



Brussels, 5 October 2016  
BK/MKIW/HSLE/JBEN/cecl/

## Report on the Survey of EER Regions: **How to make life easier for SMEs?**

### Technical data

<b>Administrators:</b>	Marc Kiwitt, Hana Slepickova, John Bennett
<b>Date of launch:</b>	18 March 2016
<b>Date of closing:</b>	14 April 2016 [deadline extended subsequently to 31 May 2016]
<b>Dissemination:</b>	EER regions
<b>Number of respondents:</b>	11 respondents [turnout of 61%]
<b>List of respondents:</b>	<ol style="list-style-type: none"> <li>1. Land Brandenburg, DE (EER 2011)</li> <li>2. Kerry County, IE (EER 2011)</li> <li>3. Region of Murcia, ES (EER 2011)</li> <li>4. Catalonia, ES (EER 2012)</li> <li>5. Helsinki-Uusimaa, FI (EER 2012)</li> <li>6. Styria, AT (EER 2013)</li> <li>7. Flanders, BE (EER 2014)</li> <li>8. Northern Ireland (EER 2015)</li> <li>9. Valencia Region (EER 2015)</li> <li>10. Glasgow (EER 2016)</li> <li>11. Małopolska (EER 2016)</li> </ol>
<b>Regions that have not responded to the survey</b>	<ul style="list-style-type: none"> <li>– Trnava Self-Governing Region, SK (EER 2012)</li> <li>– Hauts-de-France, FR (EER 2013)</li> <li>– Southern Denmark, DK (EER 2013)</li> <li>– Marche Region, IT (EER 2014)</li> <li>– Noord Brabant, NL (EER 2014)</li> <li>– Lisbon, PT (EER 2015)</li> <li>– Lombardy Region, IT (EER 2016)</li> </ul>

### ➤ **Policy areas addressed in the survey:**

1. Access of SMEs to public procurement
2. Value-added tax (VAT)
3. Opening up the Single Market for services
4. Other possible priority areas:
  - Consumer rights
  - Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH)
  - Trade statistics
  - Participation of SMEs in ERDF funded projects
  - Additional areas identified by the respondents

## **Introduction**

### **➤ Why did we consult the EER regions?**

As pioneers in the area of SME and entrepreneurship support policy, the winners of the EER award are particularly well prepared to contribute expertise from the regional and local level to the CoR's work in the area of Better Regulation. Several EER regions have already implemented measures of administrative and regulatory simplification as part of their EER action plans and provided topical feedback on individual REFIT measures. Their input can help ensure that the actual needs of the actors in regional and local business ecosystems are fully taken into account in the ongoing working process on Smart Regulation for SMEs.

Moreover, an EER contribution to the REFIT exercise can serve to further promote the EER regions as European network of excellence in entrepreneurial policy by increasing their visibility towards EU institutions and Member States.

### **➤ Background information on the EER initiative**

The Committee of the Regions launched the European Entrepreneurial Region (EER) scheme in 2009 in order to identify and reward EU regions with outstanding future-oriented entrepreneurial policy strategies. Awarded regions are selected ex-ante on the basis of their commitment to an ambitious, forward-looking and sustainable action plan aimed at mainstreaming the principles of the Small Business Act for Europe on the regional level, while demonstrating optimal use of EU and other public funding. During their award year, the EER regions regularly report back on the implementation of their entrepreneurial policy strategy to the Committee of the Regions. After the completion of each region's EER year, a jury delegation composed of CoR Members and experts from the European Commission, other institutions and social partners carries out an ex-post evaluation mission in order to verify the progress made and, where necessary, issue policy recommendations to the region.

