



Guidelines on accounting for the needs of SMEs in regulatory impact assessment (SME test)

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Contact

For all **questions related to the estimation of compliance costs**, please contact the Federal Statistical Office by sending an email to erfuellungsaufwand@destatis.de.

For all **questions related to the Federal Government's programme for Bureaucracy Reduction and Better Regulation**, please contact the Better Regulation Unit at the Federal Chancellery by sending an email to buerokratieabbau@bk.bund.de.

For all **questions related to the presentation of compliance costs and "other costs" faced by the business sector**, please contact the Secretariat of the National Regulatory Control Council. An overview of all relevant contacts can be found under the following link: https://www.normenkontrollrat.bund.de/Webs/NKR/EN/About_Us/Secretariat/_node.html;jsessionid=9F31204C4B7C32C5F60CF3C0077FA944.s7t1.

Further information on the legislative process, tools and contacts can be found on the Federal Government's platform on legislation at www.gesetzgebung.bund.de. (German only)

Introduction

Various studies conducted at national and international level confirm that the time and cost associated with the implementation of legal provisions are often particularly high for small and medium-sized enterprises (SMEs).

In order to systematically account for the needs of small and medium-sized enterprises in the German legislative process (SME test), the Federal Government adopted a Better Regulation programme in 2014 and key points on Bureaucracy Reduction.

The purpose of the guidelines presented here is to improve the legislative process. The guidelines are to help you to better account for the needs of small and medium-sized companies as you draft a new regulation¹ in the context of regulatory impact assessment in line with sections 43 and 44 of the Joint Rules of Procedure of the Federal Ministries, and section 1(3) and section 4(2) of the Act on the Establishment of a National Regulatory Control Council and help you to better assess alternative regulations.

New regulations can have both positive and negative consequences for small and medium-sized enterprises. The guidelines presented here are limited to the **transparent presentation of costs as required by the Joint Rules of Procedure of the Federal Ministries**. It will still be up to you to decide whether or how you present the benefits that SMEs in particular draw from new regulations in the official justification of the new regulation, whether you use a qualitative analysis to describe the benefits and/or use a quantitative analysis to compare the benefits to the costs.

Please note: It is compulsory to set out the compliance costs and all other costs faced by the business sector in the preamble and/or in the official justification of the new regulation or ordinance, even if you do not make use of the SME test guidelines.

Wherever the guidelines presented here include questions on the impact that a new regulation has on companies, or more specifically SMEs, this does not refer to individual companies, but rather to the whole group of small and medium-sized enterprises, as opposed to the group of large-scale companies.

Within the meaning of the present guidelines, the term 'company' or 'SME' also covers liberal professions and public companies within the meaning of section 2(3) of the Act on Finance and Personnel Statistics.

If you check 'Yes' to the first two questions asked in Section I, please read Section III for more information on alternative regulations and support measures.

The details described in Section II give you an insight into the factors that are known to drive compliance costs, provide you with information on "other costs" that apply, and help you assess whether the time and cost for implementing a new regulation may be particularly high for SMEs.

SMEs make up far more than 90 per cent of all companies operating in Germany. Most of them are micro-enterprises that employ between 1 and 9 people.

When using the guidelines presented here, we recommend taking the example of a German SME employing 4 people (including the owner) and generating €600,000 in annual turnover, and assessing the impact that a new regulation would have on this SME.

¹ Includes all laws and ordinances adopted by the Federal Government and the 1:1 implementation of European Regulations.

Section I:

Do I need to account for the needs of SMEs in this new regulation?

Please answer the following questions and follow the instructions on the next steps that need to be taken.

| No. | Question | Answer | Next step |
|-----|--|--------|--|
| 1 | Will SMEs be impacted by the new regulation? | yes | Continue to question 2 |
| | | no | Check completed |
| 2 | Will the new regulation cause estimated compliance costs ² of more than €1 million ³ for the economy as a whole or more than €100 ⁴ per company per year? | yes | Continue to sections II and III |
| | | no | Check completed |

For more information on how to estimate compliance costs go to:

www.destatis.de/DE/ZahlenFakten/Indikatoren/Buerokratiekosten/AufgabenMethodik/AufgabenMethodik.html.

