

EU member states reporting about their SME-test

*Summary and analyses on how they assess the impact
of their new regulations on SMEs*

Brussels, May 2015



Abstract

Introduction

During the meeting of the EU SME-Envoys network of November 2013, held during the EU SME Assembly in Vilnius, Belgium was asked **to hold a survey among member states to see to what extent EU member states are implementing the SME-test in their countries.** *SME-tests are meant to check a priori which impact new, intended regulations might have on SMEs. If there might emerge serious negative impacts, this could be a reason for states to adapt such a regulation or to take mitigating measures for certain categories of SMEs.*

The survey led to questions like: in what cases is a test performed, how are stakeholders consulted, what impacts are measured and how is this done? At the same time comparisons can be made to the answers of **a similar survey held in 2011, of which the main recommendations are summarised in chapter 3.** The results of the 2014 survey are extensively given and analysed in the rest of this report and below in this abstract.

Besides this, **chapter 1 and 2 in this report mention, respectively, the European Commission's recommendation on having SME-tests in the member states, and the SME-test applied by the European Commission itself to its own new regulations.**

Do member states have SME-tests in place and are they standardised across services?

83% of the countries that answered the 2014 questionnaire have some sort of SME-test in place, in addition to their regulatory impact assessment (RIA) or as a part of it. As can be seen in this report, most of the countries that already had an SME-test in 2011, had however changed parts of it in the years thereafter, related to the content or the application of the test. The few countries that do not have a SME-test or comparable test in place at the moment, are currently developing a specific SME-Test which should start to be applied in 2015 or 2016. **Thus, all responding countries apparently adhere to the principle of applying an SME-test** in cases when they think this might be useful. This is in line with what the responding national Chambers of Commerce and Industry who are member of Eurochambres, would like.

In 2014, for 70% of all countries **the design of the SME-test was to a large extent standardized across services:** 40% of the responding countries had a fully standardised SME-test across services, another 30% had non-mandatory centralised templates and guidelines. In 2011, the degree of standardisation was a bit less among the member states.

In 2014, in **85% of all countries each government service is fully individually responsible for carrying out the SME-test.** About half of these however could get help from a collective help desk for this purpose. Only 10% of the responding countries were applying a centralised SME-test, which no country had reported in 2011.

In what cases are states carrying out their SME-test?

In 2014, 35% of the countries reported that they carry out an SME-test “always” when businesses were likely to be affected. In comparison to 2011, for some countries there seems to be a tendency to apply an SME-test nowadays less often. This might be because the test is not obligatory for services to be applied, but it might also be, because they only want to apply the test, as some countries indicated, in cases when business seems potentially significantly affected by the proposed regulation. For some other countries the tendency appears to be reverse. **Apparently, among member states there are different opinions on how often SME-tests should be applied in certain cases.**

Thus, on one side there are countries that in general *prefer to apply an SME-test to almost all new regulations as a kind of standard procedure*. This in order to be sure that the possible impacts on SMEs are always checked. This might carry the risk that these countries would not have enough resources to apply the test deeply and thoroughly enough because of the limited resources being spread among the many tests performed.

On the other side there are countries that might *prefer to apply their SME-test only in cases when they think it is apparent that the new regulation might very seriously affect SMEs*. Once legislation is selected for being assessed by the SME-test, they then can use their limited resources more intensely for every SME-test applied. For these countries it is crucial that they perform this first check of suitability of the drafted legislation very precisely, in order not to miss out important consequences for the SMEs. Most national Chambers of Commerce are clearly in favour of applying the SME-test often, and mostly on an obligatory basis, to be sure that the interests of the SMEs are well taken into account. There have, however, also been remarks that for certain countries (at least two) applying the SME-test is more of a tick-the-box exercise than an in-depth analysis of the impact for SMEs.

Consultations of stakeholders in de SME-test

In 2014, 45% of all countries answered that they “always” consult SME stakeholders when an SME-test was applied. These were almost the same countries as in 2011. For the rest, most countries (35%) indicated that they consult on an ad-hoc basis. In certain countries (e.g. Austria, Denmark, Hungary and Latvia) the consultation of stakeholders is obligatory which they appreciate as a good practice, both by these states and by their Chambers of Commerce.

Almost all responding states mentioned the use of round tables and open public consultations. More than half of the states indicated also to use test panels of entrepreneurs and direct contacts with individual SMEs.

Related to the reactions on consultation from the national member associations of Eurochambres, the degree of satisfaction increased generally the more SMEs were consulted in a country. Some Chambres also indicated that in their country the consultation should be held much further in advance of the final drafting of the legislation, in order to leave enough time for the consultation process and scope for policy-makers to adapt the text. In countries, where early consultations take place, Chambers highlighted this as a good practice.

It can be concluded that both states and Chambers of Commerce are generally finding consultations useful for getting practical feedback on the proposed legislation. This can be very helpful for adapting the final draft of the legislation (regarding content, procedures or readability of the text), if necessary. It also can deepen the insight on what kind of possible mitigating measures could be applied, if useful, for

certain categories of SMEs. Sometimes it was mentioned that, to be able to bear full fruit, it is important that consultations are already started at quite an early phase of the drafting of the new legislation.

Analysing the different sorts of impacts by the SME-test

Almost all responding countries mentioned to analyse, more or less frequently, compliance costs and savings for SMEs (financial, substantive or administrative costs). About a half also analyses impacts on competitiveness and access to markets. About one third of the countries also analyses innovation and R&D, access to finance, social and environmental aspects. Some countries reported that they do analyse more aspects than three years before, or that they have improved the analysis.

Within all the categories of impact assessment there are many differences in what and how the member states are exactly investigating and how they test this. Sometimes a lack especially of quantitative analysis is mentioned, often due to the difficulty to get the right data and to summarise them well. Sometimes also the lack of certain other aspects are mentioned (e.g. on innovation and R&D, on access to markets, and on access to finance).

This probably does not only apply to the specific SME-tests carried out, but also to the general regulatory impact assessments, which partly also addresses the impacts of the proposed legislation on SMEs.

Mitigating measures for SMEs

On possible mitigating measures, about half of all responding countries (more than in 2011) mentioned that they sometimes use “complete or partial size-related exemptions for SMEs”. Besides this, about half of all countries used “simplified reporting obligations for SMEs”. Also “specific information campaigns or user guides” have often been applied. Representatives from SMEs are sometimes invited to propose certain mitigating measures, although it remains to the governments to decide on certain measures, if any.

National Chambers of Commerce and Industry are generally moderately or very satisfied about the application of mitigating measures, indicating that they are applied when considered important, but that such measures could be applied more frequently.

How to guarantee the efficiency of the SME-Test?

Answering this question, many member states indicated that **having clear procedures, guidelines, templates and manuals concerning the test** can make its application more efficient. Some member states also indicated that they use the SME-test efficiently as they only apply the test in the cases when serious impacts on SMEs would be expected (as mentioned before).

Central helpdesks for applying the SME-test or assessment of its quality by a central body are generally considered to be helpful by the states using them. At the same time it is mentioned that for such centralised bodies it is often difficult to precisely understand the proposed legislation, especially when it

is complex with lots of references to already existing regulations. Intensifying the consultation between the service drafting the text and the help desk might address this challenge to some extent.

Many member states mention also that administrative constraints should be addressed to improve the performance of the SME-test: **the difficulty to get adequate and precise data and the lack of quality when applying the SME-test, e.g. because of the lack of having enough experienced and committed officials available.** These obstacles were already noted in the conclusions of the 2011 survey. Besides this, some states mention also that they experience **severe difficulties related to cooperation between the different agencies** (and other institutions) in the country who are involved in applying the SME-test.

Checking the quality of the SME-tests

In 2014, **80 % of the countries indicated to perform a quality control** for checking the quality of the SME tests and/or monitored if these tests were carried out in line with the existing guidelines. Roughly **two thirds of these countries checked the quality of their test by the service that was performing the SME-test, the other third of the countries had this checked by a body independent from the service involved with the test.** In the cases where services themselves were checking how they had performed the SME-test, it is not clear to what extend persons different from those who drafted the legislation and applied the test have been involved.

As quite some countries have indicated to often experience problems with getting the right data or having enough qualified officials to help performing the test, this might possibly indicate that **a quality check of the applied SME-test and guidelines would preferably be done by a body independent from the officers having performed the test.**

Does the SME-test have a policy impact and a real added value for SMEs in their country?

In 2014 **75% of the responding countries perceived the SME-test to have had a policy impact and a real added value for SMEs** in their country. The rest of the countries responded that they did not know if the test had had a policy impact and value added for their SMEs or not.

The national Chambers of Commerce in the member states rated the impact of the conducted SME-tests as poor, fair or good. **When rated as poor, this mostly applied to the perception that the SME-test was not carried out in a substantive manner. In cases of the rating "good", this was in countries where it was felt that the government consulted the stakeholders systematically and where the results of these consultations were on the whole taken into account in the final legislation** (Austria, Germany and Lithuania).

Some national Chambres of Commerce mentioned that even if the SME-test had been well conducted, the results were not always taken into consideration by the service drafting the final legislation. **This might mean that explicit political support for applying the SME-test and using its results might be crucial in certain cases to make the use of the SME-test worthwhile.**

Good practices

10 countries mentioned **the stakeholder consultation procedure as a good practice**. They then mostly mention the regular consultation of representatives of SMEs and other professional organisations. Often this is ensured through regular consultations with a some SME advisory group and/or by open consultation performed electronically. Round tables and direct consultation of SMEs are also mentioned as good practice.

2 countries mentioned the evaluation of the SME-test as they had **independent Councils checking the impact assessment on business of all legislation**; in Sweden and in Germany this process delivers highly respected recommendations to the government if to accept or to reject the legislative text.

3 countries mentioned as good practice **the support structure and the accompanying materials for the test**. Examples:

- Austria applies an **IT tool for outcome oriented impact assessment including a comprehensive manual and training courses**. It is used to calculate the impact dimensions "Administrative costs" and "Enterprises". After a guided process this IT tool automatically produces a document that has to be annexed to draft laws in e-law.

- France has **centralised requests for applying the SME-test (with a special internet page, a methodological guide and other uniform tools and methods for launching such a test)**. Ministries can enter requests on a voluntary basis and then later on decide for themselves how to include the responses to the test in their legislation. The SME-test is also carried out on a voluntary basis by certain regions in France which perform the test with 15 different kinds of SMEs in their region.

- Germany mentioned **having specific guidelines to assess the compliance costs**.

Some countries mentioned **the methodology chosen to measure the analysed** impacts in the context of the SME test. In Denmark Standard Cost Model (SCM) measurements are carried out before consultation to consider alternative options for regulation.

Further remarks and conclusions

In addition to what has been mentioned above, the following comments and conclusions can be made:

1) As content and procedures of the SME-tests seem often to be very different among countries, there might be a lot of scope and use to share on practices on the content of the SME-test among the member states. One could also wonder if the European Commission could help with developing and using databases with verified data, as well as developing an impact assessment system that could be used in a uniform way by member states.

2) The design of the SME-test is to a large extent standardised across services *within* most member states. The question remaining is if it would be useful to have more standardisation, sooner or later, *across* member states. If so, guidelines, more or less specific, regarding the SME-test, agreed on at the EU-level, would be desirable.