Eighteen regions had earned the EER label by the date of the survey:

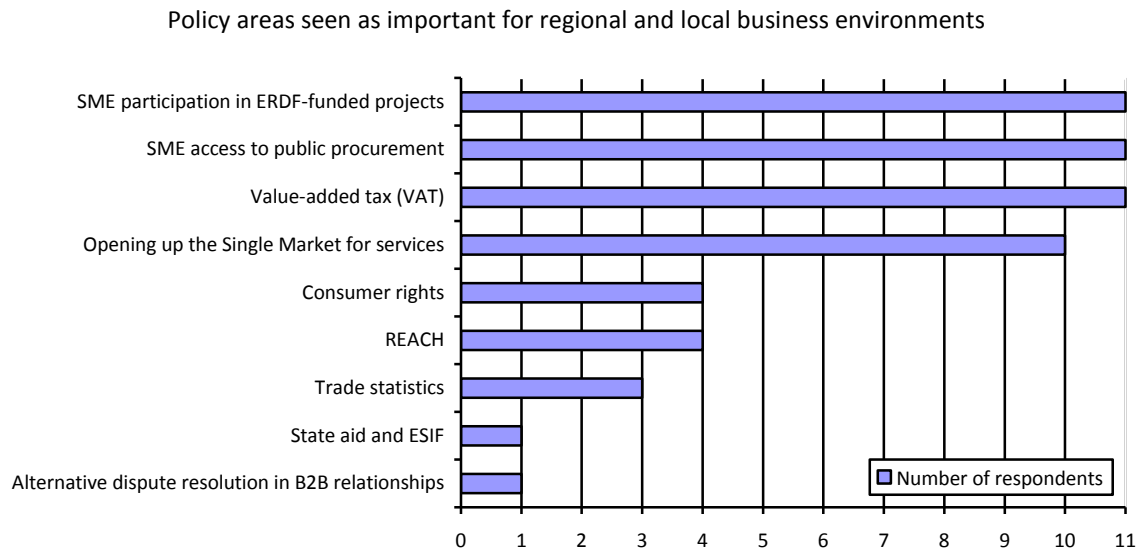
- 2011: Brandenburg (Germany), County Kerry (Ireland), Murcia Region (Spain);
- 2012: Catalonia (Spain), Helsinki-Uusimaa (Finland), Trnava Region (Slovak Republic);
- 2013: Nord-Pas de Calais (France), Southern Denmark, Styria (Austria);
- 2014: Marche (Italy), Flanders (Belgium), North Brabant (Netherlands);
- 2015: Lisbon (Portugal), Northern Ireland (United Kingdom), Valencian Region (Spain);
- 2016: Glasgow (United Kingdom), Lombardy (Italy) and Małopolska (Poland).

Three additional EU regions – Extremadura (Spain), Lower Austria, and Western Greece – were awarded the EER 2017 label on 15 June 2016.

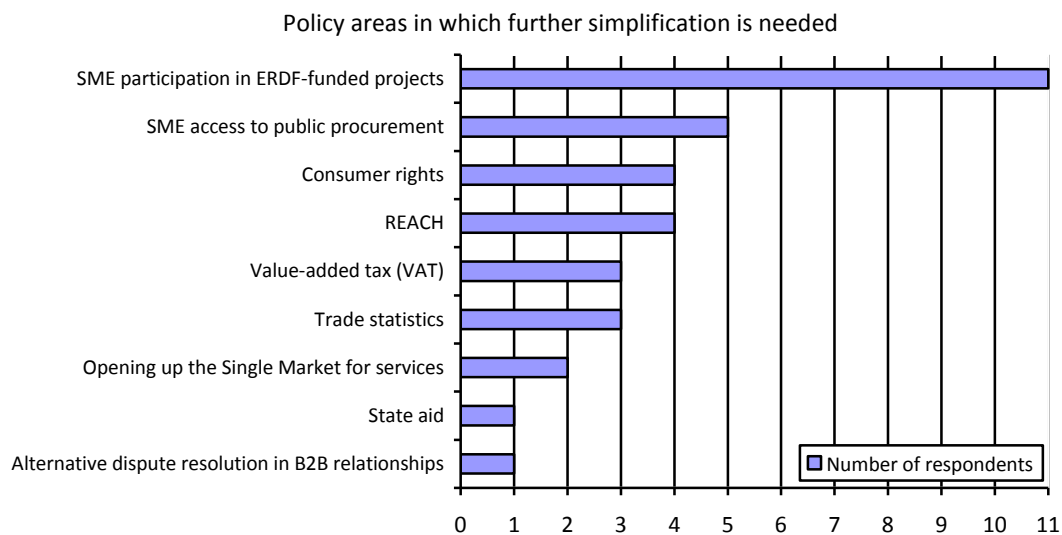
## Results of the consultation

### ➤ Priority areas identified through the consultation

The following areas have been identified by respondents as particularly important for the business environment in their region or city:



Considering only those areas for which respondents indicate that the degree of simplification introduced through existing regulation is not yet sufficient, or which they identify as priority areas for further simplification, the following picture emerges:



Thus, participation of SMEs in ERDF funded project is clearly identified as the single priority area for which all respondents see a substantial need for further simplification.

