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Ireland's SME Test

The “Think Small First” Principle

What is a SME Test?

The SME (Micro, Small and Medium Enterprises) Test is an integral part of the European Commission's Better Regulation guidelines since 2009. It asks each Member State to include an assessment of the burden on SMEs for relevant regulations and legislation. Relevant regulation should be interpreted in a broad sense of its possible implications for SMEs.

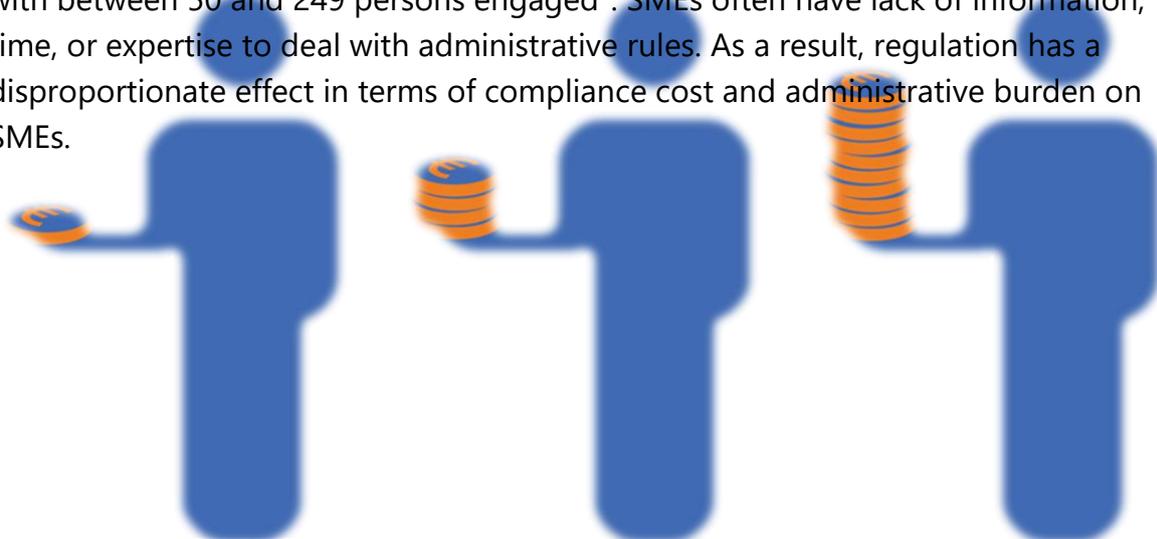
What is its purpose?

The purpose of the SME test is to request policymakers to think about the negative impact of any new legislation or regulation which may create a burden on SMEs. The main thrust of the Test is to propose possible exemptions or less stringent requirements for smaller companies.

Note: A distinction has to be made between the regulatory burden and the fiscal burden; therefore, taxes are not considered in this test.

Why?

SMEs are defined as enterprises with fewer than 250 persons engaged. SMEs are further split into micro enterprises with fewer than 10 persons engaged, other small enterprises with between 10 and 49 persons engaged and medium sized enterprises with between 50 and 249 persons engaged¹. SMEs often have lack of information, time, or expertise to deal with administrative rules. As a result, regulation has a disproportionate effect in terms of compliance cost and administrative burden on SMEs.



¹ The European Commission recommendation 2003/361/EC, published in the Official Journal of the European Union L124, p.36 of 20 May 2003)

