



European Commission
Enterprise & Industry Directorate General

Report of the Expert Group

Think Small First –

Considering SME interests in policy-making
including the application of an ‘SME Test’

March 2009

Legal Notice

This project was conducted with national experts nominated by the national authorities of the EU Member States and EFTA/EEA countries within the framework of the Competitiveness and Innovation Programme.

Although the work has been carried out under the guidance of the Commission officials, the views expressed in this document do not necessarily represent the opinion of the European Commission.

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Executive Summary

In line with the “Think Small First” principle enshrined in the “Small Business Act” for Europe, the report of the expert group is an attempt to provide guidance to policy makers on how to better treat their SMEs or simply on how to “Think small first”. The report is a tool designed to help Member States with the implementation of the SBA for Europe.

The definition of the “Think Small First” principle implies that policy makers give full consideration to SMEs at the early policy development stage. Ideally rules impacting on business should be created from the SMEs point of view or in other words, SMEs should be considered by public authorities as being their “prime customers” as far as business regulation is concerned. The principle relies on the fact that “one size does not fit all” but a lighter touch approach can also be beneficial to larger businesses. Conversely, rules and procedures designed for large companies create disproportionate, if not unbearable burdens for SMEs as they lack the economies of scale.

The application of the “Think Small First” principle aims at ensuring that SMEs voices are heard, that their interests are taken on board by policy makers and that the business environment is favourable to the development of SMEs.

There is no exhaustive list of SME favourable practices since the “Think Small First” principle is not a rigid concept. On the contrary, innovative solutions to compensate the lack of resources of SMEs to participate in the design of the business environment, but also in fully and rightly exploiting it are needed. SMEs are competitive and innovative provided that they are allowed to do what they do best – their business.

The report presents concrete solutions underpinned by good practices from the Member States and the European Commission and is organised in four chapters as follows:

1. Listening to SMEs

Ideas about how to streamline the consultation process are presented. These include:

- The 3 months mandatory consultation period on proposed major legislation in Sweden;
- The work of the Division for Better Business Regulation in Denmark;
- The work of the CNSAE “Comité National pour la Simplification Administrative en faveur des Entreprises” in Luxembourg;
- The consultation of business associations in Slovenia ;
- The Small Firms Consultation Database in the UK;
- The public consultation website “Teeme koos” in Estonia;
- The consultation process in Hungary.

2. The SME Test

Regulatory Impact Assessments should include a specific evaluation of the impacts on SMEs. Good practices are considered to be:

- The Small Firms Impact Test (SFIT) in the UK;
- The regulatory impact assessments in Sweden.

3. Improving the relationship between SMEs and the administration through the application of the « only once » principle and one stop shops

Optimising the information flow from the business to the administration is a key element to simplify the life of SMEs. A variety of examples have been identified:

- The combination of “one stop shop” system in the Czech republic;
- The application of “only once” principle in Hungary;
- The ELENA – (Elektronischer Entgeltnachweis) in Germany;
- The Inter-Institutional Taxation Data Storage (TDS) in Lithuania;
- The “Osmotherly Guarantee” in the UK;
- The *Rescrit* and the *chèque emploi* in France;
- The Contribution Payment Centers (CPCs) in Bulgaria.

4. Providing legislative certainty for business through Common Commencement dates (CCDs)

Ensuring the start of legislation on a number of limited fixed dates and providing easy to digest early information about upcoming new rules is an innovative concept. A couple of Member States have been applying it:

- Common Commencement dates in the UK;
- Common Commencement dates in the Netherlands.

In each of the four areas the European Commission good practices have been described. These include:

- The various consultation mechanisms;
- The European Commission SME Envoy;
- The SME Test;
- Common commencement dates.

This project was conducted with national experts nominated by the national authorities of the EU Member States and EFTA/EEA countries within the framework of the Competitiveness and Innovation Programme. The report is a continuation of the work performed in the framework of the expert group “Models to Reduce Disproportionate Regulatory Burden on SMEs”¹, as well as the study “Application of the ‘Think Small First’ principle in EU legislation and programmes.”² The report is based on oral and written contributions by the experts and was compiled by the Commission.

¹ http://ec.europa.eu/enterprise/entrepreneurship/support_measures/regmod/index.htm

² http://ec.europa.eu/enterprise/entrepreneurship/think_small_first.htm

Introduction

Importance of SMEs in the EU economy

Small and medium size enterprises (SMEs)³ form the backbone of the European Union's (EU) economy. They account for 99 percent of European enterprises and generate about 58 percent of the EU's turnover, employing two thirds of the total private employment. In the last five years 80 percent of the new jobs were created by SMEs. They are a driver of innovation, competitiveness and growth and thus a key element in the Lisbon agenda. It is therefore important that regulation does not create disproportionate burdens on SMEs and that the interests of SMEs are preserved.

The impact regulations can have on SMEs

While the benefits of regulations tend to be rather evenly distributed over companies of different sizes, because of their smaller size and scarcer resources, SMEs can be affected by the costs of regulations more than their bigger competitors.

The expert group report "Models to reduce the disproportionate regulatory burden on SMEs" asserted that on average, where a big company spends one euro per employee to comply with a regulatory duty a medium-sized enterprise might have to spend around four Euros and small business up to ten Euros⁴.