Access of SMEs to public procurement, consumer rights, and REACH are also considered as important areas for further simplification by several respondents.

While most respondents agree that the areas of VAT and opening up the Single Market for services are also of importance for local and regional business, a majority of them consider that the simplification achieved through existing regulation is sufficient on the whole.

### ➤ **Public procurement**

Facilitating access of SMEs to public procurement has been identified as important for regional and local business environments by all respondents. Respondents from Murcia Region, Helsinki-Uusimaa, Northern Ireland, Glasgow and Małopolska indicate that the degree of simplification that will be introduced through the new Directives and the European Single Procurement Document may not yet be sufficient to ensure SME-friendly procurement rules.

Among possible measures to make life easier for SMEs, the creation of an exemption for certain categories of **ERDF-funded public-private innovation projects** from public procurement rules would be seen as a significant improvement by ten out of eleven respondents. Respondents from **Styria** further point out that, without this type of exemptions, the actual engagement and involvement of SMEs in ERDF-funded projects may be put at risk. Eight respondents would consider an **extension of the use of the existing Internal Market Information System in cross-border procurement** as a significant improvement.

Regarding regulatory obstacles linked to public procurement, respondents from **Brandenburg** and **Styria** point out to Simplified Cost Options (SCO) as an area where burden should be further reduced. The relation between Simplified Cost Options (SCO) in ESIF and Public Procurement / Public Procurement Audit is seen as quite unclear, which can hinder the use of SCO by regional authorities. Moreover, SCO in ESIF may not be used in cases where an operation is exclusively implemented through public procurement (Art. 67.4 CPR). The scope of simplification by use of SCO is thereby reduced.

In the field of ESIF support, respondents from Brandenburg and Styria identify the area of public procurement as the one with the highest error rate within the ERDF managing authorities and their intermediate bodies, causing extensive financial corrections, which also harm enterprises as beneficiaries of ESIF. This might result from the complexity of rules and the variety of indeterminate legal concepts in public procurement:

- On the one hand, there is a large insecurity among regional authorities, which results from the risk that their own interpretations concerning the selection of the right procedure may be

different from the interpretation of audit authorities. Also, in cases where an established legal interpretation has changed, audit authorities tend to use the new legal interpretation in a retroactive way. This type of insecurity leads to a higher risk of error and to negative financial consequences for public and private beneficiaries. Indeterminate legal concepts should be avoided, and interpretation of rules in a retroactive way should be stopped.

- On the other hand, public procurement in the context of ESIF funding faces difficulties that result from different sets of rules that are in place: There are the public procurement rules deriving from EU-law, which are – above the threshold - valid for all Member States. In addition, there are also differing national public procurement rules that often have existed by far longer than EU rules: above the threshold, these rules are valid on top of the EU-rules; below the threshold these are the only valid rules. Problems result where Commission and ESIF audit authorities also audit the (differing) national rules and sanction detected errors from the national legal set by financial corrections in ESIF. This leads to a higher risk of error and financial loss in the context of ESIF in Member States with stricter national requirements for public procurement. This seems neither justified nor proportionate.

As a possible solution, respondents suggest that Commission and ESIF audit authorities should refrain from auditing and sanctioning errors concerning possible violations of originally national rules that do not derive from and/or go beyond EU law. These violations should be audited and sanctioned exclusively by national or regional audit bodies (not including the ESIF audit authority) and courts. When auditing public procurement in ESIF, Commission and ESIF audit authorities should limit themselves to the implemented EU-rules above the threshold.

