




Analysis and policy ideas by think tanks in Central and Eastern Europe in response to a range of European Union legislative proposals



WORKING TIME DIRECTIVE



SMALL BUSINESS ACT (SBA)



IMPACT ASSESSMENT GUIDELINES



NOTICE ON THE NOTION OF STATE AID



REVIEW OF EXISTING VAT LEGISLATION



EUROPEAN UNION MERGER CONTROL

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About the publication

This publication is result of cooperation between independent think tanks in Central and Easter Europe (CEE). The purpose of this cooperation is to increase awareness of upcoming legislative initiatives in CEE countries, and to increase the presence of liberal opinions from CEE countries in the EU decision making.

Provided are abridged responses to individual EU public consultations on selected issues analyzed by the think tanks involved.





1. Working Time Directive

Purpose of the consultation

The European Commission's Working Time Directive aims to protect workers from unfair working hours and exploitation by their employers. It does not regulate the wages of workers, but does impact a number of other factors by imposing a limit on average weekly working time and enforcing minimum daily and weekly rest periods. This consultation evaluates the scope and priorities of the Working Time Directive.

Summary of Response:

The Directive's current assumption that the employer-employee relationship is necessarily exploitative or antagonistic is long outdated. Additionally, the emergence of new working patterns and workplace structures requires a reformed approach to workplace regulation. Despite the difficulties associated with a complete overhaul of the current Directive, moderate reform should be considered, and should prioritize simplicity and added flexibility of the regulations as well as adaption to the work practices of the 21st century. Where possible, decisions about workplace management should be left to the discretion of individual companies and their employees.

Any potential reform of the European Commission's Working Time Directive should be focused on ensuring maximum flexibility for employers and employees. Undeniably, working time regulations impact on job creation, the costs of running a business, and the performance of the economy as a whole, and in order to ensure the competitiveness of the European Union's economy, the European Commission should aim to reduce the administrative burden on countries imposed by the working time regulations.

In a pre-industrial society (around 1919) the International Labour Organization (ILO) attempted to regulate working time to prevent extremely long or even unlimited working hours. In the 21st century, nearly one hundred years after that time, there is no empirical evidence to suggest that continued strict regulation of working hours like that which exists in the Directive is an effective strategy to

promote worker health and safety. Such regulations stem from outdated legislative traditions and assumptions. Safety in a rapidly evolving workplace is best ensured through individual and collective technical and organizational instruments used to combat health and safety issues which are specific to the situation.

The Directive stipulates mandatory requirements that employers must fulfil, thus creating an administrative burden on businesses. This burden is particularly prominent in non-standard workplaces. Furthermore, the Directive can obstruct businesses from operating at their full potential by limiting flexibility on working hours and thus conceivably forcing the business to hire extra workers they would not otherwise need. The Directive can also be irrelevant in today's changing world where businesses can use different forms of work such as telework, distant-work, zero-hour contracts, flexitime and performance-based contracts.

In an ideal workplace, workers and employers would be able to independently and individually negotiate the best working time arrangement for each particular situation. This may include long shifts followed by extended rest periods or a number of short shifts, working from home or from an office, working in the employee's own time or working as part of a team. The Working Time Directive should aim to foster this flexibility and not obstruct the worker and employer from reaching the most beneficial outcome.

In regards to the concept of on-call time and stand-by time, the Commission should be cognisant of the fact that technological advances have blurred the lines in our economy between the workplace and the home, and between "work time" and "rest time". Any regulated limitations on working time are growing less and less relevant to the real economic life of individuals and enterprises. A limit to the maximum number of hours that a worker may be required to be on-call or on stand-by could be indicated in the Directive as a recommendation or a guideline, but specific numbers should be agreed upon nationally by sector stakeholders or, even better, within companies themselves.

On the issues of on-call time and stand-by time, decisions handed down by the Courts in specific cases should not be incorporated into the Directive. This is because the Directive should be performed in an "outside the box" manner, leaving open a wide range of possibilities, and the court's decisions are based on a very narrow, specific set of circumstances. In particular, this consultation referred to a number of specific cases (C-303/98 Simap, C-151/02 Jaeger, C-14/04 Dellas) which would codify clarifications on whether stand-by time and on-call time must be counted as working time or not.

