

ASPECTS OF SMALL BUSINESS ACT, THE EUROPEAN SMEs POLICY INITIATIVE

Assist. Silvia – Ștefania Mihalache
“1 Decembrie 1918” University of Alba Iulia
Faculty of Science
Alba Iulia, Romania

Abstract: In the context of the economic crisis, the European Union has found a solution in order to support Small and Medium Sized Enterprises, representing the backbone of the European economy. Small Business Act represents a policy initiative which aims to promote a SMEs-friendly environment. Having in mind that most jobs in the EU are provided by SMEs, companies of 250 employees or less and that they have a crucial importance for the future development, but very often face enormous bureaucratic hurdles and obstacles, we may state that the European SMEs deserve to be better assisted to fully unlock their potential of long term sustainable growth and of more job creation. To achieve this goal, the European Commission has conceived the Small Business Act for Europe (SBA), a policy initiative based on ten guiding principles and proposes policy actions to be undertaken by both the Commission and Member States.

JEL classification: F15, M16, M2

Key words: Small Business Act, SMEs, economic crisis, SMEs-friendly environment, competitiveness.

1. INTRODUCTION

The well-being of SMEs is the key to future employment and prosperity in the EU. Therefore the Commission launched in June 2008 an ambitious new policy initiative, a Small Business Act for Europe (SBA), to put SMEs at the forefront of decision-making, to strengthen their potential to create jobs in the EU and to promote their competitiveness¹ both within the Single Market and in the global markets. As a key element, the SBA aims at making the “Think Small First” principle a reality in policies and decision making at all levels in the EU.

The financial and economic crisis has further accentuated the need for far-reaching and comprehensive policy measures in favour of SMEs. When adopting the SBA, the Competitiveness Council also agreed in December 2008 on an Action Plan of measures to be implemented as a matter of priority to better address the needs of SMEs in the global crisis concentrating on improving access to finance, access to markets and the regulatory environment. This was subsequently endorsed by the December 2008 European Council. The European Parliament has supported the SBA and invited the Member States to

¹ Stremțan, F., Mihalache, S. Ș., “Creșterea adaptabilității și competitivității lucrătorilor din întreprinderi – motor al creșterii economice”, in Modele europene de adaptabilitate a întreprinderilor și a lucrătorilor asimilabile pe piața muncii din România, Aeternitas Publishing House, ISBN 978 973 1890 41 8, Alba Iulia, 2009.

implement the SBA in its entirety. Last but not least, the Committee of the Regions has also given strong support to the need to fully unlock SMEs' potential through the SBA.

In today's economic crisis, a policy initiative that aims to support the backbone of the world's economy, the SMEs, is the best thing the EU could have thought of. This is the reason why we have chosen to share the results of the research made over the Small Business Act for Europe. For gathering the information we used mostly the European official portals, reports, officials' speeches, the official SBA document, also articles from European news portals and national agencies.

We started the article by defining the SMEs and presenting the context where this policy initiative appeared. After that we focused on the birth of the Small Business Act, its principles, its objectives, and in the end we presented some reactions to this initiatives followed by the Commission's report after the first year of implementation.

3. DEFINING SMEs

On 6 May 2003, the European Commission adopted a new Recommendation, 2003/361/EC², regarding the definition of small and medium-sized enterprises (SMEs), which took effect in 1 January 2005. Under this recommendation, enterprises are classified as SMEs when they have fewer than 250 employees. Furthermore, the annual turnover of enterprises should not exceed EUR 50 million, or their total annual balance sheet should not exceed EUR 43 million³. In order to provide a realistic picture of an enterprise's economic situation, a distinction has been introduced between the different categories of enterprises (autonomous, partner and linked), each of them corresponding to a type of relationship which an enterprise might have with another one. Depending on the category in which an enterprise fits it may then need to add some, or all, of the data from those enterprises to its own.

Hereby medium-size enterprises, have up to 249 employees and achieve a net annual turnover up to € 50 million (before 2005, 40 million euro) or hold total assets not exceeding € 43 million (before 2005, 27 million euro). Small enterprises have up to 49 employees and achieve a net annual turnover or hold total assets up to € 10 million (before 2005, € 7 million as annual turnover and 5 million total holed assets). As for the micro-enterprises, they have up to 9 employees and achieve a net annual turnover or hold total assets up to € 2 million (before 2005, there was no sum recommended).

