

Unclassified

English text only

7 November 2022

**PUBLIC GOVERNANCE DIRECTORATE  
REGULATORY POLICY COMMITTEE**

## **The SME Test: Taking SMEs and entrepreneurs into account when regulating**

### **Annex to the OECD Best Practice Principles on Regulatory Impact Assessment**

This Annex to the Best Practice Principles on Regulatory Impact Assessment (RIA) presents practices and policy references to assist countries in designing and improving their SMEs tests. An effective SME test helps policy makers to develop regulations that consider the characteristics and needs of small and medium-sized enterprises and entrepreneurs (SMEEs).

This Annex is available in pdf only.

Daniel Trnka ([daniel.trnka@oecd.org](mailto:daniel.trnka@oecd.org))

Renny Reyes ([renny.reyes@oecd.org](mailto:renny.reyes@oecd.org))

Stephan Raes ([stephan.raes@oecd.org](mailto:stephan.raes@oecd.org))

**JT03506893**

# THE SME TEST: TAKING SMES AND ENTREPRENEURS INTO ACCOUNT WHEN REGULATING

## ANNEX TO THE OECD BEST PRACTICE PRINCIPLES ON REGULATORY IMPACT ASSESSMENT



# Acknowledgements

The paper was prepared jointly by the Regulatory Policy Division of the OECD Public Governance Directorate and the Entrepreneurship, SME and Tourism Division of the OECD Centre for Entrepreneurship, SMEs, Regions and Cities. It was led by Daniel Trnka, Head, Regulatory Policy Division, Public Governance Directorate and drafted by Renny Reyes, Consultant, Regulatory Policy Division and Stephan Raes, Head, Division for Structural and Industry Policy with the support of Céline Kauffman, Head, Entrepreneurship, SME and Tourism Division and Elsa Pilichowski, Director, Public Governance Directorate. Supriya Trivedi, Policy Analyst, Regulatory Policy Division and Guillermo Hernández, Policy Analyst, Regulatory Policy Division provided comments on the first draft. The paper was prepared for publication by Jennifer Stein.

The development of the paper would have not been possible without the generous support of the government of Portugal and the European Union Structural Reform Support Programme. The team would like to thank the team from JurisAPP-UTAIL, in particular Arthur Pinheiro for their contribution to the initial research for this paper. This Annex also benefits from information gathered through a survey conducted by the OECD within its members, as well as insights from the Workshop “Mainstreaming SME and Entrepreneurship Perspectives in Policymaking: Making Better Use of the SME Test” jointly held by the Regulatory Policy Committee (RPC) and the Committee on SMEs and Entrepreneurship (CSMEE).

# Table of contents

Abbreviations and acronyms	4
Executive summary	5
1 Introduction	8
Note	10
References	10
2 Rationale	11
Rationale for conducting the SME test	12
Rationale to developing this Annex from a regulatory and SMEs policy perspective	13
References	15
3 Best practices before adopting an SME test	16
Knowing your SME population	17
Understanding SMEs heterogeneity	18
Notes	19
References	20
4 Best practices when designing the SME test	21
Include an SME perspective early in the decision-making process	22
Scope of the SME test	22
Data collection, availability and use	25
Guidance for policy makers	26
The SME test should respond to each country's regulatory policy and SME policy framework	26
Notes	27
References	27
5 Best practices when conducting the SME test	28
Assessing the relevance of SMEs in achieving policy objectives	29
Identification of potentially affected SMEs at a granular level	29
Engaging early and proactively with diverse groups of SMEs when conducting the SME test	30
Identification and assessment of costs, benefits and other impacts	34
When developing new proposals, take existing regulations into account	38
Determine whether the load can be lightened for SMEs	38
Transparency of the SME test	43
Notes	44
References	44

<b>6 After the SME test</b>	<b>47</b>
Oversight	48
Use of the results of the SME test	48
Are SME tests effective? Test the test	51
References	52
<b>Annex A. SME test in OECD countries</b>	<b>53</b>

## FIGURES

Figure 1. Stages: Before the test, design, implementation and checks of an effective SME test	9
Figure 2.1. Countries that have a requirement assess the impact of regulations on small businesses	13
Figure 5.1. Impacts on SMEs assessed by OECD countries	36

# Abbreviations and acronyms

<b>BRC</b>	Better Regulation Center of the Slovak Republic
<b>CSMEE</b>	OECD Committee on SMEs and Entrepreneurship
<b>DAGL</b>	Department for Juridical and Legislative Affairs of Italy
<b>MEDT</b>	Ministry of Economic Development and Technology of Slovenia
<b>RIA</b>	Regulatory Impact Assessment
<b>RIS</b>	Regulation Impact Statements in Australia
<b>RPC</b>	OECD Regulatory Policy Committee
<b>RPC</b>	Regulatory Policy Committee of the United Kingdom
<b>SaMBA</b>	Small and Micro Business Assessment of the United Kingdom
<b>SBA</b>	Small Business Administration of the United States of America
<b>SME</b>	Small and medium-sized enterprises
<b>SMEE</b>	Small and medium-sized enterprises and entrepreneurs
<b>SUCBs</b>	Single Use Carrier Bags
<b>UTAIL</b>	Technical Unit for Legislative Impact Assessment of Portugal

# Executive summary

The importance of small and medium-sized enterprises (SMEs) to countries' economies is undisputed. They account for a large majority of firms and are responsible for generating, on average, more than half of countries' employment and value added. As active members of the economy, they are also subject to regulations and policies enacted by government to improve the lives of citizens and businesses. However, because of their size and limited resources, these firms can find complying with regulations and understanding the legal environment cumbersome. SMEs face significant uncertainty when operating; consequently, when it comes to a new regulation, some small business may end up bearing the costs without surviving long enough to enjoy its intended long-term benefits.

Among regulatory management tools, the SME test provides policy makers with pertinent information on the potential impact of regulations on SMEs, considering their particularities and the proportionality of the impacts. The test can also help identify relevant potentially affected groups and support the design of regulatory or non-regulatory alternatives that help achieve the desired goals with fewer burdens on these firms.

Even though more than two-thirds of OECD countries look at how regulations affect small businesses, the depth and breadth of this analysis vary. It can range from a simple check on whether SMEs could be affected to a full evaluation of impacts and policy alternatives, involving several rounds of consultations, or anything in between.

This Annex to the Best Practice Principles on Regulatory Impact Assessment (RIA) presents policy makers with practices and policy references to help them design and improve their SMEs tests, allowing them to produce regulations in alignment with SMEs' particular characteristics and needs. It is divided into four parts that mirror the stages of adopting and conducting SME tests: establishing the framework for the test, designing the test, implementing the test, and using the test results. When adopting or improving their SME tests, countries should consider the following:

- The steps prior to adopting the test are important for setting up its potential success. They begin with having a clear and systematic definition of which businesses are SMEs and entrepreneurs, and mapping the diversity among those groups. Based on this step, data and knowledge specific to their performance, age, location, size, etc., can be developed. These data should be accessible and available to decision-makers when engaging with SMEs and when identifying potentially affected groups of a regulatory proposal.
- The design of the SME test should fit the country's regulatory policy and policy framework for small and medium-sized enterprises and entrepreneurs, and should consider already established best practices in regulatory development. Designing scope and reach includes defining, for instance, for which regulatory proposals the test would be carried out, considering proportionality, when in the decision-making process the test would be conducted, when potentially affected SMEs would be engaged, etc. In addition, the test should be designed to start in the early stages of the regulatory process, continue when policy alternatives are being considered, and be part of the closing of the regulatory-making cycle.

- Once designed and adopted, the SME test should be at the forefront of policy making, with the aim to design regulations that consider the particularities of this group. Conducting the SME test entails engaging with these groups and other relevant stakeholders, assessing potential impacts among the different identified SMEs groups, and developing, when possible, policy alternatives for SMEs that can achieve the same objectives while minimising negative impacts. The order of these steps will depend on the country's regulatory and SMEs framework, and their objectives.
- When conducting the test, policy makers should determine whether SMEs' participation is necessary to achieve the objectives of the particular regulatory proposal, and, if so, identify early potentially affected groups. In some cases, the success of a regulation critically depends on SMEs' complying with it and adapting their behaviour, while in other cases the relevance is limited. The early identification of these factors can help policy makers assess the policy problem in a more targeted manner and take the variety of SMEs into account for the purposes of the resulting regulation.
- An effective SME test relies on engaging early, proactively, and creatively with diverse groups of SMEs and other stakeholders on the regulatory proposal. Precisely because of the heterogeneity of SMEs, it allows policy makers to hear about the policy problem from different perspectives. This engagement has a dual purpose: first, to provide policy makers with relevant information from those close to the policy problem or that would be affected by the proposal and, second, to improve the chance of compliance with the regulation by making SMEs part of the process and solution.
- As with other regulatory management tools, the SME test has an assessment component, whereby policy makers assess the potential positive and negative impacts that regulations might have on different SME groups and the degree of said impact. The same regulation can affect groups differently depending on their size, age, sector or other characteristics. A granular assessment of the potential effects can help identify whether there might be disproportional impacts on (a group of) SMEs. A regulation that requires fixed-cost investments might be more cumbersome to SMEs than to larger firms that can spread their costs over time, staff, and projects, which can result in an unbalanced distribution of impacts. In the same vein, the assessment should include the impact that the proposal might have on other businesses and customers SMEs interact with (suppliers, partners, customers, etc.) and how those can indirectly, but significantly, affect SMEs.
- Even though SME tests are conducted for single regulatory proposals, policy makers should also consider the cumulative costs and effects of existing regulations for SMEs. An additional extra cost from a regulatory proposal may seem small, but the accumulation of costs may have significant consequences for companies that do not have large resources.
- The SME test also includes the consideration of alternative policy schemes or mitigating measures for SMEs, which can range from full exemptions to lighter compliance regimes. These measures depend on factors such as how the policy problem will be addressed, whether SMEs are needed for the success of the regulation, how disproportional the effects may be, the support that SMEs might need to comply with the regulation, etc. When these exemptions are not possible or desired, policy makers should consider mitigating measures directed at reducing the costs of complying with regulations or facilitating their compliance. Either option should be balanced, and the pros and cons considered. While some OECD countries exempt or create mitigating measures when possible before assessing the impact that proposals might have on SMEs, the majority of countries that do conduct the test do so after assessing the potential impacts.
- The main goal of conducting the SME test should be to use its results in designing the final regulation. The results of the SME test also should allow policy makers to monitor whether, once in place, the regulation operates as expected. This is true not only for regulations that SMEs are required comply with, but also for those they were exempted from, since it might become clear after implementation that SMEs' participation was needed for the success of the regulation.

- A report of the results of the SME test can help ensure that all elements of the SME test are consistently followed, considered, and objectively addressed for developing the regulatory proposal. This report should be both publicly available and reviewed by an oversight body. Some OECD countries produce it as a stand-alone report, while others include it in the RIA report. Guidelines for developing regulations can also help ensure consistency across policy makers when conducting the test.
- Countries should monitor the performance and effectiveness of their SME test. Such monitoring helps improve the test's quality and keeps it relevant by identifying early any shortcomings it may have or updates needed based on best practices from other jurisdictions.
- Finally, transparency is of utmost importance while conducting the SME test, including making consultation outcomes publicly available, communicating the results of the test, informing how the results were used in crafting the resulting regulation, and assessing its performance.

# 1 Introduction

Micro, small and medium-sized enterprises (SMEs) are the most common form of business in OECD countries, as they account for nearly 99% of existing firms. These firms play a key role in the economy, societal well-being and prosperity at the local, national and global level. SMEs, and young entrepreneurs in particular, are also key drivers of innovation, contribute to product and service availability, as well as to employment. As noted in (OECD, 2019<sup>[1]</sup>), SMEs are responsible for 60% of total employment in OECD countries and contribute to approximately 50-60% of value added.

With such an important role in social and economic aspects, it is key for countries to ensure that the legal and regulatory environment within which SMEs operate reflects their circumstances and needs for inclusive growth. In general, regulations establish procedures that businesses have to follow to enter a market, the rules they have to operate under, and even define the boundaries within which they can contract, transact, expand, can access financing and invest. A well-functioning regulatory framework contributes to a transparent business environment, a level playing field, and low costs of regulatory compliance which is of particular importance for smaller entities.

Navigating the legal environment and complying with regulations can be more cumbersome for SMEs. Since regulations can induce fixed costs, these costs can be more difficult to bear for SMEs because of the size of the firm and the resources constraints that they sometimes face (i.e., limited access to finance, information asymmetry, etc.). The *2012 OECD Recommendation of the Council on Regulatory Policy and Governance* (OECD, 2012<sup>[2]</sup>) acknowledged these specific circumstances for SMEs and indicated that in designing regulations, governments need to be aware of the incidence of regulatory costs on businesses and citizens and the disproportionate impacts they can have on small to medium-sized enterprises and micro businesses. For this, as an integral part of the regulatory impact assessments (RIA) conducted when developing regulations, policy makers can and should explicitly consider the impact that proposed and existing regulations can have on SMEs and how to design them considering their interests and needs (OECD, 2020<sup>[3]</sup>). This assessment focused on SMEs is often referred to as the SME test.

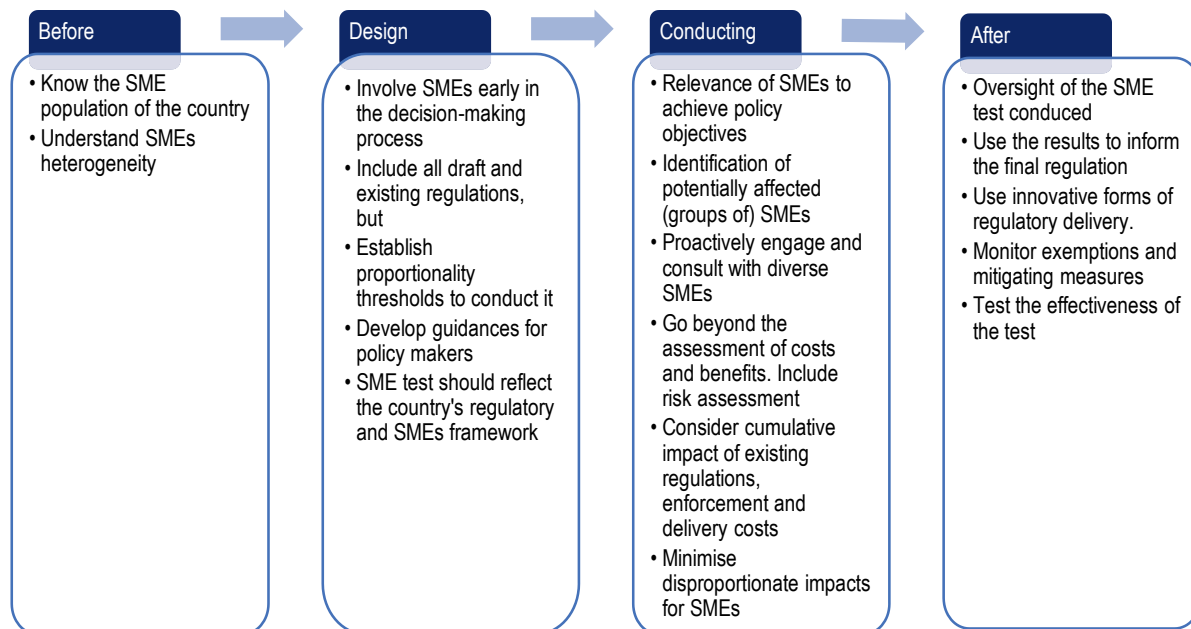
The SME test is a regulatory management tool that assists policy makers on identifying the potential SMEs groups that might be affected by proposed regulations, which and how relevant stakeholders should be engaged and consulted, and on assessing the positive and negative impacts that regulations would have or are having on them, and their proportionality. The test also assists policy makers on creating especial regimes for SMEs to exempt them from complying with the proposed regulation or proposing mitigating measures or adaptable schemes to minimise negative impacts. In sum, the results of the SME test are intended to provide policy makers with relevant information to produce regulations that consider SMEs particularities.

SME tests are important from a regulatory perspective, as well as from an SME and entrepreneurship policy perspective. SME and entrepreneurship policies aim to contribute to an environment that supports inclusive and sustainable growth by SMEs and entrepreneurs, through a variety of policy efforts (OECD, 2021<sup>[4]</sup>; OECD, 2020<sup>[5]</sup>). In some cases, such policies are targeted to SMEs, in other cases these are more horizontal policies affecting the whole business community. A key element of a modern and sound SME and entrepreneurship policy is the mainstreaming of an SME and entrepreneurship perspective in policy

making. The SME test constitutes a key means in how such SME and entrepreneurship perspective can be mainstreamed, and hence constitutes a corner stone of both regulatory and SME and entrepreneurship policies.<sup>1</sup>

This Annex to the RIAs Best Practice Principle aims to assist countries in identifying how to develop an effective SME test within their regulatory framework or improve their existing one, to develop regulations that properly consider SMEs and their particularities. It will first discuss the rationale for SME testing. Next, it will examine good practices around four stages for developing and conducting an effective SME test (Figure 1): 1. what needs to be in place in the country’s regulatory and SMEs framework before the adoption of the test; 2. considerations for the design and implementation of this regulatory management tool in a particular country; 3. how to conduct the SME test; and last 4. what comes after the test is conducted to ensure that the tool is effectively used to consider SMEs in the resulting regulation and to improve the regulatory framework for this group. The first two stages refer to setting the groundwork for adopting an SME test and designing it into the policy making process or improving and existing one, while the last two refer to conducting the SME test and taking on board its results.

**Figure 1. Stages: Before the test, design, implementation and checks of an effective SME test**



Source: Author’s own depiction.

This Annex benefits from information gathered through a survey conducted in 2020 by the OECD within its members regarding their SME tests, as well as insights from the Workshop “Mainstreaming SME and Entrepreneurship Perspectives in Policymaking: Making Better Use of the SME Test” jointly held by the Regulatory Policy Committee and the Committee on SMEs and Entrepreneurship (CSMEE) in November 2021.

## Note

<sup>1</sup> The OECD SME and Entrepreneurship Strategy will deliver in 2022 guiding principles for SME and entrepreneurship policies post COVID-19, which will include a strong emphasis on mainstreaming an SME lens through policies.

