

INCEPTION IMPACT ASSESSMENT			
TITLE OF THE INITIATIVE	Revision of the EU SME Definition		
LEAD DG – RESPONSIBLE UNIT – AP NUMBER	GROW – H/1	DATE OF ROADMAP	08/06/2017
LIKELY TYPE OF INITIATIVE	Recommendation		
INDICATIVE PLANNING	Q1 2019		
ADDITIONAL INFORMATION	<a href="http://ec.europa.eu/growth/smes/business-friendly-environment/sme-definition_en">http://ec.europa.eu/growth/smes/business-friendly-environment/sme-definition_en</a>		
<p><b>This Inception Impact Assessment aims to inform stakeholders about the Commission's work in order to allow them to provide feedback on the intended initiative and to participate effectively in future consultation activities. Stakeholders are in particular invited to provide views on the Commission's understanding of the problem and possible solutions and to make available any relevant information that they may have, including on possible impacts of the different options. The Inception Impact Assessment is provided for information purposes only and its content may change. This Inception Impact Assessment does not prejudice the final decision of the Commission on whether this initiative will be pursued or on its final content.</b></p>			

A. Context, Problem definition and Subsidiarity Check
<p><b>Context</b></p> <p>The SME Definition as provided in Recommendation 2003/361/EC<sup>1</sup> is the structural tool to identify those enterprises which are confronted with market failures and particular challenges (e.g. access to finance) due to their size, and therefore are allowed to receive preferential treatment in public support. It is a widely used tool in EU policies such as competition (State Aid), Structural Funds, Research and Innovation (Horizon 2020) as it lays down the eligibility criteria for potential beneficiaries of the related financial resources. Moreover, the SME definition is relevant in the context of some European administrative exemptions and reduced fees, such as for REACH regulation of chemicals. Currently, around 100 EU legal acts contain a reference to the SME definition<sup>2</sup>.</p> <p>The Commission works to create favourable framework conditions for SMEs through their consideration across all relevant policy fields and through its support programmes considering the importance of those companies for the economy and their specific, size-related difficulties. In November 2016 the Commission also adopted the Start-up and Scale-up Initiative. Its aim is to improve the conditions for start-ups to scale-up, by –inter alia- removing barriers and facilitating their access to finance<sup>3</sup>.</p> <p>The definition of which company qualifies as a small and medium-sized enterprise has to provide certainty, be simple to apply and capture the group of companies which face the specific challenges of smaller business.</p> <p>The Commission has opted for a "back to back" evaluation and impact assessment in support of this initiative and to inform its decision. The implementation reports prepared in 2006 and 2009, as well as the evaluation conducted in 2012<sup>4</sup> after consulting Member States, the European Investment Bank, the European Investment Fund and business stakeholders will also be taken into account.</p>

<sup>1</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32003H0361>

<sup>2</sup> [http://eurlex.europa.eu/search.html?qid=1490016917243&text=2003/361/EC&scope=EURLEX&type=quick&lang=en&DTS\\_SUBDOM=EU\\_LAW\\_ALL&FM\\_CODED=CONS\\_TEXT](http://eurlex.europa.eu/search.html?qid=1490016917243&text=2003/361/EC&scope=EURLEX&type=quick&lang=en&DTS_SUBDOM=EU_LAW_ALL&FM_CODED=CONS_TEXT)

<sup>3</sup> <http://ec.europa.eu/DocsRoom/documents/20262>

<sup>4</sup> 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.

## Problem the initiative aims to tackle

Since its entry into force in 2005, the above mentioned reports did not identify major problems that would have justified a revision of the Recommendation. The Recommendation in its general structure and scope has been confirmed at several instances<sup>5</sup>. However, over time some specific issues have been identified. They will be assessed against the current business and financing environment in the context of the evaluation of the performance of the Recommendation<sup>6</sup>.

Such concerns mainly relate to:

### 1) Financial thresholds

The current financial thresholds (annual turnover and balance sheet total) were set in 2003 when the Recommendation was adopted. The above-mentioned reports considered an update of these thresholds not yet warranted<sup>7</sup>. However, the compound developments in inflation and productivity since 2003 have been significant (e.g. inflation growth between 2003 and 2016 is 26.75%), which is why after the lapse of 14 years the adequacy of these thresholds to reflect the financial weight of EU SMEs should be re-assessed. The same applies to other nominal ceilings like the maximum annual budget of local authorities<sup>8</sup>.

