Position Paper regarding the review of the EU’s Better Regulation Agenda

Introduction

The German Confederation of Skilled Crafts and Small Businesses (Zentralverband des Deutschen Handwerks e. V., ZDH)\(^1\) welcomes the EU’s efforts undertaken so far regarding better regulation and burden reductions for small and medium sized enterprises (SMEs).

The new tools put in place by the Commission’s “Better Regulation Agenda” provide a solid basis for timely and sound policy decisions:

1. The Commission makes proof of an increased engagement with stakeholders throughout the whole policy-making process, from the conception phase (roadmaps, and inception impact assessments) to the implementation phase (implementing acts and delegated acts).

2. The evidenced-based approach has been improved, amongst others through the review of the independent Regulatory Scrutiny Board which ensures a minimum quality standard of the impact assessment work.

3. In general, the legislative process has become more open and transparent for citizens and stakeholders – through public consultations, the REFIT Programme, the "Lighten the load" web portal, and Citizens’ dialogues.

4. SME interests are taken into account via the mandatory SME test.

However, from ZDH’s point of view the Better Regulation tools need to be applied more rigorously. In particular, more targeted engagement with stakeholders, systematic evaluations, high quality impact assessments, and a more focused REFIT approach are needed to improve new proposals and existing legislation.

“Think Small First” Principle

The “Think Small First” principle was clearly expressed in the “Small Business Act” and it implies that policy makers give full consideration to SMEs at all stages of policymaking.

Almost all enterprises in Europe are SMEs (99.8 %). They account for 2/3 of private employment, 80% of the new jobs and more than half of the added value in Europe’s economy.\(^2\) It follows from these figures that SMEs are the backbone of Europe’s economy and require special attention in order to foster competitiveness, growth and employment. EU legislation should therefore help and not hinder SMEs to reach their potential in this regard. Ideally, rules impacting on business should be developed from an SME point of view or in other words: what is good for an SME cannot be bad for larger enterprises. In contrast, rules and procedures designed for large companies often create disproportionate burdens for SMEs.

The “Think Small First” principle should not be understood as a rigid concept.

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1 ZDH represents 1 million skilled crafts companies with more than 5 million employees and an annual turnover of more than 500 billion EUR which are almost exclusively SMEs.

In fact, the specific situation of SMEs needs to be identified and taken into consideration so as to design the business environment in a way which allows SMEs to be competitive and innovative. They need to be able to do what they do best – their business.

1. Improve application of the SME Test

The SME test which is mandatory since 2015 is an expression of the “Think Small First” principle. Unfortunately, so far only few impact assessments have applied the SME test to a satisfying level.\(^3\) The main focus of the Commission’s Better Regulation approach should therefore lie on the thorough and systematic application of the SME Test in line with the Better Regulation guidelines and toolbox, i.e:

- An initial preference for a certain policy option should not lead to a selective data collection and/or data analysis (negative example: e-card).
- There should be a clear minimum quality/quantity of data necessary to underpin impact assessments (negative examples: the Single Market Information Tool and the Single Digital Gateway).
- In general, the views of SME organisations, including national SME organisations, should be made more visible throughout the impact assessment process and also in the impact assessment report.

In addition, the authority of the Regulatory Scrutiny Board should be strengthened and a systematic review of the SME test be made the standard procedure for all impact assessment reviews undertaken by the Regulatory Scrutiny Board. So far, the consequences of a negative opinion seem to be limited because the subsequent revisions do not always cover all the comments of the Regulatory Scrutiny Board and the latter has no definitive veto right.

2. Examples of SME issues with existing EU legislation

For SMEs it is crucial that unnecessary bureaucratic burdens and avoidable costs for companies are identified and alleviated. Existing EU law requirements are still too complex for SMEs. They need to be able to focus on their core business. However, European requirements often make it difficult for them to do this, in particular due to extensive information, documentation and reporting duties, which also lead to high bureaucracy costs.

Additional efforts of the Commission should focus on further simplifying and optimising existing EU laws instead of adding new regulations on top. And the recommendations of the REFIT Platform in this regard should steer the Commission's priorities in the right direction and reduce unnecessary burdens on SMEs.

As a result, the Commission’s REFIT Programme should be used to revise legislation which is identified by SMEs as most burdensome (see examples in Annex I).

3. New EU legislation

The goal of Better Regulation can only be achieved if the principles of subsidiarity and proportionality are strictly applied. Regarding subsidiarity, the Commission so far limits itself to explaining why the principle of subsidiarity has not been violated. It would, however, be better if the Commission would set out its regulatory approach in a more positive and constructive

\(^3\) See also Eurochambres “SME Test Benchmark 2017"
manner by collecting information and experience on existing legislation and practices in the Member States in order to justify a clear “EU added value”. In addition, the proportionality test should include evidence that content and form of the proposed action do not exceed what is necessary to achieve the objectives. A stricter application of these two principles would clearly help the Commission meet its objectives at minimum cost and administrative burdens. At the same time it would respond to concerns that a new proposal is just another example of over-regulation, i.e. disproportionate, or that the issue being addressed is not pan-European, and should therefore be addressed by individual Member States.

