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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 21.12.2006
C(2006)7074

REPORT FROM THE COMMISSION

**ON THE IMPLEMENTATION OF THE COMMISSION RECOMMENDATION
(2003/361/EC) OF 6 MAY 2003 CONCERNING THE DEFINITION OF MICRO,
SMALL AND MEDIUM-SIZED ENTERPRISES**

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(Text with EEA relevance)

1. INTRODUCTION

In May 2003 the Commission adopted a Recommendation concerning the definition of micro, small and medium-sized enterprises (SME)¹, hereinafter referred to as the “Recommendation”. It replaced the previous recommendation² as from 1 January 2005. It invites Member States, the European Investment Bank (hereinafter “EIB”) and the European Investment Fund (hereinafter “EIF”) to comply with Title I of its Annex (hereinafter the “Annex”) for their programmes directed towards micro, small and medium-sized enterprises.

The definition was revised with a view to reflecting economic developments since 1996, promoting innovation and fostering partnerships. Economic developments in prices and productivity are reflected in the significant increase of financial thresholds. Innovation and partnerships have been promoted through a number of new measures which allow a favourable treatment to certain investors (such as venture capital companies), as well as through specific provisions for universities and non profit R&D centres.

The new definition also intends to ensure that support measures are granted only to those enterprises which genuinely need them. Therefore, a distinction has been introduced between the different types of enterprises (*autonomous, partner and linked*) in order to take into account the SME's ability to call on outside finance.

Under Article 4(2) of the Recommendation, the Member States, the EIB and the EIF were requested to inform the Commission by 31 December 2004 of any measures they have taken to implement it. They were also requested to inform the Commission by no later than 30 September 2005 of the first results of its implementation.

Article 9 of the Annex states that *on the basis of a review of the application of the definition contained in this Recommendation, to be drawn up by 31 March 2006, and taking account of any amendments to Article 1 of Directive 83/349/EEC on the definition of linked enterprises within the meaning of that Directive, the Commission will, if necessary, adapt the definition contained in this Recommendation, and in particular the ceilings for turnover and the balance-sheet total in order to take account of experience and economic developments in the Community.*

Responding to the above-mentioned requirement, the present report reviews the application of the new definition on the basis of the situation at the end of March 2006. The report

¹ 2003/361/EC, OJ L124, 20.5.2003, p. 36

² 96/280/EC, OJ L107, 30.4.1996, p. 4

summarizes the main actions taken by the Member States, the EIB and the EIF, as well as by the Commission, and highlights the areas of the Recommendation likely to need further attention in the future.

Although some difficulties of interpretation emerged at the beginning of its application, the first results of its implementation seem to confirm that the new definition is more suited to the different categories of SMEs and takes better account of economic reality through analysing relationships between enterprises.

2. SUMMARY OF MAIN ACTIONS TAKEN BY MEMBER STATES, THE EIB AND THE EIF

2.1 Information concerning implementing measures

In December 2004 the Commission invited Member States, the EIB and EIF to report on the implementing measures as requested under Article 4(2) of the Recommendation. After several reminders, the Commission has so far received answers from twenty-three Member States, the EIB and the EIF.

All Member States that answered informed the Commission that they had adopted the SME definition set out in the Recommendation in their legal systems, fixing the starting date for entry into application at 1 January 2005 in all cases. The type of legal instrument used varies from soft-law instruments (recommendations or circulars) to national laws. One Member State indicated that it has adopted a “dynamic reference”, by stating in its national legislation that its SME definition coincides with the one in force at European level.

One Member State has established headcount and financial thresholds for the microenterprises category which are lower than those recommended, in order to better match existing national legislation and specific characteristics of sectors.

The EIB and the EIF reported to the Commission on the application of the new SME definition to the activities they carry out. Both the EIB and the EIF have implemented the definition in their fields of action.

2.2 Information concerning first results

The Member States, EIB and EIF were also requested to inform the Commission by 30 September 2005 of the first results coming from the implementation of the new SME definition. To date, only nine Member States have been able to provide some results, due mainly to the fact that the definition has been applied only for a short period of time.

A preliminary analysis made by an autonomous region of one Member State on the SME population covered by the new SME definition in comparison with data corresponding to the previous definition suggests that the number of firms which have "migrated" from one category to another as a result of the changed definition is very limited. These conclusions confirm the views of the Commission that despite the new criterion on dependency, the significant increase in the thresholds allows an important number of enterprises to maintain their SME status.

2.3 Issues addressed by Member States

Member States have raised a number of points regarding the implementation of the new definition. Most of those points refer to issues already debated during the drafting of the Recommendation, such as the setting of different thresholds and/or criteria per sector.

