



EUROPA

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AK Position Paper

Regulatory Fitness and Performance (REFIT)

About us

The Austrian Federal Chamber of Labour is by law representing the interests of about 3.4 million employees and consumers in Austria. It acts for the interests of its members in fields of social-, educational-, economical-, and consumer issues both on the national and on the EU-level in Brussels. Furthermore the Austrian Federal Chamber of Labour is a part of the Austrian social partnership.

The AK EUROPA office in Brussels was established in 1991 to bring forward the interests of all its members directly vis-à-vis the European Institutions.

Organisation and Tasks of the Austrian Federal Chamber of Labour

The Austrian Federal Chamber of Labour is the umbrella organisation of the nine regional Chambers of Labour in Austria, which have together the statutory mandate to represent the interests of their members.

The Chambers of Labour provide their members a broad range of services, including for instance advice on matters of labour law, consumer rights, social insurance and educational matters.

Rudi Kaske
President

More than three quarters of the 2 million member-consultations carried out each year concern labour-, social insurance- and insolvency law. Furthermore the Austrian Federal Chamber of Labour makes use of its vested right to state its opinion in the legislation process of the European Union and in Austria in order to shape the interests of the employees and consumers towards the legislator.

All Austrian employees are subject to compulsory membership. The member fee is determined by law and is amounting to 0.5% of the members' gross wages or salaries (up to the social security payroll tax cap maximum). 560.000 - amongst others unemployed, persons on maternity (paternity) leave, community and military service - of the 3.4 million members are exempt from subscription payment, but are entitled to all services provided by the Austrian Federal Chambers of Labour.

Werner Muhm
Director

Executive Summary

The Austrian Federal Chamber of Labour (AK) in principle welcomes the ongoing efforts to ensure effective EU legislation.

The **AK resolutely rejects the recommendation** of the High Level Group on Administrative Burdens for the **application of the principal of "priority for SMEs"**. The interests of all interested parties are to be considered equally.

The **AK condemns the announcement of the EU Commission not to present** the originally planned **legislative proposals on muscular skeletal disorders, hairdressers, passive smoking, carcinogens and mutagens**. These proposals are of great benefit to employees and businesses. Therefore the AK calls for the resumption of the legislative work.

Lack of regulation can lead to enormous costs, as the financial crisis of 2008/2009 has shown. The AK therefore welcomes the introduction of basic information sheets for investment products. However, the intention to withdraw the proposal for a directive on systems for the compensation of investors is to be criticized. The Federal Chamber of Labour calls for the legislative work with a revised directive proposal to be re-launched.

A system stipulating that new EU regulation should only be adopted when another regulation is repealed is resolutely rejected by the AK. In its place,

the AK proposes continuous reviews of EU laws regarding timeliness and effectiveness with regard to the aims of all socio-political areas, in addition to the adaptation of these laws where appropriate.

A range of REFIT measures lead to unnecessary burdens for other groups of stakeholders and may be contrary to public interest:

- Concerning the **information and consultation of workers** on collective redundancies and the transfer of undertakings, it must be ensured that workers' rights are not restricted and that no additional burdens placed on the public authorities.
- When implementing initiatives on **safety and health in the workplace**, the health of workers must be paramount, regardless of the size of the company.
- Measures such as **beef labelling, securities prospectuses, food law** and other consumer protection matters must not result in a reduction in the level of consumer protection.

With regard to **impact assessments and cost/benefit analyses**, the AK asks the Commission to explain why an impact assessment was performed for the proposal, how it came to its conclusions and whether the impact assessment would be equally taken into **consideration for all socio-political areas**.

For the AK, in the case of the consultation of stakeholders and the committees of experts used by the EU Commission, the **equal treatment of the positions of the individual groups of stakeholders** is essential.

The AK emphasizes that, **in the case of the REFIT programme, the goals set in the European Treaty**, such as a competitive social market economy, full employment, social progress, a high level of protection and quality of the environment - in addition to the aim establishing the internal market – **must be vigorously pursued**.