The submission from **Malopolska** points to numerous issues that need to be solved by the parties concerned, including improved governance, simplification of procedures, and better implementation of electronic tools in public procurement. At the national level, SME access to public procurement should be facilitated by alleviating administrative burden, setting proportionate qualification levels and financial requirements. Entrepreneurs also point out late payments by contracting authorities and excessive requirements for financial guarantees. In relation to public procurement rules, the national level in Poland should consider value for money rather than merely the price when identifying the economically most advantageous offer, in order to allow contracting authorities to take account of various elements, such as quality, technical merit, functional characteristics, running costs, cost-effectiveness, after-sales service and technical assistance etc. This would give contracting authorities the opportunity to evaluate not only the direct costs of a purchase, but also its life-cycle costs.

## ➤ **Value-added tax (VAT)**

SME-friendly rules in the area of VAT have been identified as important for regional and local business environments by all respondents. Respondents from Brandenburg, Flanders and Małopolska consider that the degree of harmonization and simplification already introduced through the existing VAT directive may not yet be sufficient.

With regard to options for further simplification, ten out of eleven respondents agree that simplifying rules and procedures linked to **different VAT regimes in cross-border commerce of goods and services** would constitute a significant improvement. Moreover, nine respondents would consider an **extension of the current mini One Stop Shop principle** for telecommunications, broadcasting and electronic services to other distance sales of goods and services as a significant improvement. Eight respondents would see the **introduction of a common EU cross-border VAT threshold** (a level of cross-border sales below which VAT wouldn't be applied) favourably.

In addition, respondents from **Brandenburg** point out the need to decrease VAT compliance costs for SMEs through the following measures:

- facilitation of tax administration through a stronger harmonization of VAT, e.g. binding guidelines for the categorization of transactions: regular, reduced or zero VAT rate;
- reduction of administrative burden such as reporting requirements, deadlines, record retention periods etc.;
- general simplification especially for companies with cross-border-transactions.

Respondents from **Catalonia** identify rules concerning unpaid VAT recovery, unreasonable billing requirements, and long terms for input VAT returns, as well as the administrative practice related to the return proceedings, as main obstacles in the area of VAT.

## ➤ **Opening up the Single Market for services**

SME-friendly rules in the Single Market for services are seen as centrally importance for the business environment in regions or cities by all respondents with the exception of Glasgow. However, most of them agree that the degree of burden reduction already introduced through the existing Services Directive is sufficient to ensure SME-friendly rules. Only respondents from Flanders and Małopolska point to a need for further simplification in this area.

Among options for further simplification, nine respondents would consider the **creation of a services passport** with a harmonised notification form and an electronic document repository as a significant improvement. The lightening of **regulatory barriers and restrictions for multi-disciplinary business services** would be seen as an improvement by eight respondents.

## ➤ Other priority areas

All eleven respondents agree that **participation of SMEs in ERDF-funded projects** is a priority area for further simplification aiming to improve the regional or local business environment.

In this regard, respondents from **Catalonia** suggest that ERDF rules could be redefined by aligning them with the Horizon 2020 scheme, to help foster innovation among SMEs.

Respondents from **Brandenburg** add that the focus shouldn't be only on ERDF but on all ESIF, since all of them are relevant for SMEs. When screening the rules for ESIF in the context of better regulation, it is very important not to stop at the level of ESIF regulations, but also to include the delegated and implementing acts, as well as the numerous and often extensive Commission guidance notes. Whereas the guidance notes have officially no legally binding status, they set the scene for the auditors and thereby become soft law for all regional authorities. Manuals and instructions given from the regional authorities to beneficiaries (occasionally titled as "gold plating") often don't have their base in regulations or other legal acts, but in those guidance notes and in the experiences with the way auditors use them.

Respondents from **Styria** emphasize that they see the simplification of future ERDF rules as a priority area for the period of 2014-2020 and beyond.

Rules, regulation schemes and legal norms should be harmonized for all European Funds (ERDF, Horizon 2020, and all action programmes on European level). Currently, integrating regional and local SMEs into activities that are co-financed by the ERDF constitutes a large challenge for both project partners and applicants. The complex administration of projects and increasing financial risks for the companies and beneficiaries lead to a reduction in commitment and engagement. Differences in the interpretation of rules between the involved authorities, as well as audit efforts and requirements decrease legal security and lead to a loss of confidence between all the players at all levels. Aims of supporting regional innovation and fostering the economy through ecological and economic renewal can therefore be adversely affected.

