Federation of Small Businesses

The UK's Leading Business Organisation

FSB response to the Taskforce on EU regulation

August 2013

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The UK's Leading Business Organisation

Rt Hon Michael Fallon MP
Minister of State for Business and Enterprise
Department for Business, Innovation and Skills (BIS)
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London
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By e-mail: tacklingeuredtape@bis.gsi.gov.uk

22 August 2013

Dear Michael,

RE: FSB response to the Prime Minister's Business Taskforce on EU Regulation

Thank you for inviting the Federation of Small Businesses (FSB) to submit evidence to your business-led taskforce examining EU regulatory burdens.

The FSB is the UK's leading business organisation. It exists to protect and promote the interests of the self-employed and all those who run their own business. The FSB is non-party political, and with around 200,000 members, it is also the largest organisation representing the self-employed, micro, small and medium-sized businesses in the UK. The FSB is also a member of the European Small Business Alliance (ESBA).

Small businesses are vital to the success of the European economy, providing more than two thirds of private sector employment. SMEs make up 99 per cent of all businesses in the EU, of which 92 per cent are micro enterprises. The FSB's membership falls mainly into the latter category. The average headcount of an FSB member's business is seven members of staff[1].

Our members welcome the establishment of the Taskforce, and its openness in seeking our views. EU legislation has too often been designed as 'one size fits all' and according to the precautionary principle, thereby placing disproportionate and unfair burdens on the smallest businesses. While the Commission is taking steps to address this, we believe there is much further to go before all EU policy-makers *think micro first*, especially within the European Parliament and Council. We hope the Taskforce will unearth new ways to reduce the burdens of both existing EU legislation and forthcoming proposals.

As the voice of UK small firms, we are keen to assist the Taskforce in any way we can. We would be happy to discuss our evidence further and are keen to know more about the group's next steps. We particularly would encourage the group to present its findings to the Commission, the High Level Group on Administrative Burdens ('Stoiber Group') and MEPs in the SME Intergroup, as there will be common lessons which could be applied across the member states.

We trust that you will find our comments helpful and that they will be taken into consideration.

Yours sincerely,

Federation of Small Businesses

[1] FSB 'Voice of Small Business' Member Survey, February 2012

Introduction

While some EU legislation is necessary for the functioning of the Single Market, the flow of new and changing regulation is discouraging for businesses struggling to thrive and grow, especially in these challenging economic times. Indeed, almost a third of FSB members say regulations and enforcement are a barrier to their success[2], and reform is critical. This response builds on our comprehensive submission to the Commission's consultation on the Top 10 most burdensome laws for SMEs[3]. Annex A sets out case studies from FSB members.

There is much further to go in driving forward Smart Regulation principles at an EU level and we believe the work of the Taskforce is very timely. New regulatory burdens on business continue to arise at EU level – either from ill thought-through initiatives, or proposals intended as 'SME friendly', the benefits of which are then watered down by the European Parliament and Council. Agreements struck by the social partners also add to the regulatory burden on small businesses, yet the social dialogue remains outside the EU's Smart Regulation agenda and systems, due to its autonomous nature. We therefore hope the Taskforce will consider the burdens arising from the flow of new regulation and not simply the stock of existing law.

We would also urge the Taskforce to pay particular attention to the perspective of micro and small firms, including the self-employed. Micro businesses, with fewer than 10 employees, are estimated to make up 96 per cent of all UK businesses[4]. The average FSB member employs seven members of staff[5]. They are disproportionately affected by regulation, and unlike larger firms, do not have in-house resources to easily deal with it. It is also difficult for small businesses to pinpoint where regulatory burdens originate; indeed they struggle most with the cumulative effect of regulation and constantly changing requirements.

We hope the Taskforce will consider best practice from other member states to highlight where the UK has either deliberately or inadvertently 'gold-plated'. We hope this will result in some quick wins, where UK changes can be agreed swiftly without lengthy EU negotiations. The FSB supports the Government's 'Guiding Principles for EU Legislation' and would like to see a common definition of gold-plating agreed by all the member states. We also accept that member states may want to go beyond minimum EU requirements for political reasons, but there should be greater transparency around this. We therefore hope the Taskforce's findings will address the fear of over-implementation in the UK, and indeed identify, and if necessary justify, why it has occurred.

We also want to maintain the right balance between flexibility and certainty. While it may seem tempting to open up every regulation for maximum flexibility, legal certainty and stability is also crucial for small businesses. For example, we would not want gaps in implementation to lead to messy case law and put small businesses at risk of legal action. Legislation should be as simple as possible to ensure small businesses understand what is required of them and how best to comply. The better designed a regulation, the higher the compliance rate it achieves.

