



*Disclaimer on the translation into English*

*This document is an unofficial and courtesy translation into English (hereinafter referred to as 'the Translation') of the "State Aid Scheme" published on the webpage <https://www.mindop.sk/inisterstvo-1/doprava-3/civilne-letectvo/verejne-prostriedky-civilne-letectvo/prispevok/schemy-pomoci/schema-pomoci-podpora-leteckych-spojeni> (hereinafter referred to as 'the Scheme').*

*This text in English is meant purely as a documentation tool and has no legal effect. The Ministry of Transport of the Slovak Republic does not assume any liability for its contents.*

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## STATE AID SCHEME

pursuant to Article 107(3)(c) of the Treaty on the Functioning of the European Union in conjunction with the Communication from the Commission – Guidelines on State aid to airports and airlines, as amended

**to promote the operation of scheduled commercial air transport services between airports in the territory of the Slovak Republic operated by airport companies or between an airport in the territory of the Slovak Republic operated by an airport company and an airport in the territory of a State which is a Member State of the European Union other than the Slovak Republic or a Contracting Party to the Agreement on the Establishment of a European Common Aviation Area (ECAA)**

**SA.113202 (2024/N)**

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## A) PREAMBLE

1. The Slovak Republic is trying to increase foreign direct investment in order to support the growth of the economy. Air transport services<sup>1)</sup> are considered to be one of the essential elements that can be offered to foreign investors.
2. Due to the measures taken by the Slovak Republic in relation to transmissible COVID-19, they have had a major impact on the functioning of businesses, including those in the field of civil aviation and tourism.
3. Tourism is one of the largest and fastest growing sectors of the world economy. It plays a key role in job creation as well as in the creation of added value. The sector contributes directly on average 4.4% of GDP, 6.9% of employment and 21.5% of exports of services in OECD countries, and continued growth provides real prospects for sustainable and inclusive development.<sup>2)</sup>
4. Tourism is of increasing importance to the economy of the Slovak Republic. After record numbers in 2019, revenues from international tourism decreased to EUR 1.1 billion in 2020, 62% lower than in 2019. This decline saw a direct economic contribution from tourism of 1.2% of GDP (from 2.8% in 2019).<sup>3)</sup>
5. The State aid scheme to support the operation of scheduled commercial air transport services<sup>4)</sup> between airports operated by persons pursuant to specific legislation,<sup>5)</sup> i.e. airport companies, or between an airport operated by an airport company and an airport in the territory of a State which is a Member State of the European Union other than the Slovak Republic or a party to the Agreement on the establishment of a European Common Aviation Area (ECAA)<sup>6)</sup> (hereinafter referred to as the ‘the aid scheme’) is drawn up on the basis of specific legislation.<sup>7)</sup>
6. The object of this aid scheme is to grant State aid for a maximum period of 3 years in the form of a contribution in civil aviation<sup>8)</sup> to cover the eligible costs of airlines<sup>9)</sup> linked to

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<sup>1)</sup> Article 2(4) of Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (recast) (OJ L 293, 31.10.2008), as amended.

<sup>2)</sup> OECD (2022), “Tourist Trends and Recovery Policies”, OECD Tourism Trends and Policies 2022, OECD Publishing House, Paris. DOI: <https://doi.org/10.1787/eb68c169-en>.

<sup>3)</sup> OECD (2022), ‘Slovak Republic’ in the Field of Tourism Trends and Policies OECD 2022, OECD Publishing House, Paris. DOI: <https://doi.org/10.1787/dba2fbca-en>.

<sup>4)</sup> Article 2(16) of Regulation (EC) No 1008/2008 as amended.

<sup>5)</sup> § 1 of Act No 136/2004 Coll. on airport companies and amending Act No 143/1998 Coll. on civil aviation (the Aviation Act) and amending certain acts, as amended by Act No 37/2002 Coll.

<sup>6)</sup> Multilateral Agreement between the European Community and its Member States, the Republic of Albania, Bosnia and Herzegovina, the Republic of Bulgaria, the Republic of Croatia, the former Yugoslav Republic of Macedonia, the Republic of Iceland, the Republic of Montenegro, the Kingdom of Norway, Romania, the Republic of Serbia and the United Nations Interim Administration Mission in Kosovo on the establishment of a European Common Aviation Area (ECAA) (OJ L 285, 16.10.2006).

<sup>7)</sup> Act No 358/2015 Coll. on the regulation of certain relations in the field of State aid and de minimis aid and amending certain acts (State Aid Act).

Act No 213/2019 Coll. on remuneration and the granting of a contribution in civil aviation and amending certain acts as amended.

<sup>8)</sup> § 12(1) of Act No 213/2019 Coll.

<sup>9)</sup> For the purposes of this State aid scheme, the term ‘airline’ is used in accordance with the terminology used in the Communication from the Commission – Guidelines on State aid to airports and airlines (2014/C 99/03) (OJ C 99, 4.4.2014), as amended. Civil aviation legislation, including Act No 213/2019 Coll., uses the term ‘air carrier’.

the operation of a new scheduled commercial air transport route, i.e. remuneration for the use of a public airport and for the provision of airport services<sup>10)</sup> (hereinafter referred to as the ‘airport remuneration’), between airports in the territory of the Slovak Republic operated by airport companies or between an airport in the territory of the Slovak Republic operated by an airport company and an airport in the territory of a Member State of the European Union other than the Slovak Republic or a contracting party to the Agreement on the Establishment of a European Common Aviation Area (ECAA). The aid scheme is drawn up in accordance with Section 5.2 of the Communication from the Commission – Guidelines on State aid to airports and airlines (2014/C 99/03)<sup>11)</sup>, as amended.