3) If, at a certain moment, the application of an SME-test would be a requirement for being able to make use of EU support, the question arises to what topics and to which depth the SME-test should be applied, in order to guarantee that all member states would be treated equally.

As can be seen throughout this report, the policy impact of SME-tests depends on a chain of related elements, for example: is the proposed legislation suitable for being checked by the test, does the test assess the right aspects to a sufficient degree, are the underlying data and investigations of good quality (including stakeholder consultations) and are the results of the test well taken into account in the final draft of the legislation?

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1 Introduction to this report

1.1 The European Commission's recommendation on SME-tests in the member states

The SME-test is a procedure consisting in the assessment of the effects of new legislative and other proposals on small and medium sized enterprises (SMEs)¹. The SME test is designed to help policy makers to take into account the needs of SMEs and if necessary to adjust their policies according to these needs.

Some years back, political interest in the SME test had already developed at European level. The Communication "Small Business Act" (SBA) of the European Commission, whose aim it was to address the needs of SMEs through the "Think Small First" principle, asked the Member States in June 2008, to "rigorously assess the impact of forthcoming legislative and administrative initiatives on SMEs ("SME test") and take relevant results into account when designing proposals".

The European Commission repeated this request in her revised SBA of February 2011 and specified the need, wherever this was deemed necessary, to take into account the size differences between enterprises. The request of the European Commission was confirmed time and again by the Competitiveness Council of the EU. Whereas in 2008 the SME test was only mentioned in a Communication of the Commission, without obligatory character towards the Member States, the conclusions of the Competitiveness Council of May 2011 invited the member states "to apply rigorously the SME test. It appears that the majority of EU Member States have followed the European Council's invitation to implement the SME test.

1.2 Research on the SME-test to get better insights and to share good practices

As the recommendation to apply an SME-test had not been very specific on how member states would eventually design such a test, it is useful to see how this is done in the different member states. The survey results and the analyses given in this report aim indeed at getting more insights on this, in order to share practices and to help states to develop further steps if they would feel the use of this.

1.3 The contents of this report

The main topic of this report is about how the EU member states are currently carrying out their SME-test. This is reported in **chapters 5 and 6**. These are dealing, respectively, with the methodological aspects of the research done, the responses of the member states and the good practices reported.

The preceding chapters deal with the SME-test as applied by the European Commission itself (**chapter 2**) and a summary of an earlier report in 2011, covering the earlier implementation of SME-tests in the member states (**chapter 3**).

¹ The SME test of the European Commission:
http://ec.europa.eu/growth/smes/business-friendly-environment/small-business-act/sme-test/index_en.htm.

Chapter 7 contains main conclusions and final remarks related to the topics discussed in the report.

It is also worth noting the annexes that give comprehensive summaries of the answers of the member states and the national member associations of EUROCHAMBRES, as well as the full texts of all these answers.

2 The SME-test at the European Commission

2.1 The Commission Impact Assessment Guidelines (January 2009)

In the SBA the European Commission committed itself to “rigorously assess the impact of forthcoming legislative and administrative initiatives on SMEs (“SME test”) and take relevant results into account when designing proposals “.

Since January 2009 the European Commission implemented the so-called SME-test to assess if new EU legislation would have an impact on SMEs. The SME Test is part of the Commission’s regulatory impact assessment.² **Impact assessments are necessary for the most far stretching legislative initiatives of the Commission.** The lead service for the proposal is responsible for preparing the impact assessment. The European Commission is reviewing its impact assessment at the moment. Methodologically the SME-test would not be much changed.

2.2 The SME-test in the impact assessment

For all directorates it is obligatory to perform the SME-test for all legislative initiatives requiring an impact assessment. Possible implications for SMEs should be taken into consideration during every step of the impact assessment.

Step 0: SME stakeholders should be consulted directly after the beginning of the drafting of the new legislation and throughout all the phases of the impact assessment. Consultation is obligatory.

Step 1: Problem definition. Identify whether SMEs are among the affected population. The characteristics of the business/sector(s) likely to be affected should be identified. Examples of indicators that can be taken into consideration: Number of businesses and their size (micro, small, medium or large enterprises); proportion of the employment concerned in the different categories of enterprises affected,

If the preliminary assessment leads to the conclusion that SMEs are amongst the affected parties, the initial assumption should be that costs fall disproportionately on small businesses and one should consider the importance of SMEs when defining the objectives and developing the policy options in the impact assessment.

Step 2: Define the objectives.

Step 3: Develop policy options.

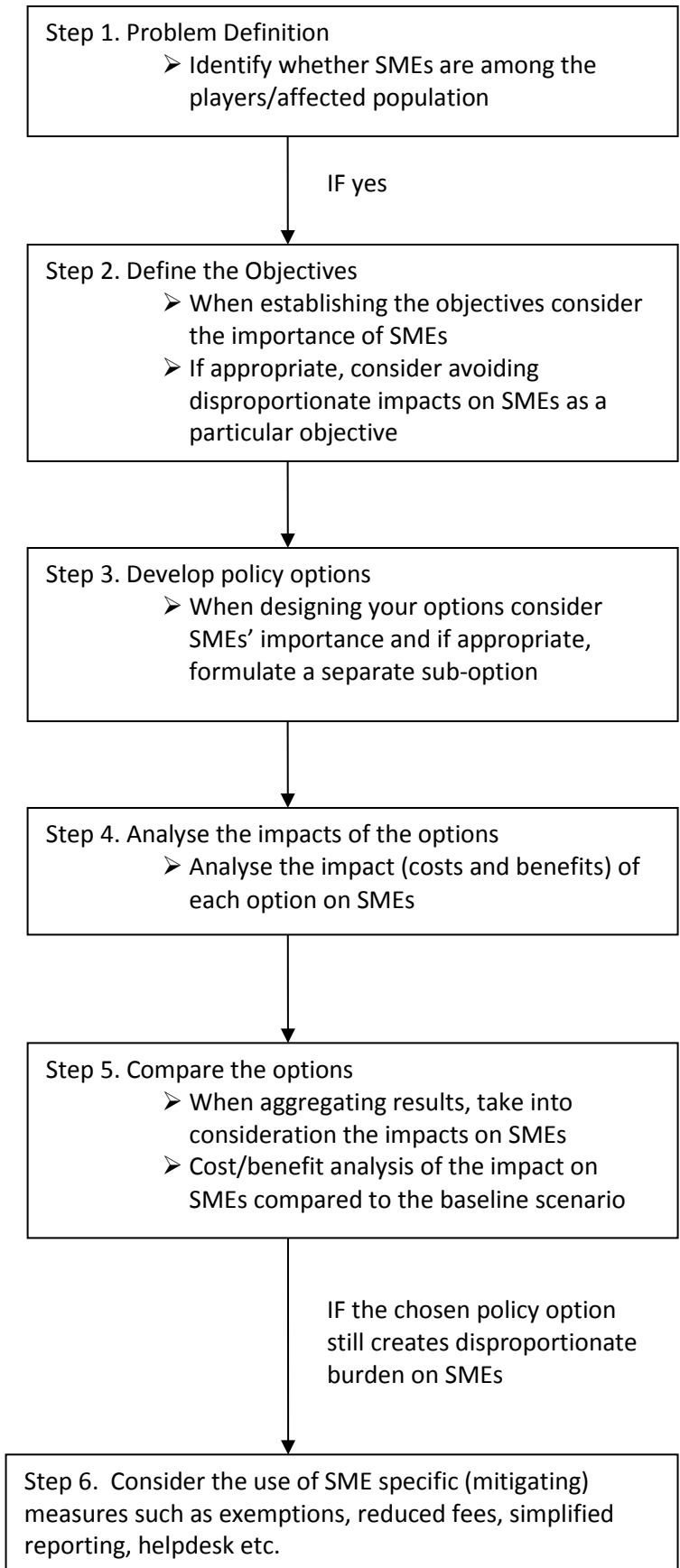
² http://ec.europa.eu/smart-regulation/impact/key_docs/key_docs_en.htm

Step 4: Analyse the impacts of the options. The distribution of the potential costs and benefits of the proposals (policy options) over the businesses size, differentiating between micro, small, medium and large enterprises, should be analysed qualitatively and, if possible, quantitatively.

Step 5: Compare the options. If the chosen policy option still creates disproportionate burden on SME's, then implement step 6.

Step 6: Consider the use of SME specific (mitigating) measures such as exemptions, reduced fees, simplified reporting, helpdesk etc.

Consultation
of
SME
representatives



2.3 The dimension micro-enterprises in de SME-test³

In its November 2011 report on "Minimizing regulatory burden for SMEs, 'Adapting EU regulation to the needs of micro-enterprises' [COM(2011) 803 final], the Commission has strengthened its commitment to ensure proportionality in the EU approach to regulation, in particular with regard to micro-enterprises, i.e. SMEs with less than 10 employees and a turnover or balance sheet total of equal to or less than €2 million. As of 2012, therefore:

- The Commission's preparation of all future legislative proposals is based on the premise that in particular micro-enterprises should a priori be excluded from the scope of the proposed legislation unless the necessity and proportionality of their being covered can be demonstrated.
- Where micro-enterprises must be covered by legislative proposals for public policy reasons, recourse to adapted solutions and lighter regimes will be sought concerning all forms of regulatory burden including, in particular regarding administrative requirements.
- The demonstration of the proportionality of covering micro-enterprises and the assessment of possible adapted solutions should be included in the Impact Assessment, thus adding a specific micro-enterprises dimension to the 'SME test'.

2.4 Support and advice for the SME-test

The different Directorate-Generals can take benefit of a 'personalised' support by the former unit F4 (Entrepreneurship and SMEs) for improving and deepening their particular SME-test.

The extent to which SMEs have been taken into consideration is being monitored by the Impact Assessment Board. The Impact Assessment Board is an independent body of policy-making departments, responsible for quality control of the impact assessments and quality support to services. It will ensure that the impacts on SMEs have been properly evaluated and may reject proposals in the case of missing or insufficient analysis. In principle, a positive opinion is needed from the Impact Assessment Board for an initiative to be tabled for adoption by the Commission. The European Commission is reviewing the way of working and the composition of the Impact Assessment Board. All members will be independent, working full-time for the board and will be chosen according to their expertise.

2.5 Assessment of the European Commission's SME-test by Eurochambres

In 2013, Eurochambres assessed the quality and implementation of the SME test by the Commission on 14 legislative dossiers covering the period October 2011 – June 2013. The selected legislative dossiers covered areas of particular importance to SMEs and, as such, according to Eurochambres, should have been subject to a thorough cost-benefit analysis for SMEs as part of the Impact Assessment.

³ Operational guidance on assessing impacts on micro-enterprises in Commission Impact Assessments http://ec.europa.eu/smart-regulation/impact/key_docs/key_docs_en.htm.

Summary of the assessment of Eurochambres:

- The overall quality of the SME tests analysed is disappointing: SME consultations are often based on general consultation methods (online public consultations, conferences and public hearings) and there is a lack of a systematic presentation of stakeholders' opinion;
- The preliminary assessment of businesses likely to be affected is largely superficial and rather descriptive with quantification taking place in only a third of the cases;
- With regard to the measurement of impact on SMEs, the quality of this step is good for one impact assessment report and average for 3 impact assessments. The unavailability of data is the main problem that precludes estimations in quantitative and monetary items;
- Mitigating measures are considered in 2 out of 14 impact assessments. There is no indication that the policy measures envisaged would result in a disproportionate burden on SMEs that justify mitigating measures in the other impact assessment reports. Half of impact assessment reports from 2013 included in the SME test assessment fail to specify whether or not micro-enterprises should be excluded from the scope of the proposed legislation;
- 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.

