

STANDARDISING THE SME TEST

POLICY PAPER





INTRODUCTION

In 2008, the European Commission launched the Small Business Act (SBA) for Europe¹. The SBA, which was loosely modelled after its US equivalent, was to become the European Commission's anchor for SME policy-making. Its four main priorities: promoting entrepreneurship; reducing regulatory burden; better access to finance; and access to markets and internationalisation, are still the main pillars for SME policy today, governed through the overarching *Think Small First* principle. By means of this principle, the Commission commits itself to take SMEs' interests into account at the very early stages of policy making, striving for SME friendly legislation.

Arguably the most important tool for the implementation of the *Think Small First* principle is the SME Test². The test is a part of Commission Impact Assessments and aims to analyse the costs and benefits of policy options, through consultation with SMEs and SME representative organisations and statistical analysis. A thorough and structured implementation of the test, should lead to better Impact Assessments and consequently to better, SME-friendlier, legislation.

However, since the inception of the *Think Small First* principle in 2008, business groups have continuously

expressed concerns about the lack of standardisation of the SME test as well as its implementation, which appears to be rather piecemeal, rather than consistent.

During a technical seminar organised by the Commission on 5 October 2016, a variety of stakeholders were invited to DG GROW to discuss the progress of the SME Test as well as ways to improve it. Not only at Commission level but also across the EU. A presentation of a report³ by the Belgian SME Envoy, Mr. Didier Kinet, showed rather alarming results regarding the implementation of the SME test throughout the Member States. Not only is there is no harmonisation of the way in which the test is carried out across Member States, in many cases the test varies even across services within the same Member State. The report further shows that the test is mostly implemented on an 'ad hoc' basis and in some cases, even when the test has been implemented, the results are not taken into consideration when drafting the corresponding legislative proposal.

The ECR Group believes that a proper, structured and standardised implementation of the SME Test is vital to better law-making in the EU. Without the Test, the *Think Small First* principle

cannot be properly implemented and EU proposals will continue to be burdensome for SMEs, leaving only unwanted options and quick-fixes such as exemptions for small businesses to alleviate the burden brought on by EU legislation.

To achieve this, the ECR Group has set out policy recommendations on the implementation of the SME Test, in order to improve the Regulatory environment for Europe's SMEs.



¹ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52008DC0394&from=EN>

² https://ec.europa.eu/growth/smes/business-friendly-environment/small-business-act/sme-test_en

³ <http://ec.europa.eu/DocsRoom/documents/19261>

2. THE EUROPEAN COMMISSION AND THE SME TEST

In 2008, the European Commission launched the Small Business Act (SBA) for Europe. The SBA for Europe lays down the key principles and pillars to which the European Commission commits itself, when drafting legislation that is likely to affect Small and Medium sized Enterprises (SMEs). Since then, the SBA has been considered the driver of Better Regulation for SMEs. The act can be divided into four main priorities:

- promoting entrepreneurship;
- reducing regulatory burden;
- better access to finance;
- access to markets and internationalisation

Eight years later, these pillars are as relevant as ever. Arguably the most pressing priority for SMEs throughout Europe is the reduction of regulatory and administrative burden, as the sheer amount of regulation puts the often under-resourced micro companies at a competitive disadvantage. To achieve this, the European Commission introduced the *Think Small First* principle, as the base principle of the Small Business Act for Europe. By means of this principle, the Commission commits itself to take SMEs' interests into

account at the very early stages of policy making, striving for SME friendly legislation⁴.

2.1 Evolution

At the time of its inception, the Small Business Act for Europe was a project, to be carried out by the Directorate General for Enterprise and Industry (ENTR), which is now known as the Directorate General for Internal Market, Industry, Entrepreneurship and SMEs (GROW). This proved to have its drawbacks as it is difficult for one DG to monitor and ensure that other DGs implement the Act and, more specifically, the SME test.

