


Annex I - SME Definition

1. **Page title:** Please insert the full Article reference (e.g. "Art. 1(4) a") and a short title (e.g. "Deggendorf principle")
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Article	Annex I
Key words	SME definition, scientific institution, public body
Member State	LV

Question	<p>Paragraph 4 of Article 1 of Annex 1 "SME Definition" of the Commission Regulation No.651/2014 states that, "except in the cases set out in paragraph 2, second subparagraph, an enterprise cannot be considered an SME if 25 % or more of the capital or voting rights are directly or indirectly controlled, jointly or individually, by one or more public bodies."</p> <p>The specific issue in question is related to evaluation of an applicant for state aid that is a scientific institution acting as a legal person of public law. However, on the basis of analysis of <i>de facto</i> and <i>de jure</i> control we cannot conclude that government exercises control over the abovementioned applicant, taking into account the following aspects.</p> <p>According to the national law, the scientific institution is established by the Cabinet of Ministers, though the decision making body is the scientific council of the institution, elected by the general meeting of scientists. The aforesaid council has a competence to approve internal regulations and scope of economic and research activities, to approve the budget, elect director and approve management officials, as well as may establish, reorganise and liquidate institutions and found, reorganise and liquidate capital companies, and decide regarding participation in associations, foundations and capital companies.</p> <p>The financial sources according to the applicant`s by-laws are: government dotation, income from private projects and other own income, donations, foreign funding. The director is accountable for budget and reports to the Council.</p> <p>According to the information provided by Ministry of Education and Science, the government`s control in the capital of scientific institution concerned including the real estate, fixed assets and granted funds for maintaining the scientific institution constitutes less than 25% of its total capital.</p> <p>Our understanding of the case outlined above is such that the government does not exercise control over the applicant.</p> <p>We would like to ask the Commission to confirm whether our understanding of the case is correct and the applicant can be treated as an SME if all other applicable criteria of Annex 1 are met. If our interpretation of the case is not correct, please provide with other criteria to evaluate control. Please note that we conduct analysis on a case-by-case basis.</p>
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COMP Reply	<p>The scientific institution should, because of its legal status, be qualified as a public body itself. As a public body, it cannot be considered an SME, irrespective of whether the conditions in Article 3(4) of Annex I are fulfilled. (These conditions apply only in situations where the enterprise is not itself a public body, but public bodies control a certain percentage of the voting rights /shares in the enterprise.)</p> <p><i>Disclaimer: This reply does not represent a formal and definite position of the European Commission but is only an informal guidance provided by the services of DG Competition to facilitate the application of the GBER. It is therefore not binding and cannot create legal certainty or legitimate expectations.</i></p>
COMP Reply date	2017.01.04
COMP Responsible	<input checked="" type="checkbox"/> COMPsupport ESTATE-AID-WIKI

¹ Article numbers & names

² AT, BE, BG, HR, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HU, IE, IT, LT, LU, LV, MT, NL, PL, PT, RO, SK, SE, SI, UK.