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NOTE

From: Presidency
To: Delegations
Subject: SME-testings: Lessons learned

Delegations will find in Annex a Presidency discussion note on the SME-testings: Lessons learned.

Discussion note on SMEs and micro-enterprises**A. Importance of SMEs and micro-enterprises**

Between 2002 and 2010, 85% of net new jobs in the EU were created by small and medium sized enterprises (SMEs). SMEs are the backbone of the EU economy. But, on average, where a 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. At the same time, SMEs find it more difficult to access capital and their cost of capital is often higher than for larger businesses.

B. The European Council , the European Parliament, the Competitiveness Council and the Commission*The European Council*

“It is particularly important to reduce the overall regulatory burden at EU and national levels, with a specific focus on SMEs and micro-enterprises”.

“Member States should make full use of regulatory flexibility provisions for the benefit of small and medium-sized enterprises in the implementation of EU legislation”.

The European Parliament

“The Commission should increase where appropriate the use of exemptions or lighter regimes for micro-enterprises and SMEs when proposing new legislation”.

“Insists that the next Commission should establish a European objective of a 30% reduction in the costs to SMEs generated by administrative and regulatory burdens by 2020”.

“Believes...that micro-enterprises should remain outside the scope of proposals unless it is demonstrated that they should be included; supports the consideration of adapted solutions and lighter regimes for SMEs in IAs where this does not inappropriately limit the effectiveness of legislation”.

The Competitiveness Council

“Underlines the necessity of continuing actions to reduce the overall burden of EU regulation on SMEs and micro-enterprises by respecting the proportionality principle in relation to the size and risk level of businesses”.

“Calls on the Commission to develop and put in place – on the basis of input from Member States and stakeholders – reduction targets in particularly burdensome areas, especially for SMEs, within the REFIT Programme”.

The Commission

“We will apply the ‘Think Small First’ principle more thoroughly when preparing initiatives: taking the interests of small- and medium-sized businesses into account when designing and evaluating policies, and envisaging a lighter regime for them including an outright exemption for micro-business wherever it is possible and makes sense”. (Better regulation for better results, 19 May 2015).

C. Think Small First principle and the SME Test

Tool 19 of the Commission toolbox includes the following elements:

“The Commission has adopted the ‘Small Business Act’. It aims to improve the overall approach to entrepreneurship, permanently anchor the Think Small First principle in policy making and to promote SMEs’ growth by helping them tackle the remaining problems which hamper their development. Legislation, administrative rules and procedures should be simple, easy to understand and to apply. SMEs’ interests should be taken into account at the very early stages of policy making in order to make legislation more SME friendly.”

The SME Test comprises four steps:

1. Consultation of SME stakeholders;
2. Identification of affected businesses;
3. Measurement of the impact on SMEs;
4. Assessment of alternative mechanisms and mitigating measures.

A summary of the results of the SME analysis must be presented in the IA Report.

Alternative mechanisms and mitigating measures:

- a. Total exemption. Example: Women on Boards.
- b. Partial exemption. Example: Electronic Waste (WEEE).
- c. Longer transitional periods. Example: Self-employed drivers.
- d. Reduced reporting/record-keeping requirements. Example: public procurement.
- e. Reduced fees. Example: medicines.
- f. Simplified inspection regimes.
- g. 'De minimis' rules. Example: low volume car manufactures.
- h. Risk-based approaches. Example: food hygiene.

In the second half year of 2015, the Luxemburg Presidency organised a joint meeting of the Working Group Industry and the Working Group Better Regulation. They had a discussion on how the better regulation agenda can be used for strengthening the competitiveness of EU businesses, in particular SMEs. This led to very useful insights such as:

- The assessment of regulatory impacts is a complex exercise in general and methodologies normally have to be designed and applied on a case by case basis;
- Quantification of impacts is not always possible in a reliable manner. However, rough estimates can constitute a useful input to the decision-making process, among other elements;
- Specific derogations or lighter regimes for SMEs or micro-enterprises can be effective in certain areas, although they can also be counterproductive when SMEs look for commercial funding. However, the main aim should remain to deliver clear and simple legislation for all businesses, small and large alike, especially given the overwhelming predominance of SMEs and micro-enterprises in the economy;

- There can be significant differences between the various types of businesses that qualify as an SME, including micro-enterprises and start-ups, and which can have very different needs and expectations regarding regulation, depending on the case.

In this joint meeting, the Commission presented a non-paper ‘Better regulation and Simplification for SMEs – Commission initiatives under REFIT’ (autumn 2015). The REFIT Scoreboard covers 58 legislative initiatives presented by the Commission. 25 of these have been adopted by the legislator and 22 have been implemented by Member States. Among these 58 legislative initiatives, 15 Commission proposals included exemptions or lighter regimes for SMEs. Eight further Commission proposals for general simplification are included as they are of particular interest to SMEs and thus offer a further illustration of the application of the ‘think small first’ principle. In the discussion, the following elements were mentioned: (1) the Commission has started the implementation of the SME Test, but a systematic application is not yet achieved, (2) the Council and the European Parliament can make more work of the application of the SME Test and the ‘think small first’ principle.

D. Discussion

1. The SME Test is a very good instrument. The non paper of the Commission (autumn 2015) indicates that the SME Test is being implemented now. However, the question can be asked whether the full potential is achieved and whether the SME Test is applied systematically enough. Is it useful that the Commission analyses the application of the SME Test in Impact Assessments from now until the first half of 2017? This can be seen as an update of the non-paper, mentioned above. The insights of this analysis can be used in the Working Programme 2018. What are the thoughts of the MS and the Commission on this?

2. The Interinstitutional Agreement on Better Regulation says that the three institutions recognise their joint responsibility in delivering high quality legislation. This also concerns avoiding overregulation and administrative burdens for administrations, businesses and citizens, and especially for small and medium-sized companies. Is it possible to propose that the three institutions start a similar approach on SMEs? This similar approach could refer to (1) the identification of affected businesses, (2) the measurement of the impact on SMEs, (3) the weighing of the importance of the interests of SMEs, (4) the assessment of alternative mechanisms and mitigating measures. What are the thoughts of the MS and the Commission on this?

3. The Interinstitutional Agreement says that legislation should be as simple and clear as possible. The use of digital tools can be very helpful in achieving this. Tool 23 of the Commission toolbox is very useful for considering the use of digital tools. However, the question can be asked whether the full potential is achieved. What are the thoughts of the MS and the Commission on this?

The issue of (the possibility of) formulating reduction objectives in particularly burdensome areas, especially for SMEs, will be discussed by the Working party on competitiveness and growth (Better Regulation) on 1 April.