## References

- OECD (2021), "SME and entrepreneurship policy frameworks across OECD countries : An OECD Strategy for SMEs and Entrepreneurship", *OECD SME and Entrepreneurship Papers* 29, <https://doi.org/10.1787/9f6c41ce-en>. [4]
- OECD (2020), *International Compendium of Entrepreneurship Policies*, *OECD Studies on SMEs and Entrepreneurship*, OECD Publishing, Paris. [5]
- OECD (2020), *Regulatory Impact Assessment*, OECD Best Practice Principles for Regulatory Policy, OECD Publishing, Paris, <https://doi.org/10.1787/7a9638cb-en>. [3]
- OECD (2019), *OECD SME and Entrepreneurship Outlook 2019*, OECD Publishing, Paris, <https://doi.org/10.1787/34907e9c-en>. [1]
- OECD (2012), *Recommendation of the Council on Regulatory Policy and Governance*, [OECD/LEGAL/0438](https://doi.org/10.1787/0438). [2]

# 2 Rationale

---

## Abstract

The main rationale to adopt and SME test is to have a tool that can assist policy makers to consider and account for SMEs when developing regulations, as it can lead to the creation of a SME-friendly regulatory environment that can enable SMEs to grow and be productive entities of society. However, how to design, adopt and implement such a tool is not straight forward and can change across jurisdictions. This Annex to the RIAs Best Practice Principle provides countries with information on relevant practices and policy options to design and improve their SMEs tests in way that can fit their regulatory and SME frameworks.

---

## Rationale for conducting the SME test

Regulations can create costs that stem from their implementation and compliance. In some cases, these are avoidable, and in other cases they are an intrinsic part of the incentives a regulation aims to provide and hence are expected to be justified by benefits to society as a whole. To produce those positive impacts, regulations cover a wide range of areas of the economy such as rules for establishing a company, licensing and permits, taxes, employment, environmental rules, etc. The impact of such justified regulations may nevertheless disproportionately affect smaller entities compared to larger ones, with young entrepreneurs and start-ups usually finding this particularly cumbersome. Further, SMEs may lack the capacity and resources to navigate complex regulatory environments, and to lobby for their needs in the absence of an established framework that facilitates their participation in public decision-making (OECD, 2006<sup>[1]</sup>; OECD, 2017<sup>[2]</sup>). All of these need to be taken into account by policy makers when developing regulations.

To help policy makers create effective and efficient regulations, regulatory impact assessments (RIAs) can provide critical information on whether and how to regulate to achieve policy goals (OECD, 2020<sup>[3]</sup>). This tool assists policy makers by identifying and assessing the potential solutions to a policy problem, by determining the impacts and consequences of both regulatory and non-regulatory options on different sectors of the economy and the society as a whole (e.g., environmental, social, and economic impacts). When using this tool policy makers should also assess the impacts that regulations might have on different groups of society, such as vulnerable groups, businesses and particularly, in this case, on SMEs (OECD, 2020<sup>[3]</sup>). Such a thorough assessment allows policy makers to decide whether to intervene or not and/or adjust the intended policy intervention, ensuring a greater quality of government regulatory action.

The OECD recommends for RIA mechanisms to be designed to explicitly consider the impact of regulations on SMEs as an integral part of the assessment (OECD, 2012<sup>[4]</sup>; OECD, 2020<sup>[3]</sup>). Although the consideration of the impact of regulation on groups of citizens or companies is usually a formal part of RIA, this is not always the case in practice. This risks that insufficient attention is given to specific groups with potential high vulnerability to the costs of regulation, which may then – when not taken explicitly into account – fall through the cracks.

The SME test is a tool that seeks to provide information to decision-makers to consider the perspective of SMEs when making regulations, by identifying the relevant SMEs groups that are affected, enabling engagement and consultations with them, and estimating the positive and negative impacts that regulations will have or are having on said groups. The SME test also helps to identify disproportionate impacts on SMEs, and when so, allows policy makers to propose alternative policy options or mitigating measures to minimise said impacts. In other words, it facilitates regulators to consider alternative solutions and propose adaptable schemes to ensure that the regulatory environment allows SMEs to operate, grow and scale-up (OECD, 2018<sup>[5]</sup>). This means that an effective SME test needs to go beyond determining whether the SME population at large will be affected by a regulation. It calls for more granularity on the understanding of the composition of the SME population, which subgroups of SMEs could be affected by regulatory options and how, and also proactive engagement with these groups of the business population. In sum, it serves as an in-depth assessment of proposed regulations and policy options, their potential positive and negative effects on SMEs, and, if needed, the consideration of special treatment towards this group.

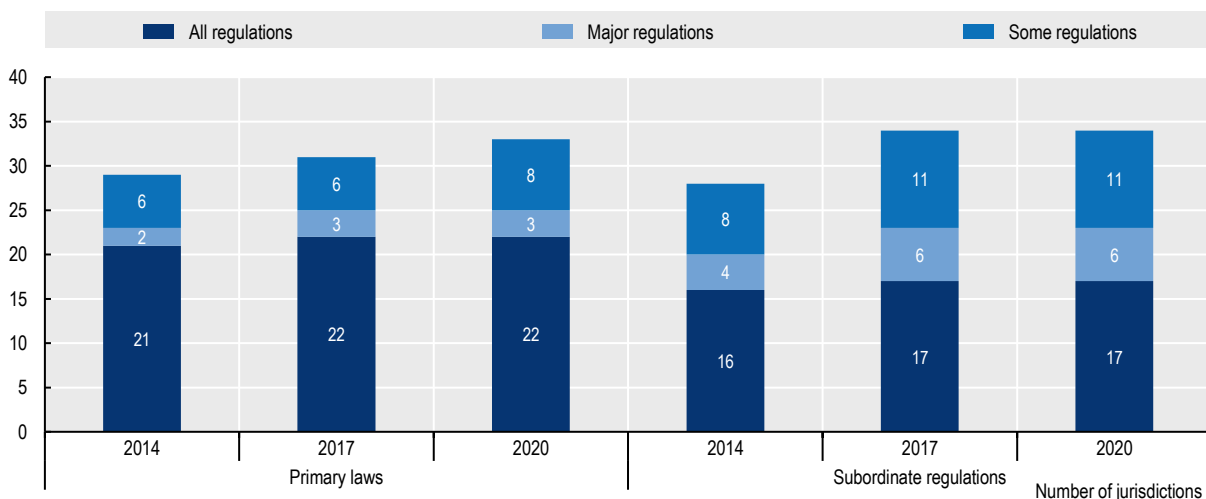
Certainly, the purpose of taking SMEs into account when regulating is not to provide an advantage to SMEs over other type of businesses, but to ensure a level playing field. Therefore, if when conducting the test, it is determined that SMEs are not disproportionality affected, it is likely that no SME-specific measures or modified policy options are required to assist SMEs nor to achieve the intended policy goals. The test then shows that the proposed regulation has accounted, or does not need to account for, SMEs in particular.

As seen in various economies, there are different approaches to conducting an SME test (Annex A below), reflecting different countries' economic structures, SME policy perspective and the SME population (OECD, 2021<sup>[6]</sup>). As with all regulatory management tools, this type of instrument should be designed and adapted to be effective in the environment where it will be used. The design and use of SME tests, to some extent, will therefore differ from country to country. However, there are common critical aspects of conducting an SME test that are relevant across countries. These critical aspects contribute to a better understanding of which considerations and elements should be accounted for when developing regulations and how to design a good SME test that can rendered the desired goals: To consider and account for SMEs when developing regulations, and to create a SME-friendly regulatory environment that can enable SMEs to grow and be productive entities in society.

### Rationale to developing this Annex from a regulatory and SMEs policy perspective

The key rationale behind the need for this Annex to the RIAs Best Practice Principle is to provide governments with key information on relevant practices and policy options to design and improve their SMEs tests to produce regulations that are in alignment with SMEs' particular characteristics and needs. It seeks also to provide information on why and how SMEs need to be particularly considered when regulations are being developed. When discussing best practices on the set up, design or development of the SME test, this Annex also highlights the importance, as well as pros and cons, of adopting a proposed approach. This is aimed to assist countries to determine whether and how to adopt it depending on their SME population, regulatory policy, and country's goals regarding SMEs. In sum, the lack of systematic consideration of SMEs when regulating in some countries, and the differences in the depth and scope when conducting their test in others, makes this a timely contribution.

**Figure 2.1. Countries that have a requirement assess the impact of regulations on small businesses**



Note: Data for 2014 is based on 34 OECD member countries and the European Union. Data for 2017 and 2021 is based on 38 OECD member countries and the European Union.

Source: Indicators of Regulatory Policy and Governance Surveys 2014, 2017 and 2021, <http://oe.cd/ireg>.

OECD countries recognise the importance and need of considering SMEs when developing regulations, as an increasing number assess in some form the impact that regulations might have on these businesses (Figure 2.1). Since the 1980s in the United States policy makers have been required to conduct an impact assessment of the effects of proposed regulations on small entities. Other countries, such as Australia in the early 1990s, and Latvia and Switzerland, slightly later, adopted a similar practice. Soon after, in the mid-2000s, countries such as the Czech Republic, Poland and Sweden also introduced the use of this type of assessment as part of their regulatory-making process. In recent years, countries like Belgium, Canada, Ireland, Italy, Slovenia and the United Kingdom, have also begun to assess the impact on SMEs. Even in countries where policy makers are not legally required to consider the impact of proposed regulations on SMEs, they are being assessed in practice. However, even though the number of countries where policy makers are required to assess the impact of regulations on small businesses has increased in the last few years, this improvement has not been systematic. Countries that have more recently included this requirement, only do so for some of their primary laws or subordinate regulations (Figure 2.1), which means that there is still room for further advancements on this area for OECD countries.

Though there is ample information and publications available on how OECD countries conduct their RIAs (see (OECD, 2018<sup>[5]</sup>) and (OECD, 2020<sup>[3]</sup>)), less is known about how countries account for SMEs when developing regulations. To fill this gap, the OECD undertook a survey in 2020 that gathered and analysed information on whether and how member countries took SMEs into account when regulating (see Box 2.1). The results from the survey showed that the depth of the requirements and practices to assess the impact of regulations on SMEs varies across OECD countries (see Annex A), ranging from not taking SMEs into account in particular when developing regulations, to only checking whether a proposed regulation would affect SMEs, to a full SME test where impacts across SMEs are analysed, assessed and accounted for. There are also differences in how countries define SMEs, how they determine the scope of their SME test, as well as which impacts their tests assess.

### Box 2.1. Survey on SME tests

#### Objective and scope of the survey

The main objective of the survey was to analyse if and how OECD countries are considering SMEs when regulating. The survey aimed at understanding whether and how SME tests were being conducted in OECD countries and what were some common practices that could be identified among members. In particular, the survey looked at the various requirements to conduct an SME test; existing country practices; the formats and methodologies to assess proposed regulations; and the participation of relevant stakeholders in this process; oversight of the process and effectiveness of the test.

#### Methodology

An online survey was designed and sent to each OECD member in March 2020. The cut-off date of the survey was 1 July 2020. The answers received from countries went through a validation process conducted by the OECD and the final results were shared with countries for confirmation.

#### Surveyed countries

23 OECD countries participated in the survey: Australia, Belgium, Canada, Colombia, Czech Republic, Finland, Greece, Hungary, Ireland, Italy, Latvia, Luxembourg, New Zealand, Norway, Poland, Portugal, Republic of Korea, Slovak Republic, Slovenia, Sweden, Switzerland, United Kingdom, and the United States.

## References

- OECD (2021), "SME and entrepreneurship policy frameworks across OECD countries : An OECD Strategy for SMEs and Entrepreneurship", *OECD SME and Entrepreneurship Papers* 29, <https://doi.org/10.1787/9f6c41ce-en>. [6]
- OECD (2020), *Regulatory Impact Assessment*, OECD Best Practice Principles for Regulatory Policy, OECD Publishing, Paris, <https://doi.org/10.1787/7a9638cb-en>. [3]
- OECD (2018), *OECD Regulatory Policy Outlook 2018*, OECD Publishing, Paris, <https://doi.org/10.1787/9789264303072-en>. [5]
- OECD (2017), *Small, Medium, Strong. Trends in SME Performance and Business Conditions*, OECD Publishing, Paris, <https://doi.org/10.1787/9789264275683-en>. [2]
- OECD (2012), *Recommendation of the Council on Regulatory Policy and Governance*, [OECD/LEGAL/0438](https://www.oecd.org/LEGAL/0438). [4]
- OECD (2006), *Policy Framework for Investment*, OECD Publishing, <http://www.oecd.org/investment/investment-policy/36671400.pdf>. [1]

# **3**

## **Best practices before adopting an SME test**

---

### Abstract

For SME tests to be relevant and informative, it helps when certain conditions are in place, in particular with regard to knowledge and interaction with (different types of) SMEs and entrepreneurs. This starts with the availability of a clear and systematically used definition of SMEs, but also relates to the appreciation of the diversity of differences among SMEs and entrepreneurs, and how regulations can affect them.

---

## Knowing your SME population

SMEs comprise an essential part of a country's businesses population and economy. They form 99% of businesses in OECD countries, making up to 60% of formal employment and representing between 50% and 60% of the value added in the OECD area (OECD, 2019<sup>[1]</sup>). SMEs, in particular young firms, contribute to innovation and growth, and can also have an impact on creating competition, allowing for greater economic efficiency (OECD, 2019<sup>[2]</sup>). In addition, SMEs, and especially young firms, also play a key role in creating new business models that adapt to market needs and embrace new opportunities.

SMEs are commonly known by one characteristic, which is their relatively small size. This characteristic may make them more agile, but at the same time can impact their access to resources or hamper the playing field in which they operate vis-à-vis larger entities. This, in combination with their weight in economies, makes it important to consider them as a specific category when developing and implementing regulations. However, to be able to do that, countries need to define, identify and know their SMEs population.

There is no universal definition of an SME, but most countries consider a company an SME based either on its number of employees, a financial threshold, or a combination of both these criteria (Box 3.1). In addition, there are countries with more than one definition of what an SME is, which may differ by industry, geographical area, or other criteria that the country determines. For example, Colombia has different financial thresholds to classify companies as SMEs depending on whether they operate in manufacturing, services or commerce. In the USA, the definition of small businesses also varies by industry, as the Small Business Administration (SBA) sets federal size standards, which define whether a business is small.<sup>1</sup> The use and application of an accepted definition of SMEs in a country can help to develop a sound SME policy, improve the quality of SME tests by making them more comparable across policy domains, and enhance possibilities for synergies. However, having a sole definition might not be what is most effective for a particular country, since the definition of SMEs should reflect differences in economic structures and policy perspectives, which also includes classifications at more granular level by size (micro, small, medium, large), location, age and sector, like the previously mentioned example of Colombia and the United States. Regardless of whether there is one definition of which companies are to be considered SMEs, or whether a country finds it useful to have more than one, what is most relevant is that it is clear to both SMEs and policy makers which companies are considered as SMEs, and thus need to specially be taken into account when regulating, and when conducting the SME test.

### Box 3.1. Criteria used by OECD countries to define SMEs

While there is no universal definition of an SME and several criteria can be used in the definition, SMEs are generally considered to be non-subsidiary firms which employ less than a given number of employees, and in some cases have turnover under a certain threshold.

#### Number of employees

The number of employees varies across OECD countries. The most frequent upper limit designation of an SME is 250 employees, as in the European Union. However, some countries set the limit at 200, while the United States considers SMEs to include firms with fewer than 500 employees. Small firms are mostly considered to be firms with fewer than 50 employees, while micro-enterprises have less than 10. Medium-sized firms regularly have between 50 and 249 employees.

#### Turnover and financial assets

- In the EU, the turnover of an SME cannot exceed EUR 50 million and the annual balance sheet should not exceed EUR 43 million. (OECD, 2019<sup>[3]</sup>)
- There are some OECD countries whose financial threshold is not a fix amount, but depends on another metric, that provides an automatic adjustment for inflation and categorizes SMEs, which is the case for Colombia.
- Similarly, in Korea, a company can be classified as an SME if its annual revenue does not exceed the average revenue of the industry in which that company operates within.

Note: For details on Colombia, see Decree No. 957 of 9 June 2019.

Source: OECD SME test survey 2020; (OECD, 2019<sup>[3]</sup>).

The availability of a clear definition allows countries to better identify SMEs and engage with them, and to develop knowledge on relevant aspects of their performance, including how many companies are micro, small or medium-sized, in which sectors these companies operate, what is their age, type of management, as well as their geographical location.

The availability of policy-relevant data by firm size is also an important prerequisite for knowing and understanding the SME population, and to enable a quantitative assessment of impacts of regulations on SMEs. Data availability by firm size has improved, for instance through the OECD Structural and Demographic Business Statistics Database<sup>2</sup>, the OECD SME and Entrepreneurship Outlook (OECD, 2019<sup>[1]</sup>) as well as through the growing availability of new and survey data on SMEs and entrepreneurs. Consultations and other engagement with SMEs can also enhance the knowledge base on SMEs and entrepreneurs to better inform policy. Greater data availability can also feed into analysis on SMEs and entrepreneurs, which can provide an important foundation for SME tests.

Knowing the SME population in detail allows countries to understand how important the population is to their economy, how to structure their SMEs test, to identify which SMEs should be considered and possibly engaged when there is a policy problem and for conducting an SME test.

## Understanding SMEs heterogeneity

Even though many SMEs share common characteristics related to their relatively smaller size, SMEs and entrepreneurs are at the same time very different and divers in terms of organisational aspects (age, sector, technological intensity, ownership type, domestic and foreign linkages), behaviour (opportunity recognition, creation, evaluation and exploitation, strategy, motivation) and performance (innovation, growth, impact, social goals) as well as characteristics of the entrepreneur (age, gender, background) (OECD, 2019<sup>[1]</sup>; Raes, 2021<sup>[4]</sup>).

Governments should take these diverse characteristics of the SME population into account, and not treat SMEs as a uniform group in impact assessments and SME tests, to avoid where necessary “one size fit all” policy solutions. An important part of knowing the SME population entails analysis on the impact of regulations on SMEs and entrepreneurs at more granular level considering the above mentioned organisational, behavioural, performance differences, among other factors. This differentiation may help capture critical drivers of firm performance or aspects of vulnerability and exposure to market failures, which are relevant for policy making, and can help ensure that differences in the impact of regulation among SMEs is taken into account in the assessments and consultations. It can more importantly help making policies more effective and efficient by targeting specific groups, by identifying policy alternatives and mitigating measures for those who need it the most. In that line, the development of classification tools, such as typologies (see Box 3.2), could help policy makers to take the diversity among SMEs and entrepreneurs better into account in SME tests.

### Box 3.2. SMEs and entrepreneurship typologies

The “OECD strategy for SMEs and Entrepreneurs” aims to develop policy-relevant typologies of SMEs, to enable policy makers to better understand SME heterogeneity in policy making (Raes, 2021<sup>[4]</sup>). On the basis of an extensive literature review on SME and entrepreneurship typologies, a framework for policy-relevant SME and entrepreneurship typology development is proposed, including four steps:

- First, the dimensions and attributes a typology encompasses should be relevant from the perspective of the **objectives** that policy makers pursue.
- Second, for typologies to be meaningful to policy makers, they should be based on **reliable and comparable data**.
- Third, to be of relevance across OECD countries, a typology should be usable in the **multiple contexts** of different country settings.
- Fourth, for typologies to be meaningful tools they should **not be too complex**, and include types that are easy to understand and recognizable for both policy makers and entrepreneurs themselves.