The current definition of SMEs according to the European Commission Recommendation 2003/361/EC is transposed into the Romanian legislation by the Law 175/2006 for modification and completing the Law 346/2004 regarding the sustaining of the SMEs establishment and development and, according to the Romanian National Agency for Small and Medium Sized Enterprises and Cooperatives, it does not represent an obstacle to targeting support awarded for SMEs development⁴. A common definition applicable at the EU level, which provides threshold limits for differentiating SMEs categories, ensures a clear indication about the real economic situation of the enterprise, in

² Gavrilă-Paven Ionela, "Investițiile în economia contemporană", Edt. Cartea Cărții de Știință, Cluj, 2010.

³ http://ec.europa.eu/enterprise/enterprise_policy/sme_definition/index_en.htm - Directorate - General for Enterprise and Industry.

⁴ http://www.mimmc.ro/animmc/small_bussines_act/ - National Agency for Small and Medium Sized Enterprises and Cooperatives.

favor of the firms which mostly need a public financial support and, also, preventing possible abuses regarding the interpretation of the SMEs statute.

According to the same Romanian Agency most of SMEs which are operating in Romania are framed under the limits provide by the EC Recommendation 2003/361/EC, regarding the SMEs definition, consequently there is no interest for the reconsidering the maximum limits⁵.

3. THE CONTEXT FOR SMALL BUSINESS ACT

Nowadays European SMEs represent: 99.8% of all European enterprises and employ between them about 65 million people, 67.1% of private-sector jobs and more than 80% of employment in some industrial sectors such as the manufacture of metal products, construction and furniture. In many sectors, SMEs are also responsible for driving innovation and competition. Globally SMEs account for 99% of business numbers and 40% to 50% of GDP.

Small and medium-sized enterprises, which form the backbone of Europe's economy, are increasingly hit by the current economic and financial crisis as demand falls off, investment diminishes and liquidity dries up with, as a consequence of less credits being granted to SMEs.

There are over 23 million small and medium-sized enterprises in the EU, but only 41,000 large companies. SMEs are Europe's net job creators, firmly anchored in their local and regional communities, and are a guarantee of social cohesion and stability.

Fortunately, we all know that SMEs around Europe face the same type of problems: administrative burden, difficulty to find financing and skilled labour, or to take opportunity of the Single Market. Addressing some of these problems together through a partnership between the EU and the Member States can bring considerable results. This is why the SBA sets common principles for policy-makers at the EU and Member States level.

In Romania, from four SMEs three are facing market reduction for the products and services they offer, as MEMRB, an international market research company, claims after an analyze carried out on 431 representative SMEs in the period 16th of February - 13th of March 2009. The analyze signalize that 63% of the respondent enterprises face late payments, 48% are facing liquidities shortage, 32% face problems because of the credit crunch, and one fourth complains of the increasing of the administrative costs.

One third of the Romanian SMEs appraise bankruptcy because of this period of crisis: 94% of them call custom shortage the first symptom of bankruptcy; 77% envision striking a negative balance. Three fourths of the SMEs face with the impossibility of ensuring the liquidity needed for salaries, an issue that can generate serious social problems⁶.

This is why, in order to fully unlock the growth and jobs potential of SMEs and make full use of their innovative capacities, the Commission wants to refocus its attention on SMEs' needs in EU and national policy making. After a wide-ranging public consultation, the Commission proposed the Small Business Act for Europe (SBA): a

⁵ Idem.

⁶ <http://www.immromania.ro/noutati/noutate.php?id=1729> – National Council for Small and Medium Sized Private Enterprises from Romania.

package of political principles accompanied by a set of ambitious actions by the EU and Member States.

4. STAGES TOWARDS SBA'S APPROVAL

In 2000, at the Feira EU summit the European Charter of Small Enterprises is endorsed and after five years, in 9 Nov 2005, Commission presents "Think Small First", its new SME policy. After other three years takes place the Commission Communication on Small Business Act. In 2008, at the EU summit the SBA proposal has been approved. The same thing did also the European Parliament's legal affairs committee with the European Private Company Statute. And last, in June 2009, the European Parliament gave SBA the green light.