3 SME-test 2011 : Reminder of the main results and findings

3.1 Introduction

In July 2011 the report "*Barriers and Best Practices in SME Test Implementation*" commissioned by the European Parliament (ITRE) was published⁴; it is based on a survey of national administrations by the European Commission (DG Enterprise). It shows the status of implementation of the SME Test, identifies the challenges and the obstacles encountered, highlights a certain number of good practices and finally makes recommendations.

At that time an SME test or a similar device was already in place in 21 Member States out of 27 (78% of the sample). The report, however points out a strong disparity among the different tests. The Member States were using their own assessment framework which lead to major methodological differences and an uneven level of complexity. The report also highlights differences in quality control, since a minority of Member States were using an independent body to validate their SME tests. This is one of the reasons why they varied not only in terms of content but also in terms of consistency.

⁴ European Parliament (2011), "Barriers and best practices in SME test implementation":
<http://www.europarl.europa.eu/document/activities/cont/201111/20111122ATT32150/20111122ATT32150EN.pdf>

The study concluded that there was a strong case for moving the implementation of the SME test forward in the European Union.

3.2 Recommendation A) A better implementation of the SME test

Given the specific characteristics of each EU country, the ITRE report points out that it would be counter-productive to apply a standardised SME test for all Member States or even to impose the same guidelines. The great variety of SME tests used means that all Member States have to face specific pitfalls and obstacles.

3.3 Recommendation B) A compulsory SME test

The report also recommends to make the SME-test compulsory when it comes to legislation affecting SMEs. Such a step would not only help to maintain good quality standards regarding the assessment process but would also preserve its coherence. Assuming that the different services can choose freely whether they want to apply the SME test or not, officers who are not particularly aware of the specific needs of SMEs could, out of convenience, opt for an easy solution.

The SME test should also assess administrative burdens and the additional costs involved by means of quantitative indicators.

3.4 Recommendation C) A holistic approach

The SME test should not be restricted to a formal and procedural approach. A systemic approach would also contribute to perpetuating the "Think Small First" principle among the authors of legislation. On the one side, the report recommends the use of inspection mechanisms such as an independent supervisory authority having real influence on implementing services, and on the other, the setting up of ad hoc training courses and the creation of a help desk to provide the authors of legislation with adequate support.

3.5 The SME test in the centre of an integrated scheme

The SME test is part of a wider approach to impact assessment. Therefore, it should not be performed in an isolated manner but be consistent with other types of impact assessments such as gender, social and environmental assessments.

4 SME-test 2014: the survey, introduction and methodology

4.1 Introduction

During the 9th session of the EU SME-Envoys network of November 2013, the SME envoys decided to hold a reporting among the EU member states to take stock of the present state of implementation of the SME-test (or related practices) and the experiences so far. This so-called 2014 survey could help the member states to develop their SME-test further, if useful, and to see on the EU-level how further progress could be made. Belgium took charge of designing and sending out the survey to the member states after the Summer of 2014. During the first quarter of 2015 Belgium compiled and analysed the results, which is reflected in this report.

4.2 The 2014 survey compared to the 2011 survey on the SME-test in member states

To make results comparable, the set-up of the 2014 survey is comparable with a survey done in 2011. The 2011 survey was summarised and analysed in the report “Barriers and Best Practices in SME Test implementation”. The main recommendations in that report have been summarised in the chapter preceding this one. The comparison between the two surveys gives an indication about the main evolutions that were taking place during the period of three years in between.

Although it could be very useful, now or at a later stage, to have information on the full content of the SME-tests performed in the member states, neither the 2014 survey nor the survey of 2011 asked countries directly about this. For reasons of brevity, the questions were mainly related to how the test had been further developed during the preceding years, what impacts it measured and the specifics of some other modalities. It was also reported by the member states how, based on the experiences so far, the test could best be performed and used for drafting new regulations. If this would not supply enough information in certain cases, more information can be asked to the SME-envoy of the country concerned.

It might be useful to note that, as indicated in the report on the 2011 survey: *“a Member State is considered as having implemented an SME test if they answer ‘yes’ to one or both of the following questions from the EC’s questionnaire (see Appendix 1):*

- *“Has the SME test already been put in place in your country?” (question Q1)*
- *“Does the SME test form part of regulatory impact assessments carried out by the national administration in your country in view of new or modified legislation?” (question Q4)*

In this way Member States with a specific SME test in place and Member States, which consider SMEs as part of their general impact assessment, are considered having an SME test.”

This approach might have important consequences related to the comparative analysis of the results. For example, a member state that might have decided to apply a specific SME test, instead of having a general approach in 2011, could experience, according to the reporting, a much lower number of tests applied.

The responses of every country on question 1.1 of the survey of 2014 “Which changes have been applied to the design or the implementation of the SME Test in your country since the 2011 survey?”, can make it clear what possible changes might have been occurring in this regard.

4.3 Reactions of the Chambers of Commerce on the SME-test and the 2014 survey

Towards the end of 2014, Eurochambres proposed to get feedback from the SME community concerning the SME-test and the answers of the member states in the 2014 survey. Eurochambres is the Association of European Chambers of Commerce and Industry. Via an electronic survey they asked their members in the EU, the national Chambers of Commerce and Industry to give feedback on how they perceived the SME-test being performed in their country.

The answers of these national Chambers covered the same topics as filled in by the EU member states in their survey. These answers are analysed in this report together with the different categories of topics of the 2014 survey. The full replies, as well the summary of these replies of national CCIs, are also given in the annexes to this report.

At this place it should be mentioned that the national Chambers of Commerce and Industry might vary a lot in the degree to which they themselves have been related to the implementation of the SME-test in their country. Some might fully have been involved in this implementation, while others might not really have been involved. This could be kept in mind when studying the answers of the national Chambers.

4.4 The 2014 survey, some characteristics of the group of countries that responded

For the 2014 survey, a questionnaire had been sent to the 28 EU member states. 24 responses had been received before the closing of the research by the end of April 2015. This sample of 24 countries is largely the same as that of the 2011 survey, but not completely, as can be seen when comparing the country lists in Annex 1. These differences are enlarging the amount of statistical errors in the comparison between the two surveys to some extent.

A summary of the draft of the present report had been presented at the SME Envoy meeting of Paris in March 2015, where Envoys also had given some additional information on the SME-test in their country. In the weeks thereafter the responding countries also had a chance to give comments on what had been written in the draft report. The present report has taken note of the comments received.

At this place it might also be useful to mention that the responses to the open questions in the 2014 survey are not necessarily reflecting the official point of view of the member states, as the SME Envoy network has an informal character which it gives some more room to share and to act.

Of the 24 responding countries, **20 countries reported that they already had an SME-test in place in that year. They therefore generally have answered via the drop down menus of the 2014 survey as reported in Annex I which is reflected in the main text of this report in relation to the circle diagrams.** This group of 20 countries includes Slovenia who reported to start applying the SME-test fully from the beginning of 2016. However, they had already performed certain SME-pilot tests and therefor answered “yes” to the question if they already had some kind of SME-test functioning. They also have fully

responded to all the other questions related to the SME-test and are thus treated in this report like the other countries having an SME-test in place.

Of the 24 responding countries in 2014, 4 countries reported not to have an SME-test in place in that year (according to question one in the electronic survey as can be seen in Annex I). These countries are: Malta, Cyprus, Czech Republic and Spain. *These 4 countries therefore did answer “no” to the questions if they had an SME-test in place in 2014 (as reported in Annex I), and thus cannot be found in the rest of that annex about the SME-test, nor in the corresponding circle diagrams in the main text regarding the 2014 survey.*

These 4 countries however have, like the other 20 countries, all responded to the qualitative questions as reported in Annex II which is reflected in the main text of this report in relation to the bar diagrams. These 4 countries answered the qualitative questions because of the following reasons:

Malta. An SME-test is reported to be applied from the beginning of 2015 onwards. When they received the 2014 questionnaire, they already knew the guidelines and other modalities concerning this new SME-test. They filled in the qualitative part of the questionnaire accordingly.

Cyprus. Although the country did not apply a full-fledged SME-test in 2014, it did already have an impact assessment including questions about SMEs. The qualitative part of the questionnaire was filled in accordingly. (They also reported to intend to review the existing impact assessment in 2015 in order to design a detailed SME-test in line with the guidelines of the European Commission.)

Czech Republic. In 2014 the Czech Republic also had an impact assessment partly related to SMEs and had already started to design a new methodology for an SME-test. The qualitative part of the questionnaire was filled in accordingly.

Spain. Spain was not considered to have a full-fledged SME-test in place in 2014. A new law that includes an SME-test had already been proposed to the parliament and is expected to be adopted in the second quarter of 2015. Spain answered the qualitative part of the questionnaire and is also reported as such.

Thus, 24 countries are included in the analysis of the qualitative answers (and the related bar diagrams) and 20 countries are included in the analysis of the answers to the dropdown menu in the questionnaire (and the related circle diagrams).

5 SME-test 2014: EU member states reporting about their SME-test

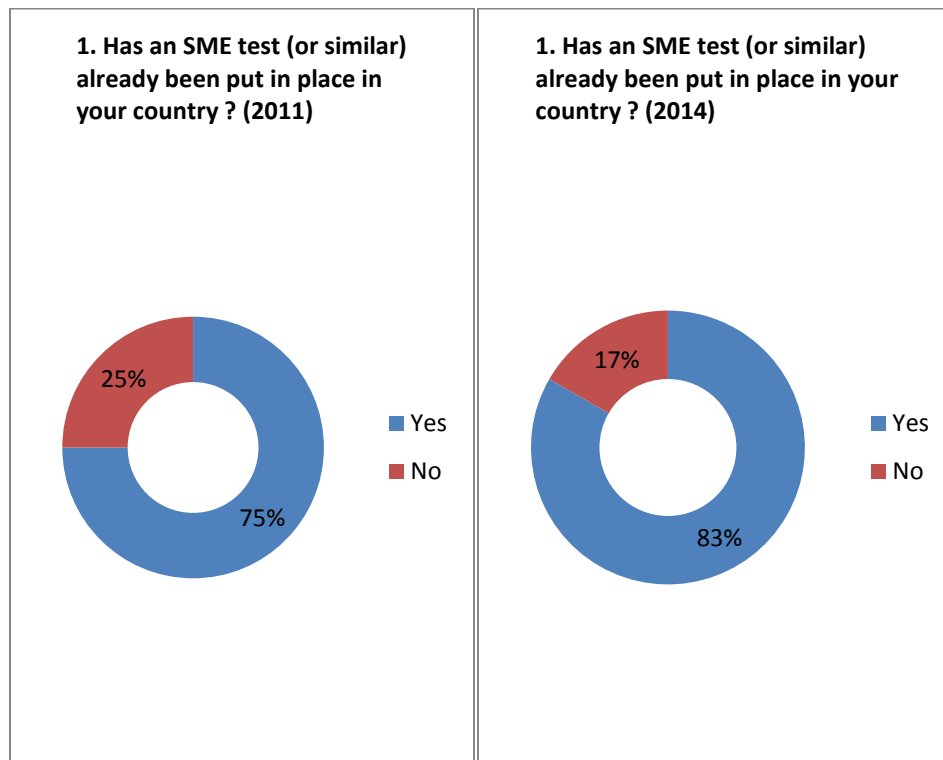
In this chapter the answers of the member states to the 2014 survey are summarised and analysed. The full set of answers per member state can be found in the attachments, as well as the listings of answers summarised per question. This chapter is written on the basis of all of this.