Simplification efforts should lighten the regulatory burden and provide assistance to the regional and local authorities in the future scheduling and implementation of their strategies and programmes. Ex-post changes of rules, as well as diverging interpretations of audit authorities, should be prevented in all cases. Extensive guiding notes – often without legal status – and the overflowing number documents contribute to the significant administrative burden.

Respondents from **Flanders** underline that simplification and lowering administrative burden related to ERDF should take place not only at the project level, but also at the programme level.

Respondents from four regions (Brandenburg, Catalonia, Flanders, Valencia) have identified the **Consumer Rights directive** as well as the Regulation on the Registration, Evaluation,

Authorisation and Restriction of Chemicals (**REACH**) as two further priority areas for regulatory simplification.

In this respect, respondents from **Flanders** underline that the Consumer Rights Directive (2011/83/EU) is not included in the REFIT programme. A possible simplification of the applicable regulatory framework could have a positive impact on SME growth.

Three respondents (Brandenburg, Glasgow, and Valencia) have identified **reporting requirements on trade statistics (Intrastat)** as a priority for further action.

Individual respondents see a need for further simplification in areas not explicitly included in the survey. Thus, respondents from Brandenburg indicate that the alleged conflict between EU Regional Policy and EU Competition Policy should be solved by **excluding ESIF from EU-state aid investigation**. They point out that ESIF funding constitutes an intentional distortion of EU competition, which aims to strengthen economic, social and territorial cohesion. ESIF Regulations therefore already differentiate between categories of regions according to their development with consequences for allocation of ESIF -means and admitted co-financing rates, but also for the thematic objectives and investment priorities that can be chosen, as well as for the scope of support. Additional rules deemed necessary from a competition policy point of view should be implemented directly in ESIF regulations.

As a consequence, funding for enterprises in the context of EU Cohesion policy would become less complicated and risky and more transparent for beneficiaries and regional administrations. Thus, the tendency to avoid funding of enterprises in order to avoid state aid procedures would be mitigated, and the combination of state aid free EU funds such as Horizon2020 with ESIF – and the fostering of synergies between them – would become by far easier.

Respondents from Flanders point out that the use of **alternative dispute resolution (ADR) in B2B relationships** is still too limited. The ADR situation varies a lot between the Member States and is therefore not systematically efficient. The EU directive on alternative dispute resolution for consumer disputes (2013/11/EU) further aims to improve consumer protection in this area.

According to the respondents, traders (especially SMEs or self-employed workers) tend not to know of ADR and therefore do not use it. Consequently, like consumers, traders limit their legal proceedings to the most important disputes and often find it easier to give up and lose a commercial relationship. Moreover, economic law mostly focuses on the weakest party, which is the consumer. It is therefore important to inform and convince traders that ADR can be useful for them (faster, more efficient, less expensive).



## Annex: Questionnaire submitted to the EER Regions

1. Access of SMEs to public procurement	
<b>Principal EU legislation</b>	<a href="#">Directive 2014/24/EU</a> of 26 February 2014 on Public Procurement <a href="#">Directive 2014/25/EU</a> of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors. <a href="#">Commission Implementing Regulation 2016/7/EU</a> of 5 January 2016 establishing the European Single Procurement Document
<p>The new Directives, which will apply from 18 April 2016, aim to simplify public procurement procedures and make them more flexible. Public purchasers will be better able to negotiate the terms of contracts with companies, minimum deadlines for procedures will be shorter, and only winning companies need to submit full documentation proving that they qualify for a contract.</p> <p>The European Single Procurement Document will simplify the access of businesses to cross-border tendering procedures and reduce burden for SMEs participating in national public procurement processes by allowing companies to self-declare that they fulfil the required conditions and submit the necessary documentation only when they are selected for a contract.</p>	

