



SME Test Benchmark 2017

Assessment of the application of the
SME test by the European
Commission



EUROCHAMBRES

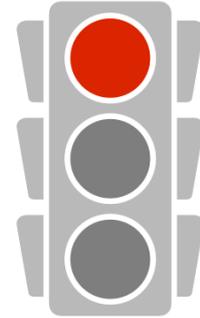
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SME Test Benchmark 2017

Overall quality

Only one-third of the IAs included an SME test of a good quality.

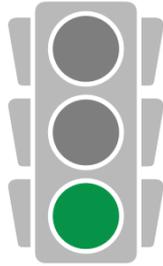


Consultation



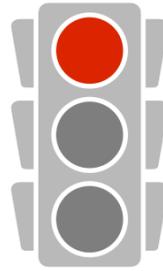
Open Public Consultation

Despite being compulsory, public consultations were not carried out for 2 dossiers.



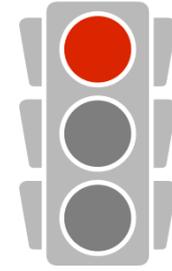
Accessibility

Most consultation questionnaires analysed allowed respondents to identify themselves as SMEs and were available in all EU official languages.



Targeted Consultation

No targeted consultation of SMEs was undertaken in the majority of IAs.



Presentation of Consultation Results

In over three quarters of IAs, the views of SMEs were not properly presented.

Analysis



Use of studies

Several IAs made use of studies to support the analysis of affected businesses.



Detail and quantification

The level of detail/accuracy in the measurement of the impact on SMEs was considered low in 7 out of 13 IAs, while costs and benefits were insufficiently quantified.



Different policy options

7 IAs presented the impact of SMEs for each policy option, although not always adequately.



SME size-classes differentiation

None of the IAs analysed separately the costs and benefits relating to different SME size-classes.

SME Test Recommendations

- An open public consultation should always be conducted and respect the guidelines for minimum duration.
- Open public consultations should be complemented with targeted consultations to ensure that relevant data is collected and potential information gaps are addressed.
- The views of SMEs should be clearly discernible from those of the business community as a whole.
- Analysis of the impact on SMEs should be more accurate and quantify costs and benefits.
- Greater attention should be paid to the different size-classes within the SME category (micro, small, medium-sized).

Executive Summary

A thorough SME test is a pre-condition for evidence-based policy initiatives that deliver their objectives in a manner that avoids unnecessary or disproportionate burdens on SMEs. As such, the SME test is pivotal to the application of the 'Think Small First' principle in policy-making and to ensuring an SME-friendly regulatory environment.

The SME Test Benchmark 2017 assesses the application of the SME test by the European Commission, also providing constructive criticism and recommendations for improvement.

The study is based on the analysis of 13 impact assessments (IAs) relating to key dossiers for SMEs that were published between July 2015 and January 2017. The IAs were checked against the European Commission's 2015 Better Regulation guidelines, following the four steps of the SME test:

1. Consultation of SME stakeholders
2. Identification of affected businesses
3. Measurement of the impact on SMEs
4. Assessment of alternative options and mitigating measures

For each IA, the study also looks at the opinions of the Regulatory Scrutiny Board (RSB) to verify whether and to what extent the application of the SME test, a mandatory element of the IA, was taken into consideration before issuing a positive opinion.

EUROCHAMBRES remained in contact with the European Commission's SME Test Helpdesk in DG GROW throughout the preparation of the SME Test Benchmark 2017.

Assessments of the European Commission's application of the SME test had already been conducted by EUROCHAMBRES in 2011 and 2013. In line with the results of the previous editions, the SME Test Benchmark 2017 reveals an unsatisfactory overall picture.

Main findings:

- Despite the strong emphasis by the current Commission on better regulation and on the economic importance of SMEs, less than one-third of the analysed IAs performed the SME test to a good level.
- Weaknesses in the collection of the views of SMEs persist, with open public consultations not being carried out for two dossiers despite being compulsory and no targeted consultation of SMEs undertaken in the majority of IAs.
- Although most consultation questionnaires allowed respondents to identify themselves as SMEs, in over three-quarters of the IAs their views were not properly presented.
- The assessment of the impact on SMEs is weakened by the absence of a thorough cost-benefit analysis, a low level of detail and accuracy and insufficient attention to the differences between SME size-classes (micro, small, medium).
- Quantification of the impact is more the exception than the rule, with the costs and benefits regarding SMEs almost never or insufficiently quantified and monetised. The lack of quantification is also rarely justified.

- The results of the SME test are not presented in a uniform manner across the IAs analysed. Information relating to the four steps is scattered throughout various sections of the reports, making it difficult to assess.
- The persistence of serious flaws in the application of the SME tests are detrimental to the policy-making process, as they increase the risk that the Commission tables initiatives which create excessive and unnecessary burdens for ‘the backbone of the European economy’.
- The reinforced independence of the Regulatory Scrutiny Board makes it better placed than its predecessor to issue neutral opinions on draft IAs. Nevertheless, there is still scope for strengthening the Board’s attention to the application of the SME test.

Main recommendations:

- The Commission’s guidelines on how to conduct the SME test should be more rigorously applied by the relevant services.
- To ensure an effective consultation of SMEs and their representatives, a 12-week open public consultation, available in all EU official languages and extended if run over main holiday periods, should be combined with targeted consultation methods, so as to enhance the quality of the data collected and fill information gaps.
- The views of SMEs should be clearly presented in the IA and distinct from those of large companies or of the totality of respondents. Attention should also be paid to the different size-classes of SMEs (micro, small, medium).
- The analysis of the impact on SMEs should be more accurate and include a thorough cost-benefit analysis. The assessment should more clearly and systematically differentiate between SMEs and large companies, as well as between the different size-classes of SMEs.
- Further efforts should be made to quantify and monetise the potential impact of proposed initiatives on SMEs. Statistics provided by Eurostat or data presented in internal or external studies should be used more systematically to better estimate costs and benefits.
- Relevant units across the European Commission’s services should receive more assistance in the application of the SME test before an IA is submitted to the RSB.
- Since the SME test is a compulsory element of the IAs, the Regulatory Scrutiny Board should more systematically verify that the SME test is properly carried out before issuing a positive opinion on an IA.

Introduction

A robust SME test is a pre-condition for initiatives that are evidence-based and that do not create disproportionate burdens on SMEs, while delivering policy objectives. As such, the SME test is a key tool to implement the 'Think Small First' principle, according to which SMEs' interests should be taken into account at a very early stage of policy-making.

The previous assessments of the European Commission's application of the SME test carried out by EUROCHAMBRES in 2011 and 2013¹, were very critical: they showed, inter alia, a poor presentation of the SME test in the IA reports, significant weaknesses in the collection and reflection of the views of SMEs and a recurring failure to properly evaluate the impact on SMEs. Moreover, despite the Commission's 2011 commitment to further strengthen the application of this tool 'to ensure that impacts on SMEs are thoroughly analysed and taken into account in all relevant legislative and policy proposals'², progress in the application of the SME test by the Commission between EUROCHAMBRES first assessment in 2011 and the second in 2013 was limited, with 57% of the scrutinised IA reports having correctly conducted an SME test in 2013 (8 out of 14) compared to 44% in 2011 (4 out of 9).

Since the beginning of its mandate in 2014, the Juncker Commission has made Better Regulation central to its work and approach. The Better Regulation agenda, adopted in May 2015, includes a strong commitment to the application of the 'Think Small First' principle: 'We will apply the "Think Small First" principle more thoroughly when preparing initiatives: taking the interests of small- and medium-sized businesses into account when designing and evaluating policies, and considering a lighter regime for them including an outright exemption for micro-businesses wherever it is possible and makes sense'³.

Two years after the launch of the Better Regulation package, this new study investigates how the Commission is applying the SME test. It serves as a basis to present recommendations as to how further improve the implementation of the SME test. This is done by addressing persisting challenges and shortcomings and by identifying positive elements and good practices that should be promoted to improve the overall application of the SME test among the Commission's services.

Methodology

Selection of the Impact Assessments

EUROCHAMBRES selected 13 Impact Assessment reports on initiatives of relevance to the SME community, that were published after the launch of the Better Regulation package and covering the period July 2015-January 2017. The selection of dossiers reflects the focus of EUROCHAMBRES' policy action and the Commission's priorities, with Internal Market and Digital Single Market prominent.

¹ EUROCHAMBRES, SME Test Benchmark 2013. Assessment of the European Commission's application of the SME Test, November 2013.

² Communication from the Commission to the European Parliament, the Council, Economic and Social Committee and the Committee of the Regions, Review of the "Small Business At for Europe", COM(2011) 78 final, p. 6.

³ Communication from the Commission to the European Parliament, the Council, Economic and Social Committee and the Committee of the Regions, Better regulation for better results – An EU agenda, COM(2015) 215 final, p. 7.

The table below shows the IAs analysed. It indicates the proposal to which the IA refers, the reference of the IA and its date of publication, the lead DG, the policy area and provides an explanation of why it is relevant to SMEs.

Proposal	Title used in the report	IA report ref.	Date of the IA	DG	Area	Relevance to SMEs
Proposal for a Directive on the legal and operational framework of the European services card introduced by ESC Regulation - COM(2016)823 - 2017/01/10	e-Card	SWD(2016)437	10/01/2017	GROW	Internal Market	The initiative is important for SMEs since it seeks to address administrative complexity encountered by service providers operating in more than one member state. A reduction in this complexity would allow such SMEs to save time and money when going cross-border.
Proposal for a Directive on the enforcement of the Directive 2006/123/EC on services in the internal market, laying down a notification procedure for authorisation schemes and requirements related to services, and amending Directive 2006/123/EC and Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System COM(2016)821 - 2017/01/10	Notification procedure	SWD(2016)434	10/01/2017	GROW	Internal Market/ Justice and Consumers	SMEs can be negatively affected by national rules which are not compliant with EU law and with the provisions of the Services Directive in particular. The Directive could ensure better compliance and therefore greater legal certainty. SMEs going cross-border should benefit from this.
Proposal for a Directive on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures and amending Directive 2012/30/EU - 2016/11/22	Insolvency	SWD(2016)357	22/11/2016	JUST	Internal Market/ Justice and Consumers	This proposal is important for SMEs and especially start-ups and young companies as they are more likely to be confronted with insolvency issues. Early warning systems could help young companies to intervene in a timely manner to avoid bankruptcy.

