

**COMMISSION RECOMMENDATION  
FOR THE REVISION OF THE  
EUROPEAN DEFINITION OF SMALL AND MEDIUM-SIZED ENTERPRISES**

**UNICE PRELIMINARY COMMENTS**

1. Introduction

UNICE has noted the Commission's working paper on the revision of the definition of small and medium-sized enterprises, which the European Commission's services prepared for the 7 November 2001 consultation meeting with European business organisations on this subject, and appreciates being given the opportunity to exchange views with the Commission as regards issues to be taken into consideration during the review.

These comments are intended to outline UNICE's first reaction to the working paper and UNICE plans to issue further detailed comments once it has had an opportunity to assess more precisely the impact of the Commission's proposals.

First of all, UNICE regrets that this process of revising the existing definition of small and medium-sized enterprises has been carried out without any proper assessment of the likely impact of the revision of the different criteria used in the definition on the different populations of European enterprises described in the definition.

Considering the importance of this matter for entrepreneurs on the ground as well as at political level, UNICE would have preferred better involvement of business organisations and an earlier consultation process, and certainly before the paper was finalised. The very short consultation period (less than one calendar month) offered to business organisations might hamper the whole process and prevent entrepreneurs from consistently evaluating the impact on businesses and from reporting to the Commission services.

UNICE has noted the Commission's clear objective, in revising the existing definition, of bringing more clarity and predictability and reducing potential circumventions regarding application of state aid rules.

UNICE has consistently held that strict control of state aid, on the basis of clearly defined criteria, is necessary to prevent distortions of competition in the internal market.

The Commission wants to encourage Member States to adopt this definition in order to harmonise the law applicable in Europe. However, these criteria are not harmonised at European level. There are many European aid programmes which refer to different criteria from those proposed by the Commission. Examples include the *Eurotech Invest programme* and the *Euro Partenariat programme* (both of which give priority to companies with fewer than 500 employees and whose net assets do not exceed €75 million with no more than one third of shares owned by large companies), or the *Eurotech Capital programme* (which also addresses companies with fewer than 500 employees). Thus, there is an unjustified discrepancy at European level. It therefore seems judicious to adopt at least the same criterion for the whole of Europe (and in particular all Community programmes). It would be useful to know as well what ceilings have been adopted in European Member States.

Having said this, UNICE supports the reinforcement of the SME definition as a policy instrument to be used at EU level to ensure better access to support programmes and policy measures for small and medium-sized enterprises and to enhance the competitiveness of European enterprises. A great deal is at stake with this definition. In many instances, European aid is granted to SMEs on the basis of this definition, e.g. aid for business cooperation or services to SMEs.

Considering that, unfortunately, the working paper does not contain a clear analysis of the impact of the different proposals, UNICE has some broad suggestions for revision of the definition, which are set out below. UNICE hopes that these suggestions will be taken into account and that close consultation and cooperation between Commission officials and UNICE on this important subject will continue in the upcoming period.

## 2. Clarification of the concept of enterprise

UNICE welcomes the clarification effort by bringing the applicable definition for small and medium-sized enterprises into accordance with article 48 of the Treaty and its interpretation by the European Court of Justice. Considering any entity engaged in economic activities, regardless of its legal form, is progress towards more fair competition within the single market, and better application and predictability of state aid rules.

## 3. Revising the four criteria

### *Employment threshold*

A company does not become large just because it has 251 employees. The criterion of 250 employees used in the past by the Commission for SMEs was chosen in order not to allow unfair competition on national markets. This reason no longer corresponds to the objectives of transforming the European Economic Area into an economic power at global level. If the aim is to give support to the fabric of medium-sized enterprises, an important local nursery for jobs and prosperity, it is important not to regard them as large companies or large groups before they have attained a size and financial capacity likely to entail distortions of competition.

In particular, the intention clearly expressed to foster growth and avoid extra *penalty* on companies that invest in people or equipment is warmly welcome.

Nevertheless, initiatives such as the German model of training youngsters within enterprises (dual system for professional qualifications) should not be discouraged.

UNICE welcomes the way the definition intends to take into account of apprentices and students engaged in vocational training, so that SMEs employing them are not penalised. Nevertheless, the change in the definition of SMEs with inclusion of unpaid family workers and apprentices and trainees, and with a widening of the dependence criterion, will have the effect of reducing the number of companies covered by the definition.

A large company in today's economic reality, which now corresponds to a globalised economy, is a company whose size and financial capacity are sufficient to exist in and influence this global market.

UNICE has noted the Commission's intention to define subgroups better within the definition of small and medium-sized enterprises (e.g. micro enterprises, small enterprises and medium-sized enterprises), on the proviso that those new categories and the relevant thresholds applied will not be used for purposes other than competition policy and support programmes and that it will not lead to additional administrative burden for the companies (which have to cope with a whole new set of rules each time they enter into a different category).

#### *Turnover and balance sheet total*

The revision of the quantitative thresholds, defined in 1996, to take account of the changing economic circumstances is welcome. Over this six-year period, productivity gains and increases in price levels have changed the economic situation and impacted heavily on enterprises' operations. In particular, UNICE strongly supports the announced aim not to penalise entrepreneurship and start-up processes as well as high-growth companies and thus to define thresholds for these two criteria which will compensate for these developments (e.g. € 50 million for turnover threshold and € 43 million for balance sheet total threshold).