## **B) LEGAL BASIS AND RELATED RULES**

The legal basis for granting State aid under this aid scheme is:

1. Article 107(3)(c) of the Treaty on the Functioning of the European Union,
2. Communication from the Commission – Guidelines on State aid to airports and airlines (2014/C99/03)(hereinafter referred to as the ‘the Commission Guidelines’),
3. Act No 213/2019 Coll. on remuneration and the granting of a contribution in civil aviation and amending certain acts as amended (hereinafter referred to as the ‘Act No 213/2019 Coll.’),
4. Act No 8/2024 Coll. amending Act No 213/2019 Coll. on remuneration and the granting of a contribution in civil aviation and amending certain acts as amended, and amending Act No 91/2010 Coll. on the promotion of tourism, as amended,
5. Act No 358/2015 Coll. on the regulation of certain relations in the field of State aid and de minimis aid and amending certain acts (State Aid Act) (hereinafter referred to as the ‘Act No 358/2015 Coll.’).

List of specific rules relating to the granting of State aid under this aid scheme:

6. Act No 431/2002 Coll. on accounting, as amended,
7. Act No 523/2004 Coll. on the budgetary rules of public administration and amending certain acts, as amended (hereinafter referred to as the ‘Act No 523/2004 Coll.’),
8. Act No 357/2015 Coll. on financial control and auditing and amending certain acts, as amended (hereinafter referred to as the ‘Act No 357/2015 Coll.’).

## **C) PURPOSE OF AID**

1. The purpose of the aid is to improve the air accessibility of the territory of the Slovak Republic and the continuity of the economic function of the state, to support the development of tourism and the mobility of residents, to contribute to the development of regions and to make the Slovak Republic more attractive for businesses.

## **D) PROVIDER OF AID**

1. The State aid provider is the Ministry of Transport of the Slovak Republic (hereinafter referred to as the ‘the provider’).

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<sup>10)</sup> Article 2(147) of Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 187, 26.6.2014), as amended.

<sup>11)</sup> OJ C 99, 4.4.2014.

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2. The provider did not entrust another entity with the implementation of this aid scheme.

#### **E) BENEFICIARY**

1. The beneficiary of the aid<sup>12)</sup> (hereinafter referred to as the ‘the beneficiary’) is an undertaking within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union,<sup>13)</sup> i.e. an entity engaged in an economic activity to which State aid is granted to carry out eligible projects under this aid scheme, regardless of its legal status<sup>14)</sup> the way in which it is financed and regardless of whether it makes a profit. ‘Economic activity’ means any activity consisting in offering goods or services<sup>15)</sup> on a market.
2. Aid under this scheme may be granted to enterprises in all size categories, i.e. micro, small, medium-sized as well as large enterprises. The definition of an SME under a special regulation is decisive for determining the size of an enterprise.<sup>16)</sup> The definition of an SME is set out in Annex 1 to this aid scheme.
3. The beneficiary is the airline.<sup>9)</sup>
4. The airline referred to in paragraph 3 of this Article of this aid scheme shall be a natural or legal person which:
  - a) is the holder of an operating licence pursuant to a special regulation<sup>17)</sup> or a similar document issued by the competent authority of another State,<sup>18)</sup>
  - b) performs or will perform scheduled commercial air transport between airports in the territory of the Slovak Republic operated by airport companies or between an airport in the territory of the Slovak Republic operated by an airport company and an airport in the territory of another state on the basis of an international treaty by which the Slovak Republic is bound or on the basis of a permit issued by the

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<sup>12)</sup> The term ‘beneficiary of aid’ under this aid scheme corresponds to the term ‘beneficiary of public funds’ under § 12 et seq. of Act No 213/2019 Coll.

<sup>13)</sup> OJ C 202, 07. 06. 2016.

<sup>14)</sup> The public or private nature of the entity carrying out the activity in question cannot affect the question whether or not that entity has the status of an undertaking, the only decisive factor being whether or not it carries out an economic activity.

<sup>15)</sup> Under EU State aid rules, services that can be qualified as economic activities constitute services that are normally provided for remuneration. The essential characteristic of remuneration lies in the fact that it constitutes the economic consideration for a given supply of services.

<sup>16)</sup> Annex I to Commission Regulation (EU) No 651/2014 as amended.

<sup>17)</sup> Regulation (EC) No 1008/2008 of the European Parliament and of the Council as amended.

<sup>18)</sup> § 13(3)(a) of Act No 213/2019 Coll. as amended by Act No 8/2024 Coll.

Ministry of Transport of the Slovak Republic, unless otherwise provided for in a special regulation<sup>19)</sup>.<sup>20)</sup>

5. Other State means a State which is a Member State of the European Union other than the Slovak Republic or a Contracting Party to the Agreement on the Establishment of a European Common Aviation Area (ECAA).
6. Until the date of entry into force of the contract granting State aid, the beneficiary of State aid shall be deemed to be the applicant (hereinafter referred to as the ‘applicant’).
7. State aid under this aid scheme may be granted to the applicant,
  - a) who has settled financial relations with the state budget,<sup>21)</sup>
  - b) who is not subject to bankruptcy proceedings, which not in bankruptcy, in restructuring and against which a bankruptcy petition has not been rejected due to lack of assets,<sup>22)</sup>
  - c) against whom execution and enforcement of a decision is not conducted,<sup>23)</sup>
  - d) who is not in liquidation,<sup>24)</sup>
  - e) has not violated the prohibition of illegal employment in the previous three years,<sup>25)</sup>
  - f) who has no arrears on social insurance premiums and the health insurance company does not register overdue claims against it,<sup>26)</sup>
  - g) who does not have a final prohibition on receiving subsidies or subsidies, receiving aid and support provided from European Union funds, participating in public procurement,<sup>27)</sup>
  - h) who is registered in the register of public sector partners, if it is a person who has an obligation to register in the register of public sector partners,<sup>28)</sup>
  - i) who does not have a limited or suspended validity of the document referred to in paragraph 4(a) of this Article of this aid scheme,<sup>29)</sup>
  - j) who does not request or receive European Union funds, funds from another state, funds from another public authority or funds from another person managing state budget funds for the same purpose as the one under Article C) of this aid scheme,<sup>30)</sup>
  - k) who has not been convicted by a final judgment of the crime of subsidy fraud, the crime of damage to the financial interests of the European Union or the crime of

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<sup>19)</sup> Article 15 of Regulation (EC) No 1008/2008 of the European Parliament and of the Council, as amended.

