



As SMEs have climbed higher up the European political agenda, so has the number of initiatives designed to help them. The latest and most comprehensive of these is the Small Business Act, behind which the European Commission and EU member states have thrown their full political weight.

## Summary

**The European Commission published in June 2008 a Small Business Act for Europe, committing itself and inviting EU member states to 'think small first' and put SMEs at the heart of policy making. The Act, not a legally binding document in itself, contains a handful of legislative proposals and a plethora of policy commitments and 'invitations' to act.**

### Key innovations and policy proposals include:

- The introduction of the 'think small first' principle as a guiding objective when making policy;
- An SME test to be carried out on all legislative and administrative proposals emerging from the Commission;
- Common commencement dates for regulations and decisions affecting business and the publication of an annual statement of legislation entering into force;
- The use of derogations, transition periods and exemptions for small businesses wherever appropriate;
- Easier access to information and public procurement opportunities;
- Easier access to R&D funding, and in particular the 7th RTD Framework Programme;
- Support for innovative start-ups and SMEs in the field of eco-innovation;
- Incentives for energy efficient businesses and products; and the

- Launch of a Gateway to China scheme to promote European SMEs' access to the Chinese market by 2010, provided that it builds on and does not duplicate existing business support structures.

In addition, the Act gave birth to four legislative proposals:

### A regulation providing for a European Private Company Statute (SPE).

The Commission proposal provides a relatively cheap and simple way of setting up a company that can operate in one or more member states. It would allow businesses to follow the same company law provisions across all member states and aims to reduce compliance costs arising from the disparities between the 27 national rules on the creation and running of companies. The new company form would exist alongside the UK private limited company, providing an alternative, not mandatory form.

The proposal does not affect national employment law, tax law, accounting, or insolvency law. Nor does it deal with contractual rights and obligations of the SPE or those of its shareholders other than the ones deriving from the articles of association of the SPE.

### A Block Exemption (GBER) of SMEs from European rules on State Aid

This brings together in one single text all the legislative acts on state aid for SMEs. The regulation will make it easier for SMEs to get state aid and increase the amount they can receive from 7.5% to 10% for medium sized companies, and from 15% to 20% for small businesses.



### A directive on reduced VAT rates.

This directive will offer member states the option to apply lower rates for labour intensive and locally supplied services (such as catering, hairdressing etc.).

### A directive on Late Payment

This was promised for July 2008 but we had to wait nearly a year for it to see the light of day. The proposal updates the current directive. It maintains the current 30 day payment period for businesses but allows them to claim both late payment interest and fixed amounts of compensation for debt recovery costs incurred. It introduces a 30 day payment period for public authorities and a penalty consisting of a flat rate compensation of 5% of the amount plus the interest if they exceed this period. It removes the exemption for claims for interest of less than €5. And finally, it tightens rules on grossly unfair contracts. The rules remain optional for businesses.

### Evidence

The vast majority of businesses in Europe (99%) are SMEs. Together they employ two thirds of all private sector workers across the EU, account for 99.9% of all new businesses created in the last seven years and 84% of new jobs created. Over the past ten years, European policy makers have been trying to change the way they make laws and support businesses so that they are more in tune with the real needs of SMEs on the ground, with mixed success. As SMEs have climbed higher up the political agenda, so has the number of initiatives designed to help them. The latest and most comprehensive of these is the Small Business Act behind which the European Commission and EU member states have thrown their full political weight.

### Government Position

EU leaders gave the SBA unequivocal support at their summit in December 2008 and chose three priority areas for action: access to finance; better regulation; and market access. Member states have been fairly active in implementing many of the proposals including the UK. Even if many of the initiatives taken by the Government

were part of manifesto commitments or in response to the financial crisis, the SBA has helped to give focus to its actions. As for the four legislative proposals, the Government is on balance supportive of these.

### BCC Position

Even if the SBA is more a worthy extension of work in progress than the 'quantum leap' in the way the EU makes SME policy that we were promised, it is testimony to the political weight being thrown behind SMEs and their needs on the ground.

Moreover we believe that the Commission and EU leaders identified the right priority areas for action. Access to finance and better regulation are paramount: SMEs need liquidity and they do not need to be clobbered by unnecessary bureaucracy as they struggle to survive. Indeed, regulation that is intelligent and targeted will help prevent businesses from going to the wall.


We also welcome the fact that the member states and the Commission will report annually on progress in meeting the commitments set out in the Small Business Act as part of the Lisbon process and hope that this will be continued beyond 2010, the scheduled expiry of the Lisbon Commitments. It is a useful discipline that has yielded results, albeit slowly.


### Better Regulation

We are particularly keen to see the SME test work in practice as well as a wider use of derogations, exemptions for SMEs or policy alternatives. The BCC is launching a Better Regulation campaign in Brussels in December 2009 that will keep the pressure on the European Commission to stick to its SBA commitments, and better communicate how regulation impacts SMEs to all EU institutions.