In this context it should also be considered that the thresholds set by the Recommendation could lead to certain lock-in effects that would discourage SMEs to scale-up by fear of losing the support that the SME status provides. European SME associations claim that approximately 70% of SMEs prefer to maintain the SME status rather than growing fast and thus creating growth and jobs. It shall be assessed whether the SME Definition might be a factor for such preferences and whether an extension of the period in which fast growing companies can retain the SME status could mitigate such effects.. Although scale-ups only represent a small number of SMEs (around 6%), they strongly contribute to job creation and productivity. In the context of capturing specificities of start-ups and scale-ups, further analysis is also needed on the effects of the Recommendation on the important involvement of venture capital funds and business angels<sup>9</sup>.

### 2) Legal certainty

On 15 September 2016 the Court of Justice ruled on 2 cases against administrative decisions of ECHA (European Chemicals Agency) involving the SME Definition and, more precisely, the independence of enterprises (Art. 6). The Rulings brought to the Commission's attention that the said article is not formulated in a clear way and can, in practice, lead to granting the status of SMEs to groups of enterprises whose real economic power exceeds that of genuine SMEs. The consequence could be:

- an artificial increase of the number of enterprises that will be considered SMEs, despite the fact that they are not SMEs within the spirit of the Recommendation;
- large companies to design corporate structures to unjustly benefit from support by circumventing the spirit of the SME Recommendation (by creating intermediate, 'empty-shell' special purpose companies).

In addition, twelve years of implementing this Recommendation has shown that a number of concepts used in the text could be better described or clarified in order to leave less room for interpretation and thus simplify the practical application of the definition. Examples of these areas are: the scope of the

2006: <http://ec.europa.eu/DocsRoom/documents/10034/attachments/1/translations>

2009: <http://ec.europa.eu/DocsRoom/documents/10033/attachments/1/translations>

2012: <http://bookshop.europa.eu/en/evaluation-of-the-sme-definition-pbNB0214126/>

5. See conclusions 5.2 of the 2012 evaluation study.

6 To be performed back-to-back to the impact assessment conducted to support the initiative (see box on better regulation tools below)

7 See recommendation 2 in the Executive summary of the 2012 evaluation study.

8 Article 3, para 2 (d) of Annex I to the Recommendation

9 Article 3, para 2 (a) of Annex I to the Recommendation

exceptions foreseen in Art. 3.2. (a-d) and the application of the '2-year rule' (Art. 4.2) in case of mergers between enterprises or spin-offs.

Any further needs identified during the evaluation/public consultation would be addressed as well.

### **Subsidiarity check (and legal basis)**

The initiative falls under the competence of the Commission according to Article 292 of the Treaty on the Functioning of the European Union (TFEU).

For the implementation of EU-programmes supporting SMEs within the Single Market and for other EU policy measures in favour of SMEs a common definition is required for legal and for budgetary certainty and to avoid distortions of competition. This does not hinder Member States from different definitions for SMES to be applied in national programmes.

In fact, the Definition is used in a significant number of EU policies and legal texts:

- in State Aid, Structural Funds, Research and Innovation as eligibility criteria for beneficiaries;
- in administrative exemptions and reduced fees, such as for REACH<sup>10</sup> (Chemicals registration) and EMA<sup>11</sup> (European Medicines Agency);
- in EU legislation providing for exemptions or lighter regimes in order to reduce the regulatory burden on SMEs .

Any adjustment of the Definition and of references to it, therefore, requires EU action.

## **B. Objectives and Policy options**

The overall objectives are to:

1. Ensure that available support and special measures to reduce administrative burden are focussing on those enterprises that are most in need of it.
2. Increase business predictability and legal certainty for enterprises by making the SME definition clearer and leave less room for interpretation.
3. Create a level playing field for EU-based SMEs within the Internal Market by fostering equal treatment for SMEs throughout the EU with regards to their access to public support and finance.

The specific objectives are to:

- ensure that the SME Definition is fit for purpose and is updated to the current economic conditions
- provide clear legal certainty and avoid companies that in practice do not face the difficulties of typical SMES to use loopholes in the Definition to benefit from SME status
- ensure that sector-specific particularities are sufficiently considered when identifying SMEs.

The retrospective evaluation will assess to what extent the Recommendation is fit for purpose and, on the basis of the results, the Commission might decide to adapt the legal text to take into account the current economic and legal situation as well as solve the issues the evaluation will have detected, if appropriate. The following options could be considered:

Option 1: Baseline scenario: no change to the Recommendation (i.e., the Court Judgement applies)

Option 2: A targeted intervention to keep the SME Definition up-to-date with economic developments, enhance its user-friendliness and the legal certainty it provides to enterprises.

