



Review of the Communication on smart regulation

Summary

In this opinion, the Committee reviews the Commission Communication *Smart regulation - Responding to the needs of small and medium-sized enterprises* (COM (2013) 122). In the Communication, the Commission provides an account of the progress that has been made on simplifying matters for small and medium-sized enterprises (SMEs) since 2011.

The Committee welcomes the Communication, and considers it important for the EU to prioritise work on simplifying regulation, and to strive to reduce administrative burdens and make matters simpler for enterprises. The Committee does, however, regard it as problematic to say that exemption rules should apply to micro, small and medium-sized enterprises when these businesses account for 99.8 % of all enterprises in both Sweden and the EU. The Committee also considers it undesirable to have general exemptions from regulation for certain enterprises. Instead, efforts should be made to achieve regulation that is as equal as possible for all enterprises, regardless of their size and turnover.

The Committee proposes that this opinion be placed on file.

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Committee proposal for a parliamentary decision

Review of the Communication on smart regulation

The Swedish Parliament (*Riksdagen*) hereby places the opinion on file.

Stockholm, 16 May 2013.

On behalf of the Committee

Mats Odell

The following members have taken part in the decision: Mats Odell (Christian Democrats), Jonas Eriksson (Greens), Jessica Polfjärd (Moderates), Jennie Nilsson (Social Democrats), Hans Rothenberg (Moderates), Carina Adolfsson Elgestam (Social Democrats), Olof Lavesson (Moderates), Krister Örnfjäder (Social Democrats), Cecilie Tenfjord-Toftby (Moderates), Ann-Kristine Johansson (Social Democrats), Helena Lindahl (Centre Party), Ann-Charlotte Hammar Johnsson (Moderates), Anna Hagwall (Sweden Democrats), Kent Persson (Left), Ingemar Nilsson (Social Democrats), Adnan Dibrani (Social Democrats) and Anna Steele (Liberal Party).

Account of the item

The item and its preparation

On 27 March 2013, the Chamber referred the European Commission Communication *Smart regulation - Responding to the needs of small and medium-sized enterprises* (COM(2013) 112) to the Committee on Industry and Trade for a review, pursuant to Article 5 of Chapter 10 of the Riksdag Act (*Riksdagsordningen*).

The Swedish Government has submitted an explanatory memorandum on the Communication to the Swedish Parliament (2012/13:FPM:84).

Background

The Commission states in the Communication that small and medium-sized enterprises form the backbone of the European economy. In the EU, some 20.7 million SMEs employ 67 % of the private-sector workforce. The Commission therefore considers it important for these enterprises to be able to thrive in a business environment in which regulation respects the specific needs of SMEs while pursuing its policy objectives.

In June 2008, the Commission presented the Small Business Act and the ‘Think Small First’ principle (COM(2008) 394). Then, in October 2010, the Commission adopted a Communication on smart regulation in the European Union (COM(2010) 543), followed in November 2011 by a report on minimising the regulatory burden for SMEs (COM(2011) 803). In December 2012, a Communication was published on EU regulatory fitness (COM(2012) 746), in which the Commission explained the simplification measures that have been implemented since 2010 and the way forward for this work. On 7 March 2013, the Commission presented the Communication *Smart regulation - Responding to the needs of small and medium-sized enterprises*.

Main content of the Communication

In its Communication, the Commission explains the progress made on making matters simpler for small and medium-sized enterprises since 2011. The Commission discusses the developments that have taken place, particularly in the areas of applying the micro-enterprise exemption, introducing lighter regulatory regimes for SMEs, introducing the scoreboard announced previously and the work on ensuring regulatory fitness.

Review by the Committee

Communication on smart regulation

Committee proposal in brief

The Swedish Parliament will place the report on file. The Committee emphasises the importance of the EU prioritising regulatory simplification work, and striving to reduce the administrative burdens and make matters simpler for enterprises.

Commission Communication

The aim of the Communication is to review progress above all on work in the areas of applying the micro-enterprise exemption, introducing lighter regulatory regimes for SMEs, introducing the SME scoreboard, and work on ensuring regulatory fitness. An Annex to the Communication (SWD(2013) 60) explains the SME scoreboard, the SME priority files in the Commission Work Programme 2013, and the results of the Top-10 consultation.

