ADAPTING LEGISLATION TO MINIMISE REGULATORY BURDENS FOR SMEs: BEST PRACTICE EXAMPLES

Group of High Level National Regulatory Experts - SME Working Group

Version 2 – October 2013
Foreword

The attached document provides a collection of examples of best practice for adapting new and existing legislation to minimise regulatory burdens for SMEs. It draws on the experiences of Member States and of the EU institutions, and has been produced by the SME Working Group of the Group of High Level National Regulatory Experts.

The examples show that policy makers have developed and applied a wide variety of exemptions and lighter regimes to minimise unnecessary regulatory burdens on small businesses when creating and amending legislation. Such measures are of enormous value to SMEs, which can be disproportionately affected by regulatory burdens – as the Commission has noted, it can cost a small business up to ten times as much per employee to comply with a regulatory duty as it costs a large business.

The Working Group hopes that the examples will be a useful source of inspiration, information and ideas for policy makers, both within the EU institutions and at national level, seeking to minimise the regulatory burdens for SMEs.
Contents

Examples of SME exemptions and lighter regimes listed by category:

A. Total exemption ................................................................. 4
B. Partial exemption .............................................................. 5
C. Longer transitional periods ............................................... 7
D. Reduced reporting or record-keeping requirements ....... 8
E. Reduced fees ................................................................. 11
F. Simplified inspection regimes ........................................... 12
G. ‘De minimis’ rules ............................................................ 13
H. Risk-based approaches ....................................................... 14
I. Other initiatives ............................................................... 16
A. Total exemption

**EU:** SMEs with fewer than 250 persons would not need to comply with the requirement of the Commission proposal on women on company boards, requiring companies that have less than 40% of non-executive directors to apply transparent selection procedures based on neutral selection criteria in order to attain 40% by 1 January 2020.

**EU:** Member States can opt to exempt micro distributors selling non-toxic pesticide formulations from the provisions of Directive 2009/128/EC.

**Germany:** SMEs with annual turnover of less than EUR 150,000 per year in the catering and hotel industry are exempted from monthly reporting requirements in the context of public commerce statistics. It is estimated that some 2,700 SMEs have benefited from this higher threshold (previously, the threshold was EUR 50,000 per year).

**Ireland:** Small businesses whose turnover does not exceed certain thresholds are not obliged to register and account for VAT. The current principal VAT registration thresholds are EUR 37,500 for persons supplying services and EUR 75,000 for persons supplying goods. Traders whose turnover is below these limits are not obliged to register for VAT but may opt to do so if they wish.

**Lithuania:** Lithuania has exercised an option provided for in Council Directive 2006/112/EC to exempt taxable persons from VAT if the annual turnover of those persons is less than LTL 155,000. Lithuania has also exercised the option for the application of flat-rate scheme, which enables farmers whose annual turnover does not exceed LTL 155,000 and the farming land does not exceed seven hectares and who are not registered as VAT payers to receive an extra additional payment of 6%.

**United Kingdom:** All SMEs (businesses with fewer than 250 employees) are exempted from the UK requirement to grant employees time off to train according to the provisions of the Employment Rights Act 1996.
B. Partial exemption

**EU:** Small shops selling electrical and electronic devices do not need to reserve extra space to meet take-back obligations under the new Directive on Electric and Electronic Waste. The take-back obligation only applies to retail shops larger than 400m².

**EU:** It is proposed in a new general Data Protection Regulation that companies with less than 250 workers need not have a Data Protection Officer and that specific measures must be considered for SMEs in the context of Commission delegated acts aimed at further specifying the criteria for assessing whether a Data Protection Impact Assessment is necessary.

**Denmark:** The Company Code has been modernised, reducing the administrative burdens, in particular by providing more flexibility for Private Liability Companies, the company-form commonly used by SMEs, e.g. simplification of the procedure of formation, reduction of the capital requirements, freedom of choice regarding management-structure, and a simpler procedure for mergers and divisions, allowing members to omit certain documents.

**Denmark:** The requirement for holding companies to audit their financial statement has been removed for the smallest holding companies (i.e. holding companies not exceeding a balance sheet total of approx. EUR 536,000 and a net turnover of approx. EUR 1 million and 12 employees). The total annual reduction in administrative burdens is estimated at EUR 55 million.

