



November 2017

EUROCHAMBRES contribution to the report of the Belgian SME Envoy on the implementation of the SME test at national level

The Belgian SME Envoy, Mr Didier Kinet, is currently preparing a 2nd edition of his report (first edition in 2014) on behalf of the Network of SME Envoys on the implementation of the SME test at national level. The report will be presented at the SME Assembly next week.

The present paper was submitted to the Belgian Federal Public Service Economy in July 2017.

EUROCHAMBRES is a member of the Network of SME Envoys and, in order to contribute to this report, consulted its members via an online questionnaire designed by the Belgian Federal Public Service of Economics between mid-May and mid-June 2017.

Input was received from the following eleven Chambers:

Country	Chamber
Austria	Austrian Federal Economic Chamber
Croatia	Croatian Chamber of Commerce
Cyprus	Cyprus Chamber of Commerce and Industry
Estonia	Estonian Chamber of commerce and Industry
France	CCI France
Germany	Association of German Chambers of Industry and Commerce
Hungary	Hungarian Chamber of Commerce and Industry
Ireland	Chambers Ireland
Luxembourg	Chambre de Commerce Luxembourg
Spain	Chamber of Commerce of Spain
Portugal	Portuguese Chamber of Commerce and Industry

The findings and recommendations from this survey are contained in this paper and are summarised on the next page. EUROCHAMBRES also contributed to the 2014 exercise, the results of which are referred to at various points throughout this paper. Due to differences in the survey, not all of the elements investigated in 2014 could be reassessed in 2017 and with regards to certain questions a direct comparison of the results is not possible. This is also due to differences in the number and identity of the respondent Chambers.

Executive summary

Main findings

- Progress has been observed in several countries regarding the introduction of an SME test since 2014
- However, significant issues remain in the application of the SME test:
 - The SME test is often not applied properly or not implemented at all
 - The analysis is often superficial and fails to correctly assess the impact of legislation on SMEs, thereby compromising the objective of the SME test to take SMEs' needs into account and avoid that they are disproportionately affected by regulation
 - The effects of legislation on SMEs are not quantified specifically
 - The relevant ministries are not aware of the importance to properly apply the SME test and are not supported by adequate guidance material and training
 - In several of the respondents' countries, the consultation period is on average extremely brief (one month or less), which hampers a proper participation from interested stakeholders in the law-making process
- Chambers recognise that, if properly applied, the SME test would have a positive impact and added value, e.g. it would contribute to a more favourable policy and regulatory environment and have a consequent positive impact in terms of competitiveness and growth.

Key recommendations

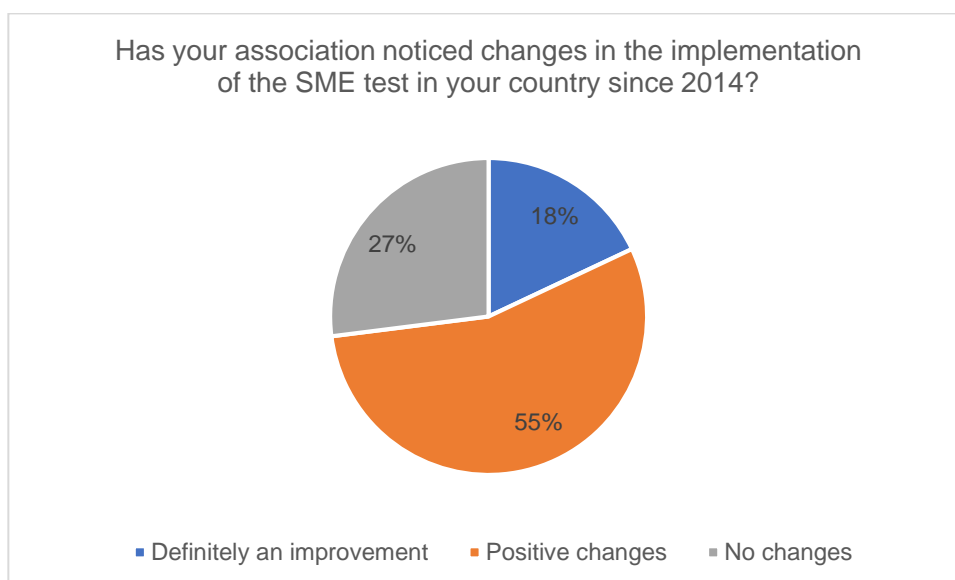
- Ensure that the SME test is rigorously implemented with the aim to assess the impact of new legislation on SMEs, so as to design regulation that does not put excessive and unnecessary burdens on 'the backbone of European economy'
- Raise awareness among ministries of the importance to perform the SME test in a thorough way and provide clear and comprehensive guidance material and training to support civil servants in applying it
- Consult properly SME stakeholders and hold the consultation sufficiently in advance to leave adequate time for interested parties to express their views and enough scope for policy-makers to take their input into consideration
- Improve the estimates of how many SMEs are affected by new legislation and to what extent, e.g. through a closer collaboration with Chambers and other relevant representative bodies
- Provide a quantification of impact specifically on SMEs (not only on business in general), as SMEs are usually more impacted by compliance costs than large companies.
- Carry out more thorough and comprehensive analysis of the impact on SMEs, bearing in mind that SMEs are not a homogeneous group and that impact may vary according to a range of factors
- Implement a mechanism to assess the implementation and quality of the SME test
- Make the results of the SME test and of the consultations publicly available and easy to find

The implementation of the SME test

The 2017 survey for stakeholders did not ask whether an SME test was in place in the respondent's country. However, this can be inferred from the input provided. The table below summarises the current situation by country.