Following this framework, a number of potential typologies were identified, for instance regarding SME internationalisation, greening, access to finance, skills development and post COVID-19 recovery policies. Such typologies can for instance help to go beyond customary distinctions among SMEs in frontrunners and laggards, and help to take differences in motivations and ambitions into account, as well as structural differences by sector and technology area. Examples of frequently used typologies include those relating to opportunity and necessity driven entrepreneurship, to the life cycle of SMEs and to their experience (novice, serial, portfolio entrepreneur).

Typologies can also help raise awareness and sensitivity among policy makers on SME diversity. For instance, through an online SME diversity assessment tool, policy makers could be led through a set of questions related to SME diversity and provided with resources on the implications and possible ways to address this. This would enable policy makers to identify relevant aspects of SME diversity and access resources on how to interpret this, without however providing concrete actionable answers for individual situations. The tool could be part of guidelines for consultations, impact assessments and SME tests.

Source: (Raes, 2021<sup>[4]</sup>).

## Notes

<sup>1</sup> To set this standard for each industry, the SBA considers, among other economic characteristics of the industry, the degree of competition, average firm size, start-up costs, entry barriers and distribution of firms by size. Likewise, it considers technological changes, competition from other industries, growth trends, inflation, etc. For more information visit <https://www.sba.gov/document/support--table-size-standards>.

<sup>2</sup> <https://www.oecd.org/sdd/business-stats/structuralanddemographicbusinessstatisticsdbsoecd.htm>.

## References

- OECD (2019), *Declaration on Strengthening SMEs and Entrepreneurship for Productivity and Inclusive Growth, OECD 2018 Ministerial Conference on SMEs*, <https://www.oecd.org/cfe/smes/ministerial/SME-Ministerial-Declaration-ENG.pdf>. [2]
- OECD (2019), *Financing SMEs and Entrepreneurs 2019: An OECD Scoreboard*, OECD Publishing, Paris, [https://doi.org/10.1787/fin\\_sme\\_ent-2019-en](https://doi.org/10.1787/fin_sme_ent-2019-en). [3]
- OECD (2019), *OECD SME and Entrepreneurship Outlook 2019*, OECD Publishing, Paris, <https://doi.org/10.1787/34907e9c-en>. [1]
- Raes, S. (2021), "Understanding SME heterogeneity: Towards policy relevant typologies for SMEs and entrepreneurship: An OECD Strategy for SMEs and Entrepreneurship", *OECD SME and Entrepreneurship Papers*, Vol. 28, <https://doi.org/10.1787/c7074049-en>. [4]

# 4 Best practices when designing the SME test

---

## Abstract

For conducting an effective SME test, first this regulatory management tool needs to be designed in a way that considers already established best practices on regulatory assessment, but also that aligns with the country's regulatory policy and SMEE policy framework. The design of the SME test should consider, among other things, when in the decision-making process the test should be conducted, how early should SMEs be involved, as well as for which regulatory proposals or regulation is it advisable and proportional to conduct the test. A design that considers the place, scope and reach of the use of this tool, can assist policy makers to later conduct the test in systematically and consistently.

---

## Include an SME perspective early in the decision-making process

The SME test should be designed to start at the early stages of the regulatory-making process, when the policy problem is being identified and discussed, and potential alternative solutions are being considered. An SME perspective should be included already at that stage, among other things, to determine if for the solutions to the identified policy problem (i.e., a change in behaviour of) SMEs are relevant, and if so, what the alternative modes are to realise this.

In practice, when it comes to SMEs, as well as other businesses and actors, policy initiatives that concern them do not always begin as a regulation or even as a regulatory proposal. They begin as policy problems to be solved or strategies to solve said problems, which are later made into regulatory proposals. Interactions and consultations with SMEs and the organisations that represent them are essential to better understand how they see policy challenges and ways to address these (see also Chapter 5). As it often happens with RIA, the SME test is conducted once there is a regulatory draft, which tends to be too late for it to inform alternative policy solutions, and too late to obtain meaningful insights from SMEs to understand how the policy problem affects them, and how to solve it from their standpoint. This is still a weakness of the SME test in most OECD countries.

## Scope of the SME test

### ***SME tests need to be conducted for a broad range of policy problems, regulatory proposals...***

In principle, the SME test should be conducted for the development of all primary laws and subordinate regulations, at all levels of government (subnational, national and international), and not limited only to those regulations that are designed for businesses. Though business regulations can seem to be the obvious source of new compliance costs and administrative measures for SMEs, depending on the characteristics of particular SMEs (e.g., the sectors or geographical region they operate within) a regulation that is not necessarily intended for businesses could have effects for these entities as well. Further, these regulations can impact SMEs' customers or suppliers, which in turn can have ripple effects on them. Hence, limiting the type of regulations that would undergo an SME test based solely on the topic of the regulation, inadvertently also limits the scope of impacts that can be identified and assessed.

### ***...and existing regulations...***

Even though in a majority OECD countries the SME test is for the most part an *ex ante* exercise, a well-rounded policy structure should also include the assessment of the impact of existing regulations on SMEs. Countries could establish the need for an SME test to be conducted also when closing the regulatory-making cycle, either as part of already existing *ex post* evaluations or as an *ex post* SME test.

In addition to knowing whether regulations are achieving their predefined objectives towards SMEs which is the main objective of *ex post* evaluations (see (OECD, 2020<sup>[21]</sup>)), policy makers can also evaluate, for instance, whether mitigating measures in place are benefiting SMEs as expected, whether regulations which SMEs are exempted from are achieving their intended policy objectives, or whether SMEs participation is perhaps needed for the regulation to be effective. This exercise is particularly important for SMEs, because this can prevent inefficient regulations from being part of SMEs regulatory framework, which could unnecessarily compromise their already limited resources; but also could make them part of an already existing regulation that could bring potential improvements to their business and the economy as a whole. This is an exercise that is not conducted often in OECD countries, with a few exceptions. For

instance, in Switzerland the SME Forum can identify existing regulations that need to be assessed and provide recommendations to the policy makers for amendments. These regulations are usually identified based on ongoing surveys and assessment, such as the “Red Tape Monitor”.<sup>1</sup>

The *ex post* assessment of the impacts of regulations on SMEs should not however be an afterthought. It should be intentional, planned and embedded as part of the life cycle of the regulation. For this, when regulations are created, policy makers should indicate, for instance, how and when will the impacts of the mitigating measures or exemptions be assessed, what will this assessment measure, which businesses or actors should the assessment account for (including those that were potentially excluded from the regulation, etc. With a previously defined mandate and initial scope for *ex post* evaluation, there can already be a reasonable expectation that the impacts of regulations on SMEs will be considered also once the regulation has entered the regulatory framework.

In addition, there might be cases when the assessment or evaluation is not conducted for individual regulations, but instead there is an evaluation of the stock of regulations in a certain area. These reviews can include the evaluation of regulations across a sector or economy, in-depth public reviews of major regulatory regimes, and the benchmarking of certain regulations where like-for-like comparisons can be made (see (OECD, 2020<sub>[2]</sub>)). When conducting this type of reviews, countries should also introduce an SME lens, where it is considered if and how those groups of regulations are impacting different groups of SMEs.

### ***...but should also be proportional to the expected impacts***

Even though conducting an SME test is an important exercise, it might not always be the most efficient approach for SMEs or the overall regulatory framework. As explained previously by the OECD, conducting RIAs should be proportional to the expected impacts, which means ensuring that “*government resources are not unduly wasted in assessing regulatory proposals with only minor impacts, where the costs of conducting RIA, consultation and other development process may outweigh their benefits*” (OECD, 2020<sub>[3]</sub>). In other words, effective and efficient SME testing requires a balance between the need for SME tests to be robust and applied systematically, and at the same time be proportional and not unduly weigh on government budgets and decision-making.

Various OECD countries have introduced pre-set thresholds to decide to conduct a full SME test when the impacts are expected to be significant (above the threshold), to conduct a simplified version of it, or to not conduct a test at all (see Box 4.1). Following those examples, countries can take into account certain criteria when designing their SME test and determining the threshold for conducting an SME test, and which type to conduct:

- *Number of affected companies:* The threshold could be determined by how many SMEs are expected to be affected by the regulatory proposal, or by how many micro, small or medium enterprises could be affected.
- *Sector/geographical area where affected SMEs operate in:* Another criterion to consider is the number of SMEs or subgroups of SMEs potentially affected in a particular sector or geographical region. Each country should determine which sectors are relevant for their SMEs, which links back to the need to know the SME population (see Chapter 3). Likewise, countries could identify if specific geographical areas might have a higher or more relevant SME population, in which case if a potential regulation affects said particular geographical area an SME test could be required.
- *Financial impact/costs:* The expected financial impact (positive and negative) of the regulation towards SMEs is also an important criterion to consider to determine whether to conduct a test, and which type. Particularly when it comes to the costs that regulations will impose to potential or existing SMEs, for instance, costs of incorporation, new licenses, administrative procedures, etc.

If the impact is expected to be over a certain threshold, affect a particular type of activity or group more than other, then a test should be conducted.

#### Box 4.1. Threshold for conducting the SME test

The use of a threshold can be a helpful tool to assist policy makers define the relative importance, in terms of impact, of any regulatory proposal. Firstly, thresholds help to ensure that high impact regulations are adequately assessed. Secondly, thresholds aim to assure that government resources are not spent on regulations with minor impacts, where the costs to perform an in-depth analysis outweighs its benefits. Finally, thresholds help to improve transparency by setting clear rules to be used by policy makers (OECD, 2020<sup>[3]</sup>). In that sense, some OECD countries use thresholds to determine whether an SME test should be conducted, and in case it does, which type of test is to be conducted.

##### Austria

Austria utilizes thresholds to trigger the execution of an in-depth SME test. These thresholds determine if a regulation is expected to have significant impacts, and if one of the following thresholds is met an in-depth SME test is required:

1. Financial impacts (taxes & duties, costs & revenues, access to finance, etc.): Impact on more than 10 000 businesses or impact for a total amount of EUR 2.5 million or more;
2. Business cycle (starting a company, internationalization, innovation capacity, take-overs, transfers, etc.): Impact on more than 500 businesses; or
3. Administrative costs: EUR 100 000 total per year.

##### Canada

In Canada, the Small Business Lens is triggered if the proposed regulation would impose new administrative or compliance costs on Canadian small businesses. The type of assessment to be carried out depends on the expected impact:

- Significant-cost-impact proposals: In addition to qualitatively describing the impacts on small businesses, it must provide a monetised analysis of the impacts and quantitative supporting information.
- Low-cost-impact proposals: Must include a qualitative description of the impact on small business, but may also include monetized or quantitative analysis, if available.

##### Switzerland

In Switzerland, the thresholds determine whether the SME compatibility test is required or only recommended:

- Mandatory: When a proposed regulation is expected to affect more than 10,000 firms, the SME compatibility test must be conducted.
- Recommended: It is recommended that the test is conducted when more than 1,000 firms or a particular geographical region is expected to be affected.

Source: OECD SME test survey 2020.

If a country determines that it is relevant for them to modulate in a proportional way which SMEs test is to be conducted for particular policy problems and regulatory proposals, it could then design at least two types of SME tests. First, a simplified version, which could be limited to either a qualitative determination

of whether SMEs can be excluded from complying of the regulation or mitigating measures are needed, which is how the United Kingdom begins its SME test. Second, a complete SME test that could contain all or many of the elements explained in detail in Chapter 5.

## Data collection, availability and use

Today, data has become abundant and an important commodity for businesses in general, and it is only appropriate that policy makers make use of them to make better and more informed decisions. Policy makers need data during several moments of policy development and when it comes to SMEs, even before the process begins. They need data, for instance, to know and understand their SME population, to determine the proportionality of the SME test to be conducted, to inform it and most importantly to develop regulations that account for SMEs, and that when necessary, are tailored to specific groups. Some of the reasons that makes data an important aspect of developing regulations when it comes to SMEs are SMEs diversity and how broad their participation in any market is. This makes it relevant for policy makers to know for certain these nuances and understand how diverse the considerations to be accounted for in policy making are.

The fact that data is abundant in general, does not necessarily translate into countries having by default good, enough or reliable data or data at a granular level on SMEs that can be used for policy making. Therefore, countries should aim to have in place effective processes for collecting data at a granular level that then can be relevant for the different parts of conducting test and of policy making. For instance, collect data on where they operate, how they are composed, their location, who are their customers, in other words, the data needed to know the SME population, as explained in Chapter 3. Ensuring that data is detailed and useful enough is still a challenge, and in part depends on the availability of sources and the methodologies used to collect it. Some OECD countries have developed statistical registries where businesses are assigned an identification number that can be used to match data collected through different sources. This already allows to build an important database that can be used during policy making, but is also important that data is collected at a more granular level.

Policy makers should have access to the data collected from different sources in the administration (e.g., taxes, chambers of commerce, permits, licences), in a way it can be used, compared and crossed to contribute and strengthen policy making. This accessibility can be achieved through having linked databases or other forms of data access. This would complement the data that can be collected through engaging stakeholders, conducting surveys during policy making, and also potentially reduce the costs of data collection and engagement burden when developing each proposal. However, before attempting to draw policy conclusions from existing data, it should be carefully analysed, especially considering the many sources, form of collection, diversity, and sometimes incompleteness of the data. (OECD, 2004<sup>[4]</sup>).

Another caveat regarding data collection and use is that it tends to be difficult to separate statistics regarding SMEs from business statistics for the economy as a whole. This is not necessarily a negative thing, since at the end of the day SMEs are a sub-set of businesses and their data should actually not be looked at in isolation (OECD, 2004<sup>[4]</sup>). However, this has to be accounted for when collecting, organising and comparing the data.

Once data are available, be it from statistics, government agencies, shared data bases or other sources, it is of utmost importance to promote its use among policy makers when developing regulations and conducting the SME test. As will be explained later in more detail, while conducting the SME test, when determining which type of mitigating measures of exemptions could be adopted when designing regulations that account for SMEs, policy makers need reliable data to understand what the potential impact of these decisions in different groups of SMEs could be.

## Guidance for policy makers

Guidance to policy makers on how to conduct SME tests helps strengthen their quality, streamline the process and enable them to conduct the SME test consistently. Guidelines provide direction, among others, on the following topics:

- When to conduct an SME test (threshold);
- Which type of test is to be conducted (simplified or full test);
- How SMEs should be differentiated when conducting the test;
- How and which stakeholders should be consulted;
- Which methodologies should be used to assess regulations that might affect SMEs;
- Type of impacts that should be assessed;
- Types of mitigating measures that can be adopted;
- Possibility of exemptions regimes.

For instance, in Australia policy makers are given five principles to follow when a policy proposal is judged to have a significant impact on small business. The principles they have to follow are: 1. Reduce or eliminate red tape; 2. Consult on the details, not just high-level ideas; 3. Think cross-agency and look for joined up solutions; 4. Adopt whole-of-government solutions to simplify business interactions; and 5. Agencies will communicate with small business in clear, simple language and present information in an accessible format. In the same line, the European Commission Better Regulation toolbox includes a specific tool on SME tests, to guide and assist policy makers;<sup>2</sup> and the Swedish Agency for Economic and Regional Growth provides a detailed list of elements that policy makers need to consider to regulate in a SMEs-friendly manner.<sup>3</sup> The main principle of the Swedish guidelines is that what works well for small businesses often works well for large companies, but not the other way around, so that should be the starting point for policy makers when regulating.

Countries should make guidelines and training available to officials in charge of conducting SME tests, and more general of developing regulations, of conducting RIAs, stakeholder engagement and *ex post* evaluations. Since, as explained above, the SME test can and should be conducted at several stages of the policy making process, the wider availability of guidelines, training and assistance can bring awareness of when it is needed, and if so, how it should be conducted.

## The SME test should respond to each country's regulatory policy and SME policy framework

SME tests are important in any country regulatory framework; however, SME tests are not the only means through which an SME and entrepreneurship perspective can be mainstreamed in policy making. Countries use various governance mechanisms to this end. In some countries dedicated Ministers or Ministries have the responsibility for the SME portfolio across government, and have put horizontal (across Ministries and agencies) and vertical (across levels of government) co-ordination mechanisms in place. Some countries have developed targeted policy strategies and frameworks aimed at SMEs and entrepreneurship, whereas others include SME and entrepreneurship policies as part of wider industrial, regional or innovation policies. Finally, some countries have an extensive network of interaction with, advocacy for, and analysis of the SME sector, through advisory boards, ombudsmen, and research centres (Raes, 2021<sup>[5]</sup>).

The best way to design and execute an SME test to some extent depends on how it fits in the context of these wider aspects of SME policy frameworks, and is enhanced when there is political ownership of its importance. SME tests can make use of existing resources and institutions, for instance in analysis of advocacy and advice. The existence of co-ordination structures on SME and entrepreneurship policy can

be a vehicle to make SME tests more uniform across government (including regional and local government) and strengthen their use and dissemination. The distribution of SME and entrepreneurship policy responsibilities across levels of government may also be a relevant factor for how SME tests can best be organised. In short, even though the SME test is a regulatory management tool it should be designed to fit the characteristics of the economy and country where it is to be adopted and conducted.

## Notes

<sup>1</sup> The Red Tape Monitor is a questionnaire sent to SMEs and large companies that records perceived burdens, as well as the time and financial burden that companies face for the compliance with legal requirements and regulations. For more information visit [https://www.seco.admin.ch/seco/en/home/Standortfoerderung/KMU-Politik/Administrative\\_Entlastung.html](https://www.seco.admin.ch/seco/en/home/Standortfoerderung/KMU-Politik/Administrative_Entlastung.html).

<sup>2</sup> [https://ec.europa.eu/info/sites/default/files/file\\_import/better-regulation-toolbox-22\\_en\\_0.pdf](https://ec.europa.eu/info/sites/default/files/file_import/better-regulation-toolbox-22_en_0.pdf).

<sup>3</sup> <https://tillvaxtverket.se/amnesomraden/forenkling/handledning-for-konsekvensutredning/utred-konsekvenser/ekonomiska-effekter/konsekvenser-for-foretag/sarskild-hansyn-till-sma-foretag.html>.

## References

- OECD (2020), *A closer look at proportionality and threshold tests for RIA*, [3]  
<https://www.oecd.org/regreform/Proportionality-and-threshold-tests-RIA.pdf>.
- OECD (2020), *Regulatory Impact Assessment*, OECD Best Practice Principles for Regulatory Policy, OECD Publishing, Paris, <https://doi.org/10.1787/7a9638cb-en>. [1]
- OECD (2020), *Reviewing the Stock of Regulation*, OECD Best Practice Principles for Regulatory Policy, OECD Publishing, Paris, <https://doi.org/10.1787/1a8f33bc-en>. [2]
- OECD (2004), *SME Statistics: Towards a More Systematic Statistical Measure of SME Behaviour*, <https://www.oecd.org/cfe/smes/31919286.pdf>. [4]
- Raes, S. (2021), "Understanding SME heterogeneity: Towards policy relevant typologies for SMEs and entrepreneurship: An OECD Strategy for SMEs and Entrepreneurship", *OECD SME and Entrepreneurship Papers*, Vol. 28, <https://doi.org/10.1787/c7074049-en>. [5]

# **5**

## **Best practices when conducting the SME test**

---

### Abstract

Once a country has decided to undertake SME testing as part of their process for developing regulations, it should ensure that the test achieves its desired objectives. For this, there are a series of practices that can be adopted by countries looking at introducing or improving their SME test, that range from how and when to involve SMEs in the discussion of policy problems and regulatory drafts, to assessing the impacts that proposed or existing regulations might have on SMEs, to setting up special regimes for SMEs groups as a way of minimising the negative impacts that regulations might produce. The rest of this section will develop on these practices.

