

Putting the “Think Small First” principle at the heart of the Regulatory Cooperation Mechanism in TTIP.

According to studies a very substantial proportion of potential economic gains from the TTIP will come from cutting costs imposed by bureaucracy and regulations¹. Small and medium sized enterprises (SMEs) in particular will benefit from increased regulatory cooperation, as due to their size, they lack the ability to profit from economies of scale, thus bearing a disproportionate burden in terms of regulatory costs and administrative red tape.

Moreover, contrary to large firms, when trading with the United States, EU SMEs typically conduct their business through direct exports rather than foreign investments, thus mostly lacking the foreign production facilities needed to bypass transatlantic regulatory differences. This further exacerbates the fact that divergences in regulation hit SMEs hardest, as it is mostly the smaller but highly competitive EU exporting firms that bear the heaviest load in terms of implementing burdensome adaptations to their products and services to comply with US regulations and standards, and vice-versa.

Put differently, small and medium sized enterprises (SMEs) stand to gain significantly from increased regulatory cooperation in TTIP.

However, while the importance of regulatory cooperation for SMEs is clearly emphasized in the general objectives and principles of the EU proposal (Art.1), Chambers Ireland believes that the current text still lacks concrete commitments targeting SMEs specifically. As a cornerstone of any EU action, the “*Think Small First Principle*” should also be applied rigorously in this area of the negotiations, particularly given that it is an absolute priority for SMEs in Europe.

In light of the above, Chambers Ireland hereby tables a series of recommendations to the EU negotiation text to better factor in the SME dimension when assessing future - and revising existing - legislation that falls within the scope of the regulatory cooperation mechanism as currently envisaged in TTIP.

Having the most advanced regulatory systems in place worldwide, both the EU and the US have policy instruments in place at a central level which assesses the impact of SMEs with respect to planned or existing regulatory acts.

In the EU, this is achieved through the **SME Test**, a cornerstone of the “*Think Small First Principle*” and an integral element in the European Commission’s impact assessments. As part of this year’s adoption by the Commission of First Vice-President Timmermans’ Better Regulation Agenda, in which the EC has committed itself to a more thorough application of the “*Think Small First*”

¹ 'Reducing Transatlantic Barriers to Trade and Investment: An Economic Assessment', Centre for Economic Policy Research, London

Principle”, the SME test is now a mandatory component in the Commission’s guidelines for conducting impact assessments.

At the same time, through the Regulatory Fitness and Performance Programme (**REFIT**), existing EU legislation is checked as to whether it is ‘fit for purpose’, placing particular emphasis on the simplification of rules and the reduction of regulatory cost for SME’s, including through the “**top 10**” *consultation of most burdensome legislative EU acts for Small and Medium sized Enterprises (SMEs)*”.

Likewise, in the United States, the **Regulatory Flexibility Act** of 1980 requires all Federal Agencies to consider the impact and effect of regulatory proposals on SMEs and guides federal agencies when conducting a revision of federal acts.

However, transatlantic cooperation on how each side assesses regulatory impacts on SMEs is not currently foreseen. It is apparent from the EU’s written proposal that a Party’s request made in accordance with Art 9, to enter into an exchange on planned or existing regulatory acts, does not require regulators and competent authorities to also enter into an exchange on SME impacts of the act in question. This is counter-intuitive given the internal obligation for regulators to do so within both EU and US federal level regulatory systems.

- **TTIP presents a unique opportunity to strengthen exchanges between relevant regulators and competent authorities on SME impacts of targeted regulations affecting transatlantic trade, without requiring any Party to change or amend its legislation.**

The above mentioned regulatory process tools provide substantial benefits to SMEs. As the Small Business Administration (SBA) reports, the stringent application of the Regulatory Flexibility Act saved US SMEs around **\$4.8 billion in 2014 alone**². With significant benefits for SMEs also resulting from the application of the SME test and the REFIT at EU level, it becomes clear that enshrining a closer cooperation between regulators and competent authorities in TTIP, will not only strengthen our internal policy tools for assessing regulatory impacts on SMEs, but can also act as a real transatlantic multiplier when it comes to the reaping the benefits.

Additionally, concrete commitment to regulatory cooperation for SMEs will enable a much more targeted and effective monitoring of the agreement, through relevant institutional bodies created thereunder, such as the SME committee, to make sure TTIP will deliver what it promises for SMEs, particularly on the regulatory front.