<sup>20)</sup> § 13(3)(b) of Act No 213/2019 Coll. as amended by Act No 8/2024 Coll.

<sup>21)</sup> § 14(1)(a) of Act No 213/2019 Coll. in conjunction with Section 13(4) of Act No 213/2019 Coll. as amended by Act No 8/2024 Coll.

<sup>22)</sup> § 14(1)(b) of Act No 213/2019 Coll. in conjunction with Section 13(4) of Act No 213/2019 Coll. as amended by Act No 8/2024 Coll.

<sup>23)</sup> § 14(1)(c) of Act No 213/2019 Coll. in conjunction with Section 13(4) of Act No 213/2019 Coll. as amended by Act No 8/2024 Coll.

<sup>24)</sup> § 14(1)(d) of Act No 213/2019 Coll. in conjunction with Section 13(4) of Act No 213/2019 Coll. as amended by Act No 8/2024 Coll.

<sup>25)</sup> § 14(1)(e) of Act No 213/2019 Coll. in conjunction with Section 13(4) of Act No 213/2019 Coll. as amended by Act No 8/2024 Coll.

<sup>26)</sup> § 14(1)(f) of Act No 213/2019 Coll. in conjunction with Section 13(4) of Act No 213/2019 Coll. as amended by Act No 8/2024 Coll.

<sup>27)</sup> § 14(1)(g) of Act No 213/2019 Coll. in conjunction with Section 13(4) of Act No 213/2019 Coll. as amended by Act No 8/2024 Coll.

<sup>28)</sup> § 14(1)(h) of Act No 213/2019 Coll. in conjunction with Section 13(4) of Act No 213/2019 Coll. as amended by Act No 8/2024 Coll.

<sup>29)</sup> § 14(3)(b) of Act No 213/2019 Coll. as amended by Act No 8/2024 Coll.

<sup>30)</sup> § 14(3)(c) of Act No 213/2019 Coll. as amended by Act No 8/2024 Coll.

contrivance in public procurement and public auction in the case of a natural person,<sup>31)</sup>

- l) to whom the contract granting the aid has not been terminated in the previous three years at the date of submission of the application,<sup>32)</sup>
  - m) who is not obliged to repay the aid on the basis of a decision of the European Commission declaring the State aid illegal and incompatible with the internal market,<sup>33)</sup>
  - n) who is not an undertaking in difficulty within the meaning of Article 2(18) of Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty<sup>34)</sup> as amended.
8. A number of separate legal entities which have controlling interests and other functional, economic and organisational links may be considered to form a single economic unit for the purposes of the application of the State aid rules and this aid scheme. This economic unit is then considered to be the relevant undertaking, i.e. the beneficiary.<sup>35)</sup>

#### **F) SCOPE**

1. State aid under this scheme is granted as start-up aid to airlines pursuant to Section 5.2 of the Commission Guidelines.
2. This aid scheme does not cover State aid to an applicant for the purchase, maintenance, repair or modernisation of a fleet of aircraft or other machinery, appliances and equipment, or for ensuring the safe operation of an airline.
3. This aid scheme covers the entire territory of the Slovak Republic.

#### **G) ELIGIBLE PROJECTS**

1. Projects for the operation of a new scheduled commercial air transport route between airports in the territory of the Slovak Republic operated by airport companies or between an airport in the territory of the Slovak Republic operated by an airport company and an airport in the territory of another State (hereinafter referred to as the 'new scheduled commercial air transport route') shall be considered eligible.
2. A new scheduled commercial air service means a service for the carriage by air of passengers, baggage, cargo or mail on a route not operated at the time of the application for State aid (hereinafter referred to as the 'the application').

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<sup>31)</sup> § 14(3)(d) of Act No 213/2019 Coll. as amended by Act No 8/2024 Coll.

<sup>32)</sup> § 14(11) of Act No 213/2019 Coll. as amended by Act No 8/2024 Coll. in conjunction with § 13(4) of Act No 213/2019 Coll. as amended by Act No 8/2024 Coll.

<sup>33)</sup> § 14(1)(l) of Act No 213/2019 Coll.; § 7(5)(b) of the State Aid Act.

Judgment of the Court of Justice of the EU of 9 March 1994, *TWD Textilwerke Deggendorf GmbH v Federal Republic of Germany*, C-188/92, ECLI:EU:C:1994:90.

<sup>34)</sup> OJ L 187, 26.6.2014.

<sup>35)</sup> Judgment of the Court of Justice of 16 December 2010, *AceaElectrabel Produzione SpA v Commission*, C-480/09 P, ECLI:EU:C:2010:787, paragraphs 47 to 55; Judgment of the Court of Justice of 10 January 2006, *Cassa di Risparmio di Firenze SpA and Others*, C-222/04, ECLI:EU:C:2006:8, paragraph 112.

3. Projects aiming at reimbursing eligible costs or expenses, i.e. airport charges under Article H) of this aid scheme, are eligible.

