Statement

Statement of the Confederation of German Trade Unions (DGB) on
Better regulation in the European Union

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Confederation of German Trade Unions

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1. Background

Since 2001, the European Commission has been working on simplifying regulation in the EU and reducing bureaucratic hurdles. In 2007, the "High Level Group on Administrative Burdens" under the chairmanship of Edmund Stoibers (the so-called Stoiber Group) was set up to advise the European Commission on how to reduce red tape. It concentrates on small and medium-sized enterprises in particular. During a consultation held in 2012, the 10 EU legal acts imposing the highest administrative burden on SMEs were determined.

This work has gained increasing momentum recently. In December 2012 the Commission began the so-called **REFIT programme (Regulatory FITness and Performance)** to guarantee the efficiency and performance of regulation. The aim is to eliminate unnecessary red tape and regulatory burdens. In order to achieve this, the full portfolio of EU legislation is being reviewed for administrative burdens, inconsistencies, loopholes or ineffective measures. In the words of the Commission it is undergoing a "fitness check". In October 2013, the Commission presented its first inventory and listed, for each political area, the legislation that it was going to simplify, rescind or revoke. In addition, it announced its intention to annually publish an indicator of European and national trends. It presented such a "scoreboard" (comprising 133 suggestions), together with the publication "REFIT: inventory and forecast", in June 2014. This was followed by the Stoiber Group's final report in July 2014. Four of the fifteen members of the Stoiber Group did not agree with the recommendations and published a dissenting opinion.[1]

The Commission under Jean-Claude Juncker is also highly committed to promoting the programme and Frans Timmermans, who serves as the First Vice-President, was nominated the "European Commissioner for Better Regulation". On 19 May, Commissioner Timmermans presented his programme within the framework of a comprehensive package for better regulation. As well as the memorandum "Better regulation for Better Results – an EU agenda"[2], the package contains a proposal for an inter-institutional agreement between

[1] http://ec.europa.eu/smart-regulation/refit/admin_burden/docs/annex_12_en_hlg_ab_dissenting_opinion.pdf
[2] COM(2015)215

the Commission, the Council and the European Parliament [3], various communications on the setting up of a REFIT platform[4] and a regulatory scrutiny board [5], a current inventory for the REFIT programme together with a scoreboard comprising 164 recommendations[6], as well as some of the Commission's internal documents [7], in which the details regarding implementation of the programme are set out.

2. General assessment

The DGB welcomes the fundamental concerns of the European Commission insofar as they are directly aimed at making European regulation simpler and more efficient. If existing regulations should prove to be unnecessary, obsolete or not (no longer) fit for purpose, they should be revised or revoked. However, this must not result in a lowering of much needed standards.

The DGB is, moreover, concerned that important regulations **in the area of social, environmental and consumer protection standards are being reviewed** and that further regulation in these areas will be blocked using the argument in favour of reducing red tape. These regulations often deal in a targeted manner with restrictions to competition, which is why they are viewed by many companies as "bureaucracy" or "over-regulation". From the perspective of the DGB, the recommendations of the Commission in the areas of **occupational health and safety, labour law and information and consultation** are particularly problematical. In addition, the DGB is critical of the fact that for the first time, under the pretext of reducing red tape, some important achievements of the European social dialogue are being called into question. The DGB firmly rejects any programme for reducing red tape in accordance with a deregulation agenda that contextually weakens social, environmental and consumer protection standards. The question of what constitutes "good regulation" should not be solely dependent on whether the rules are associated with administrative or economic costs, or whether they are restrictive or complex, but primarily on whether the regulation effectively fulfils its intrinsic purpose, e.g. the protection of the employee or consumer. In the opinion of the DGB, a common market requires European rules in order to prevent acts of unfair competition at the expense of the employee, the consumer or the environment.

[3] COM(215)216
[4] C(2015) 3260
[5] C(2015)3262
[6] SWD(2015)110
[7] Better regulation guidelines SWD(2015)111/2; Better regulation toolbox

Furthermore, the DGB fears that the new recommendations of the Commission within the framework of the package for better regulation will lead to extensive interference in **democratic decision-making processes** and will, to a large extent, create **additional costs and red tape in** the legislative process.