Lastly, we would like to highlight our key asks for EU Smart Regulation and hope the Taskforce will consider any proposed solutions with these principles in mind:

- Think Small First
- Evidence and risk-based policy making
- Smarter implementation.

[2] FSB 'Voice of Small Business' Member Survey, February 2012
[3] http://www.fsb.org.uk/policy/assets/final%20fsb%20top%2010%20burdens%20response.pdf
[4] http://www.parliament.uk/briefing-papers/SN06152
[5] FSB 'Voice of Small Business' Member Survey, February 2012.

Issues

Name of Directive/ Regulation	**REACH (Regulation EC No 1907/2006)** **The REACH Enforcement Regulations 2008**
Problem	REACH is extremely complex, burdensome, expensive and is in need of reform. The registration process requires a business to plough through 4000-5000 pages of regulation and guidelines, to get to grips with the REACH documentation, to understand the SIEF-agreement (Substance Information Exchange Fora), to potentially hire a consultant at €180 per hour, to pay for a Letter of Access and, finally, to pay the European Chemicals Agency (ECHA) fee. However, we appreciate reform will take years, so in the meantime we need the Commission to implement its REACH recommendations. Although REACH is considered one of the most burdensome pieces of legislation, it will not be withdrawn. Recasting it would mean starting again, leading to years of uncertainty and potentially a worse regime. By 2018 the REACH registration threshold will be lowered to one tonne – meaning many small firms across the UK will have to comply with it. Substances upon which ordinary small businesses rely may no longer be available to them.
Solution	We would like the taskforce to examine how other countries are managing REACH to ensure unequal enforcement is not negatively affecting UK small firms. We would like the UK Government's support for our EU asks. We are seeking a reduction in the financial and administrative burden, e.g. substantially lower fees. We would like to see an outline of how REACH affects the competitiveness of small firms; and an outline of a clear delivery plan for developing SME-friendly guidance. We would like the Government to press for a moratorium on the new one tonne threshold with its EU partners. We also believe BIS/ DEFRA need to raise awareness of REACH and its impact on industry.

Name of Directive/ Regulation	**Working Time Directive (2003/88/EC)** **Working Time Regulations (as amended)**
Problem	The Working Time Directive has created significant administrative and compliance challenges for small businesses. Our members want a healthy and safe workplace for their employees, but the Directive has been too restrictive in regulating working hours, rest breaks and on-call time. Rulings from the European Court of Justice (ECJ) on sick and annual leave have only added to the confusion and cost of meeting the Directive. The Directive is now very dated and has not kept pace with employment practices, such as use of flexible working and even zero hours contracts. Our evidence shows that the Directive and the subsequent rulings are poorly understood. While 51 per cent of FSB members claim they are familiar with the voluntary opt-out to the 48 hour

	working week, only 19 per cent are familiar with the rules regarding on-call time.[6] The law is unnecessarily complex and needs to be simplified. Indeed, there is little value in having law on the statute books if employers and employees are unfamiliar with its provisions and how to comply. Most businesses need specialist (and expensive) legal advice to get to grips with the WTD. FSB members can access this through their membership, but other small businesses must seek advice from elsewhere, or risk non-compliance. The Directive is too rigid in restricting how small businesses are allowed to structure their workload to meet seasonal demand and business fluctuations. For example, many employers would prefer to use the 48-hour 'opt-out' provision to cope with seasonal rushes (a shop in the run up to Christmas, a tourism business in summer). This is seen as a safer and simpler option than counting hours over the 17-week reference period. There are parts of the Directive where the burdens are simply more onerous for a small business to manage, such as the record-keeping it requires. In the UK it is very clear that employers are expected to check overall working hours and whether an employee has other jobs. They also need to check if these second or even third jobs impact on working hours and rest breaks. We recognise the health and safety benefits of this, but would like to point out the unfairness of the burden falling solely on the employer and the difficulties that they may face trying to comply – not least in gathering the required evidence from an employee who may be reluctant to disclose the precise details of other jobs. It is also not clear that if an individual works more than one job, then which employer the burden of responsibility would fall upon. The rules around on-call time are restrictive and confusing. Although media attention focuses on the impact in the health sector, the regulation affects many businesses where staff sleep on-site (e.g. wardens) or provide a 24/7 call-out service and where flexibility in the classification of on-call time is necessary. Lastly, case law has extended the scope of the Directive far beyond what was originally intended. FSB members face particular difficulties from the cost and administrative burdens of employees accumulating annual leave whilst on long-term sick leave. This raises uncertainty over how long annual leave accumulates for and when it should be taken. In addition, the employer may be paying out twice, in sick pay and potentially having to employ a stand-in. While we do not dispute that employees are entitled to sick leave, the risk and cost should not fall squarely on the employer. This will also become more problematic for small firms, now that the Government has decided to scrap the Percentage Threshold Scheme which had allowed small businesses to recoup a certain proportion of sickness absence costs from HMRC.
Solution	We understand that in light of the failure of the EU Social Partners to reach an agreement in 2012, the Commission will be launching a review of the Directive in autumn 2013 and that no change at EU level will be considered before the European elections. This law should therefore be considered a priority for UK level change. We would like the taskforce to consider how other countries are meeting the requirements within the scope of the current rules. We believe this would highlight flexibility within the existing law which the UK may

