

# SME TEST BENCHMARK 2022

MAKING BETTER REGULATION

WORK BETTER FOR SMES



NOVEMBER 2022

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## FOREWORD

The last three years have been extremely challenging for Europe’s small and medium-sized enterprises (SMEs), with the economic shockwaves from the war in Ukraine eroding the tentative recovery from the pandemic and further undermining already disrupted global supply chains.

SMEs are also, in many cases, lacking the margins, economies of scale and in-house human resources to mitigate the impact of new challenges. This also applies to challenges connected to the regulatory environment.

This is why the SME Test, building on the rationale of the “think small first” principle enshrined in the “Small Business Act”, to which the European Commission rightly subscribes, plays a very important role. As a key tool of the better regulation guidelines, it is a pre-condition for evidence-based policy initiatives that deliver their objectives in a manner that avoids unnecessary or disproportionate burdens. As such, the SME Test is pivotal to ensuring an SME-proofed regulatory regime and needs to be used correctly to prove effective.

BusinessEurope, Eurochambres and SMEunited have therefore joined forces to analyse the application of the European Commission SME Test. This report assesses its use across European Commission services and provides recommendations for better SME policy making.

We are proud to submit our joint report for consideration by the European Commission, other EU policymakers and the broader SME policy community.



A blue ink signature of Markus J. Beyrer, written in a cursive style.

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# 1 EXECUTIVE SUMMARY

The main objective of the European Commission SME Test is to identify measures to minimise any negative impacts of regulation on small businesses. Nevertheless, identifying the extent to which the European Commission actually takes into account the regulatory needs of SMEs when putting forward legislative proposals remains a challenging exercise.

This report analyses the application of the SME Test across European Commission services and aims to provide recommendations for better SME policy making. 26 impact assessments (IAs) were checked against the European Commission's better regulation guidelines. The study also delves into the opinions of the Regulatory Scrutiny Board (RSB) to verify whether and to what extent the SME Test, a mandatory element of the IA, is rigorously carried out.

The communication from the European Commission "*Better regulation: Joining forces to make better EU laws*"<sup>1</sup> states that "*Careful assessment of the impacts of Commission proposals on SMEs will ensure that action is targeted, achieves its objectives and does not add unnecessary costs. A more systematic and proportionate application of the 'SME Test' will help achieve this aim*".

Through the analysis of the IAs, it appears that the application of the SME Test is not systematic nor done consistently.

## Main findings

- 69% of the proposals' inception impact assessments (IIAs) take into consideration whether SMEs are affected.
- Among the 26 initiatives under analysis, 24 respect the 12-week period for an open public consultation. However, in 16 cases the period overlapped with holidays, affecting the capacity of SMEs and SME representatives to contribute to the consultation.

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<sup>1</sup> [Better regulation: Joining forces to make better laws | European Commission \(europa.eu\)](https://ec.europa.eu/better-regulation/better-regulation-communication_en)

- 62% of the IAs reveal a satisfactory level of engagement of stakeholders in the consultations by including alternative forms of consultation such as targeted interviews, meetings, panel consultations, conferences, hearings or workshops.
- 25 out of 26 initiatives include an open public consultation<sup>2</sup>. Out of these 25, 22 include a questionnaire available in all the EU 24 official languages (or 23 excluding Irish). This is a considerable improvement from the accessibility results registered in Eurochambres' 2017 SME Test Benchmark, where only 6 out of 11 files included questionnaire in all the EU official languages.
- The SME Test does not differentiate enough the impact between different sub-categories of SMEs, nor IAs consider enough mitigating measures for SMEs.
- 10 out of 26 consultations of the IA report include one or more dedicated sections presenting SMEs' views. This is a disappointing result, as the Better Regulation Guidelines of 2017 propose an annex dedicated to the SME Test as a good forward-looking assessment.
- IAs do not pay sufficient attention to indirect impact on SMEs when considering mitigating measures.

## 2 INTRODUCTION & RATIONALE

While businesses continue to face increasing economic difficulties and uncertainty, it is important to follow a fit-for-purpose and proportional law-making approach. To achieve adequate evaluations of the impact of existing and upcoming legislations, the European Commission should perform extensive ex-ante evaluations and ex-post reviews based on the collection of data and information. As indicated in a recent report from the European Parliament Research Service (EPRS)<sup>3</sup>, the effectiveness of ex-post evaluations is highly dependent on the quantity and quality of the available data. Critical to this is also the possibility to conduct interim monitoring to possibly recalibrate the effectiveness and efficiency of the measures proposed and implemented.

The analysis in this report is carried out on 26 IAs of legislative initiatives of relevance to SMEs across a total of 11 directorates general (DGs). This underlines the extremely cross-cutting exposure of businesses to EU policy and the need to systematically analyse the impact of legislative initiatives. Further information on the breakdown of DGs is available in Annex 1. Apart from the Taxonomy file, the period of the aforementioned analysis covers the current EU institutional cycle (2019-2022).

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<sup>2</sup> Proposal for a Directive on adequate minimum wages in the European Union was not open for public consultation.

<sup>3</sup> [“The way forward for better regulation in the EU”](#)

The IAs were analysed against the European Commission's 2017 better regulation guidelines<sup>4</sup>, following the four steps of the SME Test (see Chapter 4):

1. *Consultation of SME stakeholders*
2. *Identification of affected businesses*
3. *Measurement of the impact on SMEs*
4. *Assessment of alternative options and mitigating measures*<sup>5</sup>

The exercise also investigates the clarity in the presentation of the results, their aggregation in the annex to the IA or whether they are mentioned in the explanatory memorandum of the proposed legislative initiative.

The new better regulation guidelines and toolbox, published in 2021<sup>6</sup>, foresee further analysis by the European Commission services. However, considering the overlapping period between the initiatives analysed in this report and the publication of the new guidelines, we decided to carry out the analysis according to the information provided in the 2017 better regulation guidelines.

Despite the recent adoption of a new set of guidelines, BusinessEurope, Eurochambres and SMEUnited consider the results presented hereafter as an extremely important source of information for the improvement of the formulation process of new initiatives.

After presenting the main results of our analysis, a set of recommendations based on the four steps of the SME Test is provided in Chapter 5. These serve as a call for immediate action in improving the overall application of the SME Test among the Commission's services and, more broadly, contributing to the European better regulation agenda.

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<sup>4</sup> [Register of Commission Documents - SWD\(2017\)350 \(europa.eu\) - better-regulation-toolbox.pdf \(europa.eu\)](#)

<sup>5</sup> For more details, please refer to Annex 2.

<sup>6</sup> [Better regulation: guidelines and toolbox | European Commission \(europa.eu\)](#)

### 3 OVERVIEW OF ASSESSED FILES

Name of proposal	Acronym used in the report	IA report reference	Date of the IA	DG(s)	Relevance to SMEs
<b>Taxonomy</b>	Taxonomy	SWD(2018) 264 final	24.05.2018	DG FISMA	Taxonomy regulation defines the criteria for substantial contribution and “do-no-significant-harm” to any of the environment objectives and for minimum social safeguards as well as the reporting requirements for financial institutions and non-financial corporates. SMEs are not directly in the scope of the regulation, but will have to use taxonomy and report accordingly in the case of large companies in the supply chain requesting it, if financial institutions request it for providing finance, and to have access to green finance.
<b>Climate Law</b>	Climate Law	SWD(2020) 176 final	17.09.2020	DG CLIMA	The initiative will ensure that all EU policies contribute to the climate-neutrality by 2050 objective and that all sectors play their part. This will include fundamental elements guiding the EU's economy and its competitiveness. Because of the far-reaching measures in all sectors, the initiative will heavily influence SMEs, their competitiveness and daily work.
<b>Proposal for a Directive on adequate minimum wage</b>	Minimum wage directive	SWD(2020) 245 final	28.10.2020	DG EMPL	The proposal has a direct impact on employment, productivity and competitiveness of SMEs due to the potential significant increase of labour costs that it might entail as a consequence of the adjustments of the levels of minimum wages adequacy.

<b>Digital Markets Act</b>	DMA	SWD(2020) 363 final	15.12.2020	DG CNECT	While qualifying large online platforms as gatekeepers and imposing obligations that limit their control over the access to digital markets, the proposal aims to allow SMEs (including business users and other providers of core platforms services) to grow throughout the internal market as a result of the removal of important barriers to entry and expansion.
<b>Digital service act</b>	DSA	SWD(2020) 348 final	15.12.2020	DG CNECT	Digital services have transformed the EU's economy and society, in particular with the emergence of online platforms. With the evolving fragmentation, costs can have an impact on the over 10.000 potentially high-growth platforms established in the EU, out of which around 96% are SMEs, more than half of which are microenterprises.
<b>Network and Information Security Directive</b>	NIS Directive	SWD(2020) 345 final	16.12.2020	DG CNECT	SMEs would be exempted from the scope of the NIS framework under the preferred option. For medium-sized enterprises, it can be expected that there would be an increase in the level of ICT security spending in the first years, following the introduction of the new NIS framework. At the same time, raising the level of security requirements for these entities would also incentivise their cybersecurity capabilities and help improve their ICT risk management.
<b>Pay transparency directive proposal</b>	Pay transparency proposal	SWD(2021) 41 final	04.03.2021	DG JUST	The measures envisaged in this proposal are aimed at protecting the right to equal pay between women and men for equal work or work of equal value. They should therefore in principle apply to all workers, independently from sector, type of contract, hence relevant for SMEs as well. The particular situation of SMEs needs to be taken into account in this directive, and on some of the key provisions it is crucial to exempt SME from some of the administrative and financial burdens placed on companies, e.g. joint assessment report.

<b>Artificial Intelligence Act</b>	AI Act	SWD(2021) 84 final	21.04.2021	DG CNECT	The proposal focuses on ensuring that AI systems placed in the single market are safe, lawful and trustworthy. The proposal also envisages SME support measures to support their compliance and reduce conformity costs.
<b>Corporate Sustainability Reporting Directive</b>	CSRD	SWD(2021) 150 final	21.04.2021	DG FISMA	Only listed SMEs fall within the scope of the Directive but the trickle-down effect foreseen is huge as they will be required to comply with requirements and standards not adapted for SMEs.
<b>Proposal for foreign subsidies</b>	Foreign subsidies	SWD(2021) 99 final	05.05.2021	DG COMP and DG GROW	The objective is to restore the level playing field on the EU internal market by identifying and removing distortions caused by foreign subsidies in the context of acquisitions, public procurement procedures and general market situations. In this context, even if SMEs are not in the scope of the Regulation, it is relevant to assess whether this proposal will impact, and how, European SMEs.
<b>General product safety regulation</b>	GPSR	SWD(2021) 168 final	30.6.2021	DG JUST	EU product safety legislation covers all-sized enterprises, hence including SMEs, since a consumer product must be safe whatever the characteristics of its supply chain, to meet the general objective of product safety and consumer protection.
<b>Carbon Border Adjustment Mechanism</b>	CBAM	SWD(2021) 643 final	14.07.2021	DG TAXUD	The regulation will indirectly affect SMEs since the CBAM will result in relatively higher compliance administrative costs for SMEs compared to large enterprises.
<b>Energy Efficiency Directive</b>	EED	SWD(2021) 623 final	14.07.2021	DG ENER	The Directive will be of particular relevance for SMEs with a high energy usage as well as low energy using SMEs that were previously subject to the obligation to carry out energy audits because of business links. This will directly affect SMEs

					competitiveness. The initiative will also affect SMEs through the implementation by Member States.
<b>Extension of the ETS to Buildings and Road Transport</b>	Extension of the ETS	SWD(2021) 601 final	14.07.2021	DG CLIMA	The impacts of covering additional sectors in the EU ETS, notably expanding emissions trading to emissions from buildings and/or road transport, have both advantages and disadvantages. While both SMEs and large companies have the opportunity to gain competitive advantage by innovating in sustainable products and processes, the direct and indirect impact on SMEs needs to be well analysed and assessed.
<b>Proposal on CO2 emission performance standard for light duty vehicles and vans</b>	Proposal on CO2 emission performance standard	SWD(2021) 613 final	14.07.2021	DG CLIMA	Through the revision of the CO2 emission standards, passenger cars and light commercial vehicles will contribute to achieve the emission reduction target for 2030 and the climate neutrality objective. While the proposal could have positive economic impacts, it is also necessary to analyse and assess the direct and indirect costs on SMEs.
<b>Solvency II - Insurance &amp; reinsurance firms – review of prudential rules</b>	Solvency II	SWD(2021) 260 final	22.09.2021	DG FISMA	The review of Solvency II directive aims at improving the regulatory fitness and simplify the framework by reducing compliance and regulatory costs by excluding a larger number of small insurers from the scope of its mandatory application, and enhancing the application of proportionate rules for other smaller and less complex insurers. SMEs (beyond the insurance sector) would benefit from easier access to long-term capital funding.
<b>Capital Requirements Regulation &amp;</b>	CRR and CRD Review	SWD(2021) 320 final	27.10.2021	DG FISMA	CRR and CRD defining the capital a bank has to hold against lending with a risk-weighted approach. Therefore, the assumption about the riskiness of SME lending is important for the capacity of