- 2 The compliance costs to be estimated here include the time and cost faced by the business sector for implementing a Federal regulation.
- 3 Please make a first, preliminary estimate here. For example, if 100,000 companies were to be affected by the new regulation, compliance costs of more than €10 year would have to be incurred per company per year for the threshold of €1 million to be exceeded. If an existing regulation is changed, the estimated compliance costs incurred for the implementation of this existing regulation can serve as guidance for making a first estimate.
- 4 This threshold only applies if less than 10,000 companies are affected by the regulation, because otherwise the €1 million threshold is exceeded.

Section II:

Particularly high burden on SMEs

In the following section, the main factors known for driving compliance costs and other costs that may apply are briefly explained here. Compared to large-scale companies, the time and cost for implementing a new regulation are particularly high for SMEs. Knowing why this is the case will make it easier for you to phrase the official justification of the new regulation.

If you suspect or if you have received feedback from a certain industry that your new regulation will impose a high burden on SMEs, please elaborate on this in the justification of the new regulation. Always use Section III to check whether the burden on SMEs may be eased.

When will a new regulation cause SMEs to incur compliance costs that are particularly high?

The company implements the new regulation manually instead of electronically (this applies to micro-enterprises in particular).

Often, new provisions can be implemented quickly and efficiently by using electronic or automated processes. If the necessary technical requirements are not in place, and/or because investing in a certain technology would not pay off as the SMEs would rarely use this technology, this can cause a high burden on SMEs.

The company has little experience with the implementation of a new regulation.

The more often a certain process is applied, the easier it will become (learning curve). One example here is issuing a certificate of employment to employees leaving the company: the larger the company the more often these certificates of employment are issued. SMEs often have less experience with using these documents and with obtaining the necessary data compared to the HR divisions of large-scale companies.

The company does not have enough experts for implementing a new regulation (employees who are not experts in this field or the entrepreneurs themselves have to acquire knowledge on how to implement a new regulation).

Large-scale companies often have experts – e.g. in their HR, Finance or Legal Division – for implementing new provisions. In SMEs, new regulations are often implemented by the entrepreneurs themselves

or employees who are not experts in this field. Furthermore, some large-scale companies might have better access to information as they tend to be more actively involved in business associations than SMEs.

Implementing the new regulation will require the company to invest (once or recurrently) and/or cause external costs (once or recurrently).

Some new regulations impose a high burden on SMEs as their implementation results in high investment costs or costs for paying external service providers. For example, a company could be required to buy a bottle deposit machine or special software needed for the implementation of the new regulation. Especially in cases where investment costs do not rise proportionally to the size of the company, SMEs bear a higher burden than large-scale companies. Costs for external service providers may include, for example, paying a tax adviser who will take over responsibility for implementing the regulation from the SME.

When will a new regulation cause SMEs to incur “other costs” that are particularly high?

The new regulation is likely to have a negative impact on market shares and turnover.

The actual negative impact that a new regulation will have on the market share or the turnover of an SME depends on the individual case. It can be assumed that the burden imposed on SMEs is particularly high when, due to the implementation of the regulation, SMEs are required to make a change in order to ensure that they can maintain the same market share as before.

The new regulation is likely to create barriers to market entry.

It is possible that a new regulation will lead to the creation of barriers to market entry or make it more difficult to enter the market. At the same time, it may cease to be 'worthwhile' for SMEs to participate in a certain market e.g. if the new regulation results in disproportionately high (investment) costs.

The new regulation reduces the availability of or access to production-related factors.

New regulations can make it more expensive, for example, to procure material, obtain loans or use external service providers.

The new regulation makes it more difficult to undertake R&D activities.

New regulations may have an impact on product and process innovation. This can make it more difficult for SMEs to bring new and better products to market. For example, it could become more difficult to register a patent, which in turn could have a negative impact on a company's capacity to innovate.

The new regulation is likely to have a negative impact on competitiveness at international level.