5.1 Has an SME test (or similar) already been put in place in your country ?

General conclusion:

As can be seen in the diagram below, 83% of all countries responding to the 2014 questionnaire indicated to apply an SME test. This is a bit more than in 2011. Even if countries had already an SME-test working in 2011, most of them (except for four countries) improved certain aspects in the years thereafter, as will be shown in this chapter. All these 20 countries applying nowadays an SME-test are reported below in the analysis related to the bar diagrams (as explained in the preceding paragraph).

Of the small minority (4 countries out of all responding countries) that did not apply a specific SME-test in 2014, some of the countries indicated that they anyway looked at the implications for SME's. This entire minority mentioned that they were planning to start soon implementing a specific SME-test (in 2015 or 2016). Because of reasons mentioned in the preceding paragraph on methodology, these countries have answered to the qualitative questions in the 2014 survey and are therefore mentioned together with the other countries in the analysis related to the bar diagrams later mentioned in this chapter.



Further analysis:

Most countries explained that their SME-test is a part of a regulatory impact assessment or is linked to such an assessment. Most countries indicated that they had changed their SME-test since the 2011 survey or are at the moment in the process of changing their SME-test. Main changes reported by one or more countries:

- Concerning the application of the SME-test: a more precise selection of proposed legislations to be assessed by the SME-test is now carried out ;
- Impact analysis: expansion of the different elements and other improvements;
- Alternative text formulations: some states had put more emphasis on possibilities of formulating alternatives to the originally proposed texts of the legislations;
- Supporting materials: more guidelines, stakeholder contact lists accompanying materials or helpdesk support had been added to support the use of the SME-test;
- Digitalisation: some states mentioned to have the SME-test digitalised, or are in the process of doing this;
- Evaluation of the quality of the SME-test: some member states increased their efforts to check the quality of the SME-tests that were performed.

Reaction of Eurochambres

More than 50% of the national Chambers of Commerce and Industry answered to be slightly to moderately satisfied about the implementation of the SME-test and a third of them are not at all satisfied. Generally this reflects the opinion of most of them that having some kind of SME-test is important indeed, but that there is scope of improvement on either:

- the limited amount of tests applied to new legislation;
- the limited amount of characteristics checked by the test (e.g. sometimes the lack of quantification of the impact);
- the quality of the tests performed;
- or the serious consideration of the results of the test during the drafting of the final legislative text.

In cases where no specific SME-test is applied at the moment, but just a general regulatory impact assessment, the national CCIs clearly answered not to be satisfied, this is also true for the case of a certain country that said that its impact assessment was covering to quite some extent the specific impact on SMEs.

The Austrian Federal Economic Chamber answered “to be completely satisfied” about the implementation of the SME-test as any official draft of legislation is being consulted with affected stakeholders. Also the process of outcome oriented impact assessment was seen as exemplary. (Further in this report these aspects will be reported into more detail at the relevant sections.)

5.2 Frequency and amount of SME-tests carried out

In the survey, the member states were asked about how often they performed the so-called SME-test whenever there has been new proposed legislation, thus regarding the frequency of the test applied. Also the amount of SME-tests performed in the previous year were reported. These two aspects are separately reported in this paragraph, after which a general conclusion is formulated.

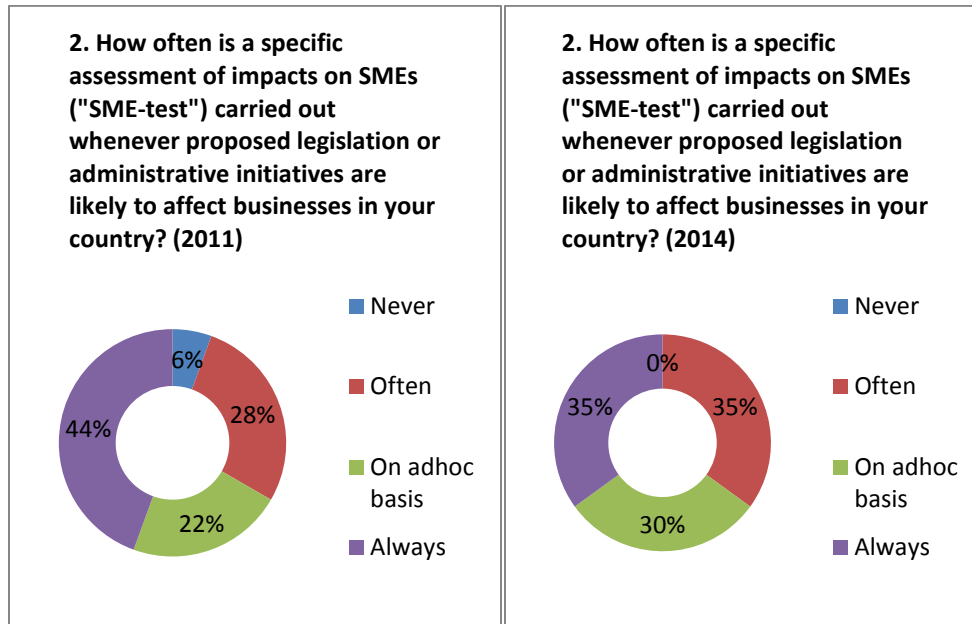
How often is a specific assessment of impacts on SMEs ("SME-test") carried out whenever proposed legislation or administrative initiatives are likely to affect businesses in your country?

General conclusion:

In 2014 more than two thirds of the countries carried out an SME-test always or often whenever their businesses were likely to be affected.

Statistics:

In 2014 slightly less countries indicated to apply an SME-test "always" than in 2011 (35 to 44 % respectively) and slightly more "often" (35 to 28%) and on "ad hoc" basis (30 to 22%).

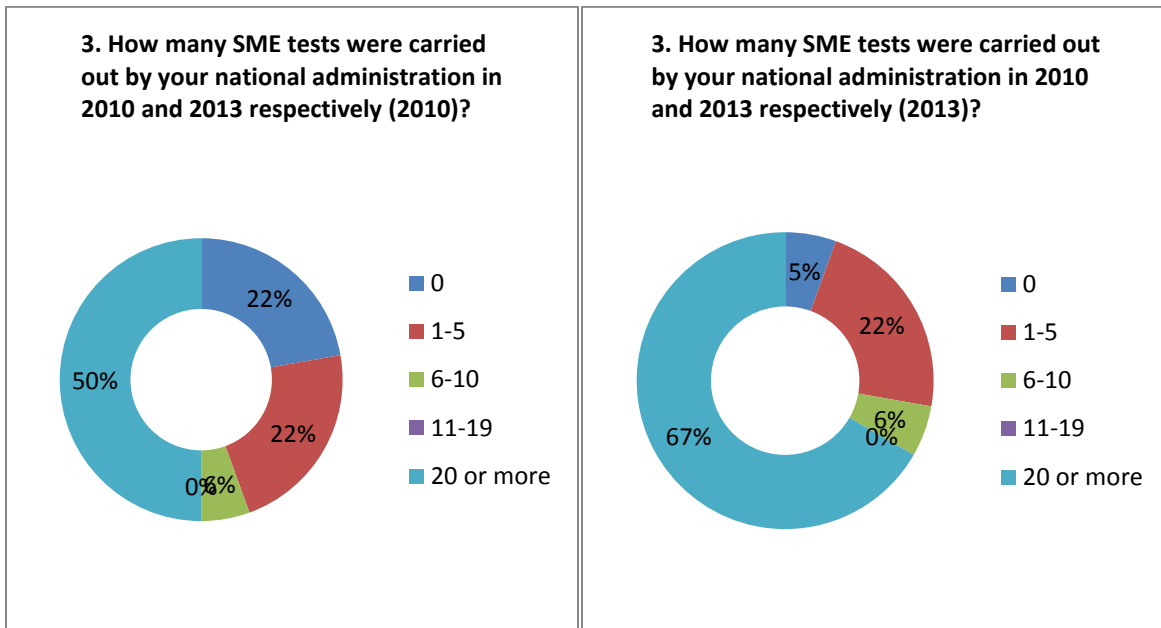


Further analysis:

When compared to 2011, there is a clear indication that some countries (at least 3) have become more specific in deciding when they would apply the test (in 2011 these countries replied "always" to applying an SME-test which changed to "often" or on an "ad-hoc" basis). This is supported by explanations elsewhere in the questionnaire. Also for other countries this might mean that in some cases the SME-test might be applied with more discretion. Apart from the incidence (frequency) as shown above and the amount of tests applied (as shown below), one could wonder if in certain cases the quality of the application of the test might have increased in cases where the test had been applied more discretionary.

How many SME tests were carried out by your national administration in 2010 and 2013 respectively?

General conclusion: There were huge differences among countries in the amounts of SME-tests that had been carried out in 2013. As can be seen in the graph below, 67% of the countries had carried out more than 20 tests, only 6% in between 6-19 tests and the others less than 6%. Compared to 2011, 5 countries changed to a higher category of amount of tests carried out, and one country to a lower category.



Further analysis:

The differences among countries in the amounts of tests performed, is at first hand related to whether or not the application of their SME-test is compulsory in their country. When not obligatory, there are some countries who consciously restrict the amount of SME-tests to be applied, but indicated to choose to apply more in depth whenever the impact of the proposed regulation on SMEs is likely to be considerable. From these countries some still performed more than 20 tests in the previous year, but others only 1 till 5 tests.

