BUSINESSEUROPE

Position

5 February 2013

REDUCING LEGISLATIVE BURDENS ON SMES:

- EXISTING EU LEGISLATIONS TO REVISIT AND TO AMEND

- DRAFT EU LEGISLATIONS TO BE MODIFIED OR WITHDRAWN

Technical fiches

Introduction

BUSINESSEUROPE has submitted a contribution (dated 20 December 2012) in the context of the European Commission enquiry on the Top 10 EU legislative acts that are most burdensome for SMEs.

In that contribution, 17 EU existing legislatives acts (or clusters of EU acts) have been highlighted as needing to be revisited and amended.

The present document gives more details on these acts and identifies some key design or implementation problems to remedy. It also highlights the burdens for SME connected with three current Commission legislative proposals or ideas.

The full list of issues commented upon in the annex is the following:

PRIORITY LIST OF EU LEGISLATIONS TO REVISIT AND TO AMEND

Taxation

1. Streamline VAT legislation
2. Clarify and simplify import VAT legislation
3. Improve the Community Customs Code

Environment / REACH

4. Amend REACH candidate list organisation to better accommodate business needs
5. Avoid overlaps and inconsistencies between REACH and other EU chemicals legislation, especially product legislation

Environment / waste

6. Uniform implementation of the waste shipment regulation with more focus on hazardous waste and less on unproblematic waste
7. Revise the 2011 Directive on the use of certain hazardous substances in electrical and electronic equipment (Restriction of Hazardous Substances - RoHS)
8. Revise the waste electrical and electronic equipment (WEEE) Directive

Internal market for services

9. Bring temporary employment agencies within the scope of the Service Directive

Health and safety

10. More flexible rules for the assessment of the risks to safety and health at work

Other areas

11. Safety legislation: solve the contradiction between the construction products regulation (CPR) and standard EN 1090 concerning non-series production.
12. Eliminate burdens in the collection of statistics relating to the trading of goods between Member States

ADDITIONAL EU LEGISLATIONS TO BE REVISITED AND AMENDED

13. Reduce administrative burdens of regulation regarding sales/turnover tax (electronic invoicing)
14. Reduce administrative burdens of regulation regarding sales / turnover tax (refunds of tax paid in another member state)
15. Suppress barriers to trade in goods (Directive 98/34/EC)
16. Address the legal fragmentation resulting from flawed concepts in consumer legislation
17. Falsified medecines Directive: define practical requirements for importation of Active Pharmaceutical Ingredients (API) manufactured outside the EU

PROPOSED EU LEGISLATIONS TO BE MODIFIED OR WITHDRAWN

18. Refrain from going forward with envisaged legislation on ergonomics, including work-related musculoskeletal disorders
19. Amend the Commission proposal for an enforcement directive on posting of workers of March 2012
20. Make the proposed EU data protection Regulation SME proof.

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Issue no. 1	**Streamline VAT legislation**
EU legislative act	EU VAT legislation in general
Problem (need for simplification)	SMEs experience the following problems in particular (non-exhaustive list): a. The obligation for SME's supplying goods and services subject to VAT in several Member States to register for VAT in those Member States; b. Different VAT rules in Member States (as a result of discretionary powers in EU legislation); c. Different interpretations of VAT rules by Member States. The resulting complexity may obstruct SMEs in their attempts to engage in intra-EU trade and leads to unnecessary extra administrative burdens and costs (such as consultancy costs). Examples of problem areas include: • Differences in interpretation regarding warehousing/storage of goods and work on movable property; • VAT registration in other Member States – a problem in itself – is complicated by differences in requirements by Member States; • Differences in requirements that Member States lay down for application of the 0% rate for intra-EU supplies; • Differences in the content of VAT declarations in the Member States (a simple uniform declaration is needed); • Differences in the possibilities to submit VAT declarations electronically; • Big problems concerning Single Authorisation for Simplified Procedures (SASP) and Centralised Clearance based on national requirements, especially in the area of VAT.