The AK position in detail

In light of the work in the European Parliament and in the Council relating to the "Regulatory Fitness and Performance Programme (REFIT)", the Austrian Federal Chamber of Labour (AK) has taken this opportunity to give an opinion on the subject.

In its opinion, the AK refers in particular to the EU Commission communication COM (2014) 368 on the Regulatory Fitness and Performance Programme (REFIT) of 18 June 2014, to the final report of the High Level Group on Administrative Burdens of 24 July 2014 and to the REFIT measures cited in Annex 3 of the Commission work programme 2015 COM (2014) 910 of 16 December 2014. These documents give rise to criticism – as described in greater detail below.

1. Regarding the principle "Priority for small and medium-sized businesses"

By way of preliminary observation, the AK is giving its opinion on a central message of the High Level Group on Administrative Burdens: an initiative to enhance the efficiency of, simplify and streamline EU law is to be welcomed. The "rigorous application of the "Think Small First" principle for small and medium-sized businesses"¹ when implementing the initiative as recommended by the High Level Group, however shows a lack of vision and an imbalance that is also problematic in relation to the EU Treaty:

¹ Final report of the High Level Group on Administrative Burdens of 24 July 2014, page 51

Even Article 3(3) TEU points out that, immediately after the aim of the creation of an internal market, the Union "...is working towards a highly competitive social market, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment..."²

By concentrating on businesses with regard to the reduction of administrative burdens, all stakeholders outside the business sectors run the risk of becoming "victims" of this initiative, as their interests clearly play a subordinate role. Furthermore, Art 3(3) TEU clearly states that the Union has a number of objectives to pursue. To solely pursue the competitiveness of businesses would contradict the aim of the EU Treaty and must therefore be rejected.

The AK therefore resolutely rejects the recommendation of the High Level Group to apply the "Think Small First principle "for SMEs (small and medium-sized businesses)". When working towards the simplification and streamlining of EU law, the interests of all stakeholders concerned must also be equally taken into consideration, as the Commission also concedes in its communication.³

² [Consolidated version of the Treaty on the European Union and the Treaty on the Functioning of the European Union](#), March 2010

³ COM(2014) 368, Commission Communication on the Regulatory Fitness and Performance Programme (REFIT): State of Play and Outlook, pages 18ff

For the AK, in the case of the consultation of stakeholders and the committees of experts used by the EU Commission, the **equal treatment of the positions of the individual groups of stakeholders** is essential.

The AK emphasizes that, **in the case of the REFIT programme, the goals set in the European Treaty**, such as a competitive social market economy, full employment, social progress, a high level of protection and quality of the environment - in addition to the aim establishing the internal market – **must be vigorously pursued.**

2. Action taken to date

The concern, that organisations outside the SME sector suffer disadvantages may be a valid one, as is already reflected in the Commission communication on REFIT. Among other things, it states that the EU Commission has decided not to present certain legislative proposals which were originally planned, including the topics specified in a footnote concerning health and safety at work for hairdressers, muscular skeletal disorders, passive smoking, carcinogens and mutagens.⁴

It is noted with some concern that the announcement by the Commission that it no longer intends to pursue the planned legislative initiative regarding hairdressers – passing over an agreement of the European social partners. This approach of the Commission is criticised by the AK in the strongest possible terms. It is clear that costs for businesses are being cut at the expense of the health of employees. These examples also show how short-sighted the approach of the Commission is: the lack of regulation on health in the workplace may not only lead to illnesses of workers, but also to considerable costs for businesses that have to cope with temporary illness and, in the worst case scenario, the entire unavailability of workers. This is also a considerable burden for the public authorities when they have to bear the costs for convalescence or early retirement of employees and, where applicable, necessary retraining. Furthermore, earnings must be taken into account, for example in the case of income tax.

⁴ Ibid, page 4, footnote 8

The AK therefore calls for the legislative work on the above-mentioned issues regarding safety and health in the workplace to be resumed in the interests of employees and businesses. The Advisory Committee on Safety and Health at Work (ACSH), which is staffed equally by government, employers and employees, would be ideally suited to support the Commission in this matter.