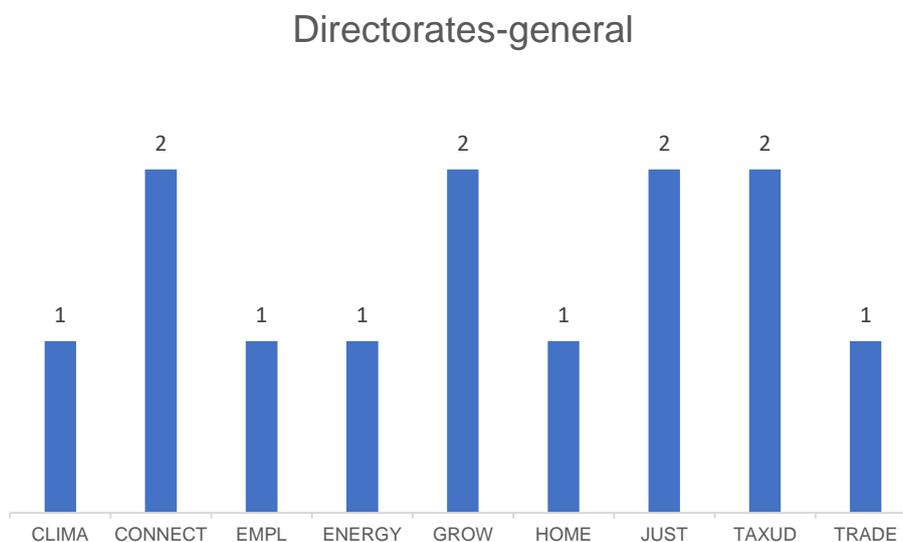
Proposal for a Regulation on addressing geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC - COM(2016)289 - 2016/05/25	Geo-blocking	SWD(2016)173	25/05/2016	CONNECT	Internal Market	The Commission intends to increase cross-border commercial transactions with this legislation. It is highly relevant to SMEs because contractual obligations might be altered by the new rules and small businesses might be more affected than large companies which typically have specialized lawyers in their staff.
Proposal for a Directive on certain aspects concerning contracts for the supply of digital content - COM(2015)634 - 2015/12/09	Contracts for the supply of digital content	SWD(2015)274	09/12/2015	JUST	Internal Market/ consumer protection	Both proposals on certain aspects concerning contracts for the supply of digital content and for the online and other distance sales of goods have an effect on the aftersales conditions of online commercial transactions. SMEs are increasingly selling online and cross-borders and therefore concerned.
Proposal for a Regulation on ensuring the cross-border portability of online content services in the internal market - COM(2015)627 - 2015/12/09	Cross-border portability of online content services in the internal market	SWD(2015)270	09/12/2015	CONNECT	Internal market/ Digital Single Market	The initiative aims to ensure the cross-border portability of online content services and is expected to result in online content service providers offering cross-border portability systematically and in all content sectors. Full application to SMEs (including micro enterprises) is envisaged. SMEs that are online content service providers will be faced with direct and indirect costs.
Proposal for a Regulation setting up a Union regime for the control of exports, transfer, brokering, technical assistance and transit of dual-use items (recast) - COM(2016)616 - 2016/09/28	Union regime for the control of exports, transfer, brokering, technical assistance and transit of dual-use items	SWD(2016)315	28/09/2016	TRADE	Trade	SMEs are very much involved in the export of products that fall within the reach of the proposed regulation, meaning they might be directly affected by EU action.

Proposal for a directive of entry and residence of third-country nationals for the purposes of highly skilled employment - COM (2016) 378 - 2016/06/07	Blue Card	SWD(2016)193	07/06/2016	HOME	Employment	The aim of the revised Blue Card is to attract more highly skilled people who can contribute to addressing skills shortages and boost economic growth. SMEs, as employers, are key players to ensure the correct application of the revised Blue Card Scheme. SMEs which suffer the most from skills shortage stand to benefit from the initiative if access to these highly-skilled workers is easy and affordable.
Proposal for a Directive amending Directive 96/71/EC of The European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services - COM(2016)128 - 2016/11/30	Posting of workers	SWD(2016)52	08/03/2016	EMPL	Employment	The Posting of Workers Directive aims to promote and facilitate the cross-border provision of services, provide protection to posted workers and ensure a level-playing field between foreign and local competitors. SMEs, as employers of posted workers or as 'local' companies, will be affected by the initiative.
Proposal for a Directive on a common consolidated corporate tax base (CCCTB) COM(2016)683 - 2016/10/25	CCCTB	SWD(2016)341	25/10/2016	TAXUD	Taxation	On the one hand, the CCCTB could reduce the burden of tax compliance for SMEs that operate in different countries by providing a standard set of rules for the calculation of the corporate tax base. This would also reduce the internal market distortions and unfairness issues that stem from aggressive tax planning. On the other hand, the 'one size fits all' approach might not be appropriate, as the harmonised standard would not take into consideration the national differences regarding their tax systems. Also, it would create a dual tax system, between the ones using the CCCTB standard and the rest, that adds complexity for tax authorities and businesses alike.

Proposal for a Directive amending Directive 2006/112/EC on the common system of value added tax as regards the temporary application of a generalised reverse charge mechanism in relation to supplies of goods and services above a certain threshold - COM(2016)811 - 2016/12/21	GRCM	SWD(2016)457	21/12/2016	TAXUD	Taxation	The GRCM aims to counter the carousel fraud and VAT evasion. This proposal partially alleviates the burden for SMEs by introducing thresholds per invoice for reporting. However, it still leads to new reporting obligations, following double reporting obligations, as well as to both additional one-time and recurring administrative costs. Therefore, the costs of compliance for SMEs could be considerably higher after the implementation of the Directive.
Proposal for a Directive of the European Parliament and of the Council on the promotion of the use of energy from renewable sources (recast) - COM(2016) 767 - 2016/11/30	Promotion of the use of energy from renewable sources	SWD(2016)418	20/11/2016	ENERGY	Energy	SMEs can be both generators and consumers of renewable energy. Moreover, they are heavily affected by energy prices and feed-in tariffs.
Proposal amending Directive 2003/87/EC to enhance cost-effective emission reductions and low-carbon investments COM (2015) 337- 2015/07/15	Cost-effective emission reductions and low-carbon investments	SWD(2015)135	15/07/2015	CLIMA	Environment	Businesses covered by the ETS are directly affected. The ETS Directive is of greater relevance to large businesses. However, there are also industrial SMEs that emit greenhouse gases in their production processes and are consequently covered by the directive. Moreover, the Directive contains provisions on optional exclusion of small emitters, which are in some cases SMEs.

The relevance to the SME community was the main selection criterion. Nevertheless, a good coverage of different European Commission Directorates General (DGs) was also factored in and ensured. Accordingly, the selected IAs were drafted by 9 different DGs: CLIMA, CONNECT, EMPL, ENERGY, GROW, HOME, JUST, TAXUD and TRADE. The range of DGs covered in the 2017 SME Test Benchmark is thus wider than in the previous editions (5 in 2013 and 7 in 2011).

As shown in the graph below, from 5 DGs, CLIMA, EMPL, ENERGY, HOME and TRADE, a single IA was selected, while from the remaining 4 DGs, CONNECT, GROW, JUST and TAXUD, 2 IAs were picked.



The list of IAs to analyse was discussed in a meeting with representatives from the SME Test Helpdesk in DG GROW, European Commission in February 2017.

Assessment

EUROCHAMBRES' assessment is based on the European Commission's 2015 Better Regulation guidelines and follows the four steps of the SME test:

5. Consultation of SME stakeholders
6. Identification of affected businesses
7. Measurement of the impact on SMEs
8. Assessment of alternative options and mitigating measures

For every IA report, each of these steps was analysed based on the content of the IA report. Additional information regarding step 1 (e.g. the consultation questionnaire and the languages in which the consultation was available) was retrieved from the Commission's website and/or provided by the relevant units through DG GROW's SME Test Helpdesk. Steps 1, 2 and 3 were attributed a score ranging from 0 to 4, according to the scale reported in the box below. 0.5 points were attributed to dossiers found to be in-between two quality levels (e.g. between poor and acceptable or good and very good). The criteria used for each step are explained in detail in the relevant sections. Step 4 simply involved verifying whether mitigating measures were proposed in the IAs; points were not attributed.

Level and quality of the information provided:

0 points: none / extremely poor
 1 point: poor
 2 points: acceptable
 3 points: good
 4 points: very good

The total score for each dossier can thus range from 0 (minimum) to 12 (maximum).

<p>Overall score:</p> <p>0-3.5 points: extremely poor</p> <p>4-5 points: poor</p> <p>6-8 points: acceptable</p> <p>9-10 points: good</p> <p>11-12 points: very good</p>
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The scores 0-12 were converted into percentages:

<p>Overall quality:</p> <p>0-29%: extremely poor (no SME test)</p> <p>26-50%: poor</p> <p>51-60%: acceptable</p> <p>61-75%: good</p> <p>76-100%: very good</p>

Compared to the 2013 SME Test Benchmark, two additional thresholds were added in 2017 in order to allow a more nuanced assessment⁴.

Due to significant changes in the methodology and in the scoring system, the results of the 2017 SME Test Benchmark cannot be compared directly with those of the 2011 or 2013 editions. However, negative trends and positive developments are identified.

For each IAs, the opinions issued by the Regulatory Scrutiny Board are also analysed to verify whether this body took into consideration how the SME test - a compulsory element of the IA - was carried out before issuing a positive opinion.

It should be stressed that the analysis is limited to the SME test and is not an assessment of the IA in general. The scores concern only the SME test or its individual steps. Moreover, the present study does not take into consideration the text of the proposals to which the IAs relate.

Results and recommendations

Step 1: Consultation of SME stakeholders

The consultation of interested parties, notably those which will be affected by a new policy initiative, is a crucial step to deliver high quality proposals, as well as to allow for transparency and legitimacy in the policy-making process. Hearing the voice of SME stakeholders is essential to ensure that the proposed initiatives are fit for 'the backbone of Europe's economy'. As rightly stressed in the Better Regulation guidelines, '[t]he SME dimension should be a central element of the consultation strategy'⁵.

According to the guidelines on 'Stakeholder consultation in the context of an IA', besides a 12-week internet-based public consultation, the consultation strategy **should** be complemented by other approaches and tools. These can include, as explained under the

⁴ In the 2013 SME Test Benchmark, the SME tests were classified as 'poor' if scoring 50% or lower, 'average' if between 50% and 75% and 'good' if the quality level was 75% or higher.

⁵ Tool #19: The SME Test, p. 129.

SME Test tool, round table discussions, focus group meetings, hearings targeting SME representatives and SME Panels⁶.

In order to assess how the consultation of SME stakeholders was carried out in the context of the SME test and whether it properly reflected the SME angle, EUROCHAMBRES looked at the following elements: the first is whether a 12-week open public consultation was conducted. If so, it was verified if, in the consultation questionnaire, respondents were able to identify themselves as SMEs and/or SME representatives. This is essential in order for policy-makers to be able to capture the SME angle and to take into consideration SMEs' needs and concerns in the proposed initiative.

The languages in which the consultation was made available were also looked at, as questionnaires available in all of the 24 EU official languages (or 23 excluding Irish) facilitate SMEs' participation in the consultation, compared to questionnaires available only in English.

The assessment also checked whether SME views were presented in relevant sections of the Impact Assessment (e.g. in the description of the policy option or in the analysis of the impact). This criterion was not considered fulfilled if the IA expressed the views of the business community as a whole, without any specific reference to SME stakeholders. This is because, as also explained in the SME Test guidelines, SME can be affected by the costs of regulation proportionality more than large companies⁷.

Finally, the assessment verified whether additional consultation methods were employed. In this regard, not only consultation methods exclusively targeting SMEs were considered (e.g. SME panels), but also those that addressed a wider range of stakeholders (e.g. business associations, employers group, trade unions, civil society and public authorities), where also SMEs and/or SME representatives were involved. In order for this criterion to be considered fulfilled, the IA reports had to state clearly and explicitly whether SMEs or SME stakeholders were involved. When the description of the targeted consultation methods employed referred in general to a broader stakeholder group (e.g. industry stakeholders, businesses in general or service providers), in which SMEs and their representatives might or might not have been included, the criterion was considered not to have been met.