Under the current Directive, Member States have the possibility to not apply the average weekly working time limit of 48 hours when the worker agrees to do so individually and freely with the employer, and does not suffer prejudice for revoking such agreement (the 'opt-out' agreement). These arrangements should be allowed to continue. Additionally, the current system allows for "autonomous workers" (such as managing executives) to have complete discretion over their own working time, and Member States have the option of applying the main points of the Working Time Directive to these workers. The allowance for such flexibility in the Directive is beneficial, and should indeed be expended to include other categories of workers who should be exempted from the conditions as well.

The Directive should be amended in light of several modern workplace trends, such as the increased possibility of teleworking, zero-hour contracts, the emergence of flexitime and performance-based contracts. The Directive should recognize the advantages of a constantly adapting economy and be updated to reflect regulations which are appropriate for a work environment containing these alternative arrangements.

While it is clear that a complete overhaul of the Working Time Directive is impossible in the current political climate, moderate revisions should be considered. These should focus on updating the Directive to being suitable for the modern workplace and minimizing the regulatory burden on businesses. The outdated tone of protecting workers from their exploitative employers should also be avoided. Overall, it should be recognized that the best interests of all parties involved are most effectively protected when these parties act on their own behalf without government interference.



2. Small Business Act (SBA)

Purpose of the consultation:

The European Union's Small Business Act has been in operation since 2008 and aims to support small and medium enterprises. The consultation aimed to survey a range of sources to assess what could be done to make life easier for small and medium enterprises in the future.

Summary of Response:

The EU should focus on reducing the regulatory burden on small and medium enterprises. This should be done by reducing the bureaucratic inconvenience faced by small businesses and minimizing the costs of establishing new enterprises in order to encourage innovation.

All reform to the Small Business Act (SBA) should be focused on reducing the administrative burden on small businesses and making the European Union's economy one which is as internationally competitive as possible. New innovation should be encouraged, and priority should be given to measures that reduce the time and cost associated with establishing a new company. Measures such as mandatory tests for new enterprises or laws which ensure all bankruptcies are covered should be given far less priority. The EU can foster the growth and health of small and medium enterprises by simplifying the access industrial and intellectual property, providing consultation about burdensome legislation, encouraging countries to simplify tax procedures for start-ups, and addressing legislative bottlenecks which impede the expansion of new companies.

The European Union should also be wary of introducing new regulations, and should incorporate an assessment of regulatory impact into its legislative process. In some cases, the cost of implementing the new regulation could be higher than the additional benefits the legislation would create. Care should also be taken before implementing overly optimistic and expensive "proactive programs" like the Commission's proposed "clusters strategy". Innovation can be promoted by removing barriers to legal operation and reducing the bureaucratic burden on companies, not through wasting money on other programs.

In order to assist with opening up the finance market for new companies, the EU should lower the tax rate for reinvested earnings. This would expand the pool of available capital because investors would have the potential of higher return for their investment. Removing obstacles to crowd-funding and raising awareness about its availability as well as risks and benefits could also be beneficial. Helping to revive EU securitization through appropriate legislation should also be prioritized.

The Commission should not, however, prioritize initiatives aimed at doing the enterprises' work for them. Schemes to help startup companies do business outside the EU or establish a "European Resources Efficiency Excellence Centre to inform and advise small and medium enterprises and provide support on this field" are less helpful than simply reducing the administrative burden on the European companies.

As part of a comprehensive policy approach to fostering growth and health of small and medium enterprises, the European Union should also support an international environment that is more conducive for individual enterprises to do business by establishing and following up on small business dialogues with key EU trade partners.