## **H) ELIGIBLE EXPENDITURE**

1. Eligible expenditure shall be expenditure actually incurred and directly linked to the operation of a new scheduled commercial air transport route in the form of costs or expenses of the applicant, provided that it is not covered by the applicant's revenue in the financial year in question for the use of an airport operated by the airport company and for the use of airport services.
2. The eligible costs are airport charges pursuant to paragraph 3 taking into account paragraph 1 of this Article of this aid scheme.
3. For the purposes of this State aid scheme, airport charges, taking into account point 25(4) of the Commission Guidelines, are:
  - a) landing charges,
  - b) passenger service charges,
  - c) parking charges,
  - d) ground handling services charges.
4. Eligible costs are those actually incurred in the financial year concerned<sup>36)</sup> during the eligible period or part thereof, in accordance with the purpose of the aid under Article C) of the aid scheme.
5. The eligible period for State aid under this aid scheme, in accordance with point 150 of the Commission Guidelines, is the period from 27 October 2024 [IATA<sup>37)</sup> winter season 2024/2025] to 27 March 2027 (IATA winter season 2026/2027).
6. The specific part of the eligible period in the financial year in question for which State aid may be granted shall be indicated in the call for applications<sup>38)</sup> taking into account the previous paragraph 5 of this Article of this aid scheme.
7. Eligible costs are not
  - a) loans, borrowings and interests on loans and borrowings received,<sup>39)</sup>
  - b) salaries, wages, service income, other personal compensation and management expenses of the applicant not related to the project,<sup>40)</sup>
  - c) costs which have been or will be covered by the applicant's revenues for the operation of scheduled air services,<sup>41)</sup>
  - d) costs under paragraph 2 of this Article of this aid scheme for the reimbursement or reimbursement of which European Union funds, funds from another State, funds

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<sup>36)</sup> In the case of the IATA summer season, this is within one year (from the end of March to the end of October). In the case of the IATA winter season, this is a period within 2 years (from the end of October of one year to the end of March of the following year).

<sup>37)</sup> International Air Transport Association.

<sup>38)</sup> § 16(1) of Act No 213/2019 Coll. as amended by Act No 8/2024 Coll. in conjunction with § 24(1)(c) of Act No 213/2019 Coll. as amended by Act No 8/2024 Coll.

<sup>39)</sup> § 14(9)(a) of Act No 213/2019 Coll. as amended by Act No 8/2024 Coll.

<sup>40)</sup> § 14(9)(b) of Act No 213/2019 Coll. as amended by Act No 8/2024 Coll.

<sup>41)</sup> § 14(9)(c) first point of Act No 213/2019 Coll. as amended by Act No 8/2024 Coll.

- from another public authority or funds from another person managing state budget funds have been or will be provided,<sup>42)</sup>
- e) costs which have been or will be covered by payments resulting from other measures, decisions or judgments or from the relevant insurance policies,<sup>43)</sup>
  - f) expenditure not included in the budget of the project or not compatible with the purpose of the aid under Article C of this aid scheme.<sup>44)</sup>
8. Value added tax (VAT) is not considered an eligible cost if the applicant can claim its deduction.
9. Eligible costs or expenditure
- a) comply with applicable legislation,
  - b) comply with the conditions laid down in the call for applications, the conditions of this aid scheme and the contract for the granting of State aid,
  - c) are spent on an eligible project (existence of a direct link with the project) and approved by the provider,
  - d) they are reasonable, i.e. they correspond to the usual prices at a given location and time and correspond to the needs of the project,
  - e) comply with the principles of economy, efficiency, effectiveness and efficiency,
  - f) they must be identifiable and substantiated by accounting documents duly registered with the applicant,
  - g) they must be paid by the applicant and the proof of payment must be presented to the provider on request.
10. State aid under this aid scheme shall not be granted if the eligible costs or expenses are incurred before the submission of the application. In this case, the whole project will be considered ineligible.

## **I) FORM OF AID**

1. State aid under this aid scheme may be granted in accordance with Act No 213/2019 Coll. in the form of a contribution to support a new scheduled commercial air transport route in the form of current transfers to pay airport charges.
2. State aid under this aid scheme may be granted in the relevant financial year for the eligible period referred to in paragraph 5 of Article H), or part thereof, from the budget chapter of the provider.
3. This aid scheme applies the method of financing
  - a) reimbursement of eligible costs,
  - b) by way of reimbursement of expenses, or
  - c) in the form of a combination of reimbursement of eligible costs and reimbursement of expenses.

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<sup>42)</sup> § 14(9)(c) second point of Act No 213/2019 Coll. as amended by Act No 8/2024 Coll.

<sup>43)</sup> § 14(9)(c) third point of Act No 213/2019 Coll. as amended by Act No 8/2024 Coll.

<sup>44)</sup> § 14(9)(d) of Act No 213/2019 Coll. as amended by Act No 8/2024 Coll.

**J) AMOUNT OF AID**

1. The amount of State aid under this aid scheme is the amount of the contribution to support a new scheduled commercial air transport route for the reimbursement of eligible costs or the reimbursement of expenses pursuant to paragraph 2 of Article H) of this aid scheme, in conjunction with paragraph 1 and 3 of Article H) of this aid scheme.
2. The applicant may be granted State aid of up to 50 % of the airport charges relating to the route for a maximum of 3 years<sup>45)</sup> per undertaking under paragraph 8 of Article E) of the aid scheme, expressed as a gross amount, i.e. before any deduction of value added tax (VAT) or other charges.
3. The maximum amount of State aid referred to in paragraph 2 shall correspond to the sum of State aid granted by the provider or other public authorities or other persons managing State budget resources in the relevant financial years during the eligible period referred to in paragraph 5 of Article H) of this aid scheme.
4. The amount of State aid in the financial year in question from the budget chapter of the provider for the eligible period referred to in paragraph 5 of Article H) of this aid scheme shall be calculated on the basis of the eligible costs
  - a) which have not been or will not be covered by the applicant's revenue for the provision of air transport services,<sup>41)</sup>
  - b) for payment or reimbursement of which European Union funds, funds from another state, funds from another public administration body or funds from another person managing state budget funds have been or will be provided,<sup>42)</sup>
  - c) which have not been or will not be covered by payments resulting from other measures, decisions or judgments or from the relevant insurance policies,<sup>43)</sup>
  - d) up to the amount of State aid pursuant to paragraph 2 of this Article of this aid scheme.

