



Cut EU red tape

Report from the Business Taskforce

October 2013

Contents

- Foreword 5**

- Executive Summary..... 8**

- Part 1: Principles 11**

- The COMPETE Principles for removing EU red tape..... 12**

- Part 2: Proposals for reform to EU rules, regulations and practices 15**

- A. Barriers to Overall Competitiveness 16**
 - A.1 – The lack of a true single market for services 17
 - A.2 – Prescriptive requirements on data protection 18
 - A.3 – Unnecessary proposals on shale gas..... 19
 - A.4 – Unnecessary non-financial reporting requirements 20

- B. Barriers to Starting a Company and Employing People 21**
 - B.1 – Requirements to provide written risk assessments 22
 - B.2 – Barriers to helping young people into work 23
 - B.3 – Costly proposed amendments to rules on pregnant workers 24
 - B.4 – Burdensome proposals for sending workers to other EU countries..... 25
 - B.5 – Burdensome proposals for change to information and consultation Directives 26
 - B.6 – Inflexible and unclear rules on working time..... 27
 - B.7 – Inflexible rules on hiring agency workers..... 28
 - B.8 – Complex and unfair results from rules on transferring staff between companies 29

| | |
|---|-----------|
| C. Barriers to Expanding a Business | 30 |
| C.1 – Onerous requirements to assess environmental impacts..... | 31 |
| C.2 – Low thresholds for procurement contracts that place burdensome requirements on SMEs | 32 |
| C.3 – Rules which restrict smaller companies’ access to capital markets | 33 |
| C.4 – Costly new reporting requirements on the oil industry..... | 34 |
| C.5 – Excessive rules on country of origin labelling for food..... | 35 |
| C.6 – Costly official controls on food and animals | 36 |
| C.7 – Unnecessary rules on SMEs transporting a small amount of waste..... | 37 |
| C.8 – Unnecessary proposals on access to justice in environmental matters | 38 |
| C.9 – Unnecessary proposals on soils..... | 39 |
| D. Barriers to Trading Across Borders | 40 |
| D.1 – The lack of a fully functioning digital single market in the EU..... | 41 |
| D.2 – High card fees that stop SMEs trading across frontiers | 42 |
| D.3 – Restrictive barriers to international trade..... | 43 |
| D.4 – Complex VAT returns and delayed refunds..... | 44 |
| D.5 – Onerous proposals on country of origin labelling for consumer goods..... | 46 |
| E. Barriers to Innovation | 47 |
| E.1 – Costly and complex chemicals regulation | 48 |
| E.2 – The need for a competitive clinical trials framework | 50 |
| E.3 – The need for a quicker, more flexible licensing regime for medicines | 51 |
| E.4 – Crop protection rules that make EU farmers less competitive | 52 |
| Annex 1: Additional concerns raised by business | 53 |
| Acknowledgements | 56 |

Foreword

Firms face a challenge. They produce superb products, offer world-class services and benefit from being able to sell to a European market of 500 million customers. But they are often encumbered by problematic, poorly-understood and burdensome European rules. The impact is clear: fewer inventions are patented, fewer sales are made, fewer goods are produced and fewer jobs are created. The burden also falls heaviest on small and medium-sized firms who make up the vast majority of businesses.

This would be bad enough if the world was standing still – but it isn't. The global economy is being re-shaped at breakneck speed. In the past decades, political systems have changed, new players have emerged on the markets, as well as new materials, new technologies and workers who are better skilled than ever. To compete in this fast-changing economy requires regulation that promotes growth, better access to markets and the availability of new sources of energy.

When US companies can get new products licensed and to market in days, it should not take weeks or months in Europe. When small and medium-sized enterprises are crucial to creating new jobs, it doesn't make sense for the EU to extract £300 million from UK businesses alone to implement new data protection rules. When innovation is so important for future businesses, it is self-defeating that new EU regulations have accompanied a 25% drop in biomedical research, and that complex and diverse rules on sales, promotions, labelling and web content hamper e-commerce. And when the discovery of shale gas in the United States has led to that country's industrial renaissance, Europe must help its chemical, plastics and steel industries, now paying several times more for gas than their US rivals, get the same benefits.

As businesspeople, we are convinced that these and many other problems must be addressed if British and European firms are to compete in the global marketplace. We need regulation to operate in a pan-European market. We are not against regulation per se. But we need regulation that is pro-growth and pro-innovation.

To help sweep away barriers to growth, we were asked by Prime Minister David Cameron to develop a set of recommendations for reform for the British and European governments as well as the EU institutions. And we, in turn, asked British and European businesses what they thought. With input from hundreds of firms, individuals and business associations across Europe we have developed 30 priority recommendations to address five kinds of barriers:

- Barriers to overall competitiveness
- Barriers to starting a company and employing staff
- Barriers to expanding a business
- Barriers to trading across borders
- Barriers to innovation.

If these are implemented, billions of pounds, euros, zloty and kroner could be saved, while thousands of new firms and new jobs could be created:

- In the digital economy alone, estimates suggest that reforms could add 4% to Europe's GDP;
- Removal of all outstanding EU barriers to trade in services could lead to an additional gain to the EU economy of 1.8% of EU GDP;
- A successful transatlantic trade deal could, in the long-term, boost the EU economy by some €120 billion annually;
- Whilst removing the requirement to write down health and safety risk assessments could save businesses across the EU some €2.7 billion.

In particular, the Services Directive – which aims to remove outstanding barriers to free trade in services in the EU – has failed to realise its full potential, due to poor and uneven implementation across the EU. Addressing this must be a key priority, given that the services sector is a key driver of competitiveness, growth and jobs. And further liberalisation of telecoms, transport, construction, and legal services, is of crucial importance in creating the right environment for competitive European businesses to prosper.

In drawing up our recommendations, we have focused on a number of key priorities. However, in preparing this report, we heard from business about a wide range of EU measures which affect their competitiveness. We set out in Annex 1 a further 66, all of them reflecting concerns raised with us by business during our work on this report.

But it isn't enough just to remove existing rules: Europe must avoid adding new ones. And when new rules are necessary they must be unashamedly pro-growth. Some of us run large corporations, others manage smaller business. Yet we all believe this. We have therefore developed principles that we think should be applied to any new regulations or legislation. They should function as a first common-sense filter through which any new EU proposals must pass. We have called these the COMPETE principles – because if they are used they will make Europe more competitive.

Many reports have been written about removing European rules, including by European governments and the European Commission. This isn't the first such report and it won't be the last. Indeed, European Commission President Jose Manuel Barroso has just published a review of regulation, committing the EU to screen two-thirds of all European rules for their commercial fitness – a welcome move.

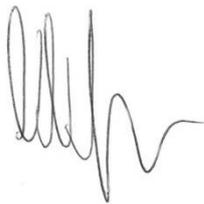
Yet for all the reports, change is still needed. We therefore call on the British and European governments, on the European Commission and the European Parliament to implement our findings. For while this report is written by businesspeople and for the British government, its recommendations, if implemented, will benefit all of Europe, helping firms start, employ staff, grow, expand, innovate and export.



Marc Bolland
Marks & Spencer



Ian Cheshire
Kingfisher



Glenn Cooper
ATG Access



Louise Makin
BTG



Dale Murray, CBE
Entrepreneur and Angel Investor



Paul Walsh
Diageo

Executive Summary

This report is drawn from evidence we received from some 90 UK businesses and business organisations, and over 20 business organisations across Europe. It sets out a range of proposals to ensure that the EU single market makes it easy for businesses in Europe to trade across borders, and to ensure that the EU regulatory framework is, and remains, competitive in the global market place.

We call on the European Commission to adopt a new ‘common sense filter’ for all new proposals – [the COMPETE Principles](#). No new EU legislation should be brought forward which does not successfully pass through this filter.

Competitiveness test

One-in, One-out

Measure impacts

Proportionate rules

Exemptions and lighter regimes

Target for burden reduction

Evaluate and **E**nforce

As well as these overarching principles, we also looked at specific pieces of existing EU legislation, and proposals in the pipeline, that hold businesses back. The removal of unnecessary regulatory burdens in areas which are critical for job creation and growth will free up businesses across the EU to lead the way towards economic recovery. We highlight barriers in the following five areas:

We have identified [Barriers to Overall Competitiveness](#). To address these, the EU should:

- Ensure the full implementation of the **Services Directive** across the EU
- Ensure **data protection** rules don't place unreasonable costs on business
- Refrain from bringing forward legislative proposals on **shale gas**
- Drop proposals to extend **reporting requirements** to non-listed companies.

We have identified **Barriers to Starting a Company and Employing People**. To address these, EU Governments should be allowed flexibility to decide:

- When low-risk companies need to keep written **health and safety risk assessments**
- How **traineeships and work placements** should be provided.

For new employment law proposals the starting presumption should be that micro-enterprises are exempt. When inclusion is sensible (e.g. a beneficial proposal) micros should have a proportionate regime. In particular the:

- **Pregnant Workers** proposals should be withdrawn
- **Posting of Workers** Directive should not introduce mandatory new complex rules on subcontracting
- Existing legislation on **Information and Consultation** should not be extended to micros, and no new proposals or changes to existing legislation should be made
- **Working Time** Directive should keep the opt out; give more flexibility on on-call time/compensatory rest; clarify there is no right to keep leave affected by sickness
- **Agency Workers** Directive should give greater flexibility for individual employers and workers to reach their own arrangements that suit local circumstances and give clarity to companies that they only need to keep limited records
- **Acquired Rights** Directive should allow an employer and employee more flexibility to change contracts following a transfer.