[6] FSB member survey on employment, June 2013 (findings available on request)

	be able to take advantage of. Simultaneously, the UK Government should put together the case for reform and build alliances with other member states for when negotiations at EU level begin. The FSB's principle suggestions for reform are as follows: 1. Maintain the individual opt-out, as it is one of the easiest parts of the Directive to understand. Our research shows that one third of members do have staff working over 48 hours[7]. The taskforce should consider how other Member States have categorised 'autonomous workers'. 2. Extend the reference period to 12 months. A longer period across all sectors would be valued not only by employers, but also by employees who want to maximise their available working time. 27 per cent of FSB members say there would be less need for employees to sign the opt out and 26 per cent believe it would make it easier to cope with seasonal peaks[8]. 3. The Directive does offer flexibility through the possibility of striking workforce agreements or by entering into social dialogue. However, this is not a feasible option for small firms and they are inherently less formal and more flexible. The UK also has less tradition of social dialogue than other countries. The Taskforce should therefore examine how the UK could make more of the flexible provisions in the Directive to benefit all sizes of business (such as an extended reference period). 4. The requirement to provide compensatory rest 'immediately' is also too inflexible and changing this to 'within a reasonable period' would help small businesses cope with unforeseen circumstances, such as staff illness. 5. We would like to see changes to the counting of on-call time so small businesses offering a 24-hour call-out service or on-site, residential contracts have more flexibility. 6. Small businesses also need a fairer deal around managing annual leave and sick leave, so employers are free to negotiate with their employees what suits both sides best.

Name of Directive/ Regulation	**Working time of self employed truck drivers (2002/15/EC)** **The Road Transport (Working Time) (Amendment) Regulations 2012**
Problem	In June 2010, by a small majority, the European Parliament voted in favour of the inclusion of self-employed lorry drivers in the scope of the 2002 Directive on the organisation of the working time of persons performing mobile road transport activities. We believe this has set a dangerous precedent for the EU to regulate the time of the genuinely self-

[7] FSB member survey on employment, June 2013
[8] As above

	employed. There is little correlation with road safety. Regulation 561/2006 already limits driving times and sets mandatory minimum rest periods for both employed and self-employed drivers. Many people choose to become self-employed to give themselves precisely the flexibility that has now been curtailed, including control over their working hours. Independent drivers now have to calculate their overall working time. This includes driving time and other activities such as loading/unloading, contact with clients and administration. This results in a loss in income as it means they are working less. When they were out of scope, the tachograph regulated their driving hours and they were free to do as much or as little as possible other work in addition to this.
Solution	Although the amending regulations include a five-year review clause, the DfT should analyse the financial impact this has had on self-employed drivers in the UK. The Government should then urge the Commission to re-introduce its proposed exemption and persuade MEPs that genuinely self-employed lorry drivers are already regulated by the Drivers' Hours regulations.

Name of Directive/ Regulation	**The Temporary Agency Workers Directive (2008/104/EC)** **Agency Worker Regulations 2010**
Problem	The Directive has introduced administrative burdens on the small business sector. The actual cost of employing a temporary worker has also greatly increased. Agency workers were previously seen by small business owners as a costly (i.e. due to agency fees) but useful way of responding to fluctuations in demand. Now small firms are more likely to be cautious and rely on existing staff, even at times when it would be sensible to take on new staff, such as an unexpectedly large order coming in. According to recent figures from the CBI, 57 per cent of firms that use temps have reduced their use as a result of the regulations.[9] The restrictions and extra costs associated with agency workers may also have contributed to the growth in use of zero hours contracts. According to a recent survey of FSB members, only four per cent of small businesses currently employ agency workers. 15 per cent of small employers have used a recruitment agency to hire staff (both temporary workers in scope of TAWD and permanent workers who are not) over the past two years, while in London, the figure is higher at 23 per cent. [10] In 2008, just before the Directive was agreed, FSB members were polled on how it might affect them. 96 per cent said they would be less likely to employ agency workers, and of all employers who have at some point employed agency workers, 98 per cent would be less likely to recruit them in the future.[11]