SMEs may have limited scope for benefiting from economies of scale. For example, regulation requiring fixed cost investments (e.g. retailers required to provide facilities for customers to return end of life electronic equipment) could be relatively more expensive for SMEs than for their bigger competitors, when dividing its cost by production volume or the number of employees or simply because they will make less use of it. Moreover, SMEs generally find it more difficult and costly to access capital than larger businesses, thus making investments more expensive. SMEs are also more constrained in passing on any increase in costs to their customers as they generally do not directly influence market prices (in other words they are generally price takers).

Further, indirect costs can have a greater impact on SMEs than on large businesses. For example SMEs could be obliged to pay for external advisor expertise or invest in extra-training of staff to comply with new obligations since they might lack information or expertise in house or they may feel that it is cheaper or easier than following regulations on their own. This is particularly true for the environmental obligations. Possible changes in the market structure could also particularly affect SMEs competitiveness and even put them out of the business.⁵

Finally, it should be borne in mind that SMEs are an extremely heterogeneous group and, to the possible extent, policy makers need to be mindful of the differences between micro, small and medium-sized companies when pursuing its analysis.

³ SME definition: http://ec.europa.eu/enterprise/enterprise_policy/sme_definition/index_en.htm

⁴ Report of the expert group "Models to reduce the disproportional regulatory burden on SMEs" (http://ec.europa.eu/enterprise/entrepreneurship/support_measures/regmod/index.htm).

⁵ For more in-depth analysis of the problems affecting SMEs, please refer to the Impact Assessment of the SBA for Europe: http://ec.europa.eu/enterprise/entrepreneurship/docs/sba/SBA_IA.pdf

A ‘Small Business Act’ for Europe

The “Small Business Act for Europe” was adopted by the European Commission on 25 June 2008. It contains a set of common principles in ten different areas to make policies more SME friendly. The European Commission has also resolved to propose new legislation in four areas that affect SMEs in particular company law, taxes, competition and late payments.

The SBA for Europe proposes a genuine political partnership between the EU and the Member States reflecting the political willingness to recognise the central role of SMEs in the EU economy and to put in place for the first time a comprehensive policy framework for the EU and its Member States. At the heart of the SBA is the objective to achieve the best possible framework conditions for SMEs based on the application of the “Think Small First” principle.

The “Think Small First” principle and Better regulation

The application of the “Think Small First” principle and the models and tools for better regulation are closely interlinked. Applying “Think Small First” implies regulating better. It is largely recognised that SMEs are one of the prime beneficiaries of the better regulation initiatives⁶. The *Third strategic review of Better Regulation in the European Union*⁷ presents the progress in the field of simplification of legislative acts, administrative burdens reduction and regulatory impact assessments and their relevance for SMEs.

How is the “Think Small First” principle defined?

The definition of the “Think Small First” principle implies that policy makers give full consideration to SMEs at the early policy development stage. Ideally rules impacting on business should be created from the SMEs point of view or in other words, SMEs should be considered by public authorities as being their “prime customers” as far as business regulation is concerned. The principle relies on the fact that “one size does not fit all” but a lighter touch approach can also be beneficial to larger businesses. Conversely, rules and procedures designed for large companies create disproportionate, if not unbearable burdens for SMEs as they lack the economies of scale.

Designing policies and creating rules from the SMEs point of view would also seem logical since they represent the overwhelming majority of all businesses. Yet, this is far from being the case. Indeed, one could argue that it is much easier for public authorities to picture the business environment from the point of view of larger companies because of their greater visibility and access to Ministers and policy makers. Moreover, generally, larger companies would simply be able to mobilise more resources to comply with the burden imposed by regulation. Hence, the risk is to produce rules that create a disproportionate burden for SMEs, thus, hampering their competitiveness and innovation capacity and eventually damaging the European economy.

The application of the “Think Small First” principle comes as a solution to this situation by proposing practical solutions that would ensure that SMEs voices are heard, that their interests

⁶ http://ec.europa.eu/enterprise/regulation/better_regulation/index_en.htm

⁷ http://ec.europa.eu/governance/better_regulation/key_docs_en.htm#_br

are taken on board by policy makers and that the business environment is favourable to the development of SMEs.

There is no exhaustive list of solutions since the “Think Small First” principle is not a rigid concept. On the contrary, innovative solutions to compensate the lack of resources of SMEs to participate in the design of the business environment, but also in fully and rightly exploiting it are needed. SMEs are competitive and innovative provided that they are allowed to do what they do best – their business.

The purpose of this handbook is to provide guidance to policy makers on how to better treat their SMEs or simply on how to “think small first”. Four chapters presenting concrete solutions are proposed underpinned by good practices from the Member States and the European Commission. This report is a continuation of the work performed in the framework of the expert group “Models to Reduce Disproportionate Regulatory Burden on SMEs”, as well as the study “Application of the ‘Think Small First’ principle in EU legislation and programmes.”⁸

1 Listening to SMEs

The SBA text

The Commission will, and the Member States are invited to:

- consult stakeholders, including SME organisations for at least 8 weeks prior to making any legislative or administrative proposal that has an impact on businesses

It is widely recognised that policy makers should not shape new policy in a vacuum, ignoring the opinion of interested parties. Good practice dictates that systematically consulting SMEs on new proposals likely to affect their business environment is crucial, as it contributes to the development and improves the quality of the evidence when proposing a new regulation. It also facilitates the work of policy makers by giving them a better feel of the problems they need to tackle and the possible solutions that could be envisaged. In addition, consulting SMEs could constitute an important feedback mechanism on the effectiveness and efficiency of regulation.