Austria	SME test in place
Croatia	SME test is legally regulated and became obligatory in 2017
Cyprus	SME test introduced
Estonia	There is not a specific SME test, but an analysis of the impact on the economy, which include an assessment of how the new legislation will affect companies. Approximately, 88% of companies in Estonia are SMEs.
France	SME test in place but not carried out since 2014
Germany	SME test in place
Hungary	SME test not in place
Ireland	SME test not in place yet but the Action Plan for Jobs 2017 commits to its introduction this year. Details on how and when remain unknown.
Luxembourg	SME test in place
Spain	SME test not in place yet but commitment from the government
Portugal	Adoption of a pilot project in March 2017 to assess the impact of new legislation on SMEs

Compared to the situation in 2014, 55% of the respondents identified positive changes in the implementation of the SME test in their country, 18% of the respondents reported a definite improvement, while the remaining 27% answered that there had been no changes in their country. None ticked the box 'negative changes', but some issues with the implementation of the SME test have nevertheless been reported, as referred to in the relevant section below.



Chambers' views on the changes in the implementation of the SME test in their respective countries since 2014 are shown in the table below.

Definitely an improvement	Some positive changes	No changes	Some negative changes	Definitely a worsening
Cyprus	Austria	France		
Germany	Croatia	Hungary		
	Estonia	Luxembourg		
	Ireland			
	Portugal			
	Spain			

Improvements

Cyprus

Inclusion of an SME test in the impact assessment questionnaire, although it is reported that the SME test is not always properly or consistently applied.

Germany

Introduction in 2016 of compulsory guidelines to assess the effects of new regulation on SMEs.

Positive changes

The positive changes reported by Chambers regarding the application of the SME test concern the following:

Commitment to the introduction and implementation of the SME test

Croatia

The SME test became obligatory for all institutions in 2017.

Ireland

The Action Plan for Jobs 2017 commits to the introduction of the SME test in Ireland this year. However, there has yet to be any further policy announcement on when and how this will take place. Despite this step forward, Chambers Ireland states that the fact that the SME test has not yet been implemented is very negative and has been an issue that the Chamber has consistently criticised the Government for in recent years.

Spain

Spain reported a real commitment to advance in the process of incorporating the SME test into ex ante evaluation of new regulation. In particular, there is a scenario and forecast of implementation in the short/medium term, with a specific legislative text (decree draft) that establishes its effective implementation. Also positively regarded is the involvement of the business community in the design of the SME test. There is an open channel of collaboration to be used to send proposals and suggestions, as well as to review the initiatives that are implemented in this regard.

Pilot project for the assessment of the economic impact of new legislation on SMEs

Portugal

In March 2017, the Portuguese Government adopted a pilot project, 'Custa Quanto', aimed to measure the economic impact of new legislation on SMEs. In January 2018, a report will be published. The pilot project is under the coordination of the Legal Centre for the Presidency of the Council of Ministers (CEJUR).

Issues with the implementation of the SME test

Austria

In Austria, as part of the compulsory impact assessment, the relevant service has to tick the box regarding the extent to which SMEs are affected by the legislative proposal. Regrettably, the Austrian Federal Chamber of Commerce reports that in most cases, in order to reduce their own administrative burden, the services tick the box saying that SMEs are not impacted or not significantly impacted even when they are impacted to a great extent. This practice clearly jeopardises the objective of the SME test of taking SMEs' needs into account and avoiding that they are disproportionately affected by regulation. Consequently, it might have a negative impact on SMEs' competitiveness.

Cyprus

The SME test is not always implemented properly or consistently.

Estonia

Sometimes interested stakeholders are given too little time to react to the draft of the proposal, which makes it difficult for them to provide proper feedback.

France

No SME test has been implemented since 2014. The body in charge of the procedure (SGG) does not ensure the use of the SME test in the relevant services and/or departments. The policy-makers in charge of drafting legislative texts do not know the test and do not use it.

Germany

Effects of the legislation are quantified, but not specifically in relation to SMEs. This leads to average results that are not realistic for SMEs.