It is also important to foster future innovation in the EU's small business economy. Scaling up the "Erasmus for Young Entrepreneurs Programme" from 800 to 10,000 exchanges a year by 2020 would be very beneficial and help to achieve this goal. Engaging students as young as secondary school age would also be useful in supporting the small and medium enterprises, and the Commission should aim to set targets for all EU countries to integrate entrepreneurship into secondary school curricula as a key subject by 2018. Consulting entrepreneurs throughout Europe to collect ideas for new initiatives to boost innovation in youth should be a key priority of the Commission.

Finally, the Commission's approach should include significant emphasis on boosting skills development. Worthwhile ideas include training schemes for skilled workers, directly involving enterprises from relevant sectors, a dual vocational training system and working towards a better overall image of skilled crafts and technical jobs in small and medium enterprises. The EU could also investigate the possibility of creating courses to assist businesses in better understanding the regulatory requirements on them, including potential courses for understanding and interacting with government institutions.

The main focus of the Small Business Act should be on reducing the bureaucratic burden on businesses and allowing innovation to flourish in the economy. While significant attention should be given to training young entrepreneurs and skilling them for the sector as well as fostering positive business conditions with nations outside the EU, the main hindrance to the sector currently is the burdensome regulation. The EU should focus on making its economic conditions as internationally competitive as possible.



3. Impact Assessment Guidelines

Purpose of the consultation:

The European Commission aims to achieve its policy goals without imposing unnecessary regulatory burdens, and uses a variety of tools to help it achieve this aim. One such tool is EC's Impact Assessment Guidelines, which encourage the Commission's initiatives and proposals to be transparent, comprehensive and based on balanced evidence, and consider the value of EU action in any given area and a cost-benefit analysis of any alternative courses of action. The Commission undertakes constant review of their Impact Assessment Guidelines, and revised them in 2014. This consultation was designed to seek stakeholders' views on the draft revised guidelines.

Summary of Response:

The Impact Assessment Guidelines should not be used as a tool to automatically support new EC legislative initiatives. Rather, they should contain detailed information about alternative, non-regulatory options and this information should be presented impartially.

The European Commission's Impact Assessment Guidelines will be most effective if they involve an exhaustive process that is free from bias and considers all policy options. The guidelines should not become a tool to support the political whims of any legislators and should not be phrased in such a way that presupposes support for any new legislative interventions.

Firstly, the Impact Assessment Guidelines should provide concrete examples of alternative policy options that do not involve new regulation. The guidelines should also incorporate success stories about times where non-regulatory policy options were implemented in the past.

The guidelines should be developed to also consider the indirect economic, social and environmental impacts associated with the proposed policy action. Any existing questions which are tendentious or biased should be amended or removed, to ensure that the guidelines establish a clearly independent review process. The guidelines should never be used to promote a political agenda.

In addition to their existing involvement in the consultation process, stakeholders concerned about any particular part of proposed legislation should be given the opportunity to submit an alternative Impact Assessment Report. This would expose a different perspective and promote transparency and careful consideration within the EU's legislative process.

A main concern with the current Impact Assessment Guidelines is that they appear to contain controversies and contradictions regarding the role of the guidelines in the EU's policy-making process, the purpose of the guidelines and the direction of the recommendations. While an impact assessment is a very valuable procedure, much of the current guidelines document seems to focus on just a "regulatory impact assessment". The difference is that impact assessment guidelines take effect at the very beginning of a policy-making decision and evaluate various different policy approaches, whereas regulatory impact assessment simply assesses the justification for new regulation. Confusing these two approaches is inadvisable, as they serve two different functions.

The beginning of the current Impact Assessment Guidelines highlights the importance of avoiding unnecessary regulatory burden. The constant reminder of this fact is a welcome component of the guidelines, as it supports initiatives like deregulation and cutting red tape. This sentiment is undermined by the tone later in the guidelines, however, which positions the guidelines as simply an instrument to ensure transparency, comprehensiveness and fair-mindedness when introducing new regulation. This "rubber-stamp" approach, where the Impact Assessment Guidelines are treated as nothing more than a means to legitimize the introduction of new regulations, is not conducive for a comprehensive review of proposed policy. Definitions and wording in the guidelines should never presuppose automatic support for EU intervention on any given issue; rather, they should give equal consideration to all alternatives and assess all alternatives against consistent criteria.

