

Commission communication

Model declaration on the information relating to the qualification of an enterprise as an SME

(2003/C 118/03)

This Communication aims to promote the application of Commission Recommendation 2003/361/EC ⁽¹⁾ on the definition of SMEs, which replaces Recommendation 96/280/EC of 3 April 1996.

There are some 20 million micro, small and medium-sized enterprises in the European Economic Area. They are a major source of jobs and a challenge for competitiveness. Their ability to identify new needs of both end-consumers and industrial operators, their potential for absorbing new technologies, and their contribution to apprenticeship, vocational training and local development, govern future advances in productivity of the entire European Union and its ability to achieve the objectives set at the Lisbon European Council. The responsibility of local, national and Community administrations in devising enterprise policies which take account of the specific needs and skills of these categories of enterprise is thus a question of major importance.

Promoting the development of such policies is the main objective of the new Commission Recommendation on the definition of SMEs. A more precise definition will ensure greater legal certainty. More suited to the various subcategories of SME, and taking account of the various types of relations between enterprises, it will promote investment and innovation in SMEs and foster partnerships between enterprises. These advantages should be acquired while preventing enterprises which do not have the economic characteristics or face the problems of genuine SMEs from benefiting unduly from measures targeted at SMEs.

This Recommendation has been the subject of extremely wide-ranging discussions with business organisations, with the Member States and individual business experts within the Enterprise Policy Group ⁽²⁾. The preliminary draft was in addition the subject of two open consultations on the Internet. After work lasting for more than one year, there was almost complete consensus despite the diversity of the objectives pursued.

All those who contributed to the revision felt that it is important that the increased legal certainty and improved recognition of the economic reality, should be accompanied by an effort by administrations to simplify and speed up the administrative handling of cases requiring qualification as a micro, small or medium-sized enterprise. To this end, offering enterprises the possibility to complete themselves a concise declaration was considered a modern and convenient method. This declaration could, if necessary, be completed on-line and could also function as a practical 'users' manual' for enterprises.

The document attached to this Communication is a model for such a declaration. It is in no way mandatory as regards its use or content, either for enterprises or for the administrations of the Member States, but is designed as one possible example amongst others. Such declarations are without prejudice to the checks or investigations provided for under national or Community rules.

If those Member States using the definition of SMEs wish to speed up the processing of administrative files, it would of course be desirable for this declaration not to increase the overall administrative burden on enterprises, but to replace whenever possible other requests for information previously required. Also it could be preferably incorporated into the files relating to applications to take part in measures for which SME qualification is required.

⁽¹⁾ OJ L 124, 20.5.2003, p. . . .

⁽²⁾ Commission Decision 2000/690/EC of 8 November 2000 setting up an Enterprise Policy Group (OJ L 285, 10.11.2000, p. 24).

To this end, the model can be used in the form proposed in the annex. It can also be completed, simplified or adapted to take account of customary national administrative usage. In order to maximise the simplification effect, it would of course be desirable that the same model declaration established by a Member State be used for all administrative purposes in that Member State for which the SME qualification is required.

As the aim of the Recommendation is to provide a common reference framework for the definition of SMEs, it would of course be counter-productive if the use of such a model declaration were to lead to diverging interpretations of that definition. Attention is therefore drawn to the fact that any other model declaration serving the same purpose must take account of all the provisions of the text of the Recommendation in order to determine the qualification of the applicant enterprise as a micro, small or medium-sized enterprise within this Recommendation's meaning. It is the text of the Recommendation, and not that of the declaration, which sets out the conditions for the SME qualification.

In this regard, it must be stressed that the model declaration proposed refers to the Seventh Council Directive 83/349/EEC concerning consolidated accounts. Enterprises meeting one or other of the conditions set out in Article 1 of that Directive are in fact linked within the meaning of Article 3(3) of the definition of SMEs, having regard to the nature of those conditions. It is therefore convenient for enterprises which are obliged to draw up consolidated accounts, pursuant to that Council Directive, to know automatically that they are also linked within the meaning of the definition of SMEs. In the event of a subsequent amendment to that Directive leading to a divergence between the two definitions, the model declaration would, however, have to be adapted to take account of that.

In view of the timetable for the entry into force of any such possible amendment, that adaptation could probably take place simultaneously with any possible future amendment to the Recommendation on the definition of SMEs, pursuant to Article 9 of its annex.

MODEL DECLARATION

INFORMATION ON THE SME QUALIFICATION

Precise identification of the applicant enterprise

Name or business name:

Address (of registered office):

Registration/VAT number (1):

Names and titles of the principal director(s) (2):

Type of enterprise (see explanatory note)

Tick to indicate which case(s) applies to the applicant enterprise:

Autonomous enterprise In this case the data filled in the box below result from the accounts of the applicant enterprise only. Fill in the declaration only, without annex.

Partner enterprise Fill in and attach the annex (and any additional sheets), then complete the declaration by copying the results of the calculations into the box below.

Linked enterprise

Data used to determine the category of enterprise

Calculated according to Article 6 of the Annex to the Commission Recommendation C 2003/361/EC on the SME definition.

Reference period (*):

Headcount (AWU)	Annual turnover (**)	Balance sheet total (**)

(*) All data must be relating to the last approved accounting period and calculated on an annual basis. In the case of newly-established enterprises whose accounts have not yet been approved, the data to apply shall be derived from a reliable estimate made in the course of the financial year.

(**) EUR 1 000 .

Important: Compared to the previous accounting period there is a change regarding the data, which could result in a change of category of the applicant enterprise (micro, small, medium-sized or big enterprise).

No

Yes (in this case fill in and attach a declaration regarding the previous accounting period (3)).

Signature

Name and position of the signatory, being authorised to represent the enterprise:

.....

I declare on my honour the accuracy of this declaration and of any annexes thereto.

Done at

Signature:

(1) To be determined by the Member State according to its needs.

(2) Chairman (CEO), Director-General or equivalent.

(3) Definition, Article 4(2) of the annex to Commission Recommendation 2003/361/EC.

EXPLANATORY NOTE

ON THE TYPES OF ENTERPRISES TAKEN INTO ACCOUNT FOR CALCULATING THE HEADCOUNT AND THE FINANCIAL AMOUNTS

I. TYPES OF ENTERPRISES

The definition of an SME ⁽¹⁾ distinguishes three types of enterprise, according to their relationship with other enterprises in terms of holdings of capital or voting rights or the right to exercise a dominant influence ⁽²⁾.

Type 1: Autonomous Enterprise

This is by far the most common type of enterprise. It applies to all enterprises which are not one of the two other types of enterprise (partner or linked).

An applicant enterprise is autonomous if it:

- does not have a holding of 25 % ⁽³⁾ or more in any other enterprise,
- and is not 25 % ⁽³⁾ or more owned by any enterprise or public body or jointly by several linked enterprises or public bodies, apart