---

## Assessing the relevance of SMEs in achieving policy objectives

A first step when conducting an SME test should be to determine whether and how SMEs are relevant for the solution to the policy problem and/or the realisation of the objectives that underlie a regulatory proposal. In some cases, that relevance may be rather limited since the regulation focuses on issues less relevant for the business sector. However, in many cases, even if the objective of a regulation is not explicitly or uniquely targeted towards SMEs, the success of a regulation will still critically depend on its ability to incentivise a change in behaviour by SMEs, if only because they account for such a large share of the business population, employment and value added.

Following this, policy makers should assess which are the most effective policy options to address the policy problem and realise the desired objectives, and the participation needed from SMEs for such. Among other things, that exercise can help determine early on how involved SMEs need to be in the development of the regulation, but most importantly in complying with it. For instance, climate policy objectives are mostly not SME specific, but rather focus on the reduction of greenhouse gases at large. An SME test on a climate policy proposal should not only assess its impact on SMEs in terms of costs and benefits (see further in this Chapter) but should start by identifying how these climate ambitions translate into expectations and goals towards SMEs, and then identify what it takes to incentivise and allow SMEs to reach that objective.

## Identification of potentially affected SMEs at a granular level

Next to identifying if and how SMEs are essential for realising the policy objectives, it is also important to identify which (groups of) SMEs are potentially going to be affected by the proposal at an early stage of an SME test. Even for those regulatory proposals where SMEs are not the main target nor are key to the realisation of a policy objective, they may still feel the impact of the regulatory proposal.

The early identification of potentially affected groups among SMEs can help policy makers assess policy problems and solutions in a targeted manner. Given the large differences and variety among SMEs and entrepreneurs, where relevant, the identification of potentially affected groups should take place at granular level, in particular, by identifying potentially impacted specific and vulnerable groups of SMEs. This requires data at more granular level, thus the relevance of knowing the SME population of a country (see also Chapter 3).

Identifying these groups allows policy makers to capture their nuances into the SME test and understand how, how much and how many companies might be affected by a proposed regulation. However, it also requires a sensitivity among policy makers of these differences, to ensure, for instance, that needs of specific groups are taken into account when assessing; and that potentially affected parties are consulted, which can translate into more accurate information for assessing. In addition, this can also help to make regulation more effective, efficient and inclusive and allow policy makers to improve the design of mitigating measures and to propose focused measures targeted at specific SME groups. Further, this information can be used to determine whether a pre-established threshold is met, and then decide whether to conduct the test, and which type should be conducted (see Box 3.1).

In many OECD countries, policy makers focus SME tests on the SME population as a whole, instead of on the more specific groups of SMEs that could be affected. However, there are a few countries where policy makers are required to increase the level of detail by identifying specific sub-groups within SMEs. For instance, Belgium, Italy and Switzerland distinguish affected SMEs by the sector they operate in, in cases when the proposed regulation is sectorial (e.g., tech, agriculture, health, etc.). Likewise, Italy and Switzerland also distinguish SMEs operating in a given geographical area, to determine whether those will be the ones affected by a proposed regulation and special attention is needed.

Therefore, in addition to different sizes of SMEs, these are other sub-groups that policy maker could look at to determine if they might be affected by the examined proposal, and also how many SMEs within those groups are concerned:

- *Sector*: The SME test should determine whether SMEs in a particular sector would be affected.
- *Location*: There are cases where the geographical location might influence how a particular group of companies are affected by a regulation either because that is a particularly sensible geographical area in the country or SMEs in that area are particularly vulnerable. It is advisable for this distinction to be also extended to different sizes of SMEs, operating in different sectors within those locations.
- *Age*: SMEs that have just entered the market or even those that have not yet entered it, might be affected by regulations that create new requirements for incorporation, entry barriers, licenses, etc. Thus, such an examination is relevant for regulations that refer to more general topics, such as how a market is regulated, that might affect more established SMEs or all SMEs regardless of their age.
- *Entrepreneur*: SME tests could particularly look into whether the proposal might particularly impact underprivileged or disadvantaged groups of entrepreneurs into account, including women, seniors, and youth.

### Engaging early and proactively with diverse groups of SMEs when conducting the SME test

Since policy makers do not necessarily have complete information into all aspects of a policy problem, or how a regulatory draft might affect different SMEs, policy making can benefit from engaging, and not only consulting, with different stakeholders and the public at large (OECD, 2020<sup>[1]</sup>). Positioning the processes more in terms of stakeholder engagement helps in ensuring that consultation takes place upstream and all through the policy-making process (see Box 5.1).

#### Box 5.1. Information, consultation and engagement

There are different forms of how stakeholders can be involved in the policy cycle and in the design and delivery of the resulting regulation. The 2017 Recommendation of the OECD Council on Open Government differentiates three levels of stakeholder participation:

- *Information*: an initial level of participation characterised by a one-way relationship in which the government produces and delivers information to stakeholders. It covers both on-demand provision of information and “proactive” measures by the government to disseminate information.
- *Consultation*: a more advanced level of participation that entails a two-way relationship in which stakeholders provide feedback to the government and vice-versa. It is based on the prior definition of the issue for which views are being sought and requires the provision of relevant information, in addition to feedback on the outcomes of the process.
- *Engagement*: when stakeholders are given the opportunity and the necessary resources (e.g., information, data and digital tools) to collaborate during all phases of the policy-cycle and in the service design and delivery.

Source: (OECD, 2017<sup>[2]</sup>).

Stakeholder engagement as part of the SME test does not differ greatly from the engagement needed during the policy cycle and for the development of regulatory proposals. However, because of the special characteristics of SMEs, policy makers could adapt and consider all necessary parts of the engagement to account and compensate for their special needs.

### **Who to engage with...**

Particularly engaging with SMEs and other stakeholders relevant to this group, enables policy makers to understand policy problems specific to SMEs, as well as how draft regulations might potentially affect them in more concrete terms. SMEs owners, SMEs representatives, trade unions and less often consumers, experts in particular fields and the general public should be engaged when conducting the SME test. These stakeholders are often able to provide feedback based on their experiences considering their large range, type of industry they participate in, and/or expertise on the matter (e.g., innovative industries, digital economy).

To benefit from the richness of potential stakeholders and in order to account for the great heterogeneity, when conducting the SME test policy makers should ensure that the variety of SME voices are heard (see for example Box 5.2). Consultations and stakeholder engagement should also acknowledge the possible gaps in representation from smaller businesses and specific kinds of businesses (e.g., women, youth, migrants, rural, etc.), as well as other vulnerable, underrepresented, or marginalised groups. These gaps can be identified when the SME population is known and accounted for, and this awareness can help policy makers grant all stakeholders equal and fair opportunities to be informed and consulted and actively engage them in all phases of the policy-cycle and delivery (OECD, 2017<sup>[2]</sup>).

#### **Box 5.2. Engaging with diverse SMEs stakeholders**

Some countries pay particular attention to differences among SMEs when engaging with them and in setting up consultations, aiming to ensure a representative participation that reflects SME variety. This is set up either in their SMEs broader policies or guidelines on how to account for SMEs when regulating.

##### **SMEs policies**

The Better regulation guidelines by the **European Commission** underline the importance of taking the perspective of different size groups within the SME population into account. The **Netherlands** SME Action Plan distinguishes between frontrunners and a broader peloton of SMEs and underlines the need for policies to take the differences between these into account. Similarly, the **German** SME Strategy also points at the diversity of SMEs, including the existence of 'hidden champions' whose voice is sometimes overheard. Likewise, one of the objectives of **Korea's** SME Strategy is the strengthening of personalised support for traditional SMEs, micro-enterprises, and traditional markets.

##### **Selective engagement with stakeholders**

There are formats of engagement that can facilitate diversity and participation in consultations, as they provide policy makers with the structure and criteria needed to reach out to a variety of stakeholders. In some OECD countries, policy makers take a selective approach when engaging with SMEs, identifying which potential stakeholders could be the most impacted and then engage with this selected group. With this approach, engagement with stakeholders is targeted:

- In **Switzerland**, when developing regulations, policy makers are required to interview a panel of representative of SMEs that the proposed regulation may impact. The panel should be heterogeneous. For this, policy makers should consider the size of the businesses, the sector

where they operate, their location (if the business operates in a specific canton, is city-based or is countryside-based), and other specific criteria that might be relevant for the proposed regulation (e.g., SMEs linked to environment activities, in case of environmental regulation). The ultimate goal of the representative panel is that it is as heterogeneous and diverse as possible, and that it offers a 360-degree perspective on the potential impacts on SMEs.

- In **Canada**, policy makers are required to identify and select stakeholders that best represent SMEs that might be impacted by the regulation at hand.

Source: OECD SME test survey, 2020; (OECD, 2021<sup>[3]</sup>).

### ***When and on what to engage with stakeholders for the SME test...***

The OECD Recommendation of the Council for Agile Regulatory Governance to Harness Innovation call policy makers to adjust their stakeholder engagement to ensure regulations are fit for future, which includes putting in place “*mechanisms for public and stakeholder engagement in the regulatory process, including innovative SMEs as well as start-ups, from an early stage and throughout the policy cycle to enhance transparency, build trust, and capitalise on various sources of expertise*” (OECD, 2021<sup>[4]</sup>). Based on this recent OECD Recommendation, engagement with SMEs and other relevant stakeholders should not be limited to getting their feedback on a final draft of a regulatory proposal. Instead, they should be engaged and consulted on various stages of the policy cycle and on different type of ideas and documents. This includes to consult on policy problems when they are being identified and defined; to discuss plans on addressing policy problems; to determine when SMEs participation is necessary to fulfil the desired policy objective; to identify the different impacts that alternatives to solve a policy problem would have on various types of SMEs; on draft of a proposed regulation; and on existing regulations to understand how (and if) they are impacting SMEs in practice.

However, in the early stages of policy making, when there is still little knowledge of the SME population that could be affected, engaging with SMEs might have its limitation. Their limited resources coupled with the often lack of specialized in-house staff, might make participating on consultations that could end up not be of their incumbency an inefficient choice. In this scenario, policy makers could choose to engage with business representatives or associations, instead of individual businesses. If it the engagement is treated as a one-time event, this choice may fail to give an accurate view of the potential impact of policy proposal on SMEs, as it would only capture the views of larger groups or groups with more resources.

Certainly, it might not always be efficient to engage on each one of those plans and documents with a large number of stakeholders. As with the SME test itself, policy makers could determine on what stakeholders need to be consulted, depending on the policy problem, regulatory draft or existing regulations at hand, and the moment of the consultation.

### ***How to engage and consult with SMEs...***

In most cases, those SMEs stakeholder whose input might be relevant to adequately regulate a policy problem, lack time and financial resources to dedicate to seek out consultations, or even to participate in them. This puts the ball on the countries’ side and requires them to include proactive formats of engagement that are easily accessible and not too burdensome to SMEs, to ensure that they can participate (Box 5.3). In addition, as recommended by the OECD Council on Open Government, policy makers should make available documents and information that are clear, complete, timely, reliable, relevant, free of cost, available in an open machine-readable format, easy to find, understand, use and reuse, and disseminated through a multi-channel approach (OECD, 2017<sup>[2]</sup>). Likewise, these engagements

should provide enough time to SMEs and other stakeholders to provide their input, minimising costs, and avoiding duplication to minimise consultation fatigue (OECD, 2017<sup>[2]</sup>).

### Box 5.3. Forms of proactive and accessible stakeholder engagement with SMEs

OECD countries use a variety of forms for reaching out to relevant stakeholders, making them aware of future and on-going consultations, and engaging them in the policy making process.

**Databases of SMEs and notification of consultations to interested stakeholders:** Some countries have created databases where SMEs can register if they are interested on participating in consultations. Policy maker then contact SMEs that are potentially affected by the policy problem or regulatory proposal and make it available for their feedback and opinion. This same differentiating criterion is used to hold workshops and meetings where those SMEs are consulted. In the **Slovak Republic**, those stakeholders and businesses that registered in their database are invited via the country's RIA commission secretariat to comment on draft regulatory proposals. In the case that authorities in the Slovak Republic are interested in developing a working group, this group would be formed by those interested stakeholders.

**Identification of relevant stakeholders:** In **Korea**, the Ministry of SMEs and Start-ups (MSS) uses a team of researchers to identify relevant stakeholders to engage with on the development of new regulatory proposals.

**Interactive consultation:** **Slovenia** has developed an online tool for its SME test that allows citizens, SMEs and other interested groups to provide their feedback to proposed regulations. It also enables them to conduct sophisticated analysis and quantify the potential impact on SMEs of the main proposal and on alternative proposals. This analysis through the online tool assists stakeholders to substantiate their comments and proposals which can be done on the [STOP the Bureaucracy website](#) and is called My Calculator.

**Interviews and panels with experts:** **Belgium** conducts interviews and expert panels with academia where they can provide comments on proposed regulations.

**Webinars:** In the **United States**, the SBA encourages agencies to provide a review of the rule in question in webinar format to encourage comments from SMEs.

**Roundtables:** Likewise, in the **United States**, the SBA's Office of Advocacy often conducts roundtables on upcoming rules where attendees tend to include small business representatives and invites the agency that drafted the regulation to provide an overview of the rule.

**Interviews with stakeholders:** In **Switzerland**, when developing regulations, policy makers are often required to organise a panel interview with relevant stakeholders who they deem could be affected by a proposed legislation.

**Online consultations:** Among the most common forms are consultations through dedicated online platforms. Even though most countries conduct their consultations on draft regulations online, it is however uncommon that there are specific websites dedicated to consultations with SMEs.

**Physical meetings:** In cases where the sector or impacts of the policy options may suggest that potentially impacted SMEs are located in a particular area or are even more limited in resources (either time or financial), policy makers adopt focused engagement approaches such as in-person consultations.

Source: SME test survey, 2020.

### ***Use the information gathered from the consultation process***

As with engagement and consultations with any other type of stakeholders, engagement with SMEs should not end when their insights are gathered. The most important aspect is that these insights are taken into account to inform the SME test, when assessing the potential impacts, when designing mitigating measures, when coming up with the policy solution or developing the final regulation. It is evident that not every comment received will end up as part of the final regulation; however, policy makers should also provide feedback to stakeholders on why their proposal was not taken into account (OECD, 2021<sup>[5]</sup>). This type of engagement increases ownership of the decision-making process, as stakeholders are heard and are more likely to later invest their time to provide their insights for other proposals.

Finally, engagement and consultation should not end with the regulatory proposal. Once the regulation is enacted, continuous engagement with stakeholders that are involved with the regulation can be useful to monitor the delivery of the regulation, assist SMEs with compliance and identify potential problems early on.

### **Identification and assessment of costs, benefits and other impacts**

As is the case of RIAs, an effective SME test should consider all relevant direct and indirect costs, benefits and other impacts that might arise from different regulatory options, to enable meaningful comparisons (OECD, 2020<sup>[6]</sup>). Policy makers should assess how those costs, benefits and other impacts could affect the various groups of SMEs previously identified, and not only SMEs as a sole group. Given that SMEs are heterogeneous, the same regulation might even impact various SMEs in different forms, since said impact might depend on factors such as the size, age of the firm (since younger firms may not survive high entry or incorporation costs), the sector it operates, etc. These differences might in turn be disproportionate, but also not justifiable when balanced against the overall benefits of the regulatory option. This justifies and calls for a more granular assessment of the costs, benefits and other impacts that alternative regulatory proposals might create to each one, and is another instance where it is relevant to know the SMEs population (see Chapter 3), but also to identify potential affected SMEs (see above in this chapter).

Also, policy makers should be aware that SMEs can be affected not only by regulations that are directed at them, but also by how regulations impact their suppliers and customers, as SMEs often depend to some degree on a limited customer and product base (Bolton, 1978<sup>[7]</sup>; Chittenden and Ambler, 2015<sup>[8]</sup>; Wynarczyk et al., 1993<sup>[9]</sup>). Further, “competitive conditions, degrees of regulatory enforcement and the responses of others in the firm’s external and internal environments [affect firms differently]” (Mallett and Wapshott, 2018, p. 6<sup>[10]</sup>), which means that even when a regulatory proposal might create correct competitive conditions for a group of businesses, the effects of that same proposal might be negative towards a certain group of SMEs.

Certainly, not all regulations will affect SMEs negatively or disproportionately. There are indeed regulations that are designed to, for instance, facilitate the entrance of SMEs into the market, by promoting their development and enabling their performance. Nevertheless, it is evident that regulations have a clear potential to affect this particular group, whether it be positively or negatively and in that sense, governments should be aware to the incidence of regulatory costs and their disproportionate impacts on SMEs (OECD, 2012<sup>[11]</sup>).

### **Costs**

One of the most common assessments that policy problems and regulatory options go through is the determination of the costs that alternative solutions would imply and how they would be complied with. There is a long list of the costs that can and should be identified, quantified and assessed when conducting

the SME test in the same range of those assessed when conducting a RIA, including financial costs, opportunity costs, macro-economic costs and indirect costs.<sup>1</sup> However, depending on the regulatory alternative being assessed, certain costs become more relevant for SMEs, or for a certain group (see for example Box 5.4).

### Box 5.4. Potential costs of regulations to be considered for SMEs

#### Sweden: Special attention to costs on SMEs

The Swedish Agency for Economic and Regional Growth provides this checklist for policy makers to pay special attention to small companies when designing the rules:

- Produce information on what the affected industries look like. How many companies are active in the industry? What does the size distribution look like?
- Estimate how much time it takes to familiarize yourself with the new regulations and to comply with the requirements. For example, what human resources, IT systems and administrative resources will be needed?
- Calculate the extent of the costs that the proposed regulations are expected to entail for companies. Is the cost the same for the companies involved regardless of size? What does the cost look like in relation to the companies' financial conditions and other resources?
- Assess whether the competitive opportunities of small companies may be affected.

