

TOOL #22. THE "SME TEST"

1. INTRODUCTION

SMEs are the backbone of the EU economy, creating more than 85% of new jobs in Europe. Due to their size and limited resources, SMEs can be affected by the costs of regulation proportionately more than their bigger competitors. At the same time, the benefits of regulations tend to be more evenly distributed over companies of different sizes. SMEs may have limited scope to benefit from economies of scale. SMEs find it more difficult to access capital and their cost of capital is often higher than for larger businesses.

The Commission aims to improve the overall approach to entrepreneurship, permanently anchor the "Think Small First" principle in policymaking and to promote growth of SMEs (and start-ups in particular) by helping them tackle the remaining problems which hamper their scaling-up. Legislation, administrative rules and procedures should be simple, easy to understand and to apply. SMEs' interests should be taken into account at the very early stages of policymaking in order to make legislation more SME friendly.

In addition, it is Commission policy¹⁹⁵ to exempt micro-enterprises from EU legislation wherever possible or introduce special regimes so as to minimise the regulatory burden on them. The results of the analysis of the impacts on SMEs must be presented in the Commission's reports given the important role of SMEs in the economy.

Box 1. The need to assess potential impacts on SMEs

- Potential impacts on SMEs should be considered and reported systematically in all impact assessment reports¹⁹⁶.
- The assessment should be proportionate: the depth of analysis should reflect the significance of the expected effects on SMEs.
- If relevant and proportionate, the SME Test requires consultation of SME stakeholders to establish the nature and magnitude of the impacts an initiative might entail for SMEs.
- If significant impacts are expected, these should be assessed in more depth.
- When the selected policy option imposes a disproportionate burden on SMEs compared to bigger enterprises, mitigating measures should be considered.

Small and medium-sized enterprises are defined at Union level¹⁹⁷. The main factors determining whether an enterprise is an SME are the staff headcount and either turnover

¹⁹⁵ COM(2011) 803

¹⁹⁶ See Tool #12 on the *Format of the IA report*; and further guidance on how to present the results of the SME Test: https://myintracomm.ec.europa.eu/dg/grow/dirunits/H/H1/_layouts/15/WopiFrame.aspx?sourcedoc=/d/g/grow/dirunits/H/H1/Documents/sme_test/The%20SME%20Test%20template.doc&action=default&DefaultItemOpen=1

¹⁹⁷ Defined in [Commission Recommendation 2003/361/EC](#) and its subsequent amendments.

or balance sheet total¹⁹⁸. A firm that is controlled or controls other companies (through ownership, partnership or other linkages) needs to include part or all of the staff headcount, turnover or balance sheet data from those companies too. The definition of an SME is important in the context of access to finance and EU support programmes and for competition policy. For the purposes of impact assessment, it is recommended to use the headcount criterion. Financial criteria (turnover or balance sheet total) may also be used, but the related data are less readily available and their application can entail a disproportionate administrative effort in this context. Applying the SME definition in full, i.e. taking ownership links into account, can be burdensome in certain cases and is therefore not recommended for non-financial purposes. Please contact the *SME Test helpdesk* (see later section for details) for further explanation or assistance.

2. HOW TO IDENTIFY IMPACTS ON SMES

Any backward or forward looking assessment should analyse whether SMEs are disproportionately affected or disadvantaged compared to large companies. If so, alternative mechanisms or flexibilities in approach that might help SMEs to comply should be considered when reviewing the policy initiative. **SMEs need to be taken into consideration in each of the analytical steps of better policymaking.**

The SME Test comprises four steps:

- (1) Identification of affected businesses;
- (2) Consultation of SME stakeholders;
- (3) Measurement of the impact on SMEs;
- (4) Assessment of alternative mechanisms and mitigating measures.

Step (1) Identification of affected businesses

During this stage, you should establish whether and which SMEs (e.g. micros) are among the likely affected population. In some cases, this will be clear. In others, you will need to identify the characteristics of the affected businesses/sector(s), such as the distribution of businesses per size-class (micro, small, medium or large enterprises). Relevant sources of information¹⁹⁹ should be explored. These could also include information available from organisations representing SMEs' interests. Examples of elements to consider include:

- Proportion of the employment concerned in the different categories of enterprises affected;

¹⁹⁸ Meeting the staff headcount criterion is mandatory in order to be considered an SME. However, an enterprise may choose to meet either the turnover or the balance sheet total ceiling.

¹⁹⁹ A useful starting point to find this information are the Structural Business Statistics produced by Eurostat, see http://epp.eurostat.ec.europa.eu/portal/page/portal/european_business/introduction

- Weight of the different kinds of SMEs in the sector(s) (micro, small and medium ones);
- Links with other sectors and possible effect on subcontracting; for instance, there may be an impact not only on the targeted sector but also on its suppliers or customers; such indirect impacts should also be taken into account.

If the preliminary assessment leads to the conclusion that one or more class of SME is affected, further analysis should be carried out.