Luxembourg

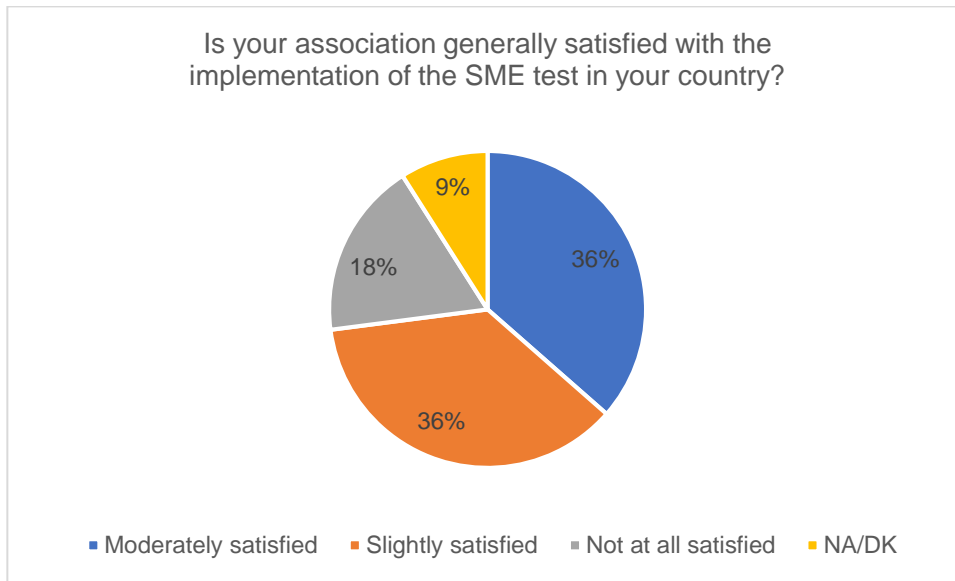
SME tests are deemed to be conducted systematically on all draft legislation and regulation. However, most of the times the SME test is not performed properly, but rather as a "box ticking" exercise, with no deep consideration of the administrative impact that draft legislation may have on SMEs.

In addition, very limited guidance is available to help the civil servants in charge of drafting legislative proposals to conduct properly the SME test (the instruction reads "évaluer rigoureusement l'impact du test sur les PME et tenir compte des résultats de cette évaluation lors de l'élaboration de propositions", with no further information). Only one (non-mandatory) training is available ("Transparence et simplification administrative des procédures et formalités de l'Etat"). However, this training lasts only 30 minutes (compared to Maastricht-based EIPA's two-day seminar on "Working with Impact Assessment at the EU level") and issues related to impact assessments are insufficiently addressed.

Satisfaction level

Asked about how satisfied Chambers are with the implementation of the SME test in their country, most of them declared to be slightly to moderately satisfied (72% of the total, with 4 respondents slightly satisfied

and 4 moderately satisfied). 18% of the respondents, Ireland and Luxembourg, said they were not at all satisfied.



The results by country are shown in the table below.

2017					
Completely satisfied	Very satisfied	Moderately satisfied	Slightly satisfied	Not at all satisfied	Not applicable/Don't know
		Cyprus	Croatia	Ireland	Hungary
		Austria	France	Luxembourg	
		Spain	Germany		
		Estonia	Portugal		

It is interesting to compare the 2017 results (table above) with those obtained in 2014 (shown in the table below). The countries of Chambers which did not participate in the survey in 2017 are struck through, those whose satisfaction level improved are highlighted in green and those whose satisfaction level worsened are highlighted in red. The countries that in 2017 changed their view to 'not applicable/don't know' are highlighted in grey.

2014					
Completely satisfied	Very satisfied	Moderately satisfied	Slightly satisfied	Not at all satisfied	Not applicable/Don't know
Austria	Lithuania	Belgium	Luxembourg	Croatia	
		Estonia		Cyprus	
		France		Czech Republic	
		Germany		Ireland	
		Hungary		Slovenia	
		Latvia			
		Spain			

The comparison shows that the only Chambers that are more satisfied than in 2014 are Cyprus, where the SME test has been included in the impact assessment questionnaire, and Croatia, where it became a legal obligation in 2017.

In four other countries, Austria, France, Germany and Luxembourg, Chambers are less satisfied than three years ago: Luxembourg went from slightly satisfied to not satisfied at all, while France and Germany from moderately satisfied to slightly satisfied. In 2014, the Austrian Federal Chamber of Commerce was the only one stating complete satisfaction with the implementation of the SME test, but in 2017 declared itself to be only moderately satisfied.

The position of Chambers Ireland, not satisfied at all, did not change, due to the fact that the SME test has not been implemented yet. The position of the Spanish and Estonian Chambers also remain unchanged.

Recommendations and suggestions for improvement

Chambers put forward recommendations and suggestions for improvement regarding the SME test¹.