3. Detailed assessment

3.1. One-sided focus of the strategy on lightening the burden for businesses

The DGB fundamentally criticises **the one-sided focus of the programme for better regulation**, which primarily aims to reduce the administrative burden on companies. This applies both to the REFIT programme and the composition and activities of the Stoiber Group. For example, the Stoiber Group recommends the rigorous application of "the Think Small First principle and competitiveness test to all proposals for legislation". This means that all legislative proposals have to "to be measured against a competitiveness test demonstrating that the costs of the proposal are outweighed by the benefits". And, within the framework of the package for better regulation, the European Commission has announced that it will place greater importance on the principle of "Think Small First". The DGB recognises that regulation should take appropriate account of the important economic and social significance of small and medium enterprises. However, if, for example, there were to be exemptions in the field of occupational health and safety for SMEs, this would mean that 99%[8] of the companies in Europe would be exempt. Depending on the member state, this would affect 53-82% of employees[9]. Under such conditions it would be impossible for occupational health and safety or the social dimension of the single market to function effectively. In addition, it would lead to the distortion of competition between companies. Every employee must be entitled to the same level of protection, tailored to his or her working conditions, regardless of the size of the company. The interests of all the stakeholders must be taken into account appropriately as part of a socially balanced and sustainable approach, as provided for both in the European Treaties and in the "Guidelines for Better Regulation"[10]. In the opinion of the DGB, **the resulting long-term costs in the event of non-regulation or of an alternative regulation**, e.g. in the area of occupational health and safety, should always also be taken into account when calculating the costs of a regulation. In the medium and long term, there may be an increase in costs for companies due to sick employees, down-time, reduced performance, a low level of employee retention and higher contributions for accident, health and retirement insurance. Also, the social costs must be taken into account, even though some of the consequences, such as reduction in the quality of life due to work-related illnesses, could be overlooked in a cost analysis.

[8] http://ec.europa.eu/growth/smes/index_en.htm
[9] ETUI, Benchmarking Working Europe 2014, p. 95
[10] SWD (2015)111/2

The package for better regulation of 19 May also provides for the establishment of a REFIT platform and a website "Lighten the load, have your say". The DGB is critical of the fact that the sole purpose of this is to provide an interface for reporting so-called "burdens" so that these reports can subsequently be investigated at great effort and expense.

In the opinion of the DGB, it is also important to achieve a reduction in the administrative burden for citizens and companies **through better implementation of European regulation** and to link these efforts with **the e-government strategy**. However, contrary to the thrust of the e-government action plan, this will not be achieved through cost savings in administration, but only through a considerable amount of investment in technology and the training of personnel, and a bottom-up approach to improving work processes. Following the initial start-up phase, this will facilitate a reduction in the costs and efforts of administrative procedures.

3.2. Attack on the social dialogue and the special role of the social partners in the legislative process

The DGB expressly welcomes the announcement by the European Commission that it intends to strengthen social dialogue and the involvement of the social partners, in particular within the framework of economic coordination. In the opinion of the DGB however, the current practice and the Commission's proposals with regard to the **European social dialogue and the particular role of the social partners in the legislative procedure,** stands in clear contradiction to this. The specific role of the social partners is anchored in the European Treaties in Art. 154 and 155 TFEU. According to this, the Commission is tasked with promoting consultation with the social partners at union level and with consulting the social partners prior to submitting proposals in the area of social policy. The current practice of the European Commission to increasingly dispense with the **consultation process with the social partners** pursuant to Art. 154 II TFEU and to engage solely in a public consultation process can be seen to contradict these principles. The DGB certainly supports the efforts of the Commission to achieve more transparency in the legislative procedure, however, it has to be said that the Commission weakens the specific role of the social partners, if their importance and representative function with regard to the world of work is called into question through public consultations. The European Trade Union Confederation represents 90 national and 10 European trade union organisations and thus is the voice of more than 50 million employees. In the consultation process it is therefore not appropriate to equate the statements of the social partners with each individual contribution.