The simplification of the **accounting and auditing rules** for micro-businesses (businesses with fewer than 10 employees and a balance sheet total of less than 500,000 Euro) are held up by both the European Commission and the High Level Group as a positive example for a reduction of administrative burdens.⁵ The businesses concerned are therefore subject to considerably fewer accounting requirements than has hitherto been the case. However, it is not mentioned that suppliers, employees and customers consequently lack important information about the situation of these businesses. For this group of stakeholders, the missing data can lead to poor decisions and thereby to higher costs.

The EU financial crisis of 2008/2009 is a prime example of the fact that a lack of regulation can lead to enormous costs in some cases. Subsequently, the EU Commission has published a series of legislative proposals that should prevent a new Super-MCA on the financial markets. One of the proposals welcomed by the AK was the introduction of

⁵ COM(2014) 368, Commission Communication on the Regulatory Fitness and Performance Programme (REFIT): State of Play and Outlook, page 9 and final report of the High Level Group on administrative burdens of 24 July 2014, pages 18ff

basic information sheets for investment products, to better inform small investors in particular about financial products. It is therefore incomprehensible that the High Level Group only talks about an increase in administrative expenses of around 170 million Euro per annum in its final report.⁶ Firstly the Commission is merely acting on the assumption of one-off costs of 171 million Euro and annual costs of only 14 million Euro in its impact assessment of the basic information sheets.⁷ Secondly, it is essential that the significant benefits in the form of avoided investment losses is taken into account, as the Commission also noted in the introduction to its proposed regulation on the basic information sheets⁸. All the more disappointing is the announcement of the EU Commission that it wishes to withdraw the proposal for a directive on systems for compensating investors.⁹ Also in this document the EU Commission is reporting on numerous complaints of investors, who were sustaining significant losses from asset investments. The AK can only confirm complaints about asset losses: in Austria, many small investors have also suffered losses in relation to financial products and have been forced to prosecute.¹⁰

6 Final report of the High Level Group on Administrative Burdens of 24 July 2014, page 37

7 SWD(2012) 187 final, Staff Working Document – Impact Assessment concerning basic information sheets for investment products, page 51

8 COM(2012) 352: Proposal for a regulation on basic information sheets for investment product page 2

9 COM(2014) 910: Annex 2 of the work programme of the Commission for 2015 – A New Start (includes the list of proposals, that are to be withdrawn or amended - see no. 48)

10 e.g. the [AWD class action](#), or see the case of the [AvW profit participating certificates](#)

With regard to the measures of the Member States, it is not only important to calculate the costs for businesses, but also to take into account benefits for other social groups.

The AK emphasizes the need for an intelligent EU law which, in addition to the adaptation of outdated legal texts, also incorporates the introduction of new regulatory measures. The AK resolutely rejects the recommendation of the High Level Group that a system should be introduced to create compensation in the case of burdens for businesses based on new EU regulations, whilst elsewhere in the *acquis communautaire*, a reduction in the burdens is provided for. Therefore, repealing sensible older regulations in the *acquis* merely because there are new challenges for which a regulation is needed can essentially only be described as counterproductive, bordering on unreasonable. The fixing of quantitative goals as a starting point of the work towards a more streamlined and efficient EU law such as, for example, “a decrease of 25% of the administrative burdens to businesses”¹¹ is simply dangerous. There is reason to fear, that as a result, even sensible regulations that are highly beneficial to society will be repealed, merely to achieve this objective.

Instead, the AK is proposing checking EU law continually for its timeliness and effectiveness with regard to the aims of all socio-political areas. If necessary, the texts are to be adapted or abolished accordingly after consultation of the social partners and other stakeholders.

