



EUROPEAN COMMISSION

Brussels, 23.11.2011
COM(2011) 803 final

**REPORT FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN
PARLIAMENT**

**Minimizing regulatory burden for SMEs
Adapting EU regulation to the needs of micro-enterprises**

1. INTRODUCTION

Small and medium-sized enterprises (SMEs) play a key role in shaping Europe's economy, accounting for 99 % of enterprises, of which 92 % are micro-enterprises.¹ They provide more than two thirds of private sector employment and play a key role in economic growth. They have a crucial importance to the European economy as employers and sources of innovation. The Commission is committed to support their development, notably through the "Small Business Act" with its "Think Small First" principle and by facilitating, amongst other things, access to EU funding. The Commission's Smart Regulation agenda also aims to help small businesses by minimising the regulatory burden of legislation that is deemed necessary at EU level.

The EU's growth strategy for the coming decade, Europe 2020, highlights the importance of improving the business environment, including through smart regulation, to make European enterprises more competitive at the global scale. However, the financial crisis is having a severe impact on many of the smallest companies in the EU economy. It is, therefore, essential to free up micro enterprises to allow them pursue their business goals without unnecessary regulation. The Commission is aware that the smallest firms face the greatest costs in complying with regulations². Compliance with legislation stemming from the regional, national or European level will always be more burdensome for the smaller enterprise.

This paper outlines ways of taking the concept of "Think Small First" a step further to deliver rapid results. It sets out how the Commission will strengthen the use of exemptions or specific, lighter legislative regimes for SMEs or micro companies. It also explains how this will be followed up through the legislative process and implementation.

Regulation is a necessary part of modern business life. It protects citizens and workers from safety risks, the environment from pollution. It is the vehicle through which public policy aims are achieved. The steady development of the EU's internal market brings many new opportunities for companies of all sizes but it also needs a minimum of regulation to function.

The Commission welcomes the European Council interest in this issue, and looks forward to feedback from the European Parliament, the Council and other stakeholders on this report, which will help to take this important work forward. The Commission also hopes the European Parliament and the Council will give strong support to its legislative proposals seeking to keep regulatory costs for SMEs and especially micro companies to a minimum.

The Commission will also continue to work with Member States to help them minimise regulatory burden and eliminate gold plating when implementing EU legislation.

¹ The definition of an SME covers all enterprises with less than 250 employees and equal to or less than either €50 million turnover or €43 million balance sheet total. Micro-enterprises are the smallest category of SME, with less than ten employees and a turnover or balance sheet total equal to or less than €2 million.

² On average, where a big company spends one euro per employee to comply with a regulatory duty a medium-sized enterprise might have to spend around four Euros and a small business up to ten Euros (Report from the Expert Group on "Models to Reduce the Disproportionate Regulatory burden on SMEs", May 2007.)

2. WHAT HAS BEEN DONE

The Commission is taking action to produce SME friendly legislative proposals, like that exempting micro-entities from unnecessary legal requirements in accounting directives. It is fully committed to assessing the impacts of new or revised legislation on SMEs through its well developed impact assessment process; it also regularly evaluates whether legislation is delivering what it was intended to do. Through the Small Business Act (SBA)³ and Single market Act (SMA)⁴ it is taking steps to facilitate access to finance for SMEs, one of the biggest challenges they face in the current crisis. Extensive simplification measures are being applied to help SMEs take part in EU funded programmes. The latest Commission proposal on Cohesion Policy, for example, introduced a core set of common rules for the five funds concerned⁵, including simplified reimbursement methods, which will significantly simplify the conditions for access to EU funds for SMEs.

The Commission has run two exercises to improve existing legislation. First, a major Simplification Programme to streamline, update and consolidate EU law: around 200 proposals have been adopted that bring substantial benefits for businesses. Second, the Administrative Burden Reduction Programme: Commission proposals representing a 33% reduction of the targeted burdens, well beyond the 25% objective, have been tabled. The co-legislator has adopted proposals amounting to a 22% reduction. Member States have started to implement some of these measures.

A report on the best practices of Member States in implementing EU law in the least burdensome way is being prepared by the High Level Group of independent stakeholders on administrative burdens chaired by Dr E. Stoiber. More information on the results of all of this work can be found in the Smart Regulation Communication.⁶

3. FURTHER EMPHASISING THE NEED TO "THINK SMALL FIRST" WHEN PREPARING NEW PROPOSALS

Following a proposal from President Barroso, welcomed by the European Council in June 2011, the Commission has started a new screening of the EU legislative *acquis* to implement the "Think Small First" principle and to identify possible further exemptions or burden reductions for SMEs, in particular micro-enterprises.