In addition, the DGB views with consternation the European Commission's intention to subject in future even fully negotiated **social partnership agreements pursuant to 155 TFEU, in particular if these are destined to be forwarded to the Council, to an impact assessment that remains undefined to date**. With regard to their specific competence and proximity to the areas of European social policy governed in Art. 153 TFEU, the social partners were granted a special - autonomous - role in the Treaties. The

autonomy of the social partners is, moreover, anchored in Art. 28 of the Charter of Fundamental Rights. To examine agreements of the social partners within the framework of a cost/benefit analysis, for example, fundamentally contradicts the autonomous character of the European social dialogue. The European Commission must provide clarity on this as a matter of urgency. In this regard, the DGB welcomes the fact that the European Commission has at least rejected the original proposal that social partnership agreements must in future be subject to a public consultation process. With regard to social partnership agreements pursuant to Art. 155 TFEU, the DGB also criticises the fact that the Commission refuses for the first time to present to the Council an agreement negotiated by the social partners in the sectoral social dialogue. In April 2012 the **social partners in the hairdressing sector** concluded a European framework agreement on the topic of health and safety at the workplace. These negotiations were primarily concerned with allergies, the risks posed by the materials used, measures to protect the skin and airways, and the need to ensure sufficient space and ventilation in hairdressing salons where chemical substances are mixed and applied. However, for the first time in the history of the social dialogue, the Commission refuses to present the agreement to the Council, even following pressure from numerous member states, and thus to recognise the application of the social partners to convert it into a binding guideline under the usual procedure. Instead the agreement is repeatedly presented as an example of "excessive EU regulation". Consequently, it is not just occupational health and safety that is now being called into question, but the whole of the social dialogue and the specific role of the social partners in the European legislative process.

3.3. Criticism of the methodology: impact assessment / fitness checks / cost/benefit analysis

Before the Commission presents a legislative proposal it carries out a so-called impact assessment with the help of the **Impact Assessment Guidelines,** which were replaced by the Better Regulation Guidelines and the so-called **Better Regulation Toolbox**. The DGB believes that the system of carrying out an impact assessment prior to the presentation of a legislative initiative fundamentally makes sense.

However, the quality of the impact assessment does not depend on the guidelines themselves, but to a far greater extent on the degree to which the guidelines are actually being taken into account. The guidelines from 2009, the newly revised Guidelines for Better Regulation[11] and the European Treaties (Art. 9, 11 TFEU) all make a comprehensive social and ecological impact assessment mandatory as well. In practice, however, it is the opinion of the DGB that the **social and ecological impact** of the Commission's initiatives **are not adequately taken into account** in the impact assessment. A good example is the "**Proposal for a directive of the European Parliament and of the Council on single-member private limited liability companies**"[12], that was presented by the EU Commission on 9 April 2014, according to which, amongst other things, the registered office

[11] COM(2015) 215

[12] COM(2014) 212

and the head office can be separated. A separation of the registered office and the administrative headquarters would, however, facilitate an escape from and out of workers participation for German companies, since German laws on corporate co-determination apply at the registered office. This proposed directive must therefore be considered a risk for best practice in German corporate law and a carte blanche for the circumvention of German co-determination law, which would place under threat the very core of the successful co-determination model. After carrying out a balanced impact assessment, in particular with regard to the "Information and Consultation of Employees" section provided for in the guidelines, the DGB is of the opinion that the proposal should therefore be withdrawn.

The DGB is critical of the proposal that the Council and the European Parliament should be obliged to carry out impact assessments for major changes to the Commission's proposal **during the legislative procedure**. By setting up a committee that can be convened by any of the three institutions if they wish to have an impact assessment, the Commission has moreover created the opportunity for impact assessments to be carried out even against the wishes of the Council and of Parliament. As a result, this could be interpreted as an attack on the democratic process within the legislative procedure, in particular on the rights of the European Parliament. In addition, it will lead to a clear slowing down of the legislative procedure and an increase in red tape.