#### Belgium: Consider a large range of costs from different natures

The guidelines for conducting the SME test urges policy makers to pay attention to the direct and indirect effects, the targeted and side effects as well as the effects that may be encountered during the various phases of a company's development (launch, growth, termination, bankruptcy). Further, since potential consequences can be of very different natures, the guidelines provide the following list of items to support the identification of these consequences:

- Additional taxes, fees, contributions
- Obligation to adapt a product, service, production process or provision of services to economic, social, environmental or other standards (e.g., the purchase of equipment or machines, training)
- Number of start-up companies, terminations, bankruptcies
- Turnover, profitability, financial health of companies
- Investments, innovation, competitiveness, productivity, export
- Salary charges, employment rate, social charges
- Access to financing
- Relocation

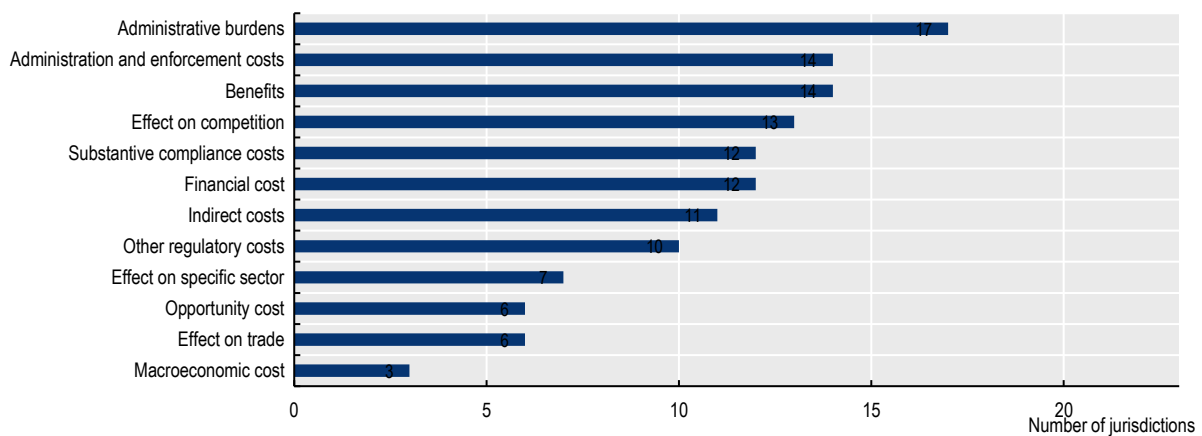
Note: For further information on Sweden: <https://tillvaxtverket.se/amnesomraden/forenkling/handledning-for-konsekvensutredning/utred-konsekvenser/ekonomiska-effekter/konsekvenser-for-foretag/sarskild-hansyn-till-sma-foretag.html>; for further information on Belgium: Manuel pour la réalisation de l'analyse d'impact: [http://www.simplification.be/webfm\\_send/541](http://www.simplification.be/webfm_send/541).

Most of the surveyed OECD countries focus mainly on compliance costs of regulatory options for SMEs, including administrative burdens, and substantive compliance costs (

Figure 5.1), as these are perceived as the most important costs that can affect SMEs. SMEs are typically less efficient than larger firms in screening the regulatory environment and dealing with relevant norms

(OECD, 2017<sup>[12]</sup>). Because of their size, SMEs might incur additional costs to consult with external advisors on how to comply with regulations, as in-house expertise might not be enough, or not even exist. Conversely, when done internally, direct labour costs – the staff time needed to understand and comply with regulations – can be relatively larger for SMEs. Overall, it has been shown that when a large company spends one euro per employee to comply with a regulatory obligation, a medium-sized business might have to spend on average up to six euros per employee to comply with the same obligation. Meanwhile, a small business might have to spend up to 10 euros to be compliant (European Commission, 2008<sup>[13]</sup>). For instance, dealing with employment protection norms can be especially challenging for small businesses, for which the hiring and firing costs are greater relative to total labour costs than for large enterprises (OECD, 2017<sup>[12]</sup>).

**Figure 5.1. Impacts on SMEs assessed by OECD countries**



Note: Data is based in 23 OECD member countries.  
Source: OECD SME test survey, 2020.

In general, small firms face important levels of uncertainty when operating. The available time between making the investment and getting a return from it can be shorter for SMEs and this might translate into them only bearing the costs and not being able to enjoy the intended long-term benefits of a regulation that might be directed at them or that might produce positive externalities that they can benefit from. Therefore, the possibility that the life span of new firms may not even stretch beyond a few years must be factored in when balancing costs of potential regulations that are expected to produce direct or indirect benefits for firms in the long term (Chittenden and Ambler, 2015<sup>[8]</sup>).

### **Benefits**

Regulations are designed for a reason – in general to improve social welfare. Unfortunately, assessing and quantifying benefits is not always as easy as quantifying costs, since for some regulatory proposals benefits might be qualitative or just not quantifiable. However, it is desirable in many fronts that policy makers identify which are the wanted and expected benefits from the regulatory alternative, in cases when quantifying them is not possible, and that they assess those benefits that can be.

First, and most evident, assessing benefits is useful to compare to the assessed costs and determine the proposals efficiency. Secondly, it is desirable to analyse at a more granular level how costs and expected benefits from a regulatory proposal are distributed across SMEs and larger companies and across different groups of SMEs. SMEs heterogeneity also influences how they receive and experience benefits from regulations, as benefits might be distributed unevenly and a proposal might create disproportionate benefits to certain groups of SMEs, putting a group in an unjustifiable market advantage or conversely

having another group not enjoy any of the benefits but receiving all the costs. Thirdly, knowing the benefits and positive impacts that are expected from the regulation, will later help to evaluate whether existing regulations are producing its intending effects, or whether they need amendment.

### ***Other impacts***

An effective SME test should consider other direct and indirect impacts that regulatory options might have on the various groups of SMEs, including, but not limited to impacts on competition and competitiveness, whether proposed regulations might discourage, entrepreneurship or innovation, impacts on environment, social impacts, etc. It should also look at the impact on business dynamics and the new entrepreneurs of tomorrow, such as impacts on business start-up and attrition, impacts on business capacity to scale up, impacts on SME population composition and location. For instance, in Sweden, policy makers are also suggested to consider if a regulation might affect the number of companies in the market by making entry or exit difficult; whether it affects the ability of companies to set their own prices, and in consequence affect their ability to compete; and to assess the impact that a proposed regulation might have on competition.

### ***Assessing (dis)proportionality of impacts on SMEs***

Policy makers can determine whether the identified potential effects are disproportionate to specific groups of SMEs or SMEs as a whole, compared to how these effects would be received by larger firms. Any regulation that requires fixed cost investments can be relatively more expensive for SMEs than to their larger competitors. This can be seen by contrasting those fixed costs to the firm's production volume, or the number of employees that the firm might have to dedicate to the regulation.

At the same time, it is important to underline that the SME test is a tool to provide information for decision making, and not a singular signpost for the direction of policy. Policy initiatives serve a variety of objectives, and that in some cases a political decision is made to give higher priority to, say, environmental objectives than SME competitiveness. What SMEs may perceive as a cost, may in fact reflect the incentive a policy creates for changing behaviour. The relevant question in such cases may not (only) be if impacts are disproportionately high, but rather if the incentives created are sufficiently adapted to induce the change required from SMEs in an effective and efficient way.

### ***Risk assessment and risk-based regulations for SMEs***

When developing regulations, governments should also consider what is the needed scope and proportionality of regulatory response, especially for SMEs. As discussed previously, the SME tests should be proportional to the expected impact of the regulation, but also the regulatory proposal should be proportional to the regulatory problem it aims to solve. For this, policy makers are called to conduct a risk assessment to estimate, among other things, the relative level of different risks<sup>2</sup> in terms of combined probability and severity of harm (OECD, 2021<sup>[5]</sup>). When conducting a risk assessment for regulatory proposals that might have an impact on SMEs, policy makers need to take into account the potential harm<sup>3</sup> (financial, environmental, etc.) or hazards<sup>4</sup> (food poisoning, tax evasion, marketing fraud, etc.) that is being considered, as this can take different shapes, level of seriousness and variation on the likelihood of materializing. (OECD, 2021<sup>[5]</sup>). For instance, the Canadian small business lens requires regulators to identify and describe any risks associated with flexible alternatives being considered for small business.

### ***Account for delivery and enforcement costs***

When designing and assessing regulatory alternatives, it is also relevant for policy makers to analyse and determine how the final regulation would be delivered and enforced, and of course account for the costs of those activities as part of the regulation.

It is unrealistic to expect a level of compliance with a regulation of 100%, because, among other things, that would entail very stringent enforcement from the regulators, at a very high cost. But even then, levels of controls that are “excessively high” have been found to decrease compliance (Kirchler, 2006<sup>[14]</sup>), since “*instead of responding to increased controls by higher compliance, businesses can end up “resisting” when they face very high burden, that they perceive as unfair, thus reducing voluntary compliance*” (OECD, 2021<sup>[5]</sup>).

The challenge is then to determine for each particular regulation that is being assessed the adequate level of enforcement measures needed, and what this would entail for the enforcing agency on one hand, and for SMEs on the other. These enforcement measures can range from information, reporting, licensing to inspection, and the choice depends also in part on the risks factors that the business activity might entail. Evidently, this varies from industry to industry, as the risk of non-compliance with tax is not the same as the risk of not compliance in industries that manage hazardous substances (Blanc and Franco-Temple, 2013<sup>[15]</sup>), as well as the resources available to carry out the enforcement activities. As explained before, the higher the risk profile of the specific business activity, there is need for stricter control, licencing and more frequent inspections. Once the needed level of enforcement and inspection for SMEs or a particular group of business is determined for a regulatory proposal, policy makers and enforcement agencies could make use of smarter enforcement and inspections, such as a remote surveillance and digital inspections (see Box 1.7 in (OECD, 2021<sup>[5]</sup>)).

### When developing new proposals, take existing regulations into account

SME tests are conducted for individual proposals, whereas from an SME policy perspective the cumulative impact of sets of proposals in conjunction also matters. Since regulations interact with each other, SMEs, like any other business or citizen, have to deal with not just the impact of isolated proposal, but also the aggregate costs and effects of all existing regulations, and the likely effects of said combination. An additional extra cost from a regulatory proposal may seem small in itself, but when put in the perspective of the accumulation of costs, may be of high relevance for companies that do not have large resources. The effects of one regulation could add to the already crowded regulatory framework for SMEs, by for example creating higher entry barriers, cumulative requirements to operate in a market, or by making it more difficult for SMEs to keep up to date with multiple regulations that each have different compliance requirements. This could lead to pushing new SMEs, or even established ones, out of the market, more easily than it would larger businesses that may have an established cushion to deal with high or unforeseen regulatory costs.

For an SME test to meaningfully inform policy makers, it should not only identify the costs and benefits arising from a single regulatory proposal, but also how it will interact with the already existing regulatory framework. In other words, when developing new regulations, policy makers should be aware of already existing regulations, and assess how the interaction of the new regulation with that framework could affect (groups of) SMEs. The European Commission has, for instance, conducted various cumulative cost studies, which – at sectoral level – aim to shed light on the cumulative impact of regulations (Leon, Bougas and Ravet, 2016<sup>[16]</sup>). SME tests can benefit from such analysis to better understand and position the impact of an individual existing regulation, which also underlines the need to connect an SME perspective in *ex ante* and *ex post* evaluations, without forgetting the delivery stage.

### Determine whether the load can be lightened for SMEs

An important aspect of an SME test is to assess if for achieving the policy objectives and/or because costs turn out to be disproportional high for smaller entities, SMEs can be exempted from obligations or can be offered lighter regimes. Customizing regulations to exempt SMEs from complying with them or to facilitate

SMEs compliance and reduce their costs has its benefits. It might make policies more effective and efficient where market imperfections are particularly pertinent or different for SMEs. Such measures may also help creating a level playing field addressing the previously discussed problem for SMEs of fixed costs of regulations (OECD, 2021<sup>[17]</sup>).

However, these exemptions and mitigating measures will not always be straightforward and come with possible trade-offs. These trade-offs may exist between efforts to reduce the regulatory burden for SMEs and the realisation of policy objectives these regulations have been set up for (Kitching, Hart and Wilson, 2015<sup>[18]</sup>). In addition, such measures may aim to support SMEs but in practice may act as a barrier to growth above the threshold levels at which such exemptions and special regimes expire (OECD, 2021<sup>[17]</sup>).

There can be important reasons for SME tests to lead to the conclusion that SMEs should be exempted or be offered a lighter regime. The main one being that SMEs can be particularly vulnerable to high administrative burdens, compliance costs and other regulatory costs. In some cases, such measures may be well justified. For instance, the European Commission suggested exempting SMEs from regulations below a certain threshold or that providing a specific derogation may be beneficial.

To know whether an exemption from complying with regulations or mitigating measures are needed and possible, policy makers should determine how the policy problem will be addressed and if SMEs are needed for the success of the regulation. Furthermore, it is useful to know whether the regulation will negatively affect SMEs in general or specific SMEs groups, and if so, whether this will be a disproportionate and undesired effect. With this information, policy makers can make informed decisions on how to allocate treatments to SMEs. In some cases, however, the identification and assessment of potential costs will not necessarily translate into a reduction of these costs for SMEs, since in principle, a well-designed regulation would only generate costs that create the right incentives for the regulation to be effective and efficient. These incentives can be positive, to influence or motivate a desirable behaviour (e.g., discounts for early tax payment) or they can be negative to disincentivise a particular action or conduct (e.g., punishment for non-compliance). In other words, there are costs that will always be part of the delivery of and compliance with the regulation. This is indeed one of the purposes of assessing potential costs of alternative solutions, to identify and assess those necessary costs, and weed out unnecessary ones, to be able to compare them to the expected benefits.

In addition, adopting an exemption regime or mitigating measures for SMEs will also entail costs that will range from how the regulation is implemented, to the creation of different groups of compliant parties, to special inspection or licencing regimes, to the set up and implementation of different measures for SMEs. All of these costs should be considered as part of the costs of the proposed regulation when assessing it and contrasted with the benefits the regulation and measure would create.

### ***Pros and cons of exemptions to SMEs should be considered***

One of the regular practices of OECD countries when it comes to SMEs is to fully or partially, permanently or temporarily, exempt them from complying with regulations. Some OECD countries, such as the United Kingdom and Portugal determine whether SMEs can be fully exempted as a first step of their SME test. Other countries, decide on whether to exempt once it is determined that the potential impacts of the proposed regulation might be negative or disproportionate to SMEs. It is not strictly necessary for exemptions to be a last step of the SME test, as in some cases a superficial analysis can make evident that an exemption is possible without jeopardizing the objectives of the regulation. Also, in line with the proportionality discourse, sometimes an analysis can create more costs than the benefits it will produce. However, because of the larger effects that an exemption regime might have, not only to SMEs, policy makers should carefully weigh the costs of exempting SMEs from a regulation.

Policy makers should be aware that when the SME test focuses more on reducing burdens and costs for SMEs, and too little on the objective of the regulation and its potential benefits it can generate important

challenges. First, it can contribute to over-exempting this group from necessary legal requirements. These exemptions themselves can come with a cost, notably in the form of a disincentive for growth beyond the threshold level at which the exemption applies. Empirical evidence on this is mixed but growing. Some studies suggest impact may be significant (see (Guner, Ventura and Xu, 2008<sup>[19]</sup>; Mintz and Chen, 2012<sup>[20]</sup>; Gourio and Roys, 2014<sup>[21]</sup>; Garicano, Lelarge and Van Reenen, 2016<sup>[22]</sup>; Kaoru Rieti Takizawa Miho et al., 2017<sup>[23]</sup>; Tsuruta, 2018<sup>[24]</sup>; Dabla-Norris et al., 2018<sup>[25]</sup>; Aghion, Bergeaud and van Reenen, 2019<sup>[26]</sup>). Other studies suggest that the size of the potential impact may be more limited. See for instance (Schivardi and Torrini, 2005<sup>[27]</sup>; Schivardi and Torrini, 2008<sup>[28]</sup>; Dachis and Lester, 2015<sup>[29]</sup>).

Second, the focus on regulatory exemption may actually be detrimental to SMEs by excluding them from mechanisms that may embed positive developments for them such as changes in behaviours and practices and access to learning and training. Third, it may affect the possibility of policy makers to achieve their regulatory objectives. Indeed, given their weight in productive systems, the inclusion of SMEs is a precondition for the realisation of many policy objectives: They account for 99% of companies, approximately 60% of GDP and value added, but also 60-70% of greenhouse gas (GHG) emissions by the business sector (OECD, 2021<sup>[30]</sup>). Whereas exemptions can be attractive from an individual firm level, at the level of society it may in fact provide a barrier to grow. When considering exemptions, policy makers should also explore that flip side of the coin. Instead of identifying if and how SMEs could be exempted, SME tests should help shed light on how SMEs can be included in a meaningful way in regulation by thinking small first.

If exemptions are decided and deemed appropriate, it should be assessed whether full exemption or a partial exemption would be more effective, and whether it should be a temporary or a permanent. When policy makers choose partial exemptions, the regulation should clearly state which parts of the regulations SMEs have to comply with. Likewise, policy makers should determine whether the exemptions are necessary for all SMEs and if not, only exempt those groups for which it is necessary. These distinctions can contribute towards the effectiveness of the regulations, while at the same time taking into account the small business community.

### ***Alternative policy options and mitigating measures towards SMEs***

When exemptions are not possible or desirable, some OECD countries also determine whether it is possible to adopt a special regime or mitigating measures for SMEs (see Box 5.5). These measures can be directed at reducing the negative impacts that complying with the regulation might entail for SMEs, but can also facilitate compliance with regulations. As with exemption regimes, policy makers should balance-out the benefits that will come from adopting mitigating measures for SMEs, against their overall costs. Likewise, they should consider whether these might apply to certain groups of SMEs, or more specifically, if different measures are needed for different groups. A note of caution is that fragmenting regulations also has its downside. If different rules apply to different SMEs, the regulation can become more complex and difficult to understand. Therefore, when deciding to create special regimes for SMEs, the advantages and costs that they will create need also to be contrasted (see Box 5.6 for example).

#### **Box 5.5. Mitigating measures that can be adopted for SMEs**

With the usual caveat related to the type of regulation and the group of SMEs that the measure will be applied to, OECD countries usually adopt the following measures to alleviate the burden of SMEs complying with regulations:

##### **Simplified processes and compliance**

- Simplification of administrative procedures

- Reduction of information requirements
- Less onerous or less frequent inspection regimes for small businesses
- Introduction of rules-based systems instead of permitting systems
- Provide longer transitions periods to SMEs so that they can have more time to allocate resources when dealing with regulations

#### **Financial aid**

- Lower administrative fees
- Facilitate access to financing or lower interest rates when in order to comply with the regulation  
SMEs need to incur in important costs

#### **Training and assistance with compliance**

- Training offered to SMEs to allow them to comply with new standards or requirements.
- Require small businesses to have only to register for a certain activity rather than having to be fully licensed
- One-stop shops.

### **Box 5.6. Canada: Practical experience with mitigating measures**

#### **Mitigating measures benefited SMEs**

The Regulations Amending the Maple Products Regulations gave small federally registered maple syrup establishments two years to gradually implement new regulatory requirements. They could either follow the previous grading system or the new grading system, and they had time to buy and install new equipment and change labels to comply with the new requirements.

