

## **Consultation SME definition**

### *Position Netherlands*

A single definition for SME's within the European Union offers substantial benefits to member countries. It means that everywhere within the European Union the same standards apply, it allows for better comparisons, and helps government to more accurately determine their role in certain segments of the economy with regard to market failures. From a statistical perspective, the definition allows member countries to study the structure of their economy through the same lens making it possible to draw more relevant lessons. From a practical perspective it has implications for the implementation of policy (f.e. in applying state aid rules).

Overall the definition works appropriately. In the vast majority of cases it offers a practical guide to determine the status of an enterprise. As with any definition there are always situations that entail more complexity and (per definition) are hard to tackle in a definition<sup>1</sup>. At the same time they also offer insights in how the definition could be improved. Below we share some of our observations in light of the EC's evaluation.

#### 2-year rule

As firms are by their very nature dynamic there have been cases where the designated status changes (in a small minority of cases). This has led to some challenges in the interpretation of how such a situation should be resolved. In our understanding the rule that the SME status is only lost after two consecutive accounting periods, is not applicable if an SME is merged or acquired by a larger group. If this is indeed the case, we recommend to state this explicitly in the SME definition.

We would also like to underline that when applying State aid rules, we regard the date of granting the aid to be decisive. In line with the Court's reasoning in the Nerea Case, any changes made to the SME definition should not affect previously granted aid to an undertaking, which at the time of granting was in accordance with the relevant State aid rules (e.g. the GBER), and in particular the SME definition. In Case C-245/16 (Nerea SpA) the Court held in respect of the non-applicability of the GBER to undertakings in difficulty, that: "aid granted to an undertaking in accordance with Regulation No 800/2008, and in particular the negative condition laid down in Article 1(6) thereof cannot be withdrawn solely on the ground that that undertaking was subject to collective insolvency proceedings subsequent to the date on which it was granted the aid."

#### Updating financial parameters

It makes sense to adjust the financial parameters as they have not been updated since the original definition was introduced.

#### Self-employed without personnel

The Netherlands has seen a substantial rise of self-employed without personnel (non-employer firms). According to the definition they are micro-firms, but in practice it could be argued that the group is a sub-set of SMEs in itself with distinct properties. As such it would be useful for all member countries to be able to make this distinction.

#### Startups / young firms

Young firms, especially startups, could also be considered a distinct sub-set of the SME population. This distinction makes sense analytically as well as from the perspective/goal of the definition to identify firms that are allowed 'special treatment' in terms of for example financial support or regulatory exemptions. Moreover question 2.8 of the consultation (on equity or business angel investment) is especially relevant for this group.

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<sup>1</sup> Also it can't be ruled out that a (small) number of firms will demonstrate strategic behaviour, making sure they do not grow above the SME threshold.