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# Corporate Intangibles Research and Development Manual

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## CIRD92700 - R&D tax relief: SME definition: text of 1996 EC SME Recommendation 1996/280/EC COMMISSION RECOMMENDATION (1996/280/EC)

of 3 April 1996 concerning the definition of small  
and medium-sized enterprises

THE COMMISSION OF THE EUROPEAN  
COMMUNITIES

Having regard to the Treaty establishing the European Commission, and in particular Article 155, second indent, thereof,

Whereas the implementation of the Integrated Programme in Favour of Small and Medium-Sized Enterprises (SMEs) and the Craft Sector (hereinafter referred to as 'the Integrated Programme') (1), in accordance with the White Paper on Growth, Competitiveness and Employment, requires the establishment of a coherent, visible and effective framework within which the enterprise policy in favour of SMEs can take its place;

Whereas, well before the implementation of the Integrated Programme, various Community policies were targeted at SMEs, each policy using different criteria to define them; whereas a number of Community policies have developed gradually with no joint approach or overall consideration of what, objectively, constitutes an SME; the result being a diversity of criteria used to define an SME and thus, a multiplicity of definitions currently in use at Community level in addition to the definitions used by the European Investment Bank (EIB) and the European Investment Fund (EIF) together with a rather wide range of definitions in the Member States;

Whereas many Member States have no general definition and operate ad hoc with rules based on local practice or which apply to particular sectors; whereas others adhere rigidly to the definition contained in the Community guidelines on State aid to SMEs (2);

Whereas the existence of different definitions at Community level and at national level can create inconsistencies and can also distort competition between enterprises; whereas the Integrated Programme aims at a more forceful coordination between, on the one hand, the different Community initiatives in favour of SMEs and, on the other hand, between these and the initiatives which exist at national level; whereas these

objectives cannot be realized successfully unless the question of the definition of SMEs is clarified;

Whereas the Commission's Report to the European Council meeting in Madrid on 15 and 16 December 1995 has underlined that a refocused effort in favour of SMEs is required in order to create more jobs across all sectors of the economy;

Whereas the 'Research' Council of 29 September 1994 agreed that preferential treatment for SMEs should be accompanied by a clearer definition of what was meant by a small or medium-sized enterprise; therefore it has requested the Commission to re-examine the criteria to be selected for defining SMEs;

Whereas, in a first Report presented in 1992 at the request of the 'Industry' Council held on 28 May 1990, the Commission had already proposed limiting the proliferation of definitions in use at Community level; specifically, it favoured the adoption of the following four criteria: number of persons employed, turnover, balance-sheet total and independence, while proposing thresholds of 50 and 250 employees for small and for medium-sized enterprises respectively;

Whereas this definition has been adopted in the Community guidelines on State aid for SMEs and in all the other guidelines or communications concerning State aid which have been adopted or revised since 1992 (it applies in particular to the Commission Communication to the Member States on the accelerated clearance of aid schemes for SMEs and of amendments of existing schemes (3), the guidelines on State aid for environmental protection (4) and the guidelines on State aids for rescuing and restructuring firms in difficulty (5);

Whereas other measures adopt this definition wholly or in part, notably the Fourth Council Directive (78/660/EEC) of 25 July 1978 based on Article 54 (3) (g) of the Treaty on the annual accounts of certain types of companies (6), as last

amended by Directive 94/8/EC (7), Council Decision 94/217/EEC of 19 April 1994 on the provision of Community interest subsidies on loans for small and medium-sized enterprises extended by the European Investment Bank under its temporary lending facility (8), and the Commission's Communication (9) on the Community SME Initiative under the Structural Funds;

Whereas, however, full convergence has not yet been achieved; some programmes still fix very varied thresholds or disregard certain criteria, such as independence;

Whereas it is appropriate that this convergence continues and is completed on the basis of the rules set out in the Community guidelines on State aids for SMEs, and that the Commission should apply, in all the policies it administers, the same criteria and the same thresholds which it requires Member States to observe;

Whereas in a single market without internal frontiers, the treatment of enterprises must be based on a set of common rules, particularly as regards State support - national or Community;