**Ireland:** Companies (Amendment) (No. 2) Act 1999 and 2012 amendment – Ireland exercised an EU derogation to exempt small companies from the requirement to audit their annual accounts. The exemption applies to companies with a balance sheet under EUR 4.4 million, a net turnover under EUR 8.8 million, and average fewer than 50 employees.

**Ireland:** An amendment in 2012 to the Travel Agents (Licensing) Regulations, 1993, allows certain applicants to seek an exemption from the requirement to provide audited accounts in support of their application and also amended certain provisions relating to the information to be held and made available by travel agents.

**Italy:** In 2011, the cases in which wastewater discharges arising from productive activities can be assimilated to domestic discharges were identified. Since 2011, 1.5 million business activities that produce little noise (retailers, hairdressers, gyms, etc…) are exempted from the obligation to prepare the document of acoustic impact (Simplification Regulation for SMEs n. 227/2011).
**Lithuania:** Small companies can benefit from a reduced corporate income tax rate of 5%, if certain conditions are met. From 2012 this rate applies to entities (except for non-profit entities) whose average number of employees on the staff list does not exceed 10 and whose income during the tax period does not exceed LTL 1,000,000 (approx. EUR 300 000) (previously LTL 500,000). Some qualification rules apply.

**Lithuania:** New businesses benefit from a September 2011 "Declaration regarding the first business year". When during the first business year infringements of legal acts are detected, a business subject is firstly warned, consulted (informed), necessary information is being provided for him/her and relevant term for amending the infringements is being accessed.

**United Kingdom:** Companies Act 2006 – small businesses are exempted from some of the requirements. Most businesses do not need to publish annual audited accounts if they meet two of the following three criteria: average fewer than 50 employees; annual turnover under GBP 6.5 million; total assets under GBP 3.26 million.
C. Longer transitional periods

EU: Self-employed drivers benefitted from a longer lead-in time before rules on the organisation of their working time (Directive 2002/15) came into effect in 2009.

Ireland: A small company is a company whose Corporation Tax liability in the preceding accounting period does not exceed EUR 200,000. Such a company has the option of basing its preliminary tax on the corresponding Corporation Tax liability for the preceding accounting period if this is more beneficial. Preliminary tax for small companies is due and payable in one instalment only, one month before their accounting period ends. This provides financial stability for small companies and assists with long-term business plans.

Ireland: New or start-up companies that do not expect their Corporation Tax liability for the first year to exceed EUR 200,000 are not obliged to pay preliminary tax in the first year but will pay any corporation tax due on their return filing date. This improves the cash-flow of companies in their first year of operation. New companies also benefit from a start-up company tax relief in their first three years of trading, under the Finance Act 2013 any unused relief in an accounting period may be carried forward indefinitely.

United Kingdom: The UK is phasing in the requirements for businesses to automatically enrol their employees in a pension scheme under the Pensions (Automatic Enrolment) Regulations 2009. This means that small businesses (under 50 employees) will not need to comply until June 2015.

United Kingdom: Some small employers who pay employees weekly, or more frequently, but only process their payroll monthly may need longer to adapt to reporting PAYE information in real time. Therefore until 5 October 2013, employers with fewer than 50 employees, who find it difficult to report every payment to employees at the time of payment, may send information to the tax authority (HMRC) by the date of their regular payroll run but no later than the end of the tax month.
D. Reduced reporting or record-keeping requirements

EU: Micro-enterprises can now choose simpler ways of showing that any one-off construction products they put on the market meet applicable product standards according to Regulation 305/2011.

EU: The Commission has made proposals to make it easier for SMEs to participate in public procurement. Bidders for public tenders can provide self-declarations, rather than original documents or certificates, showing that they meet eligibility criteria. Only the winning bidder would be asked to provide the original documents. Breaking tenders down into smaller lots will be encouraged. Together with a greater use of e-procurement, these modernised rules in the proposed Public Procurement Directive would facilitate the participation of SMEs in contracts worth about 18% of EU GDP.

