



ESBA Response to Stakeholder Consultation on “Which are the Top 10 most burdensome legislative acts for SMEs?”

Page | 1

21 December 2012

**DG Enterprise and Industry Unit D.4 Small Business Act, SME Policies
European Commission
B-1040 Brussels
Belgium**

Subject: Annex to the ESBA response to Stakeholder Consultation on Top 10 most burdensome legislative acts for SMEs.

ESBA Transparency Register ID Number: 97165848130-92

Dear Mr Andropoulos,

Please find below an elaboration to the response of the European Small Business Alliance to the stakeholder consultation on the Top 10 most burdensome legislative acts for SMEs.

Manufacturers, distributors, retailers and service providers alike have to comply with a vast array of legislation and regulations. Whether it concerns health and safety, product conformity, standard codes of practice or labour law, all these acts place considerable compliance requirements on businesses. This translates to both a financial and a ‘human resources’ burden.

It is not just one-off compliance costs that have significant effect on businesses. It is the cumulative effect of continuously changing legislation that forces businesses to constantly monitor regulatory developments. The fear of not meeting information requirements or new product conformity standards, which in turn might result in fines from the authorities or claims from customers, places a great burden on the day to day practice of small businesses.

It should be noted that there exists a great heterogeneity within the SME spectrum. As you well know, both the micro company with 2 employees and the 200 employee operation fall within the same definition. It seems, needless to say, that regulatory burden ways much greater on the former than the latter. What is perfectly manageable for a medium sized company can be detrimental to a micro business with a handful of staff.

Perhaps asking for a top 10 of the most burdensome regulations is not the right question. It is not about a handful of specific regulations but about the cumulative effect they have on our small businesses. Somewhere along the line the well-intended has moved to the gross overregulation. The EU seems to have lost track of what it is really about: to stimulate business and complete the Single Market. For this reason, it is important that ESBA’s response to this consultation is read in conjunction with our comments on smart regulation.

European Small Business Alliance – Brussels Office

Clos du Parnasse 3A, B - 1050 Bruxelles

Tel. : +32 (2) 274 25 04 – Fax. : +32 (2) 274 25 09 – email : secretariat@esba-europe.org



However, in light of this particular consultation and as we have to start somewhere, it is vital that the legislative acts described below are amended, replaced or deleted. This will enable businesses to allocate their resources to their core activities, thereby facilitating the growth of existing companies, the establishment of new businesses and the creation of the much-needed European employment.

Page | 2

Based on the responses of our membership, below you will find a concise explanation of 15 legislative acts that stand out to be particularly burdensome to micro- and small businesses. Please do not hesitate to contact our secretariat for more detailed information. I look forward to working with the European Commission to improve the increasingly uncontrollable situation.

Yours sincerely,

David Caro,
ESBA President

=====

Short description of ESBA:

ESBA is a non-party political European group, which cares for small business entrepreneurs and the self-employed and represents them through targeted EU advocacy activities. ESBA also works towards the development of strong independent advocacy and benefits groups in European countries. ESBA is one of the largest organisations based on voluntary membership in Europe. Through its direct membership, associate membership and cooperation agreements, ESBA today represents more than one million small businesses and covers 36 European countries.



Working Time Directive (2003/88/EC)

The specific structure of SMEs requires a flexible management of its staff in order to be able to adjust to staff shortages and seasonal peaks in demand for goods and services. The strict provisions in the current Working Time Directive do not allow for this flexibility. Furthermore, the reference periods specified in the Directive are very short, further adding to the inability to adapt to seasonal fluctuations of demand of labour. These points are aggravated by calculating on-call time as actual working time.

Page | 3

Anti Money Laundering Directive (2005/60/EC)

The AMLD leaves room for interpretation of the exact definition of suspicious behaviour to be reported. What might be regarded as suspicious behaviour in one country may not in another, national idiosyncrasies need to be taken into account. This poses a particular burden on non-financial service providers, e.g. real-estate agents, that have to perform adequate due diligence of their customers. There are no proper guidelines on suspicious behaviour. Furthermore, it is not established clearly, in cases of non-financial service providers, in which cases a business needs to start a due diligence procedure and the implementation and supervision of the AMLD differ across Member States. In particular for real-estate agents, it should be specified that only in case a service is provided – as opposed to multiple showings of an apartment/house – the costly and time-consuming due-diligence procedure needs to be carried out.

Working time of self-employed lorry drivers (2002/15/EC)

This Directive has a detrimental effect on self-employed lorry drivers. There is a set maximum on the time that self-employed drivers are allowed to spend next to their normal driving hours in an attempt to level the playing field between employed and self-employed drivers, thereby not taking into account that self-employed drivers have a businesses to run next tot heir driving hours, whereas employed drivers do not. Therefore, instead of levelling the playing field, self-employed drivers are placed at a competitive disadvantage. It should be noted that driving and rest times are already regulated by EC Regulation 561/2006, so that the argument of road safety in (2002/15) is invalid. The worst effect of this regulation is perhaps the fact that it opens the floodgates to regulating the working time of entrepreneurs, which is clearly not a good idea.

