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STAKEHOLDER SUGGESTIONS

-JUSTICE-

DISCLAIMER

This document contains suggestions from stakeholders (for example citizens, NGOs, companies) or Member State authorities communicated to the Commission and submitted to the REFIT Platform in a particular policy area.

It is provided by the secretariat to the REFIT Platform members to support their deliberations on the relevant submissions by stakeholders and Member States authorities.

The Commission services have complemented relevant quotes from each suggestion with a short factual explanation of the state of play of any recent, relevant ongoing or planned work by the EU institutions.

The document does not contain any official positions of the European Commission unless expressly cited.

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1. SUMMARY

This briefing includes three suggestions in three different areas:

Shareholder Rights:

- The German Insurance Association (GDV) argues that the proposal to amend the Shareholder Rights Directive (2007/36/EC) would hamper competitiveness and increase regulatory burden. Trilogue negotiations on the revision of the Shareholder Rights Directive have started at the end of October 2015 and are on-going.

Gender Balance:

- The German Chambers of Industry and Commerce (DIHK) suggests addressing the causes of existing under-representation of women in executive positions instead of introducing a binding target quota via a Directive. The proposed Directive on gender balance (COM(2012) 614) is being discussed in the Council, which is generally in favour of improving gender balance on company boards, but Member States have different preferences on the best approach to achieve this objective.

Identity and Travel documents:

- A citizen suggests that reducing the number of acceptable identity and travel documents to those which meet common minimum security standards would reduce burdens on employers, businesses and public authorities. A study assessing whether it would be appropriate to establish rules for a common secure format for registration certificates issued to EU citizens by Member States and for residence documents issued to their family members is currently under preparation.

2. SHAREHOLDER RIGHTS DIRECTIVE

2.1. Submission by the German Insurance Association (GDV)

Shareholder Rights Directive: safeguard proportionality and observe existing regulations

Opinions according to which the proposal to amend the Shareholders Right Directive does not make any positive contribution to competitiveness or the internal market are shared by GDV. The proposed Directive and many considerations of the European Parliament contradict the declared objective of reducing bureaucracy and regulatory burdens.

In particular, by overloading shareholders with decisions, such as regarding "related party transactions", administrative expense will arise, jeopardizing the flexibility needed in business decisions. Likewise, the involvement of shareholders in general meetings on compensation policy is disproportionately bureaucratic and too far-reaching. No such regulation was incorporated into the final text of Level 2 Regulation 2015/35 on Solvency II for good reason. Besides, there are already supervisory regulations for the insurance industry concerning compensation, so that a conflict between regulations must be expected. The proposed obligation to disclose the investment strategies of all institutional investors and the inclusion of all share-holders in investment strategies are also questionable. Apart from the lack of objective necessity, these duties cannot be implemented in practical terms on factual and legal

grounds. This would also undeniably lead to discrepancies with the provisions on safeguarding business secrets and the principles of European competition law.

(Regarding the demands of the European Parliament for country-by-country reporting (CBCR), see the example below concerning accounting.)

Country-by-country reporting: wait for evaluation reports

The European Parliament has demanded that the revised Shareholder Rights Directive should require large undertakings to disclose country-specific data ("country-by-country reporting" / CBCR). This would anticipate the CBCR Evaluation Report foreseen for July 2018 pursuant to the applicable Accounting Directive. The GDV deems it important to use this time to gather the necessary experience. In the ensuing review, an adequate solution for this state of affairs can be found. Anticipating the report could lead to regulation generating enormous additional expenses that would later have to be reduced.

2.2. Policy Context

The EU market in shares of listed EU companies has to a large extent become international: listed companies have an increasing proportion of foreign shareholders. Institutional investors, asset managers and proxy advisors also carry out activities which are of international nature.

The Shareholders Right Directive 2007/36/EC establishes requirements in relation to the exercise of certain shareholder rights for companies which have their registered office in a Member State and whose shares are admitted to trading on a regulated market situated or operating within a Member State.