In its Communication, the Commission highlights the work that is done before the Commission proposes new legislation or revisions of existing EU legislation. The Commission places special emphasis on its impact assessments, which involve *inter alia* analyses of whether micro-enterprises can be exempted from the coverage of the provisions of an initiative without undermining the objective of the potential proposal. Among other things, the impact assessments have shown that it is not always possible to exempt micro-enterprises. For instance, they cannot be excluded if this were to mean that the regulation would not be able to achieve its goals, e.g. to protect workers or consumers. Furthermore, micro-enterprises cannot be exempted from EU Treaty requirements protecting for example fundamental rights, or where legislation specifically targets small firms. The Commission also states that, when exemptions are not possible, efforts are made to tailor regulatory proposals to SMEs, for example through the introduction of a lighter set of requirements or reduced fees. The Commission also emphasises the fact that some parts of EU legislation leave it up to each Member State to decide whether it wants to introduce lighter regimes for SMEs.

The Commission provides examples of legislation that has been proposed or adopted by legislators where particular consideration has been given to SMEs. Some of these examples follow.

- 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 400 m² (2012/19/EU).

- It is proposed in a new general Data Protection Regulation (COM(2012) 11) that companies with fewer 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.
- SMEs with fewer than 250 persons would not need to comply with the requirement of the Commission proposal on women in company boards (COM(2012) 614), 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.

The Communication also gives examples of lighter regimes for SMEs that have recently been adopted by the EU legislator. These include the Energy Efficiency Directive (2012/27/EU), which was adopted in autumn 2012, whereby Member States may set up support schemes for SMEs in respect of energy audits, etc.

In its Communication, the Commission also explains the scoreboard that is to be published annually and which is annexed to the Communication. The scoreboard covers regulatory initiatives expected to have a significant impact on SMEs. The scoreboard makes it possible to track the progress of the legislative cycle from Commission proposal through to implementation in Member States. The scoreboard specifies the positions taken on the issues involved at the various stages from Commission adoption to implementation, and whether the regulatory burden has increased or decreased during those stages.

The Commission also emphasises the importance of engaging SMEs and organisations representing their interests in dialogue during the process of adopting new legislative initiatives and during the legislative process. The Commission therefore plans to publish a rolling calendar of planned consultations on the 'Your Voice in Europe' website. The Commission has also established a network called SME Envoys, comprising high-level representatives from Member States. The Commission is also using the Enterprise Europe Network, conferences and annual meetings with SME associations in its work.

From October to December 2012, the Commission conducted an open, internet-based consultation and invited SMEs and trade organisations to identify the 10 pieces of legislation that they considered to be the most burdensome. The pieces of legislation that were identified included the REACH Regulation (2006/907/EC), the General Product Safety Directive (2001/95/EC), the Regulation on the Modernised Customs Code (2008/450/EC) and the Regulation on recording equipment in road transport (1985/3821/EEC).

The Commission states that it will follow up on the consultation in two ways. Firstly, the Commission intends to work on the legislation identified in the consultation. Secondly, the results will be taken into account in the mapping of EU legislation that is being conducted under the Regulatory Fitness and Performance Programme (REFIT).

The Commission states that it will continue to pay close attention to SMEs in its policy development and review. The Commission will also further strengthen the ways in which it obtains data and opinions from SMEs when it revises its guidelines on evaluation and impact assessment in 2013 and 2014 respectively. Finally, the Commission emphasises that all those involved have joint responsibility for taking the SME dimension into account. The European Parliament and Council are invited to ensure that no unnecessary burdens on SMEs are added in the EU legislative process. Member States are invited to use existing opportunities in EU legislation to lighten any burden on SMEs.

The Government memorandum

In the explanatory memorandum *Communication on smart regulation - Responding to the needs of small and medium-sized enterprises* (2012/13:FPM84), which arrived at the Swedish Parliament on 9 April 2013, the Swedish Government explains its preliminary views in relation to the Communication:

The Swedish Government welcomes the Commission Communication *Smart regulation - Responding to the needs of small and medium-sized enterprises*. It is important to continue and intensify the work being done at EU level to make it easier for businesses to comply with the rules and to reduce the burdens that they bear. It is also important to strive for effective implementation of EU legislation at national level. The Government intends to ensure that simplification proposals are processed as efficiently as possible within the framework of various advisory clusters. Each simplification proposal will, however, be assessed separately once they have been put forward. The work being done on achieving smart regulation and on making matters simpler for businesses is a priority for government at EU level and is in line with similarly great ambitions for simplification work at national level.

The Government also welcomes the fact that progress is being made on strengthening the 'Think Small First' principle. The general principle for developing rules should always be that of having the small business as the starting point. Small businesses may sometimes be hit by disproportionately high costs in relation to current proposals, and it is therefore appropriate to consider whether exceptions may be made for such businesses.