<sup>10</sup> <https://echa.europa.eu/nl/regulations/reach>

<sup>11</sup> <http://www.ema.europa.eu/ema/>

Without prejudging the results of the retrospective evaluation, possible sub-options are:

- a) Adapt the financial thresholds included in the definition: turnover, balance sheet total, participation of business angels, and budget of local public entities;
- b) Clarify the wording and concepts, particularly in art. 6 to better reflect its original purpose to identify enterprises that are part of a larger group.
- c) Introduce additional considerations to the benefit of start-ups and scale-ups could also be envisaged. These could, inter alia, concern enhanced participation of venture capital or extension of the 2-year period during which scale-ups would still maintain the SME status.

Other options could be considered, based on the outcome of the evaluation and/or public consultation.

Under option 2, in addition to revising the SME definition, Omnibus Act(s) would be prepared to amend the legal acts that refer to the Recommendation.

The on-line tools that are currently available for enterprises to do a self-assessment or apply for funds or grants, will be updated according to the chosen option.

### **C. Preliminary Assessment of Expected Impacts**

#### **Likely economic impacts**

Option 1:

The possible implications of the Court judgments would not be addressed. This could artificially increase the number of SMEs due to the set-up of corporate structures that would circumvent the spirit of the Recommendation. In the absence of an increase in the overall level of support, there would be a shift at the expense of smaller enterprises both because of the dilution effect but also because larger enterprises are better able to take advantage of any support available.

Option 2:

Adapting the financial ceilings in line with inflation developments since 2003 would allow re-integrating those enterprises that have been excluded from the definition because of developments not related to real growth.

Clarifying the existing rules of the Definition would provide gains both in time and staff costs of all actors involved in SME status assessment (enterprises and managing authorities).

Supporting start-ups that scale-up would help them develop their full innovation and job creation potential.

Other options could also be considered, based on the outcome of the evaluation and/or public consultation.

#### **Likely social impacts**

There are over 23 million SMEs in the EU, employing over 90 million people. As such they play a major role in social integration and inclusion.

Supporting SMEs to deal with the barriers they encounter in the business environment will also positively influence their capacity to fulfil this important role in the social tissue.

As is the case with the economic impacts, the social impacts of this initiative will vary somewhat depending on the selected option.

Each option will result in a varying increase of the nominal number of SMEs, and consequently, the relative concentration of support. Diluting this support to a level that would no longer be sufficiently supportive would be counterproductive.

<b>Likely environmental impacts</b>
Not applicable.
<b>Likely impacts on fundamental rights</b>
Not applicable.
<b>Likely impacts on simplification and/or administrative burden</b>
<ul style="list-style-type: none"> <li>• Ensuring that the Definition remains fit for purpose and provides legal certainty to enterprises through clear wording will reduce administrative burden and cost, and will simplify the procedures.</li> <li>• Changes in the Definition that would increase its complexity should therefore be avoided.</li> </ul>
<b>D. Data Collection and Better Regulation Instruments</b>
<b>Impact assessment</b>
<p>An evaluation and an impact assessment will be prepared "back-to-back" to support this initiative and to inform the Commission's decision on the options.</p> <p>The results of an external study will feed into both exercises.</p>
<b>Data collection</b>
<p>The evaluation work will build on existing implementation reports and an evaluation study prepared in 2006, 2009 and 2012 respectively.</p> <p>Data collected during previous evaluations will be updated and reassessed against the current economic, legal and business environment. The external study will collect information and data on the issues that would require revision or clarification.</p> <p>Useful information will also be derived from implementation reports of EU programs specifically targeting SMEs (eg COSME, Horizon 2020, and Structural Development Funds), State Aid, and executive agencies (such as the European Chemicals Agency and the European Medicines Agency).</p>
<b>Consultation strategy</b>
<p>A formal open online public consultation of 12 weeks on the issues, objectives and policy options set out above will be launched early 2018. This consultation will be announced on the following website: <a href="https://ec.europa.eu/info/consultations">https://ec.europa.eu/info/consultations</a></p> <p>Additional input will be gathered through surveys and interviews, and bilateral ad hoc contacts with key stakeholders, representative business associations and Member States' competent administrations</p> <p>Stakeholders' input will be used both in the evaluation and in the impact assessment of the policy options that will be carried out back-to-back. The Commission will report on the feedback received through the various consultation activities.</p> <p>Position papers of business association and other stakeholders will be taken into account.</p>
<b>Will an Implementation plan be established?</b>
No implementation plan will be established, as it concerns an act, which does not require transposition measures or supportive measures