Current State of Play

On April 2014 the European Commission presented a proposal for the revision of the Shareholder Rights Directive to the European Parliament and Council. The proposal tackled corporate governance shortcomings relating to listed companies and their boards, shareholders (institutional investors and asset managers), intermediaries and proxy advisors (i.e. firms providing services to shareholders, notably voting advice). The proposal was preceded by an Impact Assessment.

On 8 July 2015 the European Parliament adopted a revised text and inserted a requirement for large undertakings to publish information country by country, on profits or losses before tax, taxes on profits or losses and public subsidies received.

MEPs decided not to close the First Reading in the legislative procedure, but instead to enter into informal talks with the Council with a view to seeking agreement on a final version of the legislation to be adopted. Trilogue negotiations have started at the end of October 2015.

3. GENDER BALANCE

3.1. Submission by the German Chambers of Commerce and Industry (DIHK)

EU LAW 'Improving framework conditions instead of introducing the women's quota'

In Germany, as well as many other EU Member States, the proportion of women in executive positions, and therefore also on the Supervisory Boards, is increasing. Recommendations in corporate governance codes for commitments of companies to increase the share of women on Supervisory Boards also exist. Companies are therefore already setting themselves ambitious individual targets. Self-regulation is thus working.

Yet, the EU proposes a Directive in this field.

The draft directive (parliament first reading) includes lower requirements than proposed by the Commission. We respect that the Parliament has focused the draft directive on the selection process. But a predefined and sanctioned selection process is an additional duty and burden for the companies. We are afraid that the criteria for the board selection process yet to be defined might not include the necessary criteria from companies' view and thus will not lead to the required appropriate results.

Instead of a binding target quota, the causes of the existing under-representation of women in executive positions should be addressed, for example the number of care facilities available.

In Germany in particular, the expansion of the public infrastructure for the care of children and adults who are in need of care should be promoted.

3.2. Policy Context

In April 2015, women accounted for just 21.2% of board members of the largest publicly listed companies registered in the EU Member States.

The causes for the under representation of women in decision-making processes and positions are multiple, complex, and call for a comprehensive approach to tackle the problem. They stem from traditional gender roles and stereotypes, the lack of support for women and men to balance care responsibilities with work and the prevalent political and corporate cultures, to name just a few.

With its Strategy for Equality between Women and Men, the Commission put the issue of women on boards high on the political agenda already in 2010.

In 2011, following the publication of The Gender Balance in Business Leadership Staff Working Document, the Commission called for credible self-regulation by companies to ensure better gender balance in companies' supervisory boards. One year later, the Progress report on women in economic decision-making in the EU made it clear that progress was not visible and a public consultation confirmed that further action was needed.

Current State of Play

In November 2012, the European Commission submitted a Proposal for a Directive on improving the gender balance among non-executive directors of companies listed on stock

exchanges and related measures to the Parliament and the Council¹.

The main objective of this proposed Directive is to set a 40% objective for the percentage of non-executive members of the under-represented gender on boards of publically listed companies by 2020.

This objective is not a rigid quantitative quota obligation that would result in sanctions if the 40% are not reached.

The Parliament's report on the Proposal was adopted on 20 November 2013 by a very large majority (459 for, 148 against and 81 abstentions). The main amendments adopted were amendments agreed between the major parliamentary groups. They are very moderate and do not substantially depart from the Commission proposal.

The proposed Directive is being discussed in the Council, which is generally in favour of improving gender balance on company boards, but Member States have different preferences on the best approach to achieve this objective. The proposal explicitly provides for the possibility for Member States to choose their own measures to achieve the objectives. The proposed Directive is supported by a majority of Member States.

SME are exempted from the requirement for companies with less than 40% of non-executive directors to apply transparent selection procedures based on neutral selection criteria in order to attain 40 % by 1 January 2020.

Article 3 excludes from the scope of the Directive listed companies which are small and medium-sized enterprises (SMEs), as defined by Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises.

4. IDENTITY AND TRAVEL DOCUMENTS

4.1. Submission by Citizen

When you move from one member state to another, your case is dealt with through the ordinary immigration authorities, which means that your case is but one among all other cases, no matter from where in the world immigrants come from. There is also the risk that the bureaucrats you deal with are not fully aware of the specific rights a citizen of the EU has, contrary to people from outside EU. This naturally creates misunderstandings and unnecessary bureaucracy and thus, delays in processes which should be fairly straightforward and simple for people who want to use the freedom of movement within the EU.

