

Part 2

2.3

Assessment Tool 9

How to assess the EESE and identifying priorities for reform

Section 2.3: Assessment tools

Assessing the policy, legal, and regulatory framework



Purpose

This tool has been designed to guide an Employers' Organization through the process of assessing the policy, legal, and regulatory framework for sustainable enterprise development.



How to use this tool

This Assessment Tool is designed for use by EOs. It is an illustrative guide. It is best used as a guide for employers and enterprise development specialists who will facilitate the assessment process with the EO and among other actors.

Step 1: Describe the system of governance and powers

Step 2: Describe the framework that is used to govern the private sector

Step 3: Mapping and assessment of the policy, legal and regulatory framework

Step 4: Assessing the policy, legal, and regulatory framework



Introduction

The policy, legal, and regulatory framework is a key element of the enabling environment for sustainable enterprises (ESEE). It deals with the range of policies, laws and regulations that affect firms and their business decisions.

The policy, legal, and regulatory framework is one element of what has been called the “business environment”, which is a subset of the broader investment climate.

See Box 1, below.

Box 1: The business environment

National Investment Climate	
Constitutional Rights and Freedoms • Rule of Law • Political and Macroeconomic Stability • Open Markets	
National Business Environment	
Policy, Legal, and Regulatory Framework • Administrative Systems • National Organizational Arrangements	
Local Business Environments	Sectoral Business Environments

Source: Donor Committee for Enterprise Development: *Donor guidance for business environment reform*, 2008.

The three sub-components of the national business environment comprise the following:

1. **Policy, legal and, regulatory framework:** this refers to the range of policies, laws, and regulations that affect business owners.
2. **Administrative systems:** this refers to the ways in which policies, laws and regulations are enforced, and includes issues such as governance (public and private governance, corruption, etc.).
3. **National organizational arrangements:** this refers to the ways in which government and business represent themselves and communicate with each other, and includes the issues of social dialogue and public-private dialogue.

The policy, legal, and regulatory framework provides the means by which government can manage the economy so as to achieve sustainable social and economic outcomes. Government develops policies, laws and regulations to achieve a desired purpose. Thus, The policy, legal, and regulatory framework protects and assists private enterprises by providing them with the legal space they require to operate to conduct their business. They are protected physically against the unlawful behaviour of others (e.g., theft, unlawful seizure of property), but also legally (e.g., protection against unfair competition). However, an enabling environment can take these functions further, such as by providing incentives to encourage entrepreneurship and job creation among small enterprises.

In the search for control, and in the desire to administer, some governments and their executives can overdo it. They can create a policy, legal, and regulatory framework that has the effect of reducing the capacity of private enterprises to grow and develop.