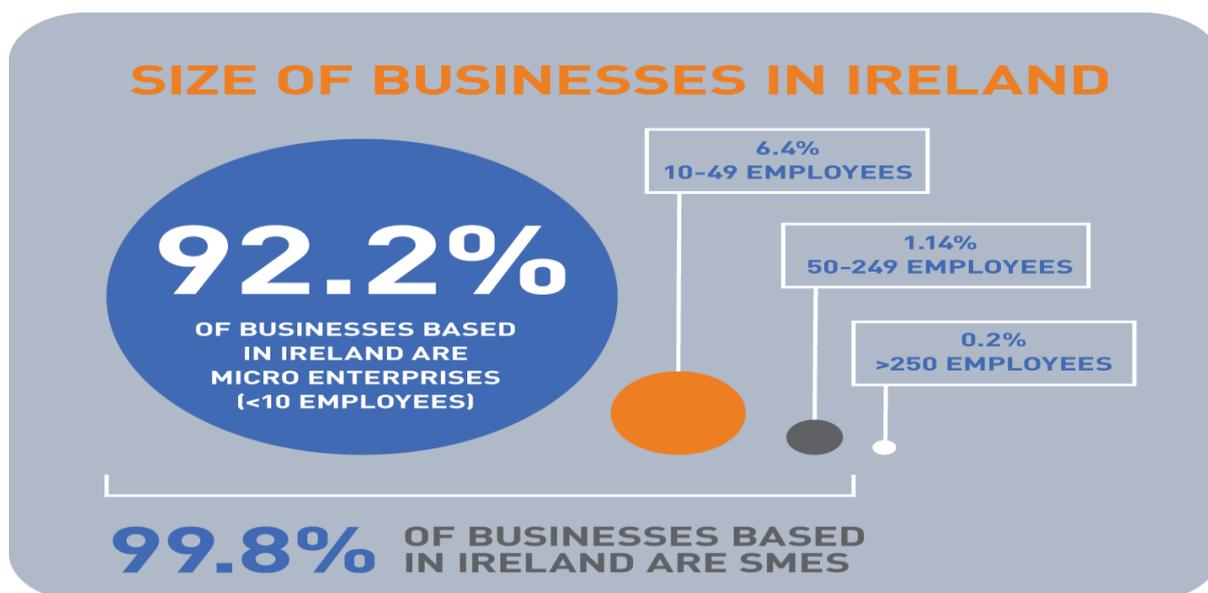
On average, where a big company spends one euro per employee to comply with a regulatory duty a medium-sized enterprise might have to spend around four euros and a small business up to ten euros².

Usually three explanations are offered for the disproportionate regulatory burden on smaller businesses:

- The fixed-cost nature of regulation.
- The lower efficiency of smaller businesses in dealing with regulation.
- The fact that in small businesses the most important resource, the entrepreneur, must deal with regulation him or herself.

Are SMEs important to Ireland's economy?

SMEs are particularly important for the labour market in Ireland. 99.8 percent of all enterprises in Ireland stand within the SME bracket. They generate more than 70 % of all jobs in the 'non-financial business economy', approximately 4 percentage points more than the EU average. In 2016, SMEs accounted for €66.1 billion of value added to the Irish economy. SMEs have contributed substantially to growth of the Irish 'non-financial business economy' in recent years. In 2012-16, SME value added increased by 25.2 % and SME employment rose by 9.8 %. Most recently, in 2015-16, SME value added grew by 5.3 % and SME employment by 2.7 %.



² European Commission Enterprise And Industry Directorate-General, Report Of The Expert Group Models To Reduce The Disproportionate Regulatory Burden On SMEs, May 2007, p4

What are the key points of the Irish SME test?

- **Exemptions**
- **Deadline variation/flexibility**
- **Simplification of the implementation of regulations**

Exemptions

Exemptions are the most widely used method to reduce the regulatory burden for small enterprises and can be found in almost all areas of regulation. Exemptions are either applied directly (i.e. businesses below certain thresholds do not have to comply with certain rules) or indirectly (i.e. the exemption depends on a criterion strongly correlated with size such as a particular economic sector or legal type of business formation).

Deadline variation/flexibility

Temporal reductions could be of great assistance for ease of compliance by SMEs. Possibilities include longer intervals for certain obligations (e.g. annual instead of quarterly payments), a lower frequency/probability (e.g. for audits) or longer transitional periods (e.g. for new regulation). In addition, common commencement dates can ease the regulatory burden for smaller businesses.

Simplification of the implementation of regulations

Simplified obligations for small businesses may be achieved by introducing simpler formal requirements. This can be combined with an information drive to inform small businesses of their obligations. The Local Enterprise Offices act as the “First Stop Shop” and can signpost businesses to the relevant information or agency responsible. The use of plain English in forms should be accompanied by examples and a list of any documentation required to complete the application.

The Cabinet Handbook requirements

The Handbook is an internal Government (Cabinet) guide for Ministers. Its purpose is to assist Ministers and officials in the preparation of matters to be dealt with at Government meetings.

It states that, in relation to the impact of legislation, where no requirement for a RIA arises, each memorandum is required to indicate clearly, as appropriate, the impact of the proposal for industry costs and the cost to small business³. An exemption applies for measures relating to the Budget.

³ Department Of The Taoiseach, Cabinet Handbook, Chp 3.4, (vi)

Regulatory Impact Assessments requirements

Competitiveness:

The RIA states that competitiveness refers to the ability of firms to compete in markets⁴. All proposed regulations must therefore be examined as to whether they could impact on:

- Ireland's business and work environment;
- Economic and technological infrastructure;
- Education and skills;
- Entrepreneurship and enterprise development;
- Innovation and creativity.

Cost to Industry:

In general, it is desirable that all affected parties should also be consulted, including representative associations and relevant industry groups⁵.