Chambers Ireland would therefore like to table the following addition of **3 specific elements** to the horizontal regulatory cooperation chapter in order to enhance the SME dimension in regulatory exchange in TTIP:

²Report on the Regulatory Flexibility Act, Fiscal Year 2014 – Small Business Administration- Office of Advocacy: https://www.sba.gov/sites/default/files/advocacy/RFA_Report_Summary_FY2014_rs428.pdf

1. Strengthening the analytical policy tools of both parties by enshrining a general commitment to enter into an exchange on regulatory impact on SMEs.

In full compliance with Section I of the EU proposal on the scope of the envisaged regulatory cooperation, we believe Section II on the Regulatory Policy Instruments, and the analytical tools which both Parties commit to apply and exchange information on, should be complemented by a clear commitment to also engage in an exchange on the impact of regulations on SMEs at the central level.

Specifically, we believe Art. 7 para. 3 b could thus be amended as follows:

*“The Parties shall promote the exchange of information on available relevant evidence and data, on their practice to assess impacts on international trade or investment, as well as on the methodology and economic assumptions applied in regulatory policy analysis, **including the respective assessment of regulatory impact on SMEs**”*

2. Establish a Focal Point for SMEs in both the EU and the US for regulatory cooperation.

EU proposal Art. 8 para. 3 sets out that each Party shall designate an office to act as a Focal Point responsible for exchanging information about envisaged and existing regulatory acts.

Given the specificities of SME regulatory impact analysis on both sides of the Atlantic and the specific agencies in charge of executing or monitoring its compliance, it is likely that the focal points which are to be designated on both sides according to the EU proposal are not identical to the authorities in charge of regulatory impact assessment for SMEs.

Therefore and in line with the reasoning laid out above, Chambers Ireland recommends also foreseeing specific focal points within both administrations that would oversee exchange on the regulatory impact on SMEs. In our view the focal point should be within those EU and US federal agencies that are already in charge of the execution and/or compliance with the respective policy tools in place with regards to measuring the burden of regulation on SMEs.

In the United States, this would most likely lie within the responsibility of the US Small Business Administration (SBA) and with the Secretariat-General and/or DG Grow on the EU side.

3. Foresee regulatory exchanges whenever the regulatory mechanism is triggered and upon determination of a significant impact of regulations on SMEs.

In accordance with Art. 9 para 3 of the EU proposal, it is foreseen that upon a request of a Party via the respective Focal Points, the Parties shall enter into an exchange on planned or existing regulatory acts at central level. This shall be led by regulators and competent authorities at central level responsible for or following the regulatory act concerned (Art. 9 para. 4).

In line with the above, Chambers Ireland proposes that the “trigger mechanism” for regulatory cooperation in Art. 9 para 3 be enlarged by including exchanges on the specific SME impact of the regulatory act in question.

In our view this additional exchange should only be applied if:

- a)** all the criteria already set out in the EU proposal are met, particularly that a significant impact on transatlantic trade or investment has been established (Art. 9 para 1)
- b)** a substantial impact for SMEs is given/to be expected for the regulatory act in question, (to be assessed in accordance with the internal policy instruments in place on both sides)

By doing so, the addition of any supplementary layer to the envisaged regulatory exchange in TTIP would be avoided and would only require regulators and competent authorities to cooperate and exchange information on the methodology, analysis and data pertaining to the SME impacts, which they are already mandated to assess within each of our regulatory systems.

In accordance with Art. 9 para 4 of the EU proposal, the regulatory exchange that includes cooperation on SME impact should therefore be led by the responsible regulators for the act in question, together with the SME focal points, as set out under point 2 above.

Should any regulatory compatibility be deemed worthy of perusal resulting from such a regulatory exchange (in accordance with the tools set out in Art 10 of the proposal), then the information gained from the specific exchange on SME impacts should be factored in and reflected where appropriate and feasible in any regulatory *rapprochement*.

In summary, Chambers Ireland believes that with the above suggestions, TTIP can capitalize on and multiply the benefits that our internal policy instruments already bring in easing the regulatory burden on those economic operators that are the most affected and are the main potential beneficiaries of a more integrated transatlantic market – our SMEs.