<b>Capital Requirements Directive review</b>					a bank to lend to SMEs or the price for SME loans. The CRR/CRD review is implementing the agreements from Basel III as regards the risk assessment of different bank activities and different methods of risk assessments.
<b>European Single Access Point</b>	ESAP	SWD(2021) 344 final	25.11.2021	DG FISMA	ESAP will provide EU-wide access to information, activities and products of entities that are required to disclose such information, which is relevant to capital markets, financial services and sustainable finance. SMEs are allowed to disclose available information on a voluntary basis.
<b>Review of the European Long-Term Investment Funds Regulation</b>	ELTIF	SWD(2021) 342 final	25.11.2021	DG FISMA	European framework for alternative investment funds that invest in long-term investments e.g. transport infrastructure projects, real estate and SMEs. The proposal is expected to provide an additional answer to the chronic lack of long-term financing for SMEs when compared to other major economies.
<b>Corporate Sustainability Due Diligence</b>	CSDD	SWD(2022) 42 final	23.02.2022	DG JUST and DG GROW	The proposal aims to foster sustainable and responsible corporate behaviour throughout global value chains. SMEs are not directly in the scope of this proposal. However accompanying measures, which will support indirectly affected companies, including SMEs, are included in the text. Also, the trickle-down effect foreseen is huge.
<b>Data Act</b>	Data Act	SWD(2022) 34 final	23.02.2022	DG CNECT	SMEs would benefit from the Data Act as B2B and B2C data sharing will enable a competitive offer of aftermarket services and complementary products.

<b>Sustainable Products Initiative</b>	SPI	SWD(2022) 82 final	30.03.2022	DG GROW	The Directive will directly affect most European SMEs, since it sets sustainability requirements for all products. Especially the planned introduction of digital product passports, which will collect information on the entire life cycle of a product, poses the risk of creating high bureaucratic hurdles for SMEs.
<b>Industrial emissions directive</b>	IED	SWD(2022) 111 final	05.04.2022	DG ENV	While the IED typically covers large, complex and capital intensive activities, the presented policy options may affect SMEs as the livestock farms tend to be more often smaller installations. While there is limited information available on whether farms meet the SME defining criteria, it is however likely that the scope increase will capture several bigger SMEs of the sector.
<b>Long-term Residents Directive</b>	LTRD	SWD(2022) 651 final	27.04.2022	DG HOME	The Directive's application to SMEs remains difficult to assess since no research has been conducted on the employment of third-country nationals by SMEs. However, the simplified procedures in the revised Directive may make it easier for SMEs to hire non-EU workers.
<b>Single Permit Directive</b>	SPD	SWD(2022) 656 final	27.04.2022	DG HOME	The Directive's application to SMEs remains difficult to assess since no research has been conducted on the employment of third-country nationals by SMEs. However, the simplified procedures in the revised Directive may make it easier for SMEs to hire non-EU workers.
<b>Debt-equity bias reduction allowance</b>	DEBRA	SWD(2022) 145 final	11.05.2022	DG TAXUD	The debt equity bias in corporate taxation is one of the reasons why SMEs rely too much on debt finance (deductible interest rates) and show low rates of equity in their balance sheets (costs for equity such as dividends are not deductible).

## 4 ANALYSIS

### 4.1 Step 1: Identification of affected businesses

According to the SME Test Guidelines: “ (...) *this stage (...) should establish whether and which SMEs (e.g. micros) are among the likely affected population. In some cases, this will be clear. In others, you will need to identify the characteristics of the affected businesses/sector(s), such as the distribution of businesses per size-class (micro, small, medium or large enterprises).*”

The correct identification of affected businesses is one of the central pillars of better law-making and the first step of the SME Test. A legislative proposal that carefully considers:

- the obstacles and impacts on small and medium businesses,
- the economic, social, and environmental variables, each of which can influence the consequences of proposals,
- how the requirements will be met in practice, and
- whether they will yield the expected benefits in the different SME classes,

results in more business compliance, reduces the cost of enforcement and builds legitimacy in regulatory processes. As the 2017 better regulation guidelines mention “*If the preliminary assessment leads to the conclusion that one or more class of SME is affected, further analysis should be carried out*”<sup>7</sup>. The first step of the SME Test is thus an important feature of optimal regulatory performance and a key factor in strengthening the economic growth of SMEs. The elements considered for the analysis of this section were:

- *Does the Inception Impact Assessment consider whether SMEs (including micro) are affected?*
- *Does the Impact Assessment consider whether SMEs (including micro) are affected?*

If there is no mention of whether SMEs are affected or not:

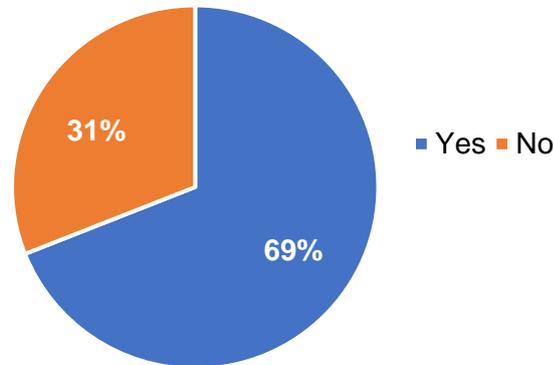
- *Are SMEs exempted upfront (micro should be by default)? Is an explanation provided in the Inception Impact Assessment/Impact Assessment?*
- *Use of quantitative analysis and data/estimate/other figures.*

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<sup>7</sup> [TOOL #22 The SME TEST \(europa.eu\)](https://ec.europa.eu/economy_finance/20170629_better-regulation-guidelines_en)

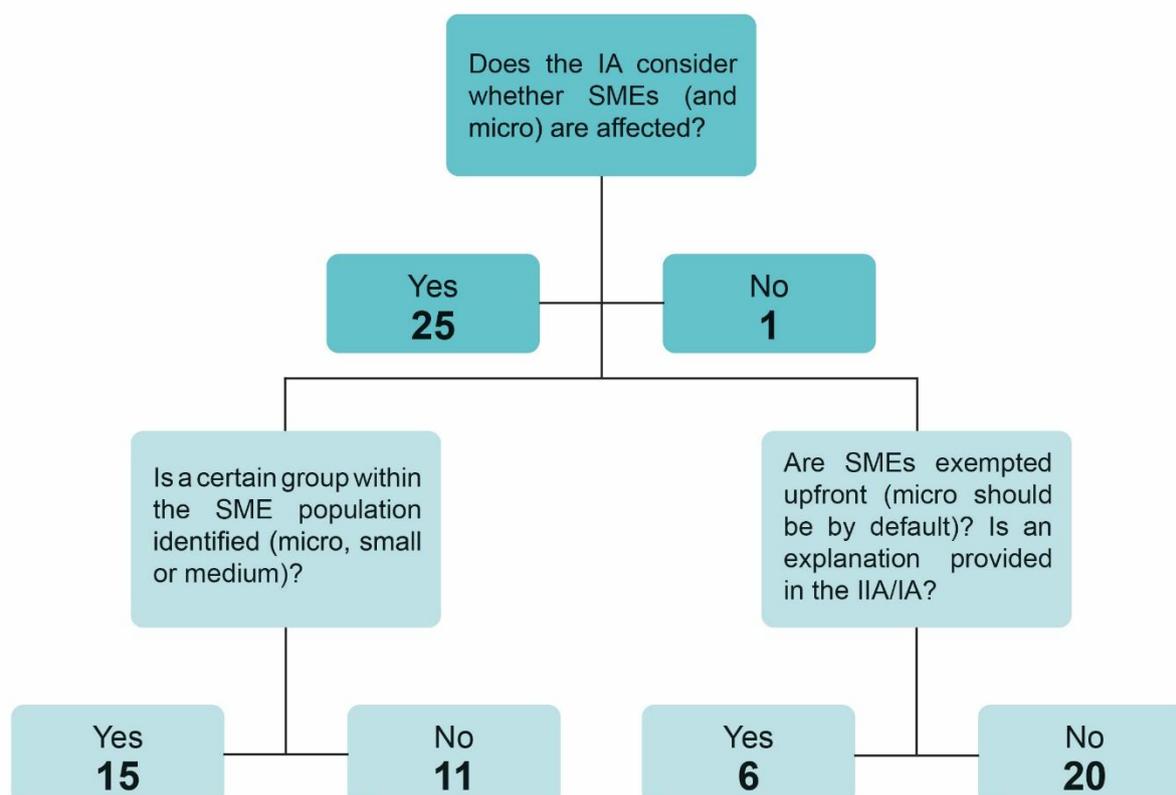
- *Use of existing specialised literature (academic, SME representatives, etc.), if not: duly explanation is required.*

**Figure 1. Does the IIA consider whether SMEs (and micro) are affected?**



Our analysis shows that the majority of the proposals' IIAs (69%) take into consideration whether SMEs are affected. However, the references to SMEs tend to be quite scant ranging from single paragraphs calling out for the need to alleviate the reporting burden on SMEs, the possibility to include exemptions according to the proportionality principle, or that particular attention will be given to impacts on SMEs. In a couple of cases it is mentioned that the lack of a policy initiative may be detrimental to companies, in particular for small businesses, validating the need for legislative action.

**Figure 2. Distribution of analysed Impact Assessments**



Out of 26 IAs, only one did not take into consideration whether SMEs are affected. This represents a systematic improvement even though proper chapters dedicated to thoroughly assessing the impact on SMEs were largely absent. Information was often found scattered throughout the different documents and annexes making it difficult to consolidate information in a clear and transparent manner.

However, 15 out of 26 IAs differentiate between distinct size-classes within the SME category. In most of these cases, general considerations, assumptions, or statistics are given on SMEs but there are no attempts to break those down further nor provide more granular assessments.

Finally, 6 out of 26 IAs exempted SMEs upfront. Considered that certain EU policies pose particular compliance challenges to small companies, such as policies introducing administrative burden on SMEs, the decision to adopt exemptions should take into account the trickle-down of policies.