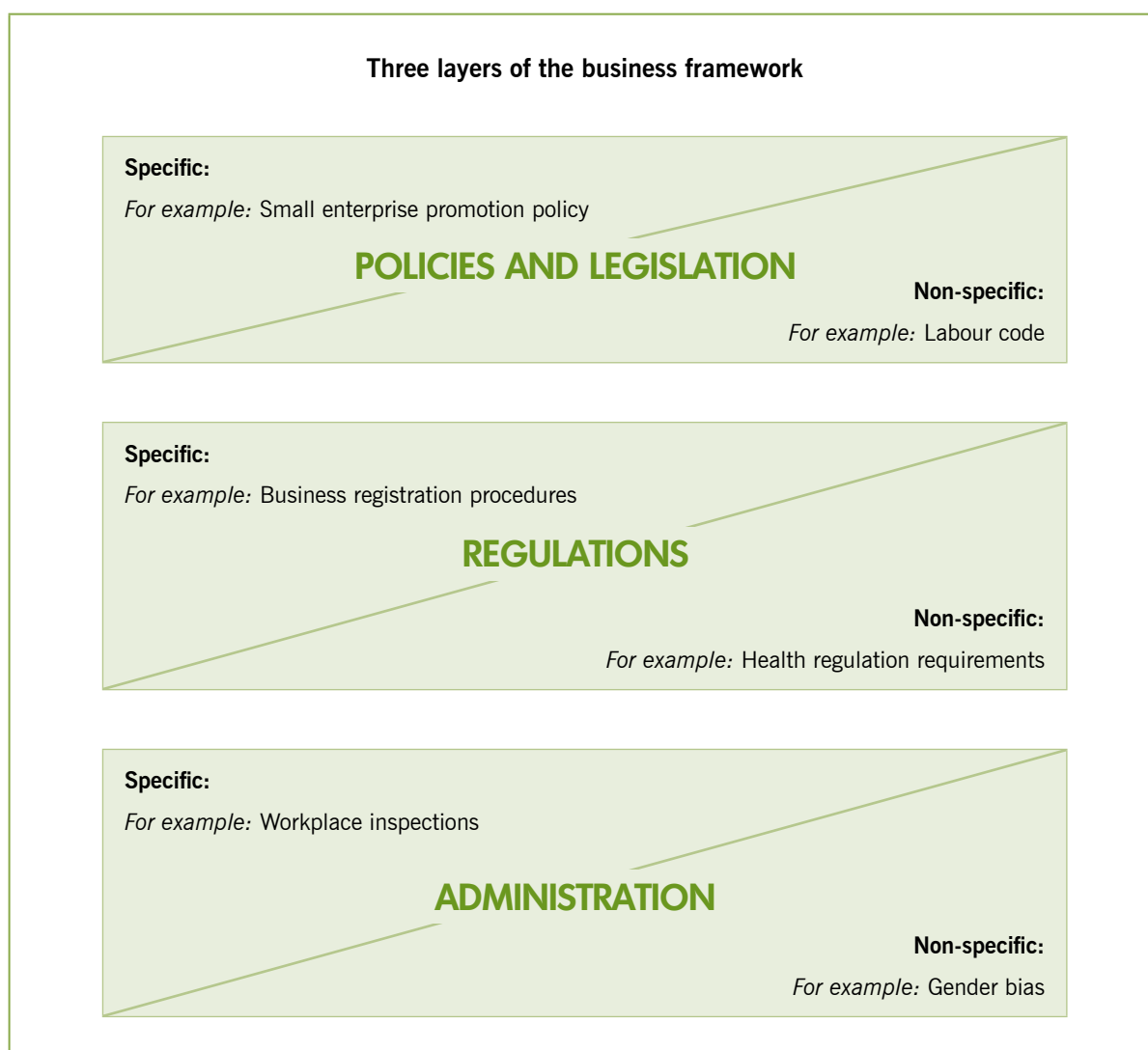
The figure on the following page shows three layers of government activity that shape the policy, legal, and regulatory framework.

The first, policies and laws, sets the directions and intentions of government. They underpin development efforts and influence the role that the enterprise sector performs in national, provincial, and local economies. Policies and laws provide the justification for programme and regulatory action. They can also establish a stable economic climate where the rule of law promotes transparent and enforceable transactions between government and enterprises, as well as in the commercial transactions of the private sector.

The second layer concerns regulations. These are a means through which policies and laws are implemented. Regulations represent the 'tools' that are used to enact such policies and legislation.

The third layer of activities is that of administration. This refers to the ways in which policies, laws, and regulations are applied, managed, and monitored. Whilst all three of these layers of government activity are important and independent in their own right, it must be remembered that there are connections between them.

The policy, legal, and regulatory framework in which businesses operates can be affected by factors that have been deliberately designed to do just that. However, it can also be influenced by factors that were not the primarily intended purpose. The above figure illustrates this point. It shows how the three different layers of the policy, legal, and regulatory framework each contain factors that are specific and non-specific in regards to enterprises. Whilst specific forms are designed with private enterprises in mind, non-specific forms were not, yet they can still affect the operations of an enterprise. The policy, legal, and regulatory framework can enable or promote business activity, it can restrain other types of business activity or prevent activity that is harmful to workers, society, or the natural environment. Thus, policies, laws, regulations, and administrative mechanisms can enable and they can restrict. They can do this intentionally, through specific measures, or unintentionally, through non-specific measures.



Assessing the policy, legal, and regulatory framework for sustainable enterprise development

The following steps provide an approach to assessing the policy, legal, and regulatory framework for sustainable enterprise development.

Step 1: Describe the system of governance and powers

The first important step is to briefly explain the system of governance that operates in the country before mapping the relevant policy fields that affect private enterprises. This is important because there will be readers of your work – within the country and outside – that don't fully understand these arrangements. This should also include a description of the powers and responsibilities of government structures at the

national, provincial, district, and local levels.