Step (2) Consultation that captures the SMEs angle

If SMEs are potentially affected (or if there are doubts as to the extent of the influence on SMEs), then SME dimension should be a central element of the consultation strategy (for which separate guidance exists²⁰⁰). In addition to an open public consultation, consultation activities may involve specific targeted actions such as round table discussions, focus group meetings, hearings targeting SME representatives, SME Panels or specific consultations – carried out with the assistance of the Enterprise Europe Network - aimed at providing inputs into the SME Test section of the Impact Assessment, etc.²⁰¹ Wherever it is deemed useful and relevant, the start-up community should also be targeted by the consultation activities.

The SME dimension in Public Consultations is explained in Tool #53 The consultation strategy.

3. HOW TO MEASURE IMPACTS ON SMES

Step (3) Measurement of the impact on SMEs

For each policy option, the distribution of the costs and 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, quantitatively²⁰². A one-size fits all approach for all SMEs has so far not proved effective or efficient as the impact on micro-companies is likely to differ substantially from the impact on medium sized ones. Therefore, where relevant and feasible, costs and benefits accruing to each size-class of SMEs should be presented and analysed separately. It is equally important to assess the impacts of SME specific or mitigating measures, where they already exist. Quantification of costs and benefits is often difficult and evidence sources should be used to the maximum such as studies, stakeholder consultations, calls for evidence etc.

²⁰⁰ See Tools #53, #54 and #55 on stakeholder consultation

²⁰¹ DG GROW unit H2 coordinates the preparation of these panels

²⁰² See Tool #58 on the *Typology of costs and benefits*; and Tool #59 *Methods to assess costs and benefits*

As part of the overall assessment of competitiveness, it is important to establish the extent to which the proposal affects SMEs' competitiveness or the business environment in which they operate compared to larger organisations²⁰³.

Whenever a threshold is being considered to differentiate the application of a given option on companies, the effects of the threshold on the potential scaling-up of companies should be assessed.²⁰⁴

It is likely that an EU measure would have direct and indirect impacts on SMEs – both positive and negative. 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 regulatory costs²⁰² some of which may be disproportionately felt by SMEs, notably:

- Compliance costs (created by the obligation to pay fees or duties; and 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 standards (e.g. the purchase of new equipment, training of staff, additional investments to be made));
- 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). This type of costs can be expressed in working hours which makes comparison across Member States easier.

Cost and impacts identified for SMEs should be compared with those of large enterprises. For this purpose, you can for instance **compare the overall costs identified to the number of persons employed to obtain the average cost per employee**²⁰⁵. You could also **compare the costs identified to the total overhead or turnover of the company**²⁰⁶.

In addition, consider the following elements:

- Possible impacts on barriers to entry, competition in the market and market structure, for example in terms of possibilities for SMEs to enter markets;²⁰⁷
- Possible impact on innovation.²⁰⁸

²⁰³ See Tool #20 on *Sectoral competitiveness*

²⁰⁴ For example, in the proposal amending Directive 2013/34/EU disclosure of income tax information by certain undertakings and branches, MNE Groups with a total consolidated group revenue exceeding €750 million will be required to prepare the Country by country reporting. The threshold effect was expressly considered in the IA.

²⁰⁵ It is recommended to use the ranges of the SME definition: 0-9, 10-49, 50-249 and 250+ employees.

²⁰⁶ Representative samples of different size of companies can also be used.

²⁰⁷ See Tool #24 on the *Internal market*

Box 3. Examples of good forward-looking assessments of impacts on SMEs

Examples of summaries of results include:

- Annex 5 to the impact assessment report on Electronic identification and trust services for electronic transactions in the internal market²⁰⁹ (2012) summarises all 4 steps of the SME test. It gives an overview and evidence that SMEs specific concerns were taken into account.
- Impact assessment report on the directive on combating late payment in commercial transactions ²¹⁰ contains an annex dedicated to the SME test.

4. HOW TO MINIMIZE ANY NEGATIVE IMPACTS ON SMEs

Step (4) Assessment of alternative options and mitigating measures

The abovementioned analysis may show that micro, small and/or medium sized enterprises are facing a relatively higher burden than large companies and that specific measures, where they already exist, have not proven to sufficiently or adequately address the SME needs. In such case, one might consider the use or the revision of specific measures in order to ensure a level playing field and the respect of the proportionality principle.

The choice of specific measures will be made on a case-by-case basis, including an assessment whether they should apply to all SMEs or, for example, to the micro-enterprises only. However, if there is clear evidence that excluding micro-enterprises would mean that the initiative would not be able to achieve its goals or would undermine other Treaty-based goals or fundamental rights, they should be covered but the possibility to apply adapted solutions should be assessed.

When defining the scope of a mitigating measure, you can make a dynamic reference to the SME definition²¹¹ (for instance in the recitals) and spell out in the Articles of the legislation which criteria and thresholds exactly define the scope of the mitigating measure. Take into account that implementing the whole SME definition or part of it entails an administrative cost, therefore the simpler the criteria, the better. The SME definition criteria are not the only option that can be used (e.g. see Box 3, WEEE directive).