[9] http://www.cbi.org.uk/media-centre/press-releases/2012/10/government-must-ensure-agency-workers-regulations-support-job-creation-cbi/
[10] FSB member survey on employment, June 2013
[11] http://www.fsb.org.uk/news.aspx?REC=4643&re=news.asp

Solution	We realise it is very difficult to change many of the provisions, which could be considered as UK 'gold-plating', as agreement was struck by the national social partners (TUC and CBI). However, if the Regulations are opened up at UK level, then the social dialogue should include a wider, more representative range of businesses to ensure the needs of small firms are taken onboard.

Name of Directive/ Regulation	**Waste Framework Directive (2008/98) and List of Waste (Decision 2000/532/EC)** **Waste (England and Wales) Regulations 2011 / Waste (England and Wales) Regulations 2012**
Problem	How businesses handle, transport and dispose of waste is subject to a number of EU regulations. While it is right to regulate this, micro and small businesses deal with very small quantities of waste, similar to domestic household volumes, as opposed to the far larger quantities dealt with by medium or large businesses. The associated paperwork for these small volumes of waste bears no relation to its potential environmental risk, so there is a need for a greater risk-based approach in terms of small business waste regulation. Duty of Care was implemented under the Environmental Protection (Duty of Care) Regulations 1991 (as amended). It requires businesses to be responsible for the handling, disposal or recovery of waste produced, even when it has been sent to another party, such as a waste contractor or skip-hire business. The European Waste Catalogue (EWC)/duty of care regulations place a significant amount of administrative burden on small firms. Requirements to register as a waste carrier and complete Waste Transfer Notes requires small firms to carry out a high level of compliance and is disproportionate to the environmental risk they pose.
Solution	The FSB believes a small business exemption should be considered for the completion of Waste Transfer Notes under the EWC. We would like to see the UK argue for a common EU definition of waste, for example when a material is waste, and when it is a resource. This is significant for small businesses because when an item is defined as waste, the full administration burden must be applied to its disposal. If the item can be considered as a process material then smaller firms would face far less administrative burden, as well as giving greater scope for the potential sustainable reuse of materials. Article 11 of the revised Waste Framework Directive requires waste management companies to offer separate collections of waste by 2015. Whilst broadly supportive of this objective, we are concerned that, given the difficulties UK small businesses have in accessing suitable waste and recycling services (particularly city centre storage facilities), many of our members will face significant cost increases. Therefore, the separate collection of waste duties under the revised Waste Framework Directive could potentially have large administrative and cost implications for small business. The caveat in the Directive that allows national governments to take account of technical and economic considerations when interpreting the requirements is therefore welcome, and the UK should push,

	during the current review of EU waste legislation, to retain the ability to implement this caveat.

Name of Directive/ Regulation	**Assessment of the effects of certain public and private projects on the environment: provisions concerning the quality of the Environmental Impact Assessment (EIA)** **Amending Directive 2011/92/EU, 'EIA Directive' 2011/0080(COD)**
Problem	The European Commission has proposed the revision of the Environmental Impact Assessment (EIA) Directive, which is now being negotiated by the European Parliament. Ensuring small firms can interact with a streamlined and responsive planning and development system is crucial to ensuring small business are able to grow and expand their business. We believe the current proposal for the revision of the EIA Directive will have serious consequences for the UK's small firms and limit their ability to contribute to economic growth. Currently screening is done in the UK via thresholds with only large projects required to be screened. Article 4 (3-4) of the proposed revisions to the EIA Directive would effectively make the current screening thresholds redundant, meaning that thousands of small projects – anything from the installation of micro-generation power technologies to setting up a specialist cheese maker or micro-brewery – will have to be appraised for its potential impact on the environment. Businesses would have to pay for written screening reports for those small projects that are below the current threshold and do not require screening assessment at the moment. This new type of requirement effectively amounts to mini-EIAs being carried out for even the smallest of projects which bear no risk to the environment.
Solution	The current proposals clearly do not respect the principles of subsidiarity and proportionality, nor do they *Think Small First*. It is therefore highly regrettable that the length of time taken by the Department to submit its Explanatory Memorandum to the European Scrutiny Select Committee meant that the House of Commons did not issue a Reasoned Opinion on this proposal. [12] The FSB supports the retention of the existing flexible system which gives member states the ability to set thresholds for screening, depending on the size and the likely environmental impact of a project. We therefore hope that Ministers will be able to persuade counterparts in Council and MEPs to support this approach.

