



BOSMIP III SEMINAR
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Morning session I

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- I. Why Europe is important for our enterprises ?

- II. SME at the heart of the EU-policy : the Small Business Act (SBA) – THINK SMALL FIRST !

- II. Implementation of the Products Liability Directive in Belgium



- I. Why Europe is important for our enterprises ?
 - 1. 75 % of our national legislation derives from the EU (regulations and directives); (examples : Intellectual Property Law, Energy, Environment, Company Law, Consumer Protection)

 - 2. Enterprises benefit inter alia from :
 - A single market (facilitates export to other Member States)
 - Legal certainty (European legislation)



- Peace and stability
 - Fair competition
 - R & D framework –programmes especially for SME’s (financing)
 - Social dialogue
 - Control on Public finances through the Growth and Stability Pact
- Last but not least, Europe is the first commercial power in the world !

Therefore, Employers’ Federations should :

- Convince their Government to integrate EU-legislation and invite their members - the entrepreneurs - to be involved in the EU-decision making process

Business involvement in European matters is A MUST !



3. Importance for a country-candidate for EU-accession to implement the ‘acquis communautaire’ (about 95.000 pages of EU-legislation)

- This is a French term meaning, essentially, "the EU as it is" – in other words, the rights and obligations that EU countries share.
 - all the EU's treaties and laws, declarations and resolutions, international agreements on EU affairs and the judgments given by the Court of Justice;
 - Actions that EU governments take together in the area of the Common Foreign and Security Policy;
 - Candidate countries have to accept the "acquis" before they can join the EU, and make EU law part of their own national legislation.
- Enlargement Strategy Report 2010-2011 (European Commission):
 - Progress towards meeting the **political criteria** (Democracy, public administration, judicial system)
 - Concerning **economic criteria**, further progress towards establishing a functioning market economy has been limited :
 - Broad consensus on the fundamentals of a market economy;
 - Reforms to tackle the biggest structural shortcomings (labour market, public finance, privatisation);
 - Alignment of the legislation to European Standards;
 - Internal market (further efforts needed)



4. Results of the Belgian EU Presidency: success for enterprises!

- Agreement on financial supervision package
- Agreement on the creation of a permanent crisis resolution system to safeguard the euro’s stability
- Conclusions on the simplification of European research programme
- New guidelines for the employment policies of the member states
- Preparation of the UN Climate Change Conference in Cancún
- Launch of an enhanced cooperation procedure regarding EU Patent
- Free Trade Agreement (FTA) between the EU and South Korea
- Establishment of the European External Action Service
- Adoption of the EU budget for 2011
- ...



II. SMEs at the heart of the EU-Policy: the Small Business Act (SBA) – “Think Small First”!

- a. Content
- b. Practical examples - The SME-policy of FEB
- c. Tools and info in order to facilitate export for enterprises and SME’s in particular



II. SME’s at the heart of the EU-Policy : the SBA (Small Business Act)

- a. Content
- 2008 : The EU Commission launches the SBA
- Adoption of the SBA - action plan by the Council (December 2009)
- SBA : 10 principles :
 1. Create an environment in which entrepreneurs and family businesses can thrive and entrepreneurship is rewarded.
 2. Ensure that honest entrepreneurs who have faced bankruptcy quickly get a second chance
 3. Design rules according to the “Think Small first” principle
 4. Make public administrations responsive to SME’s needs
 5. Adapt public policy tools to SME needs : facilitate SMEs’ participation in public procurement and better use State Aid possibilities for SMEs’
 6. Facilitate SMEs’ access to finance and develop a legal and business environment supportive to timely payments in commercial transactions
 7. Help SMEs to benefit more from the opportunities offered by the Single Market
 8. Promoting the upgrading of skills in SMEs and all forms of innovation
 9. Enable SMEs to turn environmental challenges into opportunities
 10. Encourage and support SME’s to benefit from the growth of markets



- Every EU or national initiative has to comply with those principles.
- SBA applies to independent companies (less than 250 employees = 99 %)
- Concrete actions : see http://e.europa.eu/enterprise/policies/sme/small-business-act/index_en.htm
- New legislative proposals introduced by SBA
 - European Private Company Statue (not approved yet)
 - Directive on lower VAT-tariffs : in force since 1/7/2009; member states can apply lower VAT-tariffs on local services (in Belgium : only for restaurants, except for drinks)
 - Late payments directive adapted in order to facilitate payments of Public authorities and BtoB payments (indemnity) (currently discussed in the European Parliament)



b. The SME-Policy of FEB

1) SME-Committee (structure)

- High level policy Committee (cfr. Other Policy Committees FEB : ex. Social, Legal, Economic ...)
- Members : representatives both of sectoral member Federations and enterprises. Chairman : SME-entrepreneur

2) Priorities

- Strive to reduce
 - Tax burden
 - Administrative burden (= major problem)
- Monitor and strive to improve access to finance



• Focus on :

- Promoting entrepreneurship
- Less, but better regulation
- R & D and innovation
- Guarantee fair competition
- Encourage SME's to go 'TRANSBORDER'
- Provide information via enterprise Europe Network
- Support Internal Market (directive 'Services in the Internal market, European Private Company Statute)
- Support and info on EU-framework programmes for R & D (ex. Promoting Eco-Innovation)
- Advocating SBA
- Advocating late payments directive
- Promoting E-invoicing



