

Chapter 84

Critical Review of SME Regulation Optimization in Serbia: A Reflection on Harmonization with the EU Acquis

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ABSTRACT

The European Union (EU) and the Republic of Serbia have recognized the importance of SMEs and are developing accordingly the institutional framework of this sector. In the process of EU accession, Serbia has to fulfil political, economic and legal requirements by implementing systemic reforms of its legal system in order to align it with the EU acquis. Some of these requirements have a direct or indirect impact on SME regulations, to which our chapter has been dedicated within a series of our papers on developing the SME regulatory framework. This paper will try to present the importance of innovating legal development of these companies. Furthermore, modern concepts will be introduced together with very important tools of legal forms of SME organization. The intention is to clearly define specific legal goals of SMEs, expressed through targeted legal forms. The modern regulatory framework relating to SMEs should combine the existing solid theoretical base and innovative models from the practice.

INTRODUCTION

The purpose of this chapter is to comparably examine the institutional framework and process that optimizes company law through the adoption of more uniform regulatory models and laws compatible with a policy agreed at a multilateral level of the European Union (EU). The constituent premise is that development of small and medium enterprises (SMEs) can benefit from this process. Given that 99% of all forms of businesses in the EU are SMEs, which provide 67% of jobs and another 85% in newly

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created businesses, the EU therefore strongly encourages entrepreneurship and SME development (European Commission, 2016a).

Many studies highlight the value of examining legal, regulatory and administrative environment deemed favorable for SMEs. For example OECD (2004) study, featured, *inter alia*, the following:

- Property rights are clearly recognized;
- Contracts are easily enforced;
- A simple, transparent and low-compliance-cost tax system is operational and it is perceived as fair;
- Businesses are able to register with authorities through a simple and inexpensive system, preferably by remote access through the Internet;
- Business licensing requirements are minimized, and when they are enforced, the objective is to safeguard health and safety of consumers and labor rather than only being a source of revenue for local and/or central government;
- Labor regulations are balanced and flexible, protecting the rights of labor and the firm equally;
- SMEs, whether they are exporting or importing, interact with a streamlined customs administration that is efficient, simple and transparent;
- Financial sector regulations (banking, insurance, leasing) recognize SME constraints and provide legal and regulatory instruments that enable commonly available SME assets to be used as collateral;
- Public administrators at local levels appreciate entrepreneurs as contributors to economic growth, treat them fairly and are committed to limiting corruption to a minimum;
- Legislation and regulation is gender insensitive, rule of law and rules of the game apply equally to men and women;
- SMEs can easily set up and join membership organizations;
- Bankruptcy legislation does not impose unduly high penalties on the entrepreneur or the SME.

Clearly, in the field of the administrative burdens such as registration costs, efficiency of commercial courts and required permits it is recommendable to reduce the paperwork and cost involved in setting up SMEs.

Following a brief presentation of the EU approach to SME development and Serbia's progress (European Commission, 2016c), in this field the main context of this chapter is to examine the impact of some unique important principles of company law on SME growth and development. Part of the author's approach is also to critically analyze the most significant facilitating and restrictive factors as challenges or concerns for SMEs in both EU and Serbia. Consequently, the chapter will examine rewards and challenges associated with SME regulatory optimization and harmonization. To enhance this chapter, the author uses the comparative scientific method coupled with logical-axiological research and normative theory of law.

Following the above described content, the chapter discussion will present future research directions and is followed with a conclusion.

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