

Mr Maroš Šefčovič
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Foresight
European Commission
1049 Brussels

By e-mail

Brussels, 16 April 2021

Better regulation

Dear Vice-President,

We are looking forward to seeing the upcoming Commission communication on better regulation, and to working with you and the Secretariat-General in following up the communication. I hope you will allow me meanwhile to raise a couple of general points which may be relevant to this. My colleagues would be happy to give your services the detail behind these points if useful.

Consultation timing: We were pleased to see the Commission seeking to catch up with its work programme at the end of last year after the delays caused by the COVID pandemic, but this caused some real problems. Some extra time for responses was allowed to take account of the Christmas period in line with the better regulation guidelines, but the spirit of these – to ensure stakeholders time to consider the ideas and respond - was not adhered to in a lack of coordination between the DGs asking for responses. Having spoken to other associations, we were not alone in facing the challenge of responding to some 30 consultations simultaneously in the last 2 months of 2020 and first weeks of 2021, some of which we were unable to cover due to shortage of time. I will not repeat here our letter of last year, in which we pointed to another issue reflecting the rush to get proposals out, where some DGs ran both roadmaps and consultations at the same time, which is not in line with the guidelines. **We would ask** the Commission to work to phase such exercises, and thus ensure that this volume of simultaneous consultations is avoided in future.

Quality of questionnaires: as we have discussed with your cabinet, the design of many of the questionnaires and the individual questions was often not of the standard which I know you would like to see. Many of the questions were either impossible to answer, were closed questions with only one answer, or sought opinions on very vaguely-worded questions. In others, questions combined two or more ideas but expected a single answer. In too many exercises, it seemed that the consultants used had little understanding of the issues. This leaves an unfortunate impression that some individual DGs are still regarding consultations as a tick-box exercise rather than a serious attempt to gather stakeholder views and model their proposal on the basis of what may actually work best.

In all this, we rely on our members' commitment to the often considerable work involved in helping us produce constructive and considered answers to Commission consultations, but we can only continue to attract that commitment if our members feel that the exercise and their answers are being taken seriously. **We therefore ask** that the Commission address this issue and drive improvement in the design and management of such consultations.

European agencies: These have wide powers to propose and implement often very important rules affecting the market. We welcome very much their growing willingness to engage with stakeholders, but they often fall well short of the better regulation guidelines in how they approach this. They often restrict the time for responses below those set out in the guidelines, and use workshops, called at short notice, and with very limited numbers of stakeholders allowed, as their main or only means of

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consultation. **We would ask** the Commission to bring the practices of the agencies in question fully into line with the guidelines as applied by the Commission services.

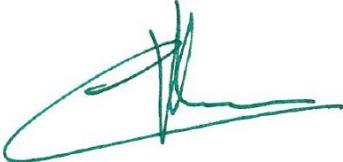
Implementing acts and guidance: A number of problems have arisen over the last couple of years with significant delays in the Commission producing necessary implementation guidance and also the implementing acts needed to provide detail of implementation of general framework legislation. In some cases, the Commission has been flexible and allowed an extension to take account of this delay, but in the majority, this has not been the case. I would mention one important example - the Single Use Plastic Directive, on which I wrote to Commissioner Sinkevicius last November and am writing to him again this month. Our members faced the requirement to introduce completely new labelling in less than 4 months, as the guidance and implementing legislation had been so delayed, and no extra time given for implementation. This will have a considerable environmental impact as we will have to discard a significant stock of plastic packaging which could otherwise have been used up before introducing the much-delayed new label. In other cases, guidance has been missing for months after the date foreseen in the legislation, and even after the legislation had entered into force. We would like to discuss with your services how this can be addressed to reflect the real-world challenges faced by business if the deadlines for such guidance and implementing legislation are missed. **We would ask** the Commission to change its approach and in future systematically provide, in legislation which includes provision for implementing measures, for the implementation period to start from the actual publication of such implementing legislation or guidance. This would avoid the otherwise reasonable implementation period foreseen in the original legislation being so curtailed by such a delay in producing the necessary measures as to render its implementation unfeasible. Meanwhile, we would also ask you to issue guidance to DGs to provide for an automatic extension of the implementation date if such guidance or implementing legislation is unduly delayed.

Fit-for-the-Future Platform: Finally, we had considerable hopes that, as was suggested when it was announced, the Fit-for-the-Future Platform would be more effective, open and dynamic than its predecessor. We and, as I know, a number of other European organisations, were disappointed at the lack of ambition in the work programme of the platform proposed by the Commission, and also at the manner in which it was adopted. The programme included almost none of the suggestions from its members, a number of whom are senior SME Envoys with a real insight into the challenges faced by the small firms who make up 90% of our membership.

This is for us an important part of the better regulation agenda, yet very few of the measures now for review reflect the list of problematic legislation which, for many years, we and others have been highlighting to the Commission as urgently needing scrutiny in this forum. We are strong believers in harmonised rules and the single market, but it is in everyone's interest that these reflect what is actually happening in the market. **We would ask** therefore that, in next year's programme, the Commission to seek to take on board more of the platform members' proposals and use the platform to make a real difference to the effectiveness and focus of European legislation.

In closing, I would repeat our strong wish to support you and your services in making the better regulation agenda, and thus the legislation ultimately proposed, work for everyone involved.

Yours sincerely,



Christian Verschuere
Director-General