The screening of the *acquis* is being carried out but SME stakeholders' involvement is vital in order to identify those cases that can make a real difference. SMEs and micros need to be better involved in this exercise as they have expressed concerns that exemptions should not lead to disadvantages for their situation. For this reason, better and more specific consultation mechanisms for SMEs and micro companies are being established.

First results of the screening process show that clear-cut criteria for identifying legislation from which micro companies can be exempted are difficult to identify on a general basis. It is

³ Review of the "Small Business Act" for Europe, Commission communication - COM(2011)78 (23 February 2011).

⁴ Single Market Act - Twelve levers to boost growth and strengthen confidence - "Working together to create new growth", Commission communication - COM (2011) 206 (13 April 2011).

⁵ The European Regional Development Fund (ERDF), the Cohesion Fund (CF), the European Social Fund (ESF), the European Agricultural Fund for Rural Development (EAFDR) and the European Maritime and Fisheries Fund (EMFF)

⁶ Smart Regulation in the European Union, Commission communication - COM(2010)543 (8 October 2010).

acknowledged by SMEs and their representatives that SMEs cannot expect to be above the law. Much legislation will remain applicable to SMEs and micros, covering fundamental public policy obligations, for example, product safety standards that are integral to trading throughout the single market. Exemptions or lighter provisions for smaller businesses will not undermine overall public policy objectives pursued through the relevant regulations, for example in public and workplace health and safety, food safety or environmental protection. Their aim should be to reduce the disproportionate burden of delivering these objectives. There are instances when lightening the burden for smaller operators, while in itself attractive, could produce broader negative repercussions which could outweigh any benefits. In such cases the priority attached to the impact on smaller operators should play a key role in the design of the whole instrument. The key issue is to apply the “Think Small First” principle to avoid unnecessary burdens on SMEs.

A not insignificant volume of cost comes from completing or keeping paperwork and records, or from being inspected to demonstrate compliance. Such costs can be abolished in whole or in part or often be made easier for small firms. Where laws are focussed on processes, such as those relating, for example, to hygiene standards, take-back obligations or similar provisions, the Commission is working to develop tailored approaches which are simpler and prevent businesses having to scour long rulebooks for the parts that apply to them.

Examples of preliminary results of the ongoing screening exercise are given in the non-exhaustive lists in annexes 1 and 2.

The screening exercise shows an important range of legislation with existing exemptions. A distinction should be made between different cases. In some cases, SMEs are completely excluded from the scope of the legislation. In other instances, legislation applies to SMEs but exemptions are granted based on the size of the enterprise. Finally, legislation is applicable to SMEs but with lighter requirements.

Whilst the general objective is to exempt small businesses, these exemptions are defined on a case-by-case basis with the different thresholds taking full account of the specific nature of the sector and the overall objective of the legislation.

3.1. Legislation excluding small businesses from its scope

In some cases, small businesses are not covered by EU legislation, for example by the application of the *de minimis* principle.

3.2. Exemptions already applied or foreseen in EU legislation:

- Partial exemption: for example, fishing vessels below 15 meters which operate exclusively in the territorial waters may be exempted from the obligation to be fitted with a vessel monitoring system; micro companies are exempted from installing tachographs in lorries that travel within a limited radius;
- Extended transition periods: for example, the longer adaptation period allowed for SMEs to install health and safety signs in the workplace; and a transitional period of two years allowing SMEs in the construction sector to adapt to the legislation on the use of work equipment.

- Temporary exemptions: micro companies are exempted for a limited period from certain legislative provisions such as temporarily exempting self-employed persons performing mobile road transport activities which were exempted from working time directives until March 2009 ;

3.3. Tailor-made legislation:

- In certain domains, requirements should not be the same for the biggest and the smallest companies. Therefore the Commission, in accordance with stakeholders' wishes, is preparing legislation on accounting law that will clearly distinguish the obligations for each category of businesses (big, middle, small and micro). A further example of this is the ongoing reform of EU data protection rules, which is examining ways of alleviating some of the burden of legislation for micro-enterprises and SMEs, by introducing lighter obligations wherever possible, without prejudicing the protection of fundamental rights.
- The modernisation of the Transparency Directive will alleviate some of the obligations linked to listing and make capital markets more attractive to SMEs.
- In addition to the core set of common rules for the five relevant funds introduced by the recent Commission proposal on Cohesion Policy, further simplification is planned for the forthcoming EU research and innovation programme, Horizon 2020, particularly to increase the participation of SMEs.