See Box 2 for an illustration of the possible range of systems of governance and powers.

Box 2: Range of systems of governance and powers

Level of government	Kinds of instruments	Instruments used (Example)	Authority (Example)	
Central	National polity	Constitution	Parliament, Plebiscite, Referendum	
	National policies	Presidential Decree	President	
		Executive Order	President	
		Parliamentary Decree	National Parliament	
		White Paper	National Parliament	
		National Policy	National Cabinet	
		Legislation	National Law	National Parliament
	Regulation	Code	National Parliament or Cabinet	
		Regulations and procedures	National Parliament	
		Ordinance	Line-ministries	
		Circular	Line-ministries	
	Provincial	Provincial Policies	Provincial Strategies	Provincial Development Council
			Provincial Strategies	Provincial Council
Legislation		Provincial Laws	Provincial Legislature	
Regulation		Provincial Regulations and Ordinances	Provincial Bureaucracy	
Local		Local Policies	Local Government Plans	Local Authority Council
	Local Development Strategy		Local Government Council	
	Legislation	Bylaws	Local Government Council	
	Regulations	Ordinance	Local Government Council	
	Administration	Procedures and inspections	Local Government Bureaucracy	

Step 2: Describe the framework that is used to govern the private sector

There are three general layers of government activity that usually shape the framework for private enterprises. It is necessary for you to describe the instruments that are used in each of these layers.

- A. **Policies and laws:** These set the directions and intentions of government. They underpin development efforts and influence the role enterprises perform in the national, district, and local economies. They provide the justification for regulatory action. Policies, like all the other fields of government activity listed here, can be developed at national, regional, and local levels. In countries where an English or Roman system of government operates, policy documents may be called a “white paper” or simply, a “policy”. In other countries a presidential decree sets the framework for government. Legislation is the act of giving laws: it is the exercise of a sovereign power. These laws may be passed by a parliament or congress (and sometimes there are two houses of parliament through which a bill must pass before it becomes law). Laws may take the shape of published legislation or cabinet, congressional, or presidential decrees.
- B. **Regulations:** These are the means through which policies and laws are implemented. Regulations are rules or procedural directives issued by administrative agencies to implement laws. These agencies must have specific authorization to issue directives and must usually adhere to procedures and conditions that are prescribed by the parliament or congress. Regulations represent the “tools” that are used to enact the policies and legislation in the pursuit of desired outcomes.
- C. **Administration:** This refers to the ways in which policies, laws and regulations are applied, managed and monitored. There are many policies and laws at the national level that affect enterprises - and increasingly, local governments are required to administer these. In some cases, private sector agencies, NGOs or business associations may be contracted by government to administer specified laws or regulations.

Look at the names and status that are given to policies, laws and regulations and provide a short summary of these. This will help the reader to understand more easily the terminology you use when describing the policy and legal framework.

This section should contain the official definitions for the following terms (where they apply):

- Micro-enterprise
- Small enterprise or small business
- Medium-sized enterprises
- Large enterprise
- Cooperative enterprise

Depending on the interests of the Employers’ Organization, it will be useful to apply these definitions when mapping and assessing the policy, legal, and regulatory framework. Take note of any inconsistencies and look for situations in which some kinds of enterprise are treated differently within the policy, legal, and regulatory framework.

Finally, there is more than one level of government in most member States of the ILO. Whilst central or national governments set the national framework (e.g., the Constitution) and direction (e.g., the National Development Plan) for the country, there are other levels of government that undertake activities that affect small enterprise development. These may be provincial, state, regional, local, town or village governments, authorities, or councils. Whatever they are called, their operations have a significant effect on the contribution small enterprises can make to the economy.

Box 3, below, displays the multiple layers of influence affecting sustainable enterprises. It illustrates

how central, provincial, and local governments can all be engaged in the design of policy and legislation that affect the sector. Each of these levels of government can also design and implement regulations that affect small enterprises, which all require administrative mechanisms. Care must be taken when interpreting this chart, however, since whilst local governments may be involved in the implementation of central government policies, laws and regulations, it is unlikely central government agencies will do likewise for local governments.