In this regard, ZDH expressly welcomes the setting up of the new Task Force on Subsidiarity, Proportionality and “Doing Less More Efficiently”. Indeed, the EU should focus on areas in which European regulation brings a significant added value – such as security, external border management or defence – and in the least burdensome way possible. The Commission should therefore identify issues which really need to be dealt with at EU level, and make sure they are dealt with in the most efficient way. On the other hand, Member States should be empowered to deal with everything else themselves. In particular, the details of documentation and reporting requirements can often be dealt with nationally or even locally in a more practical way. Negative examples in this regard are the recent proposals on the “Eurovignette” and the services package as well as the State aid monitoring in case of “de minimis” aid.

When the EU decides to take action, it should focus even more on SMEs (“Think Small First”). In particular, it should provide for targeted consultations of SME stakeholders with an early and comprehensive involvement of all EU and national SME organisations. In addition, the collection of evidence needs to take into account the limited resources of SMEs by providing for simpler and limited questionnaires targeted to SMEs who do not have the resources and means to deal with complicated information requests on a regular basis. Finally, it must be ensured that representative data is collected and sufficiently analysed to avoid that new obligations are created which lead to disproportionate burdens for SMEs (for example the recent proposal regarding the Single Market Information Tool).

**Conclusion**

Much has been achieved since the adoption of the Better Regulation Agenda in 2015. In fact, the policy-making process has become more open and transparent and the evidence-based approach has been strengthened.

Nevertheless, additional work is needed to improve the Commission’s Better Regulation policy, in particular regarding the stricter application of the existing tools and a better focus on SMEs.

ZDH therefore supports a renewed commitment to the Better Regulation Agenda and a more rigorous application of the existing tools and principles with a view to further reducing regulatory burdens on SMEs.

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## Annex I

### Examples of EU legislation which is still too burdensome for SMEs

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<th>Area</th>
<th>Description</th>
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<td><strong>REACH</strong></td>
<td>SMEs need further attention under the REACH Regulation 1907/2006/EC as they are clearly the most negatively affected by the REACH Regulation, including the authorisation process. Identifying and accompanying developments on substances of concern is a particular challenge. In case of niche applications (i.e. use of lead and antimon in piano keyboards), there is a risk of belated action in the consultation process. Further burdens on SMEs include the high costs for the elaboration of a dossier, short review-periods, the limited possibility to use non-English languages as well as administrative burdens and high costs for the authorisation. It would be helpful if indications on substance applications would be broadened and if chemicals consultations would be notified beyond the ECHA-portal with a view of reaching out to groups that might be considered or consider themselves “chemicals-savvy”. Furthermore, the authorisation process needs to be simplified.</td>
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<td><strong>Safety and health of workers</strong></td>
<td>Regarding the Carcinogens and Mutagens Directive (Directive 2004/37/EC) disproportionate burdens for SMEs need to be avoided. In particular compliance costs should be reduced to a minimum. When it comes to the inclusion of further substances in the Annex of the directive this should be evidence-based and underpinned by a thorough impact assessment that takes account of sectorial differences and an opinion of the Advisory Committee on Safety and Health. Changes to the limit values such as changes to the Occupational Exposure Limit (OEL) of Hardwood dusts, Respirable Crystalline Silica (RCS), Chromium and Butadiene have a particular impact on SMEs with regard to increased burdens of measuring limit values, risk assessment and replacement/reduction costs to comply with the requirements. Too restrictive and disproportionate limit values need to be avoided as they cause heavy additional financial burdens for SMEs and lead to strong and excessive investment requirements.</td>
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<td><strong>EU Consumer law</strong></td>
<td>The Consumer Rights Directive 2011/83/EU should become more practical for SMEs, for example by reducing the definition of “contracts negotiated away from business premises” to contracts concluded in private homes or at work. Contracts concluded on the initiative of the consumer himself should be excluded from the scope. In addition, distance contracts should be restricted to business models clearly targeted to distance selling (e.g. online shops, teleshopping, contracting via call centres, etc.).</td>
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<td>EU funding programmes</td>
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<td>The information requirements need to be reduced and simplified. For example, it is not necessary that entrepreneurs inform the consumer on the non-existence of a statutory right of withdrawal. Furthermore, the information obligation to refuse participation in a consumer dispute resolution procedure does not create an informative added value for consumers and has the sole purpose of discrediting entrepreneurs who decide not to participate in such proceedings. The rules on the right of withdrawal and the model withdrawal form need to be simplified and allow for more flexibility of the entrepreneur. The goal must be to inform consumers comprehensibly and in a flexible manner about their rights. The extension of the withdrawal period in case of formally incorrect instructions is disproportionate if the consumer is actually sufficiently informed in terms of content of the instructions and leads to a lot of legal uncertainty about the contract. Overall, the information requirements should be streamlined. In particular, a single catalogue of information requirements should apply both to doorstep and distance contracts and the formal requirements should be the same as well.</td>
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Cohesion policy is one of the key policy areas that makes the EU directly visible locally, and this in a positive way. Many cohesion policy instruments have proved their worth in the activation and stabilisation of SMEs and in the improvement of economic conditions in the regions. But not all aims can be achieved due to bureaucratic burdens. Overall, the management of structural funds should be simplified, especially for smaller projects. The statutory and documentation obligations should be limited to the necessary minimum. Also the envisaged simplification and merging of programmes must be better targeted for the use by SMEs. The EU’s intention to use the existing budget more efficiently as well as to use synergies between EU structural funds and FP9 should not lead to direct competition between the various programmes for the same funds. Otherwise, it would weaken the different objectives of the funding instruments. As for the Erasmus+ follow up programme SMEs need slim application procedures as well as documents in all EU-languages (not only in English). In order to encourage SMEs to participate in this programme, the importance of the role of intermediary SME organisations or chambers must be acknowledged. |