4. STRENGTHENING THE APPLICATION OF THE SME TEST PARTICULARLY FOR MICRO-ENTERPRISES

In order to strengthen the focus on exemptions and tailor-made legislation for micro-enterprises and SMEs, the Commission has started to work to reverse the burden of proof. From January 2012 the Commission's preparation of all future legislative proposals will be based on the premise that in particular **micro-entities should be excluded from the scope of the proposed legislation unless the proportionality of their being covered can be demonstrated**. This demonstration is a new element to be included in the SME test. Thus modified, the test will de facto reverse the burden of proof and focus the preparation of EU law on the specific situation of SMEs and micro companies.

From the same date the Commission will also ensure that, in cases where micro enterprises must be covered by its legislative proposals for wider public policy reasons, its proposals will be substantiated via the introduction of a micro-entities dimension in the "SME test" which forms part of the regular Impact Assessment. In these cases, **recourse to adapted solutions and lighter regimes** will be sought. As the arguments and reasons for lighter regimes become more visible, it should also be easier to trace the position of SMEs and micro companies throughout the decision making process.

To achieve this major shift in policy and to make sure that it is followed through to the implementation phase, the Commission will establish a **scoreboard**, updated on a yearly basis, which will show:

- All exemptions and lighter regimes for SMEs and micro companies proposed by the Commission as well as other proposals where the impact on smaller operators has been identified as a major factor;

- the way they change during the co-decision process and the final outcome of the legislation as adopted by the European Parliament and Council ;
- the subsequent implementation by each Member State of these provisions, with a particular emphasis on highlighting "gold plating" where this is done at the national or regional level.

This will allow all interested parties to identify where progress is made – or where different stages in the EU legislative cycle backtrack on simplification, etc.

5. AN ACTION PLAN TO INVOLVE SMEs BETTER IN LAW-MAKING AND IN EVALUATING THE PROGRESS MADE

The Commission will provide SMEs with better tailored opportunities to give their views and help to shape decisions targeting their needs. It will discuss with them their preferred way to mitigate the regulatory burden in different types of situations or domains. The Commission will consult them in an appropriate way on their perceptions of the expected results of the different measures. In the field of social policy the Commission will use the consultation process with the European social partners provided under Article 154 of the Treaty, before issuing a proposal. In addition, the Commission is reviewing its consultation process as a follow-up to the Smart Regulation Communication and intends to make the following changes:

1. The Commission will strengthen the involvement and consultation of small businesses in better law-making.
2. Specific SME Panel consultations, within the Enterprise Europe Network, will be used more often to provide direct input from SMEs to the Commission's impact assessment process and for a range of other purposes: for instance, an on-going consultation invites SMEs to report on the most burdensome obstacles they are facing in the Internal Market.
3. Dedicated conferences with SMEs and micro companies in the Member States, with the Commission listening and collecting problems presented by SMEs and micro companies, are currently being tested and will be rolled out on a larger scale in the framework of the Smart Regulation Agenda and the Small Business Act.
4. The Small Business Act Review introduces a new governance structure to ensure that SMEs' views are considered in the uptake and effective implementation of the Act. In the newly established network of national SME Envoys and the SME Assembly, the European and national SME organisations will report on and evaluate the uptake of the Small Business Act and promote the exchange of good practices, typically on how to ensure SME-friendly legislation and to avoid unnecessary regulatory burden.
5. The network of national SME Envoys will have the opportunity to provide their views on where exemptions or lighter regimes are most needed and how they should be framed. The Commission's SME Envoy will liaise with SME stakeholders and make sure SME interests are taken into account in the Commission's business-relevant proposals.
6. A dedicated webpage, will be created to identify the top 10 EU legislative acts considered to place burdens on micro companies and SMEs. This will be used to make focused and tailor-made revisions of these legislative acts.

The financing of these actions and initiatives will be covered by existing or planned programmes consistently with the current Multi-Annual Financial Framework and the proposals for the new framework 2014-2020.

In order to minimise the regulatory burden on SMEs and micro-enterprises, the Commission calls upon the Member States to make sure that they apply the same principles set out above and, in particular, that they:

- involve the small business community closely in law-making right from the start;
- take the “Think Small First” principle a step further by applying it systematically in national law-making and considering lighter requirements and exemptions on a case-by-case basis where appropriate; and
- apply the “SME Test” in impact assessments and strengthen the micro enterprise-dimension of the Test.

The national SME Envoy should have a key role in his/her country to monitor the implementation of these actions in close cooperation with SME organisations.

6. CONCLUSION

The Commission has set out concrete actions in this report to minimise the regulatory burdens on SMEs, in particular for micro enterprises. The Council and European Parliament are invited to support this approach and to use the Commission Scoreboard to track exemptions and lighter requirements for micro enterprises through the co-decision and implementation process. The Commission calls upon the Member States to apply the “Think Small First” and to commit to the full and speedy implementation of the principles and actions applicable at Member State level.

