

COMMISSION REGULATION (EC) No 364/2004**of 25 February 2004****amending Regulation (EC) No 70/2001 as regards the extension of its scope to include aid for research and development**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 994/98 of 7 May 1998 on the application of Articles 92 and 93 of the Treaty establishing the European Community to certain categories of horizontal State aid ⁽¹⁾ and in particular points (a)(i) and (b) of Article 1(1) thereof,

Having published a draft of this Regulation ⁽²⁾,

Having consulted the Advisory Committee on State Aid,

Whereas:

- (1) The definition of small and medium-sized enterprises (SMEs) used in Commission Regulation (EC) No 70/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises ⁽³⁾ is that used in Commission Recommendation 96/280/EC of 3 April 1996 concerning the definition of small and medium-sized enterprises ⁽⁴⁾. That Recommendation has been replaced by Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises ⁽⁵⁾ with effect from 1 January 2005.
- (2) The rules should be clarified in cases where an investment takes place in an area eligible for regional aid, but in a sector where regional aid is forbidden. The regional aid ceilings should only apply if both the region where the investment is carried out and the sector to which the beneficiary belongs are eligible for regional aid. The rules requiring notification of large individual grants beyond certain thresholds should be clarified accordingly.
- (3) Experience has shown that it is desirable to have a unified and simplified reporting system of annual reports adopted pursuant to Article 27 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty ⁽⁶⁾. The specific reporting provisions laid down in Annex III to Regulation (EC) No 70/2001 should therefore only apply until such time as a general reporting system has been adopted.
- (4) It is necessary to lay down provisions for the assessment of the compatibility with the common market of any aid to small and medium-sized enterprises granted without prior authorisation of the Commission before the entry into force of Regulation (EC) No 70/2001.
- (5) Aid for research and development can contribute to economic growth, strengthening competitiveness and boosting employment. Aid for research and development for SMEs is of utmost importance, because one of the structural disadvantages of SMEs lies in the difficulty they may experience in gaining access to new technological developments and to technology transfer. At the same time, the Commission has taken the view in the Community framework for State aid for research and development ⁽⁷⁾ that it may be assumed that State aid for research and development will represent an incentive for SMEs to engage in more research and development since SMEs in general only spend a low percentage of their turnover on research and development activities. On the basis of its experience with the application of the Community framework for State aid for research and development to SMEs, the Commission has therefore decided that it is justified to exempt such aid from prior notification, taking also into account that such aid only has very limited potential to have a negative effect on competition. This also applies to aid for feasibility studies and aid to cover patenting costs as well as to individual aid which does not exceed certain ceilings.
- (6) The scope of Regulation (EC) No 70/2001 should therefore be extended to cover aid for research and development granted to SMEs in the widest possible range of sectors.
- (7) Certain definitions in Regulation (EC) No 70/2001 should be amended, in order to take account of the particularities of State aid for research and development, and others should be added. In particular, the definitions of the stages of research and development contained in Annex I to the Community framework for State aid for Research and Development should be inserted. The list of eligible costs should correspond to the list in Annex II to the framework, with certain clarifications necessary in order to reflect the fact that a Regulation is directly applicable in the Member States. Beneficiaries should not be able to benefit from double subsidisation of identical research results.

⁽¹⁾ OJ L 142, 14.5.1998, p. 1.

⁽²⁾ OJ C 190, 12.8.2003, p. 3.

⁽³⁾ OJ L 10, 13.1.2001, p. 33.

⁽⁴⁾ OJ L 107, 30.4.1996, p. 4.

⁽⁵⁾ OJ L 124, 20.5.2003, p. 36.

⁽⁶⁾ OJ L 83, 27.3.1999, p. 1. Regulation as amended by the 2003 Act of Accession.

⁽⁷⁾ OJ C 45, 17.2.1996, p. 5.

