



SME Test Benchmark 2013

**Assessment of the European
Commission's application of the
SME test**



EUROCHAMBRES

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Executive Summary

The SME Test Benchmark reveals that the SME test is not yet an integral part of IAs despite the provision of additional guidance material on enterprise competitiveness (i.e. Competitiveness Proofing) and on micro-enterprises and the repeated commitments made by the Commission to reinforce its application over the last two years. Progress in the use of the SME test is limited, with 43% of the IA reports still failing to consider smaller businesses. The quality of the SME test remains very low, with an average score of 28%. Furthermore, half of IA reports from 2012 and 2013 included in the SME Test Benchmark fail to specify whether or not micro-enterprises should be excluded from the scope of the proposed legislation.

The main findings:

- The presentation of the SME test in the IA reports is poor. Relevant information is scattered and consequently hard to locate. This raises concerns about transparency and accountability.
- Weakness in the collection and reflection of the views of SMEs, which are far from being systematic and sufficient, resulting more from a need to tick a box in the SME test rather than a genuine intention to gather input. The involvement of SMEs in the process is low or even non-existent for 71% of the IAs analysed. SME consultations are mainly based on general consultation methods that fail to take the particular concerns of SMEs into account.
- Persistent failure to properly evaluate the impact on SMEs, with almost three-quarters of the IA reports analysed not having conducted a thorough cost-benefit analysis for SMEs. The analysis is rather superficial often based on a general assessment for all businesses and impacts are almost never quantified or monetized.
- Mitigating measures for SMEs are rarely recommended in the cases analysed and exemptions of micro-enterprises are recommended in only two cases.

From this, one can conclude that the SME test remains merely a perfunctory process rather than a valuable tool for evidence-based policy-making. Concerns arise that the decisions taken by the Commission are often based on a partial and incomplete view of the potential impact on 99% of Europe's businesses. The whole Commission strategy to reduce regulatory burdens on SMEs is significantly undermined by the fact that the SME test is not yet common practice, which often results in new rules that bring disproportionate and

unnecessary burdens on those very businesses that are seeking to grow and constitute a source of jobs creation. This on-going failure to properly assess the impact of new legislation on 99% of businesses implies a continued over-reliance on the ex-post evaluation of current EU laws and screening of the *acquis communautaire* to identify burdens, gaps and inefficiencies as part of the Regulatory Fitness and Performance Programme (REFIT). Time and money is invested on repairing/fixing EU laws which have not been well designed in the first place.

EUROCHAMBRES calls for a quality leap and stronger supervision to ensure a consistent, transparent and efficient application of the SME test with the opinion of the SMEs and their representatives fully taken into account and based on a robust assessment of the impacts of proposals on SMEs.

The main recommendations:

- The "Think Small First" principle must remain the leitmotif of the SME policy and the SME test, its flagship measure for its implementation.
- Merge its Competitiveness Proofing and the operational guidance on micro-enterprises into the SME test to improve understanding and enforcement of the guidelines and provide a list of compulsory minimum standards to be met.
- Make it compulsory to present conclusive evidence that the SME test was conducted.
- Consult earlier and properly SMEs and their representatives with the objective of gathering quality input and not simply to comply with an SME test requirement.
- Introduce procedures to improve the availability and quality of data relating to SMEs in cooperation with the member states.
- Invest more time and resources within the Commission services to conducting each step of the SME test thoroughly and to implementing the recommendations made by the Impact Assessment Board thereafter.
- Strengthen the role of the IA support units in the DGs, notably with regard to the screening of the draft IAs before they are submitted to the Impact Assessment Board.
- Ensure that no proposal proceeds to inter-service consultation unless the impact assessment is approved by the Impact Assessment Board and contains a robust SME test and evidence of its completion.

EUROCHAMBRES invites the Commission to take on board the recommendations made in this report when revising its impact assessment guidelines in 2014.

Introduction

The SME test is a crucial element of the impact assessment that European Commission services cannot neglect considering the dominant role of SMEs in the economy and the disproportionate effect of regulatory costs and administrative burdens on them (i.e. the smaller the company, the heavier the burden). A well conducted SME test is therefore a pre-condition for evidence-based policy-making, a decisive component of SME policy at EU level and to smaller businesses' capacity to operate and thrive without unnecessary regulation. The SME test is a central instrument to implementing the "Think Small First" principle, aimed at minimizing the regulatory burden of legislation that is deemed necessary at EU level, while maintaining the necessary standards (i.e. environmental, health & safety, etc...) and rights of consumers and workers.

Although efforts have been made over the recent years to improve the uptake of the SME test by the various Commission Directorates General (DG), EUROCHAMBRES highlighted in its first edition of the SME Test Benchmark¹ in 2011 important gaps in a number of areas (e.g. collecting relevant data), which limit the effectiveness, impact and consistency of the implementation of the SME test. The Commission has acknowledged this weakness in its impact assessment (IA) system and committed to strengthen the application of the test in its Communication on the Small Business Act Review² and report on minimizing regulatory burdens for SMEs³, which introduces the "reversal of the burden of proof", whereby micro-businesses are exempted from all future EU legislation unless a strong case is made to include them. This year, the Commission expressed in another Communication⁴ its willingness to respond to the needs of SMEs and the Competitiveness Council reiterated the utmost importance of ensuring that the Smart Regulation initiatives are SME-tuned⁵.

Against this background and with the end of the current Commission and European Parliament mandates in 2014 approaching, there is merit in investigating once more the effective application of the SME test on a sample of legislative dossiers relevant to the SME community and engage in a constructive dialogue with the EU institutions to accelerate progress in this area. Such analysis is even more necessary in the current socio-economic

¹ <http://www.eurochambres.eu/content/default.asp?PageID=1&DocID=3831>

² COM(2011)78

³ COM(2008)394

⁴ COM(2013)122

⁵ Council conclusions of 22 May 2013: <http://register.consilium.europa.eu/pdf/en/13/st09/st09533.en13.pdf>

crisis, which reinforces the necessity to “better explain the benefits and justify the costs of needed legislation⁶”.

The objective of this second EUROCHAMBRES SME Test Benchmark is to provide updated evidence on how recent Commission IAs have integrated the specific consideration of SMEs in legislative proposals and to evaluate the progress made since 2011. In addition, EUROCHAMBRES’ study aims to investigate how the “reversal of the burden of proof” is applied in practice. Finally, the SME Test Benchmark forms the basis for concrete recommendations on how challenges and gaps may be addressed in the future. By assessing 14 legislative dossiers, the 2013 SME Test Benchmark provides a snap-shot of the quality and implementation of the SME test by the Commission. It is important to note that although the sample size is small, all of the included legislative dossiers are relevant for SMEs and therefore should have been subject to a thorough cost-benefit analysis for SMEs.

Methodology

EUROCHAMBRES selected 14 different Commission legislative dossiers covering the period October 2011 – June 2013. The selection of legislative proposals that are relevant to the SME community was prioritized over the coverage of different Commission Directorates General. As such, the sample of impact assessment reports included in the present SME Test Benchmark is bigger than in the previous edition (i.e. 14 IA reports compared to 9 in 2011), while the number of DGs covered is smaller (i.e. 5 DGs compared to 7 in 2011). The following DGs feature in this edition: DG Health and Consumers (SANCO), DG Justice (JUST), DG Internal Market and Services (MARKT), DG Trade (TRADE) and DG Communications Networks, Content and Technology (CONNECT).

As aforementioned, the selected legislative dossiers cover areas of particular importance to SMEs and, as such, should have been subject to a thorough cost-benefit analysis for SMEs as part of the IA.