Stakeholder Consultation:

Consultation with key stakeholders should take place as early as possible in the RIA process so that it can feed into the analysis of costs, benefits and impacts.

It is important that even informal consultation should be balanced in terms of seeking views from different interests in the process.

The EU Better Regulation Toolbox

This document contains an easily understood overview of the Test and practical detailed examples of how to implement the Test. It states "it is Commission policy to exempt micro-enterprises from EU legislation wherever possible or introduce special regimes so as to minimise the regulatory burden on them"⁶.

⁴ Department Of The Taoiseach REVISED RIA GUIDELINES How to conduct a Regulatory Impact Analysis, 4.41 & 4.42, p27-28

⁵ Ibid, 4.61, p32

⁶ EU Better Regulation Toolbox, Tool #22, https://ec.europa.eu/info/sites/info/files/file_import/better-regulation-toolbox-22_en_0.pdf

What are the steps required to apply the Test?

- (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.

Step (1) Consultation that captures the SMEs angle

Policymakers should consider if early consultation with SME representative bodies, sectoral groups or relevant Agencies is required.

As per the RIA and Department of Public Expenditure and Reform guidelines⁷, consultation can be formal or informal but it is important to document the feedback received from stakeholders. As SMEs have less staff, allow for a longer timeframe for their opportunity to submit their feedback.

The main thrust of the Test is not to avoid regulating smaller businesses, but instead, to ensure the ease of use, understanding and application of regulation for SMEs.

Step (2) Identification of affected businesses

It is necessary to identify within the wide-ranging variety of SMEs, the variation of the impact dependent on size. The SME test must take in account that the burden of regulation varies greatly from a micro business (1-9) to a medium sized business (50-249). The costs, in terms of time and money, differ greatly as a micro business is often reliant on the entrepreneur or owner/manager to adhere to the relevant regulations. This is not as onerous for a company of c.200, who would have specialists. In addition, there may be sectors that have far greater regulatory burdens than others. Where feasible, this should be identified and presented to the body implementing the regulation.

Therefore, you should ask the following questions regarding the types of businesses affected by the legislation:

- Are all businesses affected?
- Are all sizes of businesses affected?
- Is it sector specific?
- How many businesses will be required to comply?

⁷ Consultation Principles and Guidelines, <http://www.per.gov.ie/en/consultation-guidelines/>

Step (3) Measurement of the impact on SMEs

It is important to establish the extent to which the proposal affects SMEs' competitiveness or the business environment in which they operate compared to organisations with more than 250 employees.

National legislative measurements have direct and indirect impacts on SMEs – both positive and negative. The direct benefits such as improved working conditions, increased competition etc. should be reflected in reduced costs to SMEs. Yet, these benefits may be offset by various regulatory costs some of which may be disproportionately felt by SMEs, notably:

- Compliance costs which can take the form of the obligation to pay fees or duties; and costs created by the obligation to adapt the nature of the product/service and/or production/service delivery process to meet economic, social or environmental standards;
- Administrative costs can be created by the obligation to provide information on the activities or products of the company including one-off and recurring administrative costs.

Cost and impacts identified for SMEs should be compared with those of large enterprises.

In addition, consideration should be given to the following elements:

- Possible impacts on barriers to entry,
- Competition in the market and market structure, for example in terms of possibilities for SMEs to enter markets;
- Possible impact on innovation.

Step (4) Assessment of alternative options and mitigating measures

The main objective of the SME Test is realising measures in order to minimise any negative impacts on smaller businesses. After carrying out the previous steps, analysis may show that micro, small and/or medium sized enterprises are facing a relatively higher burden than large companies and that specific measures, where they already exist, have not proven to sufficiently or adequately address the SME needs.

The result should lead to the assessment as to whether mitigating measures (such as exemptions, deadline variation, and simplification) for each regulation should apply to all SMEs or, for example, to micro-enterprises only. However, if there is clear evidence that excluding a particular cohort would mean that the initiative would not

be able to achieve its goals or would undermine other Government goals or fundamental rights, all SMEs should be included but the possibility to apply adapted solutions should be assessed.

In Summary

Follow the 4 steps:

- 1. Consultation**
- 2. Identification**
- 3. Impact Measurement**
- 4. Alternatives & Mitigation**

In conjunction with the following questions:

- 1.** Will the legislation have a negative impact on SME's? Would it be possible to exempt some or all of the cohort from its requirements?
- 2.** Is your legislation one of a number that is due for upcoming implementation? Could these be grouped together as part of a common commencement date? Alternatively, could temporal derogations be given to SMEs?
- 3.** If your legislation is technical in nature or highly complex, could it be simplified for SMEs to ensure understanding and compliance?