- (8) The guidance in the Community framework for State aid for research and development as to whether certain measures constitute State aid within the meaning of Article 87(1) of the Treaty remains relevant for the purposes of this Regulation.
- (9) With a view to encouraging the dissemination of research results, SMEs may receive aid for the costs of obtaining and validating patents and other industrial property rights resulting from research and development activities. It should not be a precondition for exempting such aid that the activity which led to the right in question also received aid. It is sufficient that the activity would have qualified for research and development aid.
- (10) Not all research and development aid for SMEs can be exempted under Regulation (EC) No 70/2001. The ceiling in the Community framework for State aid for Research and Development which applies to individual notifications should also apply in respect of individual aid which may be exempted under that Regulation. Special rules should also continue to apply for Eureka projects falling within the scope of the Declaration of the Ministerial Conference in Hanover on 6 November 1985 which are considered to be of common European interest.
- (11) Regulation (EC) No 70/2001 should not exempt aid granted in the form of an advance that, expressed as a percentage of eligible costs, exceeds the aid intensity set in that Regulation and is repayable only in the event of a successful outcome of the research activities as provided for in the Framework for State aid for Research and Development, since the Commission assesses reimbursable aid on a case by case basis, taking into account the proposed conditions of reimbursement.
- (12) Regulation (EC) No 70/2001, as amended by this regulation, applies only to State aid for Research and Development granted to small and medium-sized enterprises. The Community framework for State aid for research and development will continue to be used for the assessment of all aid for research and development which is notified to the Commission.
- (13) Regulation (EC) No 70/2001 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 70/2001 is amended as follows:

1. Article 1(2) is amended as follows:

(a) point (a) is replaced by the following:

‘(a) with regard to Articles 4 and 5, to activities linked to the production, processing or marketing of products listed in Annex I to the Treaty;’

(b) the following point (d) is added:

‘(d) to aid falling within the scope of Council Regulation (EC) No 1407/2002 (*).’

(*) OJ L 205, 2.8.2002, p. 1.;

2. Article 2 is amended as follows:

(a) in point (e) the following subparagraph is added:

‘For aid for research and development (R&D), the gross aid intensity for an R&D project being carried out in collaboration between public research establishments and enterprises shall be calculated on the basis of the combined aid deriving from direct government support for a specific research project and, where they constitute aid, contributions from public non-profit-making higher education or research establishments to the project.’;

(b) the following points (h), (i) and (j) are added:

‘(h) “fundamental research” shall mean an activity designed to broaden scientific and technical knowledge not linked to industrial or commercial objectives;

(i) “industrial research” shall mean planned research or critical investigation aimed at the acquisition of new knowledge, the objective being that such knowledge may be useful in developing new products, processes or services or in bringing about a significant improvement in existing products, processes or services;

(j) “pre-competitive development” shall mean the shaping of the results of industrial research into a plan, arrangement or design for new, altered or improved products, processes or services, whether they are intended to be sold or used, including the creation of an initial prototype which could not be used commercially. This may also include the conceptual formulation and design of other products, processes or services and initial demonstration projects or pilot projects, provided that such projects cannot be converted or used for industrial applications or commercial exploitation. It does not include the routine or periodic changes made to products, production lines, manufacturing processes, existing services and other operations in progress, even if such changes may represent improvements.’;

3. in Article 4, paragraphs 2 and 3 are replaced by the following:

‘2. Where the investment takes place in areas or in sectors which do not qualify for regional aid pursuant to Article 87(3)(a) and (c) of the Treaty at the moment the aid is granted, the gross aid intensity shall not exceed:

(a) 15 % in the case of small enterprises;

(b) 7,5 % in the case of medium-sized enterprises.

3. Where the investment takes place in areas and in sectors which qualify for regional aid at the moment the aid is granted, the aid intensity shall not exceed the ceiling of regional investment aid determined in the map approved by the Commission for each Member State by more than:

- (a) 10 percentage points gross in areas covered by Article 87(3)(c), provided that the total net aid intensity does not exceed 30 %; or
- (b) 15 percentage points gross in areas covered by Article 87(3)(a), provided that the total net aid intensity does not exceed 75 %.

The higher regional aid ceilings shall only apply if the aid is granted under the condition that the investment is maintained in the recipient region for at least five years and the beneficiary's contribution to its financing is at least 25 %;

4. the following Articles 5a, 5b and 5c are inserted:

'Article 5a

Aid for research and development

1. Aid for research and development shall be compatible with the common market within the meaning of Article 87(3)(c) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty if it fulfils the conditions set out in paragraphs 2 to 5.