Issue no. 2	**Clarify and simplify import VAT legislation**
EU legislative act	Import VAT legislation
Problem (need for simplification)	There are different interpretations and handling by the Member States concerning VAT rules One example is the different understanding in case of “deduction of input tax” concerning import VAT. Especially in Germany, the interpretation is that companies must have something like ownership of the goods to secure the right to a “deduction of input tax”. In other EU countries, it is only necessary to be responsible for the customs clearance and to pay the import VAT. This is only one example of the different handling of VAT rules in the different EU Member States. There is a need for more simplified and common regulations which are in line with customs regulations and customs processes.

Issue no. 3	**Improve the Community Customs Code**
EU legislative act	Community Customs Code – Regulation (EC) No 450/2008
Problem (need for simplification)	The current revision of the Community Customs Code (CCC) will update the existing customs legislation and bring some facilitation for companies. However, there are also a number of proposals which should not be implemented as this would increase the administrative burden for companies. Moreover, there are number of innovative models which should be realised. Both these aspects should be taken into account when adopting the new Union Customs Code (UCC). Proposals which should not be implemented, because they are creating burdens, are the following: a) List rules in the area of non-preferential origin are not necessary and would be a huge burden; b) Cancellation of “First Sale Rule”; c) Cancellation of the possibility to make oral declarations or declarations made by “another act” for a lot of processes, especially in case of shipments with a value lower than € 1,000. Innovative proposals which are useful and should be implemented: d) Entry in the records without notification should also be possible in cases of prohibitions and existing global licenses or if no special controls of the goods are necessary; e) More simplifications and especially simplifications with an impact like a waiver of prior declarations in the import but also in the export area are necessary for an Authorised Economic Operator (AEO). Otherwise the burden to get an AEO status on the one hand and the advantages on the other hand are not in balance.

Issue no. 4	**Amend REACH candidate list organisation to better accommodate business needs**
EU legislative act	REACH Regulation (1907/2006 of 18 December 2006)
Problem (need for simplification)	When substances are placed on the candidate list there is an immediate information requirement for any supplier of articles containing candidate list substances in a concentration of more than 0.1 % w/w (according to Article 33). Twice a year new substances are put on the candidate list. Since supply chains are often long and complex it is an administrative burden for companies to keep track of the content of the relevant substances. It is also a problem that 6 EU countries have another definition of an article than the Commission and the rest of the Member States, and thus another basis for calculating the 0.1 w/w % parameter.
Proposal for simplification	A transition period (at least three months) for the information requirement in Article 33 of REACH should be granted. And new substances should only be put on the candidate list at a fixed date once a year. The Commission must secure a common implementation of the definition of an article throughout the EU. The problem can only be solved by a full legislative process (involving the Council and European Parliament). Since there is a general business wish not to open REACH for amendments before the next registration deadline (1st June 2013), the timing for introducing this amendment should be planned on a more long term basis.