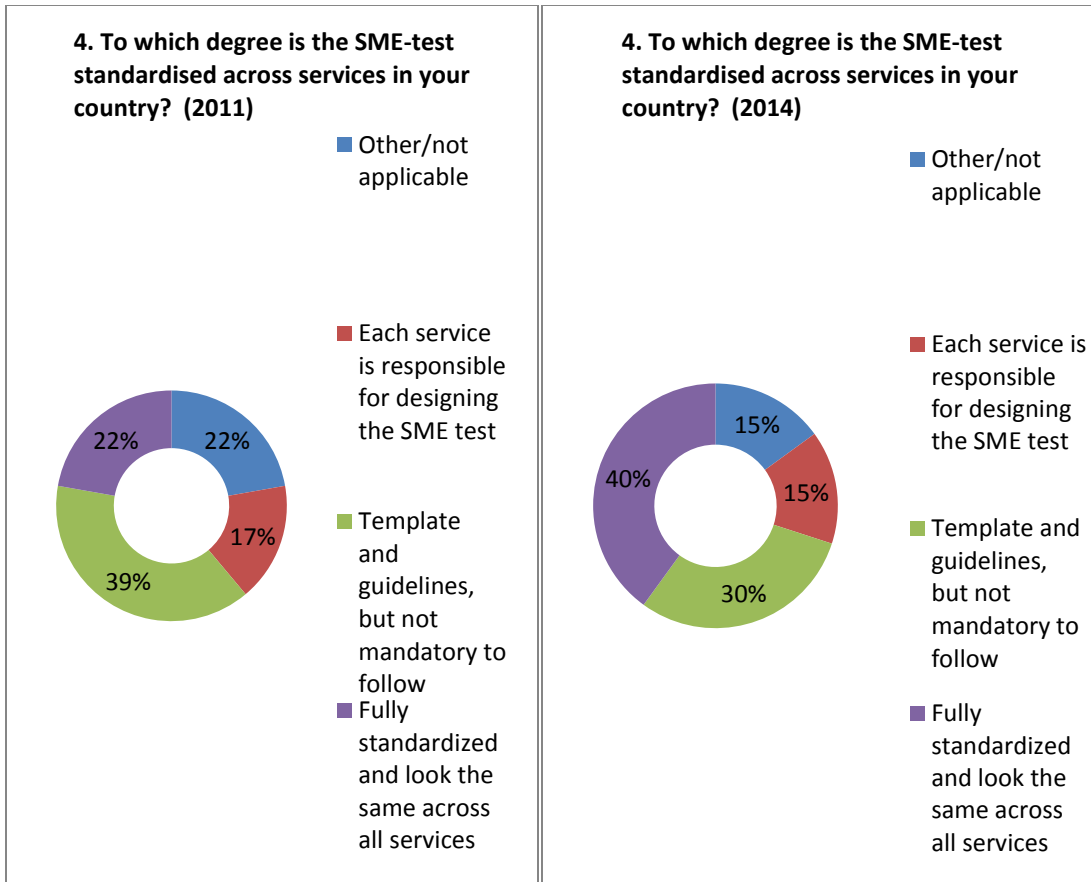
Reaction of Eurochambres

Most national Chambers of Commerce are clearly in favour of applying the SME-test often, and some on an obligatory basis, to make sure that the interests of the SMEs are properly taken into account. There are, however, also remarks that for certain countries there is not much use in applying the SME-test when it is done more as a “tick-the-box” exercise, than considering deeply the true impact new legislation might have. In some other cases, there are remarks indicating that even if the test itself is performed well, the results have not seriously been taking into account in the new legislation. Thus, besides a good application of a well-designed SME-test, the administrative and political commitment is an additional requisite to take the impact on SMEs seriously into account in new legislation.

5.3 To which degree is the SME-test standardised across services in your country?

General conclusion:

In 2014, for most countries the design of the SME-test was to a large extent standardised across services: 40% of the countries had a fully standardised SME-test across services and 30% had non-mandatory centralised templates and guidelines.

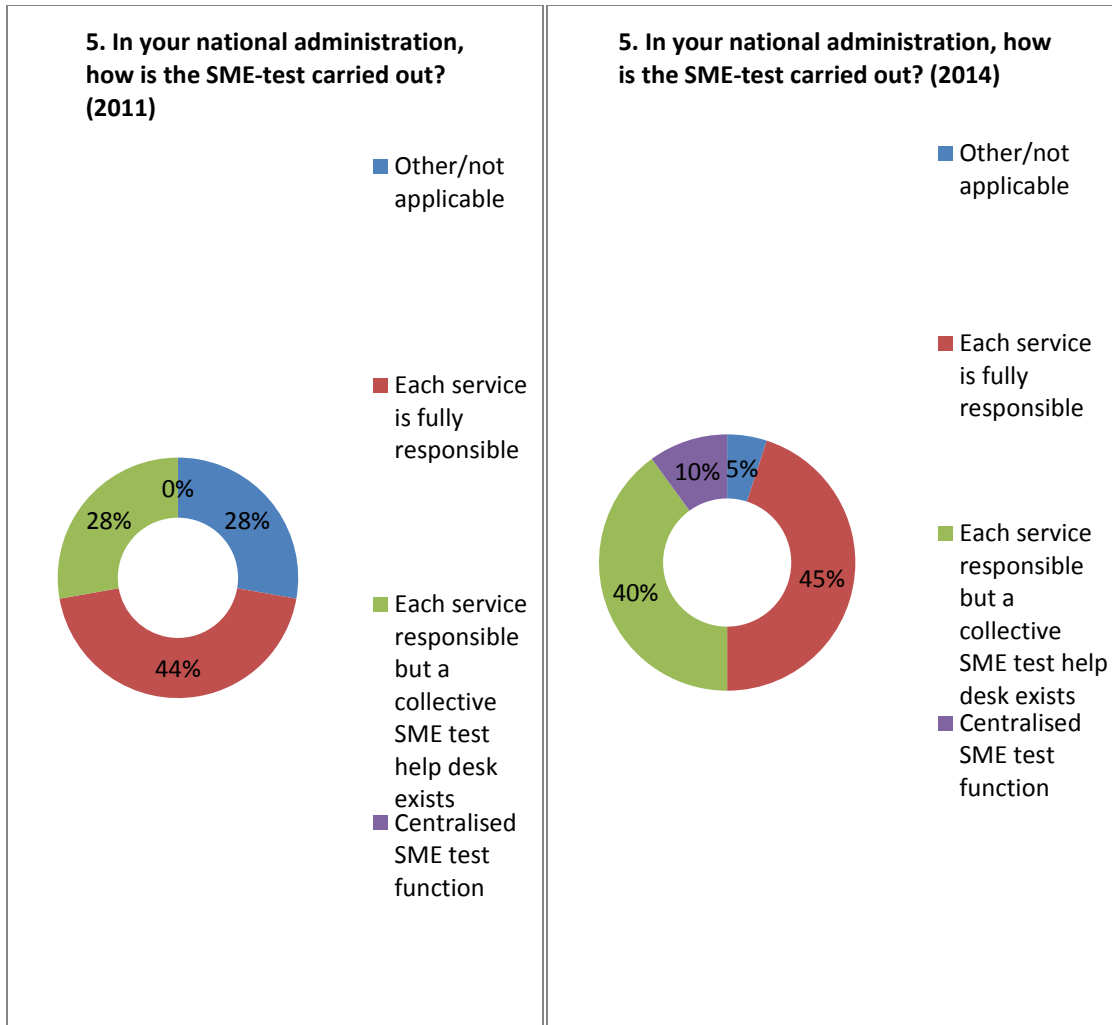


From the 20 countries in 2014 that responded to this question, 5 out of the 20 that responded in 2014 had standardised more compared to 2011, although to a different extent. In 2014, the other countries kept the same kind of standardisation or non-standardisation as in 2011.

5.4 In your national administration, how is the SME-test carried out?

General conclusion:

In 2014, in 85% of all countries each government service individually is fully responsible for carrying out the SME-test, a bit less than half of these however could get help from a collective help desk. Only 2 out of the 20 responding countries to this question were applying a centralised SME-test (the specifics of the different countries are mentioned in the first annex to this report).

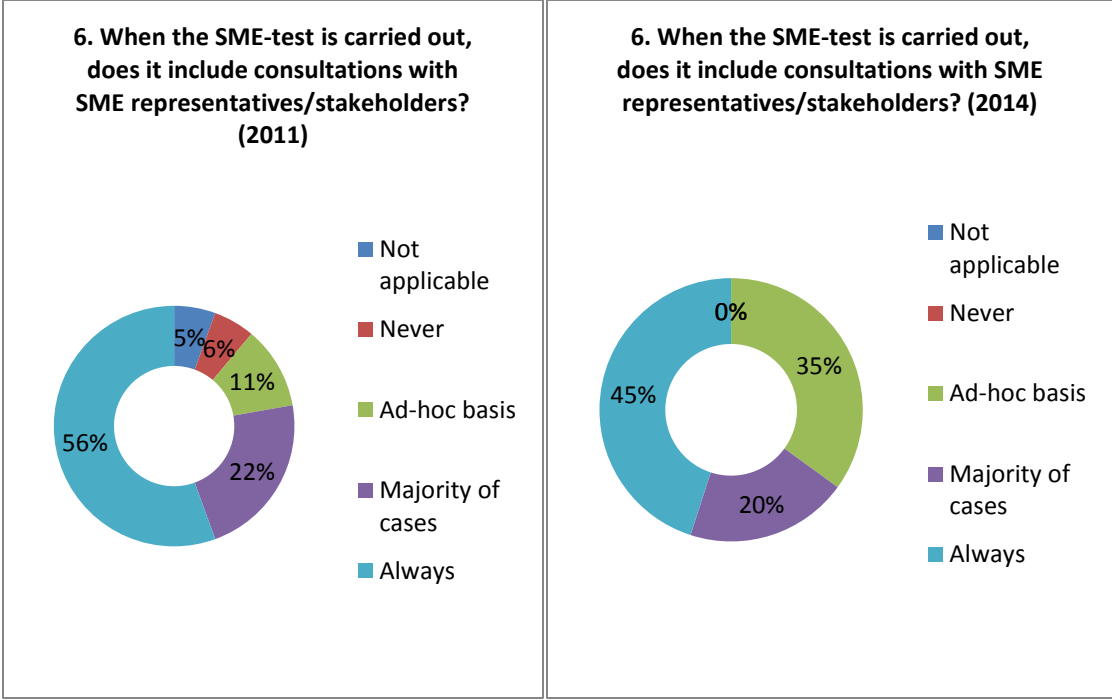


Further analysis:

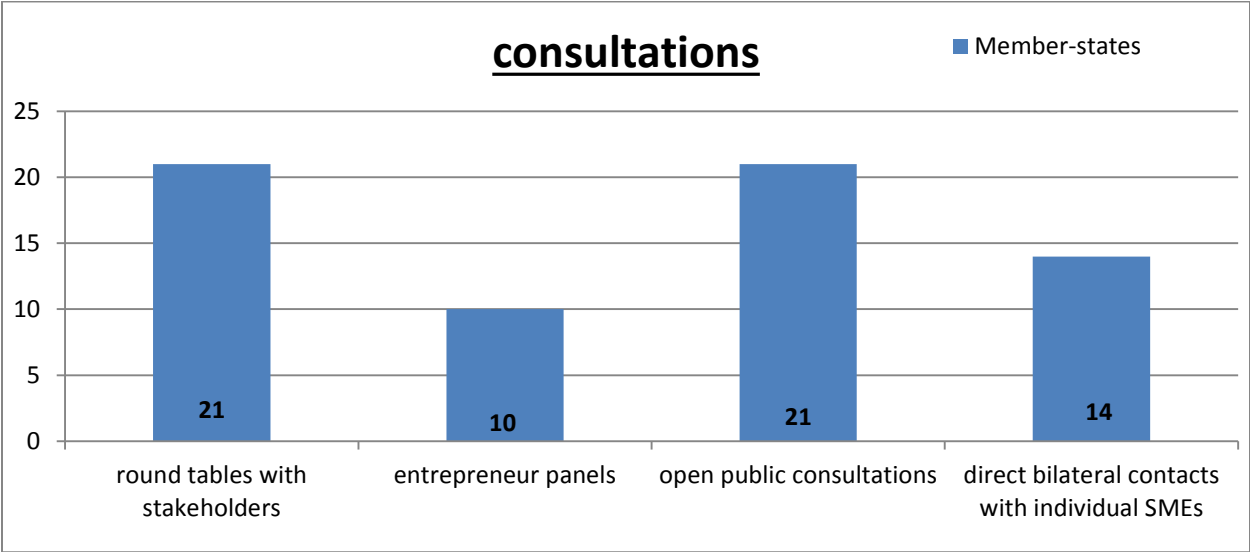
In 2014, compared to 2011, 8 out of the 20 countries had more centralised the carrying out of the test to some degree: 3 of them added a central helpdesk, 2 centralised the carrying out of the test completely. In 2014, these last two countries (Finland and France) were also the *only* ones carrying out such a test centrally, although in the case of France it were the services in charge of the legislation that were deciding if the test would be applied. In 2011 there had been no countries at all carrying out the test centrally. No country centralised less compared to 2011.