⁶ Impact Assessment Board Report for 2012

Table 1: Legislative dossiers selected and main issues for SMEs

Selected legislative proposal	Main issue(s)
<i>Regulation on electronic identification and trust services for electronic transactions in the internal market; Ref: SWD(2012)135</i>	SMEs currently use Electronic Identification, Authentication and Signature (eIAS) services to a lesser extent than large enterprises, while they could greatly benefit from a less fragmented internal market with common rules and procedures on that matter. So far, the lack of awareness and user adoption of eIAS services is particularly pronounced among smaller firms. Supportive measures are likely to increase SMEs' participation in cross-border trade and facilitate new business ventures abroad.
<i>General Data Protection Regulation; Ref: SEC(2012)72</i>	Due to their resource constraints, SMEs are especially vulnerable to onerous data protection obligations such as excessive reporting requirements or impact assessments. SMEs benefit to great extent from simplified notification procedures.
<i>Directive on alternative dispute resolution for consumer disputes; Ref: SEC(2011)1408</i>	In particular, SMEs lack the administrative capacity required to adequately deal with disputes with consumers residing in another Member State. Weak consumer confidence in cross-border e-commerce is especially detrimental to SMEs that as a consequence fail to reap the benefits of a larger market. In the absence of efficient means to resolve a dispute, SMEs are reluctant to engage in online sales and to provide services in Member States outside their domestic home market.
<i>Directive on public procurement; Ref: SEC(2011)1585</i>	SMEs often do not have the capacity to bid for large public contracts and are significantly affected by diverging national requirements when seeking cross-border contracts. This leads to insufficient participation of SMEs in public procurement markets, especially in cross-border cases.
<i>Regulation on European Venture Capital Funds; Ref: SEC(2011)1515</i>	Due to the credit crunch more and more SMEs are facing a challenge of limited sources of financing. Banks as a main source of lending for business are not as eager to provide loans, increase interest rates and require higher collateral. There is a pressure both from businesses, stakeholders and EU institutions to look for alternative forms of financing including equity financing. A more effective cross-border market for venture capital would support high-growth innovative SMEs in their progress. Despite the fact that the interest of VCs in SMEs is rather low, the VC IA estimated that a 1% increase in cross border trade in the VC market more widely would result in an additional EUR 50 million investments being directed to SMEs in given year or the additional amount would increase the amount invested to existing SMEs. For the VC IA, it was estimated that for every additional EUR 1 billion, around 10.000 jobs might be created. Given social businesses from an IA above are also SMEs, this estimate could hold for EU SEF as well.
<i>Directive on re-use of public sector information; Ref: SEC(2011)1552</i>	High charges on the re-use of public sector information can be prohibitive for SME's participation and consequently a barrier to their development.
<i>Directive on the recognition of professional qualifications; Ref: SEC(2011)1558</i>	Finding highly skilled workers continues to be a challenge for many companies - particularly SMEs - as they not do have the resources to run their own recruitment programme. In view of the skills mismatch in certain sectors in Europe, the European Commission proposed a reform of the Professional qualifications directive. The revision aims to simplify and speed up the recognition procedures of professional wishing to work abroad, for example through the introduction of a European professional card. SMEs can clearly profit of these introduced changes. However, simplification should not jeopardise quality. Small companies largely depend on the quality guarantee provided by their national training certificates. Changes might undermine the quality and value of education and training in countries where professions are regulated and will create strong discriminations against holders of domestic qualifications in the countries concerned. The impact assessment should evaluate how small companies can profit from greater mobility while assuring that high standard qualification continue to their flagship.
<i>Regulation on European Social Entrepreneurship Funds; Ref: SEC(2011)1512</i>	According to the conducted impact assessment, the social businesses to which a proposed Regulation is referring to are almost exclusively SMEs. Taking into account that an access to finance is the second most pressing problem amongst SMEs, there is a relevance that such Regulation naturally refers to SMEs as well. Nevertheless, the authors of the Regulation, impact assessment and stakeholders highlight that a social business is a specific

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	type of SME which requires a separate definition. Since many social businesses are also SMEs, but a distinct type, there is a clear implication that financing tools designed for social businesses differ from those applicable to SMEs solely.
<i>Regulation on the access of third-country goods and services to the Union's internal market in public procurement; Ref: SWD(2012)57</i>	SME's are not the prime target of this regulation; however, SME's are often sub-contractors of larger companies in tenders of the magnitude envisioned by this proposal. Therefore, despite inherent difficulties in assessing the future impact for SME's on potential increased third country market opening or the exclusion of third country bidders in the EU procurement market as a result of this regulation, there should particularly be a more thorough attempt in identifying the opportunities or negative consequences for SME's on the internal market should this proposed regulation become EU law.
<i>Regulation on insolvency proceedings; Ref: SWD(2012)416</i>	The way insolvency proceedings and business failure are regulated at European and national level directly affects SMEs as they operate in the economic system both as debtors and creditors. SMEs and microenterprises need to be informed about insolvency proceedings opened in another Member State as to timely participate in the relevant procedures. When it comes to debt recover the lack of information can bring to important financial losses. The set-up of a European register of insolvencies based on existing national register would be beneficial particularly in cross-border cases, as creditors could be informed about the opening of an insolvency proceedings against their debtor in another Member State and would be informed about the terms for their full participation in the procedure
<i>Directive on improving the gender balance among non-executive directors of listed companies; Ref: SWD(2012)348</i>	Improving gender equality in companies and assuring the access of women to executive positions is a strong ambition of many companies, including SMEs, but the idea of imposing rules for board composition goes against shareholder democracy and is therefore rejected by a majority of companies. SMEs would be particularly affected by such a proposal, as they do not have the resources to invest in sophisticated recruitment programmes and procedures. Making the appointment of members null and void would restrict the board's ability to take decisions and jeopardise the company's ability to act. The proposal of the European Commission righteously excludes SMEs from the proposal, but the EP rapporteurs have introduced them into the scope of action of the directive. In this case an in depth impact assessment would have been useful to convince the EP rapporteurs of the danger of their proposal.
<i>Regulation on Consumer product safety/market surveillance; Ref: SWD(2013)33</i>	SMEs are especially impacted by the costs of legal uncertainty that arises under the current legal framework on consumer product safety regulation. Although SMEs may be willing to respect product safety rules in place, they often lack the capacity and resources to do so. SMEs and microenterprises import a large share of the products that cause safety problems, it is essential that a balanced approach is found that respects the needs for small companies, while at the same time protecting consumer safety.
<i>Directive on e-invoicing in public procurement; Ref: SWD(2013)222</i>	The additional costs for firms resulting from multiple invoicing standards across Member States are especially burdensome for SMEs given their relatively speaking weaker market position. The resolution of interoperability problems would thus be of particular interest to SMEs.
<i>Directive on non-financial and diversity information by certain large companies and groups; Ref: SWD(2013)127</i>	SMEs are integral part of larger companies' supply chains and will be certainly impacted by the mandatory reporting requirements imposed on larger companies. The ongoing discussion within the European Parliament seems to go in the direction of lowering proposed employees', net turnover and balance thresholds with the risk of including medium enterprises in the scope of the proposed directive. Moreover a proposal to include mandatory country by country tax reporting (CBCR) has been advanced. Should the EP pursue the idea of including CBCR in the scope of the proposed directive and lowering the set thresholds, a thorough impact assessment would be needed to evaluate the consequences of such proposals on SMEs.