Issue no. 5	**Avoid overlaps and inconsistencies between REACH and other EU chemicals legislation, especially product legislation**
EU legislative act	REACH Regulation (1907/2006 of 18 December 2006) in relation to the RoHS Directive (2011/65/EU of 8 June 2011) and the toys Directive (2009/48/EC of 18 June 2009).
Problem (need for simplification)	It is a burden for industry that for many products you have to comply with double regulation, for instance REACH and RoHS, REACH and the toys Directive etc. It is further troublesome when the legislative acts in question have differing definitions, methods, etc. Since REACH should be the cornerstone of the chemicals legislation in the EU, there is a need for amending of conflicting or differing legislation.
Proposal for simplification	According to Article 138(6) of REACH (Regulation 1907/2006 of 18 December 2006) a review had to be undertaken to evaluate the scope of REACH in relation to other EU legislation before 1 June 2012. All relevant sectoral EU legislation or draft EU legislation were to be analysed with a focus on the following elements: aim and scope of each piece of legislation and if relevant the different steps or parts of the legislation; definitions; regulatory mechanisms, assessment methods and scopes, including exemptions. The report contracted by the Commission to a consultant (MILIEU) with a view to providing information for the Article 138(6) review can be found here: http://ec.europa.eu/enterprise/sectors/chemicals/files/reach/review2012/scope-final-report_en.pdf The definitions and methods in RoHS (Directive 2011/65/EU of 8 June 2011) should be fully aligned with REACH. Possibly RoHS should be incorporated in REACH. The toys Directive (2009/48/EC of 18 June 2009) should be fully aligned with REACH. Possibly the toys Directive should be incorporated in REACH. The EU acts mentioned above should be amended in a way that reduces administrative burden and enhances legal security for companies.
Remarks	CEFIC has published a Manifesto towards smart regulation for chemicals. Its conclusion nr. 3 stresses that: “Where double legislations occur, these should be abolished and, if, for good reasons, double legislation cannot be avoided, the administrative burdens should be diminished for example by setting up searchable databases of restrictions (e.g. RoHS, Toys), or guidance documents should be issued. However, REACH should be used in a non-ambiguous manner as the reference and systematic basis for sectoral legislations”.

Issue no. 6	**Uniform implementation of the waste shipment regulation with more focus on hazardous waste and less on unproblematic waste.**
EU legislative act	Regulation No. 1013/2006 14. June 2006 on shipment of waste.
Problem (need for simplification)	The regulation on waste shipment should create a common market for waste utilisation and recycling, but in real life the individual member countries use the Regulation differently and interpret the relevant documents differently. This hampers the best utilisation of the materials in the waste and jeopardises a common market for secondary raw materials.
Proposal for simplification	The waste shipment regulation must be revised to simplify the procedures for moving waste between member countries, leaving the inspection and evaluation of waste treatment facilities to the authorities in the receiving country. A simplified regulation implemented in a uniform way will increase the utilisation of waste as secondary raw materials.

Issue no. 7	**Revise the 2011 Directive on the use of certain hazardous substances in electrical and electronic equipment (RoHS)**
EU legislative act	Directive restricting the use of certain hazardous substances in electrical and electronic equipment (RoHS) - Directive 2011/65/EC
Problem (need for simplification)	The recast of the RoHS Directive resulted in scope provisions that rather decrease than improve legal certainty and regulatory stability, while the Commission's impact assessment prior to the recast proposal did not justify any scope changes of the existing RoHS Directive.

Issue no. 8	**Revise the waste electrical and electronic equipment (WEEE) Directive**
EU legislative act	Waste electrical and electronic equipment (WEEE) Directive 2012/19/EU
Problem (need for simplification)	The recast of WEEE Directive resulted in scope provisions that rather decrease than improve legal certainty and regulatory stability, while the Commission's impact assessment prior to the recast proposal did not justify any scope changes of the existing WEEE Directive.

Issue no. 9	**Bring temporary employment agencies within the scope of the Services Directive**.
EU legislative act	Services Directive - Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work.
Problem (need for simplification)	Currently the services of temporary employment agencies are excluded from the Services Directive. This exception has an inhibiting effect on the European single market for temporary agencies. This impediment is especially reflected in the diversity of schemes and permits, which many EU countries have for the temporary work market. In practice, when an agency in the Netherlands wants to send a temp to work in Belgium, it has to apply for a permit in Belgium. This results in a lot administrative handling (burden) and paying a large deposit. Another example for Dutch temp agencies concerns placing temporary workers in Germany. For each placement, the agency has to file for a permit. Filing for such a permit takes two to three months. This does not contribute to a flexible market, especially when an agency wants to respond to a request/procurement from a foreign company for temporary workers within a week (by placing a temporary worker). In addition, Germany has a minimum wage for temporary workers and there is the obligation for both the hiring company and the temporary work agency to have a payroll in the German language. The example above concerned placing temporary workers directly. When a Dutch company arranges for one of its temporary workers do work for a foreign client, there are administrative problems as well. In Germany it is only permitted for a Dutch (temporary) employee to work on the installation of a device/machine (just installation, not maintenance) and when a 'werkvertrag' (a contract for work and services) has been granted for both the worker and the job. In Belgium it is simply forbidden for a Dutch company to send one of its temporary workers to work in Belgium. The diversity of national regulations does not contribute to a flexible labour market and can in some cases cause a loss of employment. Reason for the exception from the Services Directive was, at that time, the diversity of the European temporary work market. This diversity was caused by a lack of uniform view on temporary work in different countries. As an alternative, a special directive on temporary agency work (2008/104) has been adopted.
Proposal for simplification	Now that there is a framework for temporary agency work, the Commission should consider abrogating the exception in the Service Directive.