2. The aided project must completely fall within the stages of research and development defined in Article 2(h), (i) and (j).

3. The gross aid intensity, as calculated on the basis of the eligible costs of the project, shall not exceed:

- (a) 100 % for fundamental research;
- (b) 60 % for industrial research;
- (c) 35 % for pre-competitive development.

If a project includes different stages of research and development, the permissible aid intensity shall be established on the basis of the weighted average of the respective permissible aid intensities, calculated on the basis of the eligible costs involved.

In the case of collaborative projects, the maximum amount of aid for each beneficiary shall not exceed the permitted aid intensity calculated by reference to the eligible costs incurred by the beneficiary concerned.

4. The ceilings in paragraph 3 may be increased as follows up to a maximum gross aid intensity of 75 % for industrial research and 50 % for pre-competitive development:

- (a) where the project takes place in an area which, at the time when the aid is granted, qualifies for regional aid, the maximum aid intensity may be increased by 10

percentage points gross in areas covered by Article 87(3)(a) of the Treaty and by five percentage points gross in areas covered by Article 87(3)(c) of the Treaty;

- (b) where the project aims at carrying out research with potential multi-sectoral application and focuses on a multidisciplinary approach in accordance with the objective, tasks and technical targets of a specific project or programme undertaken under the Sixth Framework Programme for research and development, established by Decision No 1513/2002/EC of the European Parliament and of the Council (*) or any subsequent Framework Programme for research and development or Eureka, the maximum aid intensity may be increased by 15 percentage points gross;

- (c) the maximum aid intensity may be increased by 10 percentage points if one of the following conditions is satisfied:

- (i) the project involves effective cross-border cooperation between at least two independent partners in two Member States, particularly in the context of coordinating national R&D policies; no single company in the Member State granting the aid may bear more than 70 % of the eligible costs; or
- (ii) the project involves effective cooperation between a company and a public research body, particularly in the context of coordination of national R&D policies, where the public research body bears at least 10 % of the eligible project costs and has the right to publish the results insofar as they stem from research implemented by that body; or
- (iii) the results of the project are widely disseminated through technical and scientific conferences or published in peer-reviewed scientific and technical journals.

For the purposes of points (i) and (ii) subcontracting is not considered to be effective cooperation.

5. Eligible costs for the purposes of this Article shall be the following:

- (a) personnel costs (researchers, technicians and other supporting staff to the extent employed on the research project);
- (b) costs of instruments and equipment to the extent and for the duration used for the research project. If such instruments and equipment are not used for their full life for the research project, only the depreciation costs corresponding to the life of the research project, as calculated on the basis of good accounting practice, are considered as eligible;

- (c) costs for buildings and land, to the extent and for the duration used for the research project. With regard to buildings, only the depreciation costs corresponding to the life of the research project, as calculated on the basis of good accounting practice, are considered as eligible. For land, costs of commercial transfer or actually incurred capital costs are eligible;
- (d) cost of consultancy and equivalent services used exclusively for the research activity, including research, technical knowledge and patents bought or licensed from outside sources at market prices, where the transaction has been carried out at arm's length and there is no element of collusion involved. These costs are only considered eligible up to 70 % of total eligible project costs;
- (e) additional overheads incurred directly as a result of the research project;
- (f) other operating expenses, including costs of materials, supplies and similar products incurred directly as a result of the research activity.

Article 5b

Aid for technical feasibility studies

Aid for technical feasibility studies preparatory to industrial research activities or pre-competitive development activities shall be compatible with the common market within the meaning of Article 87(3)(c) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty provided that the gross aid intensity, as calculated on the basis of study costs, does not exceed 75 %.

Article 5c

Aid for patenting costs

1. Aid for the costs associated with obtaining and validating patents and other industrial property rights shall be compatible with the common market within the meaning of Article 87(3)(c) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty up to the same level of aid as would have qualified as R&D aid in respect of the research activities which first led to the industrial property rights concerned.