Whereas this approach is all the more necessary in view of the extensive interaction between national and Community measures assisting SMEs, for example as regards Structural Funds and research; it means that situations in which the Community targets its action on a certain category of SMEs and the Member States on another must be avoided;

Whereas application of the same definition by the Commission, the Member States, the EIB and the EIF would reinforce the consistency and effectiveness of policies targeting SMEs and would, therefore, limit the risk of distortion of competition; whereas, moreover, many programmes intended for SMEs are co-financed by the Member States and the EC and, in some cases, by the EIB and the EIF;

Whereas before proposing thresholds for defining SMEs, it should be pointed out that this attempt to rationalize and lay down a reference standard does not mean that enterprises which exceed these thresholds do not deserve State or Community attention; however it would be more appropriate to solve this problem through specific measures in the framework of the relevant programmes, in particular international cooperation programmes, rather than by adopting or maintaining a different SME definition;

Whereas the criterion of number of persons employed is undoubtedly one of the most important and must be regarded as imperative but that introducing a financial criterion is a necessary complement in order to grasp the real importance and performance of an enterprise and its position compared to its competitors;

Whereas, however, it would not be desirable to adopt turnover as the sole financial criterion because enterprise in the trade and distribution sector have by their nature higher turnover figures than those in the manufacturing sector, thus the turnover criterion should be combined with that of the balance sheet total, a criterion which represents the overall wealth of a business, with the possibility of one of these two financial criteria being exceeded;

Whereas independence is also a basic criterion in that an SME belonging to a large group has access to funds and assistance not available to competitors of equal size; whereas there is also a need to rule out legal entities composed of SMEs which form a grouping whose actual economic power is greater than that of an SME;

Whereas, in respect of the independence criterion, the Member States, the EIB and the EIF should ensure that the definition is not circumvented by those enterprises, which, whilst formally meeting this criterion, are in fact controlled by one large enterprise or jointly by several large enterprises;

Whereas stakes held by public investment corporations or venture capital companies do not normally change the character of a firm from that of an SME, and may therefore be disregarded; the same applies to stakes held by institutional investors, who usually maintain an 'arm's-length' relationship with the company in which they have invested;

Whereas a solution must be found to the problem of joint stock enterprises which, although they are SMEs, cannot state with any accuracy the composition of their share ownership due to the way in which their capital is dispersed and the anonymity of their shareholders and cannot therefore know whether they meet the condition of independence;

Whereas, therefore, fairly strict criteria must be laid down for defining SMEs if the measures aimed at them are genuinely to benefit the enterprises for which size represents a handicap;

Whereas the threshold of 500 employees is not truly selective, since it encompasses almost all enterprises (99,9 % of the 14 million enterprises) and almost three-quarters of the European economy in terms of employment and turnover; furthermore, an enterprise with 500 employees has access to human, financial and technical resources which fall well outside the framework of the medium-sized enterprise, namely ownership and management in the same hands, often family-owned, and lack of a dominant position on the market;

Whereas, not only do enterprises between 250 and 500 employees often have very strong market positions but they also possess very solid management structures in the fields of production, sales, marketing, research and personnel management, which clearly distinguish them from medium-sized enterprises with up to 250 employees; whereas in the latter group, such structures are far more fragile; whereas the threshold of 250 persons employed is therefore a

more meaningful reflection of the reality of an SME;

Whereas this threshold of 250 employees is already the most prevalent among the definitions used at Community level and whereas it has been taken up in the legislation of many Member States as a result of the Community guidelines on State aid for SMEs; whereas the EIB had also decided to use this definition for a substantial part of the loans granted in the framework of the 'SME facility' provided for in Decision 94/217/EEC;

Whereas, according to Eurostat figures, the turnover of an enterprise with 250 employees does not exceed ECU 40 million (1994 figures); whereas it would therefore appear reasonable to apply a threshold for turnover of ECU 40 million; whereas recent calculations show that the average ratio between turnover and balance sheet total is 1:5 for SMEs and small enterprises (10), whereas, as a result, the threshold for the balance-sheet total should be fixed at ECU 27 million;