Name of Directive/ Regulation	**Health and safety (89/391/EEC)** **There are also related health and safety proposals on Ergonomics/ health and safety in the hairdressing sector (not yet agreed)**

[12] http://www.publications.parliament.uk/pa/cm201213/cmselect/cmeuleg/86xxv/8606.htm
http://www.publications.parliament.uk/pa/cm201213/cmselect/cmeuleg/86-xxxiii/8611.htm

Problem	The UK is considered to have a good record in health and safety compliance and we see the value of minimum standards agreed at an EU level. However, EU regulation should grant sufficient flexibility to accommodate the different values and cultures that exist within the Member States. More regulation does not necessarily result in better compliance. As part of the recent Commission Top 10 consultation, SMEs ranked EU health and safety law as one of the most burdensome areas of legislation. In 2011, when FSB members were asked which areas of compliance are the most difficult to deal with, health and safety was named as number two, below tax administration only[13]. We would like to see a greater culture of risk and evidence-based policy making, as EU level initiatives are still too reliant on the principle of hazard. There should be more focus on increasing compliance and bringing up the worst performing member states up to the standards of the best. We believe there is a strong case for permitting member states to exempt micro firms with fewer than ten employees carrying out low risk activities from having to write out their risk assessment. Health and safety regulation in the UK is driven by outcomes rather than input. For this reason, extensive note-taking of risks is not seen as being as important as managing the actual risk. We therefore support the recommendation of the High Level Group (HLG) on Administrative Burdens ('Stoiber Group') to remove the requirements for micro firms carrying out low risk activities to write down their risk assessment. Micro firms would need to carry out the assessment, and manage the risks identified, but by removing the requirement to write it down, it could save businesses across Europe 2.7 billion Euros[14]. It is a very practical suggestion for how to lessen the burdens on business without reducing worker protection. The HLG agreed their recommendation in 28 May 2009, and while we are aware that the Commission is currently assessing it, we are disappointed that they have not yet adopted it. Many member states would welcome flexibility to decide themselves, in conjunction with employees and employers, whether they should exempt micro firms or not from having to write the assessment down. The FSB has also campaigned strongly against the proposed Ergonomics Directive and the social partner agreement in the hairdressing sector. We believe both of these would place heavy, uncosted burdens on small businesses and do not follow Smart Regulation principles.
Solution	The Government should work with like-minded member states to argue for proportionate, risk and evidence-based health and safety policies. They should strongly oppose any new health and safety proposals until the review of the existing *acquis* reports in 2015. As part of this review, they should make the case for a change to Article 9 of the Framework Directive which would allow micros in low risk sectors to exempt themselves from writing down their risk assessment.

[13] Regulatory Reform: Where next?, Federation of Small Businesses, 2012
[14] HLG Opinion 28 May 2009,
http://ec.europa.eu/dgs/secretariat_general/admin_burden/docs/121010_offline_opinion_final_updated_after_meeting.pdf

	We would also like to see the Government campaign for smart regulation principles to apply to the social partner dialogue. We believe all agreements proposing legislative changes should be included in the Commission's impact assessment process, with a publicly released impact assessment and opinion from the Impact Assessment Board.

Name of Directive/ Regulation	**Roadworthiness Package (2012/0184 (COD)**
Problem	In July 2012 the European Commission launched the Roadworthiness Package, which would update existing EU legislation on periodic roadworthiness tests (i.e. the MOT test in the UK). The FSB agrees that common EU-wide legislation on MOTs actually helps make UK roads safer by setting minimum standards which all cars and lorries (from the UK and other parts of Europe) must meet. However, the burdens the proposals will place on micro and small businesses, particularly in rural areas, have been grossly under-estimated by the Commission and would severely impair their ability to create growth and jobs. Under the European Commission's proposals light trailers under 3500kg (category O1 and O2), agricultural tractors and modified vehicles would need to undergo an MOT test for the first time in the UK. We believe testing should not be extended to these categories, as they are far less likely to be used in cross-border transport and UK law requires them to be roadworthy. In line with subsidiarity proposals, it is more appropriate that member states continue to determine the testing regime for these vehicles, taking account of national circumstances. All types of businesses use trailers – some are vital for the operation of the whole business, while others are used very rarely, perhaps for a particular customer. For many small businesses, the accumulation of burdens from the cost of the MOT, the time it takes away from the business, and the paperwork would be too much to bear. Throughout the last year we have lobbied the Commission, the DfT and MEPs from various Member States on five key points: • Retain exemptions for light trailers (i.e. those below 3500 kg) given the lack of evidence linking them to accidents. It is estimated there are around 1,250,000 light trailers in operation across Great Britain. • Retain exemptions for tractors used in agricultural work, distinguished from high-speed vehicles engaged in haulage work. • Maintain the UK's current MOT system of repairs and testing in garages. • Agree that the purpose of a 'roadworthiness test' is to check that the vehicle is safe to be used on the roads and meets a certain environmental standard. It is not necessary to test to original manufacturing standards. • Ensure genuinely historic vehicles can be exempted from testing, if the Member State chooses to do so. While we were pleased that MEPs voted in July to exempt trailers up to 2000kg (but not caravans), we still believe all trailers below 3500kg should be exempt from the new rules.