#### **Special measures for SMEs could hinder the effectiveness of the regulation**

Sensitivity to small business must not compromise the protection of health and safety or the environment. Sometimes, adopting a less burdensome, more flexible approach is not appropriate. In such situations, the regulator explains why this is the case in the published Regulatory Impact Analysis Statement. For example, in the proposed Order Amending the Schedule to the Tobacco Act, Health Canada considered and rejected delayed implementation of new restrictions on flavoured tobacco products targeted to youth. While a delay would have given tobacco distributors time to clear inventories of product, the department demonstrated that delayed implementation ran counter to the health protection objectives of the amendment.

Source: Information provided by country in the OECD Survey SME test 2020.

When considering which mitigating measures are needed, the knowledge of the SMEs population plays an important role, as well as the identification of the SMEs that would potentially be affected by the regulation. For example, measures can also target SMEs based on their age. In that sense, it might be advisable to target preferences and simplification measures toward younger SMEs, since these companies are usually most affected by finance and cash flow difficulties (OECD, 2015<sup>[31]</sup>). Younger SMEs face the highest compliance cost burdens, are likely to have higher spill over effects from innovation, face barriers to entry and growth, but at the same time are also more likely to grow than older SMEs. For example, in

Lithuania public institutions in charge of supervising businesses signed the Declaration on the First Year of Business in 2011, which is intended to improve businesses environment, increase competitiveness and decrease administrative burden. It establishes a set of measures intended to ease the first year of operations of SMEs. In particular, it creates a special status for start-ups during their first year, which shields them from sanctions that lead to operations of the company being suspended (except in demonstrated emergencies) and provides small businesses with one month to correct mistakes or violations before imposing sanctions (OECD, 2015<sup>[32]</sup>). Further, these agencies provide assistance to companies during this one-year period to help them to comply with regulations, by for example, by contacting a new business and offering consultations services, preparing seminars, answering businesses' inquiries and requests, etc.<sup>5</sup> These measures are limited both in time (one year) and in scope of which SMEs it applies to (new start-ups).

However, choosing for the many forms of mitigating measures or alternative regimes for SMEs does not only depend on the SMEs characteristic, but that of the industry it operates in. Companies that conduct business activities with a considerable level of risk, can evidently not be exempted from having a license to operate; as opposed to low-risk business activities, where it could be possible to forego the need for a license or at least reduce the number or frequency of inspections SMEs are subject to. When determining whether this type of special regimes are suited for SMEs or a group of SMEs in a particular regulatory proposal, policy makers should look at the risk assessment previously conducted, and also have the possibility to build a risk matrix to classify both SMEs and activities according to their risk level (see (Blanc and Franco-Temple, 2013<sup>[15]</sup>).

When it is not possible to include the mitigating measures as part of the draft of the regulation, there are countries that take measures after the regulation is enacted. For example, they set up one-stop-shops that centralize information regarding the new regulation to facilitate SMEs compliance (see Box 5.7 and (OECD, 2020<sup>[33]</sup>). Likewise, they improve the availability and provision of information, organize workshops, either in person or online, on how to comply with specific regulations for SMEs to participate in.

### Box 5.7. One-stop shops: Supporting SMEs regulatory compliance

*“One-stop shops should be used as a means to improve service delivery, reduce transaction costs, and improve societal welfare, but they are merely one part of reducing administrative burdens more broadly.”* (OECD, 2020<sup>[33]</sup>). One-Stop Shops bring together a range of information and requirements to assist businesses and citizens to carry on their processes with the government, be it by obtaining information or by carrying out administrative procedures, either in a physical and/or virtual location. Particularly for business, One-Stop Shops normally focus on improved service delivery for SMEs, which means that when designing this instrument, a key part is the ease with which users can complete regulatory requirements.

In 2020, the OECD published the One-Stop Shops for Citizens and Business Best Practice Principles for Regulatory Policy. This document highlighted overarching principles that should be followed when creating either online or physical One-Stop Shops:

- They should form part of broader administrative simplification strategies; and
- They should be user-centred and based on life events

Further, the document highlighted a set of principles that should be taken into account when creating either online or physical One-Stop Shops, for the instrument to be successful in its application. These principles include, among others, the need of political commitment, co-operation and co-ordination, role clarity, public consultation and monitoring (for more detailed information, see (OECD, 2020<sup>[33]</sup>)).

There are some OECD countries that have already set up one-stop shops that cater to SMEs, for instance:

- In **Canada**, **BizPal** is an online one-stop shop for Canadian businesses. It is informational and provides help for business to identify the required licences and permits and how to get them. Even though it is looking to expand, it does not yet provide assistance to businesses on complying with these requirements.
- In **Germany**, the **Informationsportal für Arbeitgeber** is part of a strategy to reduce bureaucracy and provides SMEs with information on their social security rights and obligations, which is helpful for small businesses hiring new employees for the first time.
- The **Norwegian** one-stop shop solution **Altinn** is one of the most sophisticated online one-stop shops and has replaced physical offices. On this portal, business can carry out transactions and find information regarding their compliance obligations, and governmental agencies can develop and run their services. There is Start and Run of Business section on Altinn, which has its own business support desk that guides entrepreneurs and SMEs by phone and email. One hundred per cent of the business community uses Altinn for reporting and dialogue with the public, since in the platform businesses can both submit forms and receive messages from the public.

Source: (OECD, 2020<sup>[33]</sup>).

## Transparency of the SME test

The OECD Recommendation of the Council on Open Government calls members to foster transparency, integrity and accountability throughout the policy making process at all levels of government. (OECD, 2017<sup>[2]</sup>). Transparency can strengthen the predictability of the regulatory framework, and boost trust in the policy making process. Considering the large number of regulations and the number of policy makers behind these regulations, it is necessary that decisions are perceived as trustworthy by the public at large and particularly by the regulations' stakeholders (OECD, 2021<sup>[5]</sup>), which often comes from their involvement in and knowledge of the process.

Involving SMEs in the development of regulations entails transparency in the process. For this, policy makers should make available the consultations and assessment processes to SMEs and the public at large, the results of the SME test, as well as the elements taken into account to reach a particular decision. In most cases, this helps to increase participation in the process, accountability from policy makers, engagement, compliance with the regulation and creates incentives for future participation (OECD, 2015<sup>[34]</sup>; OECD, 2017<sup>[2]</sup>). It also shows stakeholders how they have influenced policy development and build a shared sense of policy ownership (OECD, 2021<sup>[5]</sup>).

Transparency can be achieved by making all information related to the process public while it is ongoing, including when and how consultations will be held, as a form of advance notice. Likewise, the results of these consultations and its use in developing the regulation. Afterwards, informing which SMEs are expected to be affected serves as a warning or heads-up. Then, making available information on which are the expected impacts towards these SMEs, and if any exemptions or measures are being considered. For instance, as mentioned before, in Slovenia, policy makers can conduct the assessment part of the test online<sup>6</sup>. This is done with an interactive calculator where SMEs and the public can identify and propose potential impacts of regulatory options and determine how each regulatory proposal could affect SMEs.

Transparency is also enhanced publishing a report with the results of the test after it is conducted, usually together with the RIA. Stakeholders should be aware of, not only the process that was undertaken to arrive to a regulatory decision and conduct the SME test, but how its results were used to inform the decision-

making process. or instance, there are OECD countries where the policy maker publishes a report with a list of answers to a set of pre-established questions related to the conducted assessment, listing whether the regulation disproportionately affect SMEs and the proposed mitigating measures, which is the case of Belgium. In other countries, if there are no impacts, the report must contain a statement indicating so; and if there are impacts, these have to be indicated together with the mitigating measures to be adopted, or an explanation of why there are no mitigating measures or exemptions. This is the case of Canada and the United Kingdom.

## Notes

<sup>1</sup> For a taxonomy of regulatory costs see Figure 2.2 in the RIA Best Practice Principles (OECD, 2020<sup>[6]</sup>).

<sup>2</sup> Risk is defined as the combination of the likelihood and potential magnitude and severity of harm. This can also be expressed as the combination of the likelihood and degree of hazard. Thus, risk combines a) probability, b) scope of the harm (number of people affected etc.) and c) degree of harm (type of damage). For more information see (OECD, 2021<sup>[5]</sup>).

<sup>3</sup> *Harm* is any form of *damage* done to people (their life, health, property etc.), the environment (natural and human), or other public interests (e.g. tax fraud harms state revenue). Not all types of harm are of the same nature, and some harm is irreversible (e.g. death), whereas other (e.g. financial) can be corrected once identified. For more information see (OECD, 2021<sup>[5]</sup>).

<sup>4</sup> *Hazard* is used as the *potential* type, magnitude and severity of harm, but without taking into account the likelihood of harm actually happening. For more information see (OECD, 2021<sup>[5]</sup>).

<sup>5</sup> See more regarding the Lithuanian's Declaration on the First Year of Business: <https://eimin.lrv.lt/en/sector-activities/business-environment/business-supervision-policy/declaration-on-the-first-year-of-business>.

<sup>6</sup> <https://presojaucinkov.gov.si/MojKalkulator/>.

## References

- Aghion, P., A. Bergeaud and J. van Reenen (2019), *The Impact of Regulation on Innovation*. [26]
- Blanc, F. and E. Franco-Temple (2013), "Introducing a risk-based approach to regulate businesses: how to build a risk matrix to classify enterprises or activities" No. 90754. [15]
- Bolton, J. (1978), *Report of the Committee of Inquiry on Small Firms*. [7]
- Chittenden, F. and T. Ambler (2015), "A question of perspective: Impact Assessment and the perceived costs and benefits of new regulations for SMEs in Environment and Planning", *Government and Policy*, Vol. 33, pp. 9-24. [8]
- Dabla-Norris, E. et al. (2018), "Size Dependent Policies, Informality and Misallocation", *IMF Working Paper*, No. WP/18/179, IMF, Washington DC. [25]

- Dachis, B. and J. Lester (2015), "Small Business Preferences as a Barrier to Growth: Not So Tall after All", *SSRN Electronic Journal*, <https://doi.org/10.2139/ssrn.2609527>. [29]
- Elffers, H. (ed.) (2006), *Modelling Taxpayers' Behaviour as a Function of Interaction between Tax Authorities and Taxpayers*, Boom Legal Publishers. [14]
- European Commission (2008), "Think Small First" – A "Small Business Act" for Europe, [https://ec.europa.eu/commission/presscorner/api/files/document/print/en/ip\\_08\\_1003/IP\\_08\\_1003\\_EN.pdf](https://ec.europa.eu/commission/presscorner/api/files/document/print/en/ip_08_1003/IP_08_1003_EN.pdf) (accessed on 9 July 2020). [13]
- Garicano, L., C. Lelarge and J. Van Reenen (2016), "Firm size distortions and the productivity distribution: Evidence from France", *American Economic Review*, <https://doi.org/10.1257/aer.20130232>. [22]
- Gourio, F. and N. Roys (2014), "Size-dependent regulations, firm size distribution, and reallocation", *Quantitative Economics*, Vol. 5/2, pp. 377-416, <https://doi.org/10.3982/qe338>. [21]
- Guner, N., G. Ventura and Y. Xu (2008), "Macroeconomic implications of size-dependent policies", *Review of Economic Dynamics*, Vol. 11/4, pp. 721-744, <https://doi.org/10.1016/J.RED.2008.01.005>. [19]
- Kaoru Rieti Takizawa Miho, H. et al. (2017), *Size-dependent Policy and Firm Growth*, <http://www.rieti.go.jp/en/> (accessed on 20 March 2019). [23]
- Kitching, J., M. Hart and N. Wilson (2015), "Burden or benefit? Regulation as a dynamic influence on small business performance", *International Small Business Journal*, Vol. 33/2, pp. 130–147. [18]
- Leon, L., K. Bougas and J. Ravet (2016), *An assessment of the cumulative cost impact of specified EU legislation and policies on the EU forest-based industries..* [16]
- Mallett, O. and R. Wapshott (2018), "Understanding the firm-level effects of regulation on the growth of small and medium-sized enterprises", *BEIS Research Paper*, <http://www.gov.uk/beis> (accessed on 11 June 2020). [10]
- Mintz, J. and D. Chen (2012), "Small Business Taxation: Revamping Incentives to Encourage Growth", *SSRN Electronic Journal*, <https://doi.org/10.2139/ssrn.1920866>. [20]
- OECD (2021), *Consolidated report on Phase 1 of the OECD SME Strategy. CFE/SME(2021)8*. [17]
- OECD (2021), "No net zero without SMEs: Exploring the key issues for greening SMEs and green entrepreneurship", *OECD SME and Entrepreneurship Papers*, No. 30, OECD Publishing, Paris, <https://doi.org/10.1787/bab63915-en>. [30]
- OECD (2021), *OECD Regulatory Policy Outlook 2021*, OECD Publishing, Paris, <https://doi.org/10.1787/38b0fdb1-en>. [5]
- OECD (2021), *Recommendation of the Council for Agile Regulatory Governance to Harness Innovation*, <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0464>. [4]
- OECD (2021), "SME and entrepreneurship policy frameworks across OECD countries : An OECD Strategy for SMEs and Entrepreneurship", *OECD SME and Entrepreneurship Papers* 29, <https://doi.org/10.1787/9f6c41ce-en>. [3]

- OECD (2020), *Innovative Citizen Participation and New Democratic Institutions: Catching the Deliberative Wave*, OECD Publishing, Paris, <https://doi.org/10.1787/339306da-en>. [1]
- OECD (2020), *One-Stop Shops for Citizens and Business*, OECD Best Practice Principles for Regulatory Policy, OECD Publishing, Paris, <https://doi.org/10.1787/b0b0924e-en>. [33]
- OECD (2020), *Regulatory Impact Assessment*, OECD Best Practice Principles for Regulatory Policy, OECD Publishing, Paris, <https://doi.org/10.1787/7a9638cb-en>. [6]
- OECD (2017), *Recommendation of the Council on Open Government*, [OECD/LEGAL/0438](https://doi.org/10.1787/0438). [2]
- OECD (2017), *Small, Medium, Strong. Trends in SME Performance and Business Conditions*, OECD Publishing, Paris, <https://doi.org/10.1787/9789264275683-en>. [12]
- OECD (2015), *Regulatory Policy in Lithuania: Focusing on the Delivery Side*, OECD Reviews of Regulatory Reform, OECD Publishing, Paris, <https://doi.org/10.1787/9789264239340-en>. [32]
- OECD (2015), *Stakeholder engagement in regulatory policy*, OECD Publishing, Paris, <https://doi.org/10.1787/9789264241800-en>. [34]
- OECD (2015), *Taxation of SMEs in OECD and G20 Countries*, OECD Tax Policy Studies, No. 23, OECD Publishing, Paris, <https://doi.org/10.1787/9789264243507-en>. [31]
- OECD (2012), *Recommendation of the Council on Regulatory Policy and Governance*, [OECD/LEGAL/0438](https://doi.org/10.1787/0438). [11]
- Schivardi, F. and R. Torrini (2008), "Identifying the effects of firing restrictions through size-contingent differences in regulation", *Labour Economics*, Vol. 15/3, pp. 482-511. [28]
- Schivardi, F. and R. Torrini (2005), "Firm Size Distribution and EPL in Italy", *SSRN Electronic Journal*, <https://doi.org/10.2139/ssrn.445401>. [27]
- Tsuruta, D. (2018), "SME policies as a barrier to growth of SMEs", *Small Business Economics*, <https://doi.org/10.1007/s11187-018-0119-0>. [24]
- Wynarczyk, P. et al. (1993), *The Managerial Labour Market in Small and Medium-Sized Enterprises*, Routledge. [9]

# 6

## After the SME test

---

### Abstract

The consideration of SMEs when regulating should not end once the SME test is conducted. There are steps that policy makers and regulators can take to maintain or assure the overall effectiveness of the use of the tool as a key component of a good SMEs policy. This includes the oversight of the test and how policymakers use the results to develop regulations that create a level playing field for SMEs. It also includes how regulations are delivered, how compliance is enforced and, in cases, inspected, and how SMEs could have special considerations. Lastly, the post-test stage also includes the monitoring of any special measures or mitigating regimes established for SMEs, as well as the evaluation of the overall effectiveness of the tool.

---

## Oversight

To ensure that all elements of the SMEs test are considered and addressed properly and objectively, they should be checked by someone different from who conducted the test. The reviewing entity or person could provide opinions on the quality and content of the SME test, which, depending on the mandate granted, can range from recommendations to revising the results, to simply providing recommendations for conducting future tests or as much as rejecting the content of the test if it is missing one or more of the required elements (Box 6.1).

In some OECD countries, it is required that an oversight body reviews the report containing the SME test, which in most cases is part of the RIA. Exceptionally, there are countries where a different body conducts the oversight of the SME test. For instance, in Hungary, the impact assessment that includes the impact of regulations on SMEs is examined by the hierarchical superior of the policy maker that drafted the proposed regulation. That means that, depending on the type of regulation, the impact assessment that forms part of the draft is examined by the minister who approved the draft (for subordinate regulations) or parliament (for primary laws), before adoption.

### Box 6.1. Functions of oversight bodies regarding the SME test

#### Italy

SME tests are scrutinised by the Department for juridical and legislative affairs (DAGL) as part of the RIA report. Before the respective legislative act is adopted by the Council of Ministers, the DAGL provides its opinion. In limited cases, where inconsistencies persist in the RIA report, DAGL's opinion is reported in the political decision-making fora, also for the purposes of the possible presentation, if necessary, of the legislative initiative to the Council of Ministers.

#### Slovenia

The SME test is scrutinised by the Ministry of Economic Development and Technology (MEDT). As the test is conducted while the regulation is being discussed between line ministries, at that phase competent experts at the Ministry review the SME test at the MEDT and assess whether the test is appropriately prepared. If test is not conducted properly or is poorly performed, the Ministry rejects it and it is returned to the proposing agency.

#### United Kingdom

The Regulatory Policy Committee (RPC) assess how the SMEs test presented by the policy maker was conducted and issues opinions on whether the test is fit for purpose or not. If the RPC retains major concerns over the quality of the evidence and analysis and the overall quality of the IA that need to be addressed, it will give the assessment a "red rate". Otherwise, it will be rated "green".

Source: OECD Survey SME test 2020.

## Use of the results of the SME test

The results of the test should be used to inform decision-making and have a real effect in the final regulation. For instance, when a SME test identifies disproportional avoidable costs for SMEs, measures should be sufficiently taken to avoid said costs; where specific SMEs groups were shown to be affected, the resulting regulation should account for that; when consultations revealed a particular difficulty for

compliance, it should be expected that the policy maker addresses it, etc. The SME test should not be a ticking the box exercise.

As alerted to before, the fact that a potential disproportionality is identified, does not mean that it can always be fixed. However, in those cases, there should be an explanation on why the regulation was enacted with a different direction to that suggested by the assessments.