Based on these elements, points were attributed (or deducted) as follows, with a potential maximum score of 4 points.

Was a 12-week open public consultation carried out?	If yes, +1 point; if not, -1 point
Were the respondents able to identify themselves as SMEs/SME representatives?	If yes, +0.5 points
Was the consultation available in all the EU 24 official languages (or 23 without Irish)?	If yes, + 0.5 points
Were the views of SMEs adequately presented in the IA report?	If yes, +1 point
Were other consultation methods employed (e.g. SME panels, round tables, focus groups, hearing targeted SME representatives, SBA follow-up meetings)	If yes, +1 point

⁶ Ibidem.

⁷ Tool #19: The SME Test, p. 128.

The scoring system for the first step of the SME test significantly differs from the one used in EUROCHAMBRES' 2011 and 2013 SME Test Benchmarks. While the previous assessments were based on the number of targeted consultation methods employed (i.e. zero points for no targeted consultation tool, one point for one targeted consultation tool, etc.), the current one is focused on the quality of the open public consultation and on the use of the SME views gathered (up to 3 points), while the use of one or more targeted consultation method allows the allocation of just one additional point. This change takes into account remarks from the European Commission's SME Test Helpdesk regarding the methodology for the previous assessment.

Main findings

The analysis of step 1 revealed a significant disparity across the IAs analysed, with 6 IAs qualifying as good or very good, 6 as poor or extremely poor and one as acceptable.

Quality of the consultation of SME stakeholders



The insolvency IA is the only one to have been awarded the maximum score (4/4), with the dossiers on Contracts for the Supply of Digital Content and Geo-Blocking receiving 3.5/4. On the other end of the spectrum, the IA on GRCM got a 0 due to the lack of both an open public consultation and targeted consultation methods.

Compared to the 2013 results, the targeted consultation of SMEs/SME stakeholders and presentation of their views, especially in distinction from the business community in general, remains disappointing overall.

On the following page are reported the main findings of the for each of the aspects assessed in relation to SME consultation. It provides a ranking of the IAs from the best performing to the worst performing, with the score attributed to each element. In the following section of this chapter, the main findings for the elements analysed are presented.

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Impact Assessment	12-week public consultation	Identification as SMEs	Languages	Other consultation methods	Presentation of SMEs' views	Score
Insolvency	Yes, +1	Yes, +0.5	24 languages, +0.5	Yes, +1	Yes, +1	4
Contracts for the supply of digital content	Yes, +1	Yes, +0.5	23 languages, +0.5	Yes, +1	Partially, 0.5	3.5
Geo-blocking	Yes, +1	Yes, +0.5	24 languages, +0.5	Yes, +1	Partially, 0.5	3.5
Blue Card	Yes, +1	Yes, +0.5	24 languages, +0.5	Yes, +1	No, 0	3
e-Card	Yes, +1	Yes, +0.5	23 languages, +0.5	Yes, +1	No, 0	3
CCCTB	Yes, +1	Yes, +0.5	Only EN, 0	Yes, +0.5	Yes, +1	3
Notification procedure	Yes, +1	Yes, +0.5	24 languages, +0.5	No, 0	No, 0	2
Cost-effective emission reductions and low-carbon investments	Yes, +1	Yes, +0.5	Only EN, 0	No, 0	No, 0	1.5
Union regime for the control of exports, transfer, brokering, technical assistance and transit of dual-use items	Yes, +1	Yes, +0.5	Only EN, 0	No, 0	No, 0	1.5
Promotion of the use of energy from renewable sources	Yes, +1	No, 0	Only EN, 0	No, 0	No, 0	1
Cross-border portability of online content services in the internal market	Yes, +1	No, 0	Only EN, 0	No, 0	No, 0	1
Posting of workers	No, -1	N/A, 0	N/A, 0	Yes, +1	Yes, +1	1
GRCM	No, -1	N/A, 0	N/A, 0	No, 0	Partially, 0.5	0

Public consultation

Despite being compulsory, open public consultations are not always carried out

Although conducting an open public consultation is a compulsory step of any impact assessment, this was not done in 2 out of the 13 dossiers analysed, namely the one on the GRCM and on the Posting of workers. In the first case, the absence of a public consultation was justified on the basis of time constraints⁸, while in the second, the concerned service (DG EMPL) was granted a derogation as the file was considered confidential⁹.

Timeframe

The 12-week consultation period was respected, but running a consultation during the summer period reduces the possibility of participation from SMEs and SME stakeholders

Formally, in all cases where a public consultation was conducted (11 out of 13), the 12-week period was respected. This is an improvement compared to the results of the 2013 SME Test Benchmark, where two out of the 14 IA reports scrutinised were found not to comply with the 12-week consultation period. However, in four of the cases analysed for the present study, the 12 weeks included a summer or winter holiday period (from mid-July to the end of August or from 24 December until 1 January)¹⁰. Running a consultation over such periods increases the difficulties in reaching SMEs and SME stakeholders (or indeed other stakeholders, one might assume, but these are not the focus of this exercise), thus reducing the chances of their participation.

Languages

Just in over half of the consultations analysed (6 out of 11), the questionnaire was available in all the EU 24 official languages (or 23 excluding Irish). The availability of the consultation questionnaire in all the official languages is a key aspect to enhance the participation of SMEs. Only a limited number among them would be able and willing to respond to consultations conducted in English only, as this would demand additional time and resources.

Use of targeted consultation methods

Most IAs do not pay sufficient attention to SME stakeholders in targeted consultation methods

The use of targeted consultation methods, besides the obligatory open public consultation, is essential to ensure that relevant data and evidence are collected and to address information gaps.

⁸ SWD(2016) 457 final, Annex 2, p. 63.

⁹ Source: DG EMPL.

¹⁰ The open public consultation for the dossiers Union regime for the control of exports, transfer, brokering, technical assistance and transit of dual-use items (15/07/2015-15/10/2015) and Contracts for the supply of digital content (12/06/2015-03/09/2015) were run over the summer period, while those for Promotion of the use of energy from renewable sources (18/11/2015-10-02-2016) and Cost-effective emission reductions and low-carbon investments (19/12-13/03) during the New Year break.

For the majority of IAs analysed (7 out of 13) no targeted consultation of SMEs and/or their representatives was undertaken, or if they were, it was not specified in the IA report¹¹.

The targeted consultation methods where SMEs or their representatives were involved, include workshops or roundtables¹², stakeholders group meetings¹³, bilateral stakeholder meetings¹⁴ and conferences¹⁵, with workshops (or cycles of workshops) and stakeholders group meetings being the most popular methods employed.

The dossier that used the highest number of targeted consultation methods was the e-Card, where all four of the above-mentioned were employed.

The presentation of the information concerning the targeted consultation methods employed and, most significantly, the views of SME stakeholders varies from IA report to IA report.

A particularly good practice is provided by the dossier on Insolvency, which besides giving an overview of the stakeholders involved and of the main findings (divided per group of stakeholder), reported a detailed summary of the views expressed by each of the participating stakeholders. Also the IA report on the Posting of workers reflects in a thorough way the position of each stakeholder.

The IA on Geo-blocking dedicated a section to the description of the stakeholder consultation workshop held, illustrating the topic discussed, the points on which the views of the various stakeholders involved converged and the position of businesses/traders, with a specific reference to SME representatives.

Regrettably, the IA reports on the e-Card and the Blue Card present the consultation method employed (format, and type of participants, objectives and issues raised), but fail to clearly present the position of SME stakeholders.

Identification as SMEs and views of SMEs in the IA report

In over three-quarters of IAs, the views of SMEs are not properly presented

Although the large majority of the consultation questionnaires analysed (9 out of 11)¹⁶ allowed respondents to identify themselves as SMEs¹⁷, in only three of the IA reports (less than a quarter) were the views of SMEs adequately presented¹⁸.

The main reason for such a disappointing result is that, in the relevant sections of the IA report (e.g. summary of the consultation responses and stakeholders' views on the policy options under the section on the assessment of the impacts), the business community is treated as a whole, homogeneous group, without any distinctions between SMEs and large companies. This can be observed for example in the IA reports on GRCM, Notification procedure, Contracts for the supply of digital content and Geo-blocking. Similarly, in the IA

¹¹ For example, for the proposal on Cost-effective emission reductions and low-carbon investments, three stakeholder meetings took place. However, it is not clear from the IA report whether SMEs or SME representatives were included among the stakeholders consulted. Similarly, in the IA report on dual use, it is not clear whether SME stakeholders were involved in the 'targeted outreach to key stakeholders'. For the proposal on Cross-border-portability of online content services in the internal market, numerous targeted stakeholder consultation activities were carried out, but it is not stated whether SMEs were included.

¹² Geo-blocking, e-Card, Blue Card, Posting of workers.

¹³ e-Card, Blue Card, insolvency.

¹⁴ e-Card.

¹⁵ e-Card.

¹⁶ The two IA reports for which no public consultation was conducted are excluded.

¹⁷ Including cases where the size of an enterprise was the only criterium used.

¹⁸ i.e. IA reports on CCCTB, Insolvency and Blue Card.

report on Cost-effective emission reductions and low-carbon investments, SMEs and SME business organisations fell in the group ‘industry stakeholders’, which also include large companies and trade associations, while in the IA on the Cross-border portability of online content services in the internal market, the categories used are service providers and right holders, but there is no distinction based on size. In the IA on the Blue Card alike, despite the fact that respondents could identify themselves as SMEs, the overview of the consultation responses is based on other stakeholders’ categories (including employer, employer’s organisation and executive and senior-level management) which might include SMEs but do not allow to properly capture the SME angle.

Worse yet, two IAs do not even specify which type of stakeholder (e.g. business community, public administration, civil society, etc.) held which view, making it impossible to understand the position of SMEs and whether and to what degree it was taken into consideration. This is the case of the IAs on the Union regime for the control of exports, transfer, brokering, technical assistance and transit of dual use items and the e-Card, where numerous expression, such as ‘the large majority of respondents agreed that’ or ‘according to the majority of respondents’ or again ‘this section is supported by a large share of stakeholders’ are found. The IA report on the e-Card does include a section on ‘Stakeholder opinion and concerns’¹⁹, where it presents stakeholders’ concerns and explains how they were taken into account. However, as the report fails to distinguish between the various stakeholders’ groups and to indicate which stakeholder expressed which view, the specific views of the SME community remain unclear.

Regulatory Scrutiny Board

In two of the IAs where EUROCHAMBRES found weaknesses in the reflection of the views of SMEs, GRCM and e-Card, the Regulatory Scrutiny Board (RSB) expressed recommendations to improve the consideration of stakeholders’ views. The Board’s remarks do not specifically refer to SME stakeholders, but are nonetheless considered useful in ensuring compliance with the SME test.

The Board also expressed recommendations regarding the collection and reflection of stakeholder views in the Insolvency IA, which was considered as acceptable in EUROCHAMBRES’ assessment in the context of the SME test.