Whereas, however, a distinction must be drawn, within SMEs, between medium-sized enterprises, small enterprises and micro-enterprises; whereas the latter should not be confused with craft enterprises, which will continue to be defined at national level due to their specific characteristics;

Whereas thresholds for small enterprises must be fixed in the same way, meaning thresholds of ECU 7 million for turnover, and ECU 5 million for balance sheet total;

Whereas the thresholds chosen do not necessarily reflect the average SME or small enterprise but represent ceilings designed to allow all enterprises having the characteristics of an SME or a small enterprise to be included within one or other of the categories;

Whereas the turnover and balance-sheet total thresholds laid down for defining SMEs should be revised as the need arises to take account of changing economic circumstances such as price

levels and increases in the productivity of enterprises;

Whereas the Community guidelines on State aids for SMEs will be aligned by replacing the currently used definitions with a reference to those set out in this Recommendation;

Whereas it is necessary to provide that when the Fourth Council Directive 78/660/EEC, which affords Member States the right to exempt SMEs from certain obligations relating to the publication of their accounts, is next amended, the Commission will propose that the existing definition be replaced by a reference to this Recommendation;

Whereas it would also be desirable for evaluations made of measures in favour of SMEs that the Commission, the Member States, the EIB and the EIF state exactly which enterprises benefit from them, distinguishing various categories of SME according to size, as greater knowledge of the recipients makes it possible to adjust and better target the measures proposed for SMEs, and consequently renders them more effective;

Whereas, given that a certain degree of flexibility must be permitted to the Member States, the EIB and the EIF to fix thresholds lower than the Community thresholds if they wish to direct their measures towards a specific category of SME, these thresholds represent only maximum limits;

Whereas it is also possible for the Member States, the EIB and the EIF, for reasons of administrative simplification, to retain only one criterion, notably that of the number of employees, for the implementation of some of their policies. However, this flexibility does not apply to the various State aid frameworks where the financial criteria must also be respected;

Whereas this Recommendation concerns only the definition of SMEs used in Community policies applied within the Community and the European Economic Area,



## MAKES THIS RECOMMENDATION:

### Article 1

Member States, the European Investment Bank and the European Investment Fund are invited:

- to comply with the provisions set out in Article 1 of the Annex for their programmes directed towards 'SMEs', 'medium-sized enterprises', 'small enterprises' or 'micro-enterprises',
- to comply with the ceilings chosen for the turnover and balance-sheet total where they are amended by the Commission in accordance with Article 2 of the Annex,
- to take the necessary steps with a view to using the size classes set out in Article 3 (2) of the Annex, especially where the monitoring of Community financial instruments is concerned.

### Article 2

The thresholds specified in Article 1 of the Annex are to be regarded as ceilings. Member States, the European Investment Bank and the European Investment Fund may, in certain cases, choose to fix lower thresholds. In implementing certain of their policies, they may also choose to apply only the criterion of number of employees, except in fields to which the various rules on State aid apply.

### Article 3

To enable the Commission to evaluate what progress has been made, Member States, the European Investment Bank and the European Investment Fund are invited to inform the Commission, before 31 December 1977, of the measures they have taken to comply with this Recommendation.

### Article 4

This Recommendation concerns the definition of SMEs in Community policies applied within the Community and the European Economic Area and

is addressed to the Member States, the European Investment Bank and the European Investment Fund.

Done at Brussels, 3 April 1996.

For the Commission

Christos PAPOUTSIS

Member of the Commission

(1) COM(94) 207 final.

(2) OJ No C 213, 19. 8. 1992, p. 2.

(3) OJ No C 213, 19. 8. 1992, p. 10.

(4) OJ No C 72, 10. 3. 1994, p. 3, footnote 16.

(5) OJ No C 368, 23.12. 1994, p. 12.

(6) OJ No L 222, 14. 8. 1978, p. 11.

(7) OJ No L 82, 25. 3. 1994, p. 33.

(8) OJ No L 107, 28. 4. 1994 p. 57; see Commission Report on this matter (COM(94) 434 final of 19 October 1994).

(9) OJ No C 180, 1. 7. 1994, p. 10.

(10) Source: 'BACH' (harmonized accounts) database.