Even if it might be considered that these amounts are quite high to fit with what an SME should be, attention should be paid to specific sectoral situations where the reality of operating conditions might imply extremely large turnover with very low added value, or huge investments bringing the balance sheet total to an unusual amount for an SME. Also, the funds allocated for R&D are indeed often large and require companies with a certain financial capacity.

#### *Concept of independence, group of affiliated undertakings*

UNICE supports the Commission's objective to ensure that it is the enterprises that really need to benefit from the various rules and measures to assist SMEs that do so, and thus takes note of the Commission's intention to replace in the definition the concept of the "independence" of SMEs by the concept of "linked enterprises or group of affiliated undertakings":

The concept of linked companies, which is defined extensively, does not seem very satisfactory. If it can be noted that legal certainty appears to be strengthened by the precise definition given, some points need to be underlined:

- One of the aspects of this definition seems to be a source of ambiguity. This is the reference at the end of paragraph 8 to the concept of "market" (or "adjacent

market”) to describe related companies by virtue of paragraph 8. What definition of market should be used?

- ❑ In addition, the complexity of the notion of related company is hardly compatible with the objective in view, which is to allow a company to determine easily whether or not it falls within the SME category.
- ❑ Lastly, proof of the existence of links between companies could be a source of difficulties in a number of cases. Information can be obtained from official documents about direct or indirect holdings, or about joint holdings held via a subsidiary. By contrast, relations based on a right to appoint or dismiss a majority of board members (paragraph 8b) or on a dominant influence (paragraph 8c), or arising from an agreement between partners in the two companies (paragraph 8d) are very rarely public. SMEs, to which the transparency rules for stockmarket listings do not apply, will not necessarily want to draw the attention of aid providers to the existence of such relations, a situation which could generate uncertainties and disputes.

UNICE takes into consideration that:

- ❑ the concept of a group of affiliated undertakings is supposed to provide a more accurate picture of the economic power of an enterprise which is part of the group. It is the Commission’s intention that enterprises whose real economic power is greater than that shown by their turnover or their balance sheet total alone not be considered SMEs;
- ❑ the Commission intends to harmonise criteria included in the Fourth Council Directive 1978/660/EEC of 25 July 1978 (on the annual accounts of certain types of companies) with those in the definition of SMEs, to simplify matters for the Member States and enterprises.
- ❑ this is supposed to increase legal certainty by spelling out the method of calculating the thresholds when complex relationships between various enterprises (be user-friendly: using consolidated accounts wherever they exist also simplifies the calculation of the thresholds by making use of such existing data on the enterprises, and where consolidated accounts do not exist for all or part of the group, the paragraph lays down when the turnover or balance sheet total of the enterprise in question must be increased by either all or a proportionate part of those quantities relating to the enterprises which are not consolidated).

Nevertheless, UNICE would welcome substantive clarification regarding this ‘independence’ criterion. As it now stands, crucial elements such as objectivity, reliability, and efficiency of this assessment are not clear, nor is the way assessment of such ‘independence’ will be evaluated, when the assessment will be required and who will be in charge of evaluating it.

In particular, cooperation between enterprises and clustering must not be discouraged by the new definition’s criteria. Linked ownership and company networking must be clearly differentiated. As well, there should be no attempt to enlarge the definition to the benefit of larger companies.

Since the definition will serve as a reference for questions of state aid which call for a cautious approach, the legal certainty of the definition as well as the rules applicable to relevant assessment therefore need to be reinforced and clarified.

### *European statistics*

UNICE takes note of the Commission proposal to review categories maintained for European statistics (i.e. 0 to 9 employees, 10 to 49 employees, 50 to 249 employees, 250 to 499 employees and 500+ employees) and to make European statistics available only for SMEs complying with the new definition. This will leave out of statistical focus the whole category of 250 to 499 employees. Even if it does not concern a large number of companies throughout Europe, UNICE would have been interested in having information beforehand on the likely impact of this measure (in terms of statistical output as well as in terms of effective burden on companies) which will not enable the European Commission to continue tracking companies which are growing and thus leaving SME status.

#### 4. Conclusion

This Commission recommendation to revise the current definition for small and medium-sized enterprises moves in the right direction but, nevertheless, concrete information is required on how the definition will be applied by the European Commission (and by the European Investment Bank), and especially how and by whom, and when, the control will be carried out.

UNICE supports the revision of the European definition of small and medium-sized enterprises, provided that it is made clear that the new definition will be used widely by the European Commission to evaluate eligibility of enterprises for all Community programmes, including research and development (60% of the beneficiaries of aid under R&D programmes are SMEs and companies not larger than 500 employees; by contrast, the beneficiaries of the largest credits are large groups), state aid and competition, and provided that the burden of proving compliance with the criteria is not imposed on enterprises but will be dealt with by the European Commission or any other authority when necessary.

UNICE reiterates to the European Commission its key message "*Make it simple*" for entrepreneurs, especially when discussing smaller enterprises. Lack of clarity in definition or in the way assessment will be carried out might lead to a risk of divergence in the approach and more distortion in internal market competition.

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