The Board’s remarks are reported in the table below, along with comments from EUROCHAMBRES.

IA report	Board’s remarks	EUROCHAMBRES’ comments
GRCM	<ul style="list-style-type: none"> Since there was no public consultation, the report should transparently report on stakeholder views collected through other means. The available opinions of business and Member States should feature prominently throughout the report (1st Opinion – negative) Further reference stakeholders 	Although the IA report answered to the Board that additional references to stakeholders were added, in Annex 2 – stakeholder consultation – it is not always reported which stakeholder expressed the position reported. For example, the report says ‘a considerable group of respondents supported X’ and ‘a similar numbers of participants in the consultation supported Y’ but it does

¹⁹ SWD(2016) 437, p. 54.

	view throughout the report (2 nd Opinion)	not say which stakeholders belonged to either group ²⁰ . Nevertheless, the Board recognised in its second Opinion that the IA report accounts better stakeholders' views.
e-Card	<ul style="list-style-type: none"> Better distinguish between the various stakeholder groups to clarify their views on the policy options Better highlight the negative responses received from some stakeholder groups. 	Despite explaining very well stakeholders' concerns and how they were taken into account, the lack of information on which stakeholder expressed is a notably weakness in the final version of the IA report.
Insolvency	<ul style="list-style-type: none"> Feature stakeholder views throughout the assessment of the various policy options and clearly present differences in views across the stakeholder groups (1st Opinion - negative) Since the responses to the public consultation are not a representative sample of the stakeholder population, the IA should specifically avoid lumping all responses together and reporting percentages of the total that responded in some way. There appears to be a wide spectrum of opinions within stakeholder subgroups on the feasibility and effectiveness of the options. The IA should specify and analyse this further and draw relevant implications. (2nd Opinion – positive with reservations). 	Despite not providing a detailed summary of consultation responses, the report offers a good overview of the targeted consultation of stakeholders (Annex 2) and of the views of some SME stakeholders with regards to the preferred sub-option. Overall, the consideration of SME stakeholders is regarded as acceptable.

Strikingly, for five of the IAs in which the consultation of SME stakeholders was considered insufficient by EUROCHAMBRES²¹, the Regulatory Scrutiny Board did not mention it in its Opinions.

Recommendations

- Respect minimum durations defined for open public consultation.** An open public consultation should be run for each initiative for 12 weeks. If the consultation period encompasses the summer period (from mid-July to the end of August) or the

²⁰ SWD (2016) 457, pp. 63-64.

²¹ Promotion of the use of energy from renewable sources, Union regime for the control of exports, transfer, brokering, technical assistance and transit of dual-use items, Cross-border portability of online content services in the internal market, Posting of workers and Cost-effective emission reductions and low-carbon investments. (The Impact Assessment Board was in charge for the opinion on the latter IA).

New Year's break (from 24 December until 1 January), the open public consultation should be extended by four weeks and one week respectively.

- **Language.** The questionnaire of the open public consultation should be available in all of the 24 EU official languages (or 23 without Irish).
- **Targeted consultation methods.** In the assessment of the impact of the policy options on SME, it is often lamented the difficulty in finding relevant data and evidence, which might lead to flaws in the assessment. To address this issue and fill information gaps, targeted consultation methods involving SME stakeholders should be employed besides the open public consultation. This would enhance the quality of the data and evidence collected and, consequently, of the SME test and of the proposal at hand.
- **Effective reflection of the views of SME stakeholders.** In order to effectively take into account the views of SMEs and their representatives in the formulation of any initiative,
 - Respondents should be allowed to identify themselves as micro, small or medium-sized enterprises or SME representatives in the consultation questionnaire. Without this information, policy-makers will not be able to factor in SMEs' views, needs and concerns in the assessment of the impact of the various policy options, in the choice of the most suitable one, as well as in defining accurately the body of SMEs affected by the proposed initiative.
 - The position of SME stakeholders, as expressed in the open public consultation, should be clearly reported in the summary of consultation responses contained in the IA in relation to each of the key elements of the consultation. If targeted consultation methods are employed, the views of SMEs stakeholders should also be reported in the annex dedicated to stakeholder consultations.
 - The IA should always specify which position is held by SMEs or SME representatives. Generic references to the business community should be avoided, as the views and concerns of SMEs are not the same of those of large companies and the costs of the proposed legislation can be much higher for SMEs than for their bigger competitors. Also to be avoided are even more vague references to 'respondents', that make it impossible to understand which stakeholders hold a specific position.
 - In order to make clear the position of SME stakeholders, their views (gathered through the open public consultation and/or targeted consultation methods) should be expressed in relation to each policy option or to the impact of each policy option. This would help to connect in a clearer way the position of SMEs with the policy options presented and would make it easier to understand which policy option(s) would better respond to the needs of SMEs.
- **Differentiation between size-classes.** Given that the SME category is itself highly heterogeneous, further differentiation would be welcome between the different size-classes (micro, small and medium). This would not require additional efforts in the consultation phase, as most questionnaires already allowed the respondent companies to identify themselves as micro, small or medium-sized.

Step 2: Identification of affected businesses

This step of the SME test should establish whether and which SMEs are among the affected population. According to the guidelines, if the assessment 'leads to the conclusion that one or more class of SME is affected, further analysis should be carried out'²².

The allocation of points for step 2 was based on the judgement and experience of the advisor in charge of the relevant dossier at EUROCHAMBRES. The elements taken into consideration include:

- Does the analysis differentiate between SMEs and large companies?
- Does the analysis distinguish between the different size-classes (micro, small and medium)?
- Is the analysis of businesses likely to be affected corroborated by the use of quantitative elements or is it purely qualitative?
- Were internal or external studies, surveys or statistics used to support the analysis?
- Does the analysis clearly determine whether and which SMEs will be affected by the initiative?

Unlike for step 1, the final score is not the result of an arithmetical calculation strictly based on the elements considered, but is attributed on the basis of the overall quality of this step. This was done because attributing or deducting one point in relation to the elements considered without taking into account the nature and the rationale of the initiative would have distorted the analysis.

This step was rather difficult to assess due to the fact that in many IAs there was little or no relevant information and that, if available, information was scattered throughout the report. Based on the Better Regulation guidelines, according to which if the analysis of the affected businesses leads to the conclusion that one or more class of SMEs is affected, further analysis should be carried out²³, a score of 2 (i.e. acceptable) was attributed to the IAs that conducted step 3 to a satisfactory level, even if the presentation of the results for step 2 was poor. Regardless of whether and how step 3 was conducted, a score of 2 or higher was also attributed to the IAs that were found of an acceptable or good level. This means that overall the scores attributed to this step are higher than they would have been if they had been purely based on how the analysis of the affected businesses was conducted and presented in the IA report.

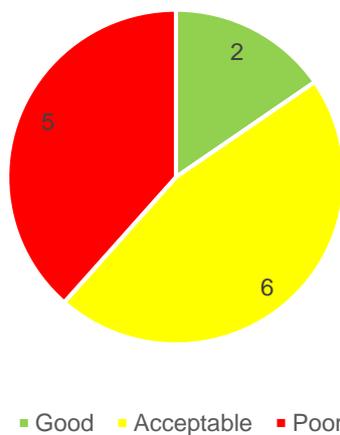
Main findings

The SME Test Benchmark shows that only 2 out of 13 IAs are classified as good. 6 out of 13 are considered as acceptable, while the remaining 5 were unsatisfactory.

²² Tool #19: The SME Test, p. 130.

²³ Ibidem.

Quality of analysis of affected businesses



Scores for each IA are shown in the table below.

Impact Assessment	Score
Contracts for the supply of digital content	3
Insolvency	3
Union regime for the control of exports, transfer, brokering, technical assistance and transit of dual-use items	2.5
CCCTB	2
Cross-border portability of online content services in the internal market	2
e-Card	2
Geo-blocking	2
Blue Card	2
GRCM	1.5
Notification procedure	1.5
Posting of workers	1
Promotion of the use of energy from renewable sources	1
Cost-effective emission reductions and low-carbon investments	1

Based on the analysis of this step, the following good and bad practices are identified. Due to differences in the content of the initiatives, not all good practices are applicable to every IA. However, they offer practical examples to help enhance the quality of step 2 in future SME tests.

Good practices

Attention to SMEs in the identification of stakeholders affected by the problem

The IA on Contracts for the supply of digital content dedicates specific attention to SMEs in the problem definition section, with an analysis both qualitative and quantitative of how they are affected by the problem at issue, i.e. the differences in consumer contract law rules. Besides estimating the costs faced by retailer as a whole as a result of such differences, the IA provides a table with the impact of one-off contract law-related costs incurred by businesses, with size breakdown (micro, small, medium and large)²⁴.

In the IA on Insolvency, the costs at EU level for domestic and cross-border insolvency proceedings are presented for SMEs and large companies, separately²⁵.

The IA on Union regime for the control of exports, transfer, brokering, technical assistance and transit of dual-use items determines that a significant number of SMEs are among the dual-use industry stakeholders, and therefore affected. Within this category, the IA provides data on the distribution of the number of firms in the defence sector, which typically produces dual-use items, with their respective turnover value and number of employees, based on 2012 statistics. This highlighted that over three-quarters of the total number of firms in the sector were micro enterprises.

Clearly state whether SMEs are included in the scope of application of the initiative

Some IAs, e.g. the one on Geo-blocking and the one on the Cross-border portability of online content services in the internal market, specify for each policy option whether they are (or should be) included.

Use of studies in support of the analysis

Several IAs refer to internal or external studies, surveys and other publications. This is done in particular in the problem definition section of the IA and it is relevant for the SME test when studies are used as a support to provide evidence of whether and to what extent SMEs are affected by the identified problem.

Particularly noteworthy is the IA on Insolvency, that made use of a wide range of studies regarding SMEs in the problem definition section. These include a 2016 study by the University of Leeds on a new approach to business failure and insolvency and studies carried out by contractors. The report also provides a comprehensive list of relevant studies for the preparation of the IA, which includes the 2016 Annual Report on European SMEs, a 2016 Eurobarometer on Insolvency (both forthcoming at the time of the publication of the IA) and the 2015/2016 SME Performance Review.

Eurobarometer surveys are also used in the IA on supply of digital content, on the e-Card and on Geo-blocking²⁶. Drawing a distinction between micro, small, medium-sized and large

²⁴ SWD(2016) 274 final, p. 12.

²⁵ SWD(2016) 358 final, p. 37.

²⁶ The IA on Contracts for the supply of digital content used the Flash Eurobarometer 413 'Companies engaged in online activities' (2015) and the Flash Eurobarometer surveys 359 and 396 'Retailers' attitudes towards a cross-border trade and consumer protection' (2013 and 2015). The IA on the e-

companies, Eurobarometer surveys can help to better understand if there are differences in the extent to which SMEs of different sizes are affected by a given problem.

The IA on the e-Card also refers, in the problem definition section, to a 2015 study conducted by EUROCHAMBRES on the obstacles to do business within the EU based on a survey of 592 entrepreneurs²⁷.

Although such studies represent a valuable asset to better investigate how SMEs are affected by a given problem and/or their perceptions towards specific issues, it is important to stress that they should be used to complement and not to replace the consultation process.