EU: SMEs are encouraged, but not obliged, to carry out an energy audit according to the new Energy Efficiency Directive 2012/27/EU. Member States may set up support schemes for SMEs, including if they have concluded voluntary agreements, to cover costs both of an energy audit and of the implementation of the highly cost-effective audit recommendations.

Austria: By raising the thresholds below which parties are exempted from providing any Intrastat information from EUR 500,000 to EUR 550,000, Austria has reduced the number of taxable persons/businesses by about 700.

Denmark: The Danish Act on Annual Financial Statements and The Danish Act on Approved Auditors and Audit firms have been amended during 2012. Reduced requirements for SMEs have been adopted with regard to the audit of annual financial statements. Small companies (i.e. companies not exceeding a balance sheet total of approx. EUR 4.8 million and a net turnover of approx. EUR 9.7 million and 50 employees) can now choose to have the annual audit of their financial statement carried out on the basis of a new audit standard, designed especially to match the size and complexity of SMEs. In addition, the formal requirements for SMEs to opt out of the requirement for audit have been simplified.

Finland: In Finland companies usually have to report and pay the VAT in every month. If company turnover is a maximum of EUR 25,000 per year they can report and pay VAT only one time or four times during calendar year. If the turnover is between EUR 25,001 and EUR 50,000, the report and the payment can be conveyed every quarter of a year.

Germany: Businesses benefit from new reporting requirements on petrol prices sold at gas stations, where certain components of the array of information to be transmitted by business were reduced. Thus, for example, the requirement to
report actual volumes being sold was withdrawn. Similarly, refineries (amongst others) were exempted from automatic reporting requirement, thereby further avoiding excessive bureaucratic burden.

**Germany:** Intrastat is the system for collecting information and producing statistics on the trade in goods between Member States. Following the EU’s decision to lower the minimum coverage of the intra-EU trade statistics Germany has exempted almost 17,000 of a total of 70,000 businesses from their Intrastat information obligation through raising the reporting thresholds from EUR 300,000 to EUR 500,000 value of traded goods per year and direction of flow. This led to a reduction of EUR 19 million p.a. in administrative burdens by 2012.

**Germany:** One major simplification of public procurement rules for companies taking part in the tendering process is an improved procedure for proving eligibility. This has been achieved for professional service contracts and supply and service contracts by including a basic requirement for candidates/tenderers to provide a self-declaration to prove eligibility. Additional proof is only required in exceptional circumstances and must be justified in the documentation supplied by the contracting authority. Restructuring of the rules has made them more user-friendly and led to more efficient and cost-effective procedures. The reduction in costs amounts to EUR 266 million a year.

*Additional remark:* A new Art. 57 (“Self-declarations and other facilitating measures”) has been proposed as part of the EU public procurement package, taking up the German example.

**Ireland:** An online system for Relevant Contracts Tax (RCT) was introduced on 1 January 2012. The re-engineering and simplification of the Relevant Contracts Tax system has provided significant benefits and savings to businesses. It significantly reduces the administrative burden on contractors in the construction, forestry and meat processing sectors.

**Ireland:** Finance Act 2010 introduced the concept of a return period other than an "Income Tax month" so that SMEs (mainly) can make less frequent RCT returns and payments. (RCT is a withholding tax regime that applies to the construction, forestry and meat processing sectors).

**Ireland:** Simplified payment and filing arrangements were introduced in 2006 for businesses whose tax payments did not exceed certain thresholds, allowing qualifying businesses to make tax payments and file tax returns less frequently. Many businesses which qualify for this provision are in the SME sector. These provisions relate to three major taxes – Employers’ PAYE/PRSI, VAT and Relevant Contracts Tax.

**Ireland:** A cash basis of accounting for VAT is available for small traders allowing them to account for VAT on the receipt of payment rather than the point of sale. Currently this is used by around 65% of small traders. Businesses qualify for this
if their annual turnover does not exceed EUR 1.25 million or if they supply almost exclusively (at least 90%) to customers who are not registered for VAT, or are not entitled to claim a full deduction of VAT.

**Ireland:** In the past year, the Irish Department of Transport has simplified and streamlined the application process for a haulage operator's licence by moving from a process requiring three affidavits and supporting documents to a self-declaration model. The application form has been reduced from 11 pages to four and is now considerably easier to complete. Over half of all licence holders are SMEs.