- If not in place yet, introduce an SME test. Involve stakeholders in its design and ensure a strong coordination at national level regarding its implementation.
- If an SME test is already in place, improve coordination between relevant ministries/ministerial units and the body responsible for the overall implementation of the SME test.
- Ensure that the SME test is genuinely and rigorously implemented with the objective to assess the impact of new legislation on SMEs so as to design regulation that does not put unnecessary and excessive burdens on 'the backbone of the European economy'.
- Consult properly SME stakeholders, holding the consultations sufficiently in advance of the final drafting of the legislation to leave adequate time for interested parties to express their views as well as enough scope for policy-makers to take their input into consideration and adapt the text.
- Improve the estimate of how many SMEs are affected by the proposed legislation, e.g. by regularly consulting Chambers and similar representative bodies.
- Raise awareness among ministries of the importance to perform an SME test in a thorough way and promote the proper use of this tool. Chambers might contribute by providing an alert when they consider that a legislative proposal should include an SME test if the drafting procedure is adequately transparent and inclusive to allow them to do so.
- Provide clear and comprehensive guidance material and training to help civil servants in charge of drafting legislative proposals to properly conduct the SME test.
- Take into consideration the results of the SME test in the formulation of new legislation.
- Implement a mechanism to assess the implementation and quality of the SME test. The quality check should be performed by a body other than the one which carried out the SME test.
- The assessments of the SME test should be followed up by measures or updated guidance material to improve its application, when needed.

Stakeholder consultation

82% of the respondent Chambers (all except France and Portugal) declared that some form of stakeholder consultation had taken place in the previous 12 months in their respective countries.

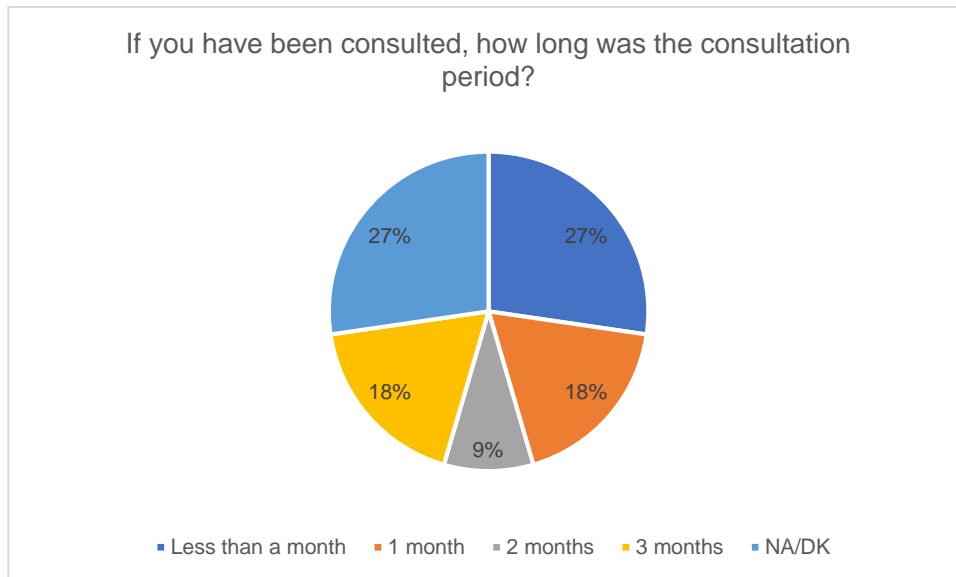
¹ This section also reiterates some of the suggestions that were expressed by EUROCHAMBRES in the previous report.

The most used consultation method is open public consultation, employed in 6 out of the eleven respondents' countries², closely followed by ad hoc round table discussions with stakeholders and regular meetings with stakeholders, used in five and four countries, respectively³. At the other end of the spectrum, according to the survey results, direct bilateral contacts with individual SMEs did not take place in any of the respondents' countries, while test panels for entrepreneurs only in one⁴.

In five of the respondents' countries, two or more consultation methods were used (two in Cyprus, Ireland and Spain; three in Hungary and four in Estonia). Still, in four of the countries, Austria, Croatia, Germany and Luxembourg, only one consultation method was used.

Consultation period

The survey shows that in several of the respondents' countries, the consultation period is on average extremely brief: less than a month in Austria, Germany and Hungary and one month in Croatia and Cyprus. Three month-consultations are only run in two countries (Luxembourg and Spain).



Less than a month	1 month	2 months	3 months	N/A / Don't know
Austria	Croatia	Ireland	Luxembourg	France
Germany	Cyprus		Spain	Estonia
Hungary				Portugal