**K) INCENTIVE EFFECT**

1. State aid under this scheme may be granted to the applicant if it has an incentive effect.
2. State aid granted to an applicant covered by this aid scheme is considered to have an incentive effect if it is likely that, in the absence of State aid, the level of economic activity of the airline at the airport concerned would not be increased, e.g. a new route would not be introduced.<sup>46)</sup>
3. The implementation of a new scheduled commercial air transport route pursuant to paragraph 2 of Article G) of this aid scheme may only start after an application pursuant to paragraph 3 of Article L) of this aid scheme has been submitted.<sup>47)</sup>

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<sup>45)</sup> Point 150 of the Communication from the Commission – Guidelines on State aid to airports and airlines (2014/C 99/03) (OJ C 99, 4.4.2014), as amended.

<sup>46)</sup> Point 148 of the Communication from the Commission – Guidelines on State aid to airports and airlines (2014/C 99/03) (OJ C 99, 4.4.2014), as amended.

<sup>47)</sup> Point 149 of the Communication from the Commission – Guidelines on State aid to airports and airlines (2014/C 99/03) (OJ C 99, 4.4.2014), as amended.

## L) CONDITIONS FOR GRANTING AID

1. State aid may be granted if the conditions set out in points 139 to 153 of Part 5.2 of the Commission Guidelines are fulfilled.
2. State aid may be granted to the applicant if:
  - a) he submitted an application under paragraph 3 of this Article for that aid scheme,
  - b) the conditions laid down in Act No 213/2019 Coll., the conditions laid down in this aid scheme and in the call for applications are met.
3. Application with attachments are submitted by the applicant
  - a) following a call for applications, taking into account point 152 of the Commission Guidelines,<sup>48)</sup> published<sup>38)</sup> on the website of: <https://www.mindop.sk/ministerium-1/transport-3/civil-aeronautics/public-means-civil-aeronautics/contribution>,
  - b) in paper form or in electronic form,<sup>49)</sup>
  - c) in accordance with the conditions laid down in the call for applications,<sup>50)</sup>
  - d) in the national language (Slovak) or together with a certified translation into the national language; an officially certified translation into the state language is not required if the application and the annexes to the application are issued in the national language of the Czech Republic.<sup>51)</sup>
4. The application referred to in paragraph 3 of this Article shall contain:
  - a) identification of the applicant to the extent
    - i. the name or business name, designation of legal form, address of registered office, identification number, first name and surname of the statutory body or the names and surnames of the members of the statutory body in the case of a legal person,
    - ii. name, surname, permanent address, address of the place of business, identification number, if any, name and surname of the responsible representative, if any, in the case of a natural person - entrepreneur,
    - iii. name, surname, permanent address, date of birth in the case of a natural person,
  - b) definition of the purpose for which the contribution is requested,
  - c) the amount of State aid requested,
  - d) the number of the IBAN account established in the bank or branch office of the foreign bank to which the State aid is to be transferred and the name of the bank or branch office of the foreign bank,
  - e) description of the project,
  - f) structured project budget and a detailed commentary on the structured project budget,
  - g) other particulars, if specified in the invitation to submit an application or in the aid scheme.

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<sup>48)</sup> According to point 152 of the Commission Guidelines, any public authority intending to grant start-up aid to an airline for a new route, whether or not via an airport, must publish its plan in sufficient time and with adequate publicity to enable all interested airlines to offer their services.

<sup>49)</sup> § 16(1) of Act No 213/2019 Coll. as amended by Act No 8/2024 Coll. in conjunction with § 25(3) of Act No 213/2019 Coll. as amended by Act No 8/2024 Coll.

<sup>50)</sup> § 16(1) of Act No 213/2019 Coll. as amended by Act No 8/2024 Coll.

<sup>51)</sup> § 25(3) of Act No 213/2019 Coll. as amended by Act No 8/2024 Coll.

5. The application referred to in paragraph 3 of this Article for this aid scheme<sup>52)</sup> shall be accompanied by :
- a) a copy of the agreement on the establishment of an account in a bank or branch office of a foreign bank to which the state aid is referred,
  - b) confirmation by the competent bankruptcy court, not older than three months, on the date of submission of the application, that it is not subject to bankruptcy proceedings, is not bankrupt, is not restructured and has not been refused a bankruptcy petition for lack of assets,
  - c) confirmation by the competent labour inspectorate, not older than three months, on the date of submission of the application, that it has not infringed the prohibition on illegal employment,
  - d) confirmation by the Social Insurance Agency and the Health Insurance Agency not older than three months on the date of submission of the application, that it has no arrears of health insurance premiums, arrears of social insurance premiums and contributions to old-age pension contributions,
  - e) confirmation by the local competent tax authority, which is the municipality and the tax office or customs office, not older than three months, on the date of submission of the application, that the applicant does not have arrears registered against the tax authority, which is the municipality or the financial administration,
  - f) an extract from the criminal record or the data necessary to request such an extract from the applicant's criminal record,
  - g) other evidence necessary for the assessment of the application, to be provided by the State aid provider for a given period of time in the invitation to submit an application or specified in this aid scheme,
  - h) an overview of the funds provided by the European Union or by another state, or of funds provided by another public administration body or other person managing state budget funds in the last three years as of the date of the application,
  - i) information on the amount of requested or provided European Union funds or funds of another State, or the amount of funds requested or provided by another public authority or other person managing state budget funds for the same purpose as the one under Article C) of this aid scheme,
  - j) information on the amount of funds that have been or will be covered by the applicant's revenues for the operation of air services,
  - k) information on the amount of funds that have been or will be covered by payments resulting from other measures, decisions or judgments or from the relevant insurance policies,
  - l) a written statement by the applicant that:
    - i. has settled financial relations with the state budget,
    - ii. it is not in liquidation,
    - iii. an account opened in a bank or branch office of a foreign bank is used only for the purpose of receiving and using the contribution,
    - iv. he is not subject to execution and enforcement,
    - v. is not obliged to repay the aid on the basis of a previous decision of the European Commission declaring the State aid illegal and incompatible with the internal market,
    - vi. does not request or draw on funds from the European Union, funds from a State other than the Slovak Republic, funds from another public authority or

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<sup>52</sup>Section 16(7) of Act No 213/2019 Coll. as amended by Act No 8/2024 Coll.