1) Commission SME test guidelines

The evaluation was based on the IA reports, further research into the steps taken and EUROCHAMBRES' own experience during the drafting process. The main parameters for the assessment were taken from the Commission's own SME test guidelines.⁷

SMEs should, according to the IA guidelines, be taken into consideration by the Commission services in each of the analytical steps when carrying out an IA. More specifically, the SME test comprises of four main steps:

1. Consultation of SME representatives
2. Preliminary assessment of businesses likely to be affected
3. Measurement of the impact on SMEs (cost/benefit analysis)
4. Use of mitigating measures, if appropriate

The first two steps are mandatory in order to determine whether SMEs are among the affected population. If this is the case, the Commission services must follow the next two steps. EUROCHAMBRES checked whether these four steps had been carried out in the IA of the selected legislative proposals and assessed the robustness of the SME test.

If one step was neglected, EUROCHAMBRES considered that the SME test had not been conducted by the EC service responsible for the IA. It goes without saying that there was no SME test conducted if none of the four steps were completed.

Regarding step 1, EUROCHAMBRES estimated that SME representatives had not been consulted when only general consultation methods (such as online public consultations or stakeholder conferences) were employed without any proactive measures from the Commission to gather the views of SMEs. Similarly, EUROCHAMBRES judged that the impact on SMEs had not been measured (i.e. step 3) if the IA consisted of a general cost-benefit analysis for businesses.

To estimate the robustness of the SME test, EUROCHAMBRES attributed a maximum of four points for steps 1, 2 and 3 according to the following methodology:

Level and quality of information found in the IA report

0 point: no information

1 point: poor

⁷ European Commission Impact Assessment Guidelines, annex 8.4

2 points: average

3 points: good

4 points: very good

For step 1, EUROCHAMBRES awarded points on the basis of how many targeted consultation tools had been used by the relevant DG to reach SMEs (i.e. zero points for no targeted tools employed, one point for one targeted consultation tool, etc.).⁸ This is a minor change in the methodology compared to the previous SME Test Benchmark aimed at increasing the objectivity of the analysis.

The allocation of points for steps 2 and 3 was based on the judgment and experience of the advisor in charge of the dossier at EUROCHAMBRES.

Regarding step 4, EUROCHAMBRES checked if mitigating measures were proposed in the IAs but did not attribute points.

The IA reports were ranked according to their total score out of the maximum score of 12 points. The scores were then converted into percentages.

EUROCHAMBRES considered the quality of an IA as being “good” when the quality level was $\geq 75\%$. The quality was considered “average” when an IA ranked between 50% and 75%. IAs $\leq 50\%$ were considered “poor”.

2) Specific micro-enterprises dimension of the SME test

With the introduction in 2012 of the reversal of the burden of proof to IAs, micro-enterprises⁹ should a priori be excluded from the scope of the proposed legislation unless the necessity and proportionality of their being covered can be demonstrated. The demonstration of the proportionality of covering micro-enterprises and the assessment of possible adapted solutions should be included in the IA, thus adding a specific microenterprises dimension to the SME test.

EUROCHAMBRES included in its SME Test Benchmark a specific check of the application of this new Commission rule on micro-enterprises in order to verify whether a trend towards

⁸ Targeted consultation tools include for example: The Enterprise Europe Network – SME Panels and SME feedback, European Business Test Panel, round table discussions/expert groups involving SME representatives, specific meetings with SME representatives, bi-lateral meetings with the responsible DG, SME Envoy, etc...

⁹ Micro-enterprises: SMEs with less than 10 employees and a turnover or balance sheet total equal to or less than €2 million

the inclusion or exclusion of micro-enterprises could be drawn. The assessment was based on the operational guidance note for IA drafters developed by the Commission.¹⁰ No points were awarded for this supplementary assessment.

3) Limitations of the SME Test Benchmark

EUROCHAMBRES has not looked into the content of the IA reports for this exercise. The analysis is purely procedural. However, given the lack of precision and transparency in the IA reports regarding the SME test, EUROCHAMBRES was obliged to make some assumptions. The comments made should therefore be considered as a contribution to the reflection on the application and effectiveness of the SME test.

In light of the small sample size, findings cannot be considered as a comprehensive analysis of the application of the SME test and should be seen rather as an effective reality check carried out on legislative dossiers that should have been subject to an SME test.

Results and recommendations

1. General Results

1.1. SME Test Benchmark Results

Application of the SME test

The SME Test Benchmark reveals some **limited progress in the consideration of SMEs** in the drafting of an impact assessment, with 57% of the IA reports having correctly conducted an SME test (i.e. 8 out of 14 IAs), compared to 44% in 2011. A further 36% IAs have partially conducted it, whereas in one case the test was not carried out at all for the IA on the recognition of professional qualifications.

It is regrettable that progress has been so limited over last two years. 43% of the IA reports that are SME-relevant are still lacking a proper SME test, despite the development of additional guidance material as regards enterprise competitiveness (i.e. Competitiveness Proofing) and micro-enterprises and the repeated commitment of the Commission over the last period to strengthen the SME test.

¹⁰ http://ec.europa.eu/governance/impact/key_docs/docs/meg_guidelines.pdf

Table 1: Use and quality of the SME test in the selected impact assessment reports

Rank	Proposal	Directorate General	SME Test conducted	Quality level
1	Regulation on Consumer product safety/market surveillance	DG SANCO	Yes	67%
2	Directive on public procurement	DG MARKT	Yes	50%
2	Regulation on electronic identification and trust services for electronic transactions in the internal market	DG CONNECT	Yes	50%
3	Directive on e-invoicing in public procurement	DG MARKT	Yes	42%
3	General Data Protection Regulation	DG JUST	Yes	42%
4	Regulation on insolvency proceedings	DG JUST	Yes	33%
4	Directive on non-financial and diversity information by certain large companies and groups	DG MARKT	Yes	33%
5	Directive on alternative dispute resolution for consumer disputes	DG SANCO	Yes	25%
6	Directive on re-use of public sector information	DG CONNECT	No	17%
6	Regulation on the access of third-country goods and services to the Union's internal market in public procurement	DG MARKT/TRADE	No	8%
7	Directive on improving the gender balance among non-executive directors of listed companies	DG JUST	No	8%
7	Regulation on European Venture Capital Funds	DG MARKT	No	8%
7	Regulation on European Social Entrepreneurship Funds	DG MARKT	No	8%
8	Directive on the recognition of professional qualifications	DG MARKT	No	0%

Quality level - legend for colours:

- Green: 75%-100% (good quality)
- Blue: 50%-74% (average quality)
- Red: 0%-49% (poor quality)