Yet consulting small businesses is not an easy task and as a general rule, the smaller the business, the more difficult it is to consult them. A scattergun approach is unlikely to be successful. Running a small business is tough and few are likely to have the time to respond. Many rely on trade associations to represent their views but many more are unlikely to be members of any representative organisations. Undertaking a specific SME Test (as part of your policy development process) helps to deal with these issues head on. The stakeholder mapping exercise that should take place during the planning of the consultation exercise should inform the decisions around the channels you will make available for stakeholders to feed in their views and inform the decisions as to the formats in which the written consultation document should be made. It should also be borne in mind that the consultation

⁸ http://ec.europa.eu/enterprise/entrepreneurship/think_small_first.htm

process itself could create a heavy burden for SMEs. A proportionate approach should be adopted in most cases. Building this into your consultation process for future or amended legislation bearing on business is at the heart of the application of the “Think Small First” principle.

Better communication with, and consideration of SMEs, could also be ensured through the nomination or appointment of an SME Envoy i.e. a person or service within the administration, that acts as the “voice of small business” within Government, with the express task of ensuring that SMEs’ interests are considered in all relevant policy areas, at the early stages of development.

Member States apply a variety of solutions to consult SMEs.

In Sweden there is a mandatory consultation period on proposed major legislation for **three months**. SMEs organisations and SMEs are free to express their opinion in written or oral on the proposal.

In Denmark, the **Division for Better Business Regulation** receives all new legislation in consultation. If the legislation is relevant for the business and contains new administrative or economic burdens, an input will be sent. The input contains an estimation of the cost and the number of businesses affected, recommendation on digital solutions and other initiatives that will improve the legislation from a SME point of view.

In addition, SME organisations interested in receiving new legislation in consultation can contact the relevant ministry or agency. The SME organisation is then added to a mail list and receives notifications when legislation is sent out in consultation. Another option is to sign up for a newsletter. All national legislation is uploaded for public consultation to this homepage, the organisation will then receive notification on consultation.

The list of consulted organisations is sent to the Parliament which checks the inputs.

Webpage to sign up for newsletter on public consultations:
<https://www.borger.dk/Lovgivning/Hoeringsportalen>

In Luxembourg the CNSAE “**Comité National pour la Simplification Administrative en faveur des Entreprises**”, is ongoing meetings with the SMEs. The president of the CNSAE (“Comité National pour la Simplification Administrative en faveur des Entreprises”) could be considered as the SME Envoy. The Sub group “Groupe des Entreprises” is in place to monitor and evaluate the legislation through tools like the “fiche d’impact ex-post” which is an evaluation for possible improvements of an existing law or regulation. In that way an ongoing evaluation of existing legislation is possible and possibilities of simplification could be discussed too.

In the legislative procedure, positions from the Chamber of Commerce and Chamber of Crafts are mandatory.

Webpage: www.simplification.lu

In Slovenia, before sending new legislation to the Parliament, the Ministry of Public Affairs always asks for opinion the business associations. The latter have the possibility to express directly their views and comments. In case of serious arguments that the new legislation can harm SMEs the Ministry is empowered to block the legislation by not sending it to the Parliament.

In the UK, the **Small Firms Consultation Database**, created in 2003, is an opportunity for small businesses to influence new regulations at an early stage, by providing feedback on any potential impact the changes may have on them. The Department for Business, Enterprise and Regulatory Reform's Enterprise Directorate, on policy officials' behalf, will contact owners and managers of small and medium-sized enterprises (SMEs) who have agreed to be contacted and are listed by interest/location/business size/business sector on the database.

The background to this tool is that the Small Business Council, in their 2002 annual report, recommended that a database be created to help policy officials reach small businesses to help enable them to undertake the Small Firms Impact Test. This also offered an opportunity for small firms to offer feedback on the impact policy proposals may have on them and has become a key element in the government's commitment to embedding the 'think small first' principle when creating and implementing new regulations that affect business. The process is part of the Impact Assessment (IA)/Small Firms Impact Test (SFIT).

Officials can invite SMEs to take part in informal discussions in person, or over the phone, attend a focus group or respond to targeted consultations about proposed new regulations

Webpage: <http://www.berr.gov.uk/whatwedo/enterprise/enterprisesmes/regulation-and-tax/info-officials/focus-groups/page38001.html>

In Estonia, the public consultation website “**Teeme koos**” is a shared platform for government agencies where businesses, business organisations and citizens can publicly give their opinion on draft legislation and on other peoples' comment. Businesses and entrepreneurs' organisations are asked to nominate a single person to speak on behalf of the organisation.

All government agencies are asked to publish their draft policy papers, development plans, laws and regulations on the website. Interested parties can subscribe to email alerts announcing new consultations.