In this regard, the DGB believes that **the role of the new regulatory scrutiny board is equally problematical**, as it has been granted wide-ranging competences with a view to the whole legislative procedure and will be working even more independently in the future. Given the fact that the committee's vote is held to be binding[13], this threatens to result in a reduction in transparency and control as well as a de-politicisation of legislative initiatives.

In connection with the **cost/benefit analysis** carried out as part of the impact assessments, the DGB requests that the subsequent costs should fundamentally be taken into account, even in the case of non-regulation. In addition, the DGB would like to point out that the benefits of regulation (e.g. reduction in health problems, conservation of ecosystems) are often difficult to measure or to express in monetary terms, which means that appropriate consideration is difficult to achieve and there is a danger that the costs will be seen to outweigh the benefits particularly in the field of social regulation.

In addition, the DGB criticises the implementation of the so-called **"Fitness check" within the framework of the REFIT programme**. The dubious nature and one-sidedness of this procedure is illustrated for example by the fitness check for the working hours directive. The consultation, in which it was not transparent who had actually been consulted, was held in the summer break. The deadline for answering the questions was just one month. Considering the scope and complexity of the material and the fact that it had to be carried out in the holiday period, this deadline was far too short. With regard to the

[13] The inter-service consultation on the proposal can be introduced only following a positive statement by the committee; Statement by the "Regulatory Scrutiny Board", C(2015)3262

contents, some of the questions were formulated in an extremely biased manner. For example, in the questionnaire there were questions asking solely about the problems with regard to the existing directives, but not about the advantages. In the suggestions for changes, questions were asked primarily with regard to the administrative burden and the costs or savings respectively that would be achieved for companies, and the effective purpose of the directive – the health and safety of employees – was only mentioned for the first time in the fourth question. This was also the case with the evaluation of the remaining 24 occupational health and safety directives. The questionnaire contained some serious methodological weaknesses, so that the results ended up with far too much scope for different interpretations and are therefore deemed not to meet the relevant scientific standards.

As a result of this, the DGB requests a balanced, meticulous, scientifically based and transparent execution of the impact assessment, whereby the main thrust of the investigation must be to ascertain the degree to which the relevant directive fulfils its protective purpose. The DGB expressly rejects an examination that one-sidedly concentrates on competitiveness alone (as with the fitness checks). In addition, the DGB requests that, in principle, there should be **more transparency in the impact assessments and fitness checks.** This means that, in principle, details regarding their execution - in particular who was consulted as part of the impact assessments - should be published together with the results. Meticulous and balanced impact assessments can support political decision-making, but they cannot replace it.

3.4. Focus on quality not quantity of regulations

In the DGB's opinion "better regulation" must be fundamentally assessed **on the basis of the quality and not the quantity of regulations**. The DGB fundamentally rejects any lump-sum rule, such as the net target for the reduction in regulatory costs recommended by the Stoiber Group[14] or the proposal to "offset new burdens by removing existing burdens" **("one in one out")** . Such regulations are arbitrary and do not serve to reduce red tape within the meaning of "intelligent regulation" as announced by the Commission.

The DGB is also fundamentally critical of so-called **"gold-plating"** proposals and so-called **"sunset clauses"**.

The purpose of **gold-plating** is to ensure that, as far as possible, the member states do not exceed a level that has been pre-determined in a directive or, if they do so, that they must be able to specifically justify such action. In the opinion of the DGB, this proposal fundamentally contradicts the character of directives and the concept of European minimum standards. In this sense, Art. 153, para. 4 TFEU governs the area of social policy: "The provisions adopted pursuant to this Article do not prevent the member states from adopting or

[14] It is recommended that targets for the reduction of regulatory costs should be defined for all stakeholder groups (administration, companies, consumers, ...).

retaining more stringent protective measures that are compatible with the Treaties." In a European Union with 28 member states, the EU can achieve the objectives anchored in Art. 3 TEU **(such as social progress, a high level of environmental protection)** only by means of ambitious minimum standards and not by means of a lowest common denominator that may not be exceeded.