REACH (EC 1907/2006)

REACH requirements have proven to be too burdensome for SMEs and smaller firms in particular as the Regulation has significantly enhanced the administrative burden of compliance with REACH. Time delays or restrictions in the availability of certain substances as a result of the registration, authorisation and restriction process hinder the capacity of firms to develop new products. Downstream users experience a lack of consistency and legal clarity regarding the applicable procedures. In fact, a substance can be proposed at any time for the candidate list, and therefore be subject to the huge administrative burden and cost of an authorisation process; once this happens, the companies only have a few months to comply and prepare the relevant paperwork to undergo the authorisation phase. This hampers SMEs' capacity to innovate. While large companies can invest large sums on R&D and innovation, there are also many SMEs, often present in high-value-added or niche markets, that play a crucial role in innovation in the chemicals industry.



Waste Framework Directive (2008/98 EC)

The recycling and recovering targets that are set to be attained by the Member States (50% of their municipal waste and 70% of construction waste) by the year 2020 have raised costs for businesses. In particular, the obligation to differentiate between waste and non-waste, in combination with preventative measures, have brought administrative complexities, raised the overall costs of production and stifled innovation and entrepreneurial action to turn waste into a resource.

Page | 4

WEEE (2012/19/EC)

This Directive places a high burden on small retailers, as they are obliged to take back end-of-life products from consumers. Instead of the manufacturer, it is the retailer that faces the burden of ensuring that products can be returned, are stored, and subsequently properly disposed of. Next to the financial burdens of the collection process, small businesses need to allocate valuable time to the accompanying administrative formalities.

VAT (2006/112/EC)

Due to the difference in VAT systems across Member States, as well as the different VAT rates for a variety of products, businesses have to invest a significant amount of time and resources before they are able to sell products abroad. Business need to stay under the national exemption thresholds or apply for a VAT number. Small businesses are disproportionately burdened by this complexity and is one of the reasons they often choose not to sell abroad.

E-Privacy Directive (2002/58/EC as amended by 2009/136/EC)

Businesses need to analyse very closely what kind of information they provide, and how it is provided, when data of consumers is collected. This information needs to be constantly updated. Businesses need to be given detailed guidelines on the information to be provided and how they would fulfill their legal obligations. Next to this, the definitions of explicit and implicit consent, as well as the legal implications of one over the other, should be more clearly defined.

Distance Selling (97/7/EC)

Business engaged in distance selling need to inform customers of their right of cancellation and must accept returns of goods within 7 days of delivery. The main burden on business stems from the fact that customers are entitled to a full refund when they want to return a product. However, as compared to offline sales, the seller has incurred costs for postaging and packaging the product and charged these costs to the customer. When a product is returned, the full amount needs to be paid back, leaving the seller with a loss on the postage and packaging costs.

Construction Products Regulation (EU 305/2011)

In order for a product to carry the CE marking, i.e. before a product is allowed on the Internal Market, a producer needs to submit a comprehensive technical dossier, prove compliance with all relevant legislation and compatibility with applicable standards. The administrative burden for small companies in this case is much higher than for larger companies. The CE marking drives business from the market as the compliance costs are too high, especially for the smallest businesses that solely trade within national borders.



The Directive on Temporary Agency Work (2008/104/EC)

The AWD intends to safeguard the interests of temporary workers across the EU. This Directive however has great negative side-effects on freelance workers. Although the AWD does not include freelance workers and does not intend to cover freelance workers, the Directive does not specify clearly enough that freelance workers are excluded. The ambiguity results in poor guidelines from national governments to businesses; in turn leading up to the fact that freelance workers might not be hired because their clients wrongly think they need to adhere to the same provisions for freelance workers as for temporary agency workers.

Recognition of Professional Qualifications (2005/36)

The wide range of regulated professions across the European Union hampers the possibility of micro- and small businesses to provide cross-border services. The qualifications that are needed for a worker to be allowed to exercise a profession in a given sector differ among the Member States. Companies struggle with the need to have workers certified when performing services abroad. This affects in particular self-employed professionals who would be very well equipped to take on assignments depending on labour shortages in different Member States.

Public Procurement (2004/18/EC)

The rules of procedure as laid down by the current legislative framework are uniform for all economic operators on the public procurement market. They fail to take into account the limited capacity of SMEs to tackle the administrative and financial requirements entailed upon bidders within public procurement. Submitting a tender entails significant costs, especially to comply with all the documentation requirements. Contracting authorities often ask for documents twice in case a company has previously participated in a tender.

Data Protection (95/46/EC)

Small businesses need to comply with strict obligations under the current Directive and face great fines in cases of non-compliance. Non-compliance, however, does not occur as a result of mal-intent. They rather stem from technical difficulties or unawareness of obligations. The obligations for businesses differ across the Member States, most significantly with regards to the notification procedure. The current revision could become quite burdensome as well, as it sets out to introduce a mandatory data protection officer for small businesses processing data. Needless to say that this will be quite a challenge for a 3 person micro-business.

Unfair Commercial Practices (2005/29/EC)

The Unfair Commercial Practices Directive places the burden of proof of unfair practices with the trader. This in itself does not constitute a burden, however, it poses burdens on businesses when consumers file unjustified complaints. In these cases, a business needs to spend time and resources to prove it has acted correctly and in good faith.