However, some of them are new, such as the following:

- one Member State considered that no population ceiling should be imposed on local authorities for benefiting from the exception of Article 3(2) (d) of the Annex³;
- two Member States pointed to uncertainty concerning the application of the 2-year rule (Article 4.2 of the Annex) to the calculation of staff headcounts and financial amounts in case of mergers or acquisitions⁴;
- one Member State regretted that a number of concepts in the Recommendation are not specifically defined (e.g.: *public bodies*, *business angels*, *institutional investors*, etc). In those cases, references are made either to European texts when they exist or to national ones. This is said to pose difficulty when applying the Recommendation, in particular if national legislation does not provide proper definitions of some of those concepts, which is the case in this Member State.

2.4 Information to the public

Most of the Member States have taken initiatives in order to provide necessary information on the definition to the public and to clarify some of the issues raised by entrepreneurs. Overall, they consider the SME user guide (mentioned below) as a useful tool which they have distributed widely.

3. SUMMARY OF THE MAIN ACTIONS TAKEN BY THE COMMISSION

The Commission has carried out different actions related to the new SME definition.

3.1 Application of the SME definition to programmes and policies

The Commission has taken measures to adapt programmes and policies to the new SME definition, in particular in three areas: competition policy (State aids), research & development (7th RTD Framework programme) and cohesion policy. In the field of State aids, the new SME definition has been integrated in the Regulation concerning block exemption for SME⁵. In the field of research & development, application forms have been adapted to take into account the new criteria of the definition. Moreover, Member States have been advised to use the new SME definition in their cohesion policy programme implementation.

³ Article 3(2) (d) of the Annex states that an enterprise can be ranked as autonomous even if the 25% threshold is reached or exceeded by, *inter alia*, autonomous local authorities if they have an annual budget of less than 10 million euro and fewer than 5,000 inhabitants.

⁴ Exceeding the headcount or financial thresholds changes the SME status only when it happens over two consecutive accounting periods.

⁵ Regulation 70/2001, OJ L 10, 13.01.2001, p.33-42

3.2 Information to the public and the Administrations

3.2.1 Creation of a functional mailbox

The Commission has created a functional mailbox (entr-sme-definition@cec.eu.int) which is at the disposal of the public from 2003 onwards for any questions about the new SME definition. DG Enterprise and Industry is responsible for answering the questions. The Commission has received more than 250 inquiries or reactions on the Recommendation since its adoption, with a high number of very detailed questions on its application to specific situations. The Commission has provided explanations or clarifications to all of them.

Some of the recurrent issues are questions of application or interpretation such as:

- the rationale and calculation method of the financial and staff headcount thresholds;
- the time period to be considered when calculating data of an enterprise;
- relationships between enterprises through natural persons acting on the same relevant market or adjacent markets.

The answers to most of these questions can now be found in the Guide mentioned below.

3.2.2 Publication of a user guide

The Commission has published a user guide in 22 languages (20 EU languages + Icelandic and Norwegian) to present the changes contained in the new definition and to explain the reasons for them. The user guide explains how to determine if an enterprise can qualify as an SME by following a step-by-step approach and by illustrating the methodology with some examples. It also provides answers to the most frequently asked questions received in the functional mailbox, as well as to most of the points raised by the Member States. Around 70.000 copies of the guide have been distributed through different channels (IRC, EIC, Permanent Representations, etc.). The user guide is also available at the Europa website⁶. Up to October 2006 it had received more than 250.000 visits.

4. CONCLUSIONS

All Member States which provided feedback to the Commission have taken actions in line with the Recommendation. Actions have also been taken at Community level in order to adapt EU programmes and policies to the SME definition. It can therefore be considered that the new SME definition has been properly implemented.

Experience gained so far, although limited, shows that the new SME definition gives a clearer picture of the real economic position of SMEs. Member States or stakeholders raised some issues of interpretation, most of which have been promptly addressed by answering directly the questions received and by publishing a SME user guide. The remaining issues⁷ are not, in the Commission's view, important enough to justify an early adaptation of the definition at the expense of a minimum level of stability of the legal framework. They may however

⁶ http://europa.eu.int/comm/enterprise/enterprise_policy/sme_definition/sme_user_guide.pdf

⁷ See point 2.3 above.

constitute, together with other possible issues arising in the coming years, a basis for a future revision. Economic developments from May 2003 do not necessitate modifications of the definition either. Finally, Article 1 of Directive 83/349/EEC, on which the definition of linked enterprises is based, has not been amended since 2003.

A period of 4 years of implementation would allow the different actors in the process to gain more experience and a new assessment could be drawn up by 31st March 2009. In the meantime the Commission will monitor the developments of inflation and productivity gains in the EU to assess if an adjustment of the financial ceilings may be necessary earlier.