Box 3: Three tiers of government and the relationship with the local policy and legal framework

	Central government	Provincial government	Local government
Policy	National policy development, with possible area or sector differentiation.	Policy development within its area of jurisdiction and within the framework of national policy. Often more involved with development planning.	Policy development within its area of jurisdiction and within the framework of national and provincial policy. Often more involved with development planning and land use planning (e.g., zoning, city planning).
Legislation	National legislation, with possible area or sector differentiation.	Legislation development within its area of jurisdiction and within the powers given to it by central government.	Legislation – usually in the form of by-laws – development within its area of jurisdiction and within the powers given to it by central government.
Regulations	National legislation will usually set the parameters for regulations that are used to enforce it.	Required to establish regulations to enact their own policies and laws, but may also do this for national policies and laws.	Required to establish regulations to enact their own policies and laws, but may also do this for national or provincial policies and laws.
Administration	Administration can be performed through national agencies, some of which may be decentralized. There is a growing tendency toward decentralizing administration to more local levels of government.	Required to administer their own activities and possibly those of central or provincial governments.	Required to administer their own activities and possibly those of central or provincial governments.

Step 3: Mapping and assessment of the policy, legal, and regulatory framework

The mapping of policy, legal and regulatory instruments involves a detailed description of existing policies, laws and regulations. Before any assessment or synthesis can occur, it is important that you scan the policy, legal, and regulatory framework and summarise its main features. This will provide the material on which your later assessments and conclusions can be based.

Depending on the government and legal system in the country under study, the responsibilities for design and implementation in these policy, legal, and regulatory instruments are shared in different ways between the national, provincial, district, and local levels of government. Therefore, you should

distinguish between the roles and responsibilities of these levels of government wherever possible.

While it is important to be as comprehensive as possible when mapping the policies, laws, and regulations, you will find that some prioritization will be necessary. Some laws and regulations, for example, deal with very minor, sometimes subsector concerns in the overall policy and legal framework. It is best to start with the major policies, laws, and regulations that affect the overall landscape in which enterprises operate. Then, you can move into the more narrowly focused policies, laws, and regulations. At some point in this second layer of narrower concerns you will reach a point where it is best to stop. This point will be reached when it is clear that the policies, laws or regulations in this layer are relevant to a very small proportion of enterprises. You might find that asking some professional advisers in business policy and law (e.g., taxation agents, accountants, lawyers, business advisers, and bankers) will help you to determine those policies, laws, and regulations that affect most enterprises and those that affect only a very tiny proportion of small enterprises.

The following tables (see Box 4 and Box 5) identify the issues you should address when mapping and reviewing the policy and legal framework.

Box 4: Issues for the mapping of the policy, legal, and regulatory framework

You may use the headlines of this table to structure your analysis of each of the policies, laws, and regulations you are mapping.

Main policies, laws and regulations [Title and year adopted]

What are the most relevant policies, laws and regulations?

Objectives or purpose

State the objectives of the policy or law. In some cases, these will be better phrased as the main purpose of the law or regulation.

Coverage

What coverage does this policy, law, or regulation have in the enterprise sector (e.g., applies to only medium-sized enterprises, or to all enterprises)?

What coverage does this policy, law, or regulation have across the enterprise sector (e.g., applies only to manufacturing enterprises)?

What coverage does this policy, law, or regulation have across the country (e.g., applies only to urban areas, to specified provinces, or to Export Processing Zones)?

Main provisions

Briefly summarize the content of each policy, law or regulation paying particular attention to:

The definitions applied and criteria used to identify micro, small and medium-sized businesses

References made to employment issues

Any gender equity considerations

Implementing agencies

Which government institutions are responsible for the implementation of policies, laws, and regulations?

Are there mechanisms for the coordination of policies and laws affecting the enterprise sector?

What are the processes for review and monitoring?

Role for stakeholders

What role in enterprise development does the policy assign to:

- Government agencies (national, provincial, district/local)?
- Business membership organizations, specifically employer organizations.
- Civil society organizations

Choosing policy, legal and regulatory domains to map and assess

There are sure to be many different kinds of policies, laws, and regulations that can be mapped and assessed in this step. Therefore, it is important to focus your assessment on those issues that are of most relevance to the EESE assessment and to the interests of the Employers' Organization.

Some of the most common domains selected for assessment include the following:

1. Business registration and licensing
2. Small enterprise promotion policies
3. Finance and credit policies, laws, and regulations
4. Labour laws and regulations
5. Property rights
6. Trade and export policies, laws, and regulations:
7. Education policies
8. Enabling and innovation policies
9. Environmental policies, laws, and regulations

The first three domains listed above are presented in more detail below to provide you with an example of the approach you can take to mapping and then assessing the policy, legal, and regulatory framework.