Annex 1 – Existing legislation with exemptions or lighter regime

	Legislation	Exemption or lighter regime
1	Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) No 1191/69 and 1107/70	Where contracts are awarded to SMEs operating a fleet of less than 23 vehicles, the thresholds above which the contract must be opened to competitive tender can be doubled, making the public procurement procedure simpler and less burdensome.
2	Council Directive 92/58/EEC of 24 June 1992 on the minimum requirements for the provision of safety and/or health signs at work (ninth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC)	Member States may specify categories of undertakings (by size or activity) which may be allowed to replace totally, partially or temporarily the obligation to have the illuminated signs, and/or acoustic signals provided they use other means delivering with the same level of protection.
3	Directive 2007/46/EC of the European Parliament and of the Council of 5 September 2007 establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles	Companies that manufacture in small quantities can apply to their approval body to have reduced requirements (NB : under preparation is a further exemption to exempt small series producers from certain technical requirements in the motor vehicle type approval legislation).
4	Regulation (EC) No 1221/2009 of the European Parliament and of the Council of 25 November 2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS)	SMEs may not be required to report on an annual basis in order to be registered for EMAS.
5	Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community	The Directive applies to undertakings employing at least 50 employees and to establishments with at least 20 employees.
6	Council Directive 2010/18/EU of 8 March 2010 implementing the revised framework agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC	Member States may authorise special arrangements to meet the operational and organisational requirements of small undertakings.

	Legislation	Exemption or lighter regime
7	Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses	Member States may limit the obligations to undertakings or businesses which, in terms of the number of employees, meet the conditions for the election or nomination of a collegiate body representing the employees.
8	Directive 2006/32/EC of the European Parliament and of the Council of 5 April 2006 on energy end-use efficiency and energy services	Member States may exclude small distributors from the obligations to support energy savings in end-use consumption and to provide advanced metering and informative billing.
9	Directive 2004/8/EC of the European Parliament and of the Council of 11 February 2004 on the promotion of cogeneration based on a useful heat demand in the internal energy market	The directive opens the possibility for Member States to give better treatment to high-efficiency small scale cogeneration as regards access to the grid.
10	Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax	Member States are allowed to implement simplified VAT charging and collection schemes for small enterprises such as flat-rate VAT schemes.
11	Directive 2006/66/EC of the European Parliament and of the Council of 6 September 2006 on batteries and accumulators and waste batteries and accumulators	Member States may exempt producers which, relative to the size of the national market, sell very small quantities of batteries or accumulators from the obligation to make a financial contribution to waste treatment and recycling requirements.
12	Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC	Member States may exclude wholly or partly from the terms of this legislation part-time workers who work on a casual basis.
13	Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy	Exemption for fishing vessels below 15 meters are exempted from the obligation to be fitted with a vessel monitoring system, because these would entail disproportionate costs.
14	Directive 94/25/EC of the European Parliament and of the Council of 16 June 1994 on the approximation of the laws, regulations and administrative provisions of the Member States relating to recreational craft	Longer transitional periods were granted to SMEs to adapt their production (small crafts) to new requirements of the directive.

	Legislation	Exemption or lighter regime
15	Regulation (EC) No 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs	Food business operators are responsible for food hygiene. Implementation of HACCP-methodology (Hazard Analysis and Control of Critical Points), a food safety management system, is required. However, SME can adapt aspects of the legislation to their situation (e.g. reduction of frequency of auto-control) Primary producers and retailers may replace implementation of HACCP by implementation of sectoral guides of good practices.
16	Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community	The Emissions Trading Scheme legislation includes a capacity threshold to exclude small installations from the Emissions Trading Scheme or to submit them to equivalent measures and simplified monitoring and reporting requirements for low emissions installations.
17	Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading	Exemptions regarding the prospectus to be published when securities are offered to the public or admitted to trading are provided for offers below 2.5 Mio EUR.
18	2006/87/EC Directive of the European Parliament and of the Council of 12 December 2006 laying down technical requirements for inland waterway vessels	The directive includes possible derogations for ships travelling only in the interior waters of one Member State. These derogations can be used in cases of equipment operating on navigable waterways not linked by inland waterway to the waterways of other Member States, or for craft having a dead weight not exceeding 350 tonnes.
19	Directive 2000/59/EC of the European Parliament and of the Council of 27 November 2000 on port reception facilities for ship-generated waste and cargo residues	A current exemption regime exists for ships with regular port calls.
20	Regulation (EC) No 443/2009 of the European Parliament and of the Council of 23 April 2009 setting emission performance standards for new passenger cars as part of the Community's integrated approach to reduce CO ₂ emissions from light-duty vehicles	Small volume and niche manufacturers may apply for lower targets.