11 Final report of the High Level Group on Administrative Burdens of 24 July 2014, page 14

3. Future REFIT Initiatives¹²

As already mentioned, new initiatives for simplification are to be welcomed, for example when they involve simplifications regarding identity and travel documents. However, there is a range of REFIT measures that could cause unnecessary burdens on other groups of stakeholders or which may be contrary to public interest:

- In the employment, social affairs, skills and labour mobility areas, this concerns a range of sensitive areas that are now subject to scrutiny: In the case of legislation concerning **information and consultation of workers collective redundancies or in the case of a transfer of undertakings**¹³ it must be ensured that there is no restriction of employee rights and no additional burdens for the state sector. Apparently there seem to be plans to exempt SMEs from consultation obligations. Early information for employees and the public authorities involved with employment measures facilitates their timely implementation, for example when searching for new employment, thereby reducing the costs for the economy. The weaknesses exposed by the investigation of the Commission relating to the implementation of directives such as the lack of or late information provided to employees or their representatives should provide the opportunity to improve the practical implementation of these directives.

- Deterioration in **safety and health in the workplace**¹⁴ are, as stated above, to be feared because of the failure to follow up legislative work: indeed, there is a need for revision in the case of directives, for example from an ergonomics point of view. However, this may not result in their repeal. Directives on "lifting and carrying", "asbestos", "monitor screen", "mineral extraction etc. are still valid and the health of employees must be paramount regardless of the size of the business.
- In the case of legal texts that concern **consumers**¹⁵, it must be ensured that revisions do not lead to a reduction in the level of consumer protection. According to the Commission's work programme, this is to be observed, for example, in the case of beef labelling, audio-visual media services, securities prospectuses, food law, drinking water, pre-packed products and misleading advertising.
- **Transport issues**¹⁶: The repeal of the directive on the retrofitting of trucks with mirrors is welcomed to the extent that all trucks can now be fitted with these sorts of mirrors. In the past, the AK has made critical remarks regarding admission to the positions as road transport operators and the common rules for access to the international road haulage market¹⁷.

¹² COM(2014) 910: Annex 3 of the work programme of the Commission for 2015 – A New Start, includes the planned REFIT measures for 2015

¹³ Ibid., REFIT Measure No. 21

¹⁴ Ibid, REFIT Measure No. 24

¹⁵ Ibid, REFIT Measures no. 2, 14-18, 32, 41, 43, 50, 59, 61, 62

¹⁶ Ibid, REFIT Measures No. 72, 74, 77

¹⁷ For example [AK position on the report of the European Commission on the position of the road transport market in the Union \(EC report on Market Access\)](#)

- A **uniform method for the allocation of costs** of independent bodies should be developed for the evaluation of cumulative costs in the chemical industry, the timber and forest industry, glass/ceramics and the construction industry, as the information provided to date regarding the affected sectors has led to huge exaggerations with regard to the anticipated costs.
- When legal acts are repealed, such as the **Energy Labelling Directive**¹⁸ it must be ensured that it does not result in the EU Parliament being deprived of control rights. The Commission's proposal to cancel the three directives on energy labelling and replace them by the adoption of new delegated acts must be rejected for this reason.
- The EU Commission states that it will withdraw the proposed directive on the improvement of safety and health protection of **pregnant workers** and replace it with a new proposal if no progress is made in the legislators' negotiations. This is to be welcomed. However, the same should also happen with regard to the investor **compensation schemes**, for which only a withdrawal and no new legislative proposal of the Commission is planned¹⁹.
- An example of where it would make sense to withdraw a legal text within the meaning of a more intelligent and simpler EU law is the proposal for the directive con-

cerning **single-member private limited-liability companies**. This proposal represents grave dangers for employees, consumers and creditors and could, for example promote cross-border bogus self-employment or wage and social dumping.²⁰

- Overall, it can be seen that a merger of directives and regulations only makes sense when the legislative texts concerned contain significant overlaps in content. The consolidation of the three directives mentioned above on employment includes, for example, **three completely different bodies of regulations**. An added benefit of the consolidation of the legislative texts is not apparent. Furthermore a consolidation of legislative texts alone does not lead to a reduction in administrative costs.