Business registration and licensing

These are the laws and regulations governing the formal establishment and operation of private businesses. It is important to distinguish between the requirements for business registration and the various licenses businesses require. Business registration procedures can vary widely across countries. However, registration has three core functions common to all: (1) checking for uniqueness of business name, (2) inscription in a public commercial registry, and (3) registration with tax authorities. However, beyond this, businesses are often also required to register with a range of other agencies, including for example:

- Labour department or employment fund;
- Statistical office;
- Tax authority;
- Department of trade and industry;
- Local government.

All private businesses are required to register with the government in one form or another. Your mapping and assessment should ensure these are fully covered.

Business licenses (and permits) differ from business registration. They are usually specific to a particular industry sector or subsector; they include licenses or permits that deal with health, safety, and the environment, especially for high-risk businesses.

Registration and licensing can be undertaken by national government agencies, as well as sub-national government agencies. For example, local governments may issue licenses for the use of business premises. Thus, a national assessment of business registration and licensing should accommodate national and sub-national registration and licensing issues.

The mapping and assessment of business registration and licensing should include the procedures for

obtaining all necessary licenses and permits and completing any required notifications, verifications, or inscriptions with relevant authorities.

When mapping this field of legal and regulatory concern you should:

- A. Identify the various legal instruments that govern business registration and licensing;
- B. determine the registration and reporting requirements of enterprises within these instruments;
- C. determine the purposes (i.e., the use of) registration and reporting information provided;
- D. assess administrative mechanisms and the average estimated cost of compliance;
- E. consider the effectiveness of service delivery mechanisms (e.g., centralisation versus decentralisation), including the delineation of national and local regulations;
- F. consider the relevance of bankruptcy law to small enterprises and the various procedures that are required--this should include an understanding of the period of obligations placed upon the bankrupt once she or he has been freed of debts.

Small enterprise promotion policies

These are the official government policies that have been formulated to promote the development of small enterprises. They express the government's interest in the value and importance of small enterprises and the way these enterprises will be promoted. In addition to general enterprise promotion policies, specific attention could be given to policies that have been developed to promote women's entrepreneurship; however, ensure that this assessment focuses on the policy and legal framework and not specific promotional programmes. The policy and legal framework is part of the business environment, whereas promotional programmes are not.

When mapping these policies, you should pay particular attention to:

- A. Definitions applied and criteria used to identify micro, small and medium-sized businesses;
- B. purpose and objectives;
- C. government organizations responsible for the design and implementation of the policy (identify these organizations);
- D. segmentation of micro and small businesses within the policy;
- E. specific references made to small enterprises that are owned and managed by women;
- F. employment elements contained within the policy;
- G. special provisions for small enterprises (e.g., incentives, and exemptions) and the effect this is intended to have;
- H. role of the State in enterprise development;
- I. role of organizations that can represent small enterprises;
- J. monitoring and review mechanisms.

In addition, you will need to consider whether there are any sub-national policies or laws that have been formulated to promote small enterprises.

It may also be useful to examine sectoral promotion policies: in most countries there are specific policies and strategies designed to address the needs of particular sectors of the economy. This may include specially-tailored policies and programmes of support, which involve the government in direct interventions. This policy area may include, for example industrial development policies, agricultural development policies, rural or regional development policies, human resource development policies, and income distribution policies.

Sector policies need to be assessed in terms of their impact on small enterprises. It is easy, for example, for an industrial development policy to focus on attracting foreign owned companies and investments and to overlook the issues related to indigenous small enterprise development, and their role in industrial development (e.g., as suppliers, sub-contractors, etc.)

Finance and credit policies, laws and regulations

This refers to the policy, legal, and regulatory instruments that affect the access enterprises have to capital, such as government incentives to finance providers to help them improve their coverage of small enterprises, depreciation facilities, and so on. It does not include specific programmes run by private institutions. Typically, small enterprises have trouble obtaining access to finance. While much of these problems are a result of the practices of private banks and credit providers, governments may decide to promote a policy framework to facilitate, or even directly provide access to credit for the small enterprise sector. Thus, you will need to determine the policy, legal, and regulatory instruments that affect enterprises and their access to finance. You should also identify any measures that have been specifically designed to address the needs of small enterprises. Finally, you should review the laws and regulations concerning bankruptcy of enterprises.