In 6th of February 2008, Günter Verheugen, the Vice-President of the European Commission responsible for Enterprise and Industry, told in front of the Commission that he was very surprised by the fact that policy makers and leading economists at a national and European level did not seem to have fully recognized the decisive role of SMEs for the competitiveness of Europe in a globalized economy. There are three reasons for this: first, European manufacturers will continue to invest and produce outside Europe and there will be further losses of jobs in these sectors and the only way to compensate this is to exploit the potential of SMEs for growth and jobs; secondly, the present financial turmoil and its significant impact on the economy as a whole have shown clearly that a strong SME structure makes an economy less vulnerable in a crisis like this. SMEs normally do not invest in highly complex financial products and they normally stay where they are; and third, SMEs are close to the customers and therefore more flexible. As they are very often family owned they have a high awareness of the needs of the society and generally demonstrate a high level corporate social responsibility. What big companies must develop, implement and monitor is for SMEs part of their traditional culture. In other words: SMEs are the most important factor of stability in an economic environment which is characterized by rapid and permanent structural change.

To summarise, Europe can in the long run only benefit from globalisation and the European way of life including the high living standards can only be maintain, if the role of SMEs is fully recognized and improved. Policy makers everywhere in Europe are advised never to forget that for the strong majority of Europeans an SME represents the employer.

Identifying the areas where action was needed: societal recognition of entrepreneurship, access to finance, transfer of business, ICT uptake and skills, reluctance to do cross-border business, limited innovative capacities, limited R and D-expenditure and , last but not least, difficulties in coping with administrative burdens or, to be more precise, over-regulation.

5. SMALL BUSINESS ACT

The Small Business Act for Europe reflects the Commission's political will to recognize the central role of SMEs in the EU economy and for the first time puts into place a comprehensive policy framework for the EU and its Member States.

The Small Business Act for Europe applies to all companies which are independent and have fewer than 250 employees and it represents a set of principles which should guide the conception and implementation of policies both at EU and national level. This is essential to create a level playing field for SMEs throughout the EU and improve the administrative and legal environment to allow these enterprises to release their full

potential to create jobs and growth. In the same time it represents an ambitious package of concrete and far reaching new measures including 4 legislative proposals which translate these principles into action both at EU and Member State level. It is designed to be adopted by the European Council to ensure the full political commitment of both the Commission and the Member States together with regular monitoring of its implementation.

At the heart of the European SBA is the belief that achieving the best possible framework conditions for SMEs depends first and foremost on society's recognition of entrepreneurs. The general climate in society should lead individuals to consider the option of starting their own business as attractive, and acknowledge that SMEs contribute substantially to employment growth and economic prosperity. As a key contribution to achieving an SME-friendly environment, the perception of the role of entrepreneurs and risk-taking in the EU will therefore have to change: entrepreneurship and the associated willingness to take risks should be applauded by political leaders and the media, and supported by administrations. Being SME-friendly should become mainstream policy, based on the conviction that rules must respect the majority of those who will use them (the "Think Small First" principle).

This is why the "Small Business Act" aims to improve the overall policy approach to entrepreneurship, to irreversibly anchor the "Think Small First" principle in policy-making from regulation to public service, and to promote SMEs' growth by helping them tackle the remaining problems which hamper their development.

The SBA builds on the Commission's and Member States' policy achievements, creates a new policy framework which integrates the existing enterprise policy instruments, and builds in particular on the European Charter for Small Enterprises and the Modern SME policy. To implement this ambitious policy agenda, the Commission is proposing a genuine political partnership between the EU and Member States that respects the principles of subsidiarity and proportionality.

The symbolic name of an "Act" given to this initiative underlines the political will to recognize the central role of SMEs in the EU economy and to put in place for the first time a comprehensive policy framework for the EU and its Member States through a set of ten principles to guide the conception and implementation of policies both at EU and Member State level. It had been chosen the word 'act' which is not common in the EU legal language in order to demonstrate the unique character of this initiative. It will be a combination of legislative actions, political commitments and concrete practical steps.