Please reply to the following statements by selecting one of the options to the right:	
<i>"SME-friendly rules in the area of public procurement are of central importance for the business environment in my region or city."</i>	<input type="checkbox"/> Fully agree <input type="checkbox"/> Mostly agree <input type="checkbox"/> Somewhat disagree <input type="checkbox"/> Do not agree at all
<i>"The degree of simplification that will be introduced through the new Directives and the European Single Procurement Document can be expected to be sufficient to ensure SME-friendly procurement rules."</i>	<input type="checkbox"/> Fully agree <input type="checkbox"/> Mostly agree <input type="checkbox"/> Somewhat disagree <input type="checkbox"/> Do not agree at all
<i>"Extending the use of the existing Internal Market Information System in cross-border procurement would constitute a significant improvement for SMEs in my territory."</i>	<input type="checkbox"/> Fully agree <input type="checkbox"/> Mostly agree <input type="checkbox"/> Somewhat disagree <input type="checkbox"/> Do not agree at all
<i>"Creating an exemption for certain categories of ERDF-funded public-private innovation projects from public procurement rules would constitute a significant improvement for SMEs in my territory."</i>	<input type="checkbox"/> Fully agree <input type="checkbox"/> Mostly agree <input type="checkbox"/> Somewhat disagree <input type="checkbox"/> Do not agree at all
<i>"Regional and local authorities are actively participating in the implementation process of these directives in my Member State."</i>	<input type="checkbox"/> Fully agree <input type="checkbox"/> Mostly agree <input type="checkbox"/> Somewhat disagree <input type="checkbox"/> Do not agree at all

Optional comments:
<ul style="list-style-type: none"> <li>▪ Main obstacles affecting SMEs in my territory related to public procurement rules</li> <li>▪ Examples of good practices implemented in my territory</li> <li>▪ Suggestions for further simplification of public procurement rules</li> </ul>

<b>2. Value-added tax (VAT)</b>	
<b>Principal EU legislation</b>	<a href="#">Directive 2006/112/EC</a> of 28 November 2006 on the common system of value added tax ("VAT Directive")
The VAT directive clarifies previous EU VAT legislation, laying down the rule for the common system of VAT in the EU. It includes rules concerning taxable persons and transactions, place of transaction, taxable amount, VAT rates, exemptions from VAT, right to deduct, and derogations.	

<b>Please reply to the following statements by selecting one of the options to the right:</b>	
<i>"SME-friendly rules in the area of VAT are of central importance for the business environment in my region or city."</i>	<input type="checkbox"/> Fully agree <input type="checkbox"/> Mostly agree <input type="checkbox"/> Somewhat disagree <input type="checkbox"/> Do not agree at all
<i>"The degree of harmonization and simplification already introduced through the existing VAT directive is sufficient to ensure SME-friendly VAT rules."</i>	<input type="checkbox"/> Fully agree <input type="checkbox"/> Mostly agree <input type="checkbox"/> Somewhat disagree <input type="checkbox"/> Do not agree at all
<i>"Simplifying rules and procedures linked to different VAT regimes in cross-border commerce of goods and services would constitute a significant improvement for SMEs in my region or city."</i>	<input type="checkbox"/> Fully agree <input type="checkbox"/> Mostly agree <input type="checkbox"/> Somewhat disagree <input type="checkbox"/> Do not agree at all
<i>"Introducing a cross-border VAT threshold (a level of cross-border sales below which VAT wouldn't be applied) would constitute a significant improvement for SMEs in my region or city."</i>	<input type="checkbox"/> Fully agree <input type="checkbox"/> Mostly agree <input type="checkbox"/> Somewhat disagree <input type="checkbox"/> Do not agree at all
<i>"Extending the current mini One Stop Shop principle for telecommunications, broadcasting and electronic services to other distance sales of goods and services would constitute a significant improvement for SMEs in my region or city."</i>	<input type="checkbox"/> Fully agree <input type="checkbox"/> Mostly agree <input type="checkbox"/> Somewhat disagree <input type="checkbox"/> Do not agree at all

<b>Optional comments:</b>
<ul style="list-style-type: none"> <li>▪ Main obstacles affecting SMEs in my region or city related to VAT rules</li> <li>▪ Examples of good practices implemented in my territory</li> <li>▪ Suggestions for further simplification of VAT rules</li> </ul>

<b>3. Opening up the Single Market for services</b>	
<b>Principal EU legislation</b>	<a href="#">Directive 2006/123/EC</a> of 12 December 2006 on services in the Internal Market ("Services Directive")
Implemented by all EU Member States in 2009, the Services Directive aims to remove barriers to trade, making it easier for businesses and consumers to provide or use services in the Single Market. Businesses benefit from easier establishment, easier provision of cross-border services, and simplified procedures and formalities.	