Bad practices

Lack of attention to the SME dimension in the analysis of affected stakeholders

The IA on Cost-effective emission reductions and low-carbon investments contains very few references to SMEs. It makes a distinction between small and large emitters. However, as stated in the IA, these categories do not necessarily correspond to large and small enterprises. The distinction made in the IA is useful for the purposes of the initiative, but fails to show if and to what extent SMEs are affected by the proposal. Moreover, the IA refers to the possible burdens that various industry sectors might incur, but does not specify to what extent SMEs might be concerned within the different sectors. Also, it is not clear how many of the approximately 11,000 installations covered by the directive are run by SMEs. Providing these figures would have been useful to better gauge the impact on SMEs.

Lack of differentiation between SMEs of different sizes

Despite the fact that 8 out of 13 IAs assessed distinguish between large businesses and SMEs, although not always systematically, only 2 made a distinction between the different size-classes within the SME category (micro, small and medium-sized). The significant differences between SMEs of different sizes are overlooked as a result of this lack of granularity.

Lack of quantification

The analysis highlights a lack of quantification in relation to the identification of affected SMEs in over three-quarters of the IAs analysed, an issue that was already highlighted in the previous SME Test Benchmarks in 2011 and 2013. This is particularly serious in the case of proposals that foresee compliance costs for SMEs.

For example, Annex 3 of the IA on Geo-blocking, 'Who is affected by the initiative and how', considers which stakeholders would be affected by the preferred policy option. The report classifies businesses in three different groups: a) companies that automatically reroute website visitors, b) companies selling tangible goods, digital services, or services consumed physically that currently treat customers differently on the basis of nationality or place of residence and c) companies that source cross-border goods or services for which they are end-users²⁸. The IA only provides an estimate of the companies concerned for the first of these three categories (2% of website operators practice automatic rerouting, and these are

Card refers to the Flash Eurobarometer 421 'The internationalisation of European SMEs' and the IA on geo-blocking used data from the Flash Eurobarometer 434, 'B2B Geoblocking' (2016).

²⁷ EUROCHAMBRES, 'EU Internal Market Barriers and Solutions: The Business Perspective', September 2015. Available at:

<http://www.eurochambres.eu/content/default.asp?PageID=1&DocID=7095>

²⁸ SWD(2016) 173 final, p. 79.

mostly large companies). No indications on the approximate number or share of companies (and SMEs) that fall into the other categories is available.

Regulatory Scrutiny Board

In its second opinion on the IA on Geo-blocking²⁹, the RSB recommended to clarify whether micro-enterprises would have been included or excluded in the preferred policy option. The IA report was adjusted accordingly: under the preferred policy options, it states that the option 'would apply to all companies including SMEs and micro enterprises other than companies selling electronically supplied services which are exempted from paying VAT under the national special schemes for small enterprises'³⁰.

Recommendations

- Pay attention to the SME dimension in the problem definition section of the IA and in the Annex 'Who is affected by the initiative and how' and ensure that a distinction is made between SMEs and large companies, as well as between the different size-classes of SMEs.
- Make further efforts to corroborate qualitative analysis with quantitative elements.
- Draw on European Commission or external studies and statistics (e.g. Eurobarometer surveys, Eurostat) to describe and provide evidence of the nature and scale of the problem at issue and of how and to what extent SMEs are affected. Such sources should never replace a proper consultation process, but be used to complement it.
- For sector-related initiatives, make use of the data split per size-class provided by Eurostat.
- Always include the results of the analysis of the identification of affected businesses in the IA. Should the assessment reveal that SMEs would not be significantly affected, this should be clearly explained and used to justify the absence of a thorough measurement of the impacts on SMEs (step 3).

Step 3: Measurement of the impact on SMEs

Step 3 is arguably the core of the SME test. It consists of a cost-benefit analysis of the proposed initiative. The Better Regulation guidelines explain that '[t]he 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, quantitatively'³¹. Further on, they stress that 'costs and benefits accruing to each size-class of SMEs should be presented and analysed separately'³² and that 'costs and impacts identified for SMEs should be compared with those of large enterprises'³³.

²⁹ Available at: http://ec.europa.eu/smart-regulation/impact/ia_carried_out/docs/ia_2016/sec_2016_0239_en.pdf.

³⁰ SWD(2016) 174 final, p. 29.

³¹ Tool #19: The 'SME Test', p. 130.

³² Ibidem.

³³ Ibidem.

Based on the guidelines, the scores for step 3 were allocated on the basis of the following elements:

- Does the analysis distinguish the impact on SMEs from the impact on large companies?
- Does the analysis of the impact differentiate between micro, small and medium-sized enterprises, or does it treat SMEs as a homogeneous group?
- Are the impacts on SMEs quantified or is the analysis purely qualitative? If there is not quantification, is an explanation provided?
- Overall, is the cost-benefit analysis proportionate?

Additional elements taken into consideration are:

- Is the impact on SMEs measured for all policy options, or only for the preferred one?
- How is the overall quality of the analysis?

Before attributing the final scores, a comparison of the overall quality of the IAs was made, taking in consideration the proportionality principle (e.g. to what extent would SMEs be impacted?).

Main findings

Presentation of the results on the impacts on SMEs

The impact on SMEs was not measured and presented in a uniform way across the IAs analysed. In 4 IAs, it was presented in a dedicated section and concerned only the preferred option, although some brief references to SMEs were also found in the assessment of other options. In 7 IAs, the impact was presented with varying degrees of detail and accuracy for every option. However, the impact on SMEs was often more detailed for the preferred policy option than for the alternatives.

Several IAs present the impact on SMEs of the preferred policy option in tables. The IA on Union regime for the control of exports, transfer, brokering, technical assistance and transit of dual-use items, for example, provides a table in Annex 3 which illustrates how SMEs will be affected by the six actions foreseen under the preferred policy options³⁴. This table is particularly useful because it contains a separate section for SMEs and for large corporations, which allows a better understanding of the differences within the business community, along with the effects on other affected stakeholders. Tables are also used in the sections dedicated to the assessment or comparison of options. Notable among these is the one in the IA on the Blue Card, which attributes a score to each of the elements considered in the assessment (including SMEs), thereby presenting clearly which options are more or less favourable to SMEs and a clearer overall picture³⁵.

The impact on SMEs was also reported in the summary sheet of the IA of 11 out of 13.

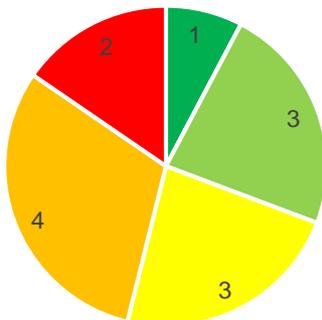
Quality of the analysis

Albeit that the majority of IA reports contained a section illustrating the impact of the proposal on SMEs, a clear and accurate cost-benefit analysis is often missing. Only 4 out of 13 IAs carried out this step to an above acceptable quality, while 6 of the assessments were poor or very poor.

³⁴ SWD(2016) 315 final, pp. 57-61.

³⁵ SWD(2016) 193 final, pp. 31-44.

Quality of the analysis of the impact on SMEs



■ Good - very good ■ Above acceptable ■ Acceptable ■ Poor ■ Very poor

The main weaknesses are set out below. These regard the lack of quantification and monetization of the costs and benefits for SMEs in almost all the IAs (11); a lack of detail and accuracy (7 IAs) and the absence of differentiation between micro, small and medium-sized companies (all IAs).

Lack of quantification and monetization

Quantification is definitely more the exception than the rule, with the costs and benefits regarding SMEs being almost never or insufficiently quantified and monetized. The IA on the contracts for the supply of digital content is an exception; it provides estimates of the one-off costs to adapt to the new law on digital content and to the new legislation for the online sales of goods both for SMEs and for all businesses in general for the preferred option³⁶.

In other IAs, quantification is disappointing. In the IA on Union regime for the control of exports, transfer, brokering, technical assistance and transit of dual-use items, costs and benefits of the different policy options on SMEs are not monetized and merited much more detail. As an example, the IA stated for policy option 3³⁷: 'It offers maximum potential for a reduction of the administrative burden for exporters – and in particular SMEs - and authorities (over time) in the REFIT context, and could help reduce distortions of competition with operators from third countries'³⁸. While identifying benefits for SMEs, these are not monetized. Quantitative estimates are not presented in the table in annex 3 on who is affected by the initiative and how³⁹.

The impact on SMEs is not quantified in the IA on the e-Card. Some quantitative estimations are presented in the section on 'impact on operating costs and administrative burden for business', but these refer to companies in general, while it is not specified how much the initiative would benefit specifically micro, small and medium-sized companies.

The IA on Geo-blocking, despite giving specific consideration to SMEs, fails to sufficiently quantify the impact on this category of businesses. Although the issue of geo-blocking relates mainly to large enterprises, the proposed Regulation will also have significant consequences for many SMEs. Therefore, a greater effort should have been made to quantify the impact on SMEs.

³⁶ Quantitative elements are also presented in other policy options, but not all.

³⁷ thereafter identified as the preferred option in combination with policy option 4.

³⁸ SWD (2016) 315 final, p. 39.

³⁹ SWD (2016) 315 final, p. 61.

In the paragraph dedicated to SMEs in the IA on the Cross-border portability of online content services in the internal market, it is stated that the costs of the preferred option could put proportionally more burden on SMEs than on large businesses, but that the negative consequences of exempting SMEs (including micros) are likely to outweigh the saving in costs, as this would undermine their competitiveness⁴⁰. However, the IA does not quantify the potential costs and benefits on SMEs. Estimates are also absent from the description of the other options, where there are references to SMEs being subjected to proportionally higher costs than large companies due to their lower bargaining power⁴¹, or finding themselves in a difficult position because of their lower market power⁴². The fact that SMEs are more affected by regulatory and compliance costs compared to large companies is well-known and documented. It is important to analyse how this truism applies to specific policy objectives and potential options. Simply stating that SMEs will be subject to higher costs is not enough.

The lack of quantification (not only regarding specifically SMEs, but also in general) is rarely justified. For the three IAs where it is, the issue is attributed to the difficulties in finding relevant data⁴³.

The fact that the costs and benefits are almost never quantified or monetized makes it difficult to clearly compare the impact on SMEs with those on large enterprises, or between the different size-classes of SMEs. As a result of this lack of quantification, the assessments are often largely descriptive and based on qualitative analysis only. This, combined with the lack of detail observed in many IAs, undermines the quality, not only of the SME test, but of the overall IA and consequently the ensuing policy process, as it results in the formulation of initiatives that are based on incomplete information and assumptions.

Low level of detail and accuracy

In addition to the lack of quantification, several IAs were characterised by a lack of detail and accuracy. The level of detail was considered low in 7 out of 13 IAs⁴⁴.

Three of the analysed IAs were found to contain a good level of detail and accuracy: Contracts for the supply of digital content, Blue card and Geo-blocking, although the assessment of the latter was compromised by the lack of quantification.

Analysis of the impact on the different size-classes of SMEs

Although the Better Regulation guidelines encourage officials to analyse and present separately the costs and benefits accruing to each size-class of SMEs, none of the IAs did so. The only references to the different size-classes are expressions such as: 'SMEs, in particular micro and small businesses...'⁴⁵, but a clear distinction of the impact between the different size-classes of SMEs is invariably missing. An assessment of the impact on each SME size-class is crucial in IAs where it was determined that SMEs of all sizes would be affected by the initiative.