### ***There is a new regulation, next stop: Delivery, enforcement and inspections***

How the regulation is delivered is a critical stage that covers the whole spectrum and wide range of activities and actions, measures, processes used to secure the implementation of regulations in practice (OECD, 2021<sup>[1]</sup>), and partly determines the success of the regulation. Securing the implementation of the regulation in practice can involve a good compliance design from policy makers, compliance from SMEs, enforcement measures and inspections from the enforcement agency. The 2012 OECD recommendations call governments to “*consider the use of risk-based approaches in the design and enforcement of regulatory compliance strategies to increase the likelihood of achieving compliance goals and to minimise the imposition of costs on citizens and businesses through compliance and enforcement procedures*” (OECD, 2012<sup>[2]</sup>).

Considering the growing number of regulations, as well as their complexity, coupled with the limited resources that SMEs already have to divide into many areas just to operate, policy makers should not assume that these small businesses can inform themselves and understand how to comply with a regulations unassisted (OECD, 2018<sup>[3]</sup>). As explained in the OECD’s Regulatory Enforcement and Inspections Toolkit, promoting and supporting compliance should be a key priority of policy makers by anchoring it in the regulation, assigning resources to developing and spreading guidance and information to regulated subjects, particularly SMEs (OECD, 2018<sup>[3]</sup>). Further, as pointed out recently by the Regulatory Policy Outlook (OECD, 2021<sup>[1]</sup>), it is also important to consider the behavioural drivers of (non-compliance, by understanding what makes people, and in this case SMEs, behave in a certain way and comply (or not) with a regulation. As with stakeholder engagement during the consultation phase of the regulatory-making process, perceived fairness in the implementation phase can also increase compliance (Tyler, 2003<sup>[4]</sup>). This can be achieved in this stage by proactively explaining to SMEs what the rules and processes are, what is the goal of the regulation, how they are being applied, etc.

### ***Monitor mitigating measures and exemption regimes***

Since during the test a vast amount of information was collected on the potential effect of the proposed regulation and decisions were made based on that information, policy makers could use that information to monitor how those decisions are being implemented. Governments should also allocate resources to monitor the performance and results of the overall regulation, and of any particular scheme created for SMEs, such as mitigating measures or alternative policy options; this can help spot any problems and be in a position to make appropriate changes if needed (OECD, 2014<sup>[5]</sup>). For example, in Switzerland, the SME Forum monitors the implementation of planned measures and the costs involved for SMEs to comply with said measures, paying special attention to administrative burdens. They can later call for an *ex post* review or modification of the regulation if needed.

Likewise, it is recommended to monitor and evaluate existing regulations from which SMEs were excluded, to determine whether the regulation is reaching its policy objectives or whether SMEs participation is actually needed for achieve them. These evaluations might lead to needed modifications of existing regulations to actually require SMEs to contribute to an improved regulatory environment, and in cases benefit from it.

### ***Closing the cycle: SME test while evaluating existing regulations***

As it was previously explained, the SME test should also be conducted for existing regulations and these evaluations should be planned already when developing the regulation as much as possible (see Chapter 4). All *ex post* SME tests should look into whether the expected impacts of the regulation held as predicted, whether there have been any unforeseen effects, if the policy objectives are being met and what are the current cost, benefits and other impacts that SMEs are currently receiving. However, the content of the SME test on existing regulations should vary and include specific evaluations depending on factors such as whether or not an SME test was conducted for the development of the regulation at hand, whether mitigating measures or exemptions were adopted or whether SMEs are required to comply with the regulation.

For regulations on which an SME test was conducted and it was decided that SMEs were to comply with, the *ex post* SME test should also look at how the regulation is impacting different groups of SMEs, their suppliers and consumers. It should evaluate as well if their compliance with the regulation is still in the best interest of both the regulation and SMEs and use these results to make the necessary adjustments to the regulation.

If as a result of the test SMEs were exempted from complying with the regulation, the *ex post* SME test should look at whether the objectives of the regulation are being met or whether SMEs' participation is necessary for its effectiveness. For example, in 2015, the UK Government introduced the mandatory 5 pence charge for single use carrier bags (SUCBs) on large retailers only. However, in 2018 SMEs retailers, airport retailers and civic and voluntary organisations' retail outlets circulated an estimated 3.2 billion (over 80%) SUCBs giving rise to subsequent extension of the regulatory requirement to these organisations, while exempting them from the obligation to report on the number of SUCBs sold. In this case, SMEs were integrated in complying with the regulation, as their lack of participation was rendering a good regulation ineffective, but these businesses were exempted from the reporting obligation as a mitigating measure.

There are cases where, as a result of the SMEs test, policy makers adopt mitigating measures to facilitate SMEs' compliance or reduce regulatory burdens. Just like with exemptions, the effectiveness of the measures should be reviewed to evaluate how they are playing out in practice. This can help determine if they are still necessary or if other measures should be adopted.

There are some cases where the SME test was not conducted because the proposal at the time fell outside the scope of the test. In those situations, policy makers should still conduct a preliminary evaluation to determine whether SMEs are still out the scope and that the regulation still does not meet the requirements to conduct an SME test. This is particularly important because unintended effects of regulations that did not undergo the SME test once in force might impact these groups of businesses, and amendments might be in order.

Regardless of what the scenario is for the regulation at hand, evaluations should be conducted not too long after the introduction of a regulation to allow for learning and improvement. However, there should be a balance to allow time for the regulation to function and see its effects.

### ***Experimentation, testing and trialling***

SMEs are often the source of innovation, which by definition, moves faster than regulation, and in cases can be slowed down by pre-existing or new regulatory requirements. In addition to the speed, innovation is uncertain and can happen in virtually any field. To facilitate and enable innovation, regulators or other agencies that enforce regulations could be enabled to have flexibility on a case-by-case basis when companies are testing innovative technologies, approaches or services (European Council, 2020<sup>[6]</sup>), or create spaces for experimentation to support innovation while also fostering policy learning and adaptation (OECD, 2021<sup>[7]</sup>).

The OECD Recommendation of the Council for Agile Regulatory Governance to Harness Innovation suggest different approaches that could be considered by policy makers, which could also be relevant for SMEs. These include, enabling controlled experimentation, testing and trialling of new ideas or business models through sandboxes, innovation spaces or testbeds; and creating regulatory exemptions to enable controlled testing of innovations and foster regulatory learning.

Sandboxes, for instance, could allow SMEs to test out new services, technology, apps, innovative ideas, in a controlled regulatory space (Box 6.2), while at the same time could enable regulators to provide them with regulatory guidance and to test how the regulation is complied with and whether adjustments are needed for SMEs in particular. This could have the advantage of not creating large costs for SMEs of figuring out the regulatory environment as they begin to operate in a new (potentially risky) market, and allows regulators to understand the market to better regulate it.

### Box 6.2. What is a regulatory sandbox?

Regulatory sandboxes generally refer to a regulatory "safe space" for businesses, enabling them to test innovations with reduced regulatory requirements. As relaxing regulatory requirements can potentially raise additional risks, most regulatory sandboxes operate in a controlled environment which include a number of safeguards. After a defined time period, innovators may apply for an authorisation outside the regulatory sandbox.

Source: OECD Regulatory Policy Outlook 2021 (OECD, 2021<sup>[11]</sup>).

Temporary regulatory exemptions, as one of the approaches to foster innovation, can allow for controlled testing of new businesses idea within an already regulated sector. However, because the risks that exemptions, even temporary ones, can bring to a market their design should be carefully thought out. It should include mechanism for business to apply to said exemptions, design appropriate safeguards to protect citizens and the environment; the exemption regime needs to be limited and justified, among other safety measures (OECD, 2021<sup>[7]</sup>). Last, regulatory experimentation and exemptions should also include provisions to understand how regulation affects SMEs; and should be proactive in getting SMEs inputs on the design implementation and evaluation of testing initiatives (OECD, 2021<sup>[7]</sup>).

### Are SME tests effective? Test the test

Last, it is important for countries to assess the robustness of their SME tests and how effective they are. Having this type of checks contributes to improving the quality of SME tests in general, and also conveys a message to both decision-makers and the public of the importance of the SME test in the development of regulations.

Canada, for instance, evaluated the effectiveness of their Small Business Lens in 2018 and adjusted several analytical requirements as part of the development of their most recent federal regulatory policy framework, the Cabinet Directive on Regulation. Many existing elements were retained, such as the requirement to identify impacts on small business, and the commitment to regulatory flexibility, with justification provided when flexibility was not offered. In terms of changes, the scope of the lens was broadened substantially so it would apply to every regulation made by the Governor in Council or a Minister instead of just those with annual national costs over \$1 million. The analytical requirements were aligned with those for analysis of benefits and costs, and the development and comparison of "initial" and "flexible" options was discontinued. These changes have resulted in a more comprehensive and systematic

assessment of small business needs that is more integrated with the broader Regulatory Impact Analysis Statement.

Finally, “testing the test” is key for closing the cycle in ex ante and ex post testing of SME impact, and allowing for learning both from a regulatory and SME policy perspective. Insights on how SME tests have worked out can help strengthen this tool for the future. Furthermore, findings from SME tests can provide key insights on how to enhance the effectiveness and efficiency of SME and entrepreneurship policies.

## References

- European Council (2020), *Council Conclusions on Regulatory sandboxes and experimentation*, [6]  
<https://www.consilium.europa.eu/en/press/press-releases/2020/11/16/regulatory-sandboxes-and-experimentation-clauses-as-tools-for-better-regulation-council-adopts-conclusions/>.
- OECD (2021), *OECD Regulatory Policy Outlook 2021*, OECD Publishing, Paris, [1]  
<https://doi.org/10.1787/38b0fdb1-en>.
- OECD (2021), *Recommendation of the Council for Agile Regulatory Governance to Harness Innovation*, [7]  
<https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0464>.
- OECD (2018), *OECD Regulatory Enforcement and Inspections Toolkit*, OECD Publishing, Paris, [3]  
<https://doi.org/10.1787/9789264303959-en>.
- OECD (2014), *Regulatory Enforcement and Inspections*, OECD Best Practice Principles for Regulatory Policy, OECD Publishing, Paris, [5]  
<https://doi.org/10.1787/9789264208117-en>.
- OECD (2012), *Recommendation of the Council on Regulatory Policy and Governance*, OECD Publishing, Paris, [2]  
<https://doi.org/10.1787/9789264209022-en>.
- Tyler, T. (2003), “Procedural Justice, Legitimacy, and the Effective Rule of Law”, *Crime and Justice*, Vol. 30, pp. 283-357, [4]  
<https://doi.org/10.1086/652233>.

## Annex A. SME test in OECD countries

### Australia

In Australia, special consideration towards SMEs is an integral part of their RIA process. Early in the policy development process, if it is determined that a proposal is likely to have more than minor impacts on businesses (including SMEs) the Office of Best Practice Regulation (OBPR) will advise that a Regulation Impact Statements (RIS) should be prepared. The RIS should adequately take into account the different impacts on small businesses of different sizes, types and locations. Policy makers are called to give small business special consideration, including determining whether they are disproportionately affected, and if the special burdens on small business arise from the fact that they often lack the required specialist legal, accounting or HR skills in-house. Policy makers are also required to consider the possibility of alternative policy options where small business can be exempt from the new regulation, or be subject to a simpler, lighter touch approach. Responsibility for preparing a RIS lies with Departments and Agencies advising decision makers (such as their Minister, or the Cabinet), with advice and assessment provided by the OBPR.

### Belgium

In Belgium, the SME is part of the RIA. The goal of the test is to identify in the most complete way possible the impact that a regulatory proposal will have on SMEs. Policy makers are required to assess positive, negative, direct, indirect, main and secondary impacts for SMEs and micro-enterprises. For purpose of the test, Belgium provides a definition of which companies are to be considered as SMEs (less than 50 workers) and which are micro-enterprises (fewer than 10) and entrepreneurs.

When assessing the potential impacts policy makers should know exactly the group companies that will be impacted by the proposal. For this they should describe how many SMEs and how many micro-enterprise are concerned, and in which sectors they operate. If groups are affected in different forms, then policy makers should indicate the expected consequences by group of SMEs and by sector.

Impacts to be assess include those that may be encountered during the various phases of a company's development (launch, growth, termination, bankruptcy, etc.). Since possible consequences can be of different nature, policy makers are provided with a list of costs and areas of impacts to look into. These include costs that are a result of additional taxes, fees or contributions arising from the obligation to adapt a product, service, production process or provision of services to economic, social, environmental or other standards (e.g., the purchase of equipment or machines, training, etc.). They should also consider consequences of administrative burdens for companies; number of start-up companies, terminations and bankruptcies; as well as employment rate turnover, profitability and financial health of companies. Likewise, the assessment should also include the impact of regulations on investments, innovation, competitiveness, productivity, export, salary charges, social charges, access to financing and relocation.

When positive impacts are assessed or identified, they need to be balanced out with negative consequences. The SME test should show whether negative impacts are proportionately heavier on SMEs than on larger companies; if the impacts are proportional to the objective pursued and whether it can be achieved in other ways that does not negatively affects SMEs. Lastly, the test should consider which

measures can be taken to alleviate said negative impacts, which can include for example exemptions (full/partial, permanent/temporary); financial support, training, longer transition periods, etc.

## Canada

The small business lens was introduced in 2012 under the Cabinet Directive on Regulatory Management, and was updated by the 2018 Cabinet Directive on Regulation. When there is a new regulatory proposal or a regulatory amendment, federal regulators must determine whether it might affect small business, in which case the small business lens is triggered. Also, since 2018, the small business lens applies to proposals that would reduce administrative and compliance burden on small businesses. Regulators are provided with [guidelines](#) that indicate how to conduct the test.

There is a threshold test that determines the type of assessment to be conducted based on the expected impact of the proposal. Significant-cost-impact proposals require an in-depth quantitative analysis where both benefits and costs are monetized; low-cost-impact proposals require a minimum qualitative description of costs and benefits, which should be quantified and monetized, if data are available; and for regulations with no anticipated costs, regulators must describe which the benefits are. Regulations are triaged as significant when they exceed more than one million Canadian dollars in cost per year nationwide.

Under the small business lens, federal regulators must identify and count all benefits and costs, including administrative and compliance costs associated with the proposal on small business. For this, regulators can use the Regulatory Cost Calculator. They also must consider flexible regulatory options that reduce costs to small businesses, but do not compromise the health, environment, safety and security of citizens, by identifying and describing any risks associated with said alternatives. Regulators must then demonstrate that efforts were made to reduce burdens imposed to small business by the regulatory proposal, including, but not limited to reducing the amount of information that they must provide, alternative implementation approaches, compliance requirements and reporting frequency.

At the early stages of the regulatory design, regulators must consult with small businesses to understand how the proposed regulation might affect them. The regulator determines which stakeholders would be best placed to provide meaningful feedback, but should select stakeholders that best represent the parties that will be impacted by the regulation, as well as the best tool by which to obtain their feedback. Further, regulators are required to consider the needs of small business in remote areas, and to plan how small business are going to be informed of the upcoming changes and of how to comply with the new regulation.

The results of the assessment conducted with the small business lens are reported as part of the RIA to the Treasury Board, which is the oversight body in charge of overseeing the implementation of the small business lens. This report must explain the impacts and how the proposed regulation addresses small business needs, separately present a characterization of anticipated impacts on small businesses, the estimated administrative and compliance costs, details of stakeholder consultations, including changes resulting from received feedback, alternative compliance options. These results are publicly available in the Canada Gazette with the Regulatory Analysis Statement.

## Czech Republic

The SME test was first introduced as a pilot project in 2005. The 2014 guidelines establish a set of steps that need to be followed by policy makers when assessing the impact that proposals might have on SMEs. Currently, conducting the test begins with defining the problem. Policy makers must first identify the scope and nature of the problem and proposal in terms of how it impacts SMEs. When considering the characteristics of the problem, they should consider whether it arise from an administrative or legislative framework (e.g., barriers to enter the market or development of activities, burdens, limits to innovation), from the financial framework or other causes. Regulators must consider which SMEs are negatively

affected by the problem, considering their size, structure, sector, activities, as well as the spatial, time and financial dimension of the identified problem. Together with this, they must define and describe objective of the regulatory proposal and its relation to SMEs.

Regulators should consult, among others, those entities that will be with the highest likely to be affected by the legislative proposal or amendment. However, they should always consult with the Chamber of Commerce of the Czech Republic, the Agrarian Chamber of the Czech Republic, and the Association of Small the medium-sized enterprises and self-employed persons of the Czech Republic, which have closer access to and more communication with SMEs. For consultations, they should identify both entities that are expected to have positive impacts and negative effects, as well as entities that might be indirectly affected. In other words, consultations cannot be limited to those companies that might be positively or directly impacted.

When conducting the assessment, policy makers should consider the following factors: 1. the SMEs group that is being affected (categories, size, sector); 2. how the regulation will impact SME performance (employment, output, productivity, investment); 3. material costs (change in behaviour of partners); 4. regulatory costs (administrative burdens, adaptation costs), 5. competitiveness (exports and imports, foreign investment inflows, possibility of SMEs entering the sector, barriers to entry); and 6. how it will impact micro-enterprises. To determine each, the guidelines establish a set of questions that policy makers must answer when conducting the test.

The guidelines highlight that policy makers should not consider exemptions as a preferred option, since the goal should be the creation of quality regulations that make exemptions unnecessary. However, if the assessment shows that SMEs face a relatively higher burden or are at a disadvantage compared to large companies, specific and proportional measures should be considered. Among the options that regulators can consider are total, partial or temporary exemptions, different requirements according to the type and/or size of the business, extension of the transitional period, tax rate or fees reductions, direct financial support and simplification of the reporting obligation for SMEs. Likewise, policy makers can consider creating special information campaigns or user manuals, training and dedicated assistance services, and simplification measures, such as the use of online tools.

In addition to the above, policy makers should assess how the proposed options would be delivered and enforced. In doing so, they should assess the risk and uncertainty aspects of the policy choice, including barriers preventing its fulfilment. They should also consider possible relative impact of sanctions for non-compliance and lastly whether and how compliance with the regulation would be monitored, controlled and reviewed.

## Ireland

Ireland's SME test comprises four main steps: i) Consultation of SME stakeholders; ii) Identification of affected businesses; iii) Measurement of the impact on SMEs; and iv) Assessment of alternative mechanisms and mitigating measures.

When there is new a regulatory proposal, policy makers are called to consider whether early consultation is required. They should consider consultations with SME representative bodies, sectoral groups or relevant agencies, and, considering SMEs limited resources, they should provide longer periods to receive feedback from these groups. As a next step, and considering the wide-ranging variety of SMEs, policy makers need to identify how different sizes of SMEs could be impacted by the regulatory proposal, whether the proposal affects different-sized SMEs in particular sectors, and how many would be affected.

With this information, the policy makers should assess the positive and negative impacts of the proposal to SMEs. Benefits, such as improved working conditions, increased competition etc. should be reflected, assessed and compared to negative impacts to identified SMEs groups. These include compliance costs

(e.g., obligation to adapt the nature of its service or production delivery process to meet new economics standards) and administrative costs (e.g., obligation to provide new information). In addition, the assessment should determine, among other things, the extent to which the proposal affects SMEs' competitiveness or the business environment in which they operate compared to larger business. Likewise, they should assess whether the regulation creates new entry barriers, impacts competition in a market or affects innovation. Lastly, policy makers should compare the costs and impacts to SMEs with those of large enterprises.

