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NOTE

From:	Trio Presidency
To:	High Level Working Group on Competitiveness and Growth
Subject:	Better regulation: SME test for supporting recovery and reducing unnecessary regulatory burdens

Small and medium-sized enterprises (SMEs) are the backbone of Europe's economy. Over 23 million SMEs in the 27 EU Member States collectively employ nearly 90 million people, make-up more than half of the EU's GDP and play a key role in adding value in every sector of the economy. SMEs bring innovative solutions to challenges like climate change, resource efficiency as well as social cohesion and help spread these innovations throughout the EU.

Regulatory burdens came out on top when SMEs were asked about the biggest problems they faced before the negative economic impact of the COVID-19 crisis was fully felt by businesses in the EU.¹ As SMEs are hit especially hard by the economic consequences of the COVID-19 **crisis**, it has become even more important to support them with an utmost efficient, effective and innovation friendly regulatory framework. Therefore, one key objective in the field of better regulation of the Council is to support SMEs by **reducing existing unnecessary compliance costs and avoiding introducing new ones** – in order to ensure the best possible regulatory framework for SMEs to flourish. This is particularly important, as SMEs are disproportionately affected by regulatory burdens compared to larger companies.

¹ Flash Eurobarometer 486

The European Commission committed itself in the **Interinstitutional Agreement on Better Law making of 2016** to carry out impact assessments, amongst others, on its proposals which have a significant economic impact. In its recent **Communication on the SME Strategy**, the Commission defined reducing regulatory burden as one of three key pillars.² In its **Conclusions on Better Regulation of May 2016**, the Council called on the Commission to ensure that measurements of impact of regulation on SMEs and micro-enterprises are consistently made and that all SME tests in Impact Assessments are robust.³ In its **Conclusions on Better Regulation of February 2020**, the Council reaffirmed the high importance of the SME test by calling on the Commission to systematically consider in its impact assessments the impact of legislative proposals on SMEs, in particular micro-enterprises, and to apply whenever possible the SME test, in order to ensure the systematic implementation of the 'think small first' principle.⁴

With the aim of monitoring the implementation of these calls, the **Council Working Party Competitiveness and Growth (Better Regulation)** discussed in its meeting on 9 September the state of play of the SME test in Commission impact assessments based on contributions by the Committee of the Regions and SMEUnited.⁵ This exchange made clear that **several shortcomings in the application of the SME test at EU-level persist** and that the impacts of legislative proposals on SMEs are often not considered sufficiently. This increases the risk of a suboptimal regulatory framework for SMEs with amongst others unnecessary high compliance costs. Stakeholder representatives argue that the **SME test is either mostly poorly executed or not applied at all** – and this even in cases where it would matter most.⁶

² 6783/20 (COM (2020)103)

³ 9580/16

⁴ 5964/20

⁵ WK 8845/20 and WK 8846/20

⁶ See above Working Papers and WK 11233/20 by Eurochambres

Possible aspects and means for improving the SME test could be:

1. The **application of the SME test** should be at least **always ensured when strong impacts on SMEs are expected**. One way of ensuring that at least all the highly relevant proposals for SMEs are identified and subjected to a SME test would be to have a transparent, **joint pre-screening of upcoming proposals by the Commission together with SME associations and the SME Envoy network** for instance based on the plans outlined annually in the Commission's Work Programme.
2. The **quality of the SME test** could be improved by for example **strengthening the consultation process, increasing the quantification of impacts** and by **taking the heterogeneity of SME size classes (micro, small, medium) better into account**.
3. Both, **application and quality of the SME test** could be improved through **stricter oversight by the Regulatory Scrutiny Board (RSB)**.

Delegations are invited to consider the following questions for the discussion in the High Level Group:

- a) *What current challenges do you see regarding the SME test?*
- b) *Which suggestions do you have for improving the SME-test?*