### Access to Finance

We fully support all of the Government and Commission efforts to improve access to finance for SMEs (and would like to see





many of them extended, not least the UK's Enterprise Finance Guarantee). We are currently undertaking research into certain EU finance and funding streams, such as JEREMIE and FP7, and will publish our views on making them more accessible during the course of the next few months.

#### SPE

The proposal is currently being considered by the member states in the Council who will have to agree the proposal unanimously (the European Parliament's opinion, adopted earlier this year, is not binding). The main sticking points in discussions are the cross border element to the proposals. Many member states do not agree that businesses should be free to create an SPE out of nothing but that businesses should already have a subsidiary elsewhere in the EU. Minimum capital requirements are an issue, (some member states want to raise it as high as €10,000) as is the existence of employee participation.

The BCC supports this proposal in principle. However there is a general feeling amongst the membership that it needs to be as easy to use and self contained as possible in order to add value. After all, the plc is a widely recognised form within the EU and beyond and the advantages of the SPE would have to be overwhelming to encourage any significant take up by UK businesses. Any attempts by member states to dilute the cross border element or to introduce complexity (such as raising the minimum capital requirement, limiting the number of shares, or requiring employee participation) would weaken business support for the proposal.

Member states are currently considering a compromise position tabled by the Swedish presidency. This allows an SPE to be created out of nothing, sets the minimum capital requirement at €1 (allowing member states to charge more should they wish) but does include employee participation, although not for SMEs. The BCC supports these elements of the compromise but we are concerned about its complexity and therefore its real use to small businesses in the UK.

There is likely to be another draft of the compromise but it is far from clear whether

it will appease the recalcitrant member states. The final decision - due at the end of 2009 - is on a knife-edge.

#### VAT rates

This directive has been superseded by an agreement by EU Finance Ministers in May 2009 to allow all member states to levy the reduced rate with immediate effect. The British Government has to date not taken advantage of the lower rate, and has been unable to give substantial reasons for not doing so beyond revenue considerations. The BCC, in its 2008 Pre Budget Report submission, called on the Government to evaluate the possible impact a reduced rate could have on employment and the black economy in the UK.

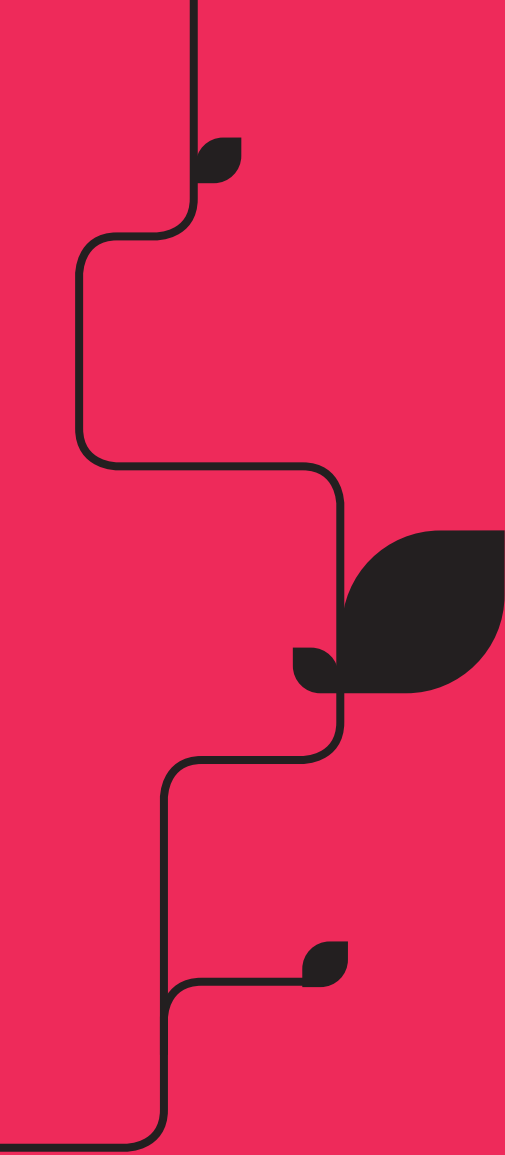
#### Late Payment

SMEs are the most frequent victims of late payment, a problem that has been exacerbated by the current economic and financial crisis. We therefore welcome the Commission's efforts to update current rules and make them more effective. Nevertheless we believe that they could be improved both in terms of content and legal certainty. We are particularly keen that the proposed rules provide a system that would give SMEs the confidence to apply the rules and not risk future contracts and customers.

We also welcome the stricter payment conditions for public authorities but we do not believe that the proposed fixed lump sum compensation on top of interest and recovery costs is appropriate. Not only is it an arbitrary figure but we have concerns that public sector penalties will end up being recouped through additional business taxation.

We are working with Eurochambres and the European Parliament's Internal Market Committee to effect these changes. The latter is expected to vote on its amendments in February 2010 and the Parliament as a whole shortly thereafter. If member states agree to the EP's changes, the directive could become law within 2 years.





## CONTACTS

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