

69,000 pages of federal decrees are too many: Deregulation is essential!

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The Western Hemisphere – the USA and EU as well as Switzerland – is suffering more and more under a continually increasing flood of legislation, overwhelming the industry and causing a sustained strain on the economy. It is overwhelming because it is assumed that we know which regulations should be used; an assumption which no longer applies today with sufficient legal certainty. It is also overwhelming because the cost required to safeguard compliance with the regulations has taken on proportions which exceed by far the benefits of the regulations themselves. It appears to me to be the task of all countries belonging to the IACCL, to work towards efficiently counteracting this trend. In this connection, some thoughts on the current situation in Switzerland shall be made in the following:

Since the Swiss National Bank discontinued the minimum exchange rate of the Swiss Franc to the Euro on January 15, 2015, Swiss industry has suffered under a strong relative price increase for its products. Many trade sectors (export industry, tourism, retail business) and regions (border areas) have been hit hard. A number of companies have announced major job cuts for 2016. Switzerland has an unemployment rate higher than at any time over the last six years. A slow-down of the international economy could lead to further job cuts.

Deregulation – a primary concern for industry

In this situation, companies and trade associations do not claim higher subsidies or a nationwide "industry policy" from politicians, as is usual in other countries in similar situations. In fact they ask for a reduction of the increasing flood of legislation.

Is over-regulation a "subjective" phenomenon (as the Federal Council calls it) or is it objectively measurable? What should be done? At the end of 2015, the international World Economic Forum WEF carried out inquiries; Swiss companies stated that their biggest problem was over-regulation. Also with regard to business obstacles, Switzerland is way behind the leading Asian countries. Companies prefer to spend their time, personnel and financial resources towards successful running of their business. Regulations which hinder them in this objective are perceived as significant locational disadvantages and result in increasing relocation and decreasing attraction of new companies.

Regulation at enormous cost

A study carried out by the Swiss Trade Association estimates regulation costs paid by companies, citizens and administrations to be 60 billion Swiss Francs annually or 10% of the Swiss GDP! This is more than the contribution of the machine industry to the Swiss GDP! The Swiss Federal Council itself estimates the cost of the most important regulations alone to be 10 billion Swiss Francs per year:

1.3 billion Swiss Francs for food hygiene, 1.6 billion Swiss Francs or 6% of all construction volume for civil engineering building approvals, 1.8 billion Swiss Francs for the 4,000 pages of environmental legislation, 1.2 billion Swiss Francs for 850 pages of work and accident safety regulations. Regulations make rebuilding and renovation work up to 32% more expensive - which significantly lowers the readiness of companies to invest.

Example building permits for EMS-CHEMIE in Switzerland

Global leading Swiss manufacturer of high-performance polymers, EMS-CHEMIE AG, wanted to increase production capacity for the manufacture of high-temperature polymers (over 96% export business) at its main production site at Domat/Ems (Canton Grisons, Switzerland). This capacity increase involved a small addition to an existing eleven-storey building which was originally built during the 1960's. As requirement to receive the building permit for the extension the condition was imposed on EMS-CHEMIE to additionally renovate the whole eleven-storey building according to the latest fire prevention regulations! This additional cost of 1 million Swiss Francs would have made the whole capacity increase investment in Switzerland uneconomical. Also at the Domat/Ems production site, during renovation of a 30-year-old quality testing laboratory, the local authorities demanded to build an additional new fire-safe stairwell at a cost of 200,000 Swiss Francs!

At the 37-year-old production site of the EMS-CHEMIE subsidiary EFTEC at Romanshorn (Canton Thurgau, Switzerland), EFTEC was suddenly confronted with such stricter environmental protection regulations that the costs involved would have been the same to transfer the whole production site to another location abroad!

In all these cases, EMS-CHEMIE negotiated at length with the local authorities to find better solutions and to preserve the Swiss production locations. Thanks to their understanding for the economic consequences, it was possible to find an agreement with the cantonal authorities on less expensive and just as effective solutions and to maintain the location in Switzerland. Every foreign investor, however – and Switzerland is dependent on these – would not undertake this kind of effort, but would capitulate and invest in other locations.