A table summarising the assessment of step 3 for each IA can be found on the following page.

⁴⁰ SWD (2015) 270 final, p. 43.

⁴¹ SWD (2015) 270 final, Option 1, p. 30-32.

⁴² SWD (2015) 270 final, Baseline scenario, p. 27.

⁴³ IA on GRCM, Cross-border portability of online content services in the internal market, Posting of workers.

⁴⁴ GRCM, Promotion of the use of energy from renewable sources, Cost-effective emission reductions and low-carbon investments, Cross-border portability of online content services in the Internal market, e-Card, Notification procedure and Posting of workers.

⁴⁵ SWD(2015) 274 final/2, p. 34, 36, 128.

Overview of the results of the measurement of the impact on SMEs			
Directorate General	Proposal	Score	Explanation
DG JUST	Contracts for the supply of digital content	3.5	<p>It provides a thorough and comprehensive assessment of the impact of the preferred option on SMEs, including quantitative estimates. It also explains the impact on SMEs for each of the other policy options (every policy option contains a section on 'operating costs and conduct of businesses' that refers to business in general and a specific section on SMEs). It uses data from Eurostat, Eurobarometer surveys and research studies to help elaborate the estimates of the costs.</p> <p>There is no accurate analysis on the different size-classes of SMEs. Only expressions such as 'SMEs, in particular micro and small businesses, ...' are to be found.</p>
DG JUST	Insolvency	3	<p>There is a small paragraph on SMEs in the assessment of the impact of the preferred policy option and references to SMEs in the table illustrating the assessment of the various options. Some quantitative estimates are also provided.</p>
DG CONNECT	Geo-blocking	2.5	<p>For each policy option, there is a specific paragraph on the impact on SMEs and micro-enterprises (separated from large companies).</p> <p>The IA does not quantify enough the impact that the proposed legislation would have on SMEs. Although geo-blocking interests mainly large companies, many SMEs will be confronted with the consequences of the Regulation.</p> <p>There is no distinction between the different size-classes of SMEs.</p>
DG HOME	Blue card	2.5	<p>The impact on SMEs is measured for all the policy options and attention is paid to the impact on SMEs in the comparison of the policy packages (there is the voice impact on SMEs under the section economic impacts and a score is attributed to it).</p>

DG TRADE	Union regime for the control of exports, transfer, brokering, technical assistance and transit of dual-use items	2	<p>A clear and quantified costs-benefits analysis for SMEs is missing. The monetization in terms of impacts of the different policy options on SMEs is something that was not embarked in and would have merited much more detail, for example with regards to the benefits identified under the preferred option.</p> <p>In the summary sheet of the IA, the section dedicated to the impact on SMEs does not actually deal with that but explains that SMEs are affected. References to SMEs are presented in some of the policy options, but not all.</p> <p>On a positive note, the table in annex 3 (who is affected by the initiative and how) explains how the various stakeholders are affected by the six actions foreseen under the preferred policy option and includes a dedicated section on SMEs (and a separate one for large corporations and exporters).</p>
DG GROW	e-Card	2	<p>There is a paragraph on the impact on SMEs for every policy package, albeit very short and not detailed. The IA lacks quantification. More efforts should have been made to quantify how much the measures would benefit SMEs specifically.</p>
DG TAXUD	CCCTB	2-	<p>The assumption is that SMEs will be excluded from the mandatory application of the CCCTB, which calls for the application of proportionality. However, there is not much focus on the estimation of costs and benefits for SMEs while considering the various options. There is a paragraph on the impact on SMEs, but the analysis lacks quantification.</p>
DG GROW	Notification procedure	1.5	<p>There is a very short and not detailed paragraph on the impact on SMEs for each policy option. Although it does not entail costs or obligations for SMEs, there is no quantification at all (e.g. of the benefits). A higher level of detail would have been necessary.</p>
DG CONNECT	Cross-border portability of online content services in the internal market	1.5	<p>The IA does not quantify possible economic impacts on SMEs. Regarding the preferred option, it indicates that the costs could proportionally put more burdens on SMEs than on larger businesses but that the negative consequences of exempting SMEs (incl. micros) are likely to outweigh the saving in costs as this would undermine their competitiveness.</p> <p>Some (short) references to SMEs are also included in the assessment of the impact of some of the policy options other than the preferred one. The</p>

			assessment is articulated around the categories of content industries, service providers and consumers. The qualitative analysis is well done for these categories but attention to SMEs is very limited. The fact that SMEs are more affected by compliance costs compared to large companies is well-known and documented and reiterating this without further analysis is not enough for a thorough SME test.
DG TAXUD	GRCM	1.5	There is not a clear distinction between large companies and SMEs nor between the different size-classes of SMEs, although it is specified that micro-enterprises should be excluded by the threshold. Vagueness in the formulation of the impacts results in lack of clarity in certain passages. There is a lack of quantification with regards to SMEs, caused by unavailability of data.
DG EMPL	Posting of workers	1.5	Very brief and undetailed paragraph on the impact on SMEs. No quantification at all.
DG CLIMA	Cost-effective emission reductions and low-carbon investments	1	SMEs are a minority among the businesses affected and the distinction made between small and large emitters makes sense for the purpose of the initiative. Although the application of the proportionality principle would not require an in-depth analysis, a specific assessment of the impacts on SMEs is missing. There should have been a reference to the administrative burdens related to trade certifications for SMEs as well as a mention on how SMEs will be affected by prize increase compared to large companies.
DG ENERGY	Promotion of the use of energy from renewable sources	1	The IA gives extremely little attention to SMEs. Limited references to SMEs are provided in the presentation of the options under the section 'other impacts', but there is a serious lack of detail and quantification. Most policy options are considered not to have a significant impact on SMEs, but the report does not explain how the Commission came to this conclusion.

Regulatory Scrutiny Board

The Opinions issued by the Regulatory Scrutiny Board were looked into to verify whether recommendations to improve the assessment of the impact on SMEs were put forward.

Overall, remarks from the Board were considered necessary in eight out of 13 IA analysed to strengthen the assessment of the impacts on SMEs⁴⁶. The Board expressed relevant recommendations for five IAs, as the table below shows.

IAs	Remarks from the RSB	EUROCHAMBRES' comments
GRCM	<p>In the first Opinion (negative), the RSB urged to present evidence why the envisaged threshold for the generalised reverse charge system is appropriate to exempt SMEs or micro-enterprises and to strengthen the presentation of costs and reporting requirements on businesses, including SMEs, to fully take into account what would happen if the possible risks foreseen materialised and to better analyse the effectiveness of a possible exemption of SMEs or micros.</p> <p>In the second Opinion (positive), the RSB states that the report gives more background information on the level of the threshold together with an explanation on expected effects on SMEs and micro enterprises, and that it provides clarifications concerning proportionality and the likely increase in costs and reporting requirement for businesses. Following the recommendations in the previous Opinion, the report now contains a worst-case scenario in addition to a best-case scenario, and this is integrated in the analysis of options.</p>	The Opinion of the RSB proved useful to increase the attention to SMEs. However, the overall quality of step 3 was still considered non acceptable.
CCCTB	No remarks directly relevant to SMEs	Remarks on SMEs not needed
Promotion of the use of energy from renewable sources	The RSB issued two negative opinions. In the second, among the main requirements for adjustment, it urged to assess the	The remark of the Board was needed, although the issues relating to the lack of quantification and detail

⁴⁶ The Impact Assessment Board was responsible for the Opinion on the IA on Cost-effective emission reductions and low-carbon

	administrative burden associated with certification regarding district heating and fuel obligations in particular for SMEs.	remained.
Cost-effective emission reductions and low-carbon investments	Neither of the two opinions of the Impact Assessment Board referred to SMEs aspects.	The Board should have underlined the need for higher attention to SMEs in the analysis of impacts.
Union regime for the control of exports, transfer, brokering, technical assistance and transit of dual-use items	The first opinion was positive, but among the main recommendations, the Board expressed the need to better analyse and substantiate with evidence the prospective administrative burden reduction, especially regarding the potential effects on SMEs. It also urged to make a greater efforts in quantifying the potential impacts or to explain why if quantification is not possible.	The Opinion of the RSB had a pivotal role in the improvement of the assessment of the impacts on SMEs, as can be observed from the section on the revisions to the IA report ⁴⁷ . However, quantification with regards to SMEs is still lacking in the final version of the IA.
Cross-border portability of online content services in the internal market	1st opinion positive – no remarks to SMEs	Despite the fact that the IA presents a very good analysis per stakeholder and per sector, it does not give sufficient attention to SMEs, therefore the SME test cannot be considered adequately carried out. The RSB should have recommended a higher level of detail and greater efforts in the quantification of the impact on SMEs.
Contracts for the supply of digital content	No remarks on SMEs	No remark on SMEs needed.
Geo-blocking	In the 1st opinion (negative), the RSB recommended that the report should 'better assess the likely impacts on SMEs, differentiating between them and big companies'.	It is regarded positively that following the remarks of the RSB, the analysis of the impacts on SMEs was strengthened in the final version of the IA. However, the issue of the lack of quantification of the impact persisted.
Efficiency of restructuring,	No remarks on the assessment of the impacts on SMEs.	No remark needed.

⁴⁷ SWD(2016) 315 final, p. 46.

insolvency and discharge procedures		
E-card	No remarks on the assessment of the impacts on SMEs.	Remarks from the RSB were not considered necessary as the proposed initiative is expected to create benefits and not burden on SMEs. Nevertheless, the lack of quantification and detail are an issue.
Notification procedure	No remarks on SMEs.	The Opinion of the Board should have invited to have a higher level of detail in the assessment of the impact on SMEs.
Blue card	No remark specifically related to SMEs.	No remark needed.
Posting of workers	In the first opinion, the Board requested to analyse and clarify how concerns of SMEs in relation to burdensome administrative procedures have been addressed.	Following the Board's recommendations, a section on SMEs was added, but the assessment of the impact on SMEs was found to lack detail and quantification.

Recommendations

- Make further efforts to quantify and monetize the potential impacts of the proposed initiatives on SMEs. If this is not possible, clearly explain the reasons why.
- As the main constraint to increased quantification and monetization appears to be the difficulty in finding relevant data, statistics provided by Eurostat or data presented in studies such as Eurobarometer surveys should be consulted more systematically in the attempt to better estimate and monetize costs and benefits.
- Provide an accurate analysis of the impact on SMEs not only for the preferred policy option, but for all the policy options. This would enable to compare the potential effects of the various options on SMEs and to better understand the pros and cons of the preferred one.
- Include in the comparison of the options (text and/or summarising table) the impact on SMEs among the elements considered under economic impact or impact on competitiveness. This would help to more easily understand how the various options compare in terms of impact on SMEs.
- Strengthen the comparison of the costs and benefits of the policy options between large companies and SMEs as well as between micro, small and medium-sized enterprises in light of the differences between the various size-classes.
- Present information and data on the impact on SMEs in a clear and accurate way.

