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The competitiveness of the EU's small and medium-sized enterprises in light of new administrative burdens/obligations

(Polish presidency exploratory opinion)

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Rapporteur: **Paul RÜBIG**

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1. Conclusions and recommendations

1.1. The European Economic and Social Committee (EESC) welcomes the initiatives launched by the European Commission in the recent past with the aim of reducing the regulatory burden. Nevertheless, SMEs in particular are facing double and triple legislative requirements and sanctions as a result of the additional wave of regulation and existing requirements. Empirical studies, company surveys, and the Draghi and Letta reports all confirm the steady increase in the bureaucratic burden at the expense of consumers, productivity, job creation and global trade. In this regard, further improvements are still required.

1.2. The process of rationalising EU legislation and developing good legislation techniques must take place within a framework that respects the character of the EU as a social market economy and in the full respect of labour rights protection and environmental and consumer safety standards. It must also ensure compliance with the commitments undertaken at international (Paris Agreement, United Nations Sustainable Development Goals, etc.) and EU levels, and with the principles of transparency and the rule of law in the EU. Simplification should not be an end in itself, but rather a means to enhance competitiveness and innovation. It should be a well-considered strategy that reduces unnecessary burdens on businesses and fosters a dynamic and competitive economy, while also ensuring the welfare of all citizens.

1.3. The EESC recommends that the SME test and the competitiveness check should be merged into one procedure. Moreover, the Regulatory Scrutiny Board (RSB) needs to be significantly strengthened and made more independent. It should carry out a 'consistency and subsidiarity check' at the beginning of each legislative process and should be empowered with appropriate revision and advisory rights. This strengthening of the RSB should be set out in the forthcoming interinstitutional agreement.

1.4. The EESC recommends making use of artificial intelligence and machine learning tools to create an easy-to-use 'single reporting tool' that can provide SMEs, mid-caps and other companies with all EU-relevant reporting obligations, deadlines and sanctions. This would also involve establishing a framework making it possible to parse documents and extract content, harmonise heterogeneous data sources and formats, uncover hidden connections, give meaning to data and, finally, draw conclusions. Each Member State should also set up a central contact point for European reporting obligations.

1.5. The EESC believes that the Commission is taking the right steps to reduce bureaucracy thanks to the REFIT platform, the SME test and competitiveness check, the digital coordination of the legislative process, reforms to the European Semester and recent commitments, including that by all Commissioners with relevant portfolios to reduce reporting obligations (25 % for all companies and at least 35 % for SMEs) ([1]). The EESC finds it regrettable that the portfolio of the Commissioner for Economy and Productivity, Implementation and Simplification is not a vice-presidential portfolio, and that none of the 14 Commissioners' Project Groups have been specifically dedicated to efficiency and simplification.

1.6. The EESC believes that the Council of the European Union and national authorities should also make greater use of the opportunities for reviewing responsibilities (subsidiarity), particularly with regard to the impact on small and medium-sized companies, consumers, administration and justice. To this end, more efficient procedures for subsidiarity complaints should be developed. In this regard, a new approach to law-making would help the EU institutions to keep track of implementation, enforcement and SMEs' compliance. When shifting from EU regulation to national legislation to improve the competitiveness of SMEs, care must be taken to ensure that no additional administrative burden is imposed at the national level.

1.7. In order for discussions on simplification to take place, there needs to be a proper and transparent enforcement of the law and effective sanctions against those who circumvent the existing binding rules (e.g. the International Labour Organization Conventions, World Trade Organization obligations), by avoiding at the same time the related duplications at the national level. A number of regulations arise as a response to those who seek to circumvent existing rules. Determination to address such actions would be fundamental to a fair market for all participants.

1.8. The EESC also recommends that the European Parliament and the Council of the EU develop an expedited procedure for impact and risk assessments carried out by their own policy departments in the case of amendments that would substantially reshape the proposals adopted by the European Commission. To facilitate their task, the new interinstitutional agreement should define the principle and empower the EU institutions with a simple, comprehensive procedure.

1.9. All these proposals could be included in a binding legislative Bureaucracy Reduction Act.

2. **General comments**

A. *Introduction and terms of reference*

2.1. The process of rationalising EU legislation and developing good legislation techniques must not open the door for national governments to reduce worker protections. It should promote economic, social and environmental standards and decent work through rights and protection measures, fostering the convergence and improvement of the living and working conditions of European citizens and considering the rapid evolution of the use of new technologies.