Detailed analyses with assessments of the repercussions for the actors involved with the 79 REFIT measures are for the most part not possible until evaluation or the legislative initiatives (simplification, revocation) have taken place.

4. Impact assessment/measurement of costs and benefits

With evaluations of cost/benefit, aspects value judgements play a central role that can lead to significantly divergent conclusions. Examples of this include taking the interests of future generations into account and asking questions regarding the level of protection of animals, the value of a human life etc. As a result, the approach of weighing up **cost against benefit** comes up against

²⁰ [AK EUROPA position on proposed Directive concerning single-member private limited-liability companies](#)

¹⁸ COM(2014) 910: Annex 3 of the work programme of the Commission for 2015 – A New Start, REFIT Measure no. 4 to 6

¹⁹ COM(2014) 910: Annex 2 of the work programme of the Commission for 2015 –A New Start (includes the list of proposals, that are to be withdrawn or amended - see no. 48 and 58)

fundamental boundaries. Another fundamental boundary connected with the aforementioned considerations is specified by the basic rights which the EU legislator is obligated to observe and which, for example, are enshrined in the European Union Charter of Fundamental Rights. In the face of the indivisibility and universality of the dignity of man, this type of consideration of costs versus benefits of legislative measures is doomed to failure.

In addition, for the cost versus benefit consideration, it must be distinguished whether costs and benefits will be borne by the same stakeholders or by very different stakeholders or groups of stakeholders. In the second case, far-ranging allocation questions may be linked to the measures.²¹

The AK requests, as quoted under the item "Future REFIT Initiatives", that a uniform method for the cost allocation of independent agencies should be developed for the evaluation of cumulative costs, as the information provided to date about the affected sectors has led to over-exaggerations with regard to the expected costs. The AK agrees with the Commission that these assessments cannot form the sole basis for policy recommendations, because positive benefits must also be taken into consideration.

For this reason the AK is asking the Commission to show why an impact assessment was performed for a proposal, how it arrived at the conclusions and whether the impact assessments would be equally taken into consideration for all socio-political areas.

²¹ Renda et al.: Assessing the Costs and Benefits of Regulation. CEPS, Brussels, 2013, pages 44f

In any case, an ex-post evaluation of the EU legislation is to be welcomed. However, the important thing is that the relevant text has already been in force for a sufficiently long period of time (and implemented by the Member States) to enable a serious evaluation.

5. Consultation of stakeholders

For many years now, the AK has been taking part in EU Commission consultations on different subject areas and, in doing so, has gained corresponding experience. It often seems as if contributions from trade unions and civil society (in the case of the AK, employment and consumer policy remarks in particular) regarding consultations were scarcely taken into consideration²², whilst arguments from the business sector were obviously given more attention. Occasionally, the questions regarding the consultations were constructed in such a way that an opinion on the socio-political consequence was not or only marginally possible.

Therefore, the AK welcomes the Commission's aim of improving its consultation planning in order to consolidate the quality, scope and accuracy of the consultations. As already repeatedly indicated above, ensuring the equal treatment of the positions of the individual groups of stakeholders such as trade unions, consumer-, health-, environmental and other interest groups is

²² For example, the consultations on the future investment relationship between the EU and China in 2011, the green book of the Commission options for the introduction of a European contract law for consumers and businesses in 2011, the directive 2003/59/EC on the initial qualification and periodic training of the drivers of certain road vehicles for the transport of goods or passengers

essential. A study²³ by the German academic Dieter Plehwe on behalf of AK concluded that the balance of power with the advocacy groups and interest groups in Brussels speaks for itself: for every one employee's representative there are approximately 50 lobbyists from the business sector. This sort of bargaining power of one group must not be used to the detriment of other groups.

The same applies for the panel of experts used by the Commission, in which it must be ensured that one group of actors does not carry more weight than other concerned groups.