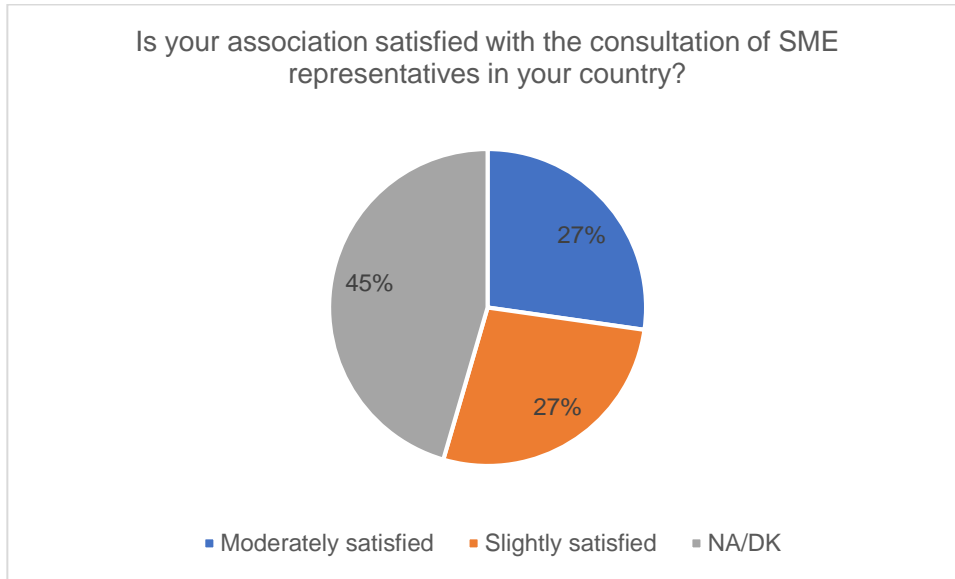
² Open public consultations were used in Austria, Croatia Cyprus, Estonia, Germany and Hungary.

³ Ad hoc round table discussions with stakeholders were organised in Cyprus, Estonia, Hungary, Ireland and Spain. Regular meetings with stakeholders were organised in Estonia, Hungary, Ireland and Luxembourg.

⁴ Estonia.

Satisfaction level regarding the consultation of SME representatives

54% of the respondents were slightly to moderately satisfied with the consultation of SME representatives.



2017					
Completely satisfied	Very satisfied	Moderately satisfied	Slightly satisfied	Not at all satisfied	Not applicable/Don't know
		Cyprus	Austria		France
		Luxembourg	Croatia		Estonia
		Spain	Germany		Hungary
					Ireland
					Portugal

2014 ⁵					
Completely satisfied	Very satisfied	Moderately satisfied	Slightly satisfied	Not at all satisfied	Not applicable/Don't know
Austria	Cyprus	Belgium	Lithuania		
	Estonia	Czech Republic	Slovenia		
	Germany	France	Spain		
	Ireland	Hungary	Croatia		
	Latvia	Luxembourg			

⁵ The countries of Chambers which did not participate in the survey in 2017 are struck through, those whose satisfaction level improved are highlighted in green and those whose satisfaction level worsened are highlighted in red. The countries that in 2017 changed their view to 'not applicable/don't know' are highlighted in grey.

Comparing the results by country of 2017 with those of 2014 reveals that Austria's satisfaction level has dropped from completely satisfied in 2014 to slightly satisfied in 2017. The same can be noted in Germany, which went from very satisfied to slightly satisfied, and Cyprus, from very to moderately satisfied. In all three cases, the low level of satisfaction is linked to the unreasonably brief consultation period. Indeed, Chambers from these three countries expressed the need for longer consultation periods, as seen in the following section.

Comments and suggestions for improvement

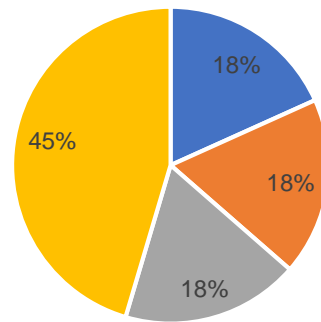
- The relevant ministries should regularly engage with and consult interested stakeholders. A strong cooperation between relevant ministries and stakeholders is key to ensuring that the interests and concerns of SMEs are taken into account and contributes to enhancing the quality of the proposal.
- Several Chambers (e.g. Austria, Cyprus, Estonia and Germany) highlighted the need for longer consultation periods. This is essential to ensure a proper involvement of interested stakeholders in the law-making process and to allow them to provide adequate feedback.
- Consultations should be held sufficiently in advance of the final drafting of legislation to leave enough scope for policy-makers to take stakeholders' input into consideration and adapt the text.
- In order to enhance the participation of interested stakeholders in the consultation process, it would be useful to make available a calendar with upcoming consultations, so as to allow interested parties to know in advance on what and within which timeframe they can express their views.
- The views expressed by SME representatives should be taken into account in the subsequent steps of the law-making process.
- To increase the transparency of the process, the main results of the consultations should be made publicly available, together with a list of the stakeholders consulted, consultation methods used and consultation period.
- Feedback should be provided to demonstrate how feedback from stakeholders has been factored into the legislative proposal or, if not, an explanation of why.
- Use of a range of consultation methods is recommended to address potential information gaps and ensure that relevant evidence and data are collected.

Assessment of the impact on SMEs

None of the Chambers is completely or very satisfied with the assessment of the impact on SMEs in their country. The highest level of satisfaction registered is "moderately satisfied", reported by Austria and Spain.