Issue no. 10	**More flexible rules for the assessment of the risks to safety and health at work**
EU legislative act	Council Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work.
Problem (need for simplification)	The conditions for the assessment of the risks to safety and health at work are not adequately flexible. Because of this the regulation inflicts an unnecessary degree of administrative burdens on the enterprises. The obligation to work out a written assessment of risks does not take the size of the enterprise into consideration, nor the duration of the employment. This means that the employer in principle has to make a written assessment of risks for an employment of two days' duration. At the same time the obligations causes double regulation of several areas. These are areas where the enterprises already have special duties to make an assessment of the risks. This is true for ATEX and chemical and biological agents among others.
Proposal for simplification	<u>General</u> We suggest that the requirements for the assessment of the risks to safety and health at work are made more flexible. The demands should take the size of the enterprise and the duration of the employment into consideration. Further the demand for written assessments should be made optional in certain situations to avoid double regulation. <u>Potential gains for companies</u> The demand for a written assessment is particularly burdensome in relation to temporary workstations and very small enterprises. A more flexible procedure would be a substantial relief in these situations. The elimination of double regulation would save the companies time; and would at the same time eliminate a source of frustration.

Issue no. 11	**Safety legislation: solve the contradiction between the construction products regulation (CPR) and standard EN 1090 concerning non-series production.**
EU legislative act	The Construction Products Regulation (305/2011/EU - CPR) - replacing the Construction Products Directive (89/106/EEC - CPD) - is laying down harmonised conditions for the marketing of construction products. The Construction Products Regulation (the CPR) is to ensure reliable information on construction products in relation to their performances. This is achieved by providing a “common technical language", offering uniform assessment methods of the performance of construction products. **Lighter regime for non-series process:** Article 5: Derogations from drawing up a declaration of performance By way of derogation from Article 4(1) and in the absence of Union or national provisions requiring the declaration of essential characteristics where the construction products are intended to be used, a manufacturer may refrain from drawing up a declaration of performance when placing a construction product covered by a harmonised standard on the market where: (a) the construction product is individually manufactured or custom-made in a non-series process in response to a specific order, and installed in a single identified construction work, by a manufacturer who is responsible for the safe incorporation of the product into the construction works, in compliance with the applicable national rules and under the responsibility of those responsible for the safe execution of the construction works designated under the applicable national rules; Article 38: **Other simplified procedures** 1. In relation to construction products covered by a harmonised standard and which are individually manufactured or custom-made in a non-series process in response to a specific order, and which are installed in a single identified construction work, the performance assessment part of the applicable system, as set out in Annex V, may be replaced by the manufacturer by Specific Technical Documentation demonstrating compliance of that product with the applicable requirements and equivalence of the procedures used to the procedures laid down in the harmonised standards. **EN 1090-1:2009-**Execution of steel structures and aluminium structures Part 1: Requirements for conformity assessment of structural components. Part 1 of this standard (EN 1090-1) requires, through its Annex ZA, that steel builder provides every part of steel structure with a CE marking. Part 1 of this standard (CE marking) will be mandatory from 1 July 2014 for steel constructions (series and non-series). CE Marking is not allowed unless the Factory Production Control (FPC) system under which they are produced has been assessed by a suitable certification body that has been approved to the European Commission.