Increasingly regulated financial sector

Regulation in the financial sector is steadily increasing. Since the financial crisis in 2008 it has been expanded in a massive way and the far-reaching competences of the Swiss Financial Market Supervisory Authority (FINMA) have been extended. In 2002, 30 pages were sufficient to govern equity financing for banks. In 2004, this had risen to 347 pages and with Basel III in 2015 the rules and standards now fill a 616 pages! The Swiss Chief Economist of the UBS estimates the additional costs arising from this increased regulation to be 900 million Swiss Francs per year for the UBS alone! Within five years, the workforce of the FINMA has increased by 44% to 481 employees; fees and charges have even increased by 66% amounting to 142 million Francs! During this period the FINMA published 61 circulars totalling 1000 pages which have a legal character – without them ever being subjected to a parliamentary legislative process!

5.6 kilos of new food regulations

The new food regulations issued by the Swiss Federal Council for consultation in 2015 covered 2,000 pages, weighed 5.6 kilograms and caused one-time regulation costs of 270 million Swiss Francs and annual costs of 46 million Francs for the companies affected. New is that allergens should now be traceable and declared – on the menu card or packaging. Bath and shower water is considered as a foodstuff, even though this is already regulated in detail at cantonal level. The effects will have a direct impact on tourism and the retail business – trade sectors which are already suffering greatly from the strong Swiss Franc! Every restaurant and every hotel would need to plan for one-time costs of 4,000 Francs and 575 Francs each year. Luckily these regulations have not yet been introduced and hopefully never will be ...

Increasing regulations: The facts

Is there also a problem with regulation in Switzerland from an objective point of view? Yes, the figures prove it: Since 1984 the number of Swiss federal decrees has grown steadily. Since 1990, this growth has doubled. On January 1, 2016, 4,900 federal decrees with a total of 69,000 pages were in force. Every week another 120 pages of additional federal legislation are published! It is alarming that today, more than half of all federal decrees are treaties and the trend is increasing! 30% are ordinances which, on average, are twice as long as the laws themselves. This means that 90% of all federal decrees are generated directly by the Federal Council and administration! Parliament is only responsible for 10% and popular initiatives make up only 1% of all federal decrees.

Where will this over-regulation lead? As mentioned at the beginning, it will lead to people no longer knowing the regulations and not being able to use them. If we applied them all, we would be simply brought to a standstill. The legal system is becoming increasingly meaningless and mutating into an instrument which is brought to bear in the case of disputes. In legal cases, highly paid lawyers (the number of lawyers in Switzerland has increased by 30% over the last 10 years by the way), search painstakingly through thousands of pages looking for arguments. In the end, the judge makes a decision on this basis which is far away from daily use and is understood only by lawyers.

All deregulation attempts so far have failed

Various political motions have had deregulation as their goal. In 2008, 199 outdated decrees were then eliminated and 161 shortened. Only 2 ½ years later this reduction had already been compensated for by new decrees! No relief at all was apparent with regard to the total number of pages. In March 2015, the three major, centre-right Swiss parties SVP (Swiss People's Party), FDP (Free Democratic Party, the Liberals) and CVP (Christian Democratic People's Party) announced their "alliance", which included a concrete package of measures to strengthen Switzerland as a business location. Unfortunately this alliance fell apart after a short time and to date, has not been reactivated again.

Today, costs arising from new regulations are estimated beforehand. This is carried out by the corresponding federal office in a Regulatory Impact Assessment. Based on

this, in Germany, Austria, Australia and Great Britain, "one-in – one-out" or "one-in two-out" rules are used: A new regulation can only be introduced when another regulation with an equivalent or double the regulating costs is removed as compensation.

We need to act now!

What should be done in Switzerland? Parliament must give the Federal Council the task to implement a "one-in – two-out" rule. After 10 years, the number of regulations would then at least return to the same level as in 2007 (before the financial crisis). This regulation status could then be maintained at a stable level with a "one-in – one-out" rule. In particular, the deregulation should also include treaties and ordinances. Switzerland must stop behaving like a model student with regard to international law. Following the basic principle of equivalency, the often simpler Swiss regulations should be enforced. On no account should Switzerland allow an autonomous adoption of EU laws! EU legislation is growing at an even faster rate than Swiss laws!

Switzerland needs improved locational advantages. National parliament needs to assign the task of deregulation to the Federal Council. For this reason I appeal to the centre-right political parties to join forces and mobilise themselves for deregulation. With the current political balance of power, there is a chance of significantly strengthening the Swiss locational advantages! If Switzerland does not act, regulation will rapidly increase further, the country will become less attractive as a business location and blocked for economic activity. This cannot be our goal. The time has come to tackle the regulation problem!