2. Eligible costs for the purposes of paragraph 1 shall be the following:

- (a) all costs preceding the grant of the right in the first legal jurisdiction, including costs relating to the preparation, filing and prosecution of the application as well as costs incurred in renewing the application before the right has been granted;
- (b) translation and other costs incurred in order to obtain the granting or validation of the right in other legal jurisdictions;

- (c) costs incurred in defending the validity of the right during the official prosecution of the application and possible opposition proceedings, even if such costs occur after the right is granted.

(*) OJ L 232, 29.8.2002, p. 1.;

5. Article 6 is replaced by the following:

'Article 6

Large individual aid grants

1. In the case of aid covered by Articles 4 and 5, this Regulation shall not exempt an individual aid grant where one of the following thresholds is met:

- (a) the total eligible costs of the whole project are at least EUR 25 000 000; and
 - (i) in areas or in sectors which do not qualify for regional aid, the gross aid intensity is at least 50 % of the ceilings laid down in Article 4(2);
 - (ii) in areas and in sectors which qualify for regional aid, the net aid intensity is at least 50 % of the net aid ceiling as determined in the regional aid map for the area concerned; or
- (b) the total gross aid amount is at least EUR 15 000 000.

2. In the case of aid covered by Articles 5a, 5b and 5c, this Regulation shall not exempt an individual aid grant where the following thresholds are met:

- (a) the total eligible costs of the whole project incurred by all companies participating in the project are at least EUR 25 000 000; and
- (b) it is proposed to provide aid with a gross grant equivalent of at least EUR 5 000 000 to one or more of the individual companies.

In the case of aid granted to a Eureka project, the thresholds in the first subparagraph shall be replaced by the following:

- (a) the total eligible costs of the Eureka project incurred by all companies participating in the project are at least EUR 40 000 000; and
- (b) it is proposed to provide aid with a gross grant equivalent of at least EUR 10 000 000 to one or more of the individual companies.;

6. the following Article 6a is inserted:

'Article 6a

Aid remaining subject to prior notification to the Commission

1. This Regulation shall not exempt any aid, whether individual aid or aid granted under an aid scheme, in the form of one or more advances that are repayable only in the event of a successful outcome of research activities, where the total amount of the advances expressed as a percentage of the eligible costs exceeds the intensities provided for in Articles 5a, 5b or 5c or the limit fixed in Article 6(2).

2. This Regulation is without prejudice to any obligation on a Member State to notify individual grants of aid under other State aid instruments, and in particular the obligation to notify, or to inform the Commission of, aid to an enterprise receiving restructuring aid within the meaning of the Community guidelines on State aid for rescuing and restructuring firms in difficulty (*) and the obligation to notify regional aid for large investment projects under the applicable multisectoral Framework.

(*) OJ C 288, 9.10.1999, p. 2.;

7. in Article 8, paragraph 1 is replaced by the following:

'1. The aid ceilings fixed in Articles 4 to 6 shall apply regardless of whether the support for the aided project is financed entirely from State resources or is partly financed by the Community.;

8. in Article 9, paragraph 3 is replaced by the following:

'3. Member States shall compile an annual report on the application of this Regulation in accordance with the implementing provisions concerning the form and content of annual reports provisions which are laid down pursuant to Article 27 of Council Regulation (EC) No 659/1999 (*).

Until such provisions enter into force, Member States shall compile an annual report on the application of this Regulation in respect of the whole or part of each calendar year during which this Regulation applies, in the form laid down in Annex III, also in computerised form. Member States shall provide the Commission with such report no later than three months after the expiry of the period to which the report relates.

(*) OJ L 83, 27.3.1999, p. 1.'

9. The following Article 9a is inserted:

'Article 9a

Transitional provisions

1. Notifications concerning aid for Research and Development pending on 19 March 2004 shall continue to be assessed under the Framework for State aid for Research and Development, while all other pending notifications shall be assessed in accordance with the provisions of this regulation.