If need be, impact assessment procedures can be merged with other early stages of policy formation such as the examination of concept papers, studies, research or consultation strategies. This reform would ensure that the impact assessment has a meaningful impact at a meaningful stage of the policy process.

The Impact Assessment Guidelines are weakened by the existence of unnecessary questions such as "Does it bring about minimum employment standards across the EU?" and "Does it have a different impact on women and men?" which are not key impact identification questions. Unnecessary, irrelevant or overly specific questions should not be included, but questions which prompt consideration of the indirect economic, social and environmental impacts of legislation should definitely be included in the guidelines, such as: "Does this option distort the natural preferences of owners, consumers, businesses and citizens?", "What is the likelihood that the implementation of this option will lead to non-compliance with the new requirements?", "Does this option create too heavy a burden and too high a cost to be complied with?", "How will it affect the shadow economy?" and "How will it affect corruption?".

In summary, the Impact Assessment Guidelines have the potential to contribute meaningfully to the European Union's policy processes; however, this function can only be effectively fulfilled if the guidelines are not biased towards the introduction of new regulatory measures.



4. Notice on the Notion of State Aid

Purpose of the consultation:

The notice on the notion of state aid is a part of the EC's state aid modernization (SAM) program, and intends to provide guidance and information about state aid measures in accordance with Article 107 (1) of the Treaty for the Functioning of the European Union (TFEU), which says that aid granted by member states which distorts the natural operations of the market is incompatible with the internal market. The consultation seeks responses from stakeholders in regards to their current state aid program, and encourages opinions on all aspects of the notion of state aid.

Summary of Response:

One main issue with both the consultation and the Notice on the Notion of State Aid itself is ambiguous wording, and it is recommended that steps are undertaken to reduce this ambiguity, including a provision of a working definition of “economic activity”. The Commission has also failed to consider the possibility and the potential benefits of allowing market competition in areas such as health, infrastructure, education and social security. Lastly, the State’s distortion of a market through state aid should be minimized and state management of resources should be executed with extreme caution.

The primary issue with the current Notice on the Notion of State Aid is the legal uncertainty which stems from the lack of specific definitions in the documents. The only clause in the current notice that works to define an undertaking refers to an “economic activity” without clarifying what the definition of an economic activity is. This can result in much ambiguity in interpreting the notice and can create significant confusion. The notice should include a clear definition of an economic activity, such as: “An economic activity is any activity that can be provided under competitive conditions (with regard to both competition in the field and competition for the field); in turn, an activity should be considered as an economic activity if a competitive setting legitimately exists, and is not under Antitrust or other disputes at the EU level, at least in one member state”.

Clearly defining key terms in the notice would lead to a clearer understanding of the scope of the regulation and a clearer list of areas which belong in the regulatory field. Under such circumstances, the Notion on the Notice of State Aid would be very useful because a member state willing to exercise public powers over that same activity should provide a detailed justification and explain political, social, economic or other reasons why it intends to suspend, limit or hinder competition.

Another problem with the current attitudes in relation to state intervention in the EU is that several member states regulate the health, education, social security or research sectors as purely non-economic activities, despite the possibility and the potential benefits of them operating in a market. At the very least, funding of specific undertakings in this field should be awarded in a transparent way; if possible, through non-discretionary, performance-based schemes.

In the field of health in particular, the role of the State should be vastly reduced. If healthcare is going to be classified as an economic or non-economic service, this process should be done on a case-by-case basis and account for the specifics of each health care service, as not all health care services are crucial for the preservation of human life. Non-crucial or elective services should be considered as economic activities, and healthcare providers should be allowed to compete in a market for services.

Although the field of infrastructure has historically been considered an area exclusively within the realm of State activity with little potential for competition, the Notice on the Notion of State Aid should be updated to reflect the significant scope for competition in the field. Large infrastructure items which are supposed to be utilized economically such as highways, ports and airports can and should be increasingly treated as economic activities themselves and, as such, funding of their construction should be open to competition. As a general rule, ancillary economic activities should also be regulated as economic activities and should not be provided outside a competitive framework.