- funds from another person managing state budget funds for the same purpose as under article C) of this aid scheme,
- vii. is not an undertaking in difficulty within the meaning of Article 2(18) of Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty<sup>53</sup>), as amended.

costs which have been or will be covered by payments resulting from other measures, decisions or judgments or from the relevant insurance policies

6. The applicant submits the annexes according to paragraph 5 of this Article only if the data contained thereto cannot be obtained by the provider from the public administration systems under special legislation.<sup>54</sup>) The applicant who has his registered office, place of business or permanent residence outside the territory of the Slovak Republic and the State of his registered office, place of business or permanent residence does not issue any of the documents referred to in paragraph 5, it may be replaced by a similar document issued by the competent authority of that State; where that State does not issue a similar document, it may be replaced by a written declaration from the applicant.
7. The recipient is obliged to
- a) reimburse the State aid granted or the relevant unspent part of the State aid granted to the provider of the State aid in the event of limitation or suspension of the document pursuant to paragraph 4(a) of Article E) of this aid scheme,
  - b) repay the State aid granted, or the relevant unspent part of the State aid granted, to the State aid provider if, in the financial year in question, it has received or will receive funding from the European Union, funding from another State, funding from another public authority or funding from another person managing state budget funds for the same purpose as the one under Article C) of this aid scheme,
  - c) repay the State aid granted if it breaches its obligations under points 139 to 153 of Part 5.2 of the Commission Guidelines or the Treaty on the granting of State aid,
  - d) incur eligible costs in the amount and structure laid down in the State aid contract,
  - e) respect the maximum economy, efficiency, effectiveness and expediency of the use of the State aid granted,<sup>55</sup>)
  - f) when using the state aid granted, proceed in accordance with the relevant legislation,<sup>56</sup>)
  - g) keep accounts of state aid granted,<sup>57</sup>)
  - h) tolerate the performance of financial control<sup>58</sup>) of the management of the State aid granted and the control of compliance with the conditions agreed in the contract on the provision of State aid and to provide assistance to the provider or authority pursuant to Act No 213/2019 Coll.,<sup>59</sup>) in particular to submit the documents and

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<sup>53</sup>) OJ L 187, 26.6.2014.

<sup>54</sup>) Act No 177/2018 Coll. on some measures to reduce the administrative burden by using public administration information systems and on amendments to some laws (law against bureaucracy) as amended.

<sup>55</sup>) § 19(3) of Act No 523/2004 Coll. on the budgetary rules of public administration and amending certain acts as amended by Act No 323/2007 Coll.

<sup>56</sup>) For example Act No 595/2003 Coll. on income tax as amended, Act No 343/2015 Coll. on public procurement and amending certain acts, as amended, Act No 213/2019 Coll.

<sup>57</sup>) Act No 431/2002 Coll. on accounting, as amended.

<sup>58</sup>) § 22(8) of Act No 213/2019 Coll.

<sup>59</sup>) § 22(4) of Act No 213/2019 Coll.

documents necessary to assess compliance with the beneficiary's obligations and conditions pursuant to points 139 to 153 of Part 5.2 of the Commission Guidelines and the contract on the provision of State aid,

- i) be registered in the register of public sector partners,<sup>28)</sup> if it is a person who has an obligation to register in the register of public sector partners,<sup>60)</sup>
  - j) throughout the duration of the contract on the provision of state aid, be entered in the register of public sector partners and comply with the obligations under special legislation<sup>61)</sup> and verify the identification of beneficial owners through an authorised person.
8. State aid granted to the beneficiary may not be
- a) used for a purpose other than that under Article C) of this aid scheme;
  - b) transfer to another person, unless it is a direct reimbursement of expenses related to the implementation of the project,<sup>62)</sup>
  - c) transfer to another account and then make direct payments from it;
  - d) used to finance projects and activities organised or carried out by others;
  - e) used to cover the costs referred to in paragraph 2 of Article H) of this aid scheme, for the reimbursement or reimbursement of which funds from the budget chapter of the Ministry of Transport of the Slovak Republic, a higher territorial unit, a municipality, the European Union or another State, or funds from another public authority or other person managing state budget resources, have been or will be provided,
  - f) used to cover expenditure not included in the budget of the project or which is not compatible with the purpose of Article C) of this aid scheme,
  - g) used to pay salaries, wages, service income, other personal balances and administration expenses of the beneficiary not linked to the granting of State aid,
  - h) used for the repayment of loans, borrowings and interest on loans and borrowings.
9. In the event of deficiencies in the management of the State aid granted, the provider shall suspend the provision of further funds to the beneficiary until they have been remedied.
10. The provider shall verify and document that the applicant fulfils the purpose of the aid under Article C) **Chyba! Nenašiel sa žiaden zdroj odkazov.** of this aid scheme.
11. The provider shall verify compliance with the condition that the applicant is not subject to an action for recovery based on a previous decision of the European Commission declaring the State aid granted by the Slovak Republic to be unlawful and incompatible with the internal market, for example via the website of the Antimonopoly Office of the Slovak Republic (European Commission Decisions – Recovery).
12. The beneficiary shall reimburse the relevant part of the State aid granted, as instructed by the provider, if the amount granted, corresponding to the estimated eligible costs indicated in the application pursuant to paragraph 3 of this Article of this aid scheme, is higher than the amount of eligible State aid under Article J) of this aid scheme.

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<sup>60)</sup> § 2 of Act No 315/2016 Coll. on the register of public sector partners and amending certain acts as amended by Act No 241/2019 Coll.

<sup>61)</sup> Act No 315/2016 Coll. as amended.

<sup>62)</sup> § 25(4) of Act No 213/2019 Coll.