## 4.2 Step 2: Consultation of SME stakeholders

This section aims at evaluating the level and quality of the information used in the proposed initiative, as a result of the consultation of SME stakeholders. For each policy initiative analysed, the score assigned to Step 2 depends on four main aspects of the consultation process: data collection, accessibility of the consultations, presentation of the results, and use of the consultation results. The four aspects were investigated according to a set of questions and corresponding scores:

- *Was a 12-week open public consultation carried out?*
- *Were the respondents able to identify themselves as SMEs/SME representatives?*

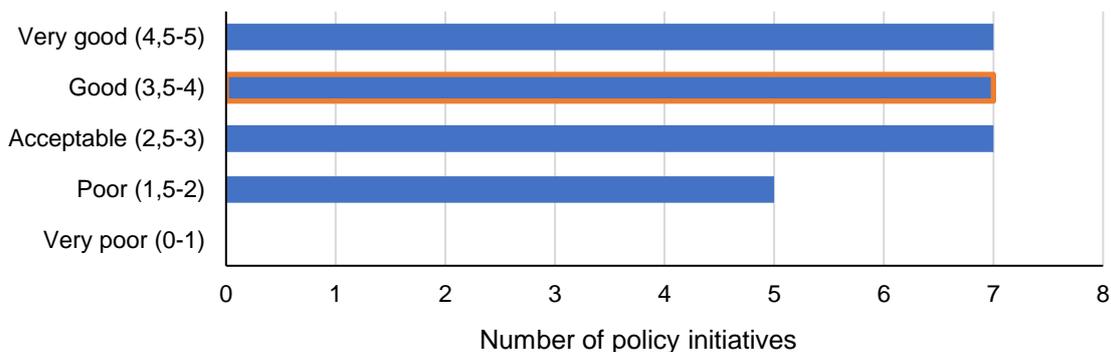
- Were other consultation methods employed?
- Was the consultation available in all the EU 24 official languages (or 23 without Irish)?
- Were the views of SMEs adequately presented in the IA report?
- Are the consultation results used in the assessment of the impact of the policy options on SMEs?

Based on the sum of the scores assigned to each of these criteria, the final score was identified according to the following scale:

- 0-1 point: very poor
- 1,5-2 points: poor
- 2,5-3 points: acceptable
- 3,5-4 points: good
- 4,5-5 points: very good

Compared to Eurochambres' 2017 exercise, both the scoring system and the grading scale were adapted in order to better quantify the quality of the consultation process and the information provided. While the presentation of the results in the 2017 assessment included a modest and relatively generic categorisation of the policy initiatives – with a division in three major categories (“*very good & good*”, “*acceptable*”, and “*poor & very poor*”) – the current one provides a better breakdown of the results. Overall, an average of “good” results was recorded. The positive feedback is further confirmed by the absence of policy initiatives falling under the “*very poor*” category. However, a more detailed analysis reveals weaknesses such as the limited presentation of the views of SMEs in the IA reports as presented in the dedicated section below.

**Figure 3. Quality of the consultation of SME stakeholders**



### **Consultation period**

Among the 26 initiatives, 24 respected the 12-week period for consultation. In two cases the temporal criterium was not respected as the public consultation was either not conducted or was initially expected to last 4 weeks, extended by two more weeks (Minimum wage directive and ESAP).

However, in 16 cases the consultation period overlapped with holiday periods (summer period or New Year’s break), strongly influencing the capacity of SMEs and SME representatives to take part in the consultative process. As the pandemic also played a role, in at least three cases the consultation period was extended to allow for a wider participation (CSDD, SPI, CSRD).

### **Were the respondents able to identify themselves as SMEs or SME representatives?**

81% of the consultation questionnaires (21 out of 26) allowed SMEs to identify themselves as such. In most cases this was guaranteed by the possibility to specify the size of the company, based on the number of employees. In 20 out of these 21 cases, the consultation did not devise a different questionnaire for SMEs and SME representatives. Although this does not affect the overall calculation nor the final grade of our analysis, it represents a criticality of the procedure already highlighted in Eurochambres' 2017 edition. The general reference to the “*business community*” does not guarantee a clear differentiation of micro, small, medium and large companies. Although not required by the Better Regulation guidelines, addressing the questionnaire directly to SMEs and SME representatives allows to fully and directly capture the SMEs segment of the business community and their perspective. Despite other criticalities, the Review of the European Long-Term Investment Funds Regulation (ELTIF) allowed for this possibility. One policy initiative (Pay transparency proposal) included targeted consultation of social partners on the basis of a separate specific questionnaire and a mini-survey for companies, followed by a dedicated consultation hearing of social partners.

### **Were other consultation methods employed (e.g. SME panels, round tables, focus groups, hearing targeted SME representatives, meetings with stakeholders)?**

62% of the policy initiatives under scrutiny (16 out of 26) included alternative forms of consultation such as targeted interviews, meetings, panel consultations, conferences, hearings or workshops. These complementary consultation methods saw the participation of different stakeholder groups, including business associations, company/business organisation representatives, trade unions, academics, non-governmental organisations (NGOs), environmental and social organisations, as well as Member State representatives and public authorities. Therefore, envisaging targeted consultations is strongly recommended, especially when the open public consultation fails in providing enough supportive information for a correct formulation of the initiative. This was already suggested in the better regulation guidelines which state that: “*In addition to an open public consultation, consultation activities may involve specific targeted actions such as round table discussions, focus group meetings, hearings targeting SME representatives, SME Panels or specific consultations – carried out with the assistance of the Enterprise Europe Network - aimed at providing inputs into the SME Test section of the Impact Assessment, etc.*”

### **Language regime**

85% (22 out of 26) of the consultations included a questionnaire available in all the EU 24 official languages (or 23 excluding Irish). This result is a considerable improvement in light of the accessibility results registered in previous analyses on the SME Test.<sup>8</sup> In the current analysis 3 consultations (ELTIF, IED, Directive on adequate minimum wages) included questionnaires only in English, German and French, limiting the possibility of participation for SMEs and SME stakeholders. Despite the absence of a public consultation on the Taxonomy Regulation, extensive consultation activities

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<sup>8</sup> In the Eurochambres' 2017 edition of the SME Test Benchmark only 6 out of the 11 analysed files included questionnaire in all the EU official languages.

were carried out for the Taxonomy Climate (“First”) delegated act. In this case, while the relevant document was available only in English, stakeholder replies were accepted in all EU languages.

### ***Were the views of SMEs presented in the IA report?***

Only 38% of the IA reports included one or more sections presenting the SMEs’ views. This is an extremely poor result as in most cases SMEs were directly or indirectly impacted by the initiatives. The IA report should provide an evidence base for the Commission’s decision-making and it must therefore include transparent and objective references to SMEs. In most cases, the views of SMEs are disregarded, blurring the effectiveness of the initiative. For instance, in the IA report of the Long-term Residents Directive SMEs are barely mentioned and the calculations for the costs and cost-savings were performed for the aggregated group of employers. This results in a reduced capacity to effectively take into account the views of SMEs. In one case<sup>9</sup>, also the Regulatory Scrutiny report reads as follows: “[...] *the report does not take sufficient account of different stakeholder groups’ views*”. 11 out of 26 files do not specifically refer to SME stakeholders in their IA reports.

On the other hand, the IA report of other policy initiatives such as Data Act includes a full chapter on the impact of the policy options on SMEs. In some IA reports and annexes, references to various SME stakeholder groups are included<sup>10</sup>.

### ***Are the consultation results used in the assessment of the impact of the policy options on SMEs?***

The proposed initiatives must thoroughly take into account the impact of the policy options on SMEs. Almost 40% (10 out of 26) of the initiatives poorly takes into account this factor, leaving *de facto* SMEs exposed to the consequences of the initiative. Consultation results should be considered as integral part of the assessment process as this guarantees a better calibration of the policy options, based on the technical feedbacks provided by SMEs and SME representatives. Although a more inclusive assessment is strongly recommended – especially by considering SME inputs – the Proposal for Foreign Subsidies distorting the internal market embeds an example of an exhaustive procedure: the feedback received during the stakeholder consultations was included in the draft of the legal instrument and accompanying IA report.

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<sup>9</sup> Carbon Border Adjustment Mechanism (CBAM)

<sup>10</sup> For instance, the Proposal for a Directive on adequate minimum wage, the IED, GPSR, and the Foreign subsidies Proposal included clear references to SME stakeholders.

### **Box 1 – Illustrated examples for Step 2: one good, one bad**

#### **Sustainable Product Initiative – SPI: 5/5**

- **Data collection: 3/3**
- **Accessibility of consultations: 0,5/0,5**
- **Presentation of results: 1/1**
- **Use of consultation results: 0,5/0,5**

The consultation period was longer than 12 weeks and the consultation included the possibility to specify the size of the company based on the number of employees. Among the other consultation methods, six dedicated workshops on different topics were organised and widely attended by participants from different stakeholder groups. Moreover, the consultation was available in all the EU 24 official languages (or 23 without Irish).

The impact on SMEs is available in the first part of the IA and it was taken into account for the analysis of all policy options. In some cases, even the different sectors in which SMEs operate were taken into account. The impact of the policy options on SMEs are described in Annex 10.

#### **European Single Access Point – ESAP: 1,5/5**

- **Data collection: 0/3**
- **Accessibility of consultations: 0/0,5**
- **Presentation of results: 1/1**
- **Use of consultation results: 0,5/0,5**

No open public consultation was carried out but only a “targeted consultation”. The consultation period run from 20 January 2021 to 12 March 2021. Originally expected to last 4 weeks, it was extended by two weeks more. However, respondents were able to identify themselves as SMEs/SME representatives and different questionnaires were devised for SMEs and SME representatives. In addition, other consultation methods employed: TESG, High Level Forum on the CMU and DG FISMA workshops, among others.

The targeted consultation was conducted only in English. The IA mentions that several preparers and SMEs underlined that there should be no additional burdens and new reporting obligations introduced for entities (p. 90-91). The IA, pag. 43 reads as follows: "*Voluntary information of similar nature would be accepted. Based on our targeted consultation, there is overwhelming support (93%) to allow SMEs to disclose voluntarily information in the ESAP, and many respondents (73%) believed that any type of company should be entitled to post information in the ESAP, or if not at least companies in the SME Growth Markets or other non-regulated markets. There was a preference for allowing only predefined sets of information (around 80%) to be accessible via the ESAP, rather than any information (around 40%)*".

### 4.3 Step 3: Measurement of the impact on SMEs

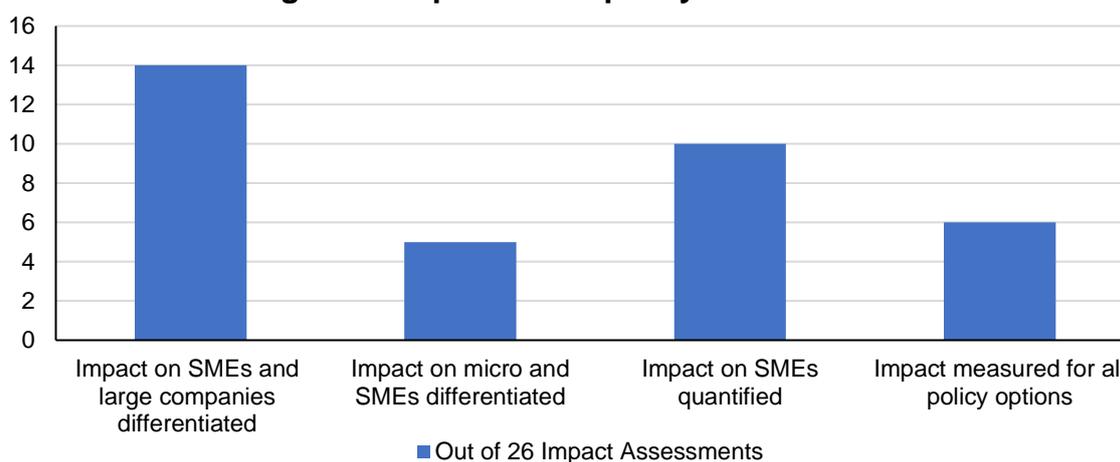
The SME Test loses its value if the impact on SMEs is not properly measured. The better regulation toolbox gathers good practices and guidelines to carry out the SME Test. It states, in bold, that “*SMEs need to be taken into consideration in each of the analytical steps of better policymaking*”. But the theory and practice are different. The analysis shows that SMEs are often left aside in certain policy making steps such as measuring the impact of each policy and of each policy option.