Solution	Through the autumn UK Ministers should continue to argue for a Directive, rather than a Regulation, which would give member states more flexibility as to how they apply it. They should also build alliances amongst EU Ministers and MEPs in order to raise the trailer weight limit to 3500kg.

Name of Directive/ Regulation	**Proposal for a standard VAT declaration**
Problem	The variation in VAT rules are burdensome and confusing for businesses that engage in intra-EU trade. A lot of members are confused on when to pay VAT and where and how to report it. One fifth of our members export and nine out of ten of those trade within the EU. Of those identifying red tape/bureaucracy as an issue, rules and regulations and the sheer level of documentation are most frequently highlighted as specific challenges. Dealing with VAT requirements is specifically named[15] Problems with VAT in a cross-border setting are caused by the complexity of the rules. It is difficult to not only comply with the paperwork, but to find out what actually needs to be done. This is made worse by authorities who do not know the rules themselves, resulting in a lot of legal uncertainty. In addition, it seems paperwork has to be provided several times for the same cases. The VAT rules are problematic for our exporting members and we would urge clearer guidance so exporting businesses are not discouraged. We also realise that member states' own VAT legislation is confusing because of the different schemes for registration, and because you have to find out the rates for different products. We are looking forward to the publication of a proposal for a standard VAT declaration. A universal VAT return form accompanied by harmonised administrative obligations would be very welcome for our exporting members.
Solution	We would like the UK ministers to push for the clearest standardised form, which is easy to understand and simple to use.

Name of Directive/ Regulation	**Proposal for a Regulation on the protection of individuals with regard to the processing of personal data and the free movement of such data (COM(2012)11)**
Problem	The Commission is overhauling EU rules around data protection. We agree with making the rules fit for the 21st century and we welcome the initial intention of the Commission to make the rules suitable for small businesses. However, the rules as they stand now are not micro/small business-friendly and have been designed on a one-size fits all basis, instead of taking into account the real risks of a data breach.

[15] FSB report – 'Enabling small businesses in the drive for more UK exports', June2013.

	The benefits of the exemptions are outweighed by the many detailed provisions that are impossible for businesses to get to grips with. Also, the road is open to multiple and vexatious access requests as the deterrent token fee of £10 would be abolished. We expect many small firms to unintentionally breach the rules if the number of provisions is not reduced. Protection of personal data should be part of good business practice. However, we want a balance between individuals' rights and burdens on business and the new rules are not balanced. There are too many detailed provisions that businesses have to comply with. In addition, the way they have to comply is too prescriptive. For example, the format in which the data have to be supplied is often prescribed. FSB, together with our European organisation, ESBA, have been lobbying hard on this. We would like to see: • An exemption or risk-based approach for SMEs from the Data Protection Officer • An exemption or risk-based approach for SMEs on the Data Impact Assessment • An exemption for SMEs on documentation requirements • The reinstatement of the Subject Access Request Fee that businesses could request • No fines for two instances of non-intentional non-compliance, instead of one We are currently awaiting the outcome of the negotiations on the amendments laid down in the European Parliament. Over 3,000 amendments have to be reduced to a manageable number of compromises. We do not yet know what these compromises will mean for the points above. The Commission's Directorate-General for Justice are now discussing the proposals, and we appreciate any support from the Taskforce to help us move these proposals so that they do not harm small business growth.
Solution	We would like UK Ministers to press harder for exemptions for small businesses who do not process data as a core activity of their business - in particular the Data Protection Officer, the Data Protection Impact Assessment, and documentation requirements. UK businesses also need to keep the ability to charge for a Subject Access Request Fee.