5.5 Consultations of stakeholders

General conclusion: in 2014, the majority of all countries included consultations with SME stakeholders, always or in a majority of cases, when an SME-test was applied. Nevertheless, still more than one third of the countries only included such consultations on an ad-hoc basis. Related to 2011, 4 out of 20 of the responding countries had been increasing their frequency of consultation, and only one country consulted in less cases.



Further analysis: As appeared from the individual answers of the member states, all member states are consulting stakeholders in one or more ways. As can be seen in the graph below, most states have a practice to use round tables and open public consultations. In certain countries (e.g. Austria, Denmark, Hungary and Latvia) the consultation of stakeholders is obligatory, which is appreciated as a good practice. About half of the states indicated also to use test panels of entrepreneurs and direct contacts with individual SMEs.



Reaction of Eurochambres

Almost all national Chambers of Commerce answered to be slightly, moderately or very satisfied about the consultation with SME representatives on new legislation concerning SMEs. The degree of

satisfaction increased generally the more SMEs were consulted. In the case of Austria, where the Chamber answered to be very satisfied, this was also related to the systematic consultation of the affected stakeholders in the so-called social partnership, a sort of platforms with the different government and stakeholder partners, where all official drafts are discussed with the goal of reaching consensus.

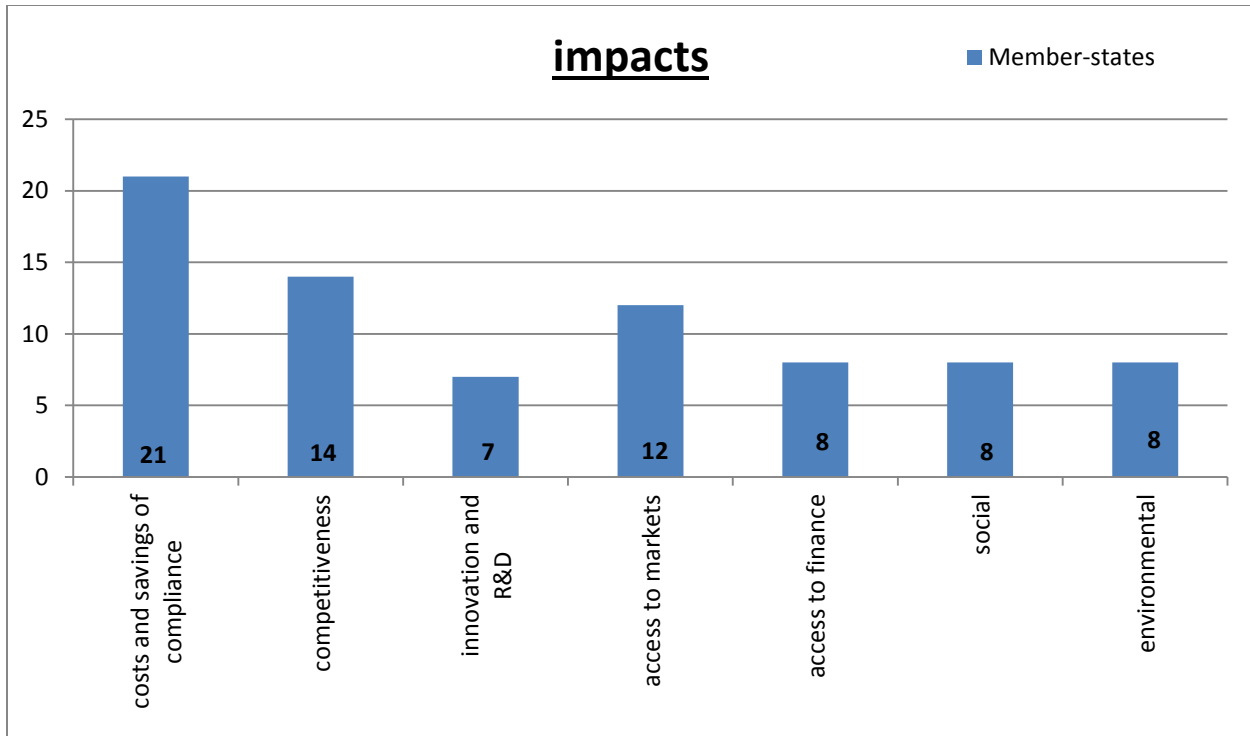
There were also some reactions indicating that in some countries the consultations should be held much further in advance of the final drafting of the legislation to leave enough time for the consultation process and scope for policy-makers to adapt the text. The countries, where early consultation takes place, were indeed mentioned as good examples.

Additional reactions from national CCIs in specific countries:

- According to the Federation of Belgian Chambers of Commerce, representative organisations could help to supply the legislator with sufficient and correct data on SMEs.
- In Spain, France and Slovenia, the chambers of Commerce recommended their stronger involvement in the process, notably for the setting up of SME panels and to bring additional expertise.

5.6 Analysing the different sorts of impacts by the SME-test

Almost all of the 24 countries that responded to the 2014 survey are analysing one or more kinds of impacts with their SME-test. For almost all of them this concerns at least compliance costs and savings for SMEs (financial, substantive or administrative costs). About half is also analysing impacts on competitiveness and access to markets. Quite some of the countries are also analysing innovation and R&D, access to finance and social and environmental aspects. Sometimes a lack of quantitative analysis in particular is mentioned by member states and national Chambers of Commerce and Industry, and sometimes also the lack of certain other aspects is mentioned (e.g. on innovation and R&D, on access to markets, and on access to finance).



Within all the categories of impact assessment there are many differences in what and how the member states are exactly investigating. This does not only apply to the specific SME-tests, but also to the general regulatory impact assessments held, which partly also addresses the impacts of the proposed legislation on SMEs.

Reaction of Eurochambres

The Chambers of Commerce that commented on the consultations in their country were not at all, slightly or moderately satisfied about the measurement of the impact on SMEs (that involves cost/benefit analysis).

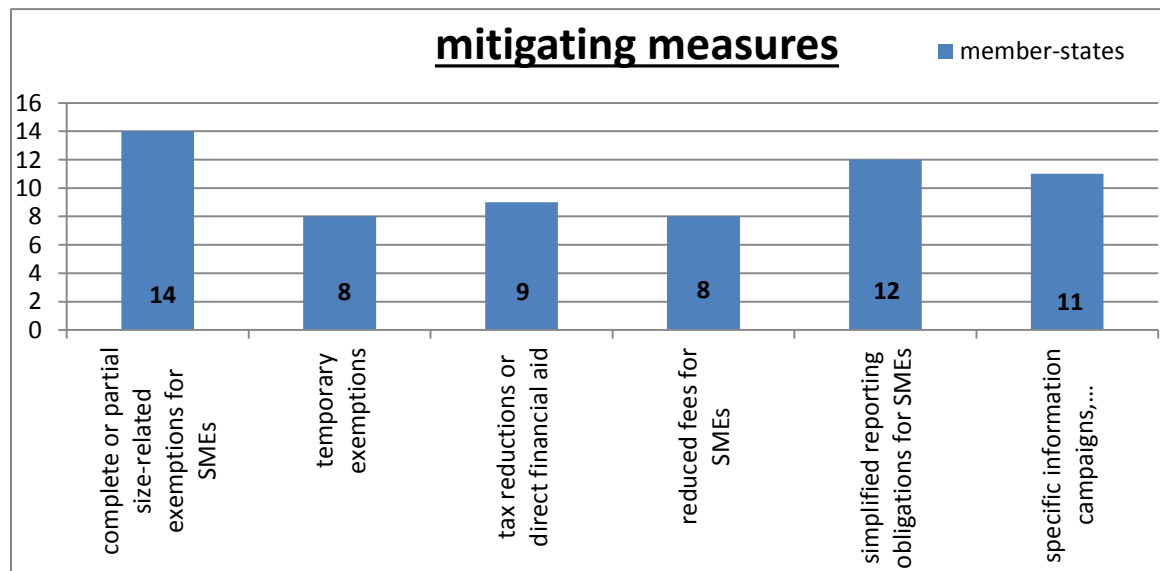
This is mostly related to the lack of quantitative data on SMEs and the limited measurement of certain aspects, in line with member states' observations referred to above. Chambers Ireland' statement below illustrates well this point of view:

*“The use of the SME test should be more widespread and encompass not only the consultation part of the SME-test but more attention should be aimed at the cost/benefit analysis of the imposed legislative measures. **Although the consultation part is very significant when adopting new legislation some bills and their impact for SME-s need to be analysed taking into account the economic indicators.** The gathering of data regarding the costs and benefits for new laws for SME-s is not an easy task but considering the impact of the new proposed legislation on SME-s should be done more comprehensively.”*

Only two national Chambers of Commerce, Austria and Lithuania, were very satisfied as they feel that most relevant aspects are taken into account during the impact analysis.

5.7 Mitigating measures for SMEs

If proposed regulations seem to cause extra burdens for SMEs, countries are sometimes applying mitigating measures to them. 18 out of 24 countries that had responded to the 2014 survey, indicated that they had applied one or more mitigating measures related to at least some sort of SMEs. Which measures are mostly applied by the member states? As can be seen in the table below 14 countries, that is half of all responding countries, used as a mitigating measure “complete or partial size-related exemptions for SMEs”. This is a larger percentage of countries than as reported in the 2011 survey for the same measure. Besides this, 12 countries used “simplified reporting obligations for SMEs” and 11 countries used “specific information campaigns or user guides” as measures that have often been applied. Sometimes SMEs have been asked if they would propose certain mitigating measures, although it stayed up to the governments to decide on this.



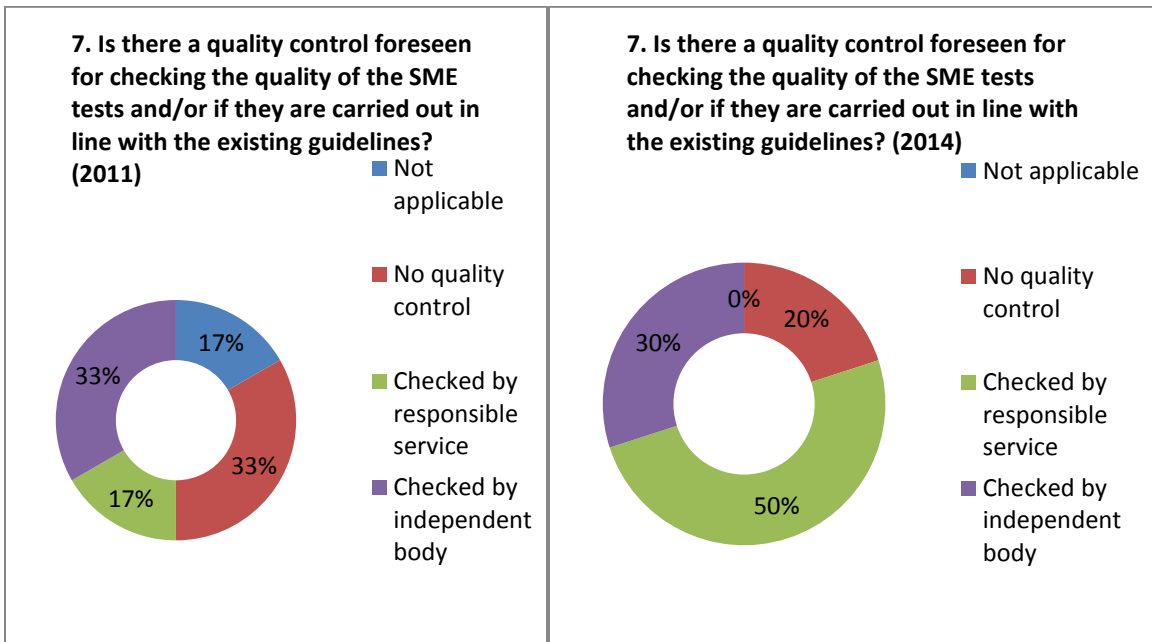
Reaction of Eurochambres

Most national Chambers of Commerce are generally moderately or very satisfied about the use of mitigating measures. In the case of moderately, that seems to be an indication that the mitigating measures are applied when considered important, but that they could be applied more frequently.