We have identified **Barriers to Expanding a Business**. To address these, the EU should:

- Drop costly new proposals on **environmental impact assessments**
- Press for an urgent increase of the current **public procurement** thresholds
- Exempt more SMEs from current rules on the **sale of shares**
- Minimise new reporting requirements for **emissions from fuels**
- Drop plans for excessively strict rules on **food labelling**
- Remove proposals to make charging for **official controls on food** mandatory
- Remove unnecessary rules on SMEs transporting small amounts of **waste**
- Withdraw proposals on **access to justice in environmental matters**
- Withdraw proposals on **soil protection**.

We have identified **Barriers to Trading Across Borders**. To address these, the EU should:

- Take action to create a fully functioning **digital single market**
- Rapidly agree measures to cap **card payment fees**
- Remove **international regulatory barriers** which inhibit trade
- Reduce the burden of **VAT returns**, and stamp out **refund delays**
- Drop proposals on **origin marking** for consumer goods.

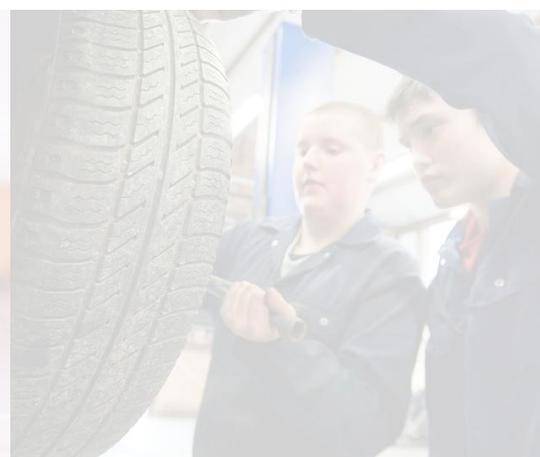
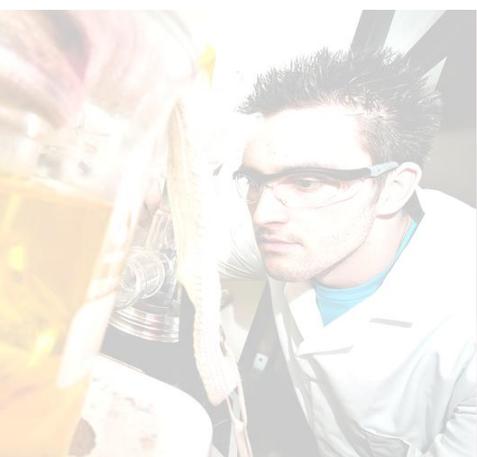
We have identified **Barriers to Innovation**. To address these, the EU should:

- Improve guidance on **REACH** to make it more SME-friendly
- Rapidly agree the new proposed Regulation on **clinical trials**
- Improve access to flexible EU **licensing for new medicines**
- Introduce a risk-based process for the evaluation of **plant protection products**.

We urge the European Commission, European governments, and the European Parliament to take these recommendations forward rapidly.

And we call on UK Government Departments to examine the scope for action to address the additional concerns raised by business on the wide range of further EU measures at Annex 1.

Part 1: Principles



The COMPETE Principles for removing EU red tape

Competitiveness test

- All new proposals from the European Commission must pass a rigorous competitiveness test to demonstrate that they will boost European competitiveness. If they fail, they should be rejected and not allowed to proceed.

One-in, One-out

- The European Commission should introduce a one-in, one-out principle for European legislation, and offset any new burdens on business by reducing burdens of an equivalent value elsewhere.

Measure the impact

- The European Commission should publish an annual statement of the total net cost to business of the proposals which it brings forward – and update the figures to take account of changes made by the European Parliament and the Council of Ministers.
- The European Commission should publish provisional Impact Assessments when it goes out to consultation – setting out the impacts of the options proposed.
- A single independent Impact Assessment Board should scrutinise all EU Impact Assessments. Proposals which do not receive a positive opinion from the Impact Assessment Board should not proceed.

Proportionate rules

- The European Commission should take a risk-based and proportionate approach when developing new proposals, drawing on objective scientific advice.
- The European Commission should bring forward clear guidance as soon as possible after legislation has been agreed, where this would help businesses comply with EU legislation in the least burdensome way.

Exemptions and lighter regimes

- The European Commission should exempt micro-enterprises and young companies from new legislation whenever possible; and always propose lighter regimes for SMEs and young companies when developing proposals.

Target for burden reduction

- In addition to applying the one-in, one-out principle, the EU should adopt a target to reduce the overall EU regulatory burden on businesses.

Evaluate and Enforce

- The European Commission should not bring forward any new proposals until the existing legislative framework has been evaluated, and should ensure EU legislation is implemented and enforced consistently across the EU.

Why are these principles needed?

Businesses have repeatedly called for relief from an endless stream of new EU regulations, rules and requirements which create unnecessary complexity and costs in their day-to-day operations.

We have seen numerous examples of legislation being brought forward by Brussels which does not add value – for example, overly prescriptive requirements around safety signs, or how olive oil may be provided in restaurants.

We also see EU rules which are disproportionately costly for business – especially small businesses – without any evidence of benefits. This seems to be particularly prevalent in proposals stemming from negotiations between the social partners. For example, recent proposals on ergonomics and on hairdressers would have placed extortionate costs on SMEs if implemented. Legislation which is brought forward through the social partners process must be subject to all of the same checks and balances as other proposals.

And all too often we see the EU adopting a highly risk-averse approach to new and innovative technologies and products. If we are to remain globally competitive, the EU must not introduce unnecessary barriers and restrictions which stifle innovative industries.

For this reason we urge the EU to fully implement these principles, to enable business to COMPETE, grow, and create jobs.

Competitiveness test

One-in, One-out

Measure impacts

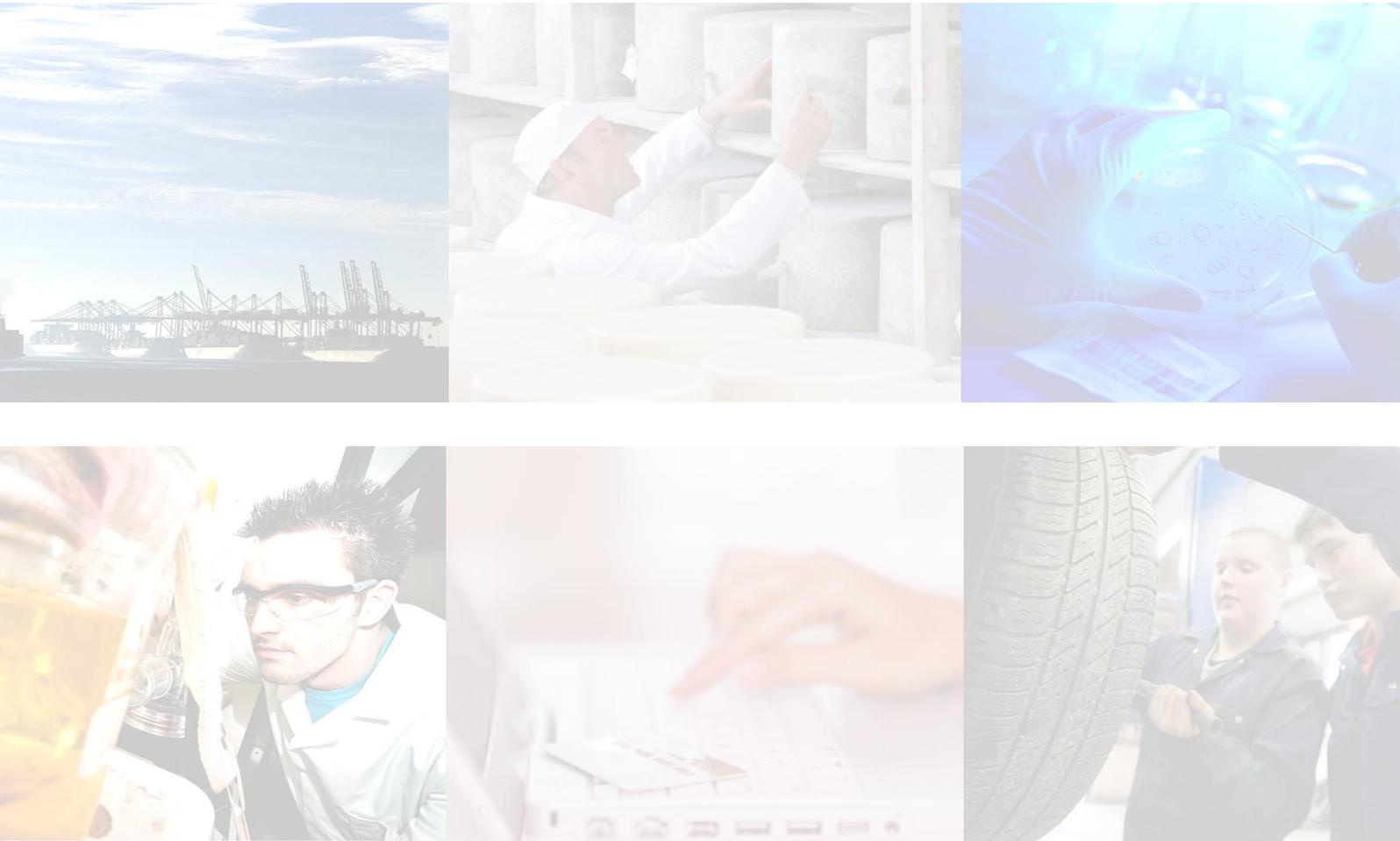
Proportionate rules

Exemptions and lighter regimes

Target for burden reduction

Evaluate and **E**nforce

Part 2: Proposals for reform to EU rules, regulations and practices



A. Barriers to Overall Competitiveness

Overview

The future of European business depends on the removal of unnecessary, burdensome regulation, which stifles growth and competitiveness. In particular, further efforts should be made to liberalise the market for services at EU level. Gains in EU GDP of 1.8% have been predicted over the long term, if the plethora of unnecessary restrictions still in place could be removed.