	Legislation	Exemption or lighter regime
21	Regulation (EU) No 510/2011 of the European Parliament and of the Council of 11 May 2011 setting emission performance standards for new light commercial vehicles as part of the Union's integrated approach to reduce CO ₂ emissions from light-duty vehicles	Small volume and niche manufacturers may apply for lower targets.

Annex 2 – Possible future exemptions or lighter regime⁷

	Legislation	Exemption or lighter regime
1	Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data	Data controllers (such as public authorities, enterprises etc) currently have the obligation to notify their data processing operations to national data protection authorities, unless there are grounds for being exempted. The Directive leaves considerable discretion to Member States in deciding possible exemptions to the obligation. Due to this, the situation varies a lot from Member State to Member State. The upcoming reform package will examine ways of effectively simplifying the regulatory environment, for instance by increasing harmonisation and proposing to abolish notification obligations except in cases of higher risk processing.
2	Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work	The possibility to replace the systematic documentation of risk assessment for micro enterprises dealing with low risk activities by a proportionate risk-based approach could be examined in the light of consultation with the social partners and after the assessment of the impact of current obligations.
3	Amendment to Directive 2004/37/EC of the European Parliament and of the Council of 29 April 2004 on the protection of workers from the risks related to exposure to carcinogens or mutagens at work	The opportunity of the amendment of this directive could be taken to introduce a risk-based approach, which would result in less burdensome obligations for SMEs, in accordance with the general approach foreseen for all occupational health and safety.
4	Proposal for a EP and Council Directive on the minimum health and safety requirements on ergonomics at work particularly to prevent work-related musculoskeletal disorders (WRMSD) and display screen vision conditions and repealing Council Directive 90/269/EEC and Council Directive 90/270/EEC	The introduction of a risk based approach should be considered, which would result in less burdensome obligations for SMEs, in accordance with the general approach foreseen for all occupational health and safety.

⁷ Proposals for new or amended EU regulation are subject to consultation and impact assessment which contributes to the final decision on the policy to be adopted.

	Legislation	Exemption or lighter regime
5	Proposal for a Directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of seasonal employment	Micros and perhaps also SMEs could be exempted from requirements related to seasonal workers, so that small farmers can again recruit seasonal workers, as before, on lighter conditions.
6	Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services	In drawing up guidelines on the implementation of this Directive, the Commission will consider whether it is possible to have a lighter regime for smaller companies.
7	Directive 2009/45/EC of the European Parliament and of the Council of 6 May 2009 on safety rules and standards for passenger ships	The current revision of this directive could be an opportunity to deal with some excessive provisions, not adapted to take account of small ships.
8	Council Directive 92/29/EEC of 31 March 1992 on the minimum safety and health requirements for improved medical treatment on board vessels	Vessels must be equipped with minimum medical supply and equipment. Beyond a specific threshold, a medical doctor is required. When revising this directive the Commission will consider the pros and cons of proposing a higher threshold for smaller vessels.
9	Directive 2002/44/EC of the European Parliament and of the Council of 25 June 2002 on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (vibration)	The Commission in the context of the planned evaluation of this Directive and as part of the process will invite comments on its impact on SMEs.
10	Directive 2002/96/EC of the European Parliament and of the Council of 27 January 2003 on waste electrical and electronic equipment (WEEE)	If the recast of this piece of legislation would include a new take back obligation for very small WEEE at distributors, as proposed by the European parliament, the exemption options from such a take back obligation could be included for shops operating on a very small surface area.

	Legislation	Exemption or lighter regime
11	Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste	Low risk SMEs that carry waste could be subject to a simplified registration procedure. To this end, the competent national authorities should make the full use of the last paragraph of article 26 of the WFD, which provides a possibility to obtain the relevant information necessary for registration of such SMEs from the existing national records. This could be applied to low risk SMEs which pose minimal risk in terms of harm to the environment or human health.
12	Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks	The forthcoming revision of this directive could present an opportunity to consider to which companies the obligation to retain data should apply. The size of the company might be amongst the criteria.
13	Proposal for a Directive of the European Parliament and of the Council on public procurement	The forthcoming revision of public procurement rules of Directives 2004/17/EC and 2004/18/EC could foresee an alleviation of the requirements for submission of certificates and other means of proof in view of participating to public procurement procedures. In particular, the certificates and other means of proof could be replaced by declarations (self-certifications).