13. The amount of the relevant part of the State aid granted which the beneficiary is required to repay pursuant to paragraph 12 of this Article shall correspond to the difference between the amount of State aid granted corresponding to the eligible costs foreseen in the application pursuant to paragraph 3 of this Article of this aid scheme and the amount of eligible State aid pursuant to Article J) of this aid scheme.
14. There is no legal entitlement to grant State aid under this aid scheme.

**M) CUMULATION OF AID**

1. State aid granted within the scope of this aid scheme shall not be cumulated with aid granted to the same beneficiary in relation to the same partly or fully overlapping eligible costs or expenses linked to the operation of a new scheduled commercial air transport route pursuant to paragraph 2 of Article G) of this aid scheme.

**N) AID GRANTING MECHANISM**

1. State aid under this aid scheme may be granted on the basis of
  - a) application with the relevant annexes,
  - b) this aid scheme,
  - c) approval of the granting of State aid<sup>63)</sup> and
  - d) State aid contract.
2. *Submission of an application*
  - 2.1. The provider shall publish a call for application for contribution in civil aviation pursuant to a special regulation<sup>38)</sup> on the website pursuant to paragraph 3(a) of Article L) of this aid scheme.
  - 2.2. The application, together with the annexes, submitted by the applicant to the provider in accordance with paragraph 3 of Article L) of the aid scheme must be duly completed and signed.
  - 2.3. The application shall be submitted within the time limit specified in the invitation to submit an application. When submitting the application, the date of the time seal or the date of delivery of the paper form of the application to the Ministry shall be decisive, which may not be later than the date set for the last day of receipt of the application.
3. *Checking of submitted applications*
  - 3.1. Once the applications have been received and registered in the State aid provider's registry system, the applications received will be checked for compliance with the formal requirements laid down in Act No 213/2019 Coll., in the call for applications and in this aid scheme.
  - 3.2. If the received application has formal deficiencies or does not contain the required particulars or attachments, the provider shall request<sup>64)</sup> the applicant by e-mail to
    - a) remove formal deficiencies in an application or to complete an incomplete application or missing attachments within five (5) days, unless a different time limit has been specified in the call for application for contribution in civil

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<sup>63)</sup> §17 of Act No 213/2019 Coll.

<sup>64)</sup> § 25(2) of Act No 213/2019 Coll. as amended by Act No 8/2024 Coll.

- aviation, from the receipt of the request to remove formal deficiencies or complete an incomplete application or missing attachments, and
- b) confirm receipt of e-mail.
- 3.3. For the day of delivery of the invitation pursuant to paragraph 3.2(a) of this Article of this aid scheme shall be deemed to be the date of receipt of the confirmation from the applicant. If the applicant does not send a confirmation within 48 hours of dispatch of the invitation to remove the formal deficiencies or to complete the incomplete application or missing attachments referred to in paragraph 3.2 of this Article, the date of dispatch of the request to remove the formal deficiencies or complete the incomplete application or missing attachments referred to in paragraph 3.2 of this Article shall be deemed to be the date of dispatch of the aid scheme.
- 3.4. If the applicant within the set time limit pursuant to paragraph 3.2(a) of this Article of this aid scheme does not remove the formal deficiencies of the application or does not complete the incomplete application or missing attachments in accordance with the request to remove the formal deficiencies or complete the incomplete application or missing attachments, the application will not be subject to assessment.
4. *Assessment and evaluation of submitted applications*
- 4.1. Applications shall be assessed and evaluated by the providers's evaluation committee<sup>65</sup>) (hereinafter referred to as the 'Committee').
- 4.2. Only those applications which meet the conditions laid down in Act No 213/2019 Coll., in the Commission's Guidelines, in the call for applications and in this State aid scheme are subject to evaluation by the Committee.
- 4.3. If, during the evaluation of any document, the members of the Committee are unable to take a position due to ambiguities in the subject matter of the document, the chairman of the Committee shall suspend the evaluation of that document and the Committee shall ask the applicant, in writing or electronically, for clarification of the documentation that is part of the submitted application and, if necessary, for the submission of other documents necessary for the evaluation of the submitted application.
5. *Authorisation to grant State aid under this aid scheme*
- 5.1. The granting of State aid is authorised after a check has been carried out, the applications submitted have been assessed and all the conditions of the aid scheme have been fulfilled.
- 5.2. The statutory representative of the provider shall decide, on the basis of a proposal from the Committee, on the granting of state aid by signing the decision approving the granting of state aid.<sup>65</sup>)
- 5.3. The provider shall inform the applicant of the approval of the granting of State aid or of the non-approval of the granting of State aid.

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<sup>65</sup>) § 17(4) of Act No 213/2019 Coll.

6. *State aid contract*

- 6.1. State aid under this aid scheme is granted on the basis of a written State aid agreement concluded between the provider and the applicant.<sup>66)</sup>
- 6.2. The agreement on the provision of state aid shall contain the particulars specified in the specific legislation.<sup>67)</sup>
- 6.3. The obligations contained in the State aid agreement cannot be transferred to third parties. In the event of the termination of the beneficiary without a legal successor, the beneficiary is obliged to notify the provider of this fact without delay, as soon as he becomes aware of it; in this case, the State aid contract expires on the day on which the beneficiary ceases to exist, but the beneficiary is obliged to fulfil all its contractual obligations towards the provider until such time as it ceases to exist. In the event of termination of the beneficiary with a legal successor, the beneficiary is also obliged to notify the provider in advance of the name and registered office of its legal successor to whom the obligations under the State aid contract are transferred.
- 6.4. The State aid agreement shall enter into force on the date on which it is signed by both parties and shall come into effect on the day following that on which it is published in the Central Register of Contracts maintained by the Office of the Government of the Slovak Republic.<sup>68)</sup>

**O) BUDGET**

1. The estimated budget of this aid scheme is EUR 5 100 000.
2. In 2024, the estimated budget for granting State aid under this scheme is EUR 1 500 000.
3. In 2025, the estimated budget for granting State aid under this scheme is EUR 1 500 000.
4. In 2026, the estimated budget for granting State aid under this scheme is EUR 1 500 000.
5. In 2027, the foreseen budget for granting State aid under this State aid scheme is EUR 600 000.

