

Regulatory Exemptions for Small and Medium-sized Enterprises

Executive Summary ([Go to study in German](#))

The question of whether SMEs have a significant incentive to remain below the SME threshold of 250 employees in order to avoid regulatory obligations has not been sufficiently analysed, but it is highly relevant. Studies in Japan, for example, have concluded that Japanese SME policy leads to a lock-in effect. This means that Japanese SMEs forego growth in order not to lose the benefits of the SME status. In addition, there are numerous studies, particularly in the area of labour law, which show that labour law thresholds (such as employment protection legislation) can have a negative impact on the propensity to hire and hence growth. All this raises the question of whether European and, in particular, Austrian SME policy also provides incentives for SMEs to remain below the 250-employee threshold in order to avoid regulatory obligations.

To answer this question, both European and Austrian legal acts were searched for regulatory exemptions for SMEs. This search revealed that only 18 EU legal acts contain regulatory exemptions for SMEs. Eleven of these regulatory exemptions concern SMEs in specific sectors. There are only seven exemptions that provide for a cross-sectoral exemption for SMEs from a regulatory obligation. This is in line with the Commission's requirement that there should be as few blanket exemptions for SMEs as possible in EU legislation. The following EU legislative acts contain cross-sectoral exemptions for SMEs or allow Member States to make such exemptions:

- the Energy Efficiency Directive [[Directive 2012/27/EU](#)],
- the Directive on Women in Decision-Making [[Directive \(EU\) 2022/2381](#)],
- the Energy Performance of Buildings Directive [[Directive 2010/31/EU](#)],
- the Accounting Directive [[Directive 2013/34/EU](#)],
- the Pay Transparency Directive [[Directive \(EU\) 2023/970](#)],
- the Whistleblower Directive [[Directive \(EU\) 2019/1937](#)], and
- the GDPR [[Regulation \(EU\) 2016/679](#)], although in the case of the GDPR, the counter-exception is so broad ("the processing is not occasional or involves the processing of particularly sensitive categories of data") that few SMEs benefit from the exception, and the exception covers only one of the many GDPR obligations.

Overall, SMEs are hardly exempt from regulatory obligations at EU level. It follows that EU law provides little general incentive for SMEs to stay below the 250-employee threshold in order to avoid regulatory obligations. If EU law provides a stronger incentive, it is at best in certain sectors.

Austrian law contains only seven regulatory exemptions for SMEs. Five of them are cross-sectoral, which means that many SMEs can benefit from these exemptions. Cross-sector exemptions include

- the law on the [compilation of consumer price indices](#),
- the [Companies Act](#)
- the [Whistleblower Protection Act](#)
- the [Federal Energy Efficiency Act](#) and
- the [Employee Protection Act](#).

Many SMEs are likely to benefit from the exemption from the obligation to prepare consolidated financial statements and a group management report. As at EU level, SMEs in Austria are therefore hardly exempted from regulatory obligations. Instead, SMEs are mainly supported by SME-specific support programmes. It follows that Austrian law provides only a small general incentive for SMEs to stay below the 250-employee threshold in order to avoid regulatory burdens.

These findings are consistent with the expert interviews conducted. In the expert interviews, two mechanical engineering companies were asked about the costs associated with exceeding the SME threshold. Both companies stated that the costs were indeed noticeable. However, they would not be a major incentive to refrain from growth. This is in line with a survey of Austrian SMEs conducted by the EU Commission. In this survey, only 2% of Austrian SMEs with no intention of growing stated that they did not want to grow because they did not want to lose the benefits of the SME status. The fact that regulatory burdens are a major obstacle to growth for SMEs is also consistent with the findings of this study that there are hardly any regulatory exemptions for SMEs.