But whilst a complete and fully functioning European single market is an essential foundation, it is only part of the picture. If our businesses are to compete in the global marketplace, they need a level playing field. European business needs an environment which fosters global competitiveness and does not hold it back.

UK and European companies are in competition with the best in the world. They will not succeed if they are subject to additional costs and burdens which their competitors in other developed markets do not face. We must ensure that EU rules do not put European firms at a competitive disadvantage in the race for international business.

High energy prices, additional charges on business, onerous record keeping, and unnecessary bureaucracy all make it harder for our companies to compete in global markets. EU rules cannot be allowed to undermine the competitiveness of European business. Where EU rules place EU firms at a competitive disadvantage, they must be tackled rigorously and speedily in order to free up our businesses to help create growth and jobs.

We have identified a number of areas which need reform to boost the overall competitiveness of EU business:

- The lack of a true single market for services
- Prescriptive requirements on data protection
- Unnecessary proposals on shale gas
- Unnecessary non-financial reporting requirements.

A.1 – The lack of a true single market for services

The Services Directive

Full implementation of the Services Directive could boost intra-EU services trade by up to 14.7% – European Commission Economic Paper, June 2012

Problem

The Services Directive has not been fully implemented across the EU. And it still allows European states the ability to maintain far too many restrictions in their services markets.

Analysis

The European Commission has predicted a potential gain of 1.8% of EU GDP if EU states were to remove all outstanding EU barriers to trade in services.

It is also clear that more ought to be done to raise performance on services integration. This becomes even more important at a time where Europe needs to boost competitiveness and realise untapped potential for growth.

However, it is apparent that some European states have been taking advantage of flexibilities granted in the Directive to maintain unjustifiable barriers to their services markets – notably by choosing to interpret concepts such as 'proportionality' and 'necessity' in the broadest manner. The introduction of a 'proportionality test' against which these measures could be challenged would help to address this.

And a raft of further restrictions in key enabling sectors such as telecoms, transport, construction, financial and legal services needs to be addressed, to improve the competitiveness of European business across the board.

Recommendation

The European Commission should:

- Ensure the full implementation of the Services Directive across the EU
- Eliminate all remaining unnecessary restrictions – notably by applying a 'proportionality test' to national measures which place unjustified restrictions on trade in services
- Take action to address outstanding restrictions in key sectors such as telecoms, transport, construction and legal services.

A.2 – Prescriptive requirements on data protection

Data Protection Regulation

"The Commission's proposal is likely to drive many small firms out of business" – an online marketing company

Problem

New onerous data protection proposals are of particular concern to SMEs. They are costly, too prescriptive, and focus on process rather than outcomes.

These obligations, backed up by punitive sanctions, could act as a barrier to new entrants to the market, and impose unnecessary additional costs on current businesses. The proposal will cover the use of personal data across a range of sectors, and will have wide-ranging effects.

Analysis

The UK's Impact Assessment concluded that the European Commission proposal could have a net cost to the UK economy of £100-£360 million per year, of which £80-£290 million would be costs on SMEs.

For example, a small advertising business uses personal data to work out the performance of its online advertising. To keep doing this, the SME would need to designate a data protection officer, be expected to carry out an expensive Data Protection Impact Assessment, and provide free rights of access to consumers to their data. All of these measures would be hugely costly, and in many cases would require external legal advice and consultancy.

Recommendation

Negotiators in Brussels should ensure the final package does not impose unnecessary burdens on SMEs. Data protection rules should be proportionate to the risks at stake. In particular:

- There should be no mandatory obligation for businesses to do a Data Protection Impact Assessment, unless there is a specific risk of harm to people
- Firms should still be able to levy a 'subject request access fee', to prevent vexatious requests and cover the costs of providing a response
- A data protection officer should not be required.

A.3 – Unnecessary proposals on shale gas

"Shale gas is a potentially game changing resource where, in the US, it has slashed energy prices and helped spur a re-industrialisation. As we continue to struggle to rebalance our economy and balance our books, we cannot ignore this potentially significant resource." – a business organisation

Problem

Energy firms seeking to extract shale gas want regulatory certainty, so that they can plan their business with confidence. New European legislation could increase costs to business and threaten the exploitation of this valuable source of energy, without offering any additional environmental protection.

Analysis

Extracting shale gas requires compliance with existing EU environmental legislation. The Commission is considering a number of options to update EU legislation. These include guidance to clarify how existing legislation should be applied to shale gas; amending existing Directives; introducing a new framework Directive to make a set of changes to existing Directives; and introducing a new detailed Directive on shale gas.

The existing Directives provide important environmental protections, but were written before the development of the latest techniques for the extraction of shale gas. Without clarification, there is scope for legal challenge, which would create damaging uncertainty for the industry.

However, new specific and prescriptive legislation for shale gas would create additional cost for little benefit. Notably, firms carrying out shale and non-shale projects would not be able to standardise their compliance work, and there is a risk of stifling innovation by regulating details while technology is still in flux. Most importantly, there would be uncertainty for up to five years whilst legislation was under discussion, deterring investment. The alternative of amending existing Directives in a piecemeal fashion would create uncertainty and clashing rules.

Recommendation

There is no need for a new detailed Directive on shale gas. The current regulatory framework ensures proper environmental safeguards are in place, is tried and tested, and is well understood by businesses. A new Directive would bring years of uncertainty, deterring investors.

Instead, guidance should be produced to clarify how existing EU environmental regulation applies to the new possibilities of shale gas exploitation. This would minimise scope for differences in interpretation, and enable safe and sustainable exploitation of shale gas.

A.4 – Unnecessary non-financial reporting requirements

Proposed Directive on the disclosure of non-financial and diversity information by certain large companies and groups

"Non-financial reporting should be flexible and focus on material, relevant information" – a business organisation

Problem

The European Commission's proposal would extend non-financial reporting to unlisted companies over a certain size. The proposal would bring no benefit to shareholders of unlisted companies. And it could limit the scope of company directors to make forward-looking strategic statements in their annual report.

Analysis

The Directive would apply to companies that have, on average, over 500 employees. This will affect 6000 companies in the UK – 5000 more than under the previous system. All of these additional companies are unlisted.

The European Commission has not produced evidence of benefit gained by adding requirements to the reports of non-listed companies. Initial estimates suggest these requirements could cost these additional companies £30,000 each in the first year, with further costs after that.

The proposal as drafted would also stop companies making 'forward look' strategic statements, which are useful to shareholders and potential investors.

Recommendation

Business supports transparency. However, the case for this proposal has not been made. The hassle and cost for 5000 unlisted businesses in the UK is not matched by any expected gain to stakeholders or the public.

The proposal should be amended to apply to listed companies only. The proposal should allow companies flexibility in presenting 'forward look' statements, as long as these are not reckless or deliberately misleading to shareholders and potential investors.

B. Barriers to Starting a Company and Employing People

Overview

We are at one in the belief that all workers should have good employment standards. We consider this is also the view of the vast majority of companies. However, Europe can and should do far more to help all employers deliver good standards, as we set out below. European employment law issues are a key concern for business. We have heard consistently from businesses, in particular SMEs and micro-enterprises, that they are struggling to cope with the unnecessary burdens placed on them by EU laws.

Faced with the risk of being sued for breaking the law by accident and countless pages of law they cannot understand, many micro-enterprises simply decide not to employ people. In short, the complexity and quantity of employment legislation coming from Europe is preventing job creation. This cannot continue.

We believe that the starting presumption for all EU employment law should be that micro-enterprises are exempt. Where this is not advisable (some proposals can be beneficial for companies) special provision should be made for micro-enterprises to have a regime that imposes lighter burdens on them. New employment law should apply to them only where there is clear evidence – from industry responses to a consultation and from the impact assessment published with that consultation – that micro-businesses would benefit.

Exactly the same principle should apply to laws proposed by the ‘social partners’. Industry, including SMEs, should have the right to be consulted upon social partner proposals, and such proposals must be subject to a rigorous impact assessment.