6. Reporting Obligations

In its communication the Commission states that it would like to reduce reporting obligations to a minimum. The drafting of reports on provisions from different policy sectors is often connected with a considerable expense for the bodies concerned. Therefore, the streamlining of reporting obligations is to be welcomed in principle. At the same time, it must however be pointed out that these are also a useful tool for evaluating the effectiveness and the benefit of legal texts or measures. It would be a disadvantage for the REFIT programme to completely dispense with these documents because a tool for the assessment of the benefit of EU legislation would be lost.

7. Regulatory fitness and performance – a common aim?

The AK is astonished that the Commission on the one hand emphasizes that

²³ Dieter Plehwe, *Measuring European relations of lobby power*, February 2012

it does not wish to question the existing policy objectives and also notes that REFIT will not have any negative effects on health, the safety of citizens, consumers, employees or on the environment.²⁴ On the other hand however, the Commission representatives report that they now no longer wish to present legislative proposals concerning health and safety in the workplace.²⁵ The Commission is thus contradicting itself, because REFIT will have very direct negative effects on the health and safety of workers as a result.

The AK emphasizes that in the case of the REFIT programme, the goals set in Treaties²⁶, such as competitive social market economy, full employment and social progress, a high-level of protection and quality of the environment – in addition to the aim of establishing the internal market – must be vigorously pursued.

As the Commission states in its communication, „...the contributions of social partners, stakeholders, NGOs and the general public are important, in order to maintain the dynamics with intelligent regulation”²⁷. As already shown at the start of the opinion, by focusing on SMEs with regard to the reduction of administrative costs all actors run the risk of becoming “victims” of this initiative.

²⁴ COM(2014) 368, Commission Communication on the Regulatory Fitness and Performance programme (REFIT): State of Play and outlook, page 19

²⁵ Ibid, page 4, footnote 8

²⁶ [Consolidated version of the Treaty on the European Union and the Treaty on the Functioning of the European Union](#), March 2010

²⁷ COM(2014) 368, Commission Communication on the Regulatory Fitness and Performance programme (REFIT): State of Play and Outlook, page 19

Therefore, for the AK it is imperative that in the case of the setting up of a new High Level Group **care should be taken to ensure a fair staffing of this body.** This means that for one socio-political group of stakeholders, one representative or - in the case of a larger body - a corresponding multiple of this is represented in the group to create an appropriate staffing balance. Should academics be consulted, these are to be selected from the group with a majority decision in order to invalidate any accusation of bias among academics, unless they serve as representatives of an academic group of stakeholders.

The High Level Group on Administrative Burdens is a prime example of how a body should not be staffed: of the 15 members, 6 people were assigned to the business or employer sector, 4 to the public sector and one to the employee, consumer, health and transport sector. The group also included one academic. Almost half of the High Level Group is therefore made up of business representatives - a gross imbalance which is also reflected in the final report and a dissenting opinion:

The official recommendations bear the hallmark of business representatives. The "rigorous application of the "Think Small First" principle for small and medium-sized businesses" mentioned many times in the statement and the call for the introduction of a system to automatically link the burdens introduced by new regulations with the easing of other burdens are just two examples.

And it is not surprising that the members who represented the employment, consumer, health and transport policy

matters are publishing a dissenting opinion to the final report. According to this opinion, "administrative burdens" are judged in a very negative and imbalanced manner in the final report. "Food labelling, instructions for the use of medicinal products, eco-labels, the disclosure of the costs of financial services and informing workers about their rights" are an administrative burden for the group, but there is no information about social benefits.

The AK therefore maintains that, with regard to work towards an efficient, simple and streamlined EU law, the equal opinion of all social groups is essential. Experiences to date in this regard are unfortunately negative. The AK is hoping that the new EU Commission under Commission President Jean-Claude Juncker establishes a **new policy regarding the equally-weighted inclusion of all groups of stakeholders.** The Commission can set a positive example with the formation, where appropriate, of a new High Level Group.

We request that the above-mentioned concerns are taken into account with regard to the work on REFIT at the EU-level.

Should you have any further questions
please do not hesitate to contact

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