In the case of Austria, this represents a drop in the degree of satisfaction compared to the 2014 results ("very satisfied"). In the case of Spain, whose rating remained unchanged, it should be noted that, according to the data collected, there is a commitment from the government to introduce the SME test, so the level of satisfaction might be related to this rather than to the actual implementation. Croatia and Luxembourg are not satisfied at all, as was the case in 2014. As far as Croatia is concerned, this is connected to the fact information on the actual implementation of any SME test is not available yet and it is not known whether any test has been carried out or not. Half of the respondents answered that the question was not applicable. This might be linked to the fact that an SME test is not in place (e.g. in Ireland, Hungary) or has not been conducted since 2014 (France).

Is your association satisfied with the assessment of the impact on SMEs in your country?



■ Moderately satisfied ■ Slightly satisfied ■ Not at all satisfied ■ NA/DK

2017					
Completely satisfied	Very satisfied	Moderately satisfied	Slightly satisfied	Not at all satisfied	Not applicable/Don't know
		Austria	Cyprus	Croatia	Estonia
		Spain	Germany	Luxembourg	France
					Hungary
					Ireland
					Portugal

The table below shows the level of satisfaction registered in 2014.

2014 ⁶				
Completely satisfied	Very satisfied	Moderately satisfied	Slightly satisfied	Not at all satisfied
	Austria	Belgium	Estonia	Croatia
	Lithuania	Hungary	Latvia	Ireland
		Spain		Luxembourg
				Slovenia

⁶ The countries of Chambers which did not participate in the survey in 2017 are struck through, those whose satisfaction level improved are highlighted in green and those whose satisfaction level worsened are highlighted in red. The countries that in 2017 changed their view to 'not applicable/don't know' are highlighted in grey.

Suggestions for improvement:

Overall, more attention to the SME dimension is needed. With this regard, the following suggestions are put forward:

- In the identification of the affected population, **better estimates** are needed **regarding how many SMEs are affected and to what extent**. This could be achieved through a closer collaboration with Chambers and other relevant representative bodies.
- A quantification of impact specifically on SMEs should be ensured, not only on business in general. This is essential, as SMEs are usually more impacted by compliance costs than large companies.
- More thorough, comprehensive and detailed analysis of the impact on SMEs, bearing in mind that SMEs are not a homogenous group and that impact may vary according to a range of factors (business development phase, size (micro, small or medium), sector etc).

Mitigating measures

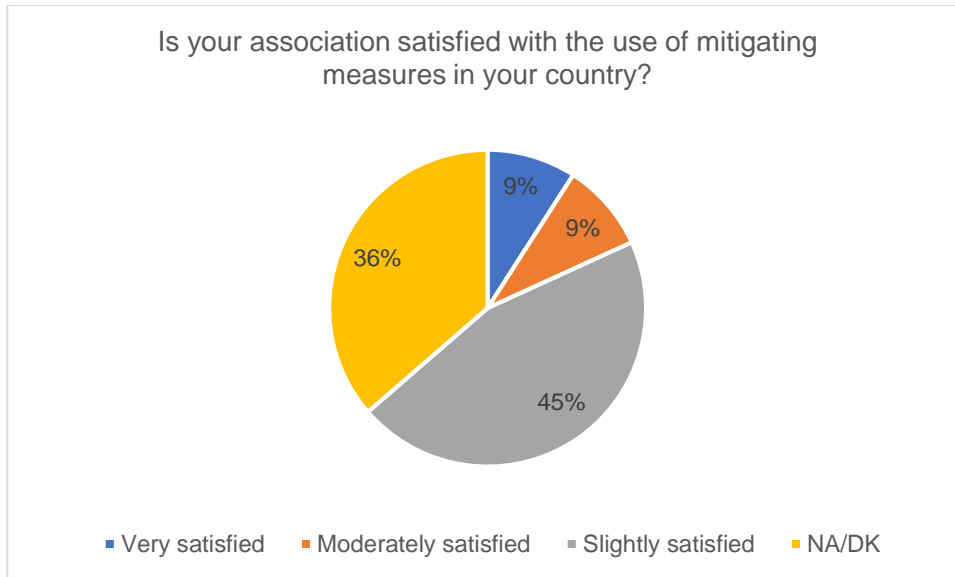
Respondents identified the use of a range of different mitigating measures in the previous 12 months, with complete or partial size-related exemptions, simplified reporting obligations and specific information campaigns or user guides, training and dedicated help desks being the most common.

The table below gives an overview of which measures were applied in which countries.