**Lithuania:** A new legal form of incorporated legal persons – the small partnership – has been created exclusively for SMEs. A small partnership allows the ability to set up a company of fewer than ten persons, with a simple and flexible management structure, the possibility to register online in under three working days, no capital requirement, and registration costs of under EUR 100.

**Lithuania:** The Administration of Marijampole Municipality applies the principle for bidders to provide self-declarations while performing public procurement procedures. Then, only the winning bidders are asked to submit all the papers.

**Lithuania:** Since January 2013, unlimited civil liability legal persons and small partnerships benefit from simplified reporting under the Business Accounting Standard (BAS). Unlimited civil liability legal persons shall not prepare a cash flow statement. Small partnerships shall not prepare a statement of changes in equity and a cash flow statement. What is more, the BAS states more ordinary financial accounting rules than other Business accounting standards.

**Lithuania:** Klaipeda city allows small enterprises to have fewer documents in their trading place if they are selling their own products according to their business certificates. Since January 2012 there is no requirement to have a consignment in the trading place.

**Netherlands:** Pilot projects are being launched in association with the business sector and other public authorities to explore whether an enterprise zone might be a solution to promote entrepreneurship and reduce the regulatory burden. This is a zone where a relaxed regulatory regime could be adopted, temporarily or otherwise, to accelerate licensing procedures, for example. A progress report will be sent to the Parliament in September.

**Sweden:** The Swedish Board of Agriculture created a central holding register for keepers of bovine animals to reduce administrative burdens on farmers. Animal keepers now only need to make one set of notifications to the central database.
E. Reduced fees

EU: SMEs who are inspected by the European Medicines Agency or use their scientific advice or services benefit from fee reductions of 90%.

EU: Member States would be forbidden from charging micro-businesses a fee for the licence required to trade in drugs precursors under a current proposal.

EU: Member States would be forbidden from charging micro-businesses fees under the Food and Feed Controls proposal.

Austria: The New Companies Promotion Act (NeuFög) saves start-up costs for start-up businesses and successor companies by exempting them from court and stamp fees, federal administration fees, land transfer tax, capital duty and stock exchange turnover tax. To qualify, the new business owner must not have been self-employed in the same business segment within the past 15 years, and he or she must have attended a start-up counselling session with their respective interest group.

Austria: The New Companies Promotion Act (NeuFög) allows start-up businesses to pay 7% less in non-wage labour costs if they hire staff in their first year of establishment. They also do not have to pay the employer’s contribution to the Family Burdens Equalisation Fund (4.5%), the contribution to housing subsidies (0.5%), the second chamber contribution (i.e. the surcharge on the employer’s contribution, which varies according to Land) and the industrial accident insurance contribution. For those who started a business after 31 December 2011, some extension of these exemptions is also possible in the second and third year after business start-up.

Lithuania: In order to decrease taxes for SMEs, the Council of Trakai District Municipality adopted a decree in late 2012, setting a flat income tax rate, a 50 per cent lower income tax, and significant tax reductions from 30-70% for business license acquirers who qualify as disabled, unemployed, parents, or of retirement age.

Lithuania: Silute District Municipality is planning to exempt SMEs from a local fee for marketing authorisation or services in Silute District’s public places during a Silute town festival.
F. Simplified inspection regimes

Italy: The activities subject to fire prevention inspections are divided into three categories, according to the risk level (high, medium, low risk). Fire prevention inspections are differentiated accordingly (Simplification Regulation for SMEs n. 151/2011).

Lithuania: Businesses benefit from simplified fire safety inspections, where the first planned inspection of fire prevention and safety is a consultation on fire safety issues, with sanctions only applied in exceptional cases. Owners can declare their own conformity to fire prevention and safety requirements, and discovered breaches will be dealt with through consultation on how to properly make a declaration and/or fire prevention issues. Sanctions are only applied where the breaches could cause fire, an explosion, or damage to surrounding buildings.

United Kingdom: Reduced the frequency of official inspections for on farm dairy hygiene by recognising, where applicable, the hygiene aspects of the results of audits carried out by Assured Dairy Farms, leading to an estimated reduction in the number of inspection in England from 10,000 to 2,000 per year.
G. ‘De minimis’ rules

**EU:** Manufacturers responsible for fewer than 500 registrations of new passenger cars per year are excluded from the obligation of having a CO₂ target according to the Commission proposal for a regulation amending Regulation (EC) No 443/2009 on car emissions.

