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NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee
Subject:	Omnibus IV Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directives 2014/65/EU and (EU) 2022/2557 as regards the extension of certain mitigating measures available for small and medium sized enterprises to small mid-cap enterprises and further simplifying measures - Final compromise text

Delegations will find enclosed the final compromise text on the Directive on small mid-caps.

ANNEX

2025/0131 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Directives 2014/65/EU and (EU) 2022/2557 as regards the extension of certain mitigating measures available for small and medium sized enterprises to small mid-cap enterprises *with a view to simplification*

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 53(1) ***and*** Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee,[1]

▌

Acting in accordance with the ordinary legislative procedure,

[1] OJ C , , p.

Whereas:

(1) In the political guidelines for the European Commission's 2024-2029 term[3], President von der Leyen set out a plan for the Union's sustainable prosperity and competitiveness. Making business easier and deepening the Single Market are among the plan's key priorities.

(2) The Commission's better regulation agenda[4] also supports the competitiveness of Union enterprises by aiming to ensure that Union laws deliver on their objectives at a minimum cost. In 2023, the Commission identified the need to rationalize and simplify reporting requirements for enterprises and administrations[5] and committed to reduce administrative burdens by 25%.

(3) On 12 September 2023, the Commission published the SME Relief Package[6], announcing its goal to help small and medium sized enterprises ('SMEs') compete and grow, by being attentive to the needs of enterprises that outgrow the thresholds of the SME definition[7], and those in the broader range of small mid-cap enterprises. Action 18 of this relief package announced that the Commission would 'develop a harmonised definition for small mid-cap enterprises, build a dataset based on such definition and assess possible measures to support these enterprises in their growth (including potential application in adapted form of certain measures favouring SMEs)'.

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3 https://commission.europa.eu/document/download/e6cd4328-673c-4e7a-8683-f63ffb2cf648_en?filename=Political%20Guidelines%202024-2029_EN.pdf

4 Better regulation: Joining forces to make better laws, COM(2021) 219 final, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2021:219:FIN

5 Long-term competitiveness of the EU: looking beyond 2030, COM(2023) 168 final, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52023DC0168

6 SME Relief Package (europa.eu). See also annex 3A to this report SME relief package policy tracker.

7 SMEs are defined as companies with under 250 employees, combined with an annual turnover up to 50 million euro or a balance sheet total up to 43 million - Recommendation 2003/361/EC - https://single-market-economy.ec.europa.eu/smes/sme-definition_en

(4) Enterprises outgrowing the SME definition – the ‘small mid-cap enterprises’ (‘SMCs’) – play a vital role in the Union’s economy ***and are key drivers of Union competitiveness, innovation and job creation***.[8] They are prominently present in industrial ecosystems that are key to the competitiveness of the Union and its technological sovereignty, in fields including electronics, aerospace and defence, energy, energy-intensive industries and health. Around 20% of all small mid-cap enterprises were SMEs three years earlier[9].

(5) Compared to SMEs, SMCs tend to demonstrate a higher pace of growth, and level of innovation and ***digitization***. Nevertheless, where administrative burden is concerned, they face similar challenges as SMEs, leading to a need for proportionality in legislation and for targeted support. To enable the smooth transition of SMEs into SMCs, it is important to address in a coherent manner the cliff-effect that may arise once they outgrow the segment of SMEs and are faced with rules that apply to large enterprises. ***In order to achieve the overarching objective of facilitating the operation of businesses and the internal market, with a particular focus on SMCs, two*** existing acts which provide for specific mitigating rules for SMEs should be ***adjusted. In particular, to make business easier for SMCs and reduce their administrative burden, those acts should be*** adapted to extend the scope of those provisions and include SMCs***, while ensuring that the ‘think small first’ principle continues to apply, including by maintaining proportionality and adequate protection of and targeted support for the smallest companies***. ***Such adjustments should not affect or reduce the scope, funding, or application of Union measures dedicated to SMEs, including specific provisions and budgetary allocations made available to them under Union law, including the Multiannual Financial Framework. The adjustments introduced by this Directive are limited to amendments to Directives 2014/65/EU and (EU) 2022/2557 and do not affect other Union legislation applicable to SMEs or to other categories of undertakings.***