The Better Regulation agenda, which emerged from the Small Business Act, in later years became a portfolio governed by the European Commission's Secretariat General, which helped in terms of stimulating the participation of other DGs. Most recently, since the Juncker Commission took office, the Better regulation agenda has been elevated to the level of First Vice-President, Mr. Frans Timmermans. One could argue therefore that the agenda and its principles have only gained in importance.

⁴ https://ec.europa.eu/growth/smes/business-friendly-environment/small-business-act_en

2.2. Shortcomings

Sadly, however, the SME test is still lacking in substance, is often not properly implemented and in some cases not implemented at all. A fully-fledged SME test consists of four clear steps:

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

A common complaint by the various European business groups is that the SME test, if carried out, is almost never carried out in the structured four step manner. Instead, Impact Assessments often contain a few lines stating that the corresponding proposal will or will not adversely affect SMEs, without any real justification as to why and how.

These claims seem reinforced by the fact that the two examples used to illustrate a well-executed SME-test, on the Commission's own website, date from 2009 and 2012. Annex 5 to the Impact Assessment report on "Electronic identification and trust services for

electronic transactions in the internal market"⁵ (2012) summarises all 4 steps of the SME test and provides an overview and evidence that SMEs specific concerns were considered. The Impact Assessment report on the directive on combating late payment in commercial transactions (2009) dedicates an entire annex to the SME test⁶.

2.3 Slow progress

The overarching authority, put in place to monitor the proper implementation of Impact Assessments, including the SME Test, is the newly established Regulatory Scrutiny Board (RSB)⁷, replacing the former Impact Assessment Board (IAB). The Board was set up by the Commission's First Vice-President, as part of the Better Regulation agenda. So far, the RSB seems to fail in delivering proper scrutiny regarding the implementation of the SME Test. The Commission's DG GROW is responsible for training staff of other Commission services on how to apply the SME test, as well as for the monitoring of its implementation. Only two staff members of DG GROW, Directorate H1: COSME Programme, SME Envoys and Relations with EASME, are allocated towards this, on a part-time basis.

⁵ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52012SC0135&from=EN>

⁶ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52009SC0315&from=EN>

⁷ http://ec.europa.eu/smart-regulation/impact/iab/members_en.htm

During a technical seminar organised by the European Commission on 5 October 2016, Eurochambres, a panellist during one of the sessions, presented a 2013 report⁸ on the

Commission's implementation of the SME Test. The main findings and criticisms in the report are still valid three years later.

Whilst the system is in place and the tools are there for all DGs to use – both in the Commissions own Better Regulation Guidelines⁹ and the Better Regulation Toolbox¹⁰ - the problem lies in the execution. Poor communication between DGs and a lack of motivation by non-business DGs are cited to be causing these issues (European Small Business Alliance, 2016).



⁸ http://www.eurochambres.eu/objects/3/Files/SME_Test_Benchmark_2013-2013-00787-01.pdf

⁹ http://ec.europa.eu/smart-regulation/guidelines/toc_guide_en.htm

¹⁰ http://ec.europa.eu/smart-regulation/guidelines/toc_tool_en.htm

3. THE SME TEST IN THE MEMBER STATES

During the technical seminar organised by the Commission on 5 October 2016, The Belgian SME Envoy, Mr. Didier Kinet presented his report¹¹ on the implementation of the SME Test in each Member State (24 Member States responded). The main conclusions are worrying, as the report shows that the SME Test is not standardised across all Member States, or even across services within most Member States. Mr. Kinet also stated that in some cases, where an SME Test had in fact been properly applied, the services chose not to take it into consideration during the drafting stage of the corresponding legislation. The report also examines the level of added value of the SME test in each country, which seems redundant when the Test is not carried out properly.

3.1 How the test is carried out

In 2014, 17% of the Member States declared that no SME Test or similar mechanism had been put in place at all. To the question asking how often a specific assessment of impacts on SMEs is carried out whenever proposed legislation or administrative initiatives are likely to affect businesses, 30% answered that this is only done

on an 'ad hoc' basis. Only 35% of the Member States said they always carry out an SME Test. In 2013, 22% of respondents admitted to having carried out a total of fewer than 5 SME Tests that year. In terms of the level of standardisation of the SME Test in the Member State, 15% of respondents said that each individual service is responsible for designing their own SME Test. Another 30% stated that there are templates and guidelines but these are not mandatory to follow. Only 10% of the Member States claim to have a centralised SME test function. When the SME Test is carried out, 35% of the respondents stated they consult SME representatives and/or stakeholders only on an ad hoc basis.