**EU:** Certain categories of vehicles driven within a radius of less than 100 km from the base of their undertaking are proposed to be exempted from Regulation (EC) No 561/2006 and therefore from the tachograph requirements.

**Lithuania:** The Government took advantage of an EU derogation in the 2006 Tachographs Regulation to exempt vehicles used or hired, without a driver, by agricultural, horticultural, forestry, farming or fishery undertakings for carrying goods as part of their own entrepreneurial activity within a radius of up to 100 km from the base of the undertaking, agricultural tractors and forestry tractors used for agricultural or forestry activities, within a radius of up to 100 km from the base of the undertaking which owns, hires or leases the vehicle.

**Lithuania:** Lithuania does not require guarantees for the activities carried out in the excise warehouses if the activities in the warehouses are carried out only by small breweries and the goods produced or held here are only those belonging to the small breweries.

**United Kingdom:** Businesses with an annual turnover of less than GBP 79,000 are exempt from the requirement to register for VAT.

**United Kingdom:** All shops with a selling area under 280 m² are exempt from the restrictions on opening hours which normally apply on a Sunday.
H. Risk-based approaches

**EU:** Regulations 852/2004 and 853/2004 require food producers to have hygiene procedures based on Hazard Analysis and Critical Control Point (HACCP) principles. The legislation promotes a food safety regime based on risk, as food producers are expected to demonstrate measures taken in response to identifiable hazards as opposed to having to follow a more rigidly prescriptive set of rules.

**Germany:** In 2007 the German customs authorities reduced bureaucratic outlay by introducing a centralised risk analysis, as a result of which many companies no longer have to be inspected annually by the customs authorities. The risk register has reduced the number of compulsory EU verifications of producers’ declarations for export refunds from 196 in 2005 to 32 in 2010.

**Ireland:** The Irish Revenue uses sophisticated risk-assessment and intelligence-gathering systems to target its interventions against the non-compliant and to minimise unnecessary contact with compliant customers. With the exception of random audits, cases requiring intervention are primarily identified by its Risk Evaluation Analysis and Profiling (REAP) system, which draws on over 50 data sources.

**Ireland:** The Road Safety Authority is implementing a risk rating system for roadworthiness checks on commercial vehicles. This means that enforcement operations are targeted towards those who choose not to properly maintain and test their fleet annually. Operators with high compliance in vehicle roadworthiness and drivers’ hours are less likely to be stopped at roadside checks.

**Italy:** In 2011, the administrative obligations and procedures related to fire prevention were simplified. The activities subject to fire prevention inspections are divided into three categories, according to the risk level (high, medium, low risk); fire prevention procedures are differentiated accordingly (Simplification Regulation for SMEs n. 151/2011).

**Italy:** Businesses operating in sectors with low risk of accidents in the workplace can carry out the risk assessment through a simplified model. Both the model and the sectors will be identified through a specific decree. Businesses with less than 50 employees can carry out the risk assessment through standardised procedures.

**Lithuania:** The Fire and Rescue Department under the Ministry of Interior applies a risk-based approach to planning inspections. Real estate objects used by SMEs, that do not have high risk of fire, such as hotel buildings that have up to 20 places, trade/sales buildings with overall area up to 100 m², as well as
administrative buildings in which up to 50 people work or stay permanently, do not enter the list of buildings that must be checked periodically and planned inspections are not being carried out in them.

Sweden: The Swedish Environmental Protection Agency reviewed its classification of environmentally hazardous activities to make sure that rules and regulations are no more complicated and demanding than is necessary to sufficiently protect public health and the environment. As a result, over 1,000 activities were moved to a lower risk category. This saved businesses approximately EUR 6.4 million in administrative costs annually.

United Kingdom: The Health and Safety Executive (HSE) is proposing to take a more risk-based approach to implementing health and safety legislation. Under the terms of a draft Deregulation Bill, 800,000 self-employed people who have no employees, and whose workplace activities pose no potential risk of harm to others and who do not work in a high-risk sector as prescribed by the Secretary of State, will be exempted from health and safety requirements.

