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CCBE COMMENTS ON THE "SMALL BUSINESS ACT" FOR EUROPE

Conseil des barreaux européens – Council of Bars and Law Societies of Europe
association internationale sans but lucratif

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The Council of Bars and Law Societies of Europe (CCBE) represents more than 700,000 European lawyers through its member bars and law societies of the European Union and the European Economic Area. The CCBE responds regularly on behalf of its members on policy issues which affect European citizens and lawyers.

On 25 June 2008, the European Commission issued a Communication to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions in favour of the development of small and medium-sized enterprises (SMEs) within the European Union

The CCBE welcomes the adoption of the Small Business Act by the European Commission which shows the willingness of EU institutions to create a legal and administrative framework encouraging growth and competitiveness of SMEs.

The CCBE welcomes the ten principles mentioned in the Communication of the Commission which should promote development of SMEs in Europe. The CCBE would also like to support the legislative action plan proposed by the Commission and looks forward to concrete measures to be adopted under the Small Business Act.

The CCBE Company Law Committee would like to participate in the reflection of EU institutions on SMEs. Lawyers are indeed privileged partners of SMEs and have a good knowledge of the practical problems they face.

Therefore, the CCBE would like to submit the following proposals to the Commission and EU institutions which could be followed in the framework of the measures which will be adopted under the Small Business Act.

1. Develop entrepreneurship through education and training

The CCBE would like to insist on the need to develop the entrepreneurial spirit within European citizens from their youngest age. The European educational system must participate in this common goal. It is therefore essential that the initial training given within Member States includes programmes of education on the creation and management of enterprises, and in particular law.

The study of law within EU countries is very often reserved to those willing to become legal professionals. Yet, the increasing complexity of the legal environment requires that the study of law be opened to the youngest and not to reserve it to higher education.

2. Encourage the creation of true "points of single contacts"

The Small Business Act underlines the importance of the role that public administrations could play to encourage the development of SMEs. In this respect, the Commission is favourable to creating a "point of single contacts" which would increase the quality of service rendered to SMEs, reduce the burden of red tape and the costs and time related to it, and to offer more legal certainty.

The CCBE supports the proposal of the European Commission in this regard. However, it proposes that this "point of single contacts" be a true administrative partner made out of representatives of all public administrations. The "point of single contacts" would also provide SMEs with advice and support and its positions would commit the whole administration, including the courts.

Lawyers could participate in these "point of single contacts" by offering legal advice to SMEs, therefore facilitating access to law.

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24.10.2008

3. Facilitate the creation of enterprises and financing of SMEs

The setting up of a business can be a long journey for its founders who have to face numerous practical difficulties mentioned in the Small Business Act. The CCBE shares the analysis of the Commission on the need to help SMEs to establish themselves and, in particular, to find their sources of finance.

In this respect, the CCBE proposes that SMEs benefit from true help in the search for sources of finance. This help could be given by a body specially dedicated to that end which would accompany the founders in their search for investors. This body could also help the founders to establish the first business plan. SMEs could then submit their business plan during their search of external financing sources, which would become easier.

The CCBE is aware that the lack of financing is one of the main hindrances to the development of SMEs and leads in some cases to bankruptcy. Yet, in some Member States, bankruptcy of a company leads to the prosecution of partners who accepted to finance it. It is therefore necessary that the partners of SMEs who accept to finance its development are not liable in case of bankruptcy. Third parties (banks, investment funds, business angels, etc.) should be encouraged to finance SMEs by ensuring that they would not be held liable in case of bankruptcy of the firm.

Besides, bank financing represents another important source for SMEs. It is proposed to create a distinct label for banks which commit to financing SMEs.

4. Creation of a European registers of companies

In the framework of commercial relations, SMEs need to have reliable legal and financial information on the co-contracting parties, especially if they are from other Member States. This information prevents them from concluding commercial links with insolvent partners.

Therefore the CCBE believes that the creation of a European register of companies would enable SMEs to meet that objective and would be useful to encourage the development of SMEs at EU level.

The CCBE hopes that the above proposals above would be considered by EU institutions when they adopt implementing measures for the Communication of the Commission.