

Comments to parts of the proposal

Below Företagarna comments on specific parts of the Commission's proposal. We find a number of proposals are too vague to comment on.

Proposal No 1: The European Parliament and the Council should take the necessary steps to adopt the proposals for the EU patent, its languages and the unified patent litigation system. The aim is for the first EU patents to be issued in 2014.

Företagarna finds that it is of outmost importance to create a good and cost efficient patent system within the EU. The present patent system is very costly for the enterprises and this hampers in particular small and innovative businesses. We pity that it has not been possible to come to a common conclusion amongst all EU Member States. However we find that it is of vital importance to proceed in the matter and thus fully support the initiative taken for enhanced cooperation between a number of Member States. It is better to give the possibility to go ahead to Member States that are truly interested in creating a competitive EU patent system instead of carrying through compromises on translations solutions that would lead to a costly EU patent system.

However we would like to point out that also the issue of a European patent litigation system is of vital importance in order to establish a well functioning and cost efficient patent system within the EU.

Proposal No 3: In 2010 the Commission will propose an action plan against counterfeiting and piracy, including both legislative and non-legislative measures. Furthermore, in 2011 it will make legislative proposals, in particular to adjust the legislative framework to meet the needs generated by the development of the Internet and to enhance customs work in this area, and it will re-examine its strategy on the implementation of intellectual property rights in third countries.

Counterfeiting and piracy harm enterprises that have put time and money in developing their businesses. In particular it is harmful to small firms who often have very limited resources to start court proceedings in order to stop infringements in their intellectual property rights. This in turn hampers the enterprises will to put effort in new innovative ideas and solutions. Företagarna therefore welcomes the Commission's intention to submit an action plan against counterfeiting and piracy.

Proposal No 4: The Commission and the Member States will cooperate in continuing to develop the internal market in services on the basis of the 'mutual evaluation' process set out in the Services Directive and currently implemented by the Member States and the Commission. In 2011, the Commission will indicate specific measures to this end, including in the business services sector.

The Services Directive aims to create a well functioning internal market for services, which is strongly supported by Företagarna. By dismantling the remaining barriers to cross border trade, better terms for increased economic growth and employment opportunities are created. This is to the benefit of small enterprises within EU. There is a considerable potential for cross border activity within the services economy. We are thus positive to the intention to further develop the internal market for services. From our

point of view it would be positive if the Services Directive is further extended to more areas of services, like the staffing companies and the health care sector.

Furthermore we find the Commission's evaluation of the implementation and application of the Services Directive in the various Member States to be very important.

Proposal No 5: By the end of 2011, the Commission will take initiatives to develop electronic commerce in the internal market. It will concentrate in particular on problems faced by consumers in the digital economy. These initiatives will include a Communication on the operation of electronic commerce and guidelines for the Member States to guarantee the effective application of provisions in the Services Directive to combat discrimination against recipients of services because of their nationality or place of residence.

Företagarna is positive to the ambitions by the Commission to improve electronic commerce within EU. Access to Internet and safe routines for electronic commerce can give entry to new markets for both consumers and enterprises. It is thus of great value with a developed electronic commerce on the internal market. Företagarna would however like to underline that it is of great importance to find a solution that balances the interests of the consumers and the enterprises. The absence of full harmonisation of the consumers rights legislation within EU creates in practice considerable barriers for small enterprises to sell goods and services to consumers in other Member States.

Proposal No 6: The Commission will propose a legislative reform of the standardisation framework in 2011 to make standard-setting procedures more effective, efficient and inclusive and to extend the scope of the procedures from goods to services.

Standards play a central role in the completion and the application of the rules on the internal market. Thus there is a value in developing and improving the standard-setting procedures. In this process it is amongst others importance to find models that give good opportunities for small enterprises to participate in and influence the standard-setting process. If not there is a risk for distortion of competition and negative effects on economic growth. There is also a need to find solutions so that the enterprises on reasonable conditions can get access to the standards documents.

Proposal No 8: In 2011, the Commission will be adopting a proposal to revise the Energy Tax Directive so as to better reflect the EU's climate and energy objectives in the fiscal context, by basing the minimum duty rates on CO₂ emissions and on energy content.

Företagarna is positive to a more consistent framework for energy taxation on the internal market. However, it is unclear in the proposal how this should be done. When this framework is formulated it is important to make an impact assessment of the effects for different sectors of the economy. The aim should be different taxes for different energy sources depending on how much pollution they cause. Given this, the position by the Commission...“to ensure consistent treatment of energy sources in the Directive and therefore truly equal treatment for energy consumers, regardless of the source of the energy being consumed” sounds illogical. For EY the most important must be to ensure a global price on carbon. This would give the market actors the right incentives to reduce the use of carbon and minimizing the need for regulations. There is a risk for overlap and controversy with too much regulation.