In addition to these overarching principles, we make recommendations in the following areas:

- Requirements to provide written risk assessments
- Barriers to helping young people into work
- Costly proposed amendments to rules on pregnant workers
- Burdensome proposals for sending workers to other EU countries
- Burdensome proposals for change to information and consultation Directives
- Inflexible and unclear rules on working time
- Inflexible rules on hiring agency workers
- Complex and unfair results from rules on transferring staff between companies.

B.1 – Requirements to provide written risk assessments

Health and Safety Framework Directive

"Removing the requirement to write down risk assessments could save businesses across Europe €2.7 billion" – a small business organisation

Problem

Small businesses are required to keep written health and safety risk assessments, even if they are working in a low-risk sector. These record-keeping requirements cost businesses time and money.

Analysis

The Health and Safety at Work Framework Directive requires all businesses to keep written records of risk assessments carried out in their workplace, regardless of risk. Managing risk to health and safety is about far more than keeping the right records.

European states should therefore be free to exempt small businesses carrying out low-risk activities from the burden of record-keeping. This would benefit at least 220,000 UK small businesses, and save businesses across the EU an estimated €2.7 billion.

Recommendation

The European Commission should give national governments the flexibility to decide when small, low-risk businesses need to keep written risk assessments. National governments are best placed to judge which businesses are low-risk, and should be able to decide where exempting businesses from record-keeping is appropriate.

B.2 – Barriers to helping young people into work

Quality Framework on Traineeships

"With youth unemployment in the EU at 22.8% in 2012, we must do all we can to help young people take their first steps in the labour market" – a large UK company

Problem

The European Commission's possible recommendations about how traineeships are provided could be an unnecessary constraint on employers wanting to offer opportunities to young people.

Analysis

The European Commission has identified issues with the way some traineeships are provided in Europe. This includes insufficient working content, pay and working conditions.

We do not yet know how the European Commission will respond to these issues, but from past experience we know that the UK would be expected to do its utmost to comply with any recommendations. We fear that the European-level action will cover anyone – of any age – doing work experience, and could lead to legally-binding proposals at a later date.

The UK helps under-25s into work through a range of informal schemes. For example, the Prince's Trust has run a series of successful schemes with leading UK firms as well as state-sponsored training schemes. Employers value their ability to run a range of schemes with minimal bureaucracy to help get young people into work.

Short-term work placements have proven success. These schemes offer unemployed young people an unpaid placement of up to 37 hours training each week for a month, including feedback, evaluation, workplace skills and support through a buddy and career coach. These placements regularly lead to a traineeship or directly to employment. Flexibility is key. Young unemployed people need, for example, to be able to continue to receive social benefits during short-term placements, to avoid the bureaucracy of having to leave and rejoin the benefits system.

Any attempt to impose a one-size-fits-all approach risks putting off all parties, with companies reluctant to offer opportunities, and the unemployed unable or unwilling to accept them. Schemes work because they can be tailored to suit individual needs.

Recommendation

Any Commission action should build on best practice and not resort to legislative proposals. It should also reflect the fact that individual European states need a variety of schemes that can be flexible to young people and employers' needs.

B.3 – Costly proposed amendments to rules on pregnant workers

“Companies need to be given the space to deliver growth and jobs – without being hamstrung by new and costly maternity rules” – A business organisation

Problem

In 2008, the European Commission brought out a proposal to amend the Pregnant Workers Directive, which was first adopted in 1992. The original proposal would not significantly increase costs for business. But the European Parliament is demanding a change to require 20 weeks' maternity leave on full pay. This would be hugely costly for UK and European firms. Despite widespread opposition, the proposal has not been withdrawn.

Analysis

The UK has its own maternity leave system with a long period of maternity leave. The current Government has published plans for new shared parental leave. This is an example of how European states develop systems which suit their own individual circumstances. Relative to other European states, the UK has an excellent record of women being active in the labour market, and take-up of maternity leave is high.

If the European Parliament's position were to be adopted, the UK would face extra costs of around £2.5 billion per year, while other European states would face a similarly high bill. Such high costs would be likely to lead to a greater share of this financial burden falling directly on business.

Recommendation

The European Commission should withdraw its proposal to amend the Pregnant Workers Directive.

B.4 – Burdensome proposals for sending workers to other EU countries

Posting of Workers Enforcement Directive

"The administration involved will be both unnecessary and prohibitively expensive, requiring multiple translations of contracts and employers to maintain a network of representatives in different parts of the EU" – a business organisation

Problem

This issue relates to the rules applying to European companies sending workers temporarily to work in another EU country. The draft law on the enforcement of these rules could really help. It could stop other countries imposing all sorts of confusing extra burdens on companies wanting to send their workers abroad. But there is a risk that some parts of this law could make the whole process much more costly.

Analysis

The proposed Directive includes many things which are helpful. If implemented properly, it will give employers and workers clear information about how the system works, online and in their own languages.

But there are two areas of risk. Firstly, the proposal introduces complicated rules on subcontracting (called joint and several liability), which would make a business liable to pick up the bill if one of its subcontractors did not pay wages. This would require UK businesses sending workers to other European states, or receiving workers from other European states, to take out additional and costly insurance.

Secondly, there is a risk an employer would have to fill in a very substantial amount of paperwork before sending a worker to another European state, with the potential for further requests while the worker is there. This could impose significant costs on business.

Recommendation

The proposal should not introduce mandatory new and complex rules on subcontracting.

There should be strict limits on the paperwork a European state can ask a business to provide before sending a worker to another EU country.

B.5 – Burdensome proposals for change to information and consultation Directives

"The existing European legal framework is sufficiently robust and does not need to be further expanded" – an EU SME organisation

Problem

The European Parliament has called for further action to give workers rights to information and consultation. The European Commission is considering a range of proposals in response. These include requiring restructuring businesses to pay for the retraining of their employees; expanding the scope of the Directives that relate to information and consultation to cover micro-businesses (who are currently exempt); and introducing standardised agreements for dispute resolution.

Analysis

Further EU action in this area would be costly to business, without adding any real value. The European Commission frequently returns to this issue, despite a lack of evidence suggesting there is a problem with existing information and consultation rights.

There is a real risk that, if these proposals are implemented, there will be significant new burdens to businesses – including requiring employers to pay for the re-training of any staff made redundant, even if they find employment immediately afterwards.

Introducing standardised agreements for dispute resolution runs the risk of reducing flexibility, and actually reducing the amount of employee consultation.

Increasing the costs on businesses carrying out redundancies will reduce their capacity following redundancies to take on new staff or restructure their business.

Recommendation

The European Commission should neither make new proposals nor change existing legislation on the information and consultation Directives.

In particular:

- Existing legislation on information and consultation should not be extended to micro-businesses
- There should not be any action to standardise agreements for dispute resolution.

B.6 – Inflexible and unclear rules on working time

"Losing the...opt-out would have an impact on nearly three-quarters of businesses (73%), with close to half (46%) saying it would be severe or significant" – a survey of UK employers

Problem

Company after company told us that complying with the Working Time Directive is a huge headache. Keeping the ability to opt out from the 48-hour week limit is essential. But problems caused by European Court rulings on how 'on-call' time is treated – and requiring paid leave to be given to workers who have not worked a day all year – need urgent action, as they have expanded the original scope of the legislation. Companies also need more flexibility and clarity on the rules.

Analysis

It is clear from the evidence we have received, and from numerous industry surveys, that an individual's ability to opt-out of the 48-hour week is a key flexibility. Many workers see the ability to work the hours they choose as a matter of personal choice. Businesses and public services that rely on on-call working face unnecessary extra costs due to the European Court's rulings. Workers and employers are left with little flexibility, and rulings on annual leave and sick leave interaction have caused confusion all round.

Recommendation

The level of fear, confusion and uncertainty created by the provisions of this Directive is unacceptable. So bad is it, that it prevents companies, particularly SMEs, giving opportunities to their workers. It may even prevent companies taking on additional contracts. Any new proposal must:

- Keep individuals' ability to opt out of the 48-hour week, and remove the uncertainty which surrounds this opt-out
- Provide more flexibility on on-call time and 'compensatory rest': clarifying that not all workplace on-call time counts as working time, and that compensatory rest does not have to be taken immediately
- Make clear in the Directive that there is no right to reschedule leave which is affected by sickness, nor any right to carry over leave
- Ensure record-keeping requirements are kept to a minimum, and that there is clarity so that businesses, especially SMEs, have confidence that all they need to retain is proportionate, limited records.

B.7 – Inflexible rules on hiring agency workers

"In the face of these costs 57% of affected firms had reduced their use of traditional agency workers" – a survey of UK employers

Problem

The Agency Workers Directive has increased the burden of hiring agency workers, and reduced the flexibility that business has to hire people. This can reduce employment opportunities, and deter businesses from hiring for fear of breaking the law.

Analysis

The Agency Workers Directive creates rights for agency workers to get the same rates of pay, holidays, rest periods, and working time as if they had been recruited directly by the hiring company. The Directive states these rights apply from the agency worker's first day in the job, unless a different start date for these rights can be agreed by representatives of employers and employees. In the UK, agency workers are entitled to these rights after 12 weeks in the same job as a result of a 2008 agreement between the UK social partners – the Trades Union Congress and the Confederation of British Industry.