Do not get distracted by those laws and regulations that regulate the establishment of a commercial bank or some other financial institution. This is usually beyond the scope of an assessment of this kind.

Step 4: Assessing the policy, legal, and regulatory framework

The objective of this assessment is to identify the strengths and weaknesses of the policy, legal, and regulatory framework, comparing it against existing benchmarks of good practice. The criteria provided in this guide should be used with flexibility to accommodate specific national concerns and circumstances. In some cases, previous studies may have provided detailed assessments on certain policy areas, and it is important to include this existing information in the assessment.

The main sources for assessment are:

- Your analysis of policy, legal and regulatory documents (as described below);
- other reviews of policy, legal and regulatory documents;
- consultations and interviews with key informants (e.g., government authorities, other business associations, etc.); see the annexes for an extensive list of questions that can be used to guide you in these interviews;
- Any other studies that highlight the effect of policies, laws, and regulations on enterprises.

There are three areas of concern that you should focus on when assessing the policy and legal framework in which small enterprises start-up and operate:

- Assessing the design of policies, laws, and regulations;
- assessing the implementation of policies, laws and regulations;
- assessing the influence of policies, laws and regulations;

These areas of concern are described under the heading below.

Assessing the design of policies, laws, and regulations

When assessing the ways in which government has designed the policies, laws and regulations that you have mapped, you should consider the following:

- **Clarity:** This refers to clarity of purpose, implementation, and responsibility. It is important that all relevant parties understand policies, laws, and regulations and that these parties know their rights and responsibilities within these policies, laws, and regulations.

When assessing a policy or law in terms of clarity for the enterprise sector you may consider the following questions:

- What is the precise purpose of the policy, law, or regulation?
 - Can small enterprise owners and managers easily understand policies, laws, and regulations?, or are they contradictory and complex?
 - Are there duplications between different regulations?
 - Do administrative procedures serve an identifiable purpose?
 - Do the policies, laws, and regulations apply a consistent definition with regard to “micro”, “small”, “medium” and “large” enterprises? Or is there a multiplicity of definitions, resulting in confusion and fragmentation?
- **Understanding of small enterprises' role and differential treatment by size class:** This refers to the importance of government recognizing the value of the small enterprise sector and the specific needs, capabilities, opportunities, and constraints that small enterprises experience. It is especially important that the government recognize that small enterprises face very different influences on their well-being than medium and large enterprises. The policies, laws, and regulations of government should reflect this recognition and demonstrate that government understands the role that small enterprises can play in the national economy and in the achievement of national development goals.

When assessing a policy or law in terms of the recognition it gives to the special roles and circumstances of the small enterprises sector, you may consider the following questions:

- Do policies, laws, and regulations provide for a differential treatment of enterprises by size class? (This can, for example, be recognizing the specific needs of small enterprises, granting specific incentives or exemptions to small enterprises, or excluding small enterprises from certain benefits and incentives.)
 - Are small enterprise policies based on a clear understanding of the (current and potential) role of small enterprises in the economy?
 - Do current policies, laws, and regulations appear to reflect current conditions? Or are they outdated remnants from the past?
 - Was the EO consulted in the design of this policy or law? How did this consultation occur? Did the consultation focus on the situation of small enterprises?
- **Compliance steps:** While this issue is connected with the implementation of policies, laws, and regulations (indeed there should always be a close connection between design and implementation), it is important to assess the requirements that are placed upon small enterprises in the design of policies, laws, and regulations. Most policies, laws, and regulations contain an element of rights (the protection or support that a subject enjoys) coupled with an element of responsibility (the requirements that are placed on the subject), it is therefore useful to assess the extent to which the policies, laws, and regulations balance these.

When assessing a policy or law in terms of the steps that small enterprises must follow to comply with the policy or laws, you may consider asking: What are the main steps and requirements that small enterprises have to follow, either to comply with the regulations, or to obtain access to certain resources or benefits?

Assessing the implementation of policies, laws and regulations

Well-designed policies, laws, and regulations can fail or prove to be less effective if they are not properly implemented. While good policies, laws and regulations will be designed with effective implementation in mind, this does not always occur. Thus, it is important to assess policies, laws, and regulations in terms of the extent to which they have been implemented.