Scores for this step were given according to the methodology explained in Annex 3 and by taking into account the following elements:

- *How is the impact on SMEs and large companies differentiated?*
- *Does the IA differentiate between subgroup (micro, small and medium)?*
- *Are both administrative and compliance costs taken into account in the quantification of the impact? Does the IA refer to quantitative analysis, data, studies...?*
- *Is the impact on SMEs measured for all policy options, or only for the preferred one?*

Although most of the analysed IAs properly differentiate the impact between large companies and SMEs, the impact on SMEs is not always presented in a clear and dedicated section<sup>11</sup>. The analysed IAs generally quantify the impact of the policy on SMEs, but a clear subdivision between micro, small and medium enterprises is often missing. When the impact on SMEs is measured, it is in most cases only for the preferred policy options<sup>12</sup>.

**Figure 4. Impact of the policy initiatives**



#### ***How is the impact on SMEs and large companies differentiated?***

<sup>11</sup> For example, the IA of the Data Act includes a chapter dedicated to the SME Test. On the other hand, the IA of the NIS directive only mentions the impact the policy will have on SMEs as part of the general analysis.

<sup>12</sup> The SME Test carried out for the CRR and CRD Review is one of the good example in which the impact is measured for every policy option.

Having a separate approach between the impact on large companies and on SMEs is at the core of the SME Test. It cannot exist without it. While the better regulation toolbox states that “*potential impacts on SMEs should be considered and reported systematically in all impact assessment reports*”<sup>13</sup>, the graph above shows that such a differentiation is carried out only in a small majority of cases, i.e. 54% (14 out of 26)<sup>14</sup>. In the other 12 IAs analysed, SMEs are most of the time considered to be part of the large aggregated group of employers, with only a few places where consideration is given to their unique characteristics.

The issue is even more significant when the IA argues no distinction is made considering that SMEs are typically not very active in sectors impacted by the policy (for example, carbon intensive sectors in the Climate Law). Such statement cannot be fully accurate and leaves behind numbers of SMEs which will still be, directly or indirectly, impacted.

In other cases, such as in the IED, the effort was made but only to a certain extent: reference to the impact on SMEs is vague, stating that “*this measure is likely to lead to limited to no impacts on SMEs (...) this measure is likely to lead to weakly negative impacts on SMEs*”. Only mentioning a likely impact cannot be identified as a proper SME Test with a clear differentiation between large companies and SMEs.

When properly done, the differentiation appears efficient as it brings into light tangible results, such as numbers on lost or created jobs, the access to loans and estimation of costs, as it was the case the CRR and CRD Review. But even when the impact is analysed, findings are rarely expressed in a dedicated part of the IA, and mostly scattered all over the report. Out of the 14 IAs where the differentiation was made, only half of them include a proper chapter dedicated to the impact on SMEs.

### ***Does the IA differentiate between subgroups?***

The report from the institutions on minimising regulatory burden for SMEs<sup>15</sup> highlights that “*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*”. The report insists on the importance to strengthen the application of the SME Test particularly for micro-enterprises.

As outlined in the above-graphic, out of 26 IAs, only 5<sup>16</sup> expressly differentiated the impact the policy would have on micro-enterprises. In the majority of cases, micro enterprises are considered as part of the SME group. There are only a few places where consideration is given to the unique circumstances of micro enterprises. In some cases, the RSB insisted, even in second opinions, that the IA should acknowledge risks for micro and small enterprises that are likely to be affected most by the initiative (Proposal on adequate minimum wage). Paradoxically, the better regulation toolbox clearly recognises that “*a one-size fits all approach for all SMEs has so far not proved effective or efficient as the impact on micro-companies is likely to differ substantially from the impact on medium sized ones*”.

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<sup>13</sup> [Chapter 1 - General principles of 'better regulation' | European Commission \(europa.eu\)](#)

<sup>14</sup> The SME Test carried out in the IA of DEBRA proposal paid specific attention to SMEs regarding budgetary implications and impact on fairness.

<sup>15</sup> [LexUriServ.do \(europa.eu\)](#)

<sup>16</sup> Namely the IAs carried out for the Data Act, the NIS Directive, the Minimum wage directive, the CSDD and the General Product Safety Directive

Of course, there are files in which micros are excluded from the scope and thus not mentioned through the IA. However, when not directly excluded, if there is no subdivision between small, medium and micro enterprises, it remains difficult to assess how the Commission policy introduces special regimes for micro companies can be carried out.

Even when focusing on small and medium enterprises, excluding micro ones, the subdivision is almost never carried out. While this report takes into account the low relevance of the subdivision for some cases, most policies will have a trickle-down effect, inevitably impacting SMEs.

### ***Are both administrative and compliance costs taken into account in the quantification of the impact?***

Quantifying the impact of a policy is a difficult task, requiring lots of data and the use of different sources. This is why the better regulation toolbox recommends this quantification “*if possible and proportionate*”. Out of 26 IAs, the quantification of the impact was done in 10 cases.

The quantification is linked to other steps of the SME Test. When these previous steps have not been properly carried out, the quantification of the impact will be suffering. For example, where the impact on SMEs has not been analysed, such as in the Taxonomy file, the quantification of the impact cannot be properly computed, whereas it would have been more than welcome<sup>17</sup>.

In certain cases, the IA leaves behind some of the costs the policy implies: for example, the IA of the EED does not include administrative and compliance costs that will be higher for energy-intensive SMEs obliged to carry out an audit.

This being said, some files show better practices when it comes to quantifying the impact. This is the case of the IA of the CSDD file. Although the Commission refused to take into account compliance costs for SMEs as they will be indirectly impacted, it later refers to estimated costs for SMEs depending on the revenue difference. The IA refers to CEPS studies and the calculations are indicated and further explained, increasing transparency of the process.

### ***Is the impact on SMEs measured for all policy options, or only for the preferred one?***

While the better regulation toolbox clearly states that “*for each policy option, the distribution of the costs and benefits of the proposals with respect to the business size (differentiating between micro, small, medium and large enterprises) should be analysed*”, the graphic shows this is the case in only 23% of cases, i.e. less than 1 out of 4 files. In most cases, the impact is measured for every policy for larger businesses while it is analysed only for the preferred option for SMEs.

If we focus on the 6 files in which the impact was measured for all policy options, findings prove that there is no clear line followed. There are cases in which although

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<sup>17</sup> SMEs are not directly in the scope of the Taxonomy Regulation, but will have to use taxonomy and report accordingly, if large companies request in the supply chain, financial institutions for providing finance and when SMEs want to have access to green finance.

the analysis was properly carried out, the analysis lacked substance<sup>18</sup>. The RSB had to ask to explore the unintended consequences of the preferred option on SMEs and again, in the second opinion, the need to acknowledge risks for micro and small enterprises that are likely to be affected most by this initiative<sup>19</sup>.

However, the IA carried out for DEBRA shows that such analysis is possible. For the different options, the IA presents the impact on companies – specifically on SMEs – on budgetary implications and impact on fairness. Benefits have been balanced with additional costs (compliance costs) for companies.

### **Box 2<sup>20</sup> – Illustrated examples for Step 3: one good, one bad**

#### **General Products Safety Regulation: 4,5/5**

- **Distinction from the impact on large companies: 1,5/1,5**
- **Distinction of certain groups: 1/1**
- **Quantification of the impact - or justification of the absence: 1,5/1,5**
- **Impact measured for every policy option: 1/1**
- **Threshold considered and potential scaling-up of companies: (- 0,5)/0**

The IA analyses, quantifies and calculates the total costs of the impact on SMEs of every policy options: *“No significant firm-level impacts are to be expected due to the implementation of Option 1 (...) Option 2: Total costs for SMEs in the EU27 in the first year of implementation are estimated at EUR 21 million. They would fall in subsequent years down to EUR16.6 million Option 3: Even though the relative cost increases are generally higher for the SMEs, the impact on SMEs overall costs is still considered moderate when measured against the benefits (...)”*

#### **Corporate Sustainability Reporting Directive 3/5**

- **Distinction from the impact on large companies: 1,5/1,5**
- **Distinction of certain groups: 0/1**
- **Quantification of the impact or justification of the absence: 1,5/1,5**
- **Impact measured for every policy option: 0/1**
- **Threshold considered and potential scaling-up of companies: (- 0,5)/0**

The IA states that *“it has not been possible to quantify the costs of these indirect effects. (...). Additionally, we have not been able to find reliable data on the number of SMEs in the supply-chains of large European companies.*

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<sup>18</sup> Example of the first opinion of the Regulatory Scrutiny Board on the Proposal on adequate minimum wages, in which the RSB concluded that the report does not distinguish how the problems, objectives, solutions and impact apply across the different types of systems; that the assessment of the inadequacy of minimum wages across Member States is not clear; that the report does not substantiate how the initiative is in line with subsidiarity and proportionality principles.

<sup>19</sup> This example comes from the IA carried out for the Directive on adequate minimum wages in the European Union.

<sup>20</sup> Here, the focus has been made specifically on the quantification. The CSRD example was used because of the striking difference between the IA and the expert group report.

However, the Commission published a meeting report of the expert group on Disclosure of Non-financial Information by EU Companies of 12 September 2011 stating that “*The costs of complying with CSR reporting for a small company were estimated by one participant between EUR 15 - 25.000 a year, including certification.*”

## **4.4 Step 4: Assessment of alternative options and mitigating measures**

According to the better regulation guidelines, when policy options impose on SMEs a disproportionate burden compared to large companies, it is necessary to consider mitigating measures. Such measures might help in alleviating the burdens created by the proposed initiative. However, the rationale of the “think small first” principle is to give full consideration at an early stage in the policy-making process in order to ensure that rules impacting businesses are developed from an SME perspective. For this reason, while the introduction of mitigating measures is relevant, it is crucial that the formulation of policy options take into consideration SMEs’ needs and do not impose unnecessary and excessive burdens on them. A thorough application of steps 1 to 3 of the SME Test is essential.

The analysis in this step is limited to a statistical observation on whether mitigating measures were foreseen or not in the 26 IAs. A breakdown overview explains the different scenarios.

### ***Mitigating measures foreseen***

Out of 26 IAs analysed, 8 of them foresee some sort of mitigating measures for SMEs and/or micro-enterprises.

In some IAs, mitigating measures for different policy options are proposed and explained: this is the case of the SPI which lists several mitigating measures including certain exemptions or more lenient provisions for SMEs (e.g. longer transitional periods or exhaustion of stock provisions), simplified procedures for reporting, targeted guidance and support. Likewise, in the CRR and CRD review the IA report presents the impact of the different options on SMEs and suggests mitigating measures like the continuation of the SME supporting factor and long transition periods for the increase of the risk weight for unrated corporates (mainly SMEs). Another example is the “Pay transparency” proposal in which mitigating measures were included in the design of the policy options and the measures modulated according to the size of the employers. In DEBRA, all the options analysed include a more favourable treatment of SMEs and the preferred option successfully addresses the debt-equity bias, while balancing the budgetary impacts and addressing the fairness aspects of the tax system.