Recommendation

Any new proposal must:

- Start by considering if a Directive is still actually necessary and/or what provisions in it are no longer required
- Give greater flexibility for individual employers and workers to reach their own arrangements that suit their own local circumstances
- Keep administrative burdens on business, in particular SMEs, to a minimum
- Ensure record-keeping requirements are kept to a minimum, and that there is clarity so that businesses, especially SMEs, have confidence that all they need to retain is proportionate, limited records.

B.8 – Complex and unfair results from rules on transferring staff between companies

Acquired Rights Directive

"It would be highly beneficial to allow companies to have their staff on the same reward package to make it easier to manage their workforce as one entity...The directive should be amended to allow an employer and employee to be able to negotiate agreeable terms following a transfer, providing that they are no less favourable overall at the point of transfer" – a business organisation

Problem

This Directive protects employees' rights where there is a transfer of a business – or a part of one – to another. However, this protection goes too far. Following transfers, if employers wish to harmonise terms and conditions for two or more groups of staff, they are frequently unable to do so, even if employees are quite happy with the proposed harmonisation.

Analysis

Currently, changing the terms of staff who are transferred in a less favourable direction, merely to bring them into line with the terms of existing staff, is not permitted. This is so, even if the change is in return for other beneficial changes.

In many cases, employers will be unable to make legally-binding changes to terms and conditions after a transfer, even if employees are willing to agree them and receive other benefits in return for giving up entitlements. All this is highly inconvenient for business, and can lead to increased costs – for example the need to run multiple pay rolls.

There is also confusion in other areas. Where a transferred employee agrees changes to his contract, these changes may or may not be valid depending upon the reasons for the change.

Increased flexibility would boost business and could improve fairness for employees. It could reduce potential sources of discontent between employees who might be doing the same work but receiving different rates of pay and benefits. It might also allow employees to work more flexibly.

Based on changes of ownership of workplaces with five or more employees, we estimate there are around 31,000 transfers in the UK per year, affecting around 4% of the total number of workplaces with five or more employees.

Recommendation

The Directive should be amended to allow employers and employees more flexibility to change contracts following a transfer.

C. Barriers to Expanding a Business

Overview

EU regulation should create the best possible conditions for businesses to grow. But too often the burden of EU regulation acts as a disincentive to growth. EU rules and regulations must not hold back companies which have the means to grow at a time when growth is so clearly needed.

This matters to businesses of all sizes. But it is a particular concern for SMEs. Over 99% of European businesses are SMEs. They need to be allowed to grow in order to stimulate economic recovery. Antonio Tajani, European Commissioner for Enterprise, has himself said “80% of all new jobs in Europe in the past five years have been created by SMEs”. We have identified a number of areas of EU law which discourage business, and SMEs in particular, from expanding, due to additional costs or added complexity:

- Onerous requirements to assess environmental impacts
- Low thresholds for procurement contracts that place burdensome requirements on SMEs
- Rules which restrict smaller companies' access to capital markets
- Costly new reporting requirements on the oil industry
- Excessive rules on country of origin labelling for food
- Costly official controls on food and animals
- Unnecessary rules on SMEs transporting a small amount of waste
- Unnecessary proposals on access to justice in environmental matters
- Unnecessary proposals on soils.

C.1 – Onerous requirements to assess environmental impacts

Environmental Impact Assessment Directive

"The current proposal for the revision of the EIA Directive will have serious consequences for the UK's small firms and their ability to contribute to economic growth." – a trade association

Problem

The European Commission's proposed revision of the Environmental Impact Assessment (EIA) Directive would significantly increase burdens on developers. It would also place disproportionate and unacceptable costs on SMEs if adopted in its current form.

Analysis

The current Directive means developers seeking planning permission for many larger projects must do an EIA. This is a flexible system. It allows European states to set thresholds for screening out projects depending on size, location and impact.

However, the European Commission's proposed revisions would significantly extend its scope and requirements – effectively making the current screening thresholds redundant. New rules would introduce a pre-screening exercise for all projects, making developers scope exactly what the EIA should cover, and requiring the use of accredited experts.

In practice, this will mean that thousands of small projects – from installing micro-generation power technologies to setting up specialist micro-breweries – would need to be appraised for their impact on the environment, even if it is clear there is no environmental risk.

This would vastly increase the time and cost in securing planning permissions for even the smallest projects. UK business groups say that existing costs of a full EIA can already range from £35,000 for smaller developments such as a new car park, to £250,000 for larger infrastructure projects. SMEs cannot take on this burden.

Recommendation

Negotiators should ensure that the revision to the Directive places no additional regulatory burdens on SMEs that will increase costs and delays.

C.2 – Low thresholds for procurement contracts that place burdensome requirements on SMEs

Public Procurement Directives

"We were effectively ruled out of tendering for a public sector scheme which we were highly qualified to deliver due to the 30 pages of onerous requirements imposed by the Directives" – a small company

Problem

Detailed EU rules apply to all public sector procurement where contract values exceed certain thresholds. The thresholds have been in place for over 20 years and have not increased to keep pace with inflation. The rules are onerous, especially for SMEs. This leads to a regulatory 'cliff edge' that inhibits SMEs from bidding for work above the threshold.

Analysis

Provisional agreement has just been reached on revised EU Procurement Directives. The new rules should make public procurement faster, less costly, and more effective for business. The Commission estimates that this could reduce costs to SMEs by up to 60% across the EU. The UK Government has said it intends to implement the new Directives as quickly as possible to realise these benefits.

But the thresholds remain unchanged. The European Commission is not due to review them for another four years. This is far too long. And the EU thresholds will only be changed if there is a comparable review of the World Trade Organisation (WTO) Government Procurement Agreement (GPA) thresholds.

Recommendation

The European Commission should press for an urgent review of the current WTO GPA thresholds, and propose an increase as soon as possible. In the meantime, the Commission needs to bear down on the regulatory burden of the public procurement process for the smallest businesses – notably by revising the 2008 EU code of best practice on SME access to public procurement.

C.3 – Rules which restrict smaller companies' access to capital markets

Prospectus Directive and Markets in Financial Instruments Directive

"The cost of publishing a prospectus is disproportionate for smaller equity offerings; private placements are often preferred" – a small company

Problem

The European rules governing the sale of shares mean that small companies seeking to raise capital through public fundraisings face disproportionate costs. This reduces the options for many such businesses seeking to raise funds to support growth and investment. It also inhibits the development of a large and diverse group of retail investors willing to invest in SMEs and help them grow.

Analysis

When a business seeks investment through a public offering of shares, EU legislation sets the rules on the information that must be disclosed to potential investors. Those rules need to strike the right balance between protecting investors, and not burdening companies with excessive compliance costs.

For a public equity offer of £5 million, the cost of producing a prospectus in the UK is estimated at between £350,000 and £600,000. For smaller companies seeking to raise funds, that is a disproportionate cost. Since the current rules – the Prospectus Directive – came into force in 2005, less than 40% of funds raised by businesses on the main UK market have been through public placements. The majority of funds are raised privately, from institutional investors. That reduces the liquidity of the public (retail) investor market, and affects the ability of smaller companies to fund business growth.

The rules were changed in 2011 to increase the number of small placements that are exempted from the rules, including those up to €5 million or 150 investors. But in the US, the equivalent exemption has recently been increased from \$5 million to \$50 million and from 500 to 2000 shareholders. A proportionate disclosure regime also came into force following the 2010 Review of the Prospectus Directive, intended to reduce administrative burdens for SMEs. But, in practice, this has only resulted in limited additional flexibility.

Recommendation

The European Commission should increase the exemption from the current rules for SMEs, as recently recommended by the European Securities and Markets Authority Stakeholder Group. It should also, as part of the current review of the Markets in Financial Instruments Directive, implement the proposal for the new 'SME Growth Markets' category across other Regulations, enabling a more proportionate approach to financial services regulation for SMEs across the board.

C.4 – Costly new reporting requirements on the oil industry

Fuel Quality Directive

"Proposed reporting rules under the Fuel Quality Directive would make the refining industry less competitive" – a large oil company

Problem

The oil industry is concerned that additional reporting, necessary to calculate greenhouse gas emissions from fuel, could be costly for UK refineries, and require sharing of commercial data.

Any additional administrative burden would affect already tight margins, damaging the sector. Any costs which could be passed through to consumers – both domestic and business – would have an effect on pump prices. And any refinery closures could have an impact on energy security.

Analysis

Exact estimates of reporting costs required under the Fuel Quality Directive are difficult to make. But the UK petroleum industry estimates these could be in the region of £60 million to £150 million per annum for UK refineries. It is also concerned that the reporting effort for fuels which are exported is likely to be nugatory. And it is not clear how imports will be subjected to an equivalent reporting requirement. This would place European industry at a competitive disadvantage.

Recommendation

The European Commission is currently developing a revised proposal on reporting requirements for greenhouse gas emissions from fuels. It should ensure that any methodology minimises any additional reporting burden on business.

C.5 – Excessive rules on country of origin labelling for food

Regulation on the provision of food information to consumers

"Country of origin labelling can add to the regulatory burdens and costs on business. More research needs to be carried out to establish consumers' real needs and expectations" – a trade association

Problem

Businesses could face significant additional costs if the European Commission adopts stringent criteria for defining country of origin for labelling of fresh and frozen meat.