Webpage: <https://www.osale.ee/konsultatsioonid/index.php>

In Hungary, draft bills, ministerial resolutions and other important policy concepts are made available to the public via the relevant ministries' homepages. People and organizations concerned can opine these documents, and the legislator shall consider these opinions.

Different consultative forums with participation of SME organisations have the opportunity to discuss in advance the most important legislative changes and measures concerning SMEs (e.g. Advisory Committee for Small Businesses and National Council for the Reconciliation of Interests). SME organisations also have the opportunity to express their opinion in written on all legislation concerning enterprises.

Webpage:

http://www.magyarorszag.hu/segitseg/edemokracia_r/edemokr_korm.html?highlight

At the European Commission level, various tools are available to ensure the consultation of SME stakeholders. A prominent role is played by the **SME Envoy** who acts as an interface with the SME business community and intervenes to defend SMEs' interests in the EU policy-making process. Reinforcing the work of the European Commission's Enterprise and Industry Directorate-General, the SME Envoy acts as a channel through which the Commission is able to take account of the impact which its legislative proposals might have on SMEs. The SME Envoy function is useful in particular in terms of raising awareness of SME issues both inside and outside the Commission and in making EU policies more SME-friendly.

Concretely the SME Envoy holds regular meetings with other Directorate Generals in the Commission to discuss SME issues. The Envoy and her team also participate actively in the shaping of Commission proposals which are of particular relevance for SMEs.

The SME Envoy also holds regular meetings European Business organisations to keep them informed and consult them at early stage on relevant for SMEs Commission proposals. This is coupled with participation in seminars, conferences and other events organised by the stakeholders as a means to bring together policy makers and business.

In addition, the **Enterprise Europe Network** can be used to obtain direct feedback from SMEs from across the EU and set up SME panels on selected policy proposals. The Network offers support and advice to businesses, especially SMEs, across Europe. It is made up of close to 500 partner organisations in more than 40 countries.

Further, the **European Business Test Panel (EBTP)**⁹ is another tool allowing the European Commission to obtain direct feedback from businesses on Commission legislative proposals or initiatives likely to have an impact on businesses. It is composed of around 3.600 companies of different sizes and sectors located in all EU Member States. Companies selected as EBTP members reply to online questionnaires sent to them by the European Commission on a regular basis.

The minimum time for **receipt of responses to Commission written public consultations** is 8 weeks, but it is strongly recommended that, when feasible, to extent the consultation period to 12 weeks in order to allow SME organisation to consult their members, considering also that they often have to translate and explain detailed and highly technical legislative proposals, analyse the responses back from their membership and, in some cases, build alliances with other trade bodies for more effective lobbying of Brussels. In addition,

⁹ http://ec.europa.eu/yourvoice/ebtp/faqs/index_en.htm

consultations should be avoided during the main holiday periods or if not, their duration should be further extended.

A reference model on the consultation process and how to make it better can be found in a Commission report titled “Consultation with Stakeholders in the Shaping of National and Regional Policies Affecting Small Business” (http://ec.europa.eu/enterprise/entrepreneurship/support_measures/stakehold/doc/final_report_en.pdf).

2 The « SME Test »

The SBA text

The Commission will, and the Member States are invited to:

- *rigorously assess the impact of forthcoming legislative and administrative initiatives on SMEs (“SME test”) and take relevant results into account when designing proposals*
- *use specific measures for small and micro-enterprises, such as derogations, transition periods and exemptions, in particular from information or reporting requirements, and other tailor –made approaches, whenever appropriate*

The SME test should be considered an integral part of any regulatory impact assessment. Impact assessment (IA) is a process aimed at structuring and supporting the development of new and amended policies. It identifies and assesses the issues at stake and the objectives pursued. It identifies the main options for achieving objectives and analyses their likely impacts in the economic, environmental and social fields. It outlines costs and benefits of each option and examines possible unintended consequences, synergies and trade-offs. Impact assessments are an aid to the *political decision* making process, not a substitute for it. It informs decision-makers of the likely impacts of proposals, but it leaves it up to them to take the decisions.

What is relevant is that any proposal that imposes or reduces the costs on business requires an SME Test that seeks to develop a policy proposal in a way that meets its objective, without unduly limiting or damaging opportunities for small businesses.

However, in certain cases, regulation might give priority to certain overarching societal goals (e.g. environmental protection, health and safety considerations etc.) over the direct interests of the SMEs, thus diluting the application of the “Think Small First” principle. It would then be appropriate to give the principle a broader interpretation and consider the use of specific provisions for SMEs. These measures would allow preserving the given overarching goal of the regulation while mitigating some of its effects on SMEs in respect with the principle of proportionality. There is no an exhaustive list of these types of measures but the most regularly used are: thresholds (or size-related exemptions), reduced obligations, simplified reporting requirements, longer transition periods, reduced fees, and exemptions. Support measures to facilitate the implementation of given legislation, such as helpdesks, awareness raising and training activities, on-line services, etc. could also constitute part of the solution.

In the UK, the **Small Firms Impact Test (SFIT)** becomes a mandatory part of the Impact Assessment (IA) process when a new or amended policy proposal imposes or reduces costs on business. The government's manifesto commitment in 2001 ensures the 'think small first' principle is followed as part of UK policy development and the UK's National Audit Office regards any IA for a measure bearing on business that lacks a SFIT as 'deficient'.