The Government notes that the Commission has stated that exceptions cannot be made when there is clear evidence that excluding micro-enterprises would mean that the regulation would not be able to achieve its goals, e.g. to protect workers or consumers. The Government would, however, like to emphasise that there is value in having regulations that work well - both new ones and those already existing - at European level, even for the very smallest businesses. The Government would also like to call to mind the fact that the consequences for competition and the internal market, for the environment, for groups that should be protected, e.g. workers and consumers, and for the relationship of the proposal to acts that have already been adopted, need to be analysed and evaluated carefully for each legislative proposal where exemptions or lightened rules are proposed.

Against the background of Sweden's austerity measures, one of several criteria for the Government is to take action so that any economic consequences of the Communication are limited, both in the national budget and in the EU budget.

Some supplementary information

Previous handling by the Swedish Parliament

The present Commission Communication was one of the items discussed during Prime Minister Fredrik Reinfeldt's consultation of the Committee on European Union Affairs on 13 March 2013, prior to the meeting of the European Council on 14-15 March 2013.

On 25 January 2010, the Committee reviewed the Commission Communication on smart regulation in the European Union (COM(2010) 543) with Maud Olofsson, Minister for Enterprise. The basis for this deliberation was the Government's explanatory memorandum *Communication on smart regulation in the European Union* (2010/11:FPM21).

Definition of micro, small and medium-sized enterprises

The EU definition of micro, small and medium-sized enterprises appears in the Annex to Commission Recommendation 2003/361/EC, and is worded as follows:

- The category of micro, small and medium-sized enterprises (SMEs) is made up of enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million.
- Within the SME category, a small enterprise is defined as an enterprise which employs fewer than 50 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 10 million.

- Within the SME category, a microenterprise is defined as an enterprise which employs fewer than 10 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 2 million.

Table 1: Definition of small and medium-sized enterprises and micro-enterprises

Enterprise category	Number of employees	Annual turnover	or	Balance sheet total
Medium-sized enterprise	< 250	≤ EUR 50 million		≤ EUR 43 million
Small enterprise	< 50	≤ EUR 10 million		≤ EUR 10 million
Micro-enterprise	< 10	≤ EUR 2 million		≤ EUR 2 million

Small and medium-sized enterprises in Sweden and in the EU

According to the 2012 Commission fact sheet on small and medium-sized enterprises in Sweden (SBA Fact Sheet 2012), the proportion of micro-enterprises and small and medium-sized enterprises (SMEs) in Sweden is equivalent to the EU average (EU-27), which may also be seen in the table below.

Table 2: Proportion of enterprises and proportion of workers in enterprises in Sweden and EU-27

	Proportion of enterprises		Proportion of workers in enterprises	
	Sweden	EU-27	Sweden	EU-27
Micro-enterprises	93.4 %	92.2 %	25.2 %	29.6 %
Small enterprises	5.5 %	6.5 %	21.3 %	20.6 %
Medium-sized enterprises	0.9 %	1.1 %	17.8 %	17.2 %
SMEs	99.8 %	99.8 %	64.3 %	67.4 %
Large enterprises	0.2 %	0.2 %	35.7 %	32.6 %
Total	100 %	100 %	100 %	100 %

In its Communication, the Commission emphasises the fact that the Small Business Act established the possibility for the exemption of micro-enterprises from regulation when justified and for lighter regulatory regimes for SMEs¹. Some of the examples of exemption from the rules given by the Commission do not only relate to micro-enterprises, however, but to all enterprises with fewer

¹ The English wording states: 'It established the possibility for the exemption of micro-enterprises from regulation when justified and for lighter regulatory regimes for SMEs.'

than 250 workers; according to the EU definition, this includes both micro-enterprises and small and medium-sized enterprises.

With regard to the wording in the Communication concerning exemptions for micro-enterprises, the Commission refers partly to the Small Business Act (COM(2008) 394) and partly to the Commission Report *Minimizing regulatory burden for SMEs - Adapting EU regulation to the needs of micro-enterprises* (COM(2011) 803).

The Small Business Act states that the Commission will, and the Member States are invited to:

use specific measures for small and micro-enterprises, such as derogations, transition periods and exemptions, in particular from information or reporting requirements, and other tailor-made approaches, wherever appropriate.

The Commission Report *Minimizing regulatory burden for SMEs* states as follows:

In order to strengthen the focus on exemptions and tailor-made legislation for micro-enterprises and SMEs, the Commission has started to work to reverse the burden of proof. From January 2012 the Commission's preparation of all future legislative proposals will be based on the premise that in particular micro-entities should be excluded from the scope of the proposed legislation unless the proportionality of their being covered can be demonstrated.