Table 2: Comparison between the application of the SME test in 2011 and 2012

		2011	2013
SME Test conducted	Yes	44%	57%
	No	56%	43%

IA reports with no proper SME test

- **Proposal for a Directive on re-use of public sector information (DG CONNECT):** No information about step 1 (i.e. no targeted consultation of SME representatives took place). This has perceivable repercussions on the quality of the subsequent two steps. Information on whether and how SMEs are likely to be affected by issues relating to the re-use of public sector information is very limited (step 2). In addition, DG CONNECT makes only a weak effort in assessing whether the most relevant policy options bear any significant costs and benefits on SMEs (step 3).
- **Proposal for a Regulation on the access of third-country goods and services to the Union's internal market in public procurement (DG MARKET/TRADE):** Information about step 2 is completely lacking (i.e. the preliminary assessment of the businesses likely to be affected did not take place). In addition, the open internet consultation was conducted during the holiday season and did not fulfil the minimum consultation period of 12 weeks. Step 3 was conducted but only in a very superficial manner. There is no precise information on why the quantification of the costs and benefits of the relevant policy options proved difficult.
- **Proposal for a Directive on improving the gender balance among non-executive directors of listed companies (DG JUST):** Step 1 and 3 were conducted according to the information provided in the IA report. In the preparatory phase, DG Justice only used a general public consultation to gather views of stakeholders to which "79 companies (both large listed companies and SMEs), 56 business associations at EU and national level" responded. The IA does not specify the number of replies from SMEs. Furthermore, SMEs were not taken into account when comparing the different policy options.
- **Proposal for a Regulation on European Venture Capital Funds (DG MARKET):** The first two steps of the SME test were not conducted according to the information provided in the IA report and the quality of step 3 is poor. There is no special focus on SMEs in the IA and no information about whether SMEs are likely to be affected is presented.
- **Proposal for a Regulation on European Social Entrepreneurship Funds (DG MARKET):** Information on the first two steps of the SME test is lacking and the quality level of step 3 is poor. Contributions from 6 business organisations are mentioned in the IA, but none from an SME representative body and no targeted consultation tool to gather replies from SMEs were used. The preliminary assessment of businesses likely to be affected fails to take SMEs into specific consideration.
- **Proposal for a Directive on the recognition of professional qualifications (DG MARKET):** The SME test is entirely absent in this IA. In the course of the preparation of the IA, no targeted consultations for SMEs were organised. Furthermore, the impact on businesses has not been evaluated. The analysis only concentrates on the professions and individuals wishing to work abroad. Finally, the impacts on SMEs of the short-listed policy options are not evaluated.

Robustness of the SME test

The overall **quality of SME tests is disappointing**, with no IA report qualifying as “good” in the SME Test Benchmark (i.e. quality level $\geq 75\%$). According to our ranking, three IA reports are of average quality (i.e. quality level between 50% and 75%) and the rest is considered poor (i.e. quality level under 50%). The average quality of SME test in the benchmark is low at 28%. The highest mark is 67% for the IA report on Consumer Product/Market Surveillance.

There is no clear pattern concerning the differences in quality between Directorates General. In fact, the SME Test Benchmark highlights differences in quality between the units of a same DG. For example, DG MARKT drafted the second best ranked SME test on Public procurement, while it was also responsible for the three worst, on European venture capital funds, European social entrepreneurship funds and Recognition of professional qualifications. This stands in stark contrast with the 2011 SME Test Benchmark, where the SME tests conducted by DG Enterprise and DG Justice performed significantly better than those drafted by other DGs.

Any comparison with the quality of the SME tests analysed in 2011 is complex since the size of the sample is different, as are the various DGs involved. For instance, DG Enterprise was the best performing DG of 2011 and is not included in this year’s SME Test Benchmark. Nonetheless, the general quality of the SME tests is disappointing in both benchmarks.

The main flaws in the process leading to such differences in the use and quality of the SME test across the Commission services remain largely the same as those highlighted by EUROCHAMBRES in 2011:

- The information, if available, is usually scattered throughout the report, which makes it difficult to verify if the SME test has been performed, how it has been conducted and its results.
- Reporting about the results of the SME test is not required by the Commission IA guidelines and there is no information on how to do it. Consequently, there is little documentation on what has actually been done and the Commission services may decide not to present the results at all.
- The IA guidelines for the SME test are broad without common methodology and compulsory minimum standards to follow leaving a lot of freedom to the Commission services.

- The addition of further operational guidance on assessing the impacts on micro-enterprises and enterprise competitiveness (i.e. Competitiveness Proofing) makes the operation of the SME test even more complex.

It is encouraging to note that the Impact Assessment Board has increased its scrutiny as regards the application of the SME test and the micro-enterprise dimension. While the Impact Assessment Board did not make any remark on its absence or need for improvement in its opinions regarding the IAs selected for the last SME Test Benchmark, recommendations were made for half of the IAs included in the present SME Test Benchmark.

1.2. Observations

The findings clearly reveal that **the SME test is not yet an integral part of IAs** despite the repeated political acknowledgment of the primary role that SMEs play in the economy and the crystallisation around the tool since 2011. The mandatory guidelines, which explicitly feature SMEs as a key consideration for policy-making, are largely circumvented when drafting impact assessments, revealing a clear gap between the ambition and actual practices. The persistent low quality of the test leads EUROCHAMBRES to conclude that the SME test is becoming merely a perfunctory process, rather than a real pursuit of SME-related evidence. As a result, the Commission still fails to adequately take into account the concerns of the vast majority of the business community, which contradicts its political commitment to anchor the “Think Small First” principle in policy-making.

1.3. Recommendations

EUROCHAMBRES calls for a **quality leap and stronger supervision** to ensure a consistent, transparent and efficient application of the SME test, with the opinion of the SMEs and their representatives fully taken into account and based on a robust assessment of the impacts of proposals on SMEs. In this respect, EUROCHAMBRES puts forward the following recommendations, reiterating several previous proposals from 2011, and invites the Commission to take them on board when revising its impact assessment guidelines next year:

- Merge the Competitiveness Proofing and the operational guidance on micro-enterprises into the SME test to improve understanding and facilitate enforcement of the guidelines.

Better integrate these rules in the overall Impact Assessment Guidelines as the SME test currently features in the “Annex to the Guidelines” and is easily overlooked.

- Provide a common methodology to conduct the SME test consisting of a list of compulsory minimum standards to be met for each step complemented with a list of possible elements to consider depending on the issue.
- Invest more time and resources within the Commission services to conducting each step of the SME test thoroughly and to implementing the recommendations made by the Impact Assessment Board thereafter. This would ensure higher quality standards.
- Make it compulsory to present clear evidence that the SME test was conducted:
 - References to the SME test should be clearly made in the various sections of the IA. For instance, the section “problem definition” should show that SMEs are (or are not) affected by the identified problem and/or do (or do not) influence the problems’ drivers. The section “objectives” should explain if they are (or not) relevant for SMEs.
 - Include a standardised summary sheet in the IA report to facilitate quick identification of the key results of the SME test with references to where the information can be found for each step. Reasons for not conducting a full SME test should be clearly stipulated and justified.

Good practices:

- (1) *The IA report on Consumer product safety/market surveillance of products (2013) includes an annex with two separate sections on the SME test and on the test for micro-enterprises.*
 - (2) *The IA report on Electronic identification and trust services for electronic transactions in the internal market (2012) contains a dedicated annex to the SME test (i.e. annex 5), which summarizes all 4 steps that are stipulated by the test. This gives a rapid overview for the reader and shows that SMEs specific concerns were taken into account).*
- Present the results of the SME test in the IA executive summary. In case the SME test is weak (e.g. in terms of quantification), the IA report should specify the reasons (e.g. lack of data, low participation in consultation, etc...).
 - Ensure enforcement by strengthening supervision
 - The function of the IA support units in each DG should be enhanced, notably with regard to the screening of the draft IAs before their submission to the Impact Assessment Board.

- o No proposal should be allowed to proceed to inter-service consultation unless the impact assessment is approved by the Impact Assessment Board.
- o The opinion issued by the Impact Assessment Board should systematically include an appraisal of the SME test; the application and robustness of which must be a fundamental requirement for the approval of the IA. Failing to provide evidence of its conduct and to analyse thoroughly the impact on SMEs should automatically lead to the rejection of the draft IA and oblige the lead DG to improve it. The procedure for the corresponding legislative dossier should then be halted and additional time granted to the Commission services to carry out a proper SME test. Where the test shows that costs to SMEs exceed the intended benefits and that the Commission nonetheless decides to proceed with the proposal, derogations or exemptions for SMEs should be introduced.
- o More resources within DG Enterprise should be allocated to the monitoring of the SME test, which is currently done by one person full time. This is very poor considering that the SME test is a priority of the Commission.
- o DG Enterprise's Director for SMEs and Entrepreneurship should robustly challenge any legislative proposal if the SME test is not conducted properly in the IA.