The SFIT is intended to provide sufficient guidance for policymakers, to confidently establish impacts on small businesses and how it is possible to minimise the impact of the requirements on small firms through flexibilities such as exemptions, simplified inspection, less frequent reporting etc. for businesses with fewer than 20 employees.

The process gained more “bite” in 2008, when Government announced that there would be greater public explanation for changes to both Primary and Secondary legislation, submitted to Parliament that would explain:

- If and why the legislation applies to small business
- What consideration has been given to minimise the impact of the requirements on small firms. For example: simplified inspection, less frequent reporting, exemptions etc
- The basis for the final decision on what action to take to assist small business and how it was reached.

The aim of these changes is to contribute to making legislation more effective and it also makes departments and other regulators accountable for their approach when regulating small firms, through a public explanation of the thinking behind the regulation and any measures adopted for them.

Policy-makers have discretion over exactly how to answer these questions, which are free text, as each instrument is likely to have different relevance for small firms. The purpose is to show that the Impact Assessment process has taken account of small firms

Guidance on the UK's SFIT can be found by visiting the Department for Business, Enterprise and Regulatory Reform's website – www.berr.gov.uk/sfit.

On 1 January 2007 a new ordinance, the Regulatory Impact Assessment Ordinance (2007:1244) on impact assessment of regulations came into force in Sweden. The ordinance replaced the Ordinance (1998:1820) on the special impact analysis of rules on small enterprises and Ordinance on Government Agencies and Institutes (1995:1322). The purpose of the new ordinance is to let the Swedish businesses have a chance to influence new regulations at an early stage. It states that guidelines for Impact Assessment in the Government Offices and for the Inquiry Committees are now mandatory.

Impact assessments address the social, environmental and economic impacts. The EU dimension of the regulation should be taken into account. Furthermore the administrative costs should be included in the assessment. Measuring the administrative costs for businesses is vital to regulatory simplification and is done in close cooperation with the business sector. The SME perspective is given a special consideration in the ordinance and in the impact assessments. If the regulation is likely to significantly affect the operational conditions of

enterprises, their competitiveness or other conditions, the impact analysis shall contain, to the extent possible, a description of the following:

1. the number of enterprises affected, the industries that these enterprises represent and the size of the enterprises,
2. the period of time required for the regulation to be implemented by the enterprises and how the regulation would affect enterprises' administrative costs,
3. the other costs to enterprises entailed by the proposed regulation and the changes in their activities that enterprises may need to make as a result of the proposed regulation,
4. the extent to which the regulation may affect the competitive conditions for the enterprises,
5. the way in which the regulation may affect the enterprises in other respects, and
6. whether particular account needs to be taken of small enterprises when designing the regulations.

Furthermore, a Regulatory Council, Regelrådet, has been set up. The Council will provide independent scrutiny of all proposals for new regulations that that could affect the working conditions, competitiveness or other similar conditions of businesses and of the impact assessments that should accompany all proposals. All regulators will have to submit their regulation proposals to the Council for a quality check. The Council will thus fulfill a similar function as the Dutch Advisory Board on Administrative Burdens (Actal) and the German National Regulatory Control Council.

Webpage: www.regelradet.se

In the European Commission, the SME test is an integral part of the revised in January 2009 Commission Impact Assessment Guidelines and does not stand as some separate analysis of the impacts on SMEs. A crucial element of the SME test is the consultation of small business representative bodies or SMEs themselves. The SME test requires that the interests of SMEs are taken into consideration at each of the analytical steps of an impact assessment. Roughly we could distinguish four different steps:

(1) Consultation with SMEs representatives

The following suggestions on how to consult SME representatives complement the general guidelines on the consultation of interested parties.

The 2005 Report on the consultation of stakeholders in the shaping of small business policy at national/regional level provides examples of good practices:¹⁰

- round table discussions with stakeholders;
- test Panels of entrepreneurs to check new initiatives in flexible and quick manner;
- specific committees; and
- use of IT tools (on-line consultations, forum).

¹⁰ http://ec.europa.eu/enterprise/entrepreneurship/support_measures/stakehold/index.htm

Other specific suggestions for consulting SME stakeholders with the support of DG ENTR:

- if stakeholders hearings are organised, ensure that SMEs representatives are invited (DG ENTR SME services could help in this sense);
- the regular meetings between the SME Envoy team in DG ENTR and SME organisations can be a useful and relatively quick way of getting feedback from this sector;
- the Enterprise Europe Network can be used to obtain direct feedback from SMEs from across the EU. The Network offers support and advice to businesses, especially SMEs, across Europe. It is made up of close to 500 partner organisations in more than 40 countries; and
- The European Business Test Panel (EBTP), although not explicitly focused on SMEs is also an alternative to consider.¹¹

(2) Preliminary assessment of businesses likely to be affected

During this stage, it is established whether SMEs are among the affected population. You should identify the characteristics of the businesses / sector(s) likely to be affected. Relevant sources of information should be explored including SME representatives. A non-exhaustive list of elements to consider includes, when applicable:

- number of businesses and their size (micro, small, medium or large enterprises);
- proportion of the employment concerned in the different categories of enterprises affected;
- weight of the different kind of SMEs in the sector(s) (micro, small and medium ones); and
- links with other sectors and possible effect on subcontracting.