Moreover the DGB categorically rejects the introduction of so-called **"sunset clauses",** for example, in the area of labour law directives. Provisions that anticipate the automatic expiry of directives do not help to reduce red tape, but on the contrary often result in the iteration of time-consuming and protracted legislative procedures or in the undermining of protective labour law provisions. Legislation should be amended when it is objectively necessary, when it is required due to new developments, not on the basis of fixed deadlines. In addition the awareness of the limited time-span of regulations could lead to procrastination in introducing certain standards.

3.4. Impact on selected policy areas

In the following the **impact of the REFIT programme** is outlined in exemplary fashion for some of the political areas that are of particular importance to the DGB. This list is not exhaustive, however. The DGB also criticises the attempt to call into question current standards, for example in the area of consumer or environmental protection, with regard to their impact on red tape and competitiveness.

3.4.1. Occupational health and safety

The DGB is particularly critical of the fact that the European Commission has decided to examine the **whole portfolio of directives dealing with occupational health and safety** within the framework of the REFIT programme. With reference to the current evaluation by REFIT, the **strategic framework for health and safety at the workplace 2014-2020** [15] that was presented to the Commission in June 2014 does not contain any recommendations for new legislation in this area. The conclusions of the Council regarding the strategy framework do, however, state that it is quite possible that new measures will be necessary.[16] They refer to psychosocial risks at work, the risks caused by new technologies, exposure to (new) hazardous substances and musculoskeletal disorders. In addition, the Council recommends that the implementation of statutory provisions in the member states and in particular in SMEs should be improved. In the opinion of the DGB, better implementation is only possible if inspections in the companies are stepped up and consultation with the operational stakeholders is also intensified. However, we are experiencing precisely the opposite trend throughout almost the whole of Europe, due to the fact that the number of employees in the relevant authorities has been falling for several years. An about-turn must quickly be introduced to deal with this, and not just in Germany.

[15] Memorandum of the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions regarding a strategic framework of the EU on health and safety at work 2014-2020 (COM 2014 (332))

[16] EU Strategic Framework on Health and Safety at Work 2014-2020: Adapting to new challenges – Council conclusions (7013/15 SOC 165 EMPL 85)

In the opinion of the DGB, the European occupational health and safety legislation is one of the main achievements of social Europe. Important, uniform and binding minimum standards for occupational health and safety have been created through this legislation. It serves to protect the health and safety of employees and contributes to creating a level playing field within the European Single Market. In Art. 153(a) TFEU, the European Union and the member states commit themselves to ensure an "improvement in particular in the work environment to protect the health and safety of employees". The European occupational health and safety aquis forms the basis for the national legislation. The German occupational health and safety act, together with its additional laws and regulations, is a milestone. The decent organisation of work is displayed as a guiding principle.[17] In the opinion of the DGB, the existing rules should be further developed, in this spirit, on an ongoing basis instead of placing the current standards under scrutiny.

In addition, the loosening of the health and safety regulations and the lack of any further developments in the area of prevention with regard to mental illnesses threaten to hinder the acceptance of new work and production methods, in particular with regard to the development of "Industry 4.0" and the digitalisation of the services industry. If occupational health and safety standards were guaranteed and if they were also to apply for new methods of production, it would ease their introduction considerably.

In the opinion of the DGB, occupational health and safety is not a field of policy that requires a reduction in red tape and no attempts should be made to introduce such a reduction here. Consequently the DGB expressly rejects any deviation from the minimum standards or any exemptions, for example for SMEs.

We have been at a standstill for years. The **maternity directive** has not been amended, and **the reform of the cancer directive** has been delayed. Every year 100,000 employees in the EU continue to die from work-related illnesses.[18] The cancer directive is obsolete. The thresholds of the current legislation only cover 20% of the actual employment conditions in which employees are exposed to carcinogenic materials and mutagens. On 04.03.2014, the employment ministers from Germany, Austria, Belgium and the Netherlands sent a joint letter to the Commission, with the urgent plea that the cancer directive should be revised as soon as possible. The DGB firmly supports this request.