You should assess the implementation of policies, laws, and regulations by focusing on the following elements:

- **Transparency:** This refers to the public processes of implementation and the decision-making functions of government institutions that implement policies, laws, and regulations. It is important that these public institutions undertake their activities in a publicly accountable and open manner, and that policies, laws and regulations are also implemented in such a way.

When assessing a policy or law in terms of transparency you may consider the following questions:

- Are administrative decisions made on the basis of objective criteria?
- Are they arbitrary? Do they lack transparency? Is corruption widespread?

- **Information on policies, laws and regulations:** This refers to the ways in which enterprises obtain information on the policies, laws, and regulations that affect them, especially newly-introduced or recently amended policies, laws and regulations. If enterprises and other relevant parties are not aware of their rights and responsibilities with respect to these policies, laws, and regulations, then it is likely that these governmental instruments will not be properly implemented.

When assessing a policy or law in terms of the information that is provided to small enterprises and other key parties, you may consider the following questions:

- Is information on policies, laws, and regulations readily available to small enterprise owners, managers and workers, or is it difficult to access even for specialists and lawyers?
- Have the stakeholders been informed of the existence and content of policies, laws, and regulations?
- Have special efforts been made in this regard (e.g. information campaigns, centralized information in one single government office)?
- Is the information dissemination approach sensitive to the differing ways in which female and male business owners access information?

- **Costs and benefits of compliance:** This refers to the balance of advantages and disadvantages that an enterprise might face as a result of the policy or law. A small enterprise might decide to avoid complying to a law because it does not offer enough advantages, or because there is no penalty (e.g. fine, imprisonment, business closure) that will result from non-compliance. In some cases, the financial cost of complying with a law (e.g. business registration fee) may be too high for the enterprise owner/manager to afford. Costs may be direct, such as the cost of fees to be paid, or indirect, such as the time taken to comply with a specific regulation. In assessing costs you are not required to undertake an in-depth analysis of the cost of compliance. Rather, you may want to refer to some key features, such as whether or not there are variations in fees based on enterprise size, or

whether there are significant hidden costs of compliance. Remember, the view of government officials may be very different to those of small enterprise owners and managers.

- **Coverage of policies, laws, and regulations:** This refers to the affect that the policy and law has on the total population of enterprises. For example, rural enterprises may be less subjected to the requirement of the law simply because they are in rural areas and are less visible. In other cases, some policies, laws, and regulations may not cover the informal sector or unregistered business because they are not officially recognized by government.

When assessing a policy or law in terms of the coverage of specific policies, laws, and regulations you may consider the following questions:

- Is there any evidence of compliance with laws and regulations (e.g., the share of registered vs. unregistered enterprises)? Does this appear to vary according to industrial subsectors, the actors involved, or specific target groups, such as women-owned enterprises?
- To what extent have specific small enterprise policies been implemented?

Assessing the influence of policies, laws, and regulations

Your assessment should also combine the two elements described above – design and implementation – to assess the overall influence that a specific policy or law has on employment in the small enterprise sector.

The term “influence” is deliberately used here instead of “impact”. This is because it is very difficult to measure the impact of any single policy or law on enterprises. Instead, it is likely to be possible to determine whether or not a policy or law has had some kind of influence, whether positive, negative, or otherwise, on the enterprise sector.

One issue to look out for is the problems that might arise from policies and laws that treat small enterprises differently from larger enterprises. While small enterprise promotion policies and laws that offer special treatment for smaller firms may be introduced to help small enterprises, they can also distort markets and create growth traps that produce disincentives for enterprise growth.

Recognizing the influence of gender

In general, gender mainstreaming should be an institutionalized strategy that aims to systematically address gender inequalities in legislation, policies, programmes and budgets at all stages of the policy and programming cycle. The objective is to ensure that women and men have equal opportunities and rights, as beneficiaries, participants and decision-makers. To bring gender issues into the mainstream in all policies, legislation, and programmes requires a five-pronged approach:

- carrying out a gender analysis
- carrying out gender-specific strategies or interventions
- starting a process of institutional change in procedures and in institutional processes
- involving women in consultation processes to give them a voice
- carrying out gender budgeting and auditing.