Although it has to be recognised that the Impact Assessment Board has increased its comments on the assessment of impacts on SMEs, EUROCHAMBRES maintains previously expressed reservations about its capacity to provide neutral opinions on draft IAs given its set up – i.e. it is a Commission body and its members are high level officials appointed by the Commission President. EUROCHAMBRES therefore supports the **establishment of a truly independent Impact Assessment Board**, supported by the three EU institutions to guarantee external scrutiny of IAs from across the institutions and staffed with independent experts. This opinion is shared by the European Parliament¹¹, the European Economic and Social Committee¹², several national regulatory bodies and others.

It is encouraging to observe that the European Parliament and the Council increase their scrutiny concerning the Commission IAs. Since 2012, the European Parliament has conducted its own appraisals of some Commission IAs, which contain a specific section about the SME test. The Council is currently conducting three pilot projects on legislative proposals to assess the effectiveness of the Council procedures regarding IAs. The pooling

¹¹ European Parliament resolution of 8 June 2011 on guaranteeing independent impact assessments (2010/2016(INI)).

¹² Opinion of the European Economic and Social Committee on the Commission Communication « Smart Regulation – Responding to the needs of SMEs » (INT/692)

in resources from the three EU institutions is both sensible and necessary given the ongoing desire to increase administrative efficiency and the need to better explain the benefits and justify the costs of legislation to businesses and citizens. In the absence of a truly independent Impact Assessment Board, both the European Parliament and Council should play a reinforced role in scrutinising the application of the SME test by the Commission.

2. Assessment step by step

2.1. SME Test Benchmark results

Directorate General	Proposal	(1) Consultation with SMEs representatives		(2) Preliminary assessment of businesses likely to be affected		(3) Measurement of the impact on SMEs		(4) Assessment of alternative options and mitigating measures	Micro-enterprises (incl./excl.) as of 2012	Total score	
		Step conducted	Quality level*	Step conducted	Quality level*	Step conducted	Quality level*			Score out of 12	% Score
DG SANCO	Consumer product safety/ market surveillance of products	Yes	2	Yes	3	Yes	3	No	Included	8	67%
DG MARKT	Public procurement	Yes	1	Yes	3	Yes	2	No	<i>Not applicable</i>	6	50%
DG CONNECT	Electronic identification and trust services for electronic transactions in the internal market	Yes	3	Yes	2	Yes	1	No	No information	6	50%
DG MARKT	E-invoicing in public procurement	Yes	1	Yes	2	Yes	2	No	Included	5	42%
DG JUST	Protection of individuals with regard to the processing of personal data and on free movement of such data	Yes	1	Yes	2	Yes	2	Yes	Excluded	5	42%
DG JUST	Insolvency proceedings	Yes	2	Yes	1	Yes	1	No	No information	4	33%
DG MARKT	Disclosure of non-financial and diversity information by certain large companies and groups	Yes	2	Yes	1	Yes	1	No	No information	4	33%
DG SANCO	Alternative dispute resolution for consumer disputes	Yes	1	Yes	1	Yes	1	No	<i>Not applicable</i>	3	25%
DG CONNECT	Re-use of public sector information	No	0	Yes	1	Yes	1	No	<i>Not applicable</i>	2	17%
DG MARKT/TR ADE	Access of third-country goods and services to the Union's internal market in public procurement...	No	0	No	0	Yes	1	No	No information	2	8%
DG JUST	Improving the gender balance among non-executive directors of companies listed on stock exchanges and related measures	No	0	Yes	1	No	0	Yes	Excluded	1	8%
DG MARKT	European Venture Capital Funds	No	0	No	0	Yes	1	No	<i>Not applicable</i>	1	8%
DG MARKT	European Social Entrepreneurship Funds	No	0	No	0	Yes	1	No	<i>Not applicable</i>	1	8%
DG MARKT	Recognition of professional qualifications	No	0	No	0	No	0	No	<i>Not applicable</i>	0	0%

2.2. Step 1: Consultation with SME representatives

Findings

The SME Test Benchmark reveals that stakeholders were consulted on a general level for all IA reports with specific consultations with SME representatives taking place in 57% of the cases - i.e. 8 out of 14 reports used SME targeted consultation methods¹³ and 6 IAs did not consult SME specifically using online public consultations, conferences and public hearings. The situation has not improved compared to 2011, where the consultation of SMEs was conducted in half of the cases too. Moreover, the quality of the consultation of SMEs is disappointing. Only one IA report employed 3 different SME targeted consultation tools, while in 29% of the cases, IAs used only one SME specific communication tool. Overall, the quality is poor and even non-existent for 71% of the IAs analysed, showing that the involvement of SMEs in the process is often superficial.

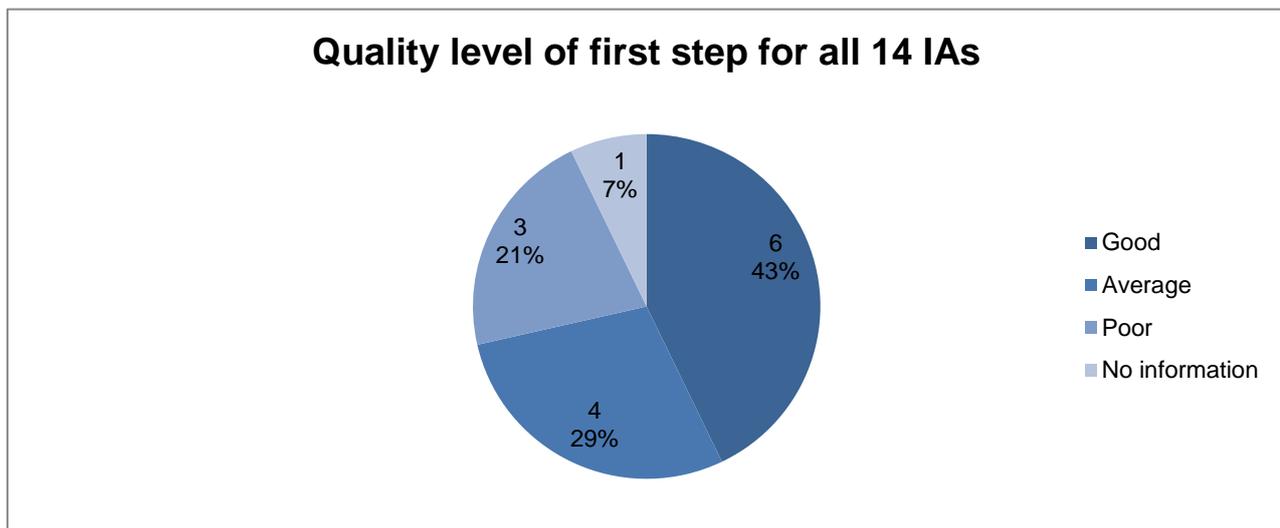
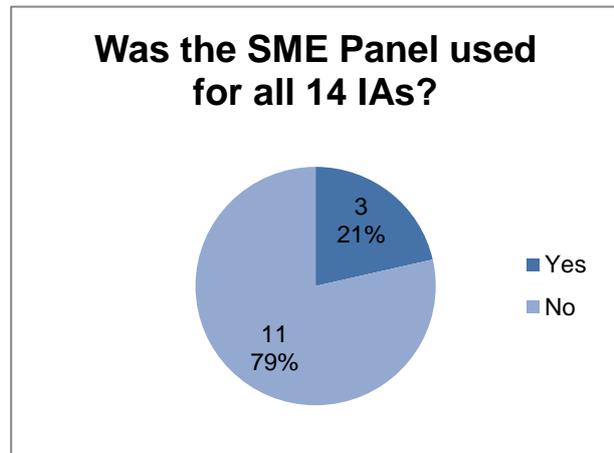
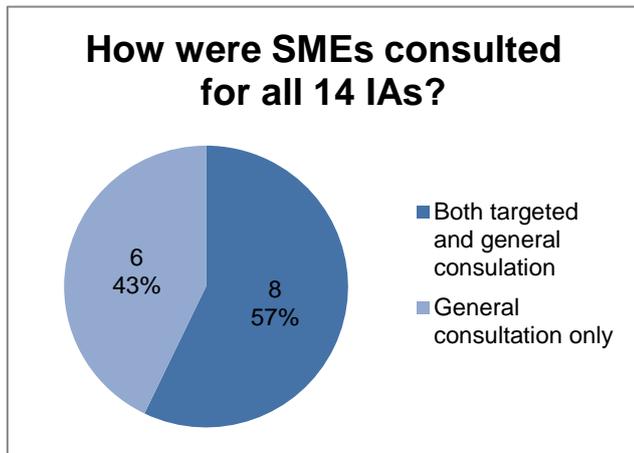
In line with the 2011 SME Test Benchmark, the most common tools used by the Commission services to reach SME organisations are online public consultations, conferences and public hearings. Regarding the SME targeted tools used, it is interesting to note that the SME Panel was used in three cases and covered a limited number of companies ranging from 1251 for the IA report on Electronic identification and trust services for electronic transactions in the internal market to 383 for the IA report on Protection of individuals with regard to the processing of personal data and on the free movement of such data. In two of these three cases, the SME Panel was used to receive both technical and general input from SMEs. In one case, the panel served to receive only general input from SMEs. Meetings with business organisations are mentioned in some IA reports, but no reference to the outcomes of the discussion is provided.