In Ireland, the main objective of the test is to create measures to minimise any negative impacts to potentially affected SMEs, as long as it does not compromise the objective of the regulation, undermine other government goals or affect fundamental rights. The type of measures that should be considered are exemptions, deadline variations and simplifications of technical regulations for SMEs. These measures should only apply to those SMEs that might be affected, be them all or a specific group of SMEs.

In conjunction with the standard SME test, policy makers need to consider two other questions: 1. If several regulations will be implemented soon, is it possible to group the proposals' implementation as part of a common commencement date? Alternatively, could temporal derogations be given to SMEs? And 2. If the legislation is technical in nature or highly complex, could it be simplified for SMEs to ensure understanding and compliance?

## Italy

Since 2011, the SME test must be conducted for all proposals, especially any proposal that is deemed to have a direct or indirect impact on SMEs, including those that might have an impact on SMEs' customers or suppliers, on competition in a way that can affect the competitive position of SMEs. To determine if this is the case, a preliminary SME test should be conducted to determine whether SMEs or their parties are relevant affected parties.

When conducting the SME test, relevant SMEs should be consulted, depending on the nature and content of the proposal. Then, policy makers are required to assess the impact that the proposal might have on SMEs or their partners. For this, policy makers should take into account direct costs, such as administrative burdens, conformity costs, fiscal costs, and indirect and long-term costs (credit rationing issues, technical change) and competitive aspects (barriers, impacts on scale economies, etc.). Particularly when competition is expected to be affected, a dedicated analysis should be performed, and it should check if the proposal introduces limits or barriers to suppliers, alters the competitive market of suppliers, reduces incentives to competition or reduces information for customers. Lastly, different mitigating measures can be considered, when impacts are deemed to be disproportional.

According to the existing guidelines, the results of the SME test should be included in a separate section in the RIA report, which is then scrutinised by the Department for Juridical and Legislative Affairs (DAGL). Each RIA report must have a positive opinion issued by DAGL before the respective legislative act is adopted by the Council of Ministers.

## Latvia

Policy makers should first conduct a preliminary SME test to determine whether there might be significant impact on SMEs, in which case a more thorough assessment needs to be conducted. The preliminary assessment includes a consultation and a preliminary impact assessment. The consultation is carried out with SMEs and SMEs' sectoral representative organisations, which are usually conducted through roundtable consultations or specially designated working groups. In some cases, online consultations with the general public and SMEs are also open. The preliminary assessment is designed to: determine the size and number of potentially affected SMEs and large businesses, assess the severity of the impact,

determine how the regulation would affect the functioning of companies, and which industries would be affected, including whether the regulation would indirectly affect interconnected sectors.

When the extended version of the test is then undertaken, policy makers should conduct further consultation. Public consultation takes place in form of open surveys as well as the public can submit letters and e-mails stating their opinion. Further, selected stakeholders are invited to discuss the proposals within the council sessions, in addition to having the option to comment on the proposal draft.

The extended version of the SME test also includes assessment of the impact for every category of SMEs, comparative impact assessment, analysis of direct and indirect impacts, assessment of proportionality and analysis of impact on the competitiveness of affected sectors. Policy makers should also assess the appropriateness of the requirements established by the proposal, the financial impact (taxes and levies) including the rise in average costs per one employee or per turnover caused by the proposed changes per type of size of company. Complementary analysis can be pursued aimed at the impact of the proposal on SMEs competitiveness and business environment, for instance, the impact of the project on barriers to entering the market. In addition, policy makers should account for the advantages that arise from the proposal, including for example reduction of administrative burdens, increase in productivity of SMEs or more investments for innovation.

If the negative impacts on the SMEs are considered crucial after both the preliminary and in-depth assessment, then a last stage takes place. It entails the evaluation of alternatives to mitigate these negative impacts. The results of assessment of this stage have to be taken into account when defining the goal of the regulation and approach to its implementation.

## Netherlands

The Netherlands does not have a conventional SME test, instead the consideration of SMEs when developing regulations takes form of consultation. When there is a new regulatory proposal or an amendment to an existing one, panel discussions are held with individual SMEs, entrepreneurs and SMEs representatives. During these discussions, the regulatory agency together with SMEs map the workability and feasibility of the legislative proposal and examine how these proposals might affect regulatory pressure on SMEs.

## Poland

According to the Act on entrepreneur's law from 2018 an SME test is required for every proposed legislation specifying the rules for undertaking, conducting or terminating economic activity. The SME test includes consultation with relevant SMEs stakeholders, assessment of potential impacts, and establishment of mitigating measures.

SMEs organisations and SMEs representatives are usually engaged in consultation, and they are selected according to the thematic scope of the draft law. However, there are few business organisations who are invited to consultation on the majority of draft legislations affecting business. These organisations represent a variety of branches and types of enterprises and represent businesses before the government and business council (Rada Dialogu Społecznego) where debates on important draft legislation are held. In addition, every SME and the public in general can participate in open public consultations held online in the central consultation portal.

Once impacts have been assessed and negative impact on SMEs has been identified, it is obligatory to proportionally reduce administrative obligations towards this group. For this, the guidelines to conduct impact assessments present a catalogue of mitigating measures. If it is not possible to adopt any mitigating measures, this should be justified.

Since in Poland the SME test is an element of the RIA, the results of the test are published in the RIA report. This report is made publicly available and accompanies any draft law that goes to public consultation. Finally, the RIAs are scrutinized by the body responsible for the RIA quality in the Chancellery of the Prime Minister.

## Portugal

The SME Test in Portugal is based on two questions: Is there the possibility of creating an exemption regime for SMEs)? If no, can a different strategy for these companies be adopted, which meets their characteristics and needs?

Should the first question be answered positively, SMEs in Portugal can then be considered for a full exemption from complying with the regulation. However, if the answer to the first question is negative, then policymakers are asked to consider a set of alternative mitigating measures, which could then be applied to all SMEs. The existing guidelines suggest policy makers to consider one of the following: Partial exemption; a moratorium on the application of legislative obligations; tax exemptions or subsidies that offset the costs incurred; reduction of direct costs; or implementation of simplified information collection and reporting regimes.

Once the test is conducted, Technical Unit for Legislative Impact Assessment (UTAIL) oversees it together with the results of the RIA.

## Slovak Republic

The SME test is conducted by the Better Regulation Center (BRC), which was created following the Small Business Act for Europe, especially to deal with issues within the field of better regulation for SMEs. The BRC comprises a team of specialists in the fields of legislation and regulatory impact assessment on the business sector (BIA), whose mission is the reduction of the disproportionate regulatory burden of SMEs and the improvement of the business environment in Slovakia – mainly through the SME test.

The BRC conducts both *ex ante* and *ex post* SME tests, which has four main phases: 1. Consultations with SME representatives; 2. Identification of businesses affected; 3. Measuring the impact of the regulation on SMEs; and 4. Assessment of alternative options and mitigating measures / actions for SMEs.

The BRC has active and ongoing consultations with businesses when conducting the SME test, which are carried out early during the policy making process. This allows the agency to identify potentially affected businesses and initiate the assessment of the impact of regulations of SMEs. Particularly, the analysis consists of the assessment of the costs, benefits and other impacts of the proposal to small business, and includes an assessment of the conformity of national legislative framework to EU legislation, to ensure that transposition does not exceed the minimum requirements imposed by EU legislation.

Once the BRC conducts the assessment, it considers measures that can reduce any negative regulatory burden that SMEs might experience from the proposed regulation, while at the same time improving competitiveness and boosting economic growth. The BRC shares these measures with the Ministry of the Economy, and when adopted, the former is also in charge of monitoring their implementation.

All SMEs tests conducted by the BRC are public and available on their website, and there is continuous assessment of the effectiveness of the test. Particularly, there is information available of the impact of the tests on reducing disproportionate burdens and the savings that these tests have represented to SMEs in the Slovak Republic.

## Slovenia

The SME test was introduced in practice in 2016 and it is mandatory since 2017 when developing all type of regulations, except laws that fall under the urgent procedure category. In Slovenia, the purpose of the SME test is to contribute to realizing regulatory goals without unjustifiably limiting or in any way reducing the opportunities of SMEs in the market or limiting the development of the business environment.

The SME test enables the preparation of an analysis of costs and benefits that also includes an assessment of possible alternatives of legislative solutions for SMEs. Within the assessment, policy makers consider the financial unburdening or burdening of SME, including direct financial costs (taxes, charges, contributions, fines, fees), indirect financial costs, other indirect costs (purchase, adjustments, and maintenance of goods and services), administrative costs (time consumed on a specific activity), material costs and external costs. In addition to costs, policy makers assess other impacts on SMEs such as legal security, possible disloyal competition, effects on productivity or on investments in R&D, as well as limits to the internationalization of their services and products.

The test is conducted in a web-based tool accessible through the eDemocracy website, which enables drafters and general public (citizens, business entities, economic and other interest groups) to quantify the impact of their policy proposals on SMEs for different policy alternatives. The tool enables users to conduct more sophisticated analysis, and it is designed according to the SCM methodology. It also allows conducting both *ex ante* and *ex post* assessments, and enables the calculation of the actual effects (both quantitatively and qualitatively) of regulations and in-depth analysis and quantification of the effects of regulatory obligations. In addition to the calculation, when conducting the test users can identify qualitative effects of the draft regulation, such as the impact on productivity, job creation, grey economy, legal certainty, competitiveness, etc. Since a required integral part of the SME test is to establish different alternatives, this tool allows users to compare the possible impact on SMEs of these alternatives.

There is also a shorter version of web application or simplified SME test called “My calculator” in the Stop Bureaucracy website. It helps users to quickly and easily calculate costs, effects of particular obligations and administrative activities created by the government; and it also has an option to calculate more than one activity at the same time and compare their costs. In addition to the test being available to all stakeholders through these online tools, the ministry that proposes the draft regulation chooses which stakeholders to engage with for more targeted consultations.

The SME test in Slovenia is also intended for regulation-making authorities to study alternative statutory solutions in processing companies that can lessen the burdens on SMEs. These alternative solutions include complete or partial exemptions for SMEs, simplified reviews, less frequent reporting, exceptions to SMEs, etc.

The Ministry of Economic Development and Technology is in charge of the oversight of the SME test and will verify the adequacy of the assessments made for individual law proposals in the stage of inter departmental coordination. The Ministry can reject the test if it is not prepared properly or is not conducted according to pre-established standards. Once the test is accepted, they are published on the eDemocracy website together with the draft regulation, which then is open for public consultation and the public can compare different regulatory options. Further, the website also enables the export of a statistical report on the number of conducted SME tests.

## Sweden

The Swedish Agency for Economic and Regional Growth provide guidance on what policy makers should consider when assessing the effect of regulations on businesses and especially small businesses. The guidance, which is publicly available, first establishes a set of assessment that policy makers must

undertake for all businesses, which include particular questions regarding businesses in general, and then provide specific assessments to the impact of regulations of SMEs.

The first guiding principle for policy makers when developing regulations is to think small scale first, and to start from the perspective of a small company when developing new regulatory proposals or amending existing ones. The assumption is that what works well for small business most of the times works well for larger businesses, but it is not always true vice versa.

When there is a new regulatory proposal that might have effects on businesses' working conditions, competitiveness or in their overall lives, then the impact assessment must contain, to the extent possible, a description of the companies affected with regard to quantity, size and sector. It must explain what the regulation involves for the expenditure of time and the administrative costs of these businesses, what the regulation involves for the compliance costs and changes in the activities of these businesses what effects the regulation has on competition conditions for the businesses and the way in which the regulation may affect businesses in other respects.

When doing this preliminary business assessment, then the policymaker can determine if SMEs in particular are affected, and if so, then a more detail assessment ensues. Policy makers are required to answer a set of questions that include: information on affected industries (number of companies in the industry and size distribution); time needed to get familiarized with new regulation and requirements (need of IT or human resources); assess costs and their proportionality to the small businesses financial condition and resources; and assess impact on competitive opportunities of SMEs.

Once it is determined that there might be a negative effect on SMEs, policy makers are called to consider alternative solutions to SMEs, if possible; and if they are not possible, they must why. If special considerations are justified, then policy makers have a guide to assist them in choosing an appropriate alternative. These include complete or partial exemption from regulatory requirements, reduction on the amount of information that small companies must provide, lower fees and the consideration of options that entail less investment and less human resources. Likewise, policy makers can consider whether it is necessary to adapt information initiatives and entry into force, especially for small companies.

One interesting aspect of the guidance provided by the Swedish Agency for Economic and Regional Growth is that it informs policy makers of the risks of enacting complicated and fragmented regulations to apply different rules to SMEs. Policy makers should find a balance between making it easy for this vulnerable group to manage rules, while at the same time making rules that are easy to understand and to comply with. In particular, they should check two things: 1. whether the fragmented regulatory framework may lead to companies needing longer times to familiarize themselves with the regulation, and in that case consider if an exemption is better; and 2. Whether the risks of business making mistakes or not complying as a result of complex rules outweigh the benefits of just excluding the group.

## Switzerland

The SME test was introduced in 1999, it is mainly a qualitative test that is part of RIA and is based on interviews with about 12 SMEs. It should be conducted by the office responsible for the proposal, or alternatively by a person or organization appointed by the responsible office.

Since February 2020, the Federal Council in Switzerland established a quick check, which is both a threshold test and "mini-RIA" and is systematically applied to all regulations at federal level at a very early stage of the legislative process. As part of this quick check, the federal office responsible for a new regulation has to respond to two questions 1) whether the regulation is expected to have an impact on SME and 2) if a specific in-depth SME test is planned further on in the legislative process. Together, there is also a threshold test that determines whether an SME test is needed. If a new regulation imposes additional regulatory costs on more than 10,000 companies, a specific SME test must be carried out.

The test with specifically selected SMEs interviews then serves to analyse the impact on SME in greater depth. Stakeholder selection depends on the expected impact of the regulation, but there is an extensive guidance for policy makers on how to select stakeholders and engage with them for the purpose of the SME test. It includes guidance on the number and type of SMEs to engage, accounting for heterogeneity (location, sector, size, topic) and depth of the analysis. The proposing entity should prepare a questionnaire short and with open-ended or semi-open questions to investigate the regulation with SMEs and unveil unknown aspects. This questionnaire should be sent in advance to the selected stakeholders, to allow them to prepare properly before the individual interview. Then, once the interview is carried out, the results can either be made part of the RIA report or explained a separate report. If there is a separate report, it should be made publicly available and shared with relevant stakeholders.

Additionally, the SME forum is an extra-parliamentary commission of expert committed to drawing the federal administration's attention to the needs of small and medium enterprises. One of its main tasks is to participate in consultations on federal laws or ordinances. It assesses the implementation of planned measures, especially the administrative burden, the costs involved and the limitations to entrepreneurial independence. The SME forum can also select any regulations for further *ex post* evaluation or consultations. Usually, the selection is based on evaluations/surveys such as the red tape monitor, which serve at a heat map for administrative burden of enterprises. Once selected, these evaluations are then carried out by the responsible ministry or an independent organization.

## United Kingdom

The Small and Micro Business Assessment (SaMBA) was introduced in 2013. Different from other countries, the default in the United Kingdom is first to exempt small business from complying with new regulatory requirements. If it is not possible to immediately exempt SMEs, the next step of the SaMBA is to assess the impact that the regulatory proposal will have on small businesses and determine if there are disproportionate to the group. The assessment is expected to be proportional, meaning that the level of evidence and analysis should be in accordance with the expected impact of the proposal. The assessment should consider in which sector the business operate, the number of businesses in the scope of the regulation and the market share of these businesses.

If no total exemptions are possible, but the assessment shows disproportionate burdens, the third step is to consider mitigating measures. The guidelines prepared by the Regulatory Policy Committee provides a list of measures that can be adopted, which include partial or temporary exemptions, extended transition periods, different requirements by firm size, financial and information aid, and voluntary opt-in.

Since the SaMBA is highly focused on exemptions and mitigating measures, policy makers should also consider the policy costs of exempting small and micro business, and how much these exemptions or mitigating measures could compromise the policy objectives. Likewise, the SaMBA should explain how much of the overall cost to business is expected to fall on small businesses when they are not exempted from the regulation.

## United States

The United States is one of the first countries to adopt into their policy making process a dedicated assessment of the potential impact of regulations on SMEs. Since 1980, the Regulatory Flexibility Act requires for regulations that must be published for notice and comment to include an impact assessment directed at impacts on small entities. The test entails an in-depth economic analysis that must be undertaken for proposals that are expected to have significant economic impact on a substantial number of small entities.

To determine whether there is significant impact, and an in-depth economic analysis is required, there is a threshold test which should include a description of small entities affected (diversity in size, revenues, profitability); and an initial first estimate of expected impacts, or a reasonable basis for assuming that the costs would be minimal. If a regulatory proposal is not deemed to have a significant impact, the proposing agency must issue a statement of certification explaining this and indicating the criteria used to examine the first estimate of costs, and the criteria used to examine whether the entities experiencing significant impacts constitute a substantial number of entities in any of the regulated size groupings. The certification should also include a description of assumptions and the degree of uncertainty in the costs estimates, when the uncertainty is large.

When conducting the test, the head of the agency proposing the new regulation is responsible of assuring that small entities have been given an opportunity to participate in the rulemaking process. It should first provide advance notice of upcoming consultation for the proposed rule, indicating if it is expected to have significant economic effect on SMEs. The agency should also directly notify SMEs and conduct open consultations, both online and in person to receive comments. However, as of recently, it is more comment for agencies to provide a review of the rule in webinar or roundtable format to encourage comments from small entities. The agency must review the comments received during these consultations and explain in the final report any changes made to the final draft of the regulation based on the received comments.

In addition to the assessment of the cost, benefits and other impacts that the proposed regulation would have on SMEs, the in-depth assessment includes a series of checks to ensure the proportionality and feasibility of the proposal. The analysis should include: 1. a description of the reasons why the action by the agency is being considered. 2. a succinct statement of the objectives of, and legal basis for, the proposed rule. 3. a description and, where feasible, an estimate of the number of small entities to which the proposed rule will apply. and 4. a description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the types of professional skills necessary for preparation of the report or record. 5. An identification, to the extent practicable, of all relevant federal rules that may duplicate, overlap, or conflict with the proposed rule.

To make sure that burdens on small businesses are not disproportional, the proposing agency should consider significant alternatives. The type of alternative to be considered has to be in line with the regulatory objective and the characteristic of the industry where the regulation would be applied. Some of the measures that should be at minimum considered are the establishment of different compliance and reporting requirements; clarification or simplification of compliance requirements; use of performance rather than design standards; and the possibility to fully or partially exempt certain or all small entities from complying with the rule. Once the assessment is conducted, the report is reviewed by the Office of Management and Budget.

Interestingly, the Office of Advocacy publishes an annual report of cost savings and success stories achieved by the functions of the Regulatory Flexibility Act.