In other cases, like in the NIS, the regulatory approach calls for a general exclusion of micro and small entities from the scope and lighter ex-post supervisory regime applied to a large number of the new entities under the revised scope, and in the DSA, micro and small enterprises would not be covered by the obligations imposed on online platforms and would also be exempted from extensive reporting obligations.

In the case of the CSRD proposal, the reporting requirements would not apply to SMEs, except listed SMEs. However, simplified reporting standards will be developed for SMEs to use on a voluntary basis. In the AI Act the framework envisages specific measures. Regulatory sandboxes are proposed as offsetting measures but not the extent to which they can actually do this.

### ***Absence of mitigating measures***

In 14 IAs no mitigating measures are foreseen. However, it is worth noting that the reasons for the lack of such measures differ. In some cases, mitigating measures are not foreseen because SMEs are considered not to be affected or targeted but there is often lack of consideration of indirect impact in the previous steps of the SME Test (Taxonomy, proposal for foreign subsidies, IED, Climate Law, DMA, CSDD) or because a proposal is expected to be mostly beneficial for SMEs (EED, Data Act).

However, some analyses in this respect are partial, lack quantitative and/or qualitative evaluations, or focus only on benefits to SMEs, which case is not always backed by data (SPD, LTRD). In other cases, despite the impact on SMEs was acknowledged, mitigating or alternative measures were not proposed (CBAM, ESAP).

More understandably, in some IAs, SMEs have no “lighter regime” or are not exempted from any of the obligations in order to meet an objective which is relevant for all-sized companies. This is the case of the GPSR where alternatives measures would jeopardise the general objective of product safety and consumer protection. This approach could be in principle shared, as well as whenever the proposal states that Member States should foresee mitigating measures (Directive on adequate minimum wages).

### ***Unclear mitigating measures***

There are some more nuanced cases in which mitigating measures are considered not relevant or not addressed.

For example, in the case of the proposal on CO2 emission performance standard for light duty vehicles and vans small volume derogations are available to manufacturers responsible for between 1.000 and 10.000 new cars or 22.000 new vans registered in a calendar year. Also, in the Solvency II, the proposed directive claims to improve regulatory fitness and simplify the framework by excluding more small firms from Solvency II. In both cases, it seems unclear whether SMEs are covered.

In the ETS extension to Buildings and Road Transport, the IA refers to small emitters which, if falling under the scope of the ETS (albeit not necessarily SMEs), can still be exempted from the ETS if equivalent measures are taken by respective Member State. However, this measure seems not sufficiently addressing potential SMEs issues.

## **5 RECOMMENDATIONS**

Better regulation principles have steadily grown in importance in the working procedures of the EU over the past two decades and the latest Communication of Better Regulation in 2021 affirms that the Commission is moving in the right direction. SME Tests are not a goal in themselves, nor indeed are the principles of better regulation and evidence-based policy-making. There is already a considerable

improvement in the application of the SME Test compared to the previous editions conducted by Eurochambres in 2011, 2013, and 2017 which revealed an unsatisfactory overall process. Despite these efforts, the SME Test guidelines are not applied consistently by all Commission services.

**BusinessEurope, Eurochambres and SMEunited call on the European Commission to apply the SME Test guidelines consistently.**

To improve the efficacy of their scope, IAs need to be regularly revised as information about the likely costs and/or benefits evolves. In this regard, the European Parliament should play a more consistent role in the assessment and evaluation of shortcomings. We therefore welcome the recommendation from the EPRS to the European Parliament Committee on Legal Affairs (JURI Committee) for the setting up of a permanent Working Group on Better Regulation to ensure a more active and persistent critical involvement by the European Parliament.<sup>21</sup>

Moreover, we recommend that:

- In line with the “think small first” principle, the Commission services must reflect on SME needs early in the IA process. This could be done systematically, foreseeing a more inclusive involvement of SME stakeholders.
- **IAs should dedicate chapters to a thorough assessment of the impact on SMEs** to consolidate this information in a clear and transparent manner.
- **IAs should differentiate between different size-classes of SMEs** (micro, small, and medium) to allow for a more granular and targeted assessment of the initiative’s impact.

**The consultation of SMEs and SME stakeholders is critical in the SME Test and their perspectives should be fully reflected in policy initiatives.** Achieving a satisfactory legislative proposal that guarantees the inclusion of SMEs’ needs depends heavily on the consultative process involving SMEs and SME stakeholders. A participative approach of relevant stakeholders is a *conditio sine qua non* to pursue satisfactory results in the internet-based public consultations. To achieve this:

- **The 12-week consultation period should be guaranteed and should not overlap with holiday periods.** If this is the case, the consultation period must be extended.
- **Guarantee that SMEs and SME representatives can identify themselves** in the open public consultation is fundamental for a meticulous assessment of their needs. In addition, addressing the questionnaire directly to SMEs and SME representatives allows to fully and directly capture the SME segment of the business community and their perspective.
- **Other methods of consultation, including targeted consultations, should be employed consistently** when the open public consultation fails in providing enough evidence, in order to benefit from technical views.
- The IA report should provide an evidence base for the Commission’s decision-making and it must therefore include transparent and objective references to SMEs. Therefore, **consultation results should be considered as integral part of the assessment process** and clearly presented in the IA. This

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<sup>21</sup> [The way forward for better regulation in the EU](#)

guarantees a better calibration of the policy options, based on the technical feedbacks provided by SMEs and SME representatives.

**Regarding the measurement of the impact on SMEs**, our analysis showed that 10 out of 26 files tends to quantify the impact on SMEs, but it would be impactful to have it done more consistently. Moreover, in most cases the impact on SMEs is measured only for the preferred policy options. We therefore recommend the following:

- Every file and every policy option must **systematically measure the impact on SMEs**. Assumptions do not replace a thorough analysis and the overall evaluation risks to heavily suffer from the lack of evidence-based analysis.
- **Quantification must be more systematic. A quantitative analysis provides more useful insights on the real impact of a policy. When made impossible due to the lack of data, the IA should clearly explain the obstacles encountered.**
- **IAs must assess the indirect and trickle-down effect of policies**, thus going further than assessing the sole direct effect of a policy. To quote the RSB, proposals must “*explore the unintended consequences (...) on SMEs.*”

**Alternative options and mitigating measures** should be considered whenever there is a direct or indirect disproportionate, and negative impact on SMEs compared to large companies. To improve this, we recommend the following:

- When deciding on the applicability of such measures, the **indirect impact** needs to be properly considered. For proposals in which SMEs are considered not affected, **indirect costs** must be identified and reduced if not eliminated.
- **The reliability of analyses is proportional to the information available. Partial or missing data put at risk the validity of the analyses.** While it is understandable that quality data is not always available, the utmost should be done to further collect relevant and usable information.
- Whenever mitigating measures are not foreseen, as they could hamper an **objective relevant for all-sized enterprises**, this should be **thoroughly explained and justified**.

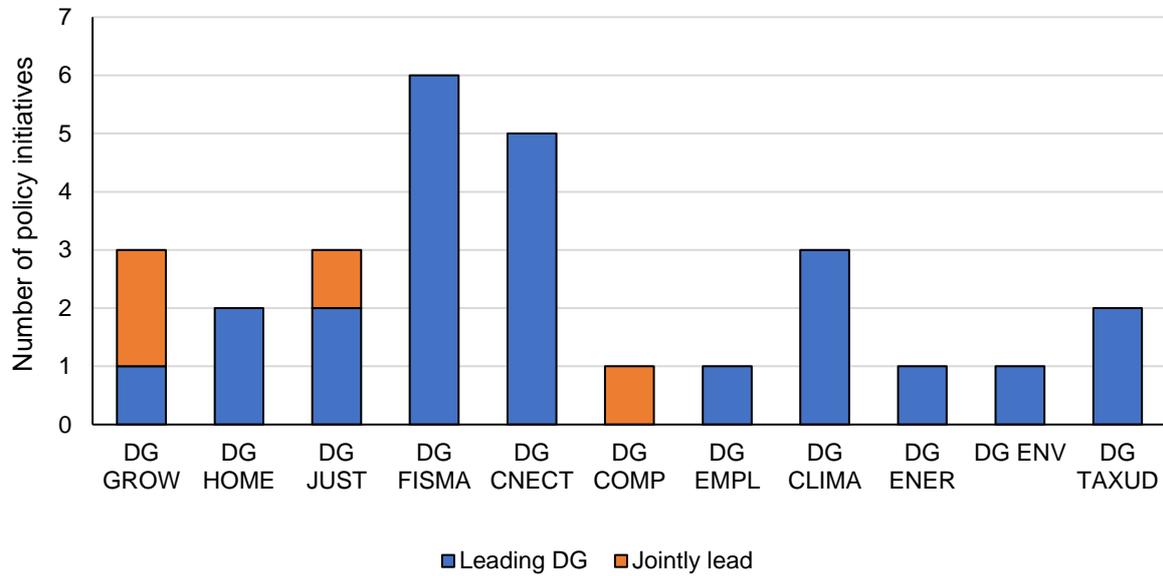
## **ANNEX 1: DISTRIBUTION OF POLICY INITIATIVES BY DIRECTORATE GENERAL**

24 out of the 26 analysed policy initiatives were carried out by individual directorate general (DG). In two cases, consultations and preparatory work were jointly carried out by two DGs:

- Corporate Sustainability Due Diligence – DG JUST and DG GROW
- Proposal for foreign subsidies – DG COMP and DG GROW

As shown in the graph below, most of the IAs were selected among the ones carried out by DG FISMA and DG CNECT (6 and 5 IAs, respectively).

**Figure 6. Legislative initiatives by DG**



## ANNEX 2: LEGISLATIVE FILES

### Taxonomy – Overall score: 0,5/10

#### Identification of affected businesses:

SMEs have not been in the scope of the IA, because the original intention of the European Commission was to address the regulation mainly to financial institutions (excluding banks). Only during the legislative process bank lending and taxonomy reporting by non-financial companies has been included. SMEs are not directly in the scope of the regulation, but will have to use taxonomy and report accordingly, if large companies request in the supply chain, financial institutions for providing finance and when SMEs want to have access to green finance.

#### Consultation of SME stakeholders:

There have been several (targeted) consultations in the framework of the sustainable finance strategy. The most important one for the IA was launched in Autumn 2017 on the consultation on institutional investors' and asset managers' duties as regards sustainability. There have not been specific SME stakeholder consultations.

#### Measurement of the impact on SMEs:

SMEs have not been in the scope of the original proposal and therefore, there is no measurement of the impact on SMEs in the IA or the legislative proposal.

#### Assessment of alternative options and mitigating measures:

None of the three options looks into the impact on SMEs at all or the quantitative impact on non-financial corporates.

### Climate Law – Overall score: 2,5/10

#### Identification of affected businesses:

The IIA does not assess whether SMEs (and micro) would be affected. However, the IA argues that SMEs are expected to play a key role in the transition, notably as a source of innovations in all economic sectors.

#### Consultation of SME stakeholders:

A 12-week open public consultation was carried out. The questionnaire distinguished companies based on the number of employees, which means respondents were able to identify themselves as a SME. SMEs have been consulted as part of the outreach to stakeholders, which means there were no consultation methods specifically targeting SMEs. The views of SMEs were not adequately presented in the IA report. It lacked both quantitative and qualitative assessments.

#### Measurement of the impact on SMEs:

The IA report stated that the modelling tools used for macro-economic analysis did not provide direct insights on specific outcomes for SMEs. However, because the economy will benefit as a whole, the macroeconomic analysis indicates a favourable outlook for such companies.

Further, the report argued that considering that SMEs are typically not particularly active in carbon intensive sectors, no trend was identified that would specifically harm them.

**Assessment of alternative options and mitigating measures:**

No mitigating measures are foreseen.