If the preliminary assessment leads to the conclusion that SMEs are amongst the affected parties, further analysis should be carried out and – where appropriate – taken into account when defining the objectives and developing the policy options in the impact assessment.

(3) Measurement of the impact on SMEs

The distribution of the potential costs and of the benefits of the proposals with respect to the business size, differentiating between micro, small, medium and large enterprises should be analysed qualitatively and, if possible and proportionate, quantitatively.

It is important to establish to which extent the proposal affects SMEs competitiveness or the business environment in which it will affect their operations:

It is likely that an EU measure would have direct and indirect beneficial effects on SMEs. The direct benefits such as improved working conditions, increased competition etc. should (at some stage) be reflected in reduced costs to SMEs. Yet, these benefits may be offset by various costs, some of which may be disproportionately felt by SMEs, notably:

- Financial costs – created by the obligation to pay fees or duties;
- Substantive costs – created by the obligation to adapt the nature of the product/service and/or production/service delivery process to meet economic, social or environmental

¹¹ http://ec.europa.eu/yourvoice/ebtp/faqs/index_en.htm

standards (e.g. the purchase of new equipment, training of staff, additional investments to be made); and

- Administrative costs – created by the obligation to provide information on the activities or products of the company including one-off and recurring administrative costs (e.g. resources to acquire or provide information).

Cost and impacts identified for SMEs should be compared with those of large enterprises. For this purpose, one can, for instance, compare the overall costs identified to the number of persons employed to obtain the average cost per employee¹². One could also compare the costs identified to the total overhead or turnover of the company¹³.

In addition, it would be useful to consider the following additional elements:

- possible loss of competitiveness due to external factors such as the availability of finance, tax regimes, access to resources or skills, etc.;
- possible changes in the behaviour of competitors, suppliers or customers;
- possible impacts on barriers to entry, competition in the market and market structure, for example in terms of possibilities for SMEs to enter markets;
- possible impact on innovation, understood as both technological and non-technological innovation (process, marketing, etc.), and
- benefits, if applicable, coming from the proposal (burden reduction, improved productivity and competitiveness, greater investments or innovation etc.).

(4) Assess alternative options and mitigating measures

If the abovementioned cost/benefit analysis shows that SMEs are facing a relatively higher burden, one might consider the use of **SME specific measures** in order to ensure a level playing field and the respect of the proportionality principle. When the analysis made under the previous section shows that SMEs are disproportionately affected or disadvantaged compared to large companies, one should consider using possible mitigating measures.

The choice of specific measures to use will be made on a case by case basis. A non-exhaustive list of measures to be considered includes:

- **complete or partial size-related exemptions for SMEs or micro-businesses** (Example: businesses below certain thresholds do not have to comply with certain specific obligations when this does not invalidate the original purpose of the legislation);
- **temporary reduction or exemptions** (Example: transition periods during which SMEs are exempted or longer intervals for certain obligations);
- **tax reductions or direct financial aid** to compensate costs incurred provided this is compatible with existing legislation (on competition or international trade);
- **reduced fees** (Example: when these fees are particularly high and/or represent a fixed cost that would will be felt disproportionately by SMEs);
- **simplified reporting obligations for SMEs** (Example: in the area of statistics, explore possible synergies with already existing reporting obligations);

¹² One could use for instance the thresholds of the SME definition: 10, 50 and 250 employees.

¹³ Representative samples containing both SMEs and large companies can also be used.

- **specific information campaigns or user guides, training and dedicated helpdesks/offices** (Example: specific SME help-desks providing tailored information for small businesses); and
- **systematically consider general simplification initiatives which can particularly benefit SMEs** (Example: possibility to use on-line facilities, simplified inspections).

When assessing possible mitigating measures for SMEs, it is important that the costs this could produce are also fully considered and included in the final assessment.

The arguments regarding the use of these measures, along with suggestions as to the circumstances where they are likely to be most effective, as well as direct examples of their application in Community law, are found in the “Think Small First toolkit” developed as part of the framework study “Application of the ‘Think Small First’ principle in EU programme and legislation” available at: http://ec.europa.eu/enterprise/entrepreneurship/docs/tsf_study_toolkit.pdf

3 Improving the relationship between SMEs and the administration through the application of the « only once » principle and one stop shops

The SBA text

The Member States are invited to:

- refrain from asking SMEs for information which already available within the administration, unless it needs to be updated

According to the “only once” principle, information submitted once to the administration should not be asked for again by another service of the administration i.e. enterprises should not be obliged to provide information all over again that authorities have already received by another route. The overall goal is to diminish the paperwork for businesses as well as the time that they would spend dealing with administration instead of spending it on running their core business. Hence, in many examples the “only once” and the “one stop shop” systems are the two sides of the same coin.

Completing statistical returns can be particularly burdensome for small businesses. In many cases the request may necessitate the “ad hoc” assembly of data not readily available. This is a time consuming and expensive process for small firms.

In the Czech Republic tax registration and notification of the Czech Social Security Administration, the Employment office and the appropriate health insurance company is done by only one form. In this occasion, the “one-stop-shop” system and “only once” principle converge.