2.2. The Polish Presidency of the Council of the EU has requested that the EESC produce a report on the competitiveness of small and medium-sized enterprises in Europe. The report should, in particular, provide an assessment of the regulatory burden and risk of sanctions for SMEs and mid-caps in the EU compared to non-European companies. It should identify the causes of the excessive cumulative regulatory burden and identify the areas of EU law that are most damaging to the competitiveness of SMEs ([2]).

([1]) As part of simplification efforts, new commitments also include a series of omnibus proposals for amending several acts to ensure consistency and maximise simplification. The first omnibus will include the Taxonomy Regulation, the Corporate Sustainability Due Diligence Directive (CSDDD) and the Corporate Sustainability Reporting Directive (CSRD) with the related European sustainability information standards.

([2]) The Polish Presidency specifically mentioned the global competition-distorting effects of the CSRD, in conjunction with the EU taxonomy. Other legislative acts that could also fall under the scope of the analysis are the Carbon Border Adjustment Mechanism (CBAM), the EU Deforestation Regulation (EUDR), the CSDDD, the Forced Labour Regulation, the Green Claims Directive (GCD), the Ecodesign for Sustainable Products Regulation (ESPR), the Conflict Minerals Regulation and the Nature Restoration Law.

B. *Bureaucracy as a location factor for SMEs*

2.3. SMEs active in the manufacturing sector, the hospitality industry and the agricultural sector, and their employees, complain in particular about the time and cost burdens resulting from excessive bureaucracy. In 2023, 55 % of SMEs flagged regulatory obstacles and administrative burden as their greatest challenge. This was also the second most cited challenge for start-ups (52 %, after access to finance) and the third most frequently cited for mid-caps (36 %, after difficulties in finding employees and supply chain disruptions) ([3]). Surveys carried out at national level certified the significant increase in costs and time spent on more demanding bureaucracy, which at the same time discourages the establishment of businesses ([4]).

2.4. The exponential increase in bureaucracy as a factor determining the establishment of businesses is also illustrated by the Draghi Report ([5]), which points to the 'asymmetries in regulation' that EU companies face compared to their competitors in China or the US.

2.5. 'The regulatory burden on European companies is high and continues to grow,' writes Draghi. According to a European Investment Bank survey, 61 % of European companies say that (excessive) regulation is a major long-term barrier to investment ([6]). Any legislation deemed excessive adds costs for businesses. This diverts funds that could otherwise be used for innovation and investment in human capital, which would enhance value-added outcomes, potentially increasing both surpluses for businesses and compensation for workers.

C. *Regulatory burden as a deterrent to opening up to innovative technologies*

2.6. The basic idea of EU climate protection, the EU Emissions Trading System (EU-ETS), is as simple as it is efficient. For industry, and now also for the building and transport sectors, pollution rights are quantitatively specified and successively reduced via ETS certificates, which is tantamount to a guarantee of compliance with the Paris climate targets. The market takes care of the rest by increasing the prices of fossil fuels. A properly functioning ETS may enable reporting activities to be simplified under the Corporate Sustainability Reporting Directive (CSRD), the EU Taxonomy Regulation, and associated environmental regulations, such as the EU Buildings Directive.

2.7. Whereas in the USA, the Inflation Reduction Act (IRA) also covers combustion efficiency, in addition to electric mobility, EU legislation is relying on a ban on combustion without a comprehensible lifecycle assessment and impact assessment. In addition, an EU obligation to renovate buildings is intended to encourage homeowners to invest, instead of allowing the climate protection guarantee of emissions trading to be implemented unbureaucratically by increasing the price of fossil fuels. Another example is the issue of hydrogen. The EU only defines hydrogen as climate-friendly if it is produced using wind or sun, instead of also including CO_2-free and cost-effective hydrogen from natural gas and nuclear power: 'All electric' before openness to technology. This is how harmful bureaucracy arises and how a market economy and innovation are stifled.

D. *Lack of evidence-based legislation*

2.8. Although SMEs do not fall within the scope of the Corporate Sustainability Due Diligence Directive (CSDDD), known as the Supply Chain Act, they are indirectly affected when they are contractors or subcontractors of large companies that fall within the scope of the Directive and thus face challenges. Under the CSDDD, European companies, that might import raw materials from suppliers located in different areas worldwide depending on the harvest and supply, are required to prove compliance with the legislative requirements for each country of origin. Within the supply chain, smaller suppliers must also carry out such due diligence and pass on the information to their customers ([7]).

([3]) European Commission, *Report on the Survey of EU Start-ups and the COVID-19 Pandemic*, 2023.