<b>Please reply to the following statements by selecting one of the options to the right:</b>	
<i>"SME-friendly rules in the Single Market for services are of central importance for the business environment in my region or city."</i>	<input type="checkbox"/> Fully agree <input type="checkbox"/> Mostly agree <input type="checkbox"/> Somewhat disagree <input type="checkbox"/> Do not agree at all
<i>"The degree of burden reduction already introduced through the existing Services Directive is sufficient to ensure SME-friendly rules in the Single Market for services."</i>	<input type="checkbox"/> Fully agree <input type="checkbox"/> Mostly agree <input type="checkbox"/> Somewhat disagree <input type="checkbox"/> Do not agree at all
<i>"Creating a services passport<sup>1</sup> would constitute a significant improvement for SMEs in my region or city that engage in cross-border provision or use of services."</i>	<input type="checkbox"/> Fully agree <input type="checkbox"/> Mostly agree <input type="checkbox"/> Somewhat disagree <input type="checkbox"/> Do not agree at all
<i>"Lightening regulatory barriers, such as diverging legal form and shareholding requirements, as well as restrictions for multi-disciplinary business services, would constitute a significant improvement for SMEs in my region or city."</i>	<input type="checkbox"/> Fully agree <input type="checkbox"/> Mostly agree <input type="checkbox"/> Somewhat disagree <input type="checkbox"/> Do not agree at all

<b>Optional comments:</b>
<ul style="list-style-type: none"> <li>▪ Main obstacles affecting SMEs in my territory related to the Single Market for services</li> <li>▪ Examples of good practices implemented in my territory</li> <li>▪ Suggestions for further simplification concerning the Single Market for services</li> </ul>

<sup>1</sup> The Commission intends to introduce a services passport with a harmonised notification form and an electronic document repository, in order to increase certainty and reduce barriers for service providers who want to access other EU markets.

#### 4. Other priority areas in improving the regulatory environment for SMEs

**Which of the following areas of EU law do you consider as priorities for further simplification in order to improve the business environment in your region or city?**

<p><a href="#">Directive 2011/83/EU</a> of 25 October 2011 on Consumer Rights Covering, among others, distance contracts and contracts negotiated away from business premises, the Directive on Consumer Rights aims to create a balance between a high level of consumer protection and the competitiveness of enterprises. Member States had to transpose the Directive into national laws by 13 December 2013 and apply these laws from 13 June 2014.</p>	<input type="checkbox"/>
<p><a href="#">Regulation EC/2006/1907</a> of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) REACH aims to improve the protection of human health and the environment through better and earlier identification of the properties of chemical substances through the registration, evaluation, authorisation and restriction of chemicals. REACH also aims to enhance innovation and competitiveness of the EU chemicals industry.</p>	<input type="checkbox"/>
<p><a href="#">Regulation EC/2004/638</a> of 31 March 2004 on Community statistics relating to the trading of goods between Member States (and <a href="#">Regulation EC/2009/222</a> amending Regulation EC/2004/638) In order to produce trade statistics ('Intrastat'), enterprises have to report on their imports and exports of goods within the EU. The EU allows Member States to increase reporting thresholds, as long as the national statistics transmitted to the Commission cover the value of at least 97% of dispatches and at least 95% of arrivals, reducing the number of reporting enterprises by a third.</p>	<input type="checkbox"/>
<p><u>Participation of SMEs in ERDF funded projects</u> Complex administrative and financial procedures, differences in interpretation of rules among managing authorities, auditors and controllers at different levels, audit requirements and execution costs from ERDF programmes can discourage SMEs from proposing actions financed by ERDF subsidies, as benefits can be perceived as being outweighed by the costs.</p>	<input type="checkbox"/>
<p><u>Other areas</u> [Please specify:]</p>	<input type="checkbox"/>

#### Optional comments:

- Main obstacles affecting SMEs in my territory in areas listed above
- Examples of good practices implemented in my territory
- Suggestions for further simplification of rules in areas listed above