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8 Study to map, measure and portray the EU mid-cap landscape - https://op.europa.eu/en/publication-detail/-/publication/ad5fdad5-6a33-11ed-b14f-01aa75ed71a1/language-en/format-PDF/source-277396461

9 https://www.esri.ie/system/files/publications/BKMNEXT429.pdf

(6) Directive 2014/65/EU[10] of the European Parliament and of the Council, contains certain provisions that aim at providing simplification or mitigating measures to SMEs. More specifically, those provisions aim at alleviating administrative burden and reducing or eliminating market entry barriers or draw Member States' attention to the benefits that SMEs derive from dedicated guidance, support and assistance. Directive (EU) 2022/2557 [11] of the European Parliament and the Council provides that Member States should support critical entities, including those that qualify as small or medium-sized enterprises, in strengthening their resilience. The Directive requires Member States to include in their resilience strategies a description of measures that are already in place at national level which aim to facilitate the implementation of the obligations of SMEs that were identified as critical entities.

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10 Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (recast) (OJ L 173, 12.6.2014, p. 349, ELI: http://data.europa.eu/eli/dir/2014/65/oj.)

11 Directive (EU) 2022/2557 of the European Parliament and of the Council of 14 December 2022 on the resilience of critical entities and repealing Council Directive 2008/114/EC (OJ L 333, 27.12.2022, p. 164, ELI: http://data.europa.eu/eli/dir/2022/2557/oj).

(7) ***For the purpose of the Omnibus IV package,*** SMCs should***,*** in principle***, be defined as enterprises that are not SMEs, that employ fewer than 1000 persons, and that either have an annual turnover not exceeding EUR 200 million or an annual balance sheet total not exceeding EUR 172 million, those numbers and amounts being calculated in accordance with points 1 and 3-6 of the Annex to that*** Commission ***Recommendation 2025/1099 of 21 May 2025. That scope covers*** enterprises that are up to ***four*** times the size of SMEs ***without extending to large mid-caps or large enterprises. References in this Directive to Commission Recommendation 2025/1099 of 21 May 2025 and Commission Recommendation 2003/361/EC*** should ***be understood as referring to the original version of those recommendations. To ensure a coherent and evidence-based approach to SMCs, the Commission should, within five years from the date of entry into force of this Directive, submit a report to the European Parliament and the Council on the review of the application of the SMC definition, on the implementation of the provisions of the directives amended by this Directive, including the impact on the reduction of administrative burden, and on competitiveness of SMCs, considering also economic, social and environmental aspects, where appropriate. As part of that review, the Commission should compile an overview of existing definitions of SMCs in Union legislative acts. The report should, in particular, focus on any need to review the thresholds defining SMCs in light of inflation, scope, and economic and market developments, with a view to considering further harmonisation of the application of the SMC definition across Union legislation, where appropriate. The report should also focus on the existing derogations, simplifications, exemptions and other preferential treatments granted to SMCs across the Union legislation, and should be accompanied***, where appropriate, ***by a legislative proposal***.

(8) Directive 2014/65/EU identifies a subcategory of multilateral trading facilities (‘MTF’) known as SME growth markets. Article 33 (3), point (a), of that Directive lays down specific conditions to ensure that those trading venues effectively benefit SMEs by facilitating their access to capital and the further development of specialist markets that cater for SMEs’ needs. That provision should be extended to include SMCs, to also allow those companies to access capital markets through those SME growth markets*, while still supporting SMEs and maintaining the existing approach in relation to them*.