Information on consultation is often scattered in various sections of the IAs, while it should be gathered and presented under a single section of the IA report (i.e. Section 1: procedural issues and consultation of interested parties), as recommended in the IA guidelines. Relevant information is sometimes found in the annexes, but the referencing is weak. The lack of a systematic presentation of stakeholder opinions raises the issue of transparency.

The minimum consultation period increased from 8 to 12 weeks as of 2012 in response to a request from various stakeholders, including EUROCHAMBRES. Two IA reports from 2012 in the SME Test Benchmark did not respect this new requirement, namely the IA on Electronic identification and trust services for electronic transactions in the internal market and on Access of third-country goods and

¹³ Examples of SME targeted consultation tools include the European Business Test Panel, Enterprise Europe Network, meetings between the SME Envoy team and SME organisations, etc....

services to the Union's internal market in public procurement. In some IA reports, no explicit dates are provided about the timeframe of the consultation period. Such practices are again not transparent.



Observations

The DGs' efforts in collecting and reflecting the views of SMEs in the IAs are far from being systematic and sufficient. Both direct consultations (e.g. through the SME panel) and indirect consultations through SME representative organisations are too often sporadic. Stakeholder consultation seems to rely in essence on general consultation methods such as public consultations that cannot sufficiently guarantee the input from the SME community. The improvement noticed in the use of SME targeted tools seems to result more from a need to tick a box in the SME test rather than a genuine intention to gather input. Furthermore, the minimum consultation period of 12 weeks is in some cases not observed.

Recommendations

As consultation is the basis for producing high quality and evidence-based policy proposals, the Commission must ensure that clear mechanisms are put in place to safeguard the representation of SMEs. The recent revision of the Commission consultation policy¹⁴ should help in this respect. EUROCHAMBRES nevertheless stresses the following key recommendations:

- Consult earlier and properly SMEs and their representatives with the objective of gathering quality input and not simply to comply with the SME test requirement.
- Better take into account the opinion of the SMEs expressed through their representative organisations. As such, SME representative organisations should be approached on a more frequent basis before drafting IAs.
- Ensure that SMEs are directly consulted for technical legislation drafts using a proactive and dynamic approach to involve them. Tools such as field trips, interviews, national workshops and SME Panels have proved to be efficient to discuss specific questions and collect problems.
- Improve the presentation of stakeholder contributions in the IA report notably by providing a list of stakeholders consulted per tool used and stating the consultation period, which is often missing. The difficulties encountered in consulting SMEs (e.g. low attendance at workshops, low number of replies received, etc...) should also be stated in the IA report.
- Increase the Impact Assessment Board's scrutiny of the way that SMEs' views are collected (directly or indirectly contacted) and reflected in the IA report.

Good practice: the IA report on Consumer product safety/market surveillance of products (2013) includes a specific annex on SMEs with a table detailing their consultation (i.e. number of SMEs reached, communication channel used and responses received). Such an approach ensures greater transparency and increases at the same time the likelihood that the SME test is conducted in a more thorough and systematic manner.

- Apply a stricter approach about the enforcement of the general principles and minimum standards, notably regarding the minimum consultation period (i.e. 12 weeks).
- DG Enterprise should attach greater importance to SME contributions in the decision-making process and systematically discuss at the Directors weekly meetings the on-going consultations and IAs.

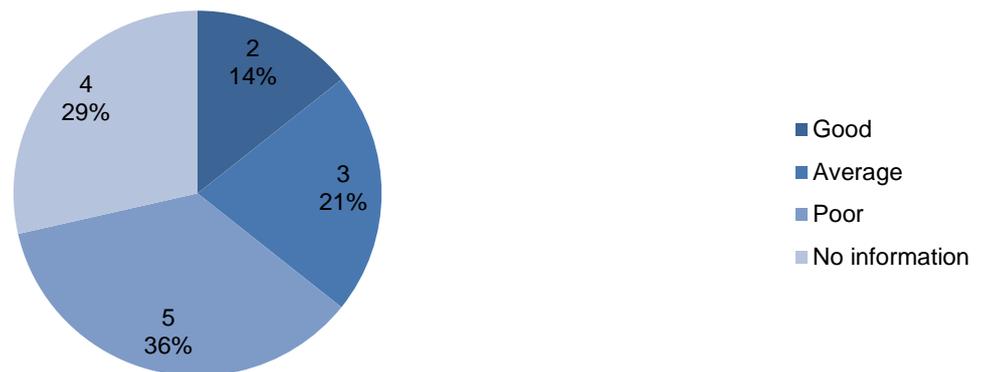
¹⁴ Staff Working Document "Review of the Commission Consultation Policy", SWD(2012)422

2.3. Step 2: Preliminary assessment of businesses likely to be affected

Findings

The SME Test Benchmark shows that 71% of the IA reports analysed (i.e. 10 out of the 14 IAs) conducted a preliminary assessment of the businesses likely to be affected. However, a thorough analysis is done in only two cases (i.e. Consumer product safety/market surveillance and Public procurement) and the level of quality of the other IA reports is rather low with 5 IAs ranking as “poor” and 3 IAs as “average”. The analysis is largely superficial and rather descriptive with quantification taking place in only a third of the cases (i.e. 5 IAs). The scale and nature of the problems listed usually refer to the wide business community with no real evaluation of how SMEs specifically are affected. There is no information about whether this step of the SME test has been conducted in four IA reports. No progress can be observed for this step since the first SME Test Benchmark in 2011.