United Kingdom: The HSE’s statutory National Enforcement Code for local authorities will refocus proactive council inspections on higher risk activities in specified sectors, or where there is intelligence of workplaces putting employees or the public at risk. Tens of thousands of lower risk businesses, such as shops and offices, will be removed from health and safety inspections. Inspections of poor performers and higher risk activities will continue.

United Kingdom: The UK Vehicle and Operator Services Agency (VOSA) targets inspections on the roadworthiness of lorries and buses on the basis of a risk scoring system so as to focus inspection efforts on non-compliant operators. The scoring system draws on data from a variety of sources including annual statutory test data, checks on the roadside and of vehicle fleets, and previous prosecution records.
I. Other initiatives

Ireland: In June 2012, the Irish Government launched the web portal businessregulation.ie to help business identify the main regulations which affect their activities, to assist them in navigating through the complex regulatory landscape and to provide a centralised place for links to the relevant agencies and their guidance, tools and contact points. Businessregulation.ie does not restate information available elsewhere, as regulatory information is best explained by the relevant agency. The portal includes over 150 separate links to information from over 30 Government bodies. The homepage also includes contact information and lists of support.

Ireland: The Health and Safety Authority has developed BeSMART.ie, as part of its “Taking Care of Business” initiative for small business. The Business electronic Safety Management And Risk assessment Tool (BeSMART) helps small business owners/managers to prepare risk assessments and a safety statement for their workplace. It is easy to use, reduces the chances of an accident in the workplace and saves businesses time and money.

Ireland: The Safety Management Pack for construction contractors (SMP20) assists construction firms with fewer than 20 employees in establishing and maintaining an effective safety management system. The pack gives details of statutory health and safety duties and provides guidance and tools to enable compliance with these duties. The pack is intended to be a road map to managing safety and health; it also includes new guidance on basic risk assessment and worked examples intended to assist businesses in carrying out their own specific risk assessments. For more information visit www.smp20.ie

Italy: In 2013, a Simplification Regulation concerning the Single Environmental Authorisation (Autorizzazione Unica Ambientale) was adopted, aimed at introducing simplification measures for SMEs and plants which do not fall within the scope of the IPPC (Autorizzazione Integrata Ambientale). The Single Authorisation substitutes up to 7 different environmental procedures (e.g. industrial wastewater discharges authorisation, air pollution authorisation, acoustic impact, etc.). SMEs can fill a unique Authorisation model and send it telematically to the SUAP. If no changes occur, the Single Environmental Authorisation is valid for 15 years. (D.P.R. n. 59/2013).

Lithuania: The Council of Marijampole Municipality takes decisions to reduce the fees of land tax and property tax in individual cases. Before that, the appropriate suggestions are usually provided by special commission.
**Lithuania:** SMEs are entitled to get support for job creation when implementing projects of local initiatives for employment under the Law on Support for Employment.

**Lithuania:** Klaipeda city discounts real estate tax for persons operating in the historical centre of Klaipeda city and doing business in tourism promotion: 30 per cent for small shops with up to 100 m² trade area that carrying on activities which do not require a business certificate and for small cafés with up to 100 m² commercial area.

**Lithuania:** Mazeikiu District Municipality has an SME promotion fund. Its objectives are to promote entrepreneurship, competitiveness and participation; to create attractive conditions for starting new SMEs; and to create better conditions for the professional development of SME business managers.

**Lithuania:** The Government conducts an SME Test as part of the impact assessment of new legislation, considering the proportionality for SMEs and the possibility for exemptions.

**Netherlands:** The Dutch government has worked with consultants to develop the CAR-methodology, a cost-driven approach to regulatory burden which focuses on identifying compliance costs to understand the sources of burdens on business. The studies have found that regulatory burdens on small businesses can be significant and in some cases even threaten their viability. The methodology could provide a useful tool for others planning analytical studies of regulatory burdens on certain businesses or sectors, and has been applied to identify ways of reducing burdens in several sectors, including EU small bakeries and chemical products. More information is available at: www.ukmin.lt/uploads/documents/DEBR/Compliance_costs_measurement.pdf