Step 4: Assessment of alternative options and mitigating measures

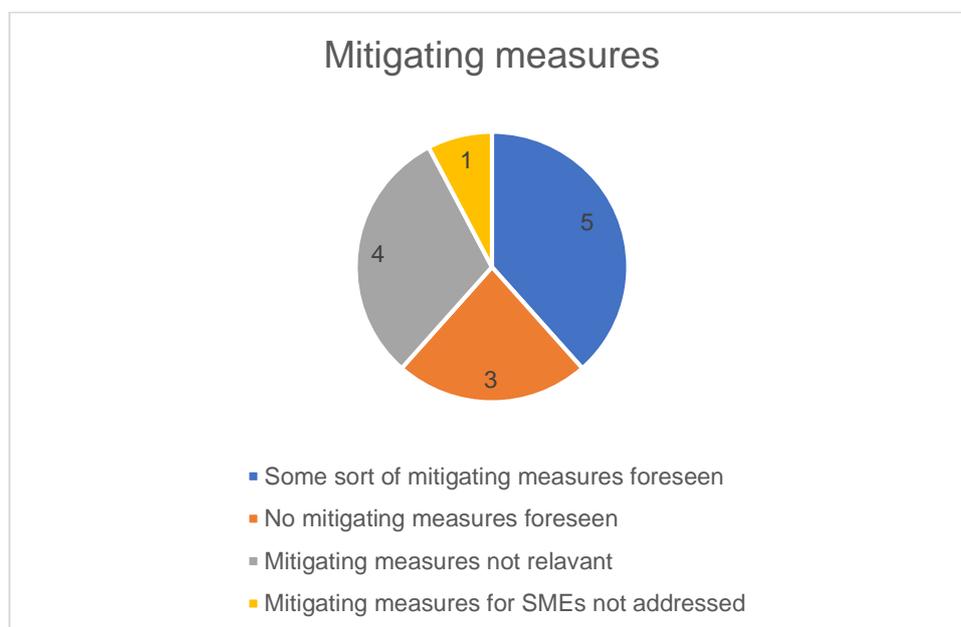
According to the Better Regulation guidelines, when the measurement of the impact on SMEs reveals that micro, small and/or medium-sized companies face a relatively higher burden than large enterprises, measures to ensure a level playing field and the respect of the proportionality principle might be considered ⁴⁸.

Such measures might help in mitigating the burdens created by the proposed initiative. However, the rationale of the 'Think Small First' principle is to give full consideration to SMEs at an early stage in the policy-making process in order to ensure that rules impacting 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 of policy options that take into consideration SMEs' needs and do not impose unnecessary and excessive burdens on them. This means that a thorough application of steps 1 to 3 of the SME test is crucial.

Besides not being in line with the 'Think Small First' principle, mitigating measures might also deter SMEs and start-ups from growing. At the 2016 European Parliament of Enterprises, 82% of businesses stated that administrative, legislative or fiscal exemptions discourage businesses from scaling up their activity⁴⁹. Before applying any mitigating measures, potential unintended consequences of this nature should be taken into account.

Main findings

As in the previous edition of the SME Test Benchmark, a score is not attributed for this step. The analysis is limited to an observation of whether and under which circumstances mitigating measures were proposed. The results are summarised in the graph below.



⁴⁸ Tool #19: The 'SME test', p. 131.

⁴⁹ The 2016 European Parliament of Enterprises, one of EUROCHAMBRES' flagship initiatives, brought together over 700 European entrepreneurs in the hemicycle of the European Parliament in Brussels. The results of the voting sessions are available here: http://www.parliament-of-enterprises.eu/upload/161013-EPE_multiscenario_FINALE_58050b458eb99.pdf

Mitigating measures

Four IAs envisage some sort of mitigating measures for SMEs or micro-enterprises only.

Exemptions or partial exemptions for SMEs

The IA on the CCCTB concludes that SMEs should be excluded from its mandatory application through the recommended turnover threshold. The scheme would be mandatory for large companies only, whereas other companies could voluntarily opt into the system. This choice is justified by the fact that, given the relatively low degree of internationalisation of SMEs, the risk of imposing additional administrative burdens on them would not necessarily be offset by the benefits of having a common base throughout the EU⁵⁰.

It can be understood from the IA on the GRCM that micro-enterprises would be exempted from the system.

The IA on the Promotion of the use of energy from renewable sources foresees mitigating measures for interested parties, especially SMEs, that can be applied by Member States. An example is the possibility to exempt SMEs from the scheme as long as a minimal share of the supply is represented. The IA specifies that the exemption should mitigate the impact on such SMEs without placing a disproportionate burden on the remaining eligible ones⁵¹. The flexibility granted to Member States is justified by the diversity of the heating and cooling sectors across the EU⁵².

Lighter provisions

Due to overriding security reasons, the proposal on Union regime for the control of exports, transfer, brokering, technical assistance and transit of dual-use items does not envisage exemptions for SMEs. However, the scope of certain provisions that may be particularly demanding in terms of human and IT resources has been limited to avoid excessive regulatory burden on SMEs.

No mitigating measures

Mitigating measures not considered relevant

In four of the IAs analysed, i.e. Insolvency, e-Card, Notification procedure and Blue Card, mitigating measures were considered non-applicable as the proposed initiative would not entail any costs or obligations for SMEs.

Mitigating measures not foreseen

Four IAs did not envisage a specific regime for SMEs (or micros). Two of them, the IAs on the Cross-border portability of online content services of the internal market⁵³ and on the Posting of workers⁵⁴, provided a justification in line with the Better Regulation guidelines, according to which if there is clear evidence that excluding micro-enterprises would jeopardise the achievement of the initiative's objectives, this categories of businesses should be covered⁵⁵.

The IA on Contracts for the supply of digital content is the only case where micro-enterprises are included without justification. However, the high score on the SME test (10/12) reveals

⁵⁰ SWD(2016) 341 final, p. 56.

⁵¹ SWD(2016) 418, final, p. 102.

⁵² SWD(2016) 418, final, p. 13.

⁵³ SWD (2015) 270 final, p. 43.

⁵⁴ SWD(2016) 52 final, pp. 43-44.

⁵⁵ Tool #19: The 'SME test', p. 131.

that this initiative was formulated taking adequately into account the interests of SMEs, in line with the 'Think Small First' principle.

The IA on Geo-blocking also foresees no mitigating measures for SMEs.

The table below summarises the assessment of alternative options and mitigating measures.

Impact Assessment	Mitigating measures
CCCTB	Yes (threshold)
GRCM	Yes (threshold)
Promotion of the use of energy from renewable sources	Yes (possibility of exemption)
Union regime for the control of exports, transfer, brokering, technical assistance and transit of dual-use items	Lighter regime
Cross-border portability of online content services in the internal market	No
Posting of workers	No
Contracts for the supply of digital content	No
Geo-blocking	No
Blue Card	N/A
e-Card	N/A
Insolvency	N/A
Notification procedure	N/A
Cost-effective emission reductions and low-carbon investments	No information

Recommendations

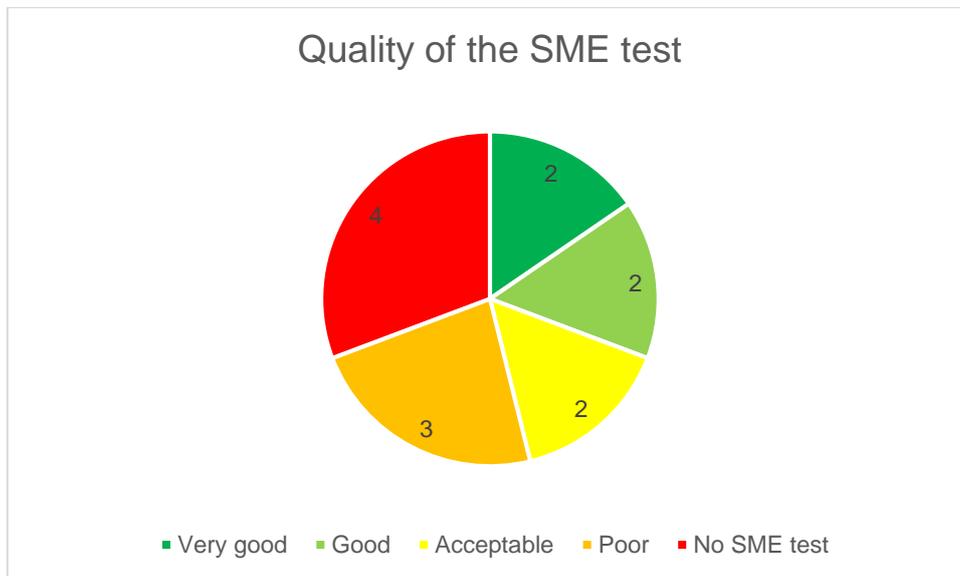
The nature of this analysis does not allow a judgement of the appropriateness of the mitigating measures envisaged. However, the following recommendations can be put forward:

- In line with the 'Think Small First' principle, strive to formulate initiatives affecting business from an SME perspective, taking into account their needs and concerns, rather than developing policy instruments from a large company perspective and then adding measures to mitigate the negative effects that they might have on SMEs.
- When envisaging exemptions or other mitigating measures for SMEs, carefully take into account the potential negative unintended consequences that such measures might have on the growth of individual businesses and on the economy as a whole.

General assessment

Main findings

The SME Test Benchmark reveals that less than half (6) of the IAs included an SME test of an acceptable level or higher. Of these, two qualified as 'very good', both with a score of 83%, two as 'good' and two as 'acceptable'. At the other end of the spectrum, four IAs did not carry out an SME test (score below 30%), while three were considered poor, with a score ranging from 37% to 50%.



Despite the strong emphasis of the current Commission on Better Regulation and the broad political recognition of the socio-economic importance of SMEs, it is clear that there is still considerable scope for improvement in the application of the SME test. The main issues observed regard the weak reflection of the views of the SME community in the IAs and the absence of a robust cost-benefit analysis of the impact of the proposed initiatives on SMEs. A significant shortfall in the quantification and monetisation of impacts, an often insufficient level of detail and accuracy in the analysis and inadequate differentiation between the size-classes of SMEs complete the picture.

The purpose of this study was not to assess the pros and cons of policy decisions that ensued from these IAs. Nonetheless, it is clear that such weaknesses in the application of the SME test increase the risk that the Commission tables legislative proposals which create excessive and unnecessary burdens for 99% of European businesses.

The two IAs with the highest-ranked SME tests were drafted by DG JUST. Other than that, it is not possible to identify a clear pattern regarding the quality of the SME test across the Directorates-General. For example, the two IAs drafted by DG CONNECT were rated one as 'good' and one as 'poor', while the two conducted by DG GROW scored 'acceptable' and 'poor'.

The overall results are shown in the table on the following page.

