



Ms Elżbieta Bieńkowska  
Member of the European Commission

Rue de la Loi 200  
B-1049 Brussels

7 November 2017

Dear Commissioner,

Re: Revision of the EU SME definition

We have seen that the Commission plans to revise the EU SME definition (Recommendation 2003/361/EC of 6 May 2003).

I am pleased to send you attached BusinessEurope's position on this issue, in the light of the General Court Decisions in cases T-675/2013 (K-Chimica) and T-587/14 (Crosfield). As you may know, in these two cases, the General Court considered that the European Chemicals Agency (ECHA), following the traditional practice of the Commission Services, had wrongly interpreted Article 6 in the Annex to the 2003 Recommendation and unduly denied to Crosfield and K-Chimica (a company with less than 20 employees) the benefit of the reduced REACH registration fee for small enterprises.

In 2012, we adopted a general position on the EU SME definition, which is still valid. It included a very broad consensus view that the 2003 SME definition was pragmatic and workable for addressing a large number of SME issues. There was also a very broad consensus that this basic EU SME definition should not be fundamentally modified, except possibly regarding the level of financial parameters to take account of inflation.

The K-Chimica and Crosfield cases have however highlighted that a discriminatory treatment was wrongly being made by the EU Authorities between autonomous SMEs and SMEs integrated in particular chains of "linked" and "partner" companies, like K-Chimica and Crosfield. The Court decisions have clarified that fully autonomous SMEs and SMEs integrated in chains of companies of the K-Chimica type can objectively have the same need for a lighter regulatory regime than the one applicable to large companies.

The inception impact assessment of 8 June 2017 and some recent documents of the Commission Services show however that this important fact might be lost of sight when revising the EU SME definition. In these documents, BusinessEurope would have liked to see a more sophisticated presentation of the possible policy options for revising the SME definition. By looking too much at the EU SME definition as a tool for optimising SME access to EU finance, there is a danger of neglecting the "better regulation" dimension of the SME definition. The EU SME definition must be fit for defining which company population can, in some specific circumstances, benefit of a lighter EU regulatory regime or of regulatory exemptions. It would not be appropriate to define this



company population with criteria aimed at assessing whether companies are part of a larger group. Such an approach might lead companies like K-Chimica and Crosfield to be again requested to pay the full REACH registration fee. More generally, it would lead to artificially exclude many companies from the benefit of any EU SME-g geared lighter regulatory regimes.

In order to avoid these harmful consequences, it is essential to align the future EU SME definition with the conclusions of the Court Decisions in the K-Chimica and Crosfield cases.

Any calculation methods set up in a revised definition should be simple and straightforward to apply for SMEs, which should always be able to do the calculations by themselves. It is essential to avoid that SMEs need to spend time on advanced calculation methods or even to pay for counselling in order to determine whether they are an SME or not. Any adjustment of the SME definition should furthermore remain strictly aligned with rules for consolidating accounts.

Article 3 in the Annex to the 2003 Recommendation has often a negative impact on access by SMEs to venture capital and/or on growth prospects once venture capital has been obtained. We therefore call for amending the 2003 EC Recommendation in a way that stipulates that a company is autonomous when a venture capital fund invests in it, whether or not this fund holds 50% or less of the capital or voting rights.

In conclusion, BusinessEurope recommends that the basic EU SME definition should not be fundamentally modified, except to take into account the recent jurisprudence from the K-Chemica and Crosfield cases, to facilitate equity financing by financial intermediaries and to possibly adjust the level of financial parameters, to take account of inflation. This inflation adjustment should be done with due care, and not result in including, in the scope of the EU SME definition, a new segment of bigger players compared with what was foreseen in the 2003 definition.

Following the assessment of the EU SME definition, it could be useful that the Commission holds a strategic discussion on the role of mid-caps, which has been recognized in Horizon 2020 and EFSI for example.

I am sending a similar letter to Vice-President Dombrovskis, to Vice-President Katainen, to Mrs Ann Mettler, Head of the European Political Strategy Center and Mr Alexander Italianer, Secretary-General.

I thank you in advance for the consideration that you will give to BusinessEurope's views.

Yours sincerely,

Markus J. Beyrer