The Notion on the Notice of State Aid could assist the interpretation of state aid regulations by removing ambiguity around the scope for government intervention. One “grey area” of particular concern is the government’s ability to provide regulatory advantages in addition to simply subsidizing something. This means that a government can create legal conditions for an undertaking’s economic success that would not exist in an openly competitive scenario. Greater clarity as to what is considered legitimate government intervention in creating regulatory advantages is needed in order to prevent harmful interventions.

Another instance of indirect state aid occurs when government-owned (or government-controlled) companies bid in public tenders set out by their own public shareholder. In this case, potential issues can arise from private companies losing faith in the tender process due to perceived conflict of interest, even in circumstances where none actually exists. Therefore, the Notion on the Notice of State Aid should ensure that public undertakings are prevented from bidding on tenders which are established by entities that have a stake in the undertakings themselves.

One last component of state aid which is currently subject to counterproductive controversy is state-driven redistribution between companies. A particularly prominent example of this occurs in the energy sector, where policies aimed at promoting renewable energy sources can have a distortionary effect on the market. In order to avoid discriminatory or unfair practices, policy objectives should be



pursued in a way that is purely driven by the environmental, social or other specific non-economic benefit they are designed to achieve. For example, subsidy schemes that pay different prices to technologies that deliver the same output should be regarded as state aid.

Any kind of state aid always distorts competition and the market. State aid should be limited wherever possible because state intervention in a market confers benefits to some members of that market while disadvantaging others. As a general rule, no financial support should be provided by the state to undertakings competing within a liberalized market. Whenever a competitive model is applied to a field, financial support should only be provided through open, non-discriminatory tenders and any conflicts of interest should be accounted for.

The Notion on the Notice of State Aid deals with a very sensitive issue. State intervention in any area has the potential to distort the market forces and cause significant problems for both the government and the enterprises involved if it is not limited and regulated correctly. As such, the Notion on the Notice of State Aid should include clear definitions on key terms such as an “economic activity”, and remove ambiguity around indirect methods of providing aid.





5. Review of Existing VAT Legislation

Purpose of the consultation:

Since 2013, the European Commission has undertaken a review of the Value Added Tax (VAT) regime, and has investigated the principles that must underlie any reformed system as well as determining the priority actions to create a simpler, more efficient and more robust VAT system in the EU. This consultation provided an opportunity for stakeholders to express their views on the VAT.

Summary of Response:

The European Commission presents five options for VAT reform which have varying degrees of merit, but these failed to include a very important other option, which involves removing the VAT and replacing it with a sales tax. This option would reduce existing competition distortions, reduce compliance and administration costs and increase the transparency of the taxation system.

Of the five options presented by the European Commission in their “Review of existing Value-Added Tax (VAT) legislation on public bodies and tax exemptions in the public interest”, the first option is referred to as the “full taxation model”. This is considered to be the most comprehensive reform proposal, because it eliminates the competition distortions that exist when certain public bodies do not pay VAT. Significantly, however, pursuing this option of a taxation model would increase the tax burden on European taxpayers, who, on average, already pay the highest tax in the world. While a non-discriminatory taxation system is a good idea, the European Union should prioritize lowering tax rates, not an overall increase in taxes.

According to the 2013 edition of the European Commission’s “Taxation Trends in the European Union”, the overall tax ratio stood at 38% of GDP in 2011, compared to 25.2% in the US and 28.7% in Japan. This uncommonly high tax burden not only hurts consumers and businesses, it undermines the competitiveness of the region. The European Commission’s consultation paper “Review of existing Value-Added Tax (VAT) legislation on public bodies and tax exemptions in the public interest” mentions the potential for a full taxation model to coincide with a reduction in the value added tax



rate, however, a reduction has not been guaranteed, and even if implemented, is unlikely to be large enough to compensate for the tax increase which would result from full taxation of services performed by public bodies.