Quality level of second step for all 14 IAs



Observations

It is good practice that most IA reports in the SME Test Benchmark indicate that SMEs are affected by the identified problem. Yet, the information presented is brief, with little effort made to differentiate between the effects on SMEs as compared to large companies or between the different kinds of SMEs (micro, small or medium). This lack of granularity runs counter to the requirement to justify the inclusion or exclusion of micro-enterprises from the scope of the initiative since 2012.

Since this preliminary assessment constitutes a precondition for setting objectives and identifying options to address the policy objective, it is worrying that the majority of IA reports analysed do not adequately describe and provide evidence for this important step of the SME test. It is, however, not surprising

considering the unsatisfactory consultation of SMEs highlighted in the previous chapter. Without proper consultation, there is a lack of relevant input to analyse the impact on businesses likely to be affected.

Recommendations

- Make the preliminary assessment of businesses likely to be affected (i.e. large, medium, small or micro-enterprises) a mandatory, integral part of the definition of the problem in the Commission IA guidelines. The results should be presented in the IA report together with the reasons for conducting or not a full SME test.
- Corroborate qualitative analysis with quantitative elements (e.g. SME share, proportion of employment concerned, etc.) when possible and proportionate.
- In addition to stakeholder consultation, draw on external studies to describe and provide evidence of the nature and scale of the problem including the actors, sectors and social groups primarily affected.

Good practice: the IA report on Electronic identification and trust services for electronic transactions in the internal market (2012) draws heavily on external studies conducted for example by Formit or Eurostat.

It goes without saying that the robustness of this step inevitably depends on the quality of step 1 of the SME test. While external studies can supplement the assessment, they cannot and should not replace stakeholder input through proper consultation procedures.

2.4. Step 3: Measurement of impact on SMEs

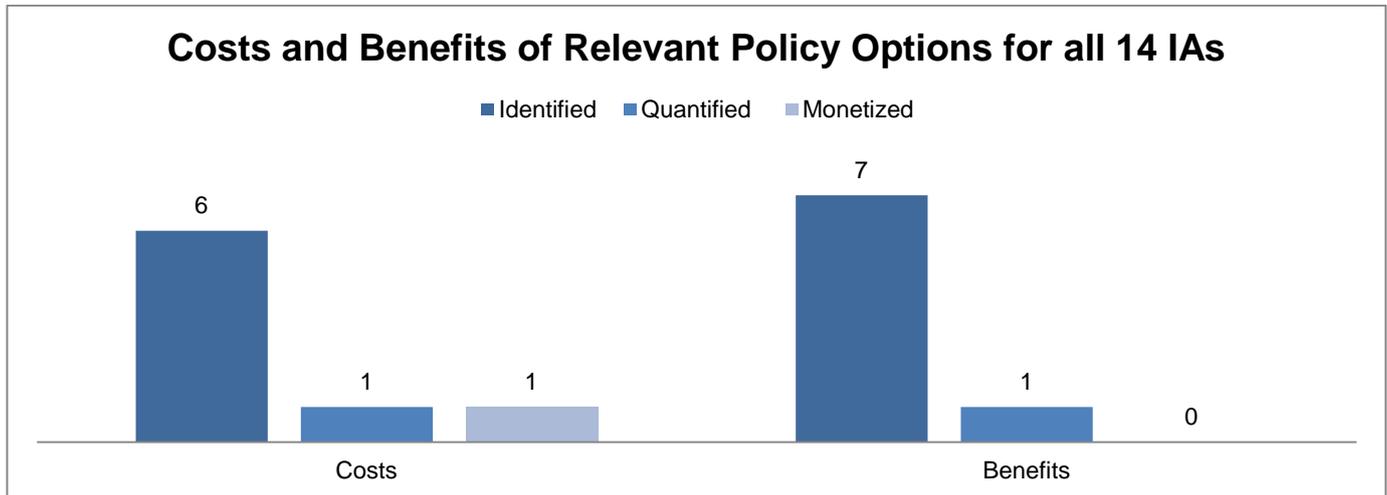
Findings

Almost three-quarters of the IA reports analysed do not include a thorough cost-benefit analysis for SMEs. The assessment is poor for 8 IA reports and 2 entirely lack any information about the impact of the relevant policy options on SMEs. The quality of this step is good for one IA report (i.e. Consumer product safety/market surveillance) and average for 3 IAs (i.e. Public procurement, E-invoicing in public procurement and General data protection).

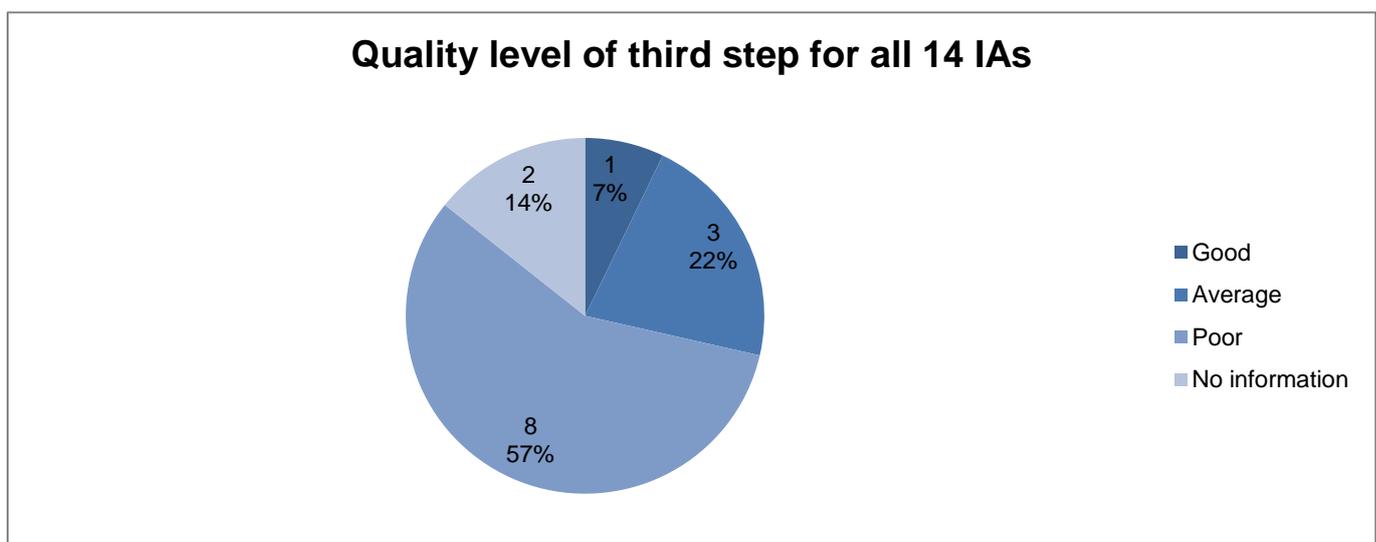
Out of the 12 IA reports which evaluate impacts, 67% do not identify the costs for SMEs deriving from the most relevant policy options (8 IA reports) and 58% do not specify the benefits for SMEs stemming from these policy options (7 IA reports). **The costs and benefits are almost never quantified and monetized.** Only one IA report on Alternative dispute resolution for consumer disputes (2011) quantifies and monetizes all the costs and one IA report on European Social Entrepreneurship Funds (2011)

quantifies (but not monetizes) the benefits. Most IA reports provide a rather qualitative analysis of the impacts of the relevant policy options on SMEs.

Reasons for not providing quantified and monetized figures are provided in two thirds of the cases. The unavailability of data is the main problem that precludes estimations in quantitative and monetary terms.