## **Directive on adequate minimum wages in the European Union – Overall score: 4,5/10**

**Identification of affected businesses:**

The IA clearly mentions that two thirds of the costs of increased minimum wages fall on micro and small enterprises, divided almost equally. This corresponds to the share of these categories of enterprises employing minimum wage earners.

**Consultation of SME stakeholders:**

A public consultation on the minimum wages initiative was not conducted. A two-stage consultation of social partners took place in January 2020 and in June 2020, with SMEs representatives replying in a detailed manner to the two consultations. However, the replies were not sufficiently used in the assessment of the impact of the policy options on SMEs.

**Measurement of the impact on SMEs:**

The IA mentions the impact on SMEs however the methodology used to determine the impact remains very vague. The distinction between large and small companies is mentioned, but only assessed for the preferred option. In its first opinion, the RSB addressed the need to explore the unintended consequences of the preferred option on SMEs and in the second opinion the need to acknowledge risks for micro and small enterprises that are likely to be affected most by this initiative.

**Assessment of alternative options and mitigating measures:**

The IA indicates that Member States should foresee mitigating measures and may choose a more gradual approach to increase minimum wages, or may adopt mitigating measures such as reducing the tax or contribution burden on minimum wages.

## **Digital Markets Act – DMA – Overall Score: 8,5/10**

**Identification of affected businesses:**

The IIA mentions that the initiative will bring a positive impact on SMEs allowing them to grow, develop their own products/services and innovate. Referencing diverse studies, the IA mentions that SMEs would not be targeted by the new obligations focusing instead on creating an advantaged level playing field, increasing their

productivity and reducing costs. The IA also highlights the differences of gatekeepers and SMEs in their role both as competitors and business users.

#### **Consultation of SME stakeholders:**

The public consultation was open for 12 weeks, despite overlapping with a holiday period. However the views of SME representatives were taken into account using additional consultation methods e.g. meetings and public hearings and the annex accompanying the IA shows the differentiation of respondents according to size.

#### **Measurement of the impact on SMEs:**

The annex to the IA includes a comprehensive table with the expected impact of the new ex ante rules for gatekeepers and for competitors and new entrants. The impacts on SMEs are analysed on both a quantitative and a qualitative basis as well as the costs and the burdens placed on different actors, including "competitors, start-ups, and business users". The IA also measures the impacts on SMEs for all policy options.

#### **Assessment of alternative options and mitigating measures:**

No evidence on alternative policy options or mitigating measures was found.

### **Digital Service Act – DSA – Overall score: 7/10**

#### **Identification of affected businesses:**

Both the IIA and the IA acknowledge that there will be impact on (innovative) SMEs. It is highlighted that, with the evolving fragmentation, costs can have an impact on the over 10.000 potentially high-growth platforms established in the EU, out of which around 96% are SMEs, more than half of which are microenterprises.

#### **Consultation of SME stakeholders:**

The consultation spanned 14 weeks (extended due to the summer holiday period), and despite no targeted SME questionnaires were devised, other relevant (SME) consultation methods were employed. SMEs views are not adequately presented in the IA, however some limited references were made to business associations and medium-sized companies with regard to burdens for companies in the single market.

#### **Measurement of the impact on SMEs:**

Under all options, the additional transparency obligations are expected to be proportionate to the risks and capacity of each service provider. However, these costs could be in themselves disproportionate for a small or micro-enterprise and the risks such companies pose, and the impacts they may have do not justify such limitations on the companies.

#### **Assessment of alternative options and mitigating measures:**

Micro and small enterprises would not be covered by the obligations imposed on online platforms and would also be exempted from extensive reporting obligations. The introduction of standard, minimum requirements for notices, procedures and conditions, as well as reporting templates, although eventually high one-off cost,

should in a long term further decrease the expected costs for small companies, supporting them in tackling illegal content and increasing in turn the legal certainty.

## **Directive on security of network and information systems – NIS Directive – Overall score: 8/10**

### **Identification of affected businesses:**

The IA categorises SMEs as a separate respondent group, assessing their approach to cyber threat and their need for support to increase the level of their cyber resilience. An analysis provides the most acceptable estimate for SMEs. Although the focus of regulation is on medium-sized companies the IA points out the significance of raising the level of security requirements for all sector entities, which would also incentivise their cybersecurity capabilities and help improve their ICT risk management.

### **Consultation of SME stakeholders:**

A public consultation was carried out in a 12-week period, from July 7 until October 2, 2020 and included questions regarding all elements of the NIS Directive in order to gather information for the retrospective evaluation. The aim was to collect diverse opinions and experiences from all stakeholder groups. IA identified SMEs from digital sectors as an individual respondent category, checking their level of cyber resilience, their readiness to strengthen their ICT security, and their extra costs, including administrative and compliance expenditures.

### **Measurement of the impact on SMEs:**

Despite excluding small and micro enterprises from the scope, IA allows for a substantial percentage of companies active in one industry. The new proposal enables some flexibility for Member States to identify smaller entities with a high security risk profile. The IA estimated the costs and benefits at the level of organisations, including the particular economic impact on SMEs.

### **Assessment of alternative options and mitigating measures:**

The regulatory approach calls for a general exclusion of micro and small entities from the NIS scope and lighter ex-post supervisory regime applied to a large number of the new entities under the revised scope. Thuswise, it is sufficient to take only those measures that are necessary to ensure a level of security of network and information systems that is appropriate to the risk presented. IA has presented an evaluation of different political options with an impact on SMEs, including possible impacts within the analysed options.

## **Pay transparency proposal – Overall score: 8,5/10**

### **Identification of affected businesses:**

The IIA states that the initiative will take into account any possible disproportionate burden or interference on micro or small enterprises. An SME Test section is present in the IA and summarises all the SME-relevant points. The IA provides a good overview of costs and main impacts and a number of studies and analyses support it. Under the overview of the policy options, the scope / exemptions per company size are indicated.

### **Consultation of SME stakeholders:**

Besides the public consultation, three targeted surveys were implemented to complement the information collected. For the targeted survey of individual employers, 21% were SMEs (between 50 and 249 employees). The IA presents fairly the views of the SMEs who responded to the consultation, and a dedicated hearing, involving social partners, including SME representatives, was organised.

### **Measurement of the impact on SMEs:**

The analysis distinguishes the impact on SMEs from the impact on large companies in terms of costs and impacts of main pay transparency measures. The impact on SMEs is measured for all policy options and they put in comparison the support received for the measures, the percentage of companies and workers impacted and the costs per employer. The IA took into account and addressed the comments from the RSB in its final version.

### **Assessment of alternative options and mitigating measures:**

The specific impact of all policy measures on SMEs has been screened ex ante for all options. The aim of the analysis was to check whether SMEs would be disproportionately affected and, where relevant, to include mitigating measures in the design of the policy options. The measures are modulated according to the size of the employers to find a balance between the interest of all workers in seeing their right protected and minimising costs and burden on employers.

## **Artificial Intelligence Act – AI Act – Overall Score: 7/10**

### **Identification of affected businesses:**

The IIA mentions that proportionality will have to be ensured and that SMEs' inclusion in the scope of the regulation must be considered given the high scalability of digital technologies and the disproportionate benefit it will bring to them. The IA devotes a full section to the SME Test outlining how the different policy options might impact SMEs however there is not a differentiation according to the different size classes nor how new administrative obligations might impact them accordingly. Specialised literature and quantitative analysis were used to make sure that SMEs' interests were reflected in the IA.

### **Consultation of SME stakeholders:**

The consultation was open for stakeholders' feedback for more than 12 weeks most likely because it overlapped a holiday period and the respondents were able to identify themselves as SMEs as they responded to the general questionnaire.

### **Measurement of the impact on SMEs:**

The studies from CEPS and ICF used in preparation for the IA dedicate a section to SMEs in addition to a number of estimates with regards to the extra costs that the regulation is expected to have on SMEs. While the figures for the estimates of the compliance costs are coming from a dedicated study, the offsetting measures are less clear e.g. "the monetary value of the support measures cannot be terminated with

accuracy". According to the RSB's opinion, some of these concerns were addressed in Annex 4 of the IA.

#### **Assessment of alternative options and mitigating measures:**

The IA indicates the proposal of regulatory sandboxes as offsetting measures but not the extent to which they do this.

## **Corporate Sustainability Reporting Directive – CSRD – Overall Score: 5,5/10**

#### **Identification of affected businesses:**

Both the IIA and the IA takes into account the indirect effect the CSRD will have on SMEs. The IIA states that "*Additional reporting requirements could lead to additional demands for information from SMEs (...)*". The IA includes an Annex 4 dedicated to the SME Test, in which every step is properly detailed. As SMEs are not in the scope, the indirect effect is the one taken into account here.

#### **Consultation of SME stakeholders:**

The consultation has been carried out following the rules. The 12-week period was respected, and even extended for one month due to the pandemic. A targeted consultation of micro, small and medium enterprises was conducted from 3 March to 27 May 2020. The consultation was extended by 1 month in order to allow SMEs to provide input. The results of the consultation are gathered in Annex 4.

#### **Measurement of the impact on SMEs:**

The IA clearly mentions page 83 that it "*has not been possible to quantify the costs of these indirect effects. In particular, it would not be possible to disaggregate the indirect effect of the proposed revision of the NFRD from the effects of the overall transition to a sustainable economy described in point 1. Additionally, we have not been able to find reliable data on the number of SMEs in the supply-chains of large European companies.*"

#### **Assessment of alternative options and mitigating measures:**

Mitigating measures are only foreseen when it comes to standard setting. The plan is to develop simplified standard for voluntary use by SMEs, to adapt the standard to SMEs' expertise and resources to prepare report.

## **Proposal for foreign subsidies – Overall score: 3/10**

#### **Identification of affected businesses:**

The IA states that SMEs are not expected to be impacted as they are not likely fall under the notification obligation and this initiative will not impose an additional burden on SMEs. According to the IA, SMEs would de facto be excluded from the notification obligation, however SMEs are not officially exempted.

#### **Consultation of SME stakeholders:**

The feedback received during all phases of the stakeholders consultation were used in the drafting of the legal instrument and accompanying IA report, but not specific attention was paid to SMEs.

#### **Measurement of the impact on SMEs:**

Impact is given for each option but does not cover SMEs. The IA states that the preferred option would not affect much SMEs. The notification thresholds are likely to be too high to affect them. Furthermore, the high threshold for subsidies not deemed distortive in the preferred option – which is 25 times higher than the *de minimis* for State Aid – is also likely to be too high to affect most SMEs. Indirect impact on SMEs is not analysed.

#### **Assessment of alternative options and mitigating measures:**

As SMEs are considered not to be affected, there are no alternative options nor mitigating measures proposed.

### **General product safety regulation – Overall score: 9/10**

#### **Identification of affected businesses:**

The IIA states that particular consideration will be given to the views of SMEs likely to be affected by the possible revision and the IA comprises a comprehensive section on the SME Test (Annex 7) which summarises the results of the SMEs Test, assessment of the likely impact, etc., and explains why SMEs and micro-SMEs are not exempted from any of the obligations foreseen under the different options.

#### **Consultation of SME stakeholders:**

The consultation spanned 14 weeks (extended due to the summer holiday period). The questionnaires were sent to more than 1.000 SMEs and more than 300 relevant business (SME) associations. Specific views from SMEs are included.

#### **Measurement of the impact on SMEs:**

The IA outlines the total costs for EU SMEs in the first year of implementation of the preferred option, including the one-off and recurrent costs and does so by company size. Also, it makes reference to the most affected business sectors (online sales, producers of some new technology sectors).