3.2 How quality control is carried out

To the question asking whether quality control is in place for checking the test and whether it is carried out in line with the existing guidelines, 20% of the Member States said they do not have any quality control in place. 50% have some form of quality control by the responsible service and only 30% have the SME Test checked by an independent body.

¹¹ <http://ec.europa.eu/DocsRoom/documents/19261>

3.3. Findings

The statistics in the report, based on figures from 2013 and 2014, clearly show that the implementation of the SME test in the Member States leaves much room for improvement. It also shows a need for coordination and for better checks and balances.

(encompassing a total of 21 amendments). Most commonly, the Directorate's Impact Assessments are six to twelve-page initial appraisals of Commission Impact Assessments



4. THE SME TEST IN THE EUROPEAN PARLIAMENT

Within the 2003 Inter-Institutional Agreement (IIA) on Better Law-Making, a document establishing working relations between the European Parliament, the European Commission and the Council, reference is made to the possibility of the European Parliament and Council choosing to conduct Impact Assessments on their own amendments. In the subsequent 2006 Inter-Institutional Common Approach to Impact Assessment, the Parliament and Council 'undertake to carry out impact assessments, when they consider this to be appropriate and necessary for the legislative process, prior to the adoption of any substantive amendment' (Paragraph 14)¹². In June 2011, the European Parliament adopted an own-initiative report by Angelika Niebler MEP, on 'guaranteeing independent impact assessment', which welcomed the on-going development of the impact assessment process within the EU institutions as an integral part of better law-making during the whole policy cycle¹³. In 2012, with a view to strengthening the capacity of the parliamentary committees to engage in a variety of ex-ante work, the Parliament's Bureau created a dedicated Directorate for Impact Assessment and European Added Value. The 2016 Inter-Institu-

tional Agreement, the last one to date, adds a paragraph which states that "The European Parliament and the Council will, when they consider this to be appropriate and necessary for the legislative process, carry out impact assessments in relation to their substantial amendments to the Commission's proposal. The European Parliament and the Council will, as a general rule, take the Commission's impact assessment as the starting point for their further work. The definition of a 'substantial' amendment should be for the respective Institution to determine"¹⁴

4.1 In practice

Available figures from the period June 2012 and December 2014 show that the Parliament's dedicated directorate had prepared roughly 90 initial appraisals of original European Commission Impact Assessments for Parliamentary Committees, including six detailed appraisals and four complimentary or substitute Impact Assessments. However, only four Impact Assessments were carried out on substantive amendments by the Parliament itself (encompassing a total of 21 amendments). Most commonly, the Directorate's Impact Assessments

¹² http://ec.europa.eu/smart-regulation/better_regulation/documents/ii_common_approach_to_ia_en.pdf

¹³ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A7-2011-0159+0+DOC+PD-F+V0//EN>

¹⁴ [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016Q0512\(01\)](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016Q0512(01))

are six to twelve-page initial appraisals of Commission Impact Assessments¹⁶

4.2 Room for improvement

Whilst in the period until 2016, a substantial number of European Parliament Impact Assessments have been added, the vast majority focus on appraising European Commission Impact Assessments, rather than carrying out Impact Assessments on the European Parliament's own proposed substantive amendments¹⁷. The ECR Group believes that more often than not, European Commission proposals are quite heavily amended when they reach the European Parliament. In some cases to such an extent that the scope of the initial proposal changes

considerably. Whilst it is the Parliament's given right and duty to amend Commission proposals where it deems necessary, it is important to note that, when amendments create substantive changes to the European Commission's original proposal, the Commission's Impact Assessment becomes progressively less accurate. It is therefore of vital importance that, in such cases, thorough Impact Assessments are carried out on said amendments. Most importantly, however, in light of alleviating unnecessary burdens on our small businesses, we must ensure that every Impact Assessment carried out within the European Parliament contains a thorough and standardised SME test.