## ANNEX

### DEFINITION OF SMALL AND MEDIUM-SIZED ENTERPRISES ADOPTED BY THE COMMISSION

#### Article 1

1. Small and medium-sized enterprises, hereinafter referred to as 'SMEs', are defined as enterprises which:

- have fewer than 250 employees, and

- have either,
- an annual turnover not exceeding ECU 40 million, or
- an annual balance-sheet total not exceeding ECU 27 million,
- conform to the criterion of independence as defined in paragraph 3.

1. Where it is necessary to distinguish between small and medium-sized enterprises, the 'small enterprise' is defined as an enterprise which:

- has fewer than 50 employees, and
- has either,
- an annual turnover not exceeding ECU 7 million, or
- an annual balance-sheet total not exceeding ECU 5 million,
- conforms to the criterion of independence as defined in paragraph 3.

1. Independent enterprises are those which are not owned as to 25% or more of the capital or the voting rights by one enterprise, or jointly by several enterprises, falling outside the definition of an SME or a small enterprise, whichever may apply. This threshold may be exceeded in the following two cases:

- if the enterprise is held by public investment corporations, venture capital companies or institutional investors, provided no control is exercised either individually or jointly,
- if the capital is spread in such a way that it is not possible to determine by whom it is held and if the enterprise declares that it can legitimately presume that it is not owned as to 25% or more by one enterprise, or jointly by several enterprises, falling outside the definitions of an SME or a small enterprise, whichever may apply.

1. In calculating the thresholds referred to in paragraphs 1 and 2, it is therefore necessary to cumulate the relevant figures for the beneficiary enterprise and for all the enterprises, which it directly or indirectly controls through possession of 25% or more of the capital or of the voting rights.
2. Where it is necessary to distinguish micro-enterprises from other SMEs, these are defined as enterprises having fewer than 10 employees.
3. Where, at the final balance sheet date, an enterprise exceeds or falls below the employee thresholds or financial ceilings, this is to result in its acquiring or losing the status of 'SME', 'medium-sized enterprise', 'small enterprise' or 'micro-enterprise' only if the phenomenon is repeated over two consecutive financial years.
4. The number of persons employed corresponds to the number of annual working units (AWU), that is to say, the number of full-time workers employed during one year with part-time and seasonal workers being fractions of AWU. The reference year to be considered is that of the last approved accounting period.
5. The turnover and balance sheet total thresholds are those of the last approved 12-month accounting period. In the case of newly established enterprises whose accounts have not yet been approved, the thresholds to apply shall be derived from a reliable estimate made in the course of the financial year.

## Article 2

The Commission will amend the ceilings chosen for the turnover and balance-sheet total as the need arises and normally every four years from the adoption of this Recommendation, to take account of changing economic circumstances in the Community.

## Article 3

1. The Commission undertakes to adopt the appropriate measures to ensure that the

definition of SMEs, as set out in Article 1, applies to all programmes managed by it in which the terms 'SME', 'medium-sized enterprise', 'small enterprise' or 'micro-enterprise' are mentioned.

2. The Commission undertakes to adopt the appropriate measures to adapt the statistics that it produces in line with the following size-classes:
  - 0 employees,
  - 1 to 9 employees,
  - 10 to 49 employees,
  - 50 to 249 employees,
  - 250 to 499 employees,
  - 500 employees plus.
1. Current Community programmes defining SMEs with criteria other than those mentioned in Article 1 will continue, during a transitional period, to be implemented to the benefit of the enterprises, which were considered SMEs when these programmes were adopted. Any modification of the SME definition within these programmes can be made only by adopting the definition contained herein and by replacing the divergent definition with a reference to this Recommendation. This transitional period should in principle end at the latest on 31 December 1997. However, legally binding commitments entered into by the Commission on the basis of these programmes will remain unaffected.
2. When the Fourth Council Directive 78/660/EEC is amended, the Commission will propose that the existing criteria for defining SMEs be replaced by a reference to the definition contained in this Recommendation.
3. Any provisions adopted by the Commission which mention the terms 'SME', 'medium-sized enterprise', 'small enterprise' or 'micro-enterprise, or any other such term, will refer to

the definition contained in this  
Recommendation.

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