Also when you move from one member state to another (which also includes countries belonging to the EEC-area), your economic history is being zeroed or non-existent. I don't know whether this also happens to bureaucrats working within the EU-system and in case it doesn't, you may not even be aware of this and the problems it causes. A normal citizen has to wait until he or she has filed a tax declaration and become registered as a tax payer before it is possible to obtain a normal bank card or often even such simple dealings as to get an internet provider, a mobile phone contract, not to think of asking for credits or loans. Even renting a flat can be troublesome if you don't know people in the country you move to who can vouch

¹ (Proposal from the Commission of 14 January 2012 - COM(2012) 614).

for you or even guarantee for you. Economically, you are seen as someone without any economic history and documentation proving your economic past is not even considered. You may have worked in the same profession for decades and have had a stable income, although as an independent or freelancer, having paid taxes and had a good relation with banks and credit institutions in the country you move from, but all of this has become irrelevant and your past is nulled, zeroed, becoming non-existent. This is clearly an obstacle for the free movement of people between the different countries within the EU as you have to start from scratch each time, regarding this.

Finally, I think the EU should look to the Nordic countries to learn and get inspired from the systems they have there, if this is not already the case. Something which would save a lot of time and money and get rid of unnecessary bureaucracy would be to provide every EU-citizen with their individual signum. This would then be instead of all the various numbers you have in countries like Portugal, for instance. One number for everything.

I think it would be more efficient if each member state established special departments which only dealt with the cases pertaining to EU-citizens. Such offices could be concentrated to the major cities but the immigration offices all over the country could contact them if in doubt. I understand that EU cannot demand this from the member states, but one could present a plan, at least, showing how this would improve the free movement of people within the EU and thus save time and money for both the citizens as well as the states in question. The bureaucrats working in such offices would be specialised in the rules and regulations regarding the free movement of EU-citizens and unnecessary delays and bureaucratic confusion will be avoided.

What with today's technology it should be relatively simple and straightforward for citizens to have their economic past moved together with them to the new country of residence. I am not the right person to suggest the right procedures how to solve this, but as I have moved quite a few times and have experienced this over and over, I see this as an unnecessary obstacle and it causes economic losses for businesses in the new country of residence as the person moving cannot purchase goods and services the way a person normally would. I hope people are aware of this obstacle and try to find solutions to it.

One personal signum for each citizen.

4.2. Policy Context

Based on Directive 2004/38/EC, EU citizens residing in an EU Member State other than their own for more than three months may be required to register with the local authorities, in which case they receive a registration certificate. However, these certificates are not always accepted as identity documents in the EU (in particular by private entities such as bank, companies, etc.) and citizens cannot use them as travel documents, even within the EU. Similar problems arise for EU citizens who hold identity cards issued in their country of origin and often cannot rely on them in their transactions in other EU Member States. Private companies feel uneasy accepting 'foreign' documents as proof of identity since the format of such documents, unlike passports, is not harmonised at EU level.

Current State of Play

In the public consultation on EU citizenship leading to the 2013 EU citizenship report², reported problems were *inter alia* related to moving to or living in another EU country, administrative hurdles with documents when wanting to travel or proving identity within the EU. Citizens asked for solutions to simplify their lives and reinforce their identification with the EU, including through uniform European documents, where applicable.

As a follow-up to the 2013 EU citizenship report – an action plan with concrete action items to improve EU citizens' rights in a number of areas – the Commission is working to remove obstacles in relation to identity and residence documents issued by Member States. The Commission will have to report on the implementation of this action in the context of the upcoming 2016 EU Citizenship report.

Furthermore, the Commission is preparing a study to further define the problems regarding residence cards and identity documents from the perspective of both the citizens who have exercised their right to free movement and the Member States, which will also analyse possible options to address them. Security features and standards will be part of this study.

² http://ec.europa.eu/justice/citizen/files/2013eucitizenshipreport_en.pdf