(9) Directive (EU) 2022/2557 obliges the Member States to support critical entities that qualify as SMEs in strengthening their resilience. In doing so, Member States are to prevent excessive administrative burdens. To this purpose, Member States are to adopt strategies for enhancing the resilience of critical entities. Pursuant to Article 4 of that Directive, each strategy is to contain a description of measures that are already in place to facilitate the implementation of certain obligations by the SMEs that are identified as critical entities by the Member States. The scope of that provision should be extended to include SMCs, so that Member States should include a description of any facilitating measures for SMC in their strategies. ***Such measures should support compliance for SMEs and SMCs without undermining the objectives of that Directive.***

(9b) Since the objective of this Directive, namely to reduce the administrative burden for SMCs by extending to them mitigation measures that currently benefit SMEs, cannot be sufficiently achieved by the Member States but can rather, by reason of the scale or effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

(10) Directives 2014/65/EU and (EU) 2022/2557 should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 2014/65/EU

Directive 2014/65/EU is amended as follows:

(1) in Article 4(1), the following point (13a) is inserted:

‘(13a)‘small mid-cap enterprises’, ***or 'SMCs'*** for the purposes of this Directive, means companies that had an average market capitalisation equal to or higher than EUR 200 000 000 and lower than EUR 1 000 000 000 on the basis of end-year quotes for the previous three calendar years; ▌

(2) in Article 33(3), point (a) is replaced by the following:

‘(a) at least 50% of the issuers whose financial instruments are admitted to trading on the MTF are SMEs or SMCs or both, at the time when the MTF is registered as an SME growth market and in any calendar year thereafter;.’

Article 2

Amendment to Directive (EU) 2022/2557

▌ Directive (EU) 2022/2557 ***is amended as follows***:

‘(1) in Article 2, the following points are inserted:

(11) ‘small and medium-sized enterprises’ means enterprises as defined in the Annex to Commission Recommendation 2003/361/EC*;

(12) ‘small mid-cap enterprises’ means enterprises which are not micro, small and medium-sized enterprises, that employ fewer than 1000 persons, and either have an annual turnover not exceeding EUR 200 million or an annual balance sheet total not exceeding EUR 172 million, those numbers and amounts being calculated in accordance with points (1) and (3)-(6) of the Annex to Commission Recommendation 2025/1099 on the definition of small mid-cap enterprises**.

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* Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36, ELI: http://data.europa.eu/eli/reco/2003/361/oj).

(3) ** Commission ***Recommendation 2025/1099 of 21*** May 2025 concerning the definition of small mid-cap enterprises (***OJ L, 2025/1099, 28.5.2025, ELI: http://data.europa.eu/eli/reco/2025/1099/oj).***

(3) in Article 4(2), point (h) is replaced by the following:

▌

(h) a description of measures already in place which aim to facilitate the implementation of obligations under Chapter III of this Directive by small and medium-sized enterprises ▌ and by small mid-cap enterprises ▌ that the Member State in question has identified as critical entities. ▌

▌

Article 2a

Review

By ... [five years from the date of entry into force of this amending Directive], the Commission shall submit a report to the European Parliament and the Council on the review of the application of the SMC definition, as foreseen by Commission Recommendation 2025/1099 of 21 May 2025[12], on the implementation of the provisions of Directives 2014/65/EU and (EU) 2022/2557 as amended by this Directive, including the impact on the reduction of administrative burden, and on competitiveness of SMCs, considering also economic, social and environmental aspects, where appropriate. As part of that review, the Commission shall compile an overview of existing definitions of small mid-cap enterprises in Union legislative acts. The report shall in particular focus on any need to review the thresholds defining SMCs in light of inflation, scope, and economic and market developments, with a view to considering further harmonisation of the application of the SMC definition across Union legislation, where appropriate. The report shall also focus on the existing derogations, simplifications, exemptions and other preferential reatments granted to SMCs across the Union legislation. The report shall be accompanied, where appropriate, by a legislative proposal.

[12] Point 8 of Commission Recommendation of 21 May 2025 concerning the definition of small mid-cap enterprises OJ L, 2025/1099, 28.5.2025.

Article 3

Transposition

1. ***By … [15 months after the date of entry into force of this Directive],*** Member States shall adopt and publish ***the measures*** necessary to comply with this Directive. They shall ***immediately inform*** the Commission ***thereof***.

They shall apply those ***measures from … [15*** months and one day after ***the date of*** entry into force of this Directive].

When Member States adopt those ***measures***, they shall contain a reference to this Directive or ***shall*** be accompanied by such ▌ reference on the occasion of their official publication. ***The methods of making*** such reference ***shall be laid down by Member States***.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 4

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

Article 5

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*