5.8 Is there a quality control foreseen for checking the quality of the SME tests?

General conclusion:

In 2014, 80% of the countries had been foreseeing a quality control in order to check the quality of the SME tests and/or to verify if these were carried out in line with the existing guidelines. Two thirds of these countries had this checked by the service that was performing the SME-test, the other third of the countries had this done by a body independent from the service involved with the test.



Further analysis:

The amount of countries that answered to have no control at all in place, diminished in the researched period from 6 to 4 countries, although two more countries responded to this question. The amount of countries with the responsible service checking itself increased from 3 to 10 countries (out of a total of 20 responding countries). The 6 countries that have a centralised body for the quality assessment of the test, had at the same time independent services performing the test.

In the cases where services themselves were checking how they had performed the SME-test, it is not clear to what extend there are different persons involved than the ones applying the test.

As a part of the comments mentioned in the previous paragraph are related to the administrative capacity and performance, it seems important that a quality check of the applied SME-test and guidelines would be independent from the officers applying these.

Reaction of Eurochambres

According to the national Chambers of Commerce, controlling the application and quality of the SME-test is crucial and should take place in the countries where such mechanism is not in place.

Like some member states, some national Chambers mentioned that it is important to have an independent body checking the implementation and quality of the SME-test. Quality control should not be performed by the service that had been writing and/or performing the SME-test.

5.9 How to guarantee the efficiency of the SME Test?

According to some of the member states, the efficiency and effectiveness of the SME-test can be guaranteed or enhanced by different measures and procedures. In the table below the different issues that were mentioned are listed which is summarised hereafter.

Out of the comments, it follows that quite some member states mentioned that it is important to have SME-tests, but also to use them only in case when there might be clear impacts of the proposed regulation on SMEs.

The different kinds of consultations often seem to give valuable insights related to the clarity and impact of the proposed regulation. It shows what the regulation *in practice* could mean for certain categories of firms and other stakeholders, especially if the regulation is explicitly checked with a certain number of SMEs.

To have central helpdesks for applying the SME-test or having its quality assessed by a central body is generally considered to be helpful by the states using them. At the same it is mentioned that for such centralised bodies it is often difficult to precisely understand the proposed legislation, especially when it is complex with lots of references (e.g. for amendments and additionalities) to other already existing legislation.

Many states also mention administrative constraints when applying the SME-test: the difficulty to get adequate and precise data (9 states reported on this), the lack of quality of their SME-test, for instance because of the lack of quality (9 states reported on this). Sometimes a lack of enough qualified officials for applying the SME-test precisely and seriously was mentioned in this case. These obstacles were already noted in the conclusions of the 2011 survey. Besides this, 4 states mentioned also to experience severe difficulties related to the cooperation between the different agencies and other institutions in the country who are involved in applying the SME-test.

HOW TO GUARANTEE THE EFFICIENCY OF THE SME TEST?

(Please note, below are listed the main responses of the responding member states on this topic. Sometimes only the remark of a certain state is mentioned. In the text above there is a clearer indication of the relative weight of the topics mentioned.)

Related to SME-tests:

- The SME-test should be an obligatory part of the impact assessment;
- The fact that impacts only need to be assessed into detail above certain thresholds, helps to bring down the administrative burden to do research and helps to win time in other cases;

Related to consultations:

- The Public consultation procedure is generally considered to be an effective instrument;
- Round table discussions with stakeholders can indeed increase the performance of the SME-test.

Related to having central helpdesks or a central independent unit assessing the quality of the SME-test:

- It is helpful to have and use helpdesks and an independent unit to test the quality of the SME-test or the regulation impact assessment results. However, their functioning is often not easy. Helpdesks experience difficulties: to be able to quantify effects, often the nacebel-codes need to be used, but they often do not allow to precisely assess the amount of SMEs for the topic investigated. Related to other

issues it is difficult for them to answer, as they have not been writing the proposed regulation. Also on having an independent unit to assess the quality of the tests, Belgium mentioned similar difficulties of such an independent unit to assess and understand the quality of the SME-test, as the unit had not developed itself the (often complicated) proposed regulation;

Related to administrative capacities and availability of data:

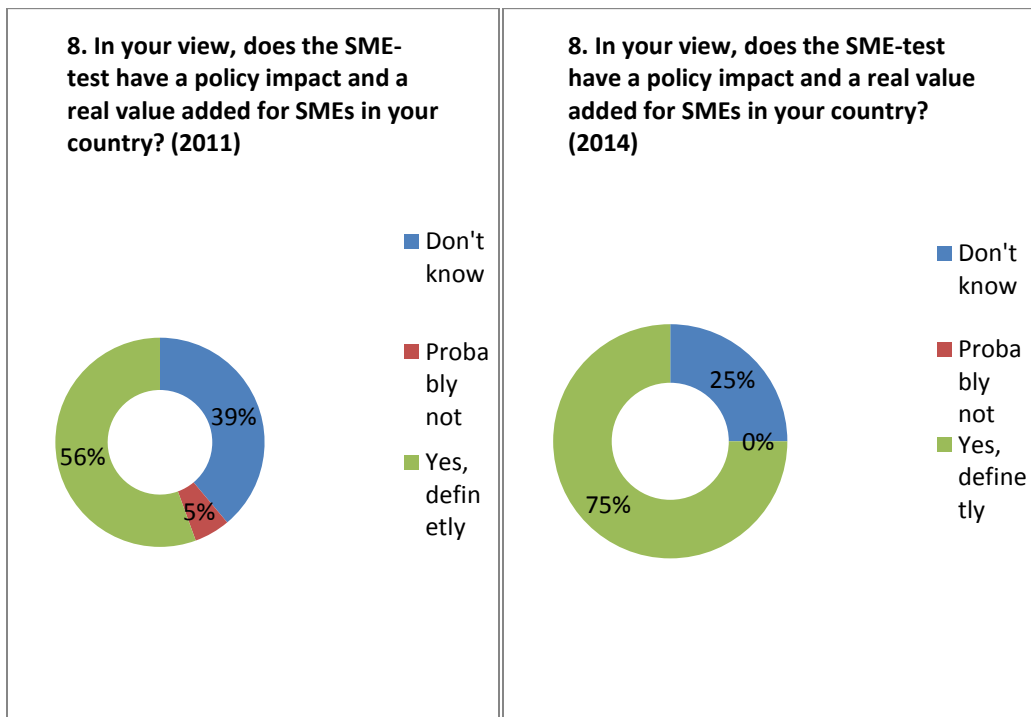
- Make policymakers and people in the administration more aware of the need to properly apply the SME-test, to consult effectively and to describe the outcomes of the test precisely;
- Provide enough time and other resources to properly implement the SME test / regulatory impact assessment;
- The government agencies and the private organisations involved should provide realistic data.

5.10 Do the SME-tests have a policy impact and a real value added for SMEs?

General conclusion: in 2014 75% of all countries perceived the SME-test to have had a policy impact and a real added value for the SMEs in their country. The rest of the countries responded that they did not know if the test had had a policy impact and added value for their SMEs.

Further analysis: in 2011, less countries, but still a considerable amount of them (50%) had responded that the test has had a policy impact and added value.

It might be useful to investigate in future what the considerations of the countries are behind the answers to this question.



Reaction of Eurochambres

The national Chambers of Commerce rated the impact of the conducted SME-tests as poor, fair or good (amounts of responses equally spread among these categories). When rated as poor, this mostly applied to the perception that the SME-test was not carried out in a substantive manner. In cases of the rating “good”, this was in countries where it was felt that the government consulted the stakeholders systematically and where the results of these consultations were mostly taken into account in the final legislation (Austria, Germany and Lithuania).

Some national Chambers mentioned that even if the impact assessment regarding SMEs had been well conducted, this was (sometimes or often) not taken into consideration by the service drafting the final legislation:

- “The practice shows that even conducted SME-tests showing negative impact on SMEs and argued by the business organizations do not restrict the Cabinet of Ministers and/or Parliament to adopt legal enactments” (Latvian Chamber of Commerce and Industry);
- “Most RIAs appear to be prepared after the decision [on the legislation] is taken or published alongside the bill (if not later)” (Chambers Ireland).

6 SME-test 2014 : Good practices

Below the main good practices that were reported by the countries in the survey are listed. The full responses are summarised in one of the annexes.

The stakeholder consultation procedure:

10 countries mentioned this item. Mostly they mention the regular consultation of representatives of SMEs and other professional organisations. Often this is done by regular consultations with a sort of SME advisory group and/or by open consultation performed electronically. Round tables and direct consultation of SMEs are also mentioned as good practice. In these last two cases SMEs and their organisations might be chosen depending on the topic of the proposed legislation.

Mitigating measures for SMEs:

In the United Kingdom the government announced the introduction of the Small and Micro Business Assessment (SaMBA) in June 2013. SaMBA applies to significant regulatory proposals that come into force from April 2014. If a SaMBA reveals any disproportionate burdens, departments must exempt small businesses from regulations or take all possible steps to mitigate any disproportionate impact.

As was mentioned: *“the default assumption under SaMBA is that there will be a legislative exemption for small and micro businesses where a large part of the intended benefits of the measure can be achieved without including them. As a result of this policy, small firms will have confidence that future regulation will be more manageable for them and that they will not face disproportionate regulatory burdens.*

The evaluation of the SME-test:

2 countries mentioned this item. In Sweden all proposed legislation that concerns business, including an impact assessment, must be submitted to the Swedish Better Regulation Council. Based on this, the council either provides an “opinion” or a shorter “Secretariat Response”. The Council’s opinion contains a recommendation or objection concerning the proposal’s suitability in administrative terms, as well as an assessment of the overall quality of the impact assessment. With respect to the administrative assessment, the Council either recommends or rejects the proposal.

In Germany an independent watchdog (the National Regulatory Control Council, NRCC) has, amongst others, the mandate to check the quality of the cost assessments. Draft bills cannot be tabled before the Cabinet without first undergoing scrutiny by the NRCC, and ministries tend to follow its recommendations. Its opinions are published.

The support structure and the accompanying materials for the test:

3 countries mentioned this item. *Germany* mentioned having specific guidelines to assess the compliance costs.