Extending blanket country of origin labelling to meat used as an ingredient in food would also be extremely impractical and costly for business.

Analysis

The European Commission is expected to adopt rules on Country of Origin Labelling of fresh and frozen meat in December. These rules could impose significant costs on UK businesses, for instance by including in the definition of origin the country of slaughter as well as the country of rearing. These costs are estimated at roughly £8 million per annum.

Rigid criteria could also prevent business from using voluntary origin indicators, for instance by identifying meat as coming from Scotland or Wales rather than the UK.

Businesses have also said that it would be a significant burden to require them to label the origin of the meat used as an ingredient in food. This would mean wholesale changes to the sourcing and processing practices of businesses. Costs would be significantly higher than for origin labelling of fresh and frozen meat, estimated to be in the tens of millions of pounds.

Business has highlighted that it believes there is no evidence that consumers want information on where the animal was slaughtered. Collecting this would be a completely unnecessary additional cost.

Recommendation

The European Commission should adopt country of origin labelling rules that are both practical for business and promote growth in the food sector. They should not impose overly strict rules that stop businesses communicating meaningful information in a flexible way, or add unnecessary costs to business.

The European Commission should take a proportionate approach to balance this with meaningful consumer information on Country of Origin Labelling.

C.6 – Costly official controls on food and animals

Regulation on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules

"We need assurance of cost-effective and transparent official controls across the EU Member States. It is important to reduce administrative burden as much as possible before imposing further costs on farm and rural business" – a trade association

Problem

The European Commission's recent proposal would significantly extend charges, and would require European states to charge businesses for the majority of official controls carried out in agri-food businesses. Under the current proposal, only micro-businesses would be exempted from paying the costs of routine official controls.

This proposal would add costs to businesses along the agri-food chain, from farmers to restaurants.

Analysis

Industry is concerned about the additional financial burden the charging proposal could impose. Costs are likely to be high – in the tens of millions of pounds per annum.

This change would hit across the food sector. Some sectors, such as primary producers, would have to pay particularly large amounts towards the costs of controls. This would be a major burden, taken alongside the already high cost of regulation to these sectors.

Recommendation

The proposal to make charging mandatory should not be taken forward. European states should be free to determine whether food businesses should be charged for official controls. This would allow national governments to take a more targeted approach to charges, and consider the wider context – for instance a business's track record, or the impact of raising costs on a particular sector.

C.7 – Unnecessary rules on SMEs transporting a small amount of waste

Waste Framework Directive

"We are concerned that, given the difficulties UK small businesses have in accessing suitable waste and recycling services, many of our members will face significant cost increases" – a small business organisation

Problem

EU rules on the disposal of business waste place a significant burden on SMEs. Even low-risk SMEs such as gardeners, that transport only a small amount of their own waste, need to register as waste carriers. The time and administrative cost spent on doing this is disproportionate for SMEs.

Analysis

The Waste Framework Directive governs the collection, transport, recovery and disposal of waste across Europe, including the UK.

All businesses that produce waste will usually pay for its collection and disposal. The cost varies depending on the nature of the waste material and the method of its management. SMEs have said that the effort of registering to regularly transport a small amount of their own low risk waste is disproportionate.

120,000 UK businesses are registered to collect and transport waste professionally and pay a fee every three years. A further estimated 220,000 to 460,000 SMEs in the UK regularly carry their own waste. These businesses will also need to register as waste carriers from 2014.

Whilst some small companies transport hazardous waste or arrange for the export of large quantities of waste, most do not. So a risk-based approach should be taken to how controls are applied.

Recommendation

The European Commission should propose an amendment to the Directive to introduce SME exemptions – for example, by removing the requirement for SMEs to register as waste carriers if they only transport a small amount of their own non-hazardous waste. This could benefit up to 460,000 small businesses in the UK alone.

The European Commission should use its ongoing waste review to identify further opportunities to reduce burdens on SMEs, including through simplifying reporting requirements.

C.8 – Unnecessary proposals on access to justice in environmental matters

Proposed Directive on Access to Justice in Environmental Matters

"There are a number of proposals which the Commission will propose to withdraw...including access to justice in the environmental field" –The European Commission's REFIT Communication: 2 October 2013

Problem

The European Commission's proposal for a Directive on access to justice in environmental matters is unnecessary – the EU is already signed up to an international convention that guarantees access to justice. The draft Directive's 'one-size-fits-all' approach would impose a disproportionate, inflexible set of rules. It would waste businesses' time and money.

Analysis

In 2003 the European Commission proposed a Directive on access to justice in environmental matters. This was rightly blocked by European states. It would mean huge uncertainty for the development of major infrastructure projects. And it would force businesses to comply with an overly rigid set of rules.

The Directive has never been formally withdrawn. The European Commission has, in its 'REFIT' Communication earlier this month, indicated its intention to withdraw the current proposal whilst it considers alternative measures in this area.

But all EU Member States and the EU itself are already party to the Aarhus Convention. This guarantees access to justice in environmental matters. Any new Directive would place unacceptable costs on businesses trying to expand. Any business which interacts with environmental law could be affected – from a large developer to an SME setting up in a technology park or opening a new warehouse.

Recommendation

All proposals for further legislation in this area are unnecessary. The Commission should now withdraw this proposal, in line with its commitment in its REFIT Communication.

C.9 – Unnecessary proposals on soils

Soil Framework Directive

"The Commission will therefore examine carefully whether the objective of the proposal...is best served by maintaining the proposal or by withdrawing it" – The European Commission's REFIT Communication: 2 October 2013

Problem

The European Commission's proposal on soil protection would impose unnecessary regulatory burdens on farmers and other land managers. The proposal takes a prescriptive approach to land management and tackling soil degradation. Many of its provisions duplicate requirements under the Common Agricultural Policy. Farmers would therefore be faced with additional administrative burden without any additional benefits for the protection of soil.

And in the contaminated land sector, the Directive could cause widespread and unnecessary 'blight' of low-risk sites. The requirement for 'Soil Status Reports', on the sale and purchase of land and property, will stifle growth in the housing and development sector.

Analysis

Most farmers and many landowners are small businesses. This proposal will therefore hit those businesses with the least resource to spend on complying with new, unnecessary administrative burdens. Margins in the agricultural sector can already be small, so extra costs could threaten the survival of some small farming operations. Additional costs to an individual farmer could be as much as £4000 per annum.

The proposal could also stifle the redevelopment and regeneration of many thousands of hectares of former industrial (brownfield) sites. This would hamper the potential for growth in the development sector.

Recommendation

The European Commission should withdraw this proposal, which would impose additional costs on European business and threatens growth and jobs.

D. Barriers to Trading Across Borders

Overview

A recent European Commission study showed that only 27% of UK businesses sell across borders. And a Eurostat report highlighted that between 2010 and 2012, there has been only a 2% increase in the number of consumers making cross-border purchases of goods or services over the internet in the EU. This clearly demonstrates that the single market is not yet complete. The EU must take urgent action to address these issues if we are to stimulate growth.

Completing the digital single market could increase EU GDP by 4% by 2020. Urgent and immediate action must be taken to complete the single market for e-commerce. Unnecessary establishment requirements and restrictions in individual European states should be removed; disparate reporting, accounting and administration requirements for VAT should be addressed; and remaining areas of complexity – such as those on labelling requirements and parcel delivery – should be removed.

In addition, more should be done to make it possible for businesses to trade with non-EU countries. In ongoing trade negotiations, the EU's top priority must be the removal of barriers which block our firms from accessing lucrative international markets.

We have identified a number of areas where action is needed to remove barriers which make it harder for businesses to trade:

- The lack of a fully functioning digital single market in the EU
- High card fees that stop SMEs trading across frontiers
- Restrictive barriers to international trade
- Complex VAT returns and delayed refunds
- Onerous proposals on country of origin labelling for consumer goods.

D.1 – The lack of a fully functioning digital single market in the EU

"Completing the digital single market could increase EU GDP by 4% by 2020" – the European Policy Centre

Issue

A fully functioning single market for e-commerce is far from a reality. A range of barriers continue to inhibit the development of cross-border e-commerce, to the detriment of both businesses, large and small, and consumers.

Issues such as data protection, VAT, and payment services and interchange fees are dealt with elsewhere in this report. But, in addition, there are many barriers to cross-border e-commerce, including complex and varying rules on labelling, sales promotion and web content. And arrangements for parcel delivery and returns across borders do not work effectively.

Analysis

According to Eurostat, the total market value of e-commerce in Europe was around €175 billion in 2010, making it one of the fastest growing markets in Europe. However, recent Commission studies show that most online consumers in Europe prefer to buy from domestic retailers – only 10% of UK consumers buy online from other EU countries.

There are unnecessary regulatory and legal barriers to establishing an online operation in individual EU states, which are particularly difficult for SMEs to navigate. Labelling requirements for online selling vary – both in terms of language and information required. Different sales promotion laws mean that a legal offer in one Member State may be prohibited in another. Rules determining the information a company must put on its website are implemented inconsistently. And more consumer- and business-friendly systems for cross-border parcel delivery and returns are needed.

Recommendation

The European Commission should take action to:

- Remove unnecessary national requirements on establishment and other legal restrictions to providing cross-border e-commerce
- Review and simplify the labelling requirements and sales promotion regulations
- Address the inconsistent application of the rules on web content
- Improve international standards for cross-border parcel delivery, to create a reliable and affordable system within the EU.