3) Follow up of the crisis

SMEs faced severe liquidity shortage. Result of drastic fall in demand (2008) preceded by period of high labour cost and raw material cost (2007)

Actions (examples)

- Monitor access to credit (Creation of contactpoint FEB – financial sector/federation Febelfin)
- Facilitated access to bank credit by strengthening systems of public guarantees
- Improve access to credit insurance
 - Abolish tax on credit insurance
 - Establish complementary credit insurance with public guarantee (Belgacap)



c) **TOOLS and INFO** in order to facilitate export for enterprises and SME's in particular

1. FEB model contracts (ex. Distribution agreements)
2. Through FEB's publications : info on latest legislative developments both at national and European level
3. Facilitating international trade : the International Chamber of Commerce (ICC – Paris)
 - ICC : founded in 1919, the world business organisation; speaks on behalf of enterprises from all sectors in every part of the world (website : www.iccwbo.org)
 - Mission : promote trade and investment across frontiers (close working relationship with United Nations, WTO and G8)



- Main activities : rules-setting, arbitration and policy
- Main services : ICC International Court of Arbitration (world's leading arbitral institution)
- Worldwide network of Chambers of Commerce (ICC – Belgium was co-founded by FEB); ICC = represented in 130 countries (ex. also Russia, Romania, Serbia, Ukraine, Turkey ...)
- ICC-publications facilitate international trade (ex) :
 - Rules for letters of credit;
 - Uniform customs and Practice for Documentary credits (UCP 600, accepted worldwide),
 - Incoterms (standard trading terms)
 - Model contracts (ex. Confidentiality clause, sales contract, Model Commercial Agency Contract, Model International Franchising Contract)
 - ICC provides topical reference works such as Fighting Corruption and Private Commercial Bribery



III. TOOL FOR PRACTICAL USE :
A CONCRETE EXAMPLE :

IMPLEMENTING THE PRODUCTS LIABILITY DIRECTIVE
IN BELGIUM – ACTION FEB



The products liability directive (25/7/1985)

1. Preliminary remarks

- Harmonization of laws : not always easy through directives; major reasons:
 - Options left to Member States
 - Minimum clauses (especially in consumer and environmental areas)
 - However, Member States can't create new barriers to trade or act to protect their own national interests
- To the contrary, EU-regulations guarantee full harmonization
 - Directly applicable
- Options and minimum clauses can create DISTORTIONS between competitors



2. Why were producers so strongly opposed to the Commission's proposal ?

- 12 years of discussion before the directive was adopted
- Liability without fault : weakens the position of producers
- Before the directive, the defect of a product was defined according to the expected use of the product or the purpose for which it was purchased
- Most important innovation of the directive : the defectiveness of a product is determined according to the safety which a person is entitled to expect
- The directive was largely inspired by the American Strict Products Liability
- Since 1970, this system generated a current crisis in the USA regarding insurance availability and affordability



3. Major causes of the products liability crisis in the USA

- A strict, nearly absolute liability of the producer
- Contingency fee system
- The 'loser pays' principle
- Trial by Jury (not legally trained)
- Allowance of punitive damages (public offense)
- Class action



**4. Main objectives of the directive :
harmonization and high level protection of victims**

- General Picture of Liability system
 - Strict liability (without fault) of the producer
 - Burden of proof on the victim (damage, defect and causal relationship)
 - Exoneration of the producers' liability in strict limited cases (ex. Product was stolen or counterfeited, development risks)
 - Liability limited in time (10 years)
 - Clauses limiting or excluding liability towards the victims are prohibited
 - High financial ceiling of liability (70 million €), but optional for the Member states
 - The 1985 directive excluded from its scope primary agricultural products (products of the soil, of stock farming, fisheries & game). Extension of liability to these products was optional for Member States. Since 1999 (BSE-crisis), the modified directive covers these products.



5. Framework of the products liability under the 1985 directive

- Products covered by the directive
- Who is liable ?
 - Producer
 - Any person who presents himself as a producer (ex. by putting his trademark on the product)
 - The supplier of a product (unless he informs the victim of the identity of the producer)
 - The european importer of a product
- Defectiveness of a product : criteria
- Damages covered
- The directive does not affect the rights of the victim according to national law (coexistence of both systems)



6. Focus on development risks

- Initial proposal of the Commission : the producer was liable for development risks
- Strong lobby from Unice (currently : Businesseurope) and its Member Federations (especially CBI, Medef and FEB) and the Insurers to avoid this extension of liability
- Arguments : High insurance premiums, problems of availability of insurance, hampers R&D and leads to loss of competitiveness of European industry



7. Successful lobby

- In accordance with the 1985 directive the producer of a defective product shall not be liable if he proves that the state of technical and scientific knowledge at the time when he put the product into circulation was not such as to enable the existence of the defect to be discovered
- The so-called 'development risk defence' was introduced at the request of European and national industry federations
- The extension of the producers liability to development risks became optional
- Option taken up by a few number of Member states :
 - In general : Finland, Luxemburg
 - Spain : only for food and medicinal products
 - Germany : only for medicinal products (existing legislation since 1976)
 - France : only for products derived from the human body



Conclusion

- Thanks to a strong lobby from the Business community, the directive has established a fair balance between access to remedy for the victims and the legitimate interests of industry

THANK YOU FOR YOUR ATTENTION

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