In Hungary, the Act CXL of 2004 (on the General Rules of Administrative Proceedings and Services) declares, that verification of any data available in the records of an authority should not be requested from the client, the competent authority shall obtain these data from the relevant authority. From October 2009, this regulation will apply to the data in the records of the Courts and the Hungarian Chamber of Civil Law Notaries as well.

At present, the “only once” principle applies for instance to the process of founding a new company, the process of environmental protection product charges declaration, and partly to reporting remuneration data and the process of structural fund applications.

For instance employees’ remuneration data reported monthly to the Hungarian Tax and Financial Control Administration contain all necessary information for social securities as well, and the tax office forwards the relevant data to the National Health Insurance Office, the Central Administration of National Pension Insurance and private pension insurance companies.

Webpage: www.magyarorszag.hu

In Germany, every year about 3 million employers issue approximately 60 million wage statements printed on paper needed by the employees to prove to the administration that they are entitled to certain public transfer payments like unemployment benefits, housing benefits etc. For every new request of an employee, the employer needs to issue a new paper certificate. In contrast the administration is already using electronic means for its internal processes.

ELENA (German abbreviation: ELENA - **Elektronischer Entgeltnachweis**) is an electronic earnings statement created for dismantling enterprises from administrative burden that will start on the 1st of January 2012. The instrument will allow a central saving of data regarding the salaries of employees in compliance with the standards of the Data Protection Act. With ELENA enterprises need to transmit the required data “only once” to a central server, from which all concerned administrations will be able to obtain the necessary data upon the authorisation of the employee. ELENA starts with six procedures (e.g. employer issued employment certificates) and can be expanded by more procedures in the future.

In the introduction stage of ELENA, the net savings of administrative costs on the employers’ side is calculated with 85.6 million EUR per year.

Webpage: <http://www.bmwi.de/BMWi/Navigation/Service/publikationen.did=254994.html>

Introduced in 2007 in Lithuania, the national information system **Inter-Institutional Taxation Data Storage (TDS)** includes data about taxpayers, their financial and economic indicators, declared and paid taxes and other data. The submission of those to the TDS and the centralized submission of the TDS data to the TDS user are regulated by legislation. Data managers delivering data to the TDS are: the Ministry of Finance, the Customs Department under the Ministry of Finance, the State Tax Inspectorate under the Ministry of Finance, the State Social Insurance Fund Board under the Ministry of Social Security and Labour, the Financial Crime Investigation Service under the Ministry of the Interior, the Department of

Statistics under the Government of the Republic of Lithuania and other public administration institutions that have concluded agreements with the TDS user on data submission. The TDS user is the Information Society Development Committee under the Government of the Republic of Lithuania.

Webpage: <http://tds.ivpk.lt>

Since 1997, for the smallest firms (micro businesses: 0-9 employees), the UK has operated the so-called “**Osmotherly Guarantee**”. Under this approach, micro businesses are guaranteed that, if selected for an Office of National Statistics (ONS) survey:

- they would be notified of the period during which they will be included in the survey (generally not exceeding 15 months);
- they would not be required to contribute to another of ONS’s statutory surveys during that time; and
- following this period, they would not be required to contribute to any statutory ONS postal survey for a further three years.

ONS has been largely successful in applying the guarantee. There have been a few exceptions for example, where it has been necessary to ensure that the results of a survey would be sufficient in quality and coverage to enable appropriate evaluation. ONS continues to adopt sampling strategies designed to avoid burdening the smaller businesses as far as possible and is currently considering whether the Guarantee can be extended further.

Webpage: <http://www.statistics.gov.uk>

Further information: <http://www.ons.gov.uk/about-statistics/ns-standard/cop/protocols/managing.pdf>

In France, the *Rescrit* is an administrative practice that aims at increasing legal certainty for businesses in relation to tax issues. Following a query by a business on a tax issue, the administration takes an official stance that is binding upon it. Hence, businesses can get an exact idea about the fiscal implications of a business project such as a contract, a donation etc. The *Rescrit* has been recently extended to apply to queries in relation to exemptions from social security contributions.

More information :

http://www.impots.gouv.fr/portal/dgi/public;jsessionid=A4QK1EO3VM3HRQFIEMPSFFOAVARXAIV1?paf_dm=popup&paf_gm=content&paf_gear_id=500018&typePage=cpr02&docOid=documentstandard_3564&espId=2&temNvlPopUp=true&hlquery=rescrit

Webpage: <http://www.impots.gouv.fr/>

Another interesting practice from France is the *chèque emploi* (employment cheque) which could be used by enterprises with no more than 5 employees. Irrespective of the type of employment contract, the employer could use the *chèque emploi* as an alternative to all to the main procedures related to the recruitment and remuneration of an employee: recruitment

declaration, employment contract, calculation and declaration of the social security contributions, payslip.

More than 40 000 employers are currently using this service.

Webpage: www.emploi-pe.fr

In Bulgaria, small enterprises with up to 50 employees can transfer the administration of social security procedures and the payment of contributions to **Contribution Payment Centers (CPCs)**. A Contribution Payment Center can be established by not less than five self-insured persons and/or five legal entities - insurers. A member of the CPC can be any employer with up to 50 employees.