Problem (need for simplification)	**An example where EU-legislation leads to disproportionate legislation instead of the 'think small first' principle.** The CPD (construction products directive) offers the possibility of a lighter regime for non-series production. The CPR, however, is linked to the standard EN 1090 and this standard comprises both series and non series production. So the opportunity that was given in the CPR - to reach more proportionate legislation (mostly for the small and micro companies) by making an exception for non series production - is undone by EN 1090. Companies which make building products such as non-series stairs (especially made for one (unique) building only) are therefore unnecessarily faced with extra administrative burdens: CE marking and FPC certificate. Companies which benefit from an exception for non-series production were most likely not represented by the members of the relevant standardisation committee. In connection with this example the following question can be raised: is it possible to correct the wrong approach followed and change the standard itself, or the reference to EN 1090, so that non-series production becomes an exception again as intended by CPR?
Proposal for simplification	Solve the contradiction between CPR and EN 1090 concerning non-series production. The standard should be amended in line with the CPR. The Commission must raise this issue with CEN.

Issue nr. 12	**Eliminate burdens in the collection of statistics relating to the trading of goods between Member States**
EU legislative act	Statistics relating to the trading of goods between Member States - Regulation (EC) No 638/2004
Problem (need for simplification)	When an enterprise in one country exports to an enterprise in another EU country, the export is reported to Intrastat Export; and the import is reported to Intrastat Import. Thus the same transaction is reported to the statistical bureaus twice - so-called “mirror statistics”. For each individual European company the reporting of sales/exports of the company's own product(s) self evidently is much easier than reporting the wide range of raw materials, intermediary products and other inputs the company acquires/imports. The main part of the problem stems from information gathering when the invoice does not contain or is unclear about the required information. Therefore the reporting of imports is especially burdensome for companies.
Proposal for simplification	<u>General</u> The import reports should be abolished and substituted by reports from the exporting country's statistical bureau. Export statistics are superior to import statistics with respect to reliability, and the administrative burden it imposes on businesses. Thus, the best way to proceed would be to drop statistics based on imports and 'recycle' export statistics among Member States. <u>Potential gains for companies</u> Danish studies have revealed that Intrastat statistics account for 3/4 of the total statistical burden on companies (AMVAB, sep. 2004). The total burden on Danish companies caused by Intrastat has been estimated to 17 million Euro per year (this corresponds to approximately 1 p.c. of the total administrative burdens, which stem from EU-legislation, in Denmark). Especially Intrastat Import is burdensome, accounting for totally 2/3 of the total statistical burden in Denmark.

Issue no. 13	**Reduce administrative burdens of regulation regarding sales/ turnover tax (electronic invoicing)**.
EU legislative act	Directive 2006/112 on the common system of value added tax.
Problem (need for simplification)	Lack of uniformity: each Member State has different rules regarding electronic invoicing. In the Netherlands for instance, the notions 'authentic' and 'integrity' are flexible, while in Germany those notions are applied in a rigid manner. Still printing and storing original paper invoices: annually, companies submit electronically Eighth Directive refund claims (regarding VAT). However, the paper invoices must also be sent to the relevant tax office. An electronic invoice is insufficient / not accepted.
Proposal for simplification	Harmonisation on EU level (in the 'Green Papers' of the EC a development towards harmonisation of electronic invoicing has been started).

Issue no. 14	**Reduce administrative burdens of regulation regarding sales/ turnover tax (refunds of tax paid in another member state).**
EU legislative act	Directive 2006/112 on the common system of value added tax
Problem (need for simplification)	Problems arise due *to* the absence of a formal decision: after filing for a refund, in several countries like France and Spain, the money is refunded without a formal decision being communicated. France and Spain both pay interest in case of late payments of the refunds. Without a formal decision, it is not possible to check whether the actual refund corresponds to the filed refund request. Late payments of VAT refunds: unfortunately, it is not uncommon that a VAT refund is not paid within the statutory period. Companies regularly wait longer than a year for a VAT refund.
Possible approach	In the case of the Netherlands, companies prefer receiving a VAT refund through the national tax office (by filing the refund claim through the Dutch tax office). The Dutch tax office should arrange this with the member states concerned. Follow the one-stop-shop-scheme in VAT.