The ten principles are essential to bring added value at EU level, create a level playing field for SMEs and improve the legal and administrative environment throughout the EU. These ten principles refer to: creating an environment in which entrepreneurs and family businesses can thrive and entrepreneurship is rewarded; ensuring that honest entrepreneurs who have faced bankruptcy quickly get a second chance; designing rules according to the "Think Small First" principle⁷; making public administrations responsive to SMEs' needs; adapting public policy tools to SME needs (facilitate SMEs' participation in public procurement and better use State Aid possibilities for SMEs); facilitating SMEs' access to finance and develop a legal and business environment supportive to timely payments in commercial transactions; helping SMEs to benefit more from the opportunities offered by the Single Market; promoting the upgrading of skills in SMEs and

⁷ *** Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions: "Think Small First" - A "Small Business Act" for Europe, Brussels, 25.6.2008.

all forms of innovation; enabling SMEs to turn environmental challenges into opportunities; encouraging and supporting SMEs to benefit from the growth of markets.

Also, SBA means a set of new legislative proposals which are guided by the "Think Small First" principle: General Block Exemption Regulation on State Aids (GBER) - will simplify procedures and reduce costs. It will increase the aid intensity for SMEs and make it easier for SMEs to benefit from aid for training, research and development, environmental protection and other types of aid; Regulation providing for a Statute for a European Private Company (SPE); Directive on reduced VAT rates; An amendment to the Late Payments Directive to ensure SMEs are paid on time for all commercial transactions.

If SMEs want to do business in several Member States, they have to set up subsidiaries using different company forms. Setting up and running subsidiaries, for example, as an SARL in France, a limited company in the UK and a GmbH in Germany requires knowledge of three different legal systems. This is time-consuming. It is also very expensive. The only way out of the legal labyrinth for entrepreneurs is through costly legal advice.

The European Private Company, or the "SPE", is a new European company form specially designed for SMEs. It means that entrepreneurs do no longer need to go through a legal labyrinth if they want to do business in the Single Market. The potential savings on legal costs of the SPE could be between €2,000 and €10,000 for setting-up companies and between €750 and €8,000 for day-to-day operating costs.

The SPE is a private limited-liability company form that may be set up in the same way in every Member State. The SPE is a light and flexible company form that gives shareholders broad freedom in shaping their company, including how decisions are taken. Rather than spending time and money on mastering 27 different sets of rules, entrepreneurs will be able to focus on what they do best, namely running their businesses.

In addition to its uniformity and flexibility, the SPE has three advantages: first, anyone in any Member State can create an SPE instead of an SARL, a "Ltd" or a GmbH. The SPE does not need to have shareholders from different Member States. It could even have just one shareholder. This approach will allow small local businesses to grow and extend to foreign markets when they are strong enough to do so. Second, the SPE may be set up with a legal capital of only €1. This could result in cost savings of up to €35,000 in some Member States. In many Member States, a high legal capital requirement has traditionally been considered as a means to protect creditors. In some Member States this concept still exists even when practical experience shows that creditors rather rely on other, less formal and more effective ways of protecting the company's assets. Thirdly, the SPE will be free to have its headquarters or principal place of business in a country that is different from its place of registration. The European Court of Justice has made it very clear that companies cannot be forced to have their main activities in the country where they are registered. Such requirements infringe their right to freedom of establishment as ensured by the Treaty. The proposal for an SPE is in line with the ECJ's approach⁸.

And last, but not the least, this policy initiative encompasses a set of new policy measures which implement these ten principles according to the needs of SMEs both at Community and at Member State level.

After its approval, some organizations from different countries have complained of the fact that their national governments do not comply with SBA. For example, ISME, the

⁸ Gavrilă-Paven Ionela, "Investițiile în economia contemporană", Edt. Cartea Cărții de Știință, Cluj, 2010.

Irish Small & Medium Enterprises Association has described the Budget for last year (2009) as “savage and a missed opportunity, which will do nothing to stimulate enterprise or assist in maintaining employment”⁹. The Association outlined its concern that taxation measures dominated as opposed to introducing significant cuts in current expenditure¹⁰.

The Federation of Small Businesses (UK) complained that the budget had ignored the plight of SMEs. Offering a cautious welcome to the Chancellor's focus on employment, the FSB said more must be done to tackle late payments by private companies and called for firms who fail to pay on time to be “named and shamed”¹¹. Also, UK SMEs want an independent corporate mediator installed, to facilitate dialogue between banks and small businesses in order to stimulate the flow of credit to companies. It is estimated that a quarter of UK business failures are due to late payments.