Proposal No 12: The Commission will adopt an action plan for improving SME access to capital markets in 2011. This will include measures to make investors more aware of SMEs, to develop an efficient stock exchanges network or specific regulated markets focussing on SMEs and to make listing and disclosure requirements more adapted to SMEs.

Företagarna agrees with the Commission that lack of venture capital is an obstacle for growth to many small business. Making these business visible to potential investors can be one measure to increase access to capital. Still, we are very critical to the suggestion to build a network of stock exchanges or specific regulated markets focused on SME:s. Though listing on the stock exchange, to the individual expanding company may be important, clearly other solutions are substantially more important to the wide range of small business. Measures to improve profitability by reducing tax rates and cutting red tape at large as well as stimulating investments by the owner, his friends and family are much more important. These are the main investors for business in the starting phase. Only to a very limited number of small business would listing on a stock exchange ever be a possibility. In these cases the existing markets seem to function satisfactory in many member states. We also note that the substantially reduced requirements for listing that the Commission mention are contrary to the constantly increasing demands that characterize other stock exchanges and regulated marketplaces. This also suggests that the proposal is not quite well-prepared.

Proposal No 13: The Commission will assess the Small Business Act by the end of 2010 with the aims of ensuring that the ‘Think Small First’ principle is implemented in both policy and the legislative procedure in order to closely link the Small Business Act with the Europe 2020 Strategy.

Företagarna is anxious to reduce the gap between the principle of “Think Small First” and the reality of the legislative process efficiently and as quick as possible. This means we are in favor of a thorough evaluation of the Small Business Act. Regrettably the everyday life of small business is still burdened by too much red tape and regulations not designed to fit in their working processes. Impact assessments that clearly analyze and illustrate consequences for the small business are necessary. We also want to highlight that these analyses need to be updated throughout the legislative process. Regulations are often changed or amended along the way whereby the consequences originally analyzed are no longer relevant. We would also like to see evaluations made on a regular bases when the legislation has been in force some time. An evaluation ex post is also one way to make a follow-up on the relevance of the impact assessments made ex ante.

Proposal No 14: The Commission will propose a review of the accounting Directives in 2011 to simplify financial reporting obligations and to reduce the administrative burden, especially for SMEs.

Företagarna has been pushing for a modernization and simplification of the accounting directives for small business and micro entities. We therefore welcome the initiation of such a review. The accounting directives are old and need substantial modernization and simplification. Further they need to be characterized by the new perspective starting from the situation of the small business instead of exempting the vast majority of business (micro entities) from the directives, which was suggested by the Commission. In the process of reforms the possibility of allowing simplified accounting methods such as cash-based accounting for more small business and allowing them to use this method also in the annual accounts, called straight cash method.

Proposal No 17: After the currently ongoing assessment of European public

procurement legislation, and based on wide-ranging consultation, the Commission will make legislative proposals in 2012 at the latest with a view to simplifying and updating the European rules to make the award of contracts more flexible and to enable public contracts to be put to better use in support of other policies.

Public procurement in EU concerns considerable economic values and is thus of great importance. Företagarna is of the opinion that all legislation should be evaluated. This is our view also regarding the legislation on public procurement.

It is mentioned by the Commission that the administrative procedures for public procurement often are extremely cumbersome. This can of course be true for the administrative handling within the public sector, but it should be underlined that it is also true for small business participating in public procurement. According to our experience the time consuming and complex procedure is an important reason why many small enterprises refrain from participating in public procurement. However, it is very seldom the legislation as such that is the reason for the complex process for the enterprises. Instead the problems follows from the "application" in terms of the specific conditions a supplier has to meet in the various tenders. The specific conditions do in practice very seldom follow from the legislation on public procurement, but from decisions made by the contracting authority. These are factors that need to be observed in the evaluation process.

In our view the ambition to make public procurement to be of better use in support of other societal goals is not going to make public procurement more available for small enterprises. In contrary these are factors that often make the public procurement process more complex. Thus there is a risk for fewer tenders and less competition in public procurement and thereby also higher sums to pay for the tax payers.

Otherwise it is our hope that the Commission's work will lead to more companies participating in public procurements in other Member States.

Proposal No 19: The Commission will take steps to improve the coordination of national tax policies, notably by proposing a Directive introducing a common consolidated corporate tax base (CCCTB) in 2011.