([4]) In a survey conducted by the Association of German Chambers of Industry and Commerce (DIHK), the 'abundance and insufficient comprehensibility of bureaucratic requirements' was at the bottom of the list when it came to supporting factors determining where a business chooses to set up or operate (DIHK, Survey on location factors). In a survey by the Austrian Market Institute, 59 % of Austrian companies and 72 % of SMEs complained that the time spent on bureaucracy had increased significantly in the last three years (WKO, *Factsheet on Less EU Bureaucracy. Increased Competitiveness for our Companies*). Another survey, conducted by SMEdenmark in 2024, concluded that bureaucracy costs Danish SMEs more than EUR 1,8 billion each year and that they spend more than 49 million hours a year handling and complying with the applicable regulations and burdens.

([5]) Draghi, M., The future of European competitiveness – A competitiveness strategy for Europe.

([6]) Draghi, M., The future of European competitiveness – In-depth analysis and recommendations, p. 317.

([7]) The unclarity of essential reporting requirements, in particular the absence of a functioning EU information system and a country benchmarking system as regards due diligence and the EUDR, was also underlined in EESC opinion in OJ C, C/2024/6877, 28.11.2024, ELI: http://data.europa.eu/eli/C/2024/6877/oj.

2.9. Lending for SMEs is also faltering. This is due to the great uncertainty among regional banks with regard to borrowers' ability to comply with all of the EU's requirements relating to green investment, rather than to a lack of interest in investing on the part of SMEs. When setting up new production lines, SMEs and lenders would be required to provide proof of compliance with CSRD requirements, Ecodesign for Sustainable Products Regulation (ESPR) requirements, EU taxonomy requirements, sufficient transparency along the EU supply chains, and the requirements of the European Central Bank and the European Banking Authority relating to climate banking and EU emission trading implications. Moreover, the CSRD and the Taxonomy Regulation often demand the same reporting requirements.

2.10. In many cases, the complexities of regulatory compliance result in the suspension of collaboration between banks and companies at local level. The 'once-only', 'one-stop shop' and 'sunset clause' principles should always apply for those specific subjects that already fall within the scope of existing pieces of legislation that might share the same purposes as further legislative proposals.

2.11. The bureaucratic side of the Green Deal has not only blocked credit financing for medium-sized businesses. It also leads to frustration for companies and employees and high costs for consumers, who actually want energy system transformation and environmental protection.

E. *The excessive demands on the European legislative process*

2.12. The EESC believes that the unclear and complex division of responsibilities within the European Commission (cf. Justice Commissioner responsible for the supply chain) should be questioned. It is imperative to establish an effective organisational structure to provide a clear overview of all legislative acts in force, as along with their interactions, overlaps, and potential contradictions, thereby ensuring consistency.

2.13. The reviews of the Commission's impact assessments by the partly independent RSB are a sure indication of the growing complexity and incoherence of the Commission's legislative proposals. The latest available major empirical statistics (prepared by the European Parliament's Policy Department) for 314 of the Board's impact assessments show that, between 2016 and 2021, 39 % of impact assessments were so flawed that the Commission had to rework them. In 2023, the European Parliament noted with concern that, in 2022, insufficient evidence had been provided for 58 % of impact assessments ([8]). The financial implications and financing options must be set out in an impact assessment, which requires an opinion to be issued by the Committee of the Regions. The RSB also criticised the more recent impact assessments carried out on the Supply Chain Directive and the Buildings Directive as being insufficient. The EESC believes that its involvement in the impact assessments would also be beneficial to the legislative process.

2.14. The assessment of the Commission's 2019 voluntary commitment to the 'one-in, one-out' principle is also an indication that the EU legislative process is overwhelmed. The European Parliament, which usually tightens laws, complained about non-compliance with such a principle ([9]), as did the Draghi report, which calculated a ratio of 2,5 to 1 ([10]).

2.15. There are some laws, for example in the area of digitisation, which, while they may have increased the number of laws in force, have ultimately reduced the costs for companies. However, since the Commission itself is responsible for the 'annual burden survey', this assessment requires independent verification through the RSB, the Court of Auditors, the Joint Research Centre and the European Parliamentary Research Centre, with technical assistance for simplification.

F. *The Commission's existing and new approaches to reducing bureaucracy*

2.16. In recent years, the Commission has done a great deal to reduce the administrative burden. Among other things, the following should be mentioned:

(a) REFIT platform;

(b) SME test with the 'competitiveness check';

(c) 'once only' philosophy;

([8]) European Parliament, Report on European Union regulatory fitness and subsidiarity and proportionality – report on Better Law-Making covering 2020, 2021 and 2022 (2023/2079(INI)).

([9]) 2023/2079(INI).

([10]) The German Chamber of Commerce and Industry (DIHK) even calculated at times a ratio of 5 to 1.