2. Aid schemes implemented before the date of entry into force of this Regulation, and aid granted under such schemes in the absence of a Commission authorisation and in breach of the notification requirement of Article 88(3) of the Treaty, shall be compatible with the common market within the meaning of Article 87(3) of the Treaty and shall be exempt if they fulfil the conditions laid down in Article 3(2)(a) and Article 3(3) of this Regulation.

Individual aid outside any scheme granted before the date of entry into force of this Regulation in the absence of a Commission authorisation and in breach of the notification requirement of Article 88(3) of the Treaty, shall be compatible with the common market within the meaning of Article 87(3) of the Treaty and shall be exempt if it fulfils all the conditions of this Regulation, except the requirement in Article 3(1) that express reference be made to this Regulation.

Any aid which does not fulfil these conditions shall be assessed by the Commission in accordance with the relevant frameworks, guidelines, communications and notices.;

10. Annex I is replaced by the text in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Union*.

Point 10 of Article 1 shall apply from 1 January 2005.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 25 February 2004.

For the Commission

Mario MONTI

Member of the Commission

ANNEX

'ANNEX I

Definition of small and medium-sized enterprises

(Extract from Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of small and medium sized enterprises, OJ L 124, 20.5.2003, p. 36)

DEFINITION OF MICRO, SMALL AND MEDIUM-SIZED ENTERPRISES ADOPTED BY THE COMMISSION*Article 1***Enterprise**

An enterprise is considered to be any entity engaged in an economic activity, irrespective of its legal form. This includes, in particular, self-employed persons and family businesses engaged in craft or other activities, and partnerships or associations regularly engaged in an economic activity.

*Article 2***Staff headcount and financial ceilings determining enterprise categories**

1. The category of micro, small and medium-sized enterprises (SMEs) is made up of enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding 50 million euro, and/or an annual balance sheet total not exceeding EUR 43 million.
2. Within the SME category, a small enterprise is defined as an enterprise which employ fewer than 50 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 10 million.
3. Within the SME category, a micro-enterprise is defined as an enterprise which employs fewer than 10 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 2 million.

*Article 3***Types of enterprise taken into consideration in calculating staff numbers and financial amounts**

1. An "autonomous enterprise" is any enterprise which is not classified as a partner enterprise within the meaning of paragraph 2 or as a linked enterprise within the meaning of paragraph 3.
2. "Partner enterprises" are all enterprises which are not classified as linked enterprises within the meaning of paragraph 3 and between which there is the following relationship: an enterprise (upstream enterprise) holds, either solely or jointly with one or more linked enterprises within the meaning of paragraph 3, 25 % or more of the capital or voting rights of another enterprise (downstream enterprise).

However, an enterprise may be ranked as autonomous, and thus as not having any partner enterprises, even if this 25 % threshold is reached or exceeded by the following investors, provided that those investors are not linked, within the meaning of paragraph 3, either individually or jointly to the enterprise in question:

- (a) public investment corporations, venture capital companies, individuals or groups of individuals with a regular venture capital investment activity who invest equity capital in unquoted businesses (business angels), provided the total investment of those business angels in the same enterprise is less than EUR 1 250 000;
- (b) universities or non-profit research centres;

- (c) institutional investors, including regional development funds;
 - (d) autonomous local authorities with an annual budget of less than EUR 10 million and less than 5 000 inhabitants.
3. "Linked enterprises" are enterprises which have any of the following relationships with each other:
- (a) an enterprise has a majority of the shareholders' or members' voting rights in another enterprise;
 - (b) an enterprise has the right to appoint or remove a majority of the members of the administrative, management or supervisory body of another enterprise;
 - (c) an enterprise has the right to exercise a dominant influence over another enterprise pursuant to a contract entered into with that enterprise or to a provision in its memorandum or articles of association;
 - (d) an enterprise, which is a shareholder in or member of another enterprise, controls alone, pursuant to an agreement with other shareholders in or members of that enterprise, a majority of shareholders' or members' voting rights in that enterprise.

There is a presumption that no dominant influence exists if the investors listed in the second subparagraph of paragraph 2 are not involving themselves directly or indirectly in the management of the enterprise in question, without prejudice to their rights as stakeholders.

