a revised National Emission Ceilings (NEC) Directive and a new Medium-size Combustion Plant Directive, is designed to address this public health crisis, to avoid 58,000 premature deaths each year, bring health benefits of €40-140 billion in external costs, and provide about €3 billion in direct benefits due to higher productivity of the workforce, lower healthcare costs, higher crop yields and less damage to buildings. The proposal will also add the equivalent of around 100,000 additional jobs due to increased productivity and competitiveness, including in the clean technology sector. It is therefore estimated to have a positive net impact on economic growth. The package is in fact modest, and a more ambitious package would be scientifically sound and affordable.

BusinessEurope claims that "*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"*. However, legislation regarding emissions limit values makes sense only if it is based on scientific analysis of the maximum level of emissions still safe for human health and the environment and not on ''economic point of view'' or ''realistic technologies" put forward by the industry in question.

Establishment of a market stability reserves for the EU ETS

This proposal should be put forward to the legislative process. The EU ETS risks becoming a showcase of bad public spending and ineffective climate policy making since large polluters will escape an adequate carbon price signal for another decade. The existence of a carbon market cannot be an aim in itself. The new Commission must reconfirm the EU ETS as a public policy instrument that has to deliver a policy outcome, and to be managed as such.

The Commission proposal for an ETS Market Stability Reserve is a necessary but insufficient step towards the structural reforms needed to turn the EU ETS into an effective instrument that encourages clean investments and controls emissions. The current proposal fails to address the immediate problem of oversupply in the EU ETS, offers no structural solution to correct this problem in the longer term, and features no limit on the amount of allowances that can be stored. This could weaken future climate targets, including the EU's 2030 emissions target, when these allowances are re-introduced onto the market.

Deeper reforms of the EU ETS are required, and these should be part of the legislative proposals following the European Council conclusions on the 2030 framework that were adopted in October 2014. However, this should not distract from the important task of starting a Market Stability Reserve as soon as possible so that it can help stabilise prices and send an adequate price signal.

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

This proposal should be put forward to the legislative process. Numerous studies have highlighted the significant economic, social and environmental benefits of moving towards a resource efficient, circular economy. In addition to reducing Europe's dependence on virgin materials by implementing the resource efficiency measures of the package, it would create 2 million jobs in Europe and boost GDP by 1%.

The waste measures of the package would not only help Member States prevent water and soil pollution in their territories, the impact assessment shows that full implementation of the Circular Economy Package can create more than 180,000 direct jobs in the EU by 2030, in addition to the estimated 400,000 jobs that will be created by the implementation of the waste legislation in force. The recycling target of 70% will satisfy between 10% and 40% of the raw material demand in the EU and vastly contribute to achieving the 2030 EU greenhouse gas emissions reduction target. In addition, it would increase the annual turnover of the EU waste management and recycling sector by €42 billion and would save the taxpayer €72 billion a year in waste management costs.

As such the Circular economy package is a perfect example of legislation that fulfils the priorities of the current Commission and should not be re-framed as an economic piece of legislation. It already strikes the right balance.

Last but not least, the marine litter reduction target will greatly aid member states in reducing the costs of marine litter clean-ups, which are estimated to be just over €413m per annum for the EU coastline.

Conflict minerals

This proposal should be put forward to the legislative process. The UN Guiding Principles for Business and Human Rights set out the responsibilities of business to carry out human rights due diligence. These principles have been operationalised in an OECD Guidance written in close collaboration with business and industry. A broad international consensus has already emerged around the OECD Guidance and the EU made a commitment to promoting it in May 2011. There is therefore no doubt that businesses have an obligation to ensure they source responsibly and EU Member States have a duty to ensure that businesses meet this responsibility.

BusinessEurope's concern that proposed EU regulation on conflict minerals will be binding and unnecessarily burdensome is misplaced. The OECD Guidance has been available to companies since 2010, but the majority of businesses operating in the EU do not conduct and report on their due diligence.

Investors[i] and business voices[ii] have spoken out in favour of the need for mandatory conflict minerals legislation in Europe. On 28 November 2014, the former Vice-President of the mining group Rio Tinto called for mandatory conflict minerals legislation, arguing that supply chain due diligence is *"vital to any successful and sustainable business".* In the UK, at a recent parliamentary hearing [iii] on the draft Modern Slavery Bill, Swedish retailer IKEA said ethical supply chains are *"absolutely" more profitable"*, while Tesco admitted a good reputation "*more than pays for itself".* BusinessEurope therefore fails to acknowledge the more progressive voices of its own lot.

Product safety/market surveillance

This proposal should be put forward to the legislative process. The current General Product Safety Directive has proven to be a cornerstone to protect consumers in the single market from dangerous products. However, the legislation needs to be adapted to current market realities and needs to be properly enforced. For this reason, it is crucial that the European institutions take-up the product safety package as a matter of priority. The European Parliament has proposed important changes to the Consumer Product Safety and Market Surveillance Regulation which will bring considerable benefits to consumers but also achieve a more level playing field among economic operators in the internal market.

Better traceability requirements will be needed such as requiring manufacturers to indicate a batch, type or serial number as well as the full address of manufacturers and importers on the product or its packaging. The regulation also introduces a better definition of different roles of economic operators (manufacturers, importers and retailers).

Institutions for Occupational Retirement Provision (IORP)

This proposal should be put forward to the legislative process. Further development in the internal market in the area of occupational pensions, an unavoidable consequence of increased labour mobility in the internal market, is not without concerns. The current proposal is very modest in that it does not impose capital requirements for pension funds, whereas banks and insurers are subject to such rules. This distorts the level playing field between life insurers and pension funds, which in many member states provide economically substitutable investment products that help citizens deal with the impact of reduced official state pensions. BusinessEurope clearly rejects capital requirements for pension funds – it should instead embrace the rather limited transparency-focused proposal currently on the table.

The European Union expects its citizens to be mobile and work and live across member state borders. However, citizens who choose to do so, still find themselves being punished by having less access to pension schemes and insufficient information about their pension entitlements. To make sure that employers can attract the best staff across Europe, we should stimulate citizens to work abroad instead of penalising them financially for exercising their rights to free movement.

List of signatories:

Magda Stoczkiewicz, Director, **Friends of the Earth Europe**

Monique Goyens, Director General, **BEUC**

Conny Reuter, Secretary General, **SOLIDAR**

Oliver Roethig, Regional Secretary, **UNI Europa**

Carl Dolan, Director, **Transparency International EU Office**

Angelo Caserta, Regional Director, **BirdLife Europe**

Jorgo Riss, Director, **Greenpeace European Unit**

Tony Long, Director **WWF European Policy Office**

Jeremy Wates, Secretary General, **European Environmental Bureau (EEB)**

Genon K. Jensen, Executive Director, **Health and Environment Alliance (HEAL)**

Wendel Trio, Director, **Climate Action Network Europe**

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Bernd Nilles, Secretary General and - Heinz Hoedl, President **CIDSE**

Laura Sullivan, Representative at EU level, **ActionAid International**

Nina Renshaw, Secretary General **EPHA**

Jérome Chaplier, Coordinator, **European Coalition for Corporate Justice**

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[i] http://www.eurosif.org/investor-statement-on-eu-proposed-conflict-mineral-regulation/
[ii] http://euobserver.com/opinion/126718
[iii] http://www.publications.parliament.uk/pa/jt201314/jtselect/jtslavery/166/16608.htm