¹⁵ [http://www.europarl.europa.eu/RegData/etudes/BRIE/2015/528809/EPRS_BRI\(2015\)528809_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2015/528809/EPRS_BRI(2015)528809_EN.pdf)

¹⁶ <https://epthinktank.eu/2015/08/13/initial-appraisals-of-european-commission-impact-assessments/>

5. CONCLUSIONS AND POLICY RECOMMENDATIONS

The ECR Group believes that better regulation for SMEs is essential. As long as the *Think Small First* principle has not been fully implemented, the full potential of the Better Regulation agenda cannot be accomplished. To achieve this, a proper, structured, and standardised implementation of the SME Test is vital.

5.1. European Commission

We furthermore believe that the Directorate General for Internal Market, Industry, Entrepreneurship and SMEs (GROW), has developed a substantial set of tools¹⁸, which clearly describe what a fully-fledged SME Test should look like, as well as how to execute it. However, the ECR Group believes the staff resources allocated towards the implementation of the SME Test at DG level are not sufficient. Furthermore, it is difficult for one DG to oversee the implementation of the SME Test in other DGs.

More guidance and authority with regards to the SME Test is therefore required of the Commission's First

Vice-President, Mr. Frans Timmermans, who is the guardian of the better Regulation Agenda. Subsequently, there should be a bigger role for the Secretariat General, in coordinating efforts across DGs. The Secretariat General needs to cooperate closely with the Regulatory Scrutiny Board, to ensure a structured application of the SME test, in the same manner it was executed in the 2009 and 2012 Directives mentioned earlier in this document. If a Commission service fails to deliver, it is the responsibility of the RSB to reject the Impact Assessment and demand a fully-fledged SME Test. (see figure 1)

The ECR Group recommends that DG GROW uses its experience and expertise regarding the SME Test to train staff in other DGs on how to properly execute the Test. We recognise that additional staff resources might be needed. Support from the Cabinet and Secretariat General is required. The tools are there and readily available, but we need a systematic approach to implementing the SME Test across DGs.

¹⁷ <http://www.europarl.europa.eu/thinktank/en/search.html?page=1&previousSubmitter=WORD&facetAction=&selectedAuthor=&selectedKeyword=&selectedPolicyArea=&word=impact+assessment&selectedDocumentType=&documentTypes=&fakeSelectedPolicyArea=&fakeSelectedAuthor=&fakeSelectedKeywords=&previousResultSetDateStart=30-11-2015&dateStart=30-11-2015&previousResultSetDateEnd=31-01-2017&dateEnd=31-01-2017&sort=RELEVANCE>

¹⁸ http://ec.europa.eu/smart-regulation/guidelines/toc_tool_en.htm

5.2 Member States

As regard the Member States, whilst it is important to respect the principle of subsidiarity, a standardised approach towards the SME Test, preferably across Member States, but at least across services within each Member State, is recommended. A standardised SME Test makes it easier to set up an equivalent to the Regulatory Scrutiny Board in each Member State, where such an independent body does not already exist.

The ECR Group recommends that the Member States make use of the existing toolkit, created by the European Commission, by implementing the methodology within its services. This should be added to the agenda of an upcoming Competitiveness Council for discussion amongst Member States. The European Commission, most notably the Secretariat General and DG GROW could serve as an advisory body to these services, and DG GROW could set up a 'train the trainers' programme to help the authorities in the Member States implement the SME Test fully and on a structured basis. It is highly recommended that each Member State sets up an independent body to guarantee checks and balances and to ensure that the results of the SME Test, once

properly implemented, are fully taken on board in the drafting process of the corresponding legislation.