Enterprises having any of the relationships described in the first subparagraph through one or more other enterprises, or any one of the investors mentioned in paragraph 2, are also considered to be linked.

Enterprises which have one or other of such relationships through a natural person or group of natural persons acting jointly are also considered linked enterprises if they engage in their activity or in part of their activity in the same relevant market or in adjacent markets.

An "adjacent market" is considered to be the market for a product or service situated directly upstream or downstream of the relevant market.

4. 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.

5. Enterprises may make a declaration of status as an autonomous enterprise, partner enterprise or linked enterprise, including the data regarding the ceilings set out in Article 2. The declaration may be made even if the capital is spread in such a way that it is not possible to determine exactly by whom it is held, in which case the enterprise may declare in good faith that it can legitimately presume that it is not owned as to 25 % or more by one enterprise or jointly by enterprises linked to one another. Such declarations are made without prejudice to the checks and investigations provided for by national or Community rules.

Article 4

Data used for the staff headcount and the financial amounts and reference period

1. The data to apply to the headcount of staff and the financial amounts are those relating to the latest approved accounting period and calculated on an annual basis. They are taken into account from the date of closure of the accounts. The amount selected for the turnover is calculated excluding value added tax (VAT) and other indirect taxes.

2. Where, at the date of closure of the accounts, an enterprise finds that, on an annual basis, it has exceeded or fallen below the headcount or financial ceilings stated in Article 2, this will not result in the loss or acquisition of the status of medium-sized, small or micro-enterprise unless those ceilings are exceeded over two consecutive accounting periods.

3. In the case of newly-established enterprises whose accounts have not yet been approved, the data to apply is to be derived from a *bona fide* estimate made in the course of the financial year.

*Article 5***Staff headcount**

The headcount corresponds to the number of annual work units (AWU), i.e. the number of persons who worked full-time within the enterprise in question or on its behalf during the entire reference year under consideration. The work of persons who have not worked the full year, the work of those who have worked part-time, regardless of duration, and the work of seasonal workers are counted as fractions of AWU. The staff consists of:

- (a) employees;
- (b) persons working for the enterprise being subordinated to it and deemed to be employees under national law;
- (c) owner-managers;
- (d) partners engaging in a regular activity in the enterprise and benefiting from financial advantages from the enterprise.

Apprentices or students engaged in vocational training with an apprenticeship or vocational training contract are not included as staff. The duration of maternity or parental leaves is not counted.

*Article 6***Establishing the data of an enterprise**

1. In the case of an autonomous enterprise, the data, including the number of staff, are determined exclusively on the basis of the accounts of that enterprise.
2. The data, including the headcount, of an enterprise having partner enterprises or linked enterprises are determined on the basis of the accounts and other data of the enterprise or, where they exist, the consolidated accounts of the enterprise, or the consolidated accounts in which the enterprise is included through consolidation.

To the data referred to in the first subparagraph are added the data of any partner enterprise of the enterprise in question situated immediately upstream or downstream from it. Aggregation is proportional to the percentage interest in the capital or voting rights (whichever is greater). In the case of cross-holdings, the greater percentage applies.

To the data referred to in the first and second subparagraph are added 100 % of the data of any enterprise, which is linked directly or indirectly to the enterprise in question, where the data were not already included through consolidation in the accounts.

3. For the application of paragraph 2, the data of the partner enterprises of the enterprise in question are derived from their accounts and their other data, consolidated if they exist. To these are added 100 % of the data of enterprises which are linked to these partner enterprises, unless their accounts data are already included through consolidation.

For the application of the same paragraph 2, the data of the enterprises which are linked to the enterprise in question are to be derived from their accounts and their other data, consolidated if they exist. To these are added, pro rata, the data of any possible partner enterprise of that linked enterprise, situated immediately upstream or downstream from it, unless it has already been included in the consolidated accounts with a percentage at least proportional to the percentage identified under the second subparagraph of paragraph 2.

4. Where in the consolidated accounts no staff data appear for a given enterprise, staff figures are calculated by aggregating proportionally the data from its partner enterprises and by adding the data from the enterprises to which the enterprise in question is linked.'
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