

Rückmeldung

**zur öffentlichen Konsultation der Europäischen Kommission und des Ersuchens
des Bundesministeriums für Justiz zu**

KMU-Maßnahmen in den Mitgliedsstaaten

Wien, 12. Juli 2024

Über den Verband der öffentlichen Wirtschaft und Gemeinwirtschaft

Der Verband der öffentlichen Wirtschaft und Gemeinwirtschaft Österreichs – VÖWG – vertritt die Interessen der öffentlichen Wirtschaft, insbesondere im Bereich der Daseinsvorsorge. Der VÖWG repräsentiert somit Unternehmen und Einrichtungen, die im Eigentum, mit Beteiligung oder im Auftrag von Gebietskörperschaften Dienstleistungen von allgemeinem Interesse erbringen. Neben der Energie- und Trinkwasserversorgung, der Abfall- und Abwasserentsorgung und dem öffentlichen Verkehr sind auch die wirtschafts- und finanzpolitische Steuerung sowie die Bereiche Wohnen, Gesundheit und Soziales vom Begriff der Daseinsvorsorge umfasst.

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Introduction

The Association of public services and enterprises Austria (hereinafter referred to as VÖWG) represents the interests of key players in the public sector, particularly in the area of services of general interest. The VÖWG thus represents 120 companies and institutions that provide services of public interest under the ownership of, with the participation of or on behalf of local authorities. This also includes organizations that operate as small and medium-sized enterprises or groups of companies. The VÖWG welcomes the SME relief package recently adopted by the European Commission, which is intended to make it easier for SMEs to participate in public procurement.

We would like to use this call for feedback to address another criterion that poses a problem for many of the companies we represent: the exclusion of public enterprises from the EU Commission's definition of SMEs.

Call for a new definition of SMEs

As an association of the public sector, we have been campaigning for fair market conditions in the interaction between private and public players for 70 years. While profit-oriented companies can privatize their profits, public companies fulfil their mandate to safeguard the common good in terms of services of general interest. Particularly against the backdrop of current economic developments in Europe (e.g. high inflation, impending recession), over-regulation or an unfair arrangement between market participants must be rejected.

Although there is no binding definition for small and medium-sized enterprises, the EU Commission's 2003 Recommendation on the definition of micro, small and medium-sized enterprises¹ has become established in practice. Recital 13 of the recommendation explicitly states that a company or enterprise *"[...] with 25 % or more of its capital or voting rights controlled by a public body is not an SME"*. We completely reject this view in the recommendation, especially as private sector players (e.g. business angels) are explicitly excluded from the independence clause (25 %) (see recital 10). In this context, we call for a level playing field and refer to the relevance of smaller municipal waste incineration plants or building yards, which would in principle fall under the SME definition due to their number of employees, turnover and balance sheet total, but are no longer considered independent due to the public or municipal participation. The delineation of an SME according to the EU Commission's definition of an SME is also important for access to financial resources and EU funding programs that are specifically geared towards these companies. The current definition of SMEs excludes many municipal companies and means that many funding programs are not accessible to them. Disadvantages also arise in the areas of subsidies and taxes. Especially in view of the tense financial situation of public companies and municipalities as a result of the COVID-19 pandemic, the EU Commission should rethink this. Public

¹ European Commission: Official Journal of the European Union 20.05.2003:
<http://eur-lex.europa.eu/legal-content/DE/TXT/PDF/?uri=CELEX:32003H0361&from=EN>

companies should also receive additional financial support for the implementation of climate-neutral investments, particularly in view of the upcoming investments as part of the Green Deal.

Summary

The Association of public services and enterprises Austria (VÖWG) welcomes the SME relief package and the associated facilitations for the participation of SMEs in public procurement. However, we would also like to take the opportunity of this consultation to call for the definition of SMEs, which often excludes small and medium-sized public enterprises, to be reconsidered. From the point of view of public enterprises, the EU Commission's 2003 recommendation on the definition of micro, small and medium-sized enterprises represents a gross disadvantage for SMEs, particularly with regard to the restriction of public voting rights and company shares to a maximum of 25% set out in recital 13, and we ask the Commission to take this requirement of our opinion into account.

Inhaltliche Verantwortung

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