Report on better implementation of EU legislation

In September 2012, the Swedish Better Regulation Council (*Regelrådet*) and the Board of Swedish Industry and Commerce for Better Regulation (NNR) submitted a report on the implementation of EU legislation, *Clarifying Gold-Plating - Better Implementation of EU Legislation*. According to the Swedish Better Regulation Council and the NNR, there may sometimes be reasons to exceed the minimum level pursuant to the EU legislation but, in that case, the reasons for this should be carefully explained and the impacts of this made clear in an impact assessment. The report contains the following four main proposals:

- The Government should decide that the minimum level for implementation of Directives shall be determined in each individual case and form the starting point for assessing how a Directive is to be implemented.
- The Government should also, after consultation with stakeholders, decide a generally acceptable definition for Sweden of the concept 'gold-plating'

that is clear and usable in discussions of alternatives that exceed the minimum level in the implementation of EU legislation.

- A ‘minimum principle’ should also be introduced such that the minimum level pursuant to the EU legislation shall serve as a guideline for the regulator in the implementation but that, if there are reasons to exceed this level, this shall be clearly described and the impacts for companies analysed and reported in a public document.
- A provision should be introduced stating that, with regard to the implementation of EU legislation, the impact assessment shall - over and above what already applies - contain a description of the EU regulation’s scope and minimum level.

Position of the Committee

The Committee welcomes the Commission Communication on smart regulation, and supports the ‘Think Small First’ principle, which means that the principle for drafting legislation should always be that of having small businesses as the starting point. The Committee considers it important for the EU to prioritise work on simplifying regulation and strive to reduce administrative burdens and make matters simpler for enterprises. The Commission is also doing some important work to identify pieces of legislation that small and medium-sized enterprises consider to be particularly burdensome, in order to subsequently do more work on them from the perspective of small and medium-sized enterprises. It is also important for the Commission to give due consideration to small and medium-sized enterprises when developing its legislative initiatives. The Committee also shares the Commission’s view that both the European Parliament and the Council are responsible for ensuring that no unnecessary burdens are placed on businesses during the debates. In addition to this, the Committee would also like to call to mind the responsibility that Member States have to implement legislation that is adopted at EU level. On this point, the Committee would like to call to mind the principle of proportionality and the fact that legislation should therefore not go beyond what is necessary to achieve the intended aim. This may mean that the legislation should not contain excessively detailed descriptions of how it should be implemented or what form of regulation it is proposed the legislation should have where a Directive provides greater opportunities than a Regulation does for Member States to consider national conditions.

The Committee notes that the Communication appears to contain some ambiguities concerning which enterprises should be exempted from legislation and concerning the application of the definitions of micro, small and medium-sized enterprises. In its Communication, the Commission emphasises the fact that the Small Business Act (COM(2008) 394) established possibilities for the exemption of micro-enterprises from regulation and for lighter regulatory regimes for SMEs. However, the examples of exemptions that the Commission gives in

the Communication also apply to SMEs. Furthermore, the Small Business Act states that exemptions should apply to small enterprises and to micro-enterprises, while the Commission Report *Minimizing regulatory burden for SMEs* (COM(2008) 803) states that it is actually micro-enterprises that should be exempt from legislation. It is therefore not entirely clear whether the Commission's position is such that exemptions should only apply to micro-enterprises or whether they should also include SMEs. The Committee would welcome the Commission's clarification of this point.

The Committee also considers it problematic to say that exemption rules should apply to small and medium-sized enterprises when these businesses account for 99.8 % of all enterprises in both Sweden and the EU. It cannot be the intention that some legislation that is adopted should only apply to 0.2 % of enterprises in the EU.

The Commission also states that it is sometimes impossible to exempt micro-enterprises from legislation. On this point, the Committee shares the view expressed by the Swedish Government. There is value in having regulations that work well at European level, and every legislative proposal where exemptions or lightened rules are proposed must be analysed and evaluated carefully. A general exemption from legislation for some enterprises is undesirable. Instead, efforts should be made to achieve regulation that is as equal as possible for all enterprises, regardless of their size and turnover. Simplification proposals must, however, be assessed separately once they have been put forward. The Committee would also like to draw attention to the fact that exemptions and simplified regulation can create threshold effects for enterprises that want to grow, through the increased administrative burdens involved in, for example, going from being a micro-enterprise to being classed as a small enterprise. Even if the Commission does carry out impact assessments before it presents its legislative proposals, there does not appear to be a more general evaluation of what the overall consequences of exemption will be for enterprises that want to grow and thus be covered by different provisions from previously.

Finally, the Committee would like to emphasise the fact that there are some areas where neither the size nor the turnover of an enterprise can create acceptance of exemptions for enterprises. These areas include rules on *inter alia* protection under employment law, the working environment, and the environment.

The Committee therefore proposes that the Swedish Parliament place the opinion on file.

ANNEX

List of documents reviewed

Commission Communication Smart regulation - Responding to the needs of small and medium-sized enterprises (COM(2013) 122).