A related problem to the lack of quantification and monetization is that half of the IAs do not compare the costs and impact for SMEs with those of large enterprises and fail to refer to the three different SME subgroups (micro, small and medium enterprises). This in line with the findings under step 2, which already revealed that IAs frequently fail to differentiate between businesses of different sizes. Furthermore, the impact for SMEs is often more detailed for the preferred policy options than for the other alternatives.



Observations

The SME Test Benchmark shows that the analysis of the impact on SMEs is far from being thorough and systematic. In fact, the analysis remains largely superficial and relies to a great extent on qualitative information, while quantification is key when the magnitude of the impact on SMEs is to be documented. In line with the observations from the 2011 SME Test Benchmark, the lack of information on SMEs, mainly quantitative, does not allow for sophisticated assessment of the impact and is the most significant barrier to good quality and evidence-based evaluation. This is detrimental to the decision-making process, which as a consequence too often remains based on partial information, estimates and assumptions.

Recommendations

- Strengthen the conduct of the cost-benefit analysis for SMEs for all policy options (not only the preferred option) and ensure that quantification and monetization become the norm rather than the exception.
- State the reasons when quantification and/or monetization of the impact of the relevant policy options for SMEs is not possible.

Good practice: the IA report on E-invoicing in public procurement (2013) provides a clear and sound explanation of why quantification and monetisation was not feasible: “The exact amount of additional costs for firms generated by the need to adapt to multiple standards is difficult to quantify, since as mentioned above, service providers use various business models and pricing schemes, which typically depend on the volume of invoices generated by the supplier”.

- Use summary tables (in annex for example) that provide a comparison of policy options across all stakeholder groups, including SMEs. These tables are valuable to disentangle the effects of the different options between SMEs and large companies and give a swift overview to the reader.

Good practice: both the IA reports on Insolvency proceedings (2012) and on General data protection (2012) contain tables that distinguish the effects of various measures across companies of different sizes. It would be desirable if these tables were also better linked to the relevant policy options presented in the IA.

- Improve the availability and quality of data relating to SMEs:
 - The Commission and the member states should make a political commitment to improve the gathering of data on SMEs. The member states should be obliged to provide data which is already available or uncomplicated to produce. The Commission should develop and propose a uniform methodology for gathering data on SMEs from national sources without generating too high administrative efforts. Elements of this methodology could include the size of statistical samples, broad participation by SME associations and impartial and independent management of the data collection process.

- National level IAs on Commission draft proposals should be conducted as early as possible in the legislative cycle. By aligning national and European IA systems more effectively, the quality and availability of data relating to SMEs will improve, leading therefore to a more comprehensive and accurate appraisal of the consequences of EU action.

2.5. Step 4: Alternative options and mitigating measures

Findings

Mitigating measures are considered in less than 15% of the IA reports analysed (i.e. 2 out of 14 IAs). There is no indication that the policy measures envisaged would result in a disproportionate burden on SMEs that justify mitigating measures in the other IA reports.

Given the previous findings exposing an insufficient consultation of SMEs and a superficial analysis of the impacts on SMEs, questions arise as to whether the discussion on mitigating measures is in all cases based on valid (scientific) evidence.

It is important to note that mitigating measures may still be considered in the final proposal and that derogations or exemptions for SMEs are sometimes introduced by the Council or the European Parliament.

Observations & Recommendations

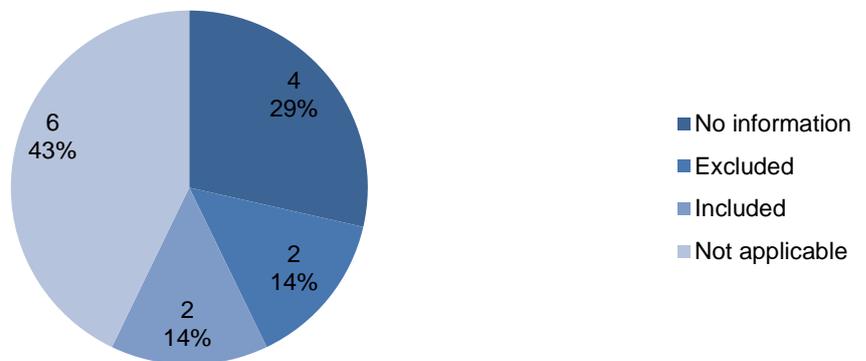
The SME Test Benchmark reveals that mitigating measures for SMEs were hardly used for the cases analysed. The terms of the present study do not allow a judgment on the appropriateness of these measures, which must be considered on a case-by-case basis as a result of the findings of the SME test. However, the non-proliferation of exemptions of micro-enterprises that was feared with the implementation of the “reversal of the burden of proof” is to be welcomed. Mitigating measures for micros and other SME sub-categories must be substantiated by a thoroughly conducted SME test. Omitting a thorough SME test and making systematic exemptions the norm rather than the exception would jeopardize evidence-based policy-making.

2.6. Micro-enterprise dimension

The discussion in the previous sections leads to the newly added objective of this SME Test Benchmark – i.e. to application of the new default principle of the Commission to exempt micro-businesses from all future EU legislation unless a strong case is made to include them. This rule has been applicable since 2012 and affects 8 IA reports in our SME Test Benchmark (see the table page 19).

The SME Test Benchmark reveals that half of the sample (i.e. 4 out of 8 IA reports) include a specific micro-enterprise dimension: 2 IA reports recommend excluding micro-enterprises from the application of the legislative act (i.e. General data protection and Improving gender balance among non-executive directors of companies listed on stock exchanges) and 2 IAs explicitly foresee to include micro-enterprises (i.e. Consumer product safety/market surveillance and E-invoicing in public procurement). For the remaining 4 IAs, there is simply no information on whether to include or exclude micro-enterprises. This makes it very difficult to draw any clear conclusion on how the reversal of the burden of proof is applied in practice. The Impact Assessment Board commented on the absence of justification as regards the inclusion or inclusion of micro-enterprises from the initiative for 2 IAs – i.e. the one on General data protection and the one on E-invoicing in public procurement.

Micro-enterprises inclusion/exclusion in the 14 IAs



The SME Test Benchmark shows that the new approach towards micro-enterprises, which should have been fully in force since 2012, is not fully applied. This fact leads to several observations:

- The difficulty to enforce the guidelines on micro-enterprises as it is the case for the SME test and the need for more scrutiny from the Impact Assessment Board.
- This new rule did not really contribute to a strengthening of the SME test as initially foreseen by the Commission since the quality of the SME test for the 4 IAs applying this requirement varies greatly.
- This additional requirement seems to make the IA guidelines more complex and thus more difficult to comply with.

EUROCHAMBRES recommends incorporating the operational guidance on micro-enterprises into the SME test in order to improve understanding and compliance giving full consideration to the three subgroups of SMEs (micro, small and medium).

EUROCHAMBRES trusts that this SME Test Benchmark and recommendations will aid the process to better integrate the concerns of small companies in EU policy-making.

Further information:

Ms. Typhaine Beaupérin, Tel +32 2 282 08 80, beauperin@eurochambres.eu

Mr. Frederik Lange, Tel +32 2 282 08 90, intern.ea@eurochambres.eu

Press contact:

Ms. Susete Sampaio, Tel +32 2 282 08 66, sampaio@eurochambres.eu

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ASSOCIATION OF EUROPEAN CHAMBERS OF COMMERCE AND INDUSTRY

Chamber House, Avenue des Arts, 19 A/D • B - 1000 Brussels • Belgium

• Tel +32 2 282 08 50 • Fax +32 2 230 00 38 • eurochambres@eurochambres.eu • www.eurochambres.eu