**P) TRANSPARENCY AND MONITORING**

1. The aid scheme will be published and publicly available on the website of the provider <https://www.mindop.sk/inisterstvo-1/transport-3/civil-aeronautics/public-resources-civil-aeronautics/contribution/schemes-aid-until> the end of its validity. The provider shall ensure that the full text of the aid scheme is published on the website within 10 calendar days from the date of entry into force and effect of the aid scheme, including any amendments thereto (schemes as amended), the text of the scheme, including any

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<sup>66)</sup> § 18(1) of Act No 213/2019 Coll.

<sup>67)</sup> § 18(3) and (4) of Act No 213/2019 Coll.

<sup>68)</sup> § 47a(1) of Act No 40/1964 Coll. Civil Code as amended by Act No. 546/2010 Coll.

§ 5a(1) and (6) of Act No 211/2000 Coll. on freedom of access to information and amending certain acts (Freedom of Information Act) as amended.

amendments thereto, shall remain publicly available at least until the end of the validity and effect of the aid scheme.

2. The invitations to submit an application covered by this aid scheme will be published on the website referred to in paragraph 3 (a) of Article L) of this aid scheme.
3. Data on state aid granted and data on the beneficiary shall be recorded by the provider in the central register (hereinafter referred to as the 'IS SEMP') pursuant to § 12 of Act No 358/2015 Coll. For this purpose, the provider shall record the scheme in the IS SEMP.
4. The provider shall check compliance with all the conditions laid down by this aid scheme and shall check compliance with the maximum aid amount pursuant to Article J) of this aid scheme.
5. The provider shall keep detailed records and records on the granting of State aid under this aid scheme. The records shall contain complete information on all State aid granted under this aid scheme necessary to demonstrate that the conditions under this aid scheme have been complied with and shall be kept for 10 years from the date on which the last individual State aid was granted and shall be submitted to the European Commission upon request.
6. Pursuant to § 16(4) of Act No 358/2015 Coll., the provider shall submit to the Antimonopoly Office of the Slovak Republic a report on the State aid granted under this State aid scheme for each calendar year, always by the end of February of the following calendar year.

**Q) CONTROL AND AUDIT**

1. The provider carries out financial control of the management of the state aid granted pursuant to Act No 357/2015 Coll. and checks on compliance with the conditions agreed in the contract on the granting of state aid.
2. The provider checks the eligibility of the expenditure to which the State aid granted relates, as well as compliance with other conditions for the granting of State aid. For this purpose, the provider shall be entitled to carry out a check directly at the beneficiary. Other bodies involved in control and audit shall carry out control and audit at the beneficiary in accordance with the relevant legislation.
3. When checking or auditing the State aid granted, in particular the implementation of the project, the state of progress of the project, the use of State aid resources and the eligibility of expenditure under this aid scheme, the beneficiary is obliged to
  - a) tolerate the performance of control and audit,
  - b) provide the staff of the inspection body carrying out the inspection or audit with the necessary assistance,
  - c) create adequate conditions for the staff of the control body carrying out the control or audit to carry out the control or audit properly and in a timely manner,
  - d) submit the required documents and other documents to the staff of the inspection body carrying out the inspection or audit,
  - e) allow inspection or audit staff to inspect documents and other documents,

- f) allow the withdrawal of originals or certified true copies of documents and other documents necessary to preserve evidence,
  - g) demonstrate to the provider, pursuant to § 14(1) of Act No 358/2015 Coll., the use of State aid resources and the eligibility of the costs incurred, and enable the provider to carry out checks on the use of State aid resources, the eligibility of the costs incurred and compliance with the conditions for granting State aid,
  - h) enable the necessary surveys to be carried out,
  - i) make the statements, information, data and explanations requested,
  - j) ensure the presence of persons responsible for the implementation of the project activities,
  - k) refrain from any action which could jeopardise the initiation and proper conduct of the inspection or audit.
4. If the beneficiary of State aid has breached financial discipline, § 31 of Act No 523/2004 Coll. applies.
  5. In proceedings for breach of financial discipline, decisions and penalties for breach of financial discipline in the handling of state budget funds are imposed and enforced by the authority pursuant to § 4 of Act No 357/2015 Coll.

**R) VALIDITY AND EFFECTIVENESS OF THE SCHEME**

1. This aid scheme shall enter into force and effect on the date of its approval by the European Commission. Individual aid under this aid scheme can only be granted after the approval of this aid scheme by the European Commission, i.e. after its entry into force and effect.
2. The State aid provider shall ensure publication of this aid scheme, once approved by the European Commission, in the Commercial Bulletin and on its website pursuant to paragraph 1 of Article P) of this aid scheme.
3. Amendments to this aid scheme may be made in the form of written supplements to this aid scheme. Where an amendment to this aid scheme is required to be approved by the European Commission, any amendment to this aid scheme shall enter into force on the date of approval of this aid scheme by the European Commission, as amended by the amendment. Unless an amendment to this aid scheme is required to be approved by the European Commission, any such amendment to this aid scheme shall enter into force on the date of publication of this aid scheme, as amended by the amendment in the Commercial Bulletin.
4. The aid scheme expires on 4 April 2027.
5. The granting of State aid under this scheme may be authorised and subsequently concluded State aid contract must enter into force and be effective no later than on 27 March 2027.

**S) ANNEXES**

1. The following Annex forms an integral part of this aid scheme:
  - Annex 1 - SME definition

unofficial courtesy translation

**Annex I to Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 187, 26.6.2014) as amended**

**SME DEFINITION**

**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 thresholds 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 EUR 50 million, 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 employs 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 shareholders. 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 thresholds 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 Union 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 thresholds 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 thresholds 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.*