Issue no. 15	**Suppress barriers to trade in goods (Directive 98/34/EC laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on information society services)**
EU legislative act	Directive 98/34/EC laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on information society services
Problem (need for simplification)	National technical rules (specific national requirements linked to the product or to testing and/or documentation) remain a barrier to the free movement of goods and increase the costs of the product. Directive 98/34 governs the notification procedure that Member States are to follow if they introduce national technical standards and rules to products. Experience shows that the provisions of the Directive should be better enforced. According to article 8 of Directive 98/34, Member States are to provide the Commission with relevant justifications and impact assessments when they introduce national technical regulations. However, in practice such information is rarely provided nor published and the confidential nature of comments and detailed opinions makes it very difficult for business to accept the justification of such national regulation.

Issue no. 16	**Address the legal fragmentation resulting from flawed concepts in consumer legislation**
EU legislative act	Regulation 593/2008 on the law applicable to contractual obligations (“Rome I” Regulation)
Problem (need for simplification)	The main problem with this regulation is that it obliges traders who want to trade across borders to apply the legislation of the country of residence of the consumer. It results in legal fragmentation of the single market. This makes cross-border trade very costly and it makes it nearly impossible for SMEs to engage in it.

Issue no. 17	**Falsified Medicines Directive: define practical requirements for importation of Active Pharmaceutical Ingredients (API) manufactured outside the EU**
EU legislative act	EU Falsified Medicines Directive
Problem (need for simplification)	Drug manufacturers of all sizes are facing significant challenges as a result of the implementation of the Falsified Medicines Directive (http://ec.europa.eu/health/human-use/falsified_medicines/index_en.htm), specifically regarding the implementation of new requirements for accompanying "Written Confirmation" to be provided for importation of Active Pharmaceutical Ingredients (API) manufactured outside the EU. It seems likely that a number of 3rd country regulatory agencies including the US FDA may not provide written confirmations required by the Commission from July 2013 and as a consequence medicines shortages may result in the EU. Additionally, no such restrictions apply to API importations for drug product manufactured outside of the EU (even for products that may subsequently be imported and distributed in the EU) putting EU drug product manufacturers at a significant competitive disadvantage. This could lead many corporations deciding to relocate manufacture outside of the EU, resulting in significant job losses. Furthermore, as currently written, there is no provision within the directive to enable API importation into the EU for manufacture of products for development and launch in other non-EU markets prior to regulatory submission of a drug product filing in the EU, which contravenes the strategy pursued by government to increase development activities and see the EU as a base for new product introduction and innovation. While the intent of the Directive is fully supported, it is vitally important that the Commission takes action to ensure that requirements for API importation into EU are practical and will not result in drug product shortage or put EU drug product manufacturers at a competitive disadvantage that may result in job losses.

Issue no. 18	**Withdraw the ideas for a new legislative proposal on ergonomics, including work-related musculoskeletal disorders.**
EU legislative act	Draft new legislative proposal on ergonomics, including work-related musculoskeletal disorders
Problem (need for simplification)	We are concerned that the European Commission is pursuing a new horizontal regulatory initiative on ergonomics. This would clearly impose new administrative and financial burdens for all employers and in no case constitute a simplification. Moreover, the issue of a disproportionate impact on SMEs and micro businesses remains unresolved, as proven by the Matrix external impact assessment. It acknowledges that a binding legislative initiative (option 4) would be the most expensive - € 3.7 billion, with 90% of those costs borne by SMEs. We also wish to recall that there is not always a direct causal link between the occurrence of work-related musculoskeletal disorders and the workplace, as these are often caused by factors external to the working environment. We therefore urge the Commission to carefully scrutinise the costs and benefits of any initiative it may pursue, including a recommendation, on enterprises, in particular SMEs and to undertake a robust SME test before proceeding any further with this work. We also insist that the European Commission respects its commitment to cutting red tape and consequently avoids a new binding legislative initiative in this field. This would have a detrimental impact on growth and jobs at a time when all efforts should be geared towards improving the production capacities and competitiveness of European enterprises.
Proposal for simplification	Instead of a binding legislative initiative, we advocate pursuing stronger actions on awareness raising, information and training.