Austria applies an *IT tool* for outcome oriented impact assessment. It is used to calculate the involvement as far as the impact dimensions "Administrative costs for enterprises" and "Enterprises" are concerned. This IT tool supports the process of outcome oriented impact assessment in all steps, starting with the problem analysis to the examination and assessment of impacts. In addition this tool contains assistance, calculators and a guided process and automatically produces a document (as result of this process) that has to be enclosed to draft laws in e-law. Furthermore, a comprehensive manual for the outcome oriented impact assessments is available. If necessary also training courses are offered.

France has centralised the requests for applying the SME-test (with a special internet page, a methodological guide and other uniform tools and methods for launching such a test). Ministries can enter requests on a voluntary base and they later on decide for themselves how to include the responses on the test in their legislation. After a request is made, the SME-test is carried out by certain regions in France (who offered to do this on a voluntary basis). They perform the test by consulting a variety of 15 SMEs in their region, after which the results are reported to the ministry responsible for the proposed legislative text. (The Chamber of Commerce of France mentioned that it is difficult to conclude if this is a good practice or not at this stage, since only 4 tests have been implemented yet, involving 69 companies over 7 regions.).

The methodology chosen to measure the analysed impacts in the context of the SME test:

2 countries mentioned standard cost measurements (SCM) related to this topic. In Denmark these measurements are carried out in time before consultation to consider alternative options for regulation. France mentioned that additional measurements would also be possible if justified.

In France, the SME test can be used in addition to the Standard Cost Model (SCM) method in order to assess the micro-economic impact of certain legislative provisions or regulations. Impact assessment with the SCM method is not used automatically before the SME test though. The implementation of the SME test is decided in the light of the results obtained on the basis of the eligibility criteria grid which can determine the relevant consultation process for a given text. After the SME test, it can be decided to simplify regulations on the basis of suggestions made by entrepreneurs who have been consulted.

7 Main remarks and conclusions

7.1 Remarks and conclusions

The 2014 survey was held to see to what extent EU member states are implementing the SME-test in their countries. This leads to questions like: in what cases is a test performed, how are stakeholders consulted, what impacts are measured and how is this done. The context of the test also had been studied: who is performing the test within the country, how is the quality checked and what might influence the impact of the test? The 2014 survey in comparison with the 2011 survey gave also insights on how the application of the test has been changing during the last years in every country, and gave indications on possibilities to improve the test in the member states. Main remarks and conclusions related to these aspects are listed below.

Which states are implementing an SME-test and to what extent?

All responding countries apparently adhere to the principle of applying a specific SME-test in cases when they think this is desirable. The question however remains, if the SME-test should be applied to all new legislation, or only to the new legislation that seems to have a considerable impact on SMEs?

Countries are actually indeed differing as to the degree of applying the SME-test. One approach is to have the test performed obligatory to all new legislation, to be sure that the impact on SMEs always would be taken into account. As it needs a lot of human resources to carry out the test thoroughly, this approach might lead to a heavy work load on all parties involved, or lead to a rather superficial examination of possible impacts (because of the lack of resources).

The other approach is to apply the SME-test only to the cases when the SMEs might be seriously affected. Then it might be much easier to apply the test more thoroughly and more precisely targeted to certain categories of SMEs. This approach still means that all proposed legislation should be checked beforehand on this criterion. Such an approach might bear the risk that some legislation might by error not have been selected for applying the SME-test, even if there would be possible impacts on SMEs.

Another question that comes up, is if the SME-test should also be applied to legislative initiatives of the parliament and how parliamentarians in that case could have access to the data necessary to assess possible impacts on SMEs by the SME-test. The survey (and thus this report) did not cover possible legislation made by parliaments or possibly regions in the member states (where a sort of SME-test might or might not be applied, related or not to a test on the central level); however the impact of such legislation on SMEs might also be substantial (or even carry most weight). Coordination between the different state bodies involved is crucial; this concerns the carrying out of the SME-test, as well as possibly adapting the proposed legislation and mitigating measures.

Standardisation of the test across government services?

The design of the SME-test is to a large extent standardised across services in most member states. The question remaining is if it would be useful to have more standardisation, sooner or later, *across* member states. If so, more specific guidelines at the EU-level regarding the SME-test could be desirable.

If, at a certain moment, the application of an SME-test would be a requirement to make use of EU support, the question arises to what topics and to which depth the SME-test should be applied, in order to guarantee that all member states would be treated equally.

The degree of centralisation in the government and the frequency of the test performed

Only a few countries were applying a centrally performed SME-test while many countries were using a collective helpdesk. Such an approach might help to make a more general and objective assessment possible of the SME-impact in a country. It might also be more resource-efficient to apply all the SME-tests centrally than having tests spread among the different governmental services.

However, especially when new legislation is complicated, it is often difficult to understand for a central body how best to apply precisely the SME-test. In such a case it might help if there is close cooperation between the central body and the services concerned. A helpdesk could also be useful to explain the SME Test to the policy makers.

To what extent are stakeholders consulted?

A strong cooperation between stakeholders and government is generally considered as important on both sides. Besides general forms of public consultations, especially roundtables with representatives of SMEs and direct contacts with SMEs seem often to provide useful insights for the final drafting of the new legislation and can help to consider measures for mitigating the effects on certain categories of SMEs. In certain cases it was also beneficial when representative SME organisations gave further advice on who to consult in certain SME sectors.

Related to the timing of the consultation, it is often said that it is useful to involve stakeholders at an early stage of the drafting process. This gives the stakeholders time to consult others and to reflect well, and it is easier for the legislator to adapt drafts, if necessary, at an early stage than when the process is already more or less finished. This limits also the risk of delaying the legislative process, as consultations and drafting would be mostly parallel processes. The intensity of the consultation process can depend on the kind of text under consideration and should be the result of balancing the need of getting sufficient information and not overloading the parties.

Measuring what impacts on SMEs

According to the content of the SME-test, there is a wide variety among member states regarding aspects addressed and assessment methods. In their SME-test, states analyse generally, in one way or another, compliance costs and savings for SMEs (financial, substantive or administrative costs). Also the impacts on competitiveness and access to markets are frequently analysed. To a lesser extent other aspects have been analysed by member states: innovation and R&D, access to finance and social and environmental aspects. Often, especially a lack of quantitative analysis is mentioned. This is often due to the difficulty of quantifying, but preferably this problem would be addressed, instead of being neglected.

As good practices for implementing the test have often been mentioned: a clear methodology on how to carry out the test, well developed supporting materials, helpdesks, as well as the use of well-developed IT-tools.

As content and procedures seem often to be very different among countries, there might be a lot of scope and use to share (good or other) practices on the content of the SME-test among the member states. One could also wonder if the European Commission could help with developing and using specific databases with verified data, as well as developing an impact assessment system that could be used in a uniform way by member states.

Mitigating measures for SMEs

15 member states sometimes apply mitigating measures for certain categories of SMEs. Often this is related to complete or partial size-related exemptions, but also quite frequently to simplified reporting obligations, specific information campaigns or user guides, training or dedicated help desks. Sometimes the default assumption is applied that there will be a legislative exemption for small and micro businesses when a large part of the intended benefits of the measure can be achieved without including them.

Sometimes SMEs are asked during the SME-test if they propose certain mitigating measures, although it would stay up to the respective governments to decide on certain measures, if any. Not surprisingly, SMEs sometimes would prefer mitigation to a larger degree than finally is decided by their government.

Quality control on the SME-tests

Most states mentioned that they have some kind of quality control in place for checking the quality of the SME tests and/or for the case in which these tests were carried out in line with the existing guidelines. The majority of these states indicated that this quality control was done by the service that had drafted the new legislation and mostly also had performed the test itself. As a part of the quality control is related to the administrative capacity and the way how the test is carried out, it might be difficult to get an objective assessment of this quality.

The practice of some other countries that used a centralised body for the quality assessment, independent from the drafting service, was often considered as a good practice, although, in relative terms, it requires much efforts to understand the legislation and the test applied to it. Consultation with the service that drafted the regulation might help in such cases.

Especially if centralised controlling bodies carry a lot of weight not only because of their expertise, but also because of their authority given by law, backed up by political support on a high level, its impact might be large, especially when its opinions or recommendations are made public.

Besides the quality control done before the new legislation has taken effort, it might also be important to check afterwards the real impact on SMEs and if the SME-test has been used well in this regard. Sometimes the law itself is specifying certain evaluations after some period, and then this can relatively easily be taken into the routine.

The degree of policy impact and the value added for SMEs of the SME-test

A large majority of the member states perceived the SME-test to have had a policy impact and a real value added for the SMEs in their country. The other states indicated that they did not know about this.

As can be seen throughout this report, the policy impact of SME-tests depends on a chain of related elements: is the proposed legislation suitable for being checked by the test, does the test assess the right aspects to a sufficient degree, are the underlying data and investigations of good quality (including stakeholder consultations) and are the results of the test well taken into account in the final draft of the legislation?

7.2 Suggestions for next steps in learning from experiences in the member states

As has been mentioned earlier in this report when introducing the 2014 survey, neither in the 2014 survey nor in the survey of 2011, countries were directly questioned, for reasons of brevity, about the full content of the SME-test. Nevertheless, countries have given examples and best practices when answering the questionnaire, as summarised in the main text of this report. If useful, more specific information could possibly be *acquired via the SME-envoy of the country concerned*.

As good and other practices of countries are often instructive for member states, *it could help to gather the main examples of this in a data-base*, completed with references, accessible to all member states.

A further step could even be to develop a comprehensive manual on the basis of all these practices and the contents of this report. This could include different options, and a discussion of possible advantages and disadvantages of such options, also related to the legislative context of different categories of countries.

Besides this, or alongside the further development of comprehensive databases and manuals, *specific comparative studies could be done in detail on certain aspects of the SME-test* that were mentioned in this report. Especially for aspects where states appeared to differ in their approach or where they changed recently a lot in their approach, it could be worthwhile to deepen the insights.

Examples of specific studies could be the degree of centralisation in which the SME-test is performed in the member states and how *the quality of the SME-test* and its reported impacts are monitored. It could also be important to investigate to what kind of legislative contents SME-tests are currently being applied in the states (e.g. only to laws or also to other kinds of regulations) and what bodies of the state are applying the test (e.g. only central government bodies, or also para-statal bodies, parliaments, and regions).

A specific study analysing in detail *how SME-tests possibly take different categories of SMEs into account* could also be very useful. Especially the category of *micro-enterprises* might have its own specifics and experience an additional vulnerability regarding the impact of new regulations.

The results of the survey have shown that member states have put many different steps in developing and implementing the SME-test since the European Commission has made its recommendation to have such a test, in order to better take into account the effects on SMEs of new legislation. The answers of most member states seem to indicate that this is still a work in progress.

8 Thank you

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9 References and resources

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The SME Envoys Network:

http://ec.europa.eu/growth/smes/business-friendly-environment/small-business-act/sme-envoys/index_en.htm

10 Annexes

- Annex I: 2014 survey, graphics related to the drop down country responses
- Annex II: 2014 survey, tables related to the qualitative country responses
- Annex III: 2014 survey, summary of best practices
- Annex IV: Reactions of the national Chambers of Commerce - summary
- Annex V: 2014 Survey, questionnaire to EU member states