The CPCs are empowered to provide the following services to their members:

- They collect the social security contributions due and remit them to the accounts of the National social security institute (NSSI) in accordance with the Compulsory Public Insurance Code and the Health Insurance Act.
- They collect the social security contributions due and remit them to the accounts of the National social security institute (NSSI) in accordance with the Compulsory Public Insurance Code and the Health Insurance Act.
- They submit to the NSSI the documents due for payment of the money compensations and aids.
- They present electronic data on social security to the NSSI in accordance with the Compulsory Public Insurance Code.
- They provide the self-insured persons with insurance cards.
- They draw up, keep and file the insurance cards and other documents required for the social security of their members.
- They submit the documents required for the retirement of the employees of their members.
- They keep all documents related to the members' social security.
- Every year till 25th of January they present to their members a proof of the amounts remitted for the social security contributions for the past year.

The CPC are subject to registration at the regional offices of the National Revenue Agency and is obliged to inform it in writing any time when an enterprise becomes a member of the CPC or leaves the CPC. In case that the members of the CPC become less than five, the National Revenue Agency cancels the registration of the CPC and informs in writing its members.

Webpage: <http://rok.bia-bg.com/index.php?p=1&lang=en>

4 Providing legislative certainty for business through Common Commencement dates (CCDs)

The SBA text

The Commission:

- will, whenever practical, use common commencement dates for regulations and decisions affecting business and publish an annual statement of such legislation entering into force

The Member States are invited to:

- consider the usefulness of introducing common commencement dates and annual statements of legislation entering into force

Common Commencement Dates are an innovative solution to help improve the life of small business. Originally a UK idea that is now enshrined in the SBA for Europe, its principle aim is to limit the dates on which business have to implement regulation, thereby cutting down on their horizon scanning, providing certainty - leaving them free to focus on running their businesses. CCDs are normally a couple of dates per year, preceded by the publication of guidance material at least 12 weeks in advance, allowing SMEs to better prepare, adapt, and understand legislative changes. A key element of the system is the advance notification, giving SMEs the ability to plan ahead. This normally takes the shape of an Annual Statement of Forthcoming Regulations that bear on business that includes a concise high level summary of every measure to be adopted on the chosen CCD.

The objective is to assist businesses to plan for new measures and to implement them more effectively, leading to reduced costs, better compliance, and a potential reduction in the likelihood of legal challenge. Over time, it is hoped that common commencement dates will stimulate the legislator to reduce the volume of regulation as the cumulative burden becomes more apparent. Thus, CCDs subscribe in the logic of better regulation.

In the UK, the commencement of domestic legislation bearing on business is limited to two dates per annum. Initially the approach was piloted in the employment law field but has been subsequently extended to most areas of domestic legislation affecting businesses and the voluntary sector.

At the beginning of each year Government Departments issue a statement giving details of the forthcoming regulations that expected to be introduced/come into force on the next two CCDs; together with a link to guidance to help businesses prepare. The dates chosen in the UK as CCDs, to suit national circumstances, are 6 April and 1 October. Exceptionally, legislation may be brought into effect on other dates. These circumstances include emergencies; for example those involving public, animal or plant health; anti-avoidance measures necessitating urgent closure of loopholes; measures which remove significant risk or detriment from business; instances where the costs of timing a measure to meet a CCD would be disproportionate to the public purse and/or business. CCDs are part of the better regulation agenda, which is a major component of the UK Government's programme to help stimulate the economy and enable businesses to grow and prosper. The purpose of CCDs, and especially the annual statement that Departments are required to produced, is to help business plan for new regulation each year and to increase awareness of the introduction of new or

changed requirements. It also enables the Government to take a strategic overview of its regulatory programme.

A cautious estimate shows that CCDs could save UK SMEs anything between €15 million – €30 million a year. However, business suggests (in focus groups and in public consultations) that the savings figure could be as high as €1 billion a year. Neither of these figures includes savings for big business (which would boost them further).

Webpage: <http://www.berr.gov.uk/whatwedo/enterprise/enterprisesmes/regulation-and-tax/info-officials/ccds/page37983.html>

In the Netherlands, as a response to the complaints of businesses about the frequent alterations of legislation in a year and the insufficient time for preparation, the government has been experimenting with common commencement dates since 2007 in the following areas:

- Legislation on public health expenses
- Legislation on Education
- Environmental legislation
- Legislation on construction of houses, buildings.
- Financial markets legislation
- Tax legislation

Two commencement dates have been selected: January 1st and July 1st for legislation with direct relevance to companies and public institutions in healthcare and education. Information about upcoming new legislation is published online, after the decision of the Council of Ministers and just before the parliamentary discussion. A minimum time of 3 months is envisaged between the publication and the commencement of the legislation.

CCD-principles are written down in the guidelines for making legislation and thus checked in the formal legislation test and subsequently by the State Council

Webpage: www.antwoordvoorbedrijven.nl

Based on the UK experience, the European Commission and in particular Directorate General Enterprise and Industry will test the application of common commencement dates in a pilot phase as part of the Better regulation agenda. The initial focus will be on Commission implementing measures in a selected number of sectoral internal market legislation¹⁴.

¹⁴ Article 202 of the Treaty Establishing the European Community allows the Council, for the acts it adopts, to confer on the Commission powers for the implementation of the rules which the Council lays down.

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