German SMEs, in particular in industries where there is international trade, could suffer disadvantages vis-à-vis international competitors due to a new regulation. For example, if Germany were to tighten certain product requirements, this could lead to rising costs for producing these products in Germany. International competitors would not be subject to these rules and would therefore gain a competitive edge on the international market.

Implementation of the new rule is voluntary.

New regulations that can be implemented on a voluntary basis can also have a negative impact on SMEs. For example, if companies are free to extend shop opening hours, it has to be taken into account that the burden imposed on SMEs due to costs for personnel and material is higher than the burden on large-scale companies.

The new regulation makes it more difficult to attract skilled employees.

New regulations can have an impact on the training, certification or immigration of skilled employees. Large-scale companies often produce at the global level and recruit staff on the international labour markets. In contrast to this, SMEs usually operate at the national level and depend on the domestic labour market.

The new regulation causes fees/expenses, contributions or surcharges that are not based on company-specific factors.

New regulations can lead to the introduction of fees/expenses, contributions and surcharges. Companies will either have to pay a fixed amount, or pay an amount which is based, for example, on the number of their employees or facilities. For example the broadcasting fee that companies have to pay is based on the number of employees, the number of facilities and the number of commercially-used vehicles.

Section III:

Which alternative regulations/supportive measures could be used to ease the burden imposed on SMEs by new regulations?

Below you will find a list of alternative regulations and measures that can be used to help reduce the burden imposed on SMEs.

Please check all of the proposed options and whether they may be applicable to the new regulation. The options described can help to reduce the burden placed on the whole group of SMEs, or sub-groups such as micro-enterprises, or start-up owners. **Please include exceptions and supportive measures in your new regulation wherever it makes sense and is feasible. If there is no suitable alternative regulation or supportive measure due to the nature of the regulation (equal taxation, health and safety at work for all employees, equal standards of living, consistent consumer protection standards), please explain this briefly in the justification of the new regulation.** You do not have to justify every single exception or supportive measure that was not made use of.

List of possible alternative regulations and measures to ease the burden on SMEs

Exemptions⁵ (for example exempting certain groups altogether, or partially exempting certain groups of SMEs, e.g. by implementing graded requirements according to the different groups of SMEs).

1. The new regulation sets out several options for implementing the regulation. Companies are free to decide which process is better suited to their needs.
2. The frequency with which a company has to fulfil a certain duty depends on the size category of the company.
3. The Federal Fees Act states that reference fees may vary based on company-specific factors. It is also permissible to introduce contributions and surcharges that vary based on company-specific factors.
4. The deadline for implementing new regulations varies (extended transitional periods) based on the size category of the company.

5 Examples of exemptions:

Example 1 – Annual wage-tax adjustment: Only companies that employ more than 9 people have to do an annual wage-tax adjustment, micro-enterprises are completely exempted from this rule. Disposable beverage packaging: Companies whose shop area does not exceed 200m² are not obliged to accept all disposable beverage packaging. They only have to take back the packaging that they have put on the market themselves. Companies whose shop area exceeds 200m² need to take back all disposable beverage packaging.

Example 2 – Periodic VAT return: Companies generating turnover of less than €17,500 are not obliged to include VAT in their invoices, they are therefore completely exempted from periodic VAT return. All other companies are obliged to do a periodic VAT return, some on a monthly basis, some on a quarterly basis. This depends not least on the amount of VAT that has to be paid.

Example 3 – Broadcasting fees: The amount of the contributions depends, among other things, on the number of people a company employs.

Example 4 – There are some new regulations that small and micro-enterprises do not have to implement straight away, but for example one year after these regulations have to be implemented by large and medium-sized enterprises.

Additional support measures

1. Organisation of information campaigns specially targeted at SMEs
2. Preparation of target-group-specific information for SMEs
3. Checking whether SMEs can claim funding or support from existing programmes (e.g. grants and consulting services). An overview of the funding programmes available to companies is provided online on the website of the German government's funding database <http://www.foerderdatenbank.de>
4. Direct financial support for SMEs (e.g. using available budget funds to grant funding)