For further information

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ANNEX A – Case Studies

Below are comments from our members about how some of the above regulations impact their business day-to-day.

1. REACH

Case study 1 – Importing silica gel

We were contacted by an FSB member who runs a business that involves importing silica gel – a chemical that has been safely used over the last 70 years. Whilst supportive of the objectives of REACH, he is now facing a choice that will have significant ramifications for the future of his business.

He could either register under REACH for a cost of over €10,000 but the cost and time involved in providing the necessary information is so extensive it is simply not possible for a small firm such as his to do.

Alternatively he could pay for a Letter to Access, which would allow him to use a bigger company's dossier, at a cost of €180,000 or source their gel from a registered company and face paying far higher costs.

The member is now considering having to close down due to the high cost involved in complying with REACH, yet his business poses little or no harm to human health or the environment.

Case study 2 – A self-employed architect

A member who runs a one-man architectural design practice highlighted his concerns with REACH. He uses a specialist chemical as part of the architectural design printing process. He has now been told by the company that supplies the chemical that they are considering stopping importing it due to the high costs of complying with REACH. The member is now facing having to replace his entire printing machinery at a cost of several thousand pounds.

Case study 3 – Specialist cleaning company

The firm uses specialist cleaning products that are crucial to its everyday business operations. However, they have noticed that they can no longer purchase key products. When they contacted their suppliers, they were told that due to the high cost of complying with REACH, the firms that manufacture the cleaning products are choosing to no longer do so.

Case study 4 – The importer

The REACH regulation is very disturbing for SMEs in the chemical industry. As a small business we are being seriously affected with two of our main products, which we import, now being limited in volume to 100 tonnes per annum after May this year. To import more we would need to pay the lead registrant companies (our competitors) over €100,000 which is impossible for us.

If we were able to pay these monies we could then obtain the 'Letters of Access' to the dossiers generated by the lead registrants (LR) enabling us to register with REACH. From our inspection of these dossiers and the prices being charged it is obvious that the LRs are greatly inflating the prices so that they either receive large sums of money from the small companies or they force them to reduce their commercial activities.

Unfortunately, this is only the tip of the iceberg and in 2018 the REACH regulation will require a full registration by all EU companies or they will be restricted from manufacturing or importing more than one tonne per annum. Again, this is a win-win situation for the powerful lead registrant companies who will receive huge sums of money or put their competitors completely out of business.

This is a serious threat to hundreds of small companies in the UK who produce or use chemicals. We have five years to do something about this unfair use of an EU regulation or we will all be forced to close down with the closure of a large sector of the UK manufacturing industry and the loss of many ordinary jobs.

2. Roadworthiness Package

Case study 1 – Tree services business

We run two chipper trailers (main one weighing 780kg – O2), but only one earning team so there is always one spare vehicle and trailer as an emergency backup. This way we can offer 100 per cent reliability when it comes to turning up to booked work. We are currently quoting work prices for a two-man day that we were matching about 14 years ago which is ridiculous with the amount of inflation in that time. For us further expense will mean selling the secondary vehicle and chipper, losing the luxury of having a back up vehicle that long term will mean a reduced turnover.

Case study 2 – The campsite

We are a relatively new, small rural eco friendly campsite business. We use a small trailer (type O1) to move many things around the site like hedge cuttings, soil and the like. We also use it off site to collect things and to take all recyclables to the centre. If we had to MOT it, it would greatly affect us monetarily and in terms of time. As you can imagine in this economy, it is hard on a small rural business like ours as it is, without additional charges. The suggestion we have heard that specialist test centres are set up which may be miles away would be very expensive and ridiculous to have to tow a small trailer 50 miles, for example, just to be tested.

Case study 3 – Construction business

We have two trailers – one is unbraked, 500kg (O1) obviously, the other braked but unplated, but we gross it at 1400kg (O2). Living where we do, it is essential that brakes are first class. We can never understand people who risk the inconvenience, delay and possible health by using trailers with inadequate tyres. A puncture would cost us upwards from £50 depending where and when it happened. Testing will only make a minimal contribution to road safety, we need better enforcement on the roads, not more paperwork.
I could guess at the additional cost; lost time taking the trailer to be tested, say at least an hour at £30, inconvenience, because unless it is first thing in the morning or last thing at night, it will interrupt the day's work on site for at least one of us. Then there's the paperwork which will have to be kept up to date, stored, and a reminder set. Each might not sound like much on its own, but the burdens add up.