Issue no. 19	**Amend the draft enforcement directive on posting of workers (Commission proposal of March 2012)**
EU legislative act	Draft enforcement directive on posting workers (Commission proposal of March 2012)
Problem (need for simplification)	The Commission proposal introduced joint and several liability in subcontracting in the construction sector for posted workers' wages and other working conditions. This would impose significant costs for businesses and act as a barrier in the single market. Moreover, the impact of introducing joint and several liability will fall disproportionately on small and medium enterprises, because: - SMEs will lack administrative and HR capacities to monitor their subcontractors' compliance with relevant labour laws, especially as this may require communication in different languages and knowledge of different national legal systems; - SMEs will also be less able than large companies to avoid the new risks by performing tasks in-house instead of contracting them out; - SMEs in the construction sector already struggle to enter into new markets and work for new clients if no previous relationship exists. Joint and several liability would make contracting companies even more risk averse and less willing to do business with newest or smallest businesses.
Proposal for simplification	Article 12 of the Commission proposal which obliges Member States to introduce a system of joint and several liability should be deleted.

Issue no. 20	**Make the proposed EU Data Protection Regulation SME-proof**
EU legislative act	Proposed EU Data Protection Regulation COM (2012) 11 final In 2012, the Commission proposed a major reform of the EU legal framework on the protection of personal data, in order to align regulation with (often digital) innovation and boost Europe's digital economy. The Commission claims this reform will lead to savings for businesses because of fewer administrative burdens. We refute this claim.
Problem (need for simplification)	The EC tries to combine the best by inserting in the new Regulation some elements taken from the existing Directive, but this has resulted in a moderate and hardly workable middle road. The Data Protection Regulation is said to be harmonising but has instead become exhaustive, unclear and still possesses the risk of divergence. The proposed text of the Regulation is very technical, specialist and therefore almost inaccessible for SMEs. At this point of time, the current law is already very complicated for SMEs, preventing them from correct implementation. This will cause huge cost for SMEs because they will have to hire specialised professionals. Under the current directive, certain types of low-risk processes are excluded. This type of general exception has proved its worth during the last few years. The current proposal lacks these possibilities for unhindered data processing in low-risk processes. Existing exceptions and self-regulatory mechanisms should be continued. The Regulation must be closely coordinated with sectoral rules. For instance, the financial services and health sector have their own specific (often EU) rules for data protection. Accumulated and conflicting rules and obligations should be avoided. Article 28, documentation: the obligation is disproportionate since it covers almost all processes and the benefit for the data subject is limited. Documenting will be a very extensive process, especially when joint responsibility is introduced. Systems are to be identified, adapted, and rebuilt for easy digital reporting. And even then keeping track of all processes will be almost impossible. The obligation will trigger high costs, also for low-risk processes. Exceptions for low-risk processes should be in place.
Proposal for simplification	To make this Regulation workable in practice, and not to let it diverge into 27 different interpretations, the harmonisations should be better accounted for and the room for interpretation should follow a risk-based approach. To prevent different national data protection regimes, crucial verdicts and interpretations by data protection authorities (DPA) should be assessed by the EC. Obligations (like assigning a Data Protection Officer, DPO) should be risk-based. Otherwise high and unnecessary costs for businesses will follow. The Regulation prescribes precisely at what size a business should appoint a data protection officer or take other measures. The number of employees however, can hardly be considered an objective criterion for assessing a data protection risk.