Urgently required legislation in the area of **musculoskeletal disorders and psychosocial risks and stress at the workplace** has also been relegated to the back burner by REFIT. Just as production methods and work materials have changed and developed over the last 20 years, work requirements and hazards at the workplace have also seen a trans-

[17] see § 2 Working Conditions Act

[18] Takala J. Work-related Illnesses, Identification, Causal Factors and Prevention "Safe Work – Healthy Work – For Life". Greek EU Presidency Conference: www.gr2014.eu/sites/default/files/Work-related%20Illnesses%20Identification,%20Causal%20Factors%20and%20Prevention%20"Safe%20Work%20-%20Healthy%20Work%20–%20For%20Life".pdf (retrievedon 13.04.2015)

formation. Employees are now confronted by new risks, such as having to work with hormonally active compounds and substances that can damage the fertility of both men and women.

In addition, the DGB strongly regrets that the Commission has announced that it intends to withdraw **its proposal for the revision of the maternity directive**[19]. The currently valid maternity directive determines uniform minimum standards for the health and safety and the improved protection of pregnant employees, new mothers and breast-feeding employees. The directive has not been revised since it was adopted in 1992 and improvements to it are therefore required as a matter of urgency, particularly in view of the recommendation of the ILO that maternity leave should be extended to 18 weeks. The proposal of the Commission addressed this point in particular and in addition the proposal that full compensation should be paid during the period of maternity leave, whereby it should be possible to restrict it to the level of the sickness benefit payable. At the end of maternity leave, women in the EU member states would have been given the right to request more flexible working hours from their employer.

Moreover, developments in the job market also present new challenges for occupational health and safety. These include, in particular, **the expansion of the service sector, digitalisation, demographic change** and **new forms of employment and services**. Occupational health and safety must also find answers to the impact of issues such as work intensification, mobile work, temporary employment, an ageing workforce and hybrid systems, in order to guarantee the decent organisation of work. The Commission must react to these developments with new or revised directives. Regulation at European level must cover the full spectrum of workloads that are hazardous to health. Current developments, in particular the dramatic **increase in mental illness,** make more, and not fewer, binding provisions essential.

It is also absolutely not the case that health and safety legislation simply incurs more costs for companies. Quite the contrary. A major study carried out by the German Statutory Accident Insurance Association (Deutschen Gesetzlichen Unfallversicherung DGUV) investigated whether investments in occupational health and safety actually paid off. They came to the conclusion that for every euro a company invests in occupational health and safety, it "gets back" 2.20 euros.[20] The Return on Prevention (ROP) of 2.2 largely comes from reduced numbers of accidents at work, fewer incapacity for work days and an improved company culture.

[19] COM (2008) 637, Proposal for a directive issued by the European Parliament and the Council for the amendment to directive 92/85/EEC of the Council dated 19 October 1992 regarding the implementation of measures for the improvement to health and safety protection for pregnant employees, new mothers and breast-feeding employees at the workplace.
[20] DGUV (2013): Calculating the International Return on Prevention for Companies: Costs and Benefits of Investments in Occupational Safety and Health. Final report. http://publikationen.dguv.de/dguv/pdf/10002/dguv-rep1-2013.pdf (retrieved on 13.04.2015)

Also, a look at the statistics helps to illustrate the necessity and importance of a comprehensive set of legislative rules for occupational health and safety. The number of occupational accidents that had to be reported between the years of 2013 and 2014 in Germany has gone down by 10% (from around 1.1 million to 960.000).[21] The number of fatalities has almost halved. In 2001, 341 employees were killed at work; in 2013 this number was "just" 176.[22] In the opinion of the DGB, however, every employee who loses his life in a work accident is one employee too many. Occupational health and safety rules must therefore be updated and further developed on an ongoing basis.