The second option presented in the European Commission's review involved a "refund system", whereby public bodies could have their value-added tax refunded. This proposal is extremely problematic, as there is no justification as to why this refund system would only be applicable to public bodies. The arguments in favour of refunding tax paid by public institutions also hold for non-profit institutions such as charities, associations, quasi-governmental or non-governmental organisations. These organisations could also outsource their non-core activities, but are disincentivized from doing so due to current value-added tax legislation. The proposed refund system would therefore create an unfair advantage for public sector bodies and would fail to eliminate output distortions.

The third option mentioned in the European Commission's review is inadvisable. It involves deleting Article 13 of the VAT legislation while keeping tax exemptions in the public interest. There are two main issues with this approach. Firstly, this option would keep some market distortions intact, as it would fail to reform the supply side. Secondly, this would increase the tax burden on European taxpayers, which is undesirable, as outlined above.

The fourth and fifth options, involving sectorial reform or selective amendments to the current legislation, would be inadequate solutions for the current problems with the VAT legislation. Again, they would fail to reform supply side distortions and they would increase the tax burden.

The European Commission's review of potential reforms to the VAT legislation is inadequate because it fails to consider the option of replacing the VAT altogether with a sales tax. This option would achieve the goal of reducing competition distortions, as well as confer a number of other benefits to the economy.

Firstly, the replacing the VAT with a comprehensive sales tax would significantly reduce compliance costs on businesses and administrative costs for tax administrators. The VAT is an extremely complex taxation system, and causes a number of bodies for public and private organisations. For instance, there is no standardized method of administering VAT for public bodies, tax administrator decisions on VAT rulings can vary case by case, which creates uncertainty and a lack of transparency. Additionally, administrative burdens are borne more noticeably by smaller businesses than larger businesses, so replacing the VAT with a simplified system would ensure small businesses are not disadvantaged.

The second significant benefit of replacing the VAT with a sales tax is that it would increase the transparency of the taxation system for consumers. Under the current VAT system, European consumers are unaware of the amount of VAT they are required to pay. In contrast, a sales tax (which is levied at the point of purchase but is not included in the price tags on store shelves) is more transparent because consumers will be able to track how much tax they pay. This transparency is not only a good idea because it upholds the principle of fairness in allowing people to see how much they pay in tax, but also healthy for the interaction between citizens and the state. Consumers who are constantly aware of how much they pay in tax can use this knowledge to exert pressure on the state to spend this money wisely.



The most meritorious proposal, therefore, for reforming the European Commission's Value-Added Tax legislation is not included in the "Review of existing Value-Added Tax (VAT) legislation on public bodies and tax exemptions in the public interest". There are a range of problems associated with the five options discussed in this review. In order to promote greater transparency and an efficient taxation system, the VAT system should be replaced entirely with a sales tax.



6. European Union Merger Control

Purpose of the consultation:

The European Commission initiated the consultation to gather data on suggestions for improvements to existing merger control laws. This consultation was part of a wider review into making the merger control legislation more business-friendly, simple, effective and streamlined.

Summary of Response:

The suggestion of expanding merger control to the field of acquisitions of non-controlling minority shareholdings is not encouraged, as it would not be effective but would serve to increase the administrative burden for both the Commission and companies. Merger regulation should, however, be simplified, and it would be beneficial for both businesses and the Commission if mergers which do not include horizontal or vertical competition are excluded from the field of merger control. Mergers which involve the creation of a joint venture located and operating completely outside the EEA should also be excluded.

The European Commission's public consultation towards more effective European Union merger control investigates two main possibilities for reform. The first, which would involve expanding the scope of the EU's review powers into the field of non-controlling minority shareholdings, is not advisable. According to the European Commission's White Paper, there is a possibility for companies to acquire minority stakes in their competing companies and thus influence the behavior of their competitors, reducing competition in the market. There is suggestion that reform to ensure that the Commission could examine transactions involving non-controlling minority shareholdings will allay concerns about any potential endangerment of fair competition.