#### **Assessment of alternative options and mitigating measures:**

There are no specific mitigating measures. SMEs and micro-SMEs are not exempted from any of the obligations foreseen under the different options and EU product safety legislation does not allow for "lighter" regimes for SMEs in order to meet the general objective of product safety and consumer protection (nevertheless provisions are foreseen in the EU legislation).

### **Proposal for Carbon Border Adjustment Mechanism – CBAM – Overall Score: 3/10**

#### **Identification of affected businesses:**

Compliance and administrative costs on SMEs have been analysed, including in the Commissions open public consultation, but no separate SME Test was conducted, nor was a dedicated SME consultation undertaken - the report explicitly acknowledges that. Certain groups within the SME population are not identified in the IA.

**Consultation of SME stakeholders:**

The consultation has been properly carried out: the 12 weeks period was respected, and the respondents were able to identify themselves as SMEs/SME representatives.

**Measurement of the impact on SMEs:**

The impact on SMEs was not properly measured. The analysis does not distinguish the impact on SMEs from the impact on large companies and the impact of each policy option on SMEs was not specifically identified.

**Assessment of alternative options and mitigating measures:**

No mitigating measures are foreseen, but monitoring of impacts is enshrined.

## **Energy Efficiency Directive – EED – Overall score: 4/10**

**Identification of affected businesses:**

SMEs are mentioned in section C (likely economic impacts) of the IA. It is argued that positive impact on businesses, such as for example business opportunities will include SMEs. Hence, the creation of new business models will foster a stronger SME growth. The SME Test in Annex O discusses various aspects, such as potential for energy savings in SMEs and the cost effectiveness of those actions. The analysis differentiates the expected impacts according to company size.

**Consultation of SME stakeholders:**

A 12 weeks consultation was carried out, but was not extended although it was during Christmas. The questionnaire distinguished companies based on the number of employees and therefore SMEs were able to identify themselves as such. There were no consultation methods specifically targeting SMEs, but the report has a dedicated part for SMEs. Quantitative results were presented in the annex of the IA, qualitative results in the main text and in the annex. This includes visualizations differentiating between the views of micro, small, medium, and large companies.

**Measurement of the impact on SMEs:**

The IA argues that measures explored are not addressed to SMEs, while the change to the definition for mandatory energy audits will impact SMEs. *“According to the new proposal, energy audits will now be made obligatory based on energy use and not company size. This means that small, low energy using businesses that were only subject to the obligation because of business links will no longer be obliged to carry out audits.”* The change would be likely to avoid some unjustified expenditure by companies in that situation. In contrast, there is a possibility that some energy intense SMEs may become subject to the audit requirement. In those cases, businesses will have a very high energy expenditure and are likely to be able to benefit considerably from the expertise in an audit. Quantification did not include administrative and

compliance costs that may be higher for (energy-intensive) SMEs obliged to carry out an audit.

**Assessment of alternative options and mitigating measures:**

According to the SME Test, the impacts are likely to be beneficial for SMEs. Thus, no alternative options have been considered and no mitigating measures are foreseen.

**Extension of the ETS to Buildings and Road Transport – Overall score: 3/10**

**Identification of affected businesses:**

When defining the "*likely economic impacts*" the IIA mentions that both small and medium-sized enterprises and larger companies have the opportunity to gain a first-mover competitive advantage by innovating in sustainable products and processes. The impacts of covering additional sectors in the EU ETS, notably expanding emissions trading to emissions from buildings and/or road transport, will bring both advantages and disadvantages.

**Consultation of SME stakeholders:**

Besides the public consultation, while the Commission participated in more than 50 stakeholder meetings, including with companies and business associations across different sectors, trade unions, non-governmental organisations (NGOs) and Member States, information on SMEs' views are not presented in a structured and comprehensive way.

**Measurement of the impact on SMEs:**

The measurement of the impact on SMEs is unsatisfactory. The IA does not analyse the impact on SME population nor quantify it. Impact on SMEs is not taken into consideration properly.

**Assessment of alternative options and mitigating measures:**

The IA refers to small emitters which, if falling under the scope of the ETS (albeit not necessarily SMEs), can still be exempted from the existing ETS if equivalent measures are taken by respective Member State.

**Proposal on CO2 emission performance standard for light duty vehicles and vans – Overall score: 3/10**

**Identification of affected businesses:**

The IA highlights that, while SMEs producing conventional automotive technologies may need to adjust, they will also benefit from new opportunities from the additional demand for new technologies. Also, positive impacts are expected as a result of lower operating costs for the vehicles and total cost of ownership (TCO) savings, and the main beneficiaries are SMEs operating vans.

**Consultation of SME stakeholders:**

Besides the public consultation, there were different stakeholder consultation activities which input was an important tool during the IA and used to develop and assess the policy options. However, there was no specific SME input that could be used.

#### **Measurement of the impact on SMEs:**

The measurement of the impact on SMEs is rather weak. The IA does not analyse the impact on SME population nor quantify it. Impact on SMEs is not taken into consideration properly.

#### **Assessment of alternative options and mitigating measures:**

Small volume derogations are available to manufacturers responsible for between 1.000 and 10.000 new cars or 22.000 new vans registered in a calendar year. However, it is not specified whether these are SMEs.

### **Solvency II - Insurance & reinsurance firms – Review of prudential rules – Overall score: 3,5/10**

#### **Identification of affected businesses:**

The IA highlights that the review of Solvency II directive would have a positive impact on SMEs as this would reduce compliance and regulatory costs by excluding a larger number of small insurers from the scope of its mandatory application, and enhancing the application of proportionate rules for other smaller and less complex insurers. All SMEs (beyond the insurance sector) would benefit from easier access to long-term capital funding.

#### **Consultation of SME stakeholders:**

The public consultation was carried out properly, but references to SME views are not adequately presented. There is no specific SME input that could be used and information on SMEs' views are not presented in a structured and comprehensive way.

#### **Measurement of the impact on SMEs:**

The section summarising costs and benefits of the proposed options presents the reduction of compliance costs of the small and less risky insurers as a contribution to enhancing the profitability of the SME in the EU. SMEs will also be indirect beneficiaries of the revised criteria for long-term investments.

#### **Assessment of alternative options and mitigating measures:**

The proposed directive claims to improve regulatory fitness and simplify the framework by excluding more small firms from Solvency II. In concrete terms, the review could waive the mandatory application of Solvency II for up to 186 insurers. In addition, at least 249 insurers that would remain within the scope of Solvency II would benefit from simpler and more proportionate rules, which would reduce their compliance costs.

### **Capital Requirements Regulation and Capital Requirements Directive Review (Basel III implementation) – Overall score: 9/10**

#### **Identification of affected businesses:**

While the IIA does not refer to SMEs, the IA specifically refers to SMEs and analyses the impact on SMEs and the need to keep the current deviation from the Basel Agreement – especially as regards the SME supporting factor. The impact of the different options on SMEs are presented in Annex XI of the IA.

#### **Consultation of SME stakeholders:**

Two public consultations in 2018 and 2019 on the implementation of Basel III Agreement. COM Proposal has been postponed from 2020 to 2021 due to the pandemic. The last formal consultation was launched mid-October 2019 (for 12 weeks – no prolongation due to Christmas break). In addition, informal stakeholder meetings took place.

#### **Measurement of the impact on SMEs:**

The impact of the potential impact on SMEs (access and costs of loans) have been assessed not only in the IA, but also in the quantitative impact studies carried out by the European Banking Authority.

#### **Assessment of alternative options and mitigating measures:**

The IA report presents the impact of the different options on SMEs (Annex IX) and suggests mitigation measures like the continuation of the SME supporting factor and long transition periods for the increase of the risk weight for unrated corporates (mainly SMEs).

## **European Single Access Point – ESAP – Overall Score: 4/10**

#### **Identification of affected businesses:**

The IIA mentions that the current fragmentation of information activities and products is detrimental not only to capital providers but also for companies, in particular SMEs. The IA notes that the proposal will offer the ability to integrate public information about EU companies and EU investment products to increase their visibility towards investors and support their growth. MSMEs and start-ups will be able to do so voluntarily.

#### **Consultation of SME stakeholders:**

Stakeholders were not given twelve weeks to respond to the online public consultation even though various online meetings and workshops were organised. Annex 4 of the IA presents a summary of the conclusions of these online discussions. When analysing the different policy options, the percentage of responses supporting SMEs to disclose voluntarily information was mentioned.

#### **Measurement of the impact on SMEs:**

The IA dedicates a full chapter to SMEs (Annex 7) and details how ESAP can be of assistance to SMEs, the SME data landscape, and the principles of voluntary disclosure that may be applied based on existing national registries collecting and storing company data. The IA indicates the impact on SMEs according to some policy options however the quantitative and qualitative analysis could have been stronger.

#### **Assessment of alternative options and mitigating measures:**

Despite the voluntary nature of the proposal for SMEs, the IA does not indicate any mitigating measures for those small businesses that may wish to comply with the rules despite the concerns raised related to costs and the lack of financial literacy.

## **Review of the European Long–Term Investment Funds Regulation – ELTIF – Overall Score: 2/10**

### **Identification of affected businesses:**

The IIA mentions that SMEs suffer from chronic lack of long-term financing compared to other major economies and that a proposal will foster more access to alternative sources of finance and a broadened investor base. However, the IA moves away from this objective mentioning that SMEs will only benefit indirectly from this initiative.

### **Consultation of SME stakeholders:**

Stakeholders were given sufficient time to respond to the online public consultation even though the period overlapped with a holiday period. However, the public consultation was only available in 3 different languages (German, English, French) and there were no additional consultation methods employed. The IA describes the respondents by size however it does not provide any additional information regarding SME representatives' positions.

### **Measurement of the impact on SMEs:**

The IA does not distinguish the impact of the proposal between small and large companies except in the case of the optional redemption liquidity window. The IA mentions that the Inter-Service Steering group welcomed the fact that the impact on SMEs was spelled out in the options' comparison however there aren't detailed quantitative and qualitative analyses on how SMEs will be impacted or how they'll be included in investment funds' portfolios.

### **Assessment of alternative options and mitigating measures:**

No mention of any mitigating measure when comparing the different options provided by the IA.

## **Proposal for a Directive on Corporate Sustainability Due Diligence – CSDD – Overall Score: 6/10**

### **Identification of affected businesses:**

The IIA had highlighted the need to alleviate the reporting burden on SMEs to which the IA responded by directly excluding them from the scope of the proposal. Explanations for this exemption were provided as well as a list of publications and other references used to assess the impact of corporate due diligence on SMEs.

### **Consultation of SME stakeholders:**

The online public consultation lasted about 16 weeks and contained a long list of questions targeting SMEs in all EU languages. Furthermore, there were a couple of additional stakeholder outreach events such as a Social Dialogue hearing but none

solely composed by SME representatives. The IA refers to SME representatives and quantitatively analyses their responses vis-à-vis the total number of stakeholders on possible corporate due diligence duty, corporate directors' role, burden reduction, and enforcement mechanisms, among other possibilities.

#### **Measurement of the impact on SMEs:**

The IA contains a thorough quantitative and qualitative analysis of measuring the impact of the proposal on SMEs, with compliance and administrative cost estimates varying substantially depending on their size as well as revenue, backed up by studies undertaken by various organisations and think tanks. Some estimations for simplified due diligence mentioned in the IA were done for publicly quoted SMEs. Annex 5 provides additional reasoning on why SMEs were excluded from the scope and why estimating the indirect compliance costs was a very difficult task.

#### **Assessment of alternative options and mitigating measures:**

Some useful cost mitigating measures as well as cost savings are mentioned for corporates in general (e.g. modern tracking and digitalisation tools) but they do not specifically cater to SMEs.