The role and the **importance of the social partnership** in occupational health and safety cannot be over-estimated. Trade unions are the link between policy and employees and, at the same time, they promote health and safety in the company. Through the participation of the works councils and the employee representatives, health and safety measures are foregrounded and gain acceptance. The Council also recognised this and in its conclusions it encouraged the member states to support the social partners.[23]

However, the DGB is critical of the proposal that information obligations and stipulations, relating to health and safety at the workplace for example (such as in the case of reportable work accidents or the procedure for recognising an occupational illness), which currently must be complied with in writing, could be replaced by electronic means of communication that do not offer the best standards of data security and data protection. In the case of digitalisation, qualified electronic procedures must be implemented that do not permit access to sensitive data by unauthorised persons and that adequately fulfil the documentation function of the former written form, for example.

3.4.2. Labour law

The DGB is critical of the fact that the Commission is considering **a possible revision of the working time directive** within the context of the REFIT programme. The European labour directive of 1993 is one of Europe's essential minimum standards for the protection of health and safety at the workplace. It provides the framework for the national regulations governing working hours. It determines certain minimum standards, such as maximum working hours and minimum rest periods, which must be observed by the EU member states. The issue of whether to revise the directive must primarily be decided by how well the current standard serves the purpose of the regulation – the protection of health and safety at the workplace – and not by the amount of the administrative burden. The DGB firmly rejects any reduction in the current standard, e.g. with regard to on-call time.

[21] BMAS (2015): Statutory Accident Insurance in the Federal Republic of Germany in 2013. Statistical and financial report. P. 11

[22] BAuA: Fatal Accidents at Work . http://www.baua.de/de/Informationen-fuer-die-Praxis/Statistiken/Unfaelle/toedliche-Arbeitsunfaelle/toedliche-Arbeitsunfaelle.html (retrieved on 13.04.2015)

[23] See [8]

In addition, the DGB is critical of the fact that, within the framework of the REFIT programme, the so-called **proof of employment contracts directive**[24] and the **directives on part-time work[25] and fixed-term work**[26] are under review. The employer obligations provided for in the verification directive do not present any superfluous bureaucratic hurdles but are absolutely essential to ensure that employees can enforce their rights and that the control authorities can monitor compliance with the valid protective regulations. The employer obligations that derive from the part-time and fixed-term work directives to inform part-time and fixed-term employees as well as employee representatives about the opportunities presented by an increase in staffing or the removal of fixed terms are also crucial. Only thus can the targets of both directives: protection from discrimination and the equal treatment of employees in fixed-term or part-time employment relationships be realised in practice. The DGB is particularly critical of the fact that both of the directives that are being placed under scrutiny are directives that were negotiated by the social partners within the framework of the European social dialogue.

3.4.3. Workers participation

The DGB critically observes that, within the framework of the REFIT programme, the European Commission is once again examining **three directives governing the information and consultation of employees (mass redundancies, transfers of undertakings and the framework directive on information and consultation)**[27] and has, in the meantime, initiated the first phase of the social partnership consultation. It seems that the study that was requested by the Commission itself and carried out by Deloitte is therefore being called into question. In October 2012, the study found that the legal provisions under review were largely "fit for purpose" and did not require any revision.[28].

It is clear from the consultation document[29] that the main aim of the planned revision is the standardisation of the definitions of "information" and "consultation" in the three direc-

[24] Directive 91/533/EEC of the Council dated 14 October 1991 governing the employer's obligation to inform employees of the relevant conditions governing their work contracts or work relationships.
[25] Council Directive 97/81/EC of 15 December 1997 on the framework agreement on part-time working concluded by UNICE, CEEP and the ETUC
[26] Council Directive 99/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP
[27] Directive 98/59/EC on mass redundancies (http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:1998:225:0016:0021:de:PDF), Directive 2001/23/EC on transfers of undertakings (http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:082:0016:0020:de:PDF) and Directive 2002/14/EC on establishing a general framework for informing and consulting employees in the European Community (http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:080:0029:0033:de:PDF)
[28] Study to evaluate the operation and effects of information and consulting directives on employees in the EU/EEA countries, Deloitte October 2012
[29] C (2015) 2303 of 10.04.2015: https://ec.europa.eu/social/BlobServlet?docId=de

tives, which is to be realised by means of a "new version" rather than a comprehensive revision. Other obvious shortcomings in each of the three directives, will, however, not be addressed, for example the inadequate scope of the directives.