Complete or partial size-related exemptions for SMEs	Temporary exemptions	Tax reductions or direct financial aid	Simplified reporting obligations for SMEs	Specific information campaigns or user guides, training and dedicated helpdesks	Digital compliance assistance tools	Other	None	n/a
	AT	AT	AT	AT				
CY								
EE			EE	EE				
								FR
DE			DE					
								HU
		HR		HR				
								IE
							LU	
		PT		PT				
ES			ES	ES				

Level of satisfaction regarding the use of mitigating measures

Five of the respondent Chambers claimed to be slightly satisfied with the use of mitigating measures. One declared to be moderately satisfied and one very satisfied. Four of the respondents did not express their view in relation to this question. In certain cases, the low level of satisfaction is attributed to the Chambers’ perception that mitigating measures should be applied more often than they currently are. The German Chamber of Commerce also suggested that mitigating measures should be of a permanent nature, while at present they are often temporary.



The Chambers’ level of satisfaction by country is shown in the table below.

2017					
Completely satisfied	Very satisfied	Moderately satisfied	Slightly satisfied	Not at all satisfied	Not applicable/Don't know
	Spain	Hungary	Austria		Estonia
			Croatia		France
			Cyprus		Ireland
			Germany		Luxembourg
			Portugal		

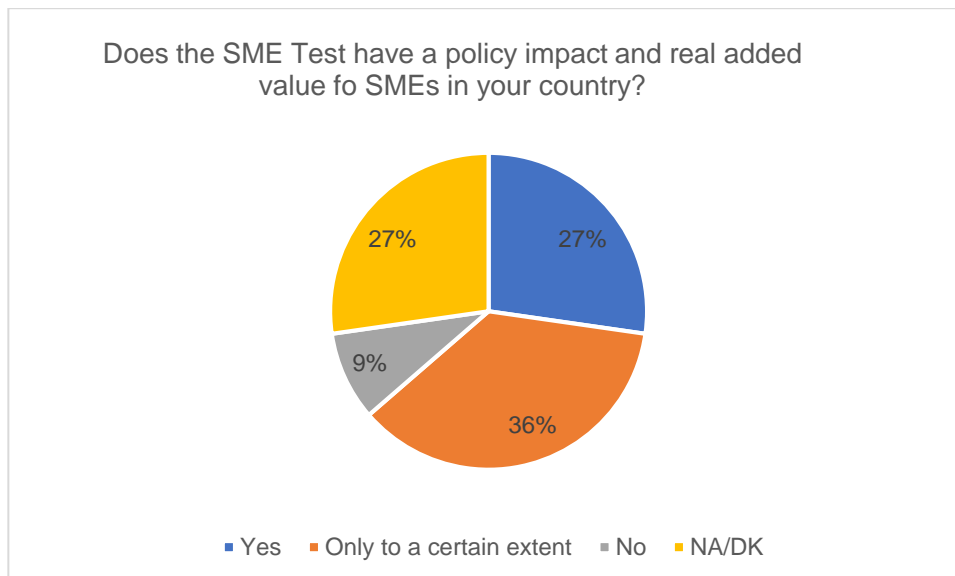
By comparing the 2017 and the 2014 results (table below), it is possible to observe a decrease in the satisfaction level of the Austrian, German and Spanish Chambers. Moreover, some of the Chambers that in 2014 clearly expressed their satisfaction level, opted in 2017 for the ‘not applicable/don’t know’ option (Estonia, Ireland and Luxembourg). The only Chamber whose satisfaction level increased is the Croatian one, which went from not satisfied at all in 2014 to slightly satisfied in 2017.

2014 ⁷				
Completely satisfied	Very satisfied	Moderately satisfied	Slightly satisfied	Not at all satisfied
Spain	Austria	Czech Republic	Estonia	Croatia
	Latvia	Germany		Ireland
	Lithuania	Hungary		
		Luxembourg		

It is clear from this that measures to mitigate burdens created by proposed legislation are of importance. Nonetheless, this should not draw attention away from the fact that the underlying rationale behind the 'Think Small First' principle, and of its main tool, the SME test are to give full consideration to SMEs and their needs at an early stage in the policy development process in order to ensure that rules impacting on businesses are developed from an SME perspective. For this reason, the focus should be not so much on the introduction of mitigating measures, but rather on the formulation and adoption of policy options that take into consideration SMEs' needs and do not instigate unnecessary and excessive burdens on them. It is therefore of paramount importance that the assessment of the impact of new legislation on SMEs is carried out in a thorough and timely manner from the inception onwards.

Policy impact and added value of the SME test

Chambers' views differ on the policy impact and real added value of the SME test for SMEs in their countries. Three answered 'yes', four 'only to a certain extent', three 'not applicable/don't know' and one 'no'.



⁷ The countries of Chambers which did not participate in the survey in 2017 are struck through, those whose satisfaction level improved are highlighted in green and those whose satisfaction level worsened are highlighted in red. The countries that in 2017 changed their view to 'not applicable/don't know' are highlighted in grey.