In the matter of the EO assessment of the policy, legal and regulatory framework, the EO should pay attention to the extent to which gender mainstreaming is being integrated at the design and implementation stages, as well as the ways in which the policy and legal framework impacts enterprises

owned by women versus men.

There are four areas of examination that may help you to assess this.

These are as follows:

- **Structural features:** These are the explicit characteristics of policies, laws, and regulations which can treat female-owned enterprises and male-owned enterprises differently. Examples of such structural biases include policies, laws, and regulations that prohibit women from owning property in their own right.
- **Behavioural or attitudinal features:** Bias in the treatment of women and men, and female-owned enterprises and male-owned enterprises, may be removed from policies, laws, and regulations, but may be found to persist in the implementation of these policies, laws, and regulations because of behavioural or attitudinal reasons.
- **Impact variations:** While it may not be possible to immediately identify structural or behavioural elements of gender bias, you can determine the effect of these by the impact they have on enterprise development. You may find, for example, a high proportion of female-owned enterprises in the micro-enterprise sector and far less in small and medium-sized enterprises. Alternatively, you might find that women participate less in small enterprise associations than men do; or that the growth of female-owned enterprises is constrained by greater restrictions on the access women have to finance. Such findings will help you to trace back these experiences to determine whether their source is structural or behavioural.
- **Promotional policies, laws, and regulations:** Promotional policies, laws, and regulations may be formulated by governments to redress the impact of other policies, laws, and regulations, or to achieve a specified social and economic outcome. This may include, for example, policies that promote female-owned enterprises.

Please see the following list (Box 6) for the issues to be addressed when assessing the policy, legal, and regulatory framework.

Box 6: Issues for the assessment of the policy and legal framework

You may use the headlines of this table to structure your analysis of each policy, law, and regulation that you are reviewing.

DESIGN

Clarity

Can small enterprise owners, managers, and workers easily understand policies, laws, and regulations? Or are they contradictory and complex?

Are there duplications between different regulations?

Do administrative procedures serve an identifiable purpose?

Do the policies, laws and regulations apply a consistent definition with regard to “micro”, “small”, “medium” and “large” enterprises? Or are there a multiplicity of definitions, resulting in confusion or fragmentation?

Understanding of enterprise role and differential treatment by size class

Do policies, laws and regulations provide for a differential treatment of enterprises by size class? (This can for example be recognizing the specific needs of small enterprises, granting specific incentives or exemptions to small enterprises, or excluding small enterprises from certain benefits and incentives.)

Are small enterprise policies based on a clear understanding of the (current and potential) role of small enterprises in the economy?

Do current policies, laws and regulations appear to reflect current conditions? Or are they outdated remnants from the past?

Steps of compliance

What are the main steps and requirements that small enterprises have to follow, either to comply with the regulations or to obtain access to certain resources or benefits?

Gender

Are there any signs that these policies, laws, and regulations address men and women differently?

Is there any difference in the way female-owned enterprises and male-owned enterprises are treated?

Are there any special policies that support the development of female-owned enterprises?

IMPLEMENTATION

Transparency

Are administrative decisions made on the basis of objective criteria?

Are they arbitrary?

Lacking transparency?

Is corruption widespread?

Information

Is information on policies, laws, and regulations readily available to small enterprise owners, managers, and workers, or is it difficult to access even for specialists and lawyers?

Have the stakeholders been informed of the existence and content of policies, laws and regulations?

Have special efforts been made in this regard (e.g., information campaigns, centralized information in one single government office)?

Costs and benefits of compliance

These may be direct, such as the cost of fees to be paid, or indirect, such as the time taken to comply with a specific regulation. You are not required to undertake an in-depth analysis of the cost of compliance. Rather, you may want to refer to some key features, such as whether or not there are variations in fees based on enterprise size, or whether there are significant hidden costs of compliance. Remember, the view of government officials may be diametrically opposite to those of small enterprise owners and managers.

Coverage

To what extent have specific small enterprise policies been implemented?

Is there any evidence on compliance with laws and regulations (e.g. share of registered vs. unregistered small enterprises)?

Does this appear to vary according to industrial subsectors, the actors involved, or specific target groups?

INFLUENCE

Is there any evidence of the influence of policies, laws, and regulations on small enterprises?

Is this influence different for men and women? (Please specify if you refer to information gathered through interviews with key informants, data analysis, or previous studies).