D.2 – High card fees that stop SMEs trading across frontiers

Proposals on Multilateral Interchange Fees and Payment Services Directive

"Interchange fees are opaque and there's no competition in that market, but we know that rates can be higher for SMEs, as high as 2%, which puts us at an even greater disadvantage" – a small company

Problem

When a customer uses a credit or debit card, the card company charges the seller a fee. The level of this fee is often hidden until after a transaction goes through, and can vary significantly across the EU. Such fees make it harder to trade across borders and can result in SMEs deciding not to sell in other European states.

Analysis

Every time someone makes a purchase with a credit or debit card, the seller is charged an 'interchange' fee by the card company. The European Commission estimates that the total value of Multilateral Interchange Fees (MIFs) in the EU in 2011 was over €10 billion.

Interchange fees vary considerably across the EU: from 0.3% in France to upwards of 2.0% in Poland. Rates within European states vary too. SMEs often pay higher rates than large companies, as they lack the financial power to negotiate better terms.

Retailers can be unaware of the exact cost of interchange until after they are billed, which significantly increases risk and uncertainty, particularly for SMEs.

Card transactions are increasing with the growth of electronic and mobile commerce. International customers increasingly expect to be able to pay by card. But high interchange fees deter SMEs in particular from selling across borders. Some are deterred from even offering card payments.

Lower fees could save retailers across the EU billions of Euros per year – benefitting SMEs in particular. This would enable more cross-border trade and e-commerce, thanks to harmonised, competitive, and transparent fees.

Recommendation

The European Commission has published a draft Directive on Payment Services. Alongside this, the Commission proposes a Regulation that would set a maximum cap on interchange fees that would be applied to card payments. It would also impose structural separation of card schemes and payment processors. This would be good news for retailers, exporters and consumers, who deserve a clear, comprehensive framework to cover card, internet and mobile payments. These measures should be agreed as a matter of urgency.

D.3 – Restrictive barriers to international trade

Completing ambitious EU Free Trade Agreements (FTAs), including the Transatlantic Trade and Investment Partnership (TTIP)

"An ambitious and comprehensive transatlantic trade and investment agreement could bring significant economic gains as a whole for the EU: €119 billion a year" – Centre for Economic Policy Research

Problem

Whilst trade tariffs are lower than ever, bureaucracy and regulation slows down trade. Greater regulatory coherence would boost innovation and competition. Different product standards between the EU and US hinder trade. The European Commission negotiates trade policy on behalf of EU states. It should continue to pursue an ambitious free trade agenda. TTIP is an important opportunity to boost the transatlantic economy by aligning standards with our biggest trading partner.

Analysis

FTAs make it easier and cheaper for businesses to trade outside the EU. They address the traditional obstacles that inhibit trade such as tariffs and export subsidies. But they also address non-tariff barriers such as labelling or product-testing standards.

Ambitious FTA negotiations, such as the TTIP, can also highlight gaps in the single market. Differing standards across the EU inhibit trade between the EU and third countries. But they also inhibit trade between EU states and impose extra costs on business. Addressing these difficulties clears the way for businesses to grow.

The European Commission is negotiating FTAs with the US, Japan, Canada, and India – amongst others. Concluding all of the FTAs the EU is currently negotiating could generate over £20 billion of benefits for the UK alone.

The largest FTA is the TTIP. Each day, goods and services of almost €2 billion are traded between the EU and the US. If the Commission maintains an ambitious approach to TTIP, the EU's exports of motor vehicles could increase by as much as 42%. EU finance and insurance sector exports could grow by 4% each.

Recommendation

The Commission must address the regulatory barriers that businesses say inhibit trade, and pursue an ambitious free trade agenda – notably in the TTIP, given the potential value of the deal. Sectors such as automotive, financial services, insurance, chemicals, and processed foods should be priorities for liberalisation.

D.4 – Complex VAT returns and delayed refunds

"There is much confusion between accounting for VAT and reporting for Intrastat – especially if your customer is in one country and he wants the goods sent to another. We spend hours trying to sort this out and prepare reports" – a small company

Problem

The VAT rules for businesses involved in cross-border trade within the EU can be complex and confusing. Although a high proportion of smaller businesses in the UK are not involved in such trade, those that are, struggle, in particular with the information requirements, including:

- Understanding the difference between, and requirements of, VAT reporting and Intrastat
- Understanding the different VAT returns in different EU Member States, the lack of consistent definitions, and different rules and procedures for submission. Guidance is often patchy and inadequate in many EU Member States.

UK businesses also experience delays in the processing of cross-border VAT refunds in some EU Member States.

Analysis

SMEs with more than ten employees account for about one third of the value of UK exports – equivalent to well over €100 billion per year. In 2010, over 60% of that total went to EU countries – higher than the proportion for exports by large businesses.

VAT is the most frequently cited area of burdensome regulation mentioned by SMEs who responded to a recent European Commission consultation. The annual cost of completing VAT declarations alone across Europe is estimated to be €40 billion.

UK businesses already benefit from one of the simplest administrative regimes for VAT within the EU. But compliance costs are higher for businesses involved in cross-border trade. Lack of clarity over VAT rules was the most common problem cited in a recent survey of small exporters in the service sector, mentioned by 36% of respondents.

The process of applying for VAT refunds from other EU Member States was simplified in 2010, enabling all EU businesses to file applications electronically. EU Member States are under an obligation to respond to straightforward applications within set timescales, and in normal circumstances within four months. But this doesn't always happen.

Recommendation

UK businesses involved in cross-border trade within the EU, particularly SMEs, need far better and more accessible information about the VAT declaration process.

including the underlying rules and procedures that apply in other EU Member States. Any proposals from the Commission with the aim of reducing business burdens across the EU – such as the standard VAT return, and better online information – must achieve real savings for UK businesses, and must not impose any additional burdens on them. Such proposals must also ensure they fully respect the principle of subsidiarity and the competences of Member States in relation to tax. The processing of VAT refunds by other EU Member States needs more rigorous monitoring. Where persistent delays occur, the Commission must act to enforce the existing legal limits.

D.5 – Onerous proposals on country of origin labelling for consumer goods

Proposed Product Safety and Market Surveillance Package

"It is difficult to foresee the circumstances in which a country of origin mark would assist either safety or traceability" – a business organisation

Issue

The European Commission is proposing that non-food consumer goods should be marked with their country of origin. This would place an unnecessary additional obligation on manufacturers and importers. EU labelling requirements are already complicated enough without these additional rules.

Analysis

The European Commission has made a proposal to simplify and strengthen rules on product safety. This incorporates a requirement to mark all non-food consumer goods with their country of origin.

The proposed labelling requirement does not serve a safety purpose. There is no relationship between a country of origin mark and product safety, so the requirement has no consumer protection benefits. Consumer groups in the UK support this view.

Instead, mandatory country of origin labelling is an extra cost for already hard-pressed retailers and manufacturers. SMEs and micro businesses in particular struggle to understand the EU's complex rules of origin.

Recommendation

Country of origin labelling should remain voluntary. The proposal to make this mandatory should be dropped.

E. Barriers to Innovation

Overview

All too often, EU legislation places restrictions on products and technologies without adequate evidence of risk. EU legislation must be evidence-based in order to encourage innovation.

It is vital that the regulation of emerging technologies does not stifle these technologies before they have a chance to deliver benefits. Innovators are risk-takers, but excessively cautious regulation can sink a good idea and the start-up business that came up with it. We must design a regulatory framework which enables them to take calculated risks, rather than setting ourselves the impossible task of eliminating all risks.

European states and the European Commission alike should lead public opinion, by encouraging informed debate and highlighting where media-hyped reports do not accord with the body of scientific opinion. The European Chief Scientific Adviser and the Science and Technology Advisory Committee should have a key and stronger role in this regard.

European industry will relocate to more dynamic markets unless we adopt a much more innovation-friendly approach to regulation.

We have identified a number of areas which need reform to encourage innovation and growth:

- Costly and complex chemicals regulation
- The need for a competitive clinical trials framework
- The need for a quicker, more flexible licensing regime for medicines
- Crop protection rules that make EU farmers less competitive.

E.1 – Costly and complex chemicals regulation

REACH (Regulation on Registration, Evaluation, Authorisation and Restriction on Chemicals)

"We've had to employ an additional four people – that's 2% of our workforce – just to deal with the paperwork associated with REACH and keep us compliant" – a small company

Problem

The cost of registering chemicals under REACH is excessive. SMEs across the EU are hit disproportionately hard. REACH is forcing some smaller businesses to consider manufacturing outside Europe or stop manufacturing altogether.

Analysis

Current REACH guidance is unwieldy and complex. It forces small companies to buy in expertise to help them comply, which can cost €180 per hour.

In 2018, the threshold for registration will reduce from 100 tonnes to one tonne per annum. Most SMEs will then be covered by the regime. They will have little option but to pay fees, often prohibitively high, to join 'registration' consortia to gain access to information on chemicals and register for REACH. Costs can be as high as €100,000. We have been given evidence of small firms being advised by their trade association not to grow so that they remain under the threshold.