The **framework directive for information and consultation** defines important minimum standards for the member states in the area of the information and consultation of employees. For employees in many European countries it is an important basis for the representation of their interests through local employee representatives. It also guarantees a minimum level of participation at national level for the interlinking of the work of the European works councils with the employee representatives in the member states. The DGB is of the opinion that the threatened dilution of these important standards under the guise of reducing red tape must be rejected.

The **directive on the consultation obligation prior to mass redundancies** states, in particular, that the employee representatives must be informed and consulted before extensive redundancies. A violation of the obligation to provide notification of mass dismissal and the proper execution of a consultation process results in the ineffectiveness of the said dismissals. Moreover, the representatives of employees on company and trade union level are often the final lifeline for employees in existential crises such as the threatened loss of a job. The aim is to mitigate the negative consequences of the redundancies for those employees affected or to prevent the mass dismissals altogether. The obligation to hold constructive discussions on possible alternatives to the mass dismissals has often led to positive results in the past, whereby the material existence of many employees has been secured. One of the central pillars of the work of employee representatives and trade unions is to protect jobs to the greatest degree possible. Any weakening of these information and consultation rights would mean that dependent employees and their representatives would have less influence and protection.

In the opinion of the DGB, similar considerations apply with regard to **the directive on the transfer of undertakings**. The central point here is that the rights and obligations that derive from the current employment contract must be safeguarded in the case of a transfer of undertakings. In particular, a transfer of undertakings does not justify dismissal. In addition, the stakeholders and the employees must be informed about the planned measures in connection with the transfer of undertakings and the conditions of the transfer. We see that, even in the case of the implementation of the existing European regulations to safeguard the rights of employees in the event of the transfer of operations or companies in national law, many member states, including the Federal Republic of Germany, took advantage of the option to circumvent the measures provided for in the directive to safeguard the rights of individual employees and to make them subject to a time limit. This increases the probability, in particular in view of the intended further flexibility due to the proposed reduction in red tape, that such rights will be demanded once again in industrial conflicts. By threatening the social peace, such a (presumed) reduction in red tape would have been bought at a high price and would not be in the interests of its main beneficiaries, the small and medium enterprises.

These three directives currently safeguard framework requirements for a solution-oriented communication process between employers, employees and company-level stakeholders. They define the information and consultation obligations for companies that are aimed at mitigating or, if possible, preventing any possible negative impact resulting from company decisions. The DGB categorically rejects any loosening of these obligations.

3.5. Legal basis and democratic legitimacy of the package for better regulation

In the opinion of the DGB, the package for better regulation that was presented on 19 May 2015 **will have major implications on the future work practices of the European Union** and, in particular, on the legislative process at European level. In addition, the programme will incur costs for the European Union, for example due to the setting up of new committees (regulatory scrutiny board, REFIT platform) and the increase in impact assessments and consultation processes. In this regard, the DGB is critical of the fact that the European Commission has deprived the programme to a large extent from the legislative process. The inter-institutional declaration will be the only object of negotiations with the Council and the European Parliament. A large part of the reforms will be carried out via communications or even internal documents of the Commission (so-called staff working documents). This gives rise to a fundamental question **regarding the transparency and democratic legitimacy** of the Commission's proposals. In this regard, the Commission has also failed to define **which legal basis** it will use to carry out these comprehensive reforms.

Conclusion

The DGB is concerned that a **programme introduced by the Commission to reduce red tape has been turned into a programme for a reduction in regulation**, in which minimum standards in the area of social and environmental policy, as well as consumer protection, are being attacked and are in danger of being accorded less importance in the long term, whereby democratic processes are being eroded. Only through a **sustainable improvement in people's quality of work and life** and a **strengthening of the democratic process** in the EU, and not a dismantling of work and social standards, it will be possible to regain the trust of people in the European Union and its lawmaking.