## **Data Act – Overall score: 6,5/10**

#### **Identification of affected businesses:**

The IIA highlights the benefits SMEs will receive from the Data Act, which will enable them to develop new products and services. SMEs are taken into account as the IIA underline the issues SMEs can encounter with larger companies with stronger negotiating power in B2B data sharing. The IA foresees a boost to SMEs' profit and quantifies it.

#### **Consultation of SME stakeholders:**

The Consultation has been properly carried out. The 12 weeks period was extended for 1 week as it overlapped with holidays. Several targeted consultations methods were carried out, webinars, workshops, SME Panel. A whole chapter is dedicated to the impact of the different policy options on SMEs.

#### **Measurement of the impact on SMEs:**

The impact on SMEs is measured separately from the impact the Data Act will have for large companies. Micro and small companies are excluded from the scope of certain requirements as they are measured to be too burdensome for them. However the quantification is really vague as it is mentioned that "*Regulatory adaptation costs for SMEs will be low in comparison to the expected high benefits*". Also, the impact is measured for every policy for larger businesses while it is analysed only for the preferred options for SMEs.

#### **Assessment of alternative options and mitigating measures:**

As the IA only foresees benefits for SMEs, no alternative options or mitigating measures are indicated.

## **Sustainable Products Initiative – SPI – Overall score: 8,5/10**

### **Identification of affected businesses:**

The IIA and the IA take into account the effects the SPI will have on SMEs. The IIA states that that an IA will pay particular attention to impacts on SMEs. The IA differentiates between different SMEs in different sectors. Also, there is an explanation of the SME survey that was carried out. Statistics on the participants in the survey are also listed, distinguishing between micro, small, medium sized SMEs.

### **Consultation of SME stakeholders:**

For the consultation the 12-week period was respected and even extended. The respondents had the opportunity to specify the size of their company. The impacts of the Policy options SME were described in Annex 10 of the consultation.

### **Measurement of the impact on SMEs:**

In Annex 10 a distinction between large companies and SMEs was made in regard to administrative burdens and economic impact. Although the SME opinions were quantified in the stakeholder views, there is no quantification of the impacts in the assessment. However, there were usually quite detailed explanations of the impact on SMEs

### **Assessment of alternative options and mitigating measures:**

In Annex 19 of the SME Test several mitigating measures for different policy options are proposed and explained.

## **Industrial Emissions Directive – IED – Overall score: 2,5/10**

### **Identification of affected businesses:**

No specific impact on SMEs is expected and SMEs are considered not to be a significant part of the affected sectors as E-PRTR activity and reporting thresholds are defined as to “*typically exclude smaller operations*”.

### **Consultation of SME stakeholders:**

The public consultation was carried out properly, but references to SME views are rare and not adequately presented. This might be justified by the fact that SMEs are not likely to be affected according to the IA (except for policy measure n. 5).

### **Measurement of the impact on SMEs:**

Several measures are presented in the IA but reference to impact on SMEs is often too vague. For example, in some cases the measures’ impacts on SMEs are defined as uncertain, in other cases impact is defined as to likely lead to “*limited to no impacts on the position of SMEs*”.

### **Assessment of alternative options and mitigating measures:**

According to the IA, SMEs are not a significant part of the affected sectors. The only reference is about the fact that, as some of the measures may consider revising or

removing reporting thresholds as well as including new activities (e.g. cattle) this impact has been retained in the assessment where relevant for specific options.

## **Long-term Residents Directive – LTRD – Overall Score: 4/10**

### **Identification of affected businesses:**

The IA reveals that SMEs are negatively affected by the underutilization of the current EU Long-Term Residents (LTR) status, as this status provides stability to their migrant workers. By making LTR status more accessible, the new proposal aims to increase the number of SMEs that can utilise it.

### **Consultation of SME stakeholders:**

The consultation period was held for 15 weeks as it overlapped with the summer break. Consultations – available in all EU official languages – involved representatives of SMEs, including a hearing on 5 May 2021, specifically for Economic and Social Partners. Nevertheless, SMEs are barely mentioned in the IA report and the calculations for the costs and cost-savings were performed only for the aggregated group of employers. The findings concerning SMEs have been presented at the hearing held by the EC with the Social and Economic Partners.

### **Measurement of the impact on SMEs:**

In the majority of the IA analyses, SMEs are considered to be part of the large aggregated group of employers. There are only few points where consideration is given to the unique circumstances of SMEs, such as administrative burdens and limited resources.

### **Assessment of alternative options and mitigating measures:**

The IA does not indicate any mitigating measure.

## **Single Permit Directive – SPD – Overall Score: 4,5/10**

### **Identification of affected businesses:**

Due to limited resources, SMEs are likely to bear a disproportionate burden when hiring third country-nationals (TCNs), compared to large enterprises. SMEs may be positively impacted by the revision of the Directive and by the implementation of the simplified application processes. The streamlining of the procedure could also encourage more employers to hire third-country workers, thus positively impacting the problematic skills shortages in national labour markets.

### **Consultation of SME stakeholders:**

The consultation period was held for 15 weeks – as it overlapped with the summer break – and was available in all EU official languages. A hearing with economic and social partners took place on 5 May 2021. Consultations included representatives of SMEs although SMEs are barely mentioned in the IA report. The IA only reiterates that, due to their limited resources, SMEs are not able to hire TCNs and that the simplification of procedures may increase interest of employers in hiring foreigners. However, these findings are not supported by data concerning the appetite of SMEs

for hiring TCNs. The report also lacks in mentioning findings from the consultations held with the SMEs representatives.

**Measurement of the impact on SMEs:**

In the majority of the IA analyses, SMEs are considered to be part of the large aggregated group of employers. There are only few considerations based on the unique circumstances of SMEs, such as administrative burdens and limited resources.

**Assessment of alternative options and mitigating measures:**

The IA does not indicate any mitigating measure.

**Debt Equity Bias Reduction Allowance – DEBRA – Overall score: 8/10**

**Identification of affected businesses:**

IIA and IA specifically refer to SMEs and the need to put forward specific SME measures due to the fact the debt-equity bias creates specific problems for SMEs. The IA includes calculations about the unused potential of SMEs due to the current situation and how this can be mitigated.

**Consultation of SME stakeholders:**

The principle idea was discussed with stakeholders in Spring 2021 as part of the Communication “*Business Taxation for the 21st Century*” and the formal consultation on DEBRA was launched on 1 July 2021 until 5 October 2021 (14 weeks – over holidays).

**Measurement of the impact on SMEs:**

The IA shows that current situation may cause a loss of 1 out of 10 jobs in SMEs and creates problems for recovery, innovation and growth of SMEs. For the different options, the IA presents the impact on companies – specifically on SMEs – on budgetary implications and impact on fairness. Benefits have been balanced with additional costs (compliance costs) for companies.

**Assessment of alternative options and mitigating measures:**

Five alternative options have been analysed, all including a more favourable treatment of SMEs. The preferred option successfully addresses the debt-equity bias, while balancing the budgetary impacts and addressing the fairness aspects of the tax system. It is expected to have a positive impact on investment and GDP, and moderate impacts on employment.

## ANNEX 3: METHODOLOGY

The methodology is based on the European Commission's 2017 better regulation guidelines/toolbox and follows the four steps of the SME Test:

- Identification of affected businesses
- Consultation of SME stakeholders
- Measurement of the impact on SMEs
- Assessment of alternative options and mitigating measures

The allocation of points for steps 2 and 3 was discussed and agreed by BusinessEurope, Eurochambres, and SMEunited.

Step 1 is assessed on a YES/NO basis according to the elements presented in the relative section below. For this step, performing a qualitative analysis was considered as the most efficient modality of assessment.

Steps 2 and 3 of the SME Test are attributed a score ranging from 0 to 5, with 0.5 points attributed to dossiers found to be in-between two quality levels. The sum of the scores of the two steps provides the overall score.

Step 4 does not involve attributing points. Instead, it involves verifying whether mitigating measures were proposed in the IAs. For this step, performing a qualitative analysis was considered as the most efficient modality of assessment. The total score for each dossier can thus range from 0 (minimum) to 10 (maximum).

### Overall score:

- **0-2 points:** extremely poor
- **3-5 points:** poor
- **6 points:** acceptable
- **7-8 points:** good
- **9-10 points:** very good

## STEP 1: IDENTIFICATION OF AFFECTED BUSINESSES

This step of the SME Test should establish whether and which SMEs are among the affected population. According to the 2017 guidelines, if the preliminary assessment leads to the conclusion that one or more class of SME is affected, further analysis should be carried out.

The elements taken into consideration include:

- Does the Inception IA assess whether SMEs (and micro) are affected?
- Does the IA assess whether SMEs (and micro) are affected?

In making the above determination:

- Is a certain group within the SME population identified (micro, small or

medium)? Both direct or indirect effect should be considered (e.g. subcontracting, sectoral impact etc.)

If there is no mention of whether SMEs are affected or not:

- Are SMEs (micro should be by default<sup>22</sup>) exempted upfront? Is an explanation provided in the Inception IA/IA?
- Use of quantitative analysis and data/estimates/other figures.
- Use of existing specialised literature (academic, SME representatives etc.), if not: duly explanation is required.

## **STEP 2: CONSULTATION OF SME STAKEHOLDERS**

Scores were attributed based on the questions below with a potential maximum score of 5 points. The weights assigned to each sub-questions were discussed and agreed by the three organisations to achieve the optimal calibration and quantification of each aspect investigated.

Data collection:

- Was a 12-week open public consultation carried out?<sup>23</sup>
  - Is the consultation period extended if it overlaps with a holiday period?
- Were the respondents able to identify themselves as SMEs/SME representatives?
  - Were different questionnaires devised for SMEs and SME representatives?
- Were other consultation methods employed (e.g. SME panels, round tables, focus groups, hearing targeted SME representatives, meetings with stakeholders)?

Accessibility of consultations:

- Language regime: Was the consultation available in all the EU 24 official languages (or 23 without Irish)?<sup>24</sup>

Presentation of results:

- Were the views of SMEs adequately presented in the IA report?
  - Does the presentation specifically refer to SME stakeholders?
  - Quantitative: it could be considered if results of the consultation are presented by category of stakeholder rather than summing up all the replies received and if SMEs are identified as one of this categories.
  - Qualitative: are the position of SMEs (associations representing SMEs and individual SMEs) clearly identified in the consultation results (annex) / in the main text of the IA?

Use of consultation results:

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<sup>22</sup> [EUR-Lex - 52011DC0803 - EN - EUR-Lex \(europa.eu\)](#)

<sup>23</sup> Answer required.

<sup>24</sup> Answer required.

- Are the consultation results used in the assessment of the impact of the policy options on SMEs?

### **STEP 3: Measurement of the impact on SMEs**

Scores were attributed based on the questions below with a potential maximum score of 5 points. The weights assigned to each sub-questions were discussed and agreed by the three organisations to achieve the optimal calibration and quantification of each aspect investigated.

- Does the analysis distinguish the impact on SMEs from the impact on large companies?
- Does the analysis of the impact identify a certain group of the SME population (micro, small and medium-sized enterprises)?
- Are the impacts on SMEs quantified or is the analysis purely qualitative? If there is quantification, does it include both administrative and compliance costs? If there is no quantification, is an explanation provided?
- Is the impact on SMEs measured for all policy options, or only for the preferred one?
- If a threshold is considered, are the effects assessed on the potential scaling-up of companies?

### **STEP 4: Assessment of alternative options and mitigating measures**

- Are mitigating measures foreseen for the preferred option? Which ones?<sup>25</sup>
- Is the use of mitigating measures explained/justified?

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<sup>25</sup> For a non-exhaustive list of examples of mitigating measures, please consult <https://ec.europa.eu/info/sites/default/files/better-regulation-toolbox.pdf> p. 159 - 161