A non-exhaustive list of mitigating measures to be considered includes:

- Complete or partial size-related exemptions (e.g.: businesses below certain thresholds do not have to comply with certain specific obligations when this does not invalidate the original purpose of the legislation);

²⁰⁸ See Tool #21 on *Research & innovation*

²⁰⁹ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52012SC0135&from=EN>

²¹⁰ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52009SC0315&from=EN>

²¹¹ By using the following reference: "as defined in Commission Recommendation 2003/361 and its subsequent amendments".

- 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 be felt disproportionately by SMEs);
- Simplified reporting obligations (Example: in the area of statistics, explore possible synergies with already existing reporting obligations);
- Specific information campaigns or user guides, training and dedicated helpdesks/offices (Example: specific help-desks providing tailored information for small businesses);
- Systematically consider general simplification initiatives which can particularly benefit SMEs (Example: possibility to use on-line facilities such as digital compliance assistance tools, simplified inspections).

When assessing possible mitigating measures, it is important that the costs this could produce are also fully considered and included in the final impact (cost-benefit) assessment. This includes the impacts on larger businesses of any SME specific measures or exemptions and also the effect on the potential scaling-up of companies.

Box 4. Examples of mitigating measures²¹²

- SMEs with fewer than 250 persons would not need to comply with the requirement of the Commission proposal on women on company boards, requiring companies that have less than 40% of non-executive directors to apply transparent selection procedures based on neutral selection criteria in order to attain 40% by 1 January 2020.
- Member States can opt to exempt micro distributors selling non-toxic pesticide formulations from the provisions of Directive 2009/128/EC.
- Small shops selling electrical and electronic devices do not need to reserve extra space to meet take-back obligations under the new Directive on Electric and Electronic Waste. The take-back obligation only applies to retail shops larger than 400m².
- Under the general Data Protection Regulation (EU) 2016/679, the obligations of data controllers and processors are calibrated to the size of the business and/or to the nature of the data being processed. For example:
 - SMEs need not appoint a data protection officer unless their core activities require regular and systematic monitoring of the data subjects on a large scale or if they process special categories of personal data such as that revealing racial or ethnic origin or religious beliefs.
 - SMEs need not keep records of processing activities unless the processing they

²¹² http://ec.europa.eu/smart-regulation/impact/best_practices_examples/docs/eu/lighter_regimes_for_smes_oct_2013.pdf

carry out is not occasional or likely to result in a risk for the rights and freedoms of data subject.

- SMEs will not be under an obligation to report all data breaches to individuals, unless the breaches represent a high risk for their rights and freedoms. .
- EU: Self-employed drivers benefitted from a longer lead-in time before rules on the organisation of their working time (Directive 2002/15) came into effect in 2009.
- Micro-enterprises can now choose simpler ways of showing that any one-off construction products they put on the market meet applicable product standards according to Regulation 305/2011.
- The Commission has made proposals to make it easier for SMEs to participate in public procurement. Bidders for public tenders can provide self-declarations, rather than original documents or certificates, showing that they meet eligibility criteria. Only the winning bidder would be asked to provide the original documents. Breaking tenders down into smaller lots will be encouraged. Together with a greater use of e-procurement, these modernised rules in the proposed Public Procurement Directive would facilitate the participation of SMEs in contracts worth about 18% of EU GDP.
- SMEs are encouraged, but not obliged, to carry out an energy audit according to the new Energy Efficiency Directive 2012/27/EU. Member States may set up support schemes for SMEs, including if they have concluded voluntary agreements, to cover costs both of an energy audit and of the implementation of the highly cost-effective audit recommendations.
- SMEs that are inspected by the European Medicines Agency or use their scientific advice or services benefit from fee reductions of 90%.
- Member States would be forbidden from charging micro-businesses a fee for the licence required to trade in drugs precursors under the Commission's proposal.
- Member States would be forbidden from charging micro-businesses fees under the under the Commission's Food and Feed Controls proposal.

5. INFORMATION SOURCES AND BACKGROUND MATERIAL

- [SME test webpage on Myintracomm](#)
- Report of the Expert Group: [Models to Reduce the Disproportionate Regulatory Burden on SMEs](#)  (2007) and [annex](#) 

EU SME policy framework:

- [Small Business Act - COM/2008/394](#)
- [Review of the "Small Business Act" for Europe - COM/2011/0078](#)
- [Minimizing regulatory burden for SMEs - Adapting EU regulation to the needs of micro-enterprises: COM/2011/803](#) 
- [Smart regulation - Responding to the needs of small and medium - sized enterprises](#)  COM/2013/122

- [Definition of SMEs in the context of access to financial incentives: Commission Recommendation 2003/361/EC](#) 
- [The revised User Guide to the SME definition](#) 
- [Structural Business Statistics \(Eurostat\)](#)
- [SME performance review \(European Commission\)](#)

6. SUPPORT

SME Test Helpdesk: GROW-SBA@ec.europa.eu