Such arrangements can result in small companies having to obtain information from larger competitors – an open invitation to disreputable larger companies to abuse their position to keep smaller competitors out of the market.

We have heard concerns that enforcement and implementation of REACH varies significantly across the EU. This requires business to work with different sets of rules and to incur extra cost.

Businesses are paying for more research than necessary to prepare 'authorisation dossiers' required by the European Chemicals Agency (ECHA), due to uncertainty as to what is needed.

Recommendation

The European Commission and ECHA should make REACH more business-friendly. They should ensure that REACH is implemented in the simplest and most cost-effective way by:

- Issuing clear guidance on fair cost-sharing with SMEs and other experts. The Commission and ECHA should produce draft guidance by December 2013

- Providing simplified guidance. This should focus on those areas which SMEs find most difficult to interpret. The European Commission and ECHA should outline a clear timetable for publication by December 2013
- Listing known authorisation consortia on the ECHA website
- Producing a worked example of what an 'authorisation dossier' would look like, so companies have a better idea of what is required
- Ensuring its consistent implementation and enforcement across the EU.

E.2 – The need for a competitive clinical trials framework

Proposed Clinical Trials Regulation

"Different interpretations of the legislation across the Member States, different national laws and a general increase in the number of requirements greatly increased the administrative burden associated with performing clinical research...this steep increase in complexity is considered to have contributed, along with other factors, to the steady decline in numbers of clinical trials performed in the EU since 2004" – a trade association

Problem

The 2001 Clinical Trials Directive (CTD) was intended to harmonise rules for trials but had the opposite effect. It created new burdens for business and allowed European states to introduce contradictory domestic rules, making the EU a less attractive location for clinical trials. EU clinical trials regulation needs urgent reform if UK and European pharmaceutical businesses are to remain globally competitive.

Analysis

Between 2007 and 2011, applications for clinical trials in the EU fell by 25%, and by 22% in the UK. The CTD created a complex regulatory framework for business that significantly impacted the feasibility of conducting EU clinical trials at the best sites in Europe. The CTD increased the costs to business and made getting licensed products to market slower. This was compounded by variations in national rules on clinical trials.

The European Commission itself estimates that the changes it has proposed for the authorisation process could save EU businesses €710 million per year. SMEs are disproportionately disadvantaged by the current regulatory framework, so will benefit most from the proposed reforms.

Recommendation

The new Regulation proposed by the European Commission in July 2012 to replace the CTD needs to be agreed urgently to provide:

- A single EU portal for all clinical trial applications
- Faster approval and a more proportionate approach for low intervention trials
- A harmonised authorisation dossier.

E.3 – The need for a quicker, more flexible licensing regime for medicines

European Medicines Agency (EMA) licensing, and breakthrough designation

"There is a lack of visibility and recognition of the different licensing flexibilities available at the European level and they are not packaged in a way that makes it easy for applicants to understand the requirements, additional support or benefits for companies. In the US licensing flexibilities are clearly defined and well communicated and the recent introduction of 'breakthrough designation' in the US has had a very positive impact on industry" – a trade association

Problem

Pharmaceutical businesses lack clarity about what EU legal flexibilities exist to allow a product to be licensed more quickly – by analogy with those available to international competitors, notably in the US.

Analysis

Pharmaceutical businesses need to be agile, in order to respond to future challenges and promote innovation. Uncertainty about the EU legal regime holds them back. In particular, they want greater certainty on the scope to make use of flexibilities such as EU 'conditional licensing' – where there is less complete data than normally required to demonstrate the potential to address unmet medical needs.

In the US, '*breakthrough designation*' – a regulatory support mechanism that offers advice and support to companies early in development – sends a clear signal to investors that a drug might be promising. Although comparable mechanisms exist in the EU, they are not packaged in a way that attracts investor attention. A similar designation in the EU is needed.

The flexibilities which do exist in the EU system are complex and difficult for some businesses, especially SMEs, to navigate. The EMA is shortly to publish guidance on adaptive licensing. It should consider introducing a designation similar to the US 'breakthrough designation'.

Recommendation

The EMA should:

- Ensure that there is clear information available on EU legal flexibilities already available in the EU licensing system
- Develop new regulatory support mechanisms or repackage existing ones to send positive signals to investors, as US 'breakthrough designation' has done, to encourage faster access to new medicines.

E.4 – Crop protection rules that make EU farmers less competitive

Plant Protection Products Regulation

"The Plant Protection Products Regulation reduces the attractiveness for developing new crop protection technologies within Europe" – a trade association

Problem

EU regulation denies business access to innovative crop protection products.

This hinders EU businesses in their efforts to improve crop yields and quality. As a result, EU farming businesses are disadvantaged on world markets.

Analysis

Farming businesses have said that EU rules mean they are denied access to new and innovative crop protection products. Existing products can also be removed from the market when they are reviewed, even though they are often still used in non-EU countries. All of this reduces the competitiveness of EU farmers.

The reason is that EU decision-making is not based solely on risk. This leads to decisions for approval that are based on theoretical concerns rather than sound scientific evidence. The assessment process is complex, with businesses often feeling that the decision made does not fit the evidence.

This also discourages agri-chemicals companies from investing in the EU, undermining the competitiveness of the European industry.

Recommendation

The European Commission should propose amendments to the Plant Protection Products Regulation to introduce a process for evaluation that is based on scientific risk assessment alone.

The European Commission's guidance also needs updating, so that it does not impose excessive cost in exchange for negligible health or environmental benefits.

Annex 1: Additional concerns raised by business

In addition to the specific recommendations we make in this report, we received representations from business about a wide range of other EU measures. All of the measures and areas set out below have the potential to affect the competitiveness of business. These should be subject to further examination, in order to identify the scope for additional reductions of burdens on business.

| Law, Proposal or Issue |
|---|
| Animal Health Directives and proposal |
| Aromatic Mineral Oils in Food Packaging – anticipated proposal |
| Artificial Optical Radiation Directive |
| Audiovisual Media Services Directive (AVMSD) |
| Batteries Directive and proposal |
| Biocidal Products Regulation |
| Biotechnology Directive |
| Boatmasters – anticipated proposal |
| Capital Requirements Directive and Regulation (CRD IV) |
| Chemical Agents Directive |
| Common European Sales Law proposal |
| Computer Screens Directive |
| Cosmetic Products Regulations |
| Driver Certificates of Professional Competence Directive |
| Driver Licensing Directive (motorised tricycles) |
| eCall proposal |
| E-Commerce Directive |
| Emissions Trading Scheme Regulation |
| Energy Efficiency Directive |
| Energy Performance of Buildings Directive (Energy Performance Certificates) |
| E-Privacy Directive |
| Equal Treatment Directive |

| Law, Proposal or Issue |
|---|
| Ergonomics |
| European Aviation Safety Agency Regulation |
| European Tissue and Cells Directive |
| Exclusions for Seafaring Workers proposal |
| Feed Oils and Fats Regulation |
| Food Information Regulation |
| Food Safety |
| Food Supplements Directive |
| GM low level presence in food – anticipated proposal |
| Habitats Directive |
| Hygiene for Food of Animal Origin Regulation (minced meat controls) |
| In Vitro Diagnostic Medical Devices proposal |
| Institutions for Occupational Retirement Provisions (IORPs) – anticipated proposal |
| Intrastat Reporting Directive |
| Labelling of Additives in Feed Regulation |
| Medical Devices Directive and proposal |
| Minced Meat Labelling |
| Mobile Workers on Inland Waterways Social Partner Agreement |
| Network and Information Security proposal |
| Nitrates Directive |
| Nutrition and Health Claims Regulation |
| Olive Oil Action Plan |
| Packaged Retail Investment Products (PRIPS) proposal |
| Passenger Ship Safety Directive and anticipated proposal |
| Plant Health Directive and proposal |
| Plant Reproductive Material Directive and proposal |
| Ports Policy proposal |
| Prior Informed Consent Notification Regulation |
| REACH Regulation (nickel) |
| Reporting Formalities for Ships Directive |
| Restriction of Hazardous Substances in Electrical and Electronic Equipment (RoHS) Directive |

| Law, Proposal or Issue |
|--|
| Road Charging – anticipated proposal |
| Roadworthiness Package of three proposals |
| Roll-on/Roll-off Passenger Ship Safety – anticipated proposal |
| Sale of High Resolution Satellite Data – anticipated proposal |
| Simplification of the Re-registration of Vehicles proposal |
| Solvency II Directive |
| Solvent Emissions Directive |
| Telecoms Package proposal |
| Temporary and Mobile Construction Sites Directive |
| Train Driver Licensing Directive |
| Transmissible Spongiform Encephalopathy (TSE) Control Regulation |
| Type Approval for Motor Vehicles Directive |
| Veterinary Medicines Directive and anticipated proposal |

Acknowledgements

We are grateful to all the businesses, business organisations and others, in the UK and across Europe, who have taken the time and trouble to contribute to our report. Their views and evidence have been invaluable.

We would like also to thank the Rt Hon Michael Fallon MP, Minister of State for Business and Energy, for facilitating the work of our group, and the members of our secretariat in the Better Regulation Executive for all their support and assistance.

Cover images:

© Echo/Cultura / Getty Images

© Punchstock

BIS image library

Cut EU red tape

Report from the Business Taskforce
#cutEUredtape