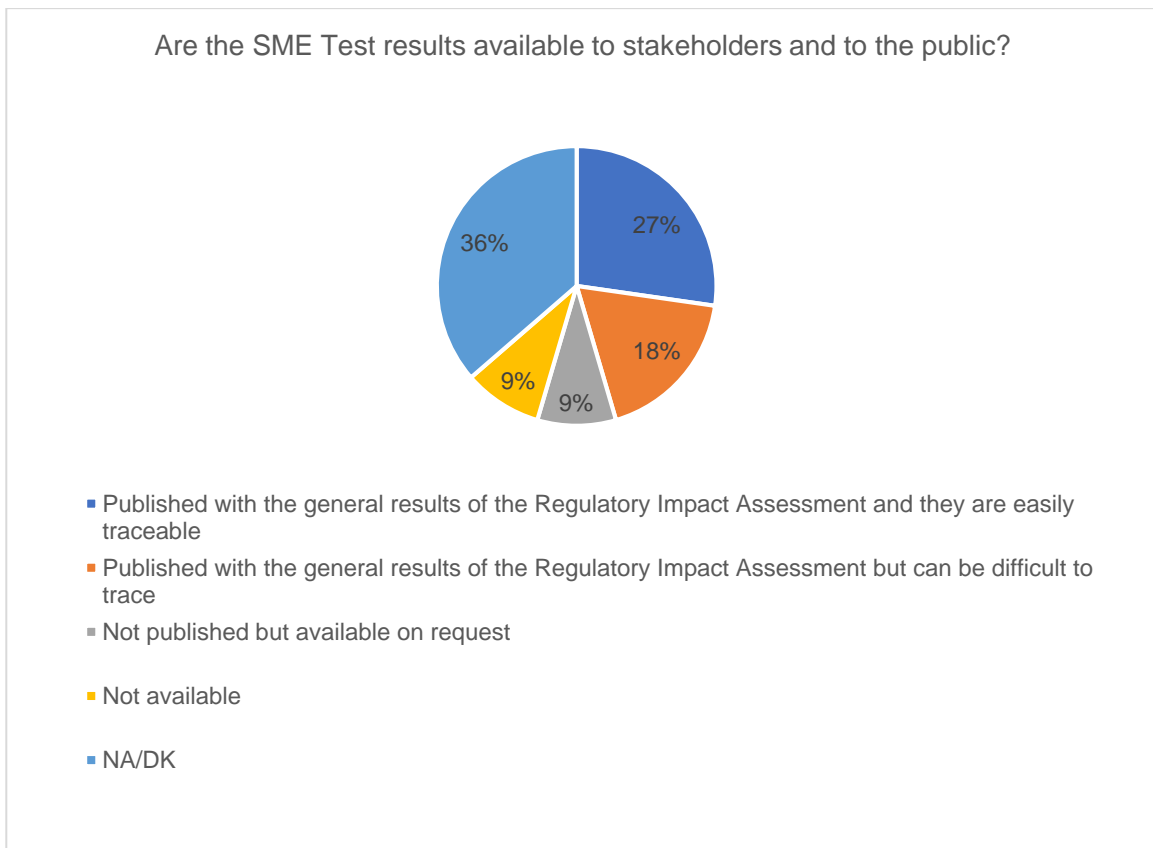
Yes	Only to a certain extent	No	N/A
Germany	Austria	Luxembourg	France
Portugal	Croatia		Ireland
Spain	Cyprus		Hungary
	Estonia		

Chambers recognise that, if properly applied, the SME test would have a positive impact and added value. Among the potential benefits, Chambers stressed that attention to SMEs and to their needs in the policy making process would contribute to a more favorable regulatory and policy environment and have a consequent positive impact in terms of economic growth and competitiveness.

Transparency - availability of the SME test results

In five respondents' countries (Cyprus, Estonia, Luxembourg, Austria and Germany), the results of the SME test are published with the general results of the Regulatory Impact Assessment. However, the latter two countries pointed out that they are not easy to find. In France, the results are not published, but are available on request, whereas in Croatia they are not available⁸.

The results of the SME test should be made publicly available and easy to find. This is important, not only for transparency reasons, but also because it allows interested stakeholders to know how the test is being applied and to put forward suggestions for improvement.



⁸ The fact that the results are not available in Croatia might be due to the very recent introduction of the SME test.

Good practices

This section presents good practices identified by two national Chambers .

Stakeholder consultation procedure

France

CCI France considers the stakeholder consultation procedure as a good practice for two main reasons: the fact that it is carried out by regional administrations, which are closer to SMEs compared to the central ones, and the use of panels and direct contact with SMEs, which allow a more targeted action. Nevertheless, this positive procedure is rendered hypothetical given that no stakeholder consultation has been carried out since 2014. This suggests that the stakeholder consultation procedure is good on paper, but is not applied in practice.

Quality control foreseen for the SME test

Germany

The German National Regulatory Control Council (NKR) started to monitor the application of the SME test in the end of 2016 and is going to publish the results from next year on.

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EUROCHAMBRES – The Association of European Chambers of Commerce and Industry represents over 20 million enterprises in Europe – 93% of which are SMEs – through members in 43 countries and a European network of 1700 regional and local Chambers.