Such amendments to merger control would not protect the competitive market. The White Paper claims that the acquisition of a minority shareholding may:

- Lead to undesirable horizontal unilateral effects, as one party may have an increased ability and incentive to raise prices or restrict output in the market,
- Enable the acquirer to gain a competitive advantage in the market by increasing the cost of rival goods,
- Enable the acquirer to use its position to restrict the operations of its target firm, thereby weakening the target firm as a competitive force in the market,
- Enhance the ability and incentive of market players to coordinate in order to achieve supra-competitive profits, and
- Lead to foreclosure, particularly an input foreclosure, given that the acquirer is only forced to absorb a small part of any potential loss in the target firm's profits.

While, to an extent, there may be some valid concern about these possibilities, the acquisition of only minority shareholdings does not pose a legitimate threat to competition. Furthermore, the act of acquiring shares inherently transfers the right to exert influence over economic parameters to the new shareholder owners. The EU should make no attempt to undermine this right. The restriction of such rights would diminish the value of shares, as every additional regulatory obstacle decreases the value of the transaction it is limiting. In this case, parties would be forced to devote time and effort to notifying the Commission about their transactions rather than actually carrying out their business and generating income. Additionally, it should be noted that shareholding transactions are carried out between two parties who are willfully and voluntarily engaging in a contract. Any company can choose whether or not to sell part of its shareholdings and, if it does, then it relinquishes part of its influence over control of its firm to the buyer. Restricting this influence would unfairly negate the buyer's full rights over their shares.

It is also important to note that the transactions which are specifically mentioned in the White Paper investigating merger control are non-controlling minority shareholdings. Such shareholdings have the ability to increase the influence of a shareholder over the targeted firm's economic parameters, but not to an extent that would legitimately pose any serious threat to the competition. This is another indication that proposed amendments to the merger control regulations are not necessary.

A targeted notification system has been proposed to carry out the additional regulation mentioned above. This could generate further negative consequences, as it would require an increased number of merges to be subject to possible review by the Commission. This would increase the time, human resources and cost involved in a number of merges, as well as increasing the work burden on the Commission. Furthermore, such a system is incompatible with the current stock market system because the majority of stock contracts are now carried out automatically. The new regulations would mean that, if a party bought enough shareholdings to meet the requirements of the Commission, then the automatic purchasing procedures would be blocked in order to notify the Commission. Such processes would be harmful to finance markets and individual companies.

Lastly, the impact assessment of this proposal claims that the Commission would intervene in 1-2 additional cases per year under this new legislation. This means that the regulation would have no practical impact in protecting competition, and that expanding the scope of the Commission's review would only create an additional administrative burden.



The second proposal in the white paper is one that would simplify the merger regulations. This involves amending the regulations so that the creation of a joint venture located and operating totally outside the EEA would not fall under the jurisdiction of the Commission's merger control. Such ventures should not even require notifying the Commission.

Furthermore, in order to further simplify merging procedures, the Commission should be empowered to exempt certain categories of transactions that do not normally raise any competition concerns from notification requirements. This could include transactions which do not involve any horizontal or vertical relationships between the merging undertakings.

The proposal to simplify the Merger Regulation would be extremely beneficial for both the Commission and businesses. Any reform to merger laws should ensure that a minimum burden is placed on businesses and administrators involved. As such, the expansion of merger control into the field of acquisitions of non-controlling minority shareholdings is inadvisable as it imposes an unnecessary additional burden and would not achieve the goal of protecting the competitive market.



References to European Commission Consultations

- Working Time Directive:
<http://ec.europa.eu/social/main.jsp?catId=333&consultId=14&visib=0&furtherConsult=yes&langId=en>
- Small Business Act: http://ec.europa.eu/enterprise/policies/sme/small-business-act/public-consultation-sba/index_en.htm
- Impact Assessment Guidelines: http://ec.europa.eu/smart-regulation/impact/consultation_2014/index_en.htm
- Notice on the Notion of State Aid:
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