In Romania, the Romanian SMEs representative, National Council of Small and Medium Sized Private Enterprises in Romania (CNIPMMR) brings to the authorities' attention that two recent legislative initiatives do not comply with SBA's provisions. These two issues are: first, Civil Procedure Code Project does not transcribe the European directive on combating late payments in commercial transactions, and second, the new lump sum tax is not in the spirit of the SMEs' addressed European document.

Despite all these, at the end of the year 2009, in the Report on the implementation of the SBA from Brussels (COM (2009) 680), the Commission summarizes the progress achieved in 2009, which has been the first full year of implementation of the SBA, focusing mainly on the measures contained in the SBA Action Plan and in the European Economic Recovery Plan. In the end, it seems that member States have shown strong political commitment to implement the SBA, but vary as regards both the approach taken and the results achieved. Several Member States have transposed the SBA as a whole into their national policy programmes. Belgium launched its ‘Plan PME’ in October 2008, which includes 40 measures covering the main objectives of the SBA. In Italy, the government created a working group to monitor the implementation of the SBA, with actions proposed in ten areas. The Irish Government has adopted a similar approach.

6. ROMANIA'S STAND FOR SBA

After the European Council agreed with this initiative in 2007, on 31st of January 2008, the European Commission launched a public consultation on the content of the European „Small Business Act”¹². Its objective was to put small and medium sized enterprises at the forefront of decision-making in the EU and to introduce concrete measures to unlock the SMEs' growth potential. In the announcement it was also mention the fact that SBA will include new initiatives to reduce regulatory burden on SMEs, facilitate access to Single Market/public procurement, and help provide necessary financial/human resources for SME development and help SMEs face the challenge of globalization and climate change. The preparation of the "Small Business Act" for Europe represents one of the key measures of the Commission's package for the next cycle of the Growth and Jobs Strategy adopted in December 2007¹³.

⁹ *** ISME Press Release, Savage Budget a Missed Opportunity, 7th April 2009.

¹⁰ <http://europa.eu/geninfo/query/resultaction.jsp?page=1>.

¹¹ *** FSB News Release PR/2009/30, FSB reaction to the Chancellor's 2009 Budget, 22 April 2009.

¹² http://www.euractiv.ro/uniunea-europeana/articles|displayArticle/articleID_16969/Taxe.html.

¹³ <http://www.eib.org/attachments/strategies/sme-consultation-2007-2008-en.pdf>.

As a response to this public consultation, Romania welcomes the European Commission initiative of launching the new Small Business Act for Europe that could lay the framework for the future development of the European SMEs in the context of the XXI century's global market. Moreover, our country appreciates the identified key areas as being covered and relevant for the new document, focusing the ten action lines of the European Charter for Small Enterprises on the "Think small first" principle¹⁴.

7. CONCLUSIONS

SMEs have become increasingly important in our society as providers of employment opportunities and key players for the well-being of local and regional communities. Therefore, the Small Business Act for Europe proposes for the first time to put into place a comprehensive policy framework for the EU and its Member States.

The Small Business Act is based on the conviction that entrepreneurship and entrepreneurs should be applauded and rewarded, they being considered as the backbone of our society. Being SME-friendly becomes mainstream policy. To achieve that, the "Think Small First" principle should be irreversibly anchored in policy making from regulation to public service thus ensuring that rules reflect the majority of those who will use them. SMEs are to be helped to thrive. When the setting up of businesses and their growth is hampered by unnecessary obstacles, these are to be removed. When SMEs are held back by market failures, these are to be corrected. And all these through the Small Business Act for Europe, that proposes a partnership between the EU and the Member States. A set of ten common principles will guide the policies both at the EU and at a national level. An ambitious package of new measures, including 4 legislative proposals, is translating them into action. In addition, all Member States are invited to benefit from good practices that exist within the EU.

As we can conclude, this is one of the most important policy initiatives in Europe in the last decade, and even more in this period of crisis. In the same time, there recommendations, although they do not have the same power as a regulation or law, they represent a step forward in the integration process of all member states and in transforming EU in a homogenous place.

If all the national governments would follow the recommendations from the SBA, than millions of SMEs would be saved from bankruptcy and peoples from unemployment. Evermore, it seems that the SMEs policy is now firmly anchored in the European strategy for growth and jobs and can only be the best for the European business world.

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¹⁴ http://www.mimmc.ro/animmc/small_bussines_act/ - National Agency for Small and Medium Sized Enterprises and Cooperatives.

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