(d) 25 % reduction in reporting requirements;

(e) systematic coordination of digital processes;

(f) obligation on each Commissioner to reduce bureaucracy;

(g) reality checks with stakeholders and reforms in the European semester to check competitiveness.

2.17. Nevertheless, these initiatives did not fully ensure a consistent reduction in the administrative burden, and a more ambitious agenda is required. Moreover, the purely quantitative outlook for the next period does not promise any improvement. The Register of Commission Documents currently lists a total of 470 pending legislative acts, 413 implementing acts, and 57 delegated acts. Since the Register only covers acts currently foreseen, the number will increase significantly in the future. There are the new legislative initiatives, with 160 projects listed in the political guidelines ([11]) for the new legislative period 2024-2029.

2.18. Mario Draghi called for EU institutions to 'apply a "self-restraint" principle in policy-making, both by better filtering future initiatives, and by streamlining the existing acquis' ([12]). In the EESC's view, the question of 'self-restraint' should also be addressed to Member States with regard to gold plating.

2.19. The portfolio of the Commissioner for Economy and Productivity, Implementation and Simplification should be expanded to include a specific focus on SMEs in order to ensure consistent management of all the different requirements for SMEs in EU legislation. An executive vice-president should, in addition, have a strong mandate on legislative implementation and simplification, as announced by President von der Leyen in her political guidelines ([13]) presented prior to her election at the European Parliament.

2.20. At the beginning of the legislative period, the Commission should identify overlapping legislation in an omnibus procedure (as proposed in the Letta report) and, in particular, introduce relief for SMEs, employees and public administrations.

2.21. The 25 % reduction in red tape mentioned in the relief package is a minimum figure. The upcoming CSRD alone contains around 1 200 reporting requirements ([14]). It is critical to provide an overview of reporting requirements in plain language, by ensuring a one-stop service in all 27 Member States. In accordance with the principle of transparency, such an overview might also include the penal provisions with an impact on class actions in civil, administrative and criminal law, and an assessment of the impact on staffing and costs of the judiciary as well as in administrative authorities. The EESC recommends making better use of digital instruments and of artificial intelligence and machine learning tools to create an easy-to-use 'single reporting tool' that can provide SMEs, mid-caps and other companies with all EU-relevant reporting obligations, deadlines and sanctions.

2.22. The Commission might require internal reform of its process for drafting legislative proposals. The RSB needs to be significantly strengthened and made more independent. It should carry out a 'coherence and subsidiarity check' at the beginning of each legislative process and should be given appropriate revision and advisory rights for new legislation if it jeopardises competitiveness. The strengthening of the RSB must be set out in the forthcoming inter-institutional agreement.

2.23. The SME test and the competitiveness check should be merged into one procedure. Without an adequate competitiveness check, approved by the Commissioner responsible for better regulation and SMEs, the legislative procedure should not proceed.

2.24. The number of delegated acts should be significantly reduced and these should be made more transparent. The European Parliament and stakeholders should be involved in an efficient procedure.

([11]) von der Leyen, U., Political Guidelines for the next European Commission 2024-2029.
([12]) Draghi, M., The future of European competitiveness – In-depth analysis and recommendations, p. 311.
([13]) von der Leyen, U., Political Guidelines for the next European Commission 2024-2029, p. 7.
([14]) https://efrag.sharefile.com/share/view/s1a12c193b86d406e90b1bcd7b6bb8f6f/fo37c90b-9d9b-4432-a76b-27760cfcc01b.

2.25. The European Parliament should develop an expedited procedure for options, impact and risk assessments and lifecycle analyses carried out by its own policy department in the case of amendments that would substantially reshape the proposals adopted by the Commission.

2.26. The Council and national parliaments/governments should make greater use of the opportunities for reviewing responsibilities (subsidiarity), and should develop more efficient procedures for subsidiarity complaints to this end.

2.27. European legislative requirements should always be accompanied by a service offered to SMEs. The network of the European Institute of Innovation and Technology (EIT) and foreign chambers should also be used, for example for certificates for supply chains or green energy. In addition, there should be an exemption from supply chain verification within the EU and from all third countries with EU trade agreements.

2.28. The Committee of the Regions must make much greater use of its role as the guardian of subsidiarity and raise the question of European competence right at the start of the legislative process to avoid financial burdens for the European regions.

2.29. The EESC recommends that all of these demands must result in a binding legislative Bureaucracy Reduction Act, an ex-post policy evaluation and a red tape challenge.

Brussels, 26 February 2025.

The President

of the European Economic and Social Committee

Oliver RÖPKE