Case study 4 – The Farm

To service the woodland management on our farm there is a specially adapted forest tractor and timber trailer (O2). The tractor and trailer only uses the public highway (local single track roads) when not working in the woodland, this probably equates to less than 1km per working day.

Many aspects of the rural economy are operating on a financial 'knife edge'. To saddle these enterprises with yet another unnecessary overhead in terms of cost and time out will only have an adverse effect upon the desperate need to revitalise and grow and the rural economy. There may be a case for having an MOT for high speed, specially adapted, haulage tractors and trailers that do significant road mileage. To further burden the 'agricultural' tractor operator with yet more expense and inconvenience would be totally unacceptable.

Case study 5 – Woodfuels business

Our trailers (O2) used for carrying woodfuels are serviced annually by the local dealer. We have to have them inspected and serviced annually to satisfy insurance requirements and as such, we can see no requirement, and indeed no benefit, in a further "MOT". Testing of the trailers would add extra time and cost. One of our trailers is only used two or three times a year and testing if done annually would therefore be carried out every 60 miles or so. There is no evidence base to suggest that this testing is necessary. It would make me think whether the business we do with a customer is worthwhile. We'd need to put our prices up – but then who would pay this?

Case study 6 – Canoe business

I have been involved in businesses, throughout my years, that utilise light trailers for carrying various goods. More recently, canoe trailers in particular (O2). To introduce additional testing would be costly and create additional bureaucracy since to test the trailers a register would need to be created, otherwise no test could easily be applied to a particular unit. This will involve registration, since chassis numbers are not currently applied to all trailers and some are manufactured individually and especially for small businesses a cost factor would be involved.
Under current legislation, owners/operators/drivers are required to meet all highways regulations (lights, markings, registration number etc) and can be prosecuted for any lapse; motorists can be stopped by the police or VOSA (including private or commercial motorists) and VOSA are able to complete roadside safety checks. Their network of Check Stations is fairly comprehensive and they do pull over various categories of vehicle including light trailers.

3. Data Protection

Case study – Translation company

We offer translation services and employ eight staff, have over 4,000 clients and buy from over 10,000 suppliers. Although gathering and storing personal data is not part of our core business we deal with private information. The new rules on data protection will therefore have a significant impact on our business.

For example, our systems would need to be changed and checked on a regular basis to allow for the extended rights of access, the wider definition of personal data and the new 'explicit' consent. This would cost around £400 to £500 a year. We don't have in-house technical expertise so will be relying on external providers to set us up properly.

The obligation to employ a Data Protection Officer (DPO) and to carry out a Data Protection Impact Assessment would be a nightmare for small companies. Some may go under as they would not be able to cover the cost of employing an extra person. Normally it would be the owner who is carrying out these tasks, like health and safety. Also, if businesses have good practices in handling personal data and are complying with the law I don't see why even businesses that handle data as their core business have to take on a DPO.

The obligation to keep track of how you handle data is difficult to impose as businesses are very different. Businesses are not against keeping documentation but it should be kept simple and should fit the business. Also, the fact that a

business remains responsible for data it transferred to a third party is problematic. I wouldn't know where to start. How can you guarantee data is deleted if that is requested?

Our freelancers update their data in our system. We are joint controllers and processors. Under the new rules we would be jointly liable. This is not good news for our freelancers, and not good for us as they would be scared to share any data with us. Their data is relevant for the running of our business.

It is very worrying that it will be so easy to attract a fine as the regulation has so many different and detailed provisions a business should comply with. Breaking the law unintentionally is easily done.

4. VAT

In 2012 we consulted our members on the problems they encountered around exporting.

Case study 1

Our water sports business has grown significantly since we opened up a webshop. We now have more customers from all over the world, including from Europe, that buy our products. The requirements around VAT are different in each country and we keep a spread sheet with all the peculiarities of VAT requirements in the member states we have customers in, which took time to set up and research.

Case study 2

I need to keep filling in European VAT forms for recurring work for a fixed fee that attract zero VAT. I should be able to log for year.

Case study 3

There is much confusion (even at HMRC) between accounting for VAT and reporting for Intrastat - especially if your customer is in one country and he wants it sent to another. We spend hours trying to sort this out and prepare reports.

Case study 4

Even though all the information is already provided, we have extra levels of VAT paperwork.

Case study 5

It is difficult to find information about the paperwork which must be created when exporting and HMRC do not give a definite answer when asked if and when VAT should be charged when exporting goods.

Case study 6

It seems that on any given day the VAT helpline gives different opinions on whether or not VAT should be charged.

Case study 7

We have difficulty finding out what exceptions are in place with regard to VAT to cover different circumstances.