\[4\] For more information see: http://ec.europa.eu/regional_policy/de/policy/how/improving-investment/high-level-group-simplification/.
| **State aid** | Further simplifications for SME support measures well below the de minimis ceiling and indirect SME support through consultants working for SME organisations are needed. In fact, consultation services provided by chambers of crafts are currently subject to the de minimis regulation with the associated high bureaucratic burdens. As direct aid to SMEs is however in many cases not sufficient to effectively support SMEs, indirect support through consultants working for SME organisations (intermediary level) should therefore also be exempted under the General Block Exemption Regulation in line with the objectives of Article 18. |
| **Standardisation** | European legislation and technical specifications refer increasingly to standardisation. Standardisation is useful for setting out the state of the art in a harmonised manner. Nevertheless, participation in standardisation requires substantial financial and human resources and the risk that a few major industry players are able to set the standards is very real. As a consequence – on top of improving SMEs access to standardisation – the European Commission and the legislators have to take great care when using standardisation to set common levels, specifications or rules. Affected companies must always be identified up front and brought to the negotiation table before the standardisation work starts. Transferring standardisation work to the international level and/or referencing such standards bears additional risks for SMEs. |
| **Construction Products Regulation (CPR)** | The CPR 305/2011/EU has resulted in significant additional cost and bureaucracy for SMEs. Implementing harmonised assessment, testing, declaration and labelling methods has created the need for costly procedures, including for companies not active across borders. A review of the CPR should lead to significant exemptions from requirements for locally active producers, delivering products for known clients or markets. In addition, solutions must be found to close the gap between national and European legislation, so as not to overburden SMEs who are construction products users. |
| **Tachographs** | The existing rules on digital tachographs in Regulation 561/2006/EC do not apply to vehicles weighing less than 3.5 tonnes. This market segment is dominated by vehicles not belonging to the road transport sector and where driving is just a secondary activity. Despite the existing – and complicated to apply – derogations for non-transport companies, any further extension of the scope would cause major burdens for SMEs. To focus the existing scope with regard to vehicles weighing more than 3.5 tonnes on the transport sector, the ZDH suggests that the max. 100-km exemption radius (cf. Article 3aa) – applied when carrying materials, equipment or machinery for the driver's use in the course of his work – is extended to 150 km. |
| Corporate Social Responsibility (CSR) | The directive 2014/95/EU on disclosure of non-financial reporting in the context of CSR triggers extensive reporting duties. What may be doable for large enterprises is quite a challenge for SMEs. Furthermore, an SME exemption doesn’t help much: As SMEs are often part of a larger supply chain, the larger companies in the supply chain will always ask them to disclose certain information and SMEs are thus de facto subject to the same reporting obligations – despite being formally exempted. |
| Anti-Money Laundering | The anti-money laundering rules (4th money laundering directive 2015/849/EU) should be reviewed as they lead to significant administrative burden for SMEs. According to these rules, persons trading in goods are “obliged entities” to the extent that payments are made or received in cash in an amount of EUR 10,000 or more. This leads to a situation in which small enterprises – especially in the car repair trade sector – need to fulfil the same anti-money-laundering obligations as banks representing a massive bureaucratic burden for enterprises with often less than 10 employees. |