Företagarna considers the Common Consolidated Corporate Tax Base (CCCTB) to be a very distant target. For sure it would be good if Member States could agree on removing overlaps, differing definitions and risks for double taxation due to different rules, structure and/or interpretations in their national tax legislation. But we also realize that the Member States face huge difficulties in agreeing on these issues. And we are very concerned that any solutions that might eventually be the result, would be too complicated for small business to use and therefore not be beneficial to them after all. Företagarna considers the importance of substantial simplification in the VAT-system for small business in combination with better prospect of success with such a project speaks in favor of following this line rather than the line of CCCTB. Therefore we advocate that the Commission ought to prioritize reducing regulatory burdens for small business in the area of VAT which is both very costly and complicated to them.

Proposal No 21: In 2011 the Commission will propose legislation to introduce the linking of company registers.

Företagarna considers interlinking of business registers between Member States to be necessary. We are facing challenges that require easy access to updated and secure

information for an increasing number of stakeholders. This makes a legal framework necessary partly to sort out which information has priority in case of differences between the registers in different countries. This can not be fixed at national level but requires EU-legislation.

Still it is absolutely necessary to make use of the potential for efficiency gains and avoid increases in the regulatory burdens for business to report to different registers and using different routines. Businesses should only need to report once and the use of web-portals may simplify registration, provided the underlying information is standardized and can be used for various purposes.

We demand – as always – a practical application of the principle Think Small First in the continued work with interlinking business registers.

The exchange of information on listed companies and/or companies who participate in cross-border mergers or transfer of principal place of business should not be allowed to be a guiding factor for the design, direction or solution of an interlinked system of business registers. The system rather needs to be designed and directed to suit the requirements of exchange of information of registered information on SMEs – who represent over 99 percent of all business in Europe.

Proposal No 22: By 2012 the Commission will propose a Decision to ensure mutual recognition of e-identification and e-authentication across the EU based on online authentication services to be offered in all Member States. In 2011 the Commission will propose a revision of the Directive on electronic signatures with a view to providing a legal framework for international interoperability and recognition of e-authentication systems.

Företagarna welcomes a system of mutual recognition of electronic identification- and authentication systems in EU. Basically we consider this to require that all Member States are included at the same time. Still, harmonization is urgently needed and bilateral or multilateral agreements of recognition could be needed in a transition period in order to increase the function of advanced e-signatures in cross-border activities.

Proposal No 23: The Commission will further develop regulatory cooperation with its main trading partners, both bilaterally, in the form of regulatory dialogues, and multilaterally, for example within the G20. The twofold objective is to promote regulatory convergence, including promoting equivalence of third-country regimes where possible, and to push for wider adoption of international standards. On this basis it will pursue negotiations for international trade agreements (both multilateral and bilateral) with a focus on both market access and convergence on regulatory issues, particularly for services, IPR and subsidies.

Företagarna looks positively upon the proposal to develop regulatory cooperation with main trading partners to the EU. Företagarna especially acknowledges the efforts made by the Commission to promote regulatory convergence in the wake of the financial and economic crisis. The emphasis on services and IPR is also positive and worth mentioning, as these issues are important for our members.

Proposal No 24: In 2011, the Commission will present a legislative proposal in favour of a Community instrument drawing on the implementation of the European Union's international commitments in order to enhance its

capacity to ensure improved symmetry in access to public procurement in the industrialised nations and the major emerging economies.

Without anticipating our views on the Commission's legislative proposal in detail, Företagarna in general looks positively on EU efforts to ensure more equal conditions for participating in access to public procurement in both industrialised nations and the major emerging economies. However, it is important to underline that "symmetry" reasonably must imply greater openness for all countries.

Proposal No 27: The Commission will adopt a Communication on energy infrastructure priorities up to 2020/2030 in order to contribute to the development of a fully operational internal energy market by tackling missing infrastructure links and facilitating the integration of renewable energy. The tools necessary for implementation will be proposed in a new European instrument for energy security and infrastructure, to be tabled in 2011.

Företagarna notes that the different energy markets in EU become more and more integrated. This is a development we view as good and necessary. But it will require new adjustments of both energy networks and energy infrastructure, which is a challenge. We are positive to a review in order to make it easier, and more profitable, for small producers of energy to deliver on the grid. This will create the diversification of energy sources that we are in great need of. We await further comments until we see a more concrete proposal from the Commission for the new tools needed for a common energy infrastructure.

Proposal No 29: Pursuant to its new strategy for the effective implementation of the Charter of Fundamental Rights by the European Union²¹, the Commission will ensure that the rights guaranteed in the Charter, including the right to take collective action, are taken into account. The Commission will first of all conduct an in-depth analysis of the social impact of all proposed legislation concerning the single market.

Proposal No 30: In 2011, the Commission will adopt a legislative proposal aimed at improving the implementation of the Posting of Workers Directive, which is likely to include or be supplemented by a clarification of the exercise of fundamental social rights within the context of the economic freedoms of the single market.