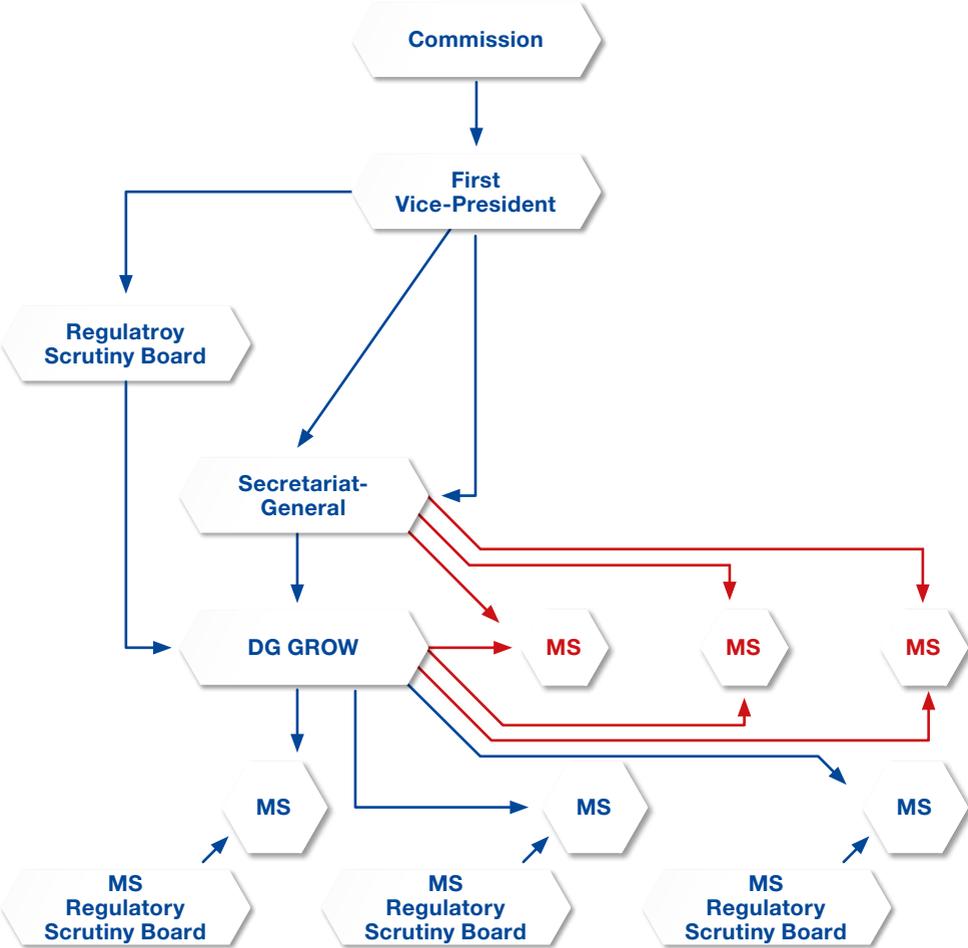
5.3 European Parliament

The ECR Group believes that, only by fully embedding the *Think Small First* principle into the EU's legislative procedures, can the disproportionate regulatory burden that often falls on small businesses be alleviated, and can European SMEs thrive and create additional employment. A structured approach to the SME Test with maximum standardisation is vital to achieving this. The ECR Group strongly recommends that the European Parliament leads by example by properly implementing a structured approach. Where the European Commission seems to have difficulties applying the SME-test across the DG's and the Member States often struggle to apply the Test coherently between services, the European Parliament can take the lead, by implementing a structured Impact Assessment procedure, that is used in the same manner by every Committee. An impact assessment should be conducted on all substantive amendments passed by the Committee as outlined in the IIA on better law-making and should also contain a fully-fledged SME test.

The ECR Group also recommends that the European Parliament assigns to its first-Vice President the task of coordinating the Parliament's work in the area of Better Regulation. This would allow the Parliament to

work in a targeted and coordinated manner with the first-Vice President of the European Commission. This would help to raise the profile and importance of SME test as part of the Better Regulation agenda.

RECOMMEND STRUCTURE





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Anthea is also the author of publications “Re-shoring: Bringing jobs back to Europe”, “ECR Policy Toolkit”, “Sunset Clauses”.



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