SME Test Benchmark 2017

DG	Impact Assessment	Step 1	Step 2	Step 3	Step 4	Total score		Quality level
						Score out of 12	% Score	
DG JUST	Contracts for the supply of digital content	3.5	3	3.5	No	10/12	83%	Very good
DG JUST	Insolvency	4	3	3	N/A	10/12	83%	Very good
DG CONNECT	Geo-blocking	3.5	2	2.5	No	8/12	67%	Good
DG HOME	Blue Card	3	2	2.5	N/A	7.5/12	63%	Good
DG GROW	e-Card	3	2	2	N/A	7/12	58%	Acceptable
DG TAXUD	CCCTB	3	2	2	Yes	7/12	58%	Acceptable
DG TRADE	Union regime for the control of exports, transfer, brokering, technical assistance and transit of dual-use items	1.5	2.5	2	Yes	6/12	50%	Poor
DG GROW	Notification procedure	2	1.5	1.5	N/A	5/12	42%	Poor
DG CONNECT	Cross-border portability of online content services in the internal market	1	2	1.5	No	4.5/12	37%	Poor
DG EMPL	Posting of workers	1	1	1.5	No	3,5/12	29%	Extremely poor
DG CLIMA	Cost-effective emission reductions and low-carbon investments	1.5	1	1	No information	3.5/12	29%	Extremely poor
DG TAXUD	GRCM	0	1.5	1.5	Yes	3/12	25%	Extremely poor
DG ENERGY	Promotion of the use of energy from renewable sources	1	1	1	Yes	2/12	17%	Extremely poor

Regulatory Scrutiny Board

The reinforced independence and new configuration of the Regulatory Scrutiny Board (RSB) make it better placed than its predecessor, the Impact Assessment Board (IAB), to issue neutral opinions on draft IAs. This is a positive development and is in line with a recommendation in EUROCHAMBRES' 2013 SME Test Benchmark⁵⁶. However, the present study highlights that there is still scope to strengthen the RSB's attention to the SME dimension and to the application of the SME test in its analysis of IAs.

As for step 1, the RSB recommended to improve the presentation of stakeholders' views in only two of the 7 IAs that did not adequately reflect the views of the SME community. Although the presentation of stakeholder views was generally enhanced in these two IAs, this improvement did not concern the views of SMEs. These continued to be inadequately reflected as the final version of the IAs still failed to specify which category of respondents expressed which view.

Concerning the impacts on SMEs, the RSB expressed relevant recommendations for 5 IAs out of the eight for which such analysis needed strengthening and the seven that qualified as 'poor' or 'extremely poor'. In only three cases, the remarks of the Board related to the need to better present and quantify costs on SMEs, while quantification was found to be poor or non-existent in all IAs but two.

All of the 4 IAs that did not carry out an SME test received a first negative opinion from the Board and three of them contained comments relating to SMEs⁵⁷. Nevertheless, the final version of these IAs received a positive opinion.

On a more positive note, the recommendations of the RSB were key in enhancing the quality of the measurement of the impact on SMEs in the IA on Geo-blocking and on the Union regime for the control of exports, transfer, brokering, technical assistance and transit of dual-use items, although both IAs fell short of adequately quantifying costs and benefits on SMEs.

Recommendations

To the units responsible for the application of the SME test

- The relevant units should apply more scrupulously the Commission's guidelines on how to carry out the SME test.
- To ensure an effective consultation of SMEs and their representatives, a 12-week open public consultation, available in all EU official languages and extended if run over holiday periods, should be combined with targeted consultation methods, so as to enhance the quality of the data collected and fill information gaps.
- The views of the SMEs should be clearly presented in the IA and discernible from those of large companies or other categories of respondents. Attention should also be paid to the different size-classes of SMEs (micro, small and medium).
- The analysis of the affected businesses should not be better presented in the IA report. In addition to the differentiation between large companies and SMEs, further efforts should be made to distinguish between the size-classes within the SME category and to corroborate the analysis with quantitative elements. For sector-related dossiers, Eurostat statistics broke down by size-class could be used.
- The analysis of the impact on SMEs should be more accurate and include a thorough cost-benefit analysis. Impacts should more clearly and systematically differentiate between SMEs and large companies, as well as between the different size-classes of SMEs.

⁵⁶ EUROCHAMBRES, SME Test Benchmark 2013, p. 17.

⁵⁷ The only one that did not is the IA on Cost-effective emission reductions and low-carbon investments, which was assessed by the IAB.

- Quantification and monetization of impacts on SMEs need strengthening. Eurostat statistics as well as internal and external studies should be used as a support.
- The potential negative unintended consequences on the scaling-up of businesses and on economic growth should be carefully considered and explained in relation to any mitigating measures that are envisaged.
- Relevant units across the European Commission's services should receive more assistance in the application of the SME test before the IA is submitted to the RSB.

To the Regulatory Scrutiny Board

- Since the SME test is a compulsory element of the IA, its thorough application should be a *conditio sine qua non* for a positive opinion by the Regulatory Scrutiny Board. Therefore, the RSB should be more systematic in verifying that the SME test was properly carried out before issuing an opinion.

New Better Regulation guidelines

In July 2017, new Better Regulation guidelines were approved. This section presents EUROCHAMBRES' remarks on the Tool #22: The SME Test as well as on relevant sections of Tool #53: The consultation strategy, and Tool #12: Format of the IA report, that are referred to under the SME Test tool.

Tool #22: The SME Test

Swap between step 1 and step 2

The steps of the SME test remain the same, but the order of steps 1 and 2 was swapped, so that now the identification of affected business is to take place before the consultation of SME stakeholders. If it makes sense to specify that SMEs should be central in the consultation strategy only if they are affected by the proposed initiative (or if there are doubts about it)⁵⁸, this change increases the need of carrying out a thorough analysis of the business likely to be affected and to clearly present the result of such analysis in the IA report. A superficial analysis entails the risk of overlooking the SME community and to produce legislation that is not SME-friendly. Also, this change raises concerns regarding the robustness of the analysis because the lack of input that up to now was collected through the consultation might make the analysis of affected businesses more difficult to carry out and reduce the weight of the views of SME stakeholders in the policy-making process.

Step 3

Step 3 introduced two specifications regarding how to identify the impacts on SMEs that are very welcome and, if observed, will contribute to improving the quality of the SME test in future IAs.

- The distribution of the costs and benefits of the proposal should be analysed for each policy option. This was recommended by EUROCHAMBRES and was already done in seven IAs, albeit not always in an accurate way. Hopefully, this addition will contribute to increasing attention to the impact on SMEs for all the policy options and not only for the preferred one.
- It is recognised that quantification of costs and benefits is often difficult and that evidence sources, such as studies, stakeholder consultations and calls for evidence, should be used to the maximum⁵⁹. The SME Test Benchmarks revealed that quantification is indeed the weak point of most IAs and highlighted the need for greater efforts.

⁵⁸ Tool #22. The 'SME test', p. 157.

⁵⁹ Tool #22. The 'SME test', p. 157.

Step 4

When a mitigating measure is being considered, the guidelines recommend to assess its effects on the potential scaling-up of companies⁶⁰. This is something that EUROCHAMBRES has been advocating based on the previously mentioned results of the EPE⁶¹.

What is missing

As recommended in 2013, the guidelines on the application of the SME test should provide a common methodology to carry out the SME test, consisting of a list of compulsory minimum standards to be met for each step, complemented with a list of desirable elements to consider if proportionate and applicable to the dossier in question⁶². This would help the RSB in the assessment of how the SME test was conducted.

Tool #53: The consultation strategy

- According to the guidelines, the consultation strategy *can* be complemented with more targeted or specialised consultations⁶³. There should have been more emphasis on the need to use targeted consultation methods, as these were not employed in the majority of IAs analysed.
- The guidelines state that '[p]ublic consultations can target SMEs either directly or through their representative organisations⁶⁴' and recognise that these two channels have different characteristics and needs. On this basis, the guidelines suggest to design different questionnaires for these two types of respondents and not to mix the two channels when analysing the replies. Having two different questionnaires is helpful because some of the questions designed for businesses are not applicable to business associations. However, the guidelines should have gone a step further and suggested to weigh the responses received by individual SMEs and those provided by organisations representing a large number of SMEs.
- The request to translate consultation documents related to public consultations for initiatives included in the Commission Work Programme, Annex I, in all official EU languages⁶⁵ is a welcome step towards enhancing the participation of SMEs. This practice should be gradually extended to all the public consultation targeting SMEs.
- The recommendation to extend the 12-week consultation period when it overlaps with a holiday period⁶⁶ is very welcome. EUROCHAMBRES reiterates the suggestion of extending a consultation by four weeks if run over the summer holiday period and by one week if run over the winter holiday period.

Tool #12: Format of the IA report

There is little guidance on how to present the SME test. The guidelines simply state that the IA report must include reference to the result of the SME test as well as to the assessment of the SME impacts, as far as possible including quantitative estimates of administrative and compliance costs⁶⁷. Information relating to the four steps of the SME test is scattered in various sections of the report (e.g. information on the consultation of SMEs stakeholders can be found in annex 2, in the description of the policy options or of their impacts and under the problem definition section; information on the affected businesses can be found under the problem definition section, in the description of the policy options and in annex 3;

⁶⁰ Tool #22. The 'SME test', p. 160.

⁶¹ See p. 35.

⁶² A suggested check-list is presented at pp. 45-46.

⁶³ Tool #53: The consultation strategy, pp. 383-384.

⁶⁴ Tool #53: The consultation strategy, p. 397.

⁶⁵ Ibidem.

⁶⁶ Tool #53: The consultation strategy, p. 400.

⁶⁷ Tool #12: Format of the IA report, p. 70.

information regarding the measurement of the impact on SMEs can be found under the assessment of the policy options or in a dedicated section as well as in annex 3). In order to assess whether and how the SME test was carried out, it would be useful to have an annex with either all the relevant information related to the four steps of the SME test or references to the pages where such information can be found.

Suggested checklist

Consultation of SME stakeholders

Compulsory

- Was a 12-week open public consultation carried out?
- Was the consultation extended if run during a holiday period?
- Were respondents able to identify themselves as micro, small, medium-sized or large companies or as SME or business organisations in the consultation questionnaire?
- Were the views of SMEs reported in the relevant sections of the IAs (e.g. summary of the consultation responses and description of the policy options) in distinction from those of the business community as a whole or of other respondents' groups?
- Was at least one targeted consultation method involving SMEs or SME representatives employed?

Highly desirable

- Was the consultation questionnaire (and related material) available in all the EU official languages?
- Were the respondents provided by individual companies and business organisations weighed?

Identification of affected businesses

Compulsory

- Is it clearly stated whether SMEs of different size-classes (micro, small and medium-sized) are included in or excluded from the scope of application of the policy options?
- Is it clear whether SMEs of different size-classes will be affected by the proposed initiative?

Highly desirable – if applicable

- Is a share of the affected SMEs (by sector for sector-related proposals) provided?

Measurement of the impact on SMEs

Compulsory

- Does the assessment clearly distinguish the impact on SMEs from the impact on large companies?
- Does the assessment include a clear cost-benefit analysis for SMEs?
- Does the assessment differentiate between micro, small and medium-sized companies?
- Is the impact on SMEs measured for each policy option?
- Is there an estimate of the costs and benefits on SMEs? If not, is there an explanation why?
- Are the impacts identified for SMEs compared with those of large companies?

Assessment of alternative options and mitigating measures

- Are the potential negative unintended consequences that the envisaged mitigating measures might have on the growth of individual businesses and of the economy considered?

Overall

Compulsory

- Are the results of the four steps of the SME test clearly presented in the IA report?

Highly desirable

- Is there an annex with references to the pages where information related to each step of the SME test can be found?

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