The European Court of Justice has recognized the right to take collective action as a fundamental right which forms an integral part of the general principles of Community law, which observance the Court ensures. For example, in the Laval case, the union's blockade, however, was disproportionate to its purpose and therefore not accepted. The judgments of the European Court of Justice in recent years about the right to take collective action have been properly handled and our opinion is that disproportionate actions not should be ensured. Our opinion is therefore that there is no motive to change the Posted Workers Directive or otherwise alter the balance that the Court of Justice has ruled in a number of judgments.

Proposal No 32: The Commission will launch a consultation with the social partners in order to create a European framework for the advance planning of industrial restructuring.

Företagarna is negative to corporatism and strongly opposes this proposal, which also contains an almost command economy way of thinking. This matter should be handled by the market.

Proposal No 36: In 2011 the Commission will propose a Social Business Initiative in order to support and accompany the development of socially innovative corporate projects within the single market by means of in particular social ratings, ethical and environmental labelling, revised rules on public procurement, and by introducing a new investment fund regime and tapping into dormant savings.

Företagarna is very negative to this proposal which is likely to increase the reporting costs and hence the administrative burden on small businesses. There is also an obvious risk that the unspecified actions to be implemented could create an unfair competition situation for small businesses that operate in normal market conditions. Instead, we suggest that the EU focus on creating a regulatory framework so that all firms (regardless of what they are called) can compete on equal terms. The Commission itself stresses that "a huge investment potential in the social economy has already been proved". It strengthens our theses that much of what the proposal aims at, could be done with the regulations and driven by markets and consumer values. This is significantly better than using new distortionary and costly regulations.

Proposal No 37: For several reasons relating mainly to the nature of its financing and the preference of shareholders or stakeholders who support projects with a strong element of social, economic and sometimes technological innovation, the market economy is structured around a variety of different types of legal status (foundations, cooperatives, mutual associations, etc.). The Commission will propose measures enabling the quality of the legal structures concerned to be improved in order to optimize their functioning and facilitate their development within the single market.

Företagarna wants to emphasize that the regulations should be designed so that different business and organizational forms can compete on equal terms.

Proposal No 38: The Commission will launch a public consultation (Green Paper) on corporate governance. It will also launch a public consultation on possible ways to improve the transparency of information provided by businesses on social and environmental matters and respect for human rights. These consultations could lead to legislative initiatives.

Företagarna is strongly opposed to this proposal which might greatly increase reporting costs and hence the administrative burden on small businesses. There is also an obvious risk that the unspecified actions to be implemented create an unfair competitive situation for small businesses, working under normal market economy conditions. Corporate governance must be an owner issues. It is also very unlikely that different solutions for different company categories will contribute to stronger competition and thus faster development. On the contrary, to believe that one via consultation and central solutions can find one single solution for the future of corporate governance appears to us as naive.

Proposal No 44: The Commission and the Member States will cooperate in continuing to develop the internal market by stepping up the procedure for

evaluating the acquis, in particular using the 'mutual evaluation' process set out in the Services Directive and currently being implemented by the Member States and the Commission. The experience gleaned from the mutual evaluation process of the Services Directive will also be applied to other key single market legislation.

Företagarna supports the Commission's initiative to evaluate and develop the internal market. We find the Commission's aim to use the experiences gained from the mutual evaluation process of the Services Directive to be appropriate.

Proposal No 46: In 2011, the Commission will be submitting an initiative on the use of alternative dispute resolution in the EU. It will also be adopting a Recommendation in 2011 on the network of alternative dispute resolution systems for financial services. The aim of these two initiatives is to ensure that simple, reasonably priced out-of-court settlement procedures are established to deal with cross-border consumer disputes. By 2012, the Commission will be proposing a European system for the settlement of online disputes for digital transactions. It will also carry out a public consultation on a European approach to collective redress in 2010-2011, in order to identify arrangements which could be introduced into the legal framework of the European Union and the legal systems of the Member States.

Företagarna is in favour of ADR systems as it can be a time- and cost-effective method of resolving disputes between parties. Of course, future proposals hereon must be analyzed in detail before approval.

Företagarna is opposed of the proposed EU initiative on collective redress for consumers. We strongly question whether such an initiative is the appropriate way of improving the situation of consumers on the internal market.

Proposal No 49: In 2010, the Commission will continue to promote a onestop shop to provide citizens and businesses with information and support concerning their rights in the single market, on the internet, by telephone or in person, by developing the 'Your Europe' internet portal and improving its coordination with 'Europe Direct'. The Commission will also strengthen its partnerships with the Member States with a view to ensuring that information on national rules and procedures is also available through this one-stop shop.

In order to create a well functioning internal market it is of substantial importance that individuals and enterprises have knowledge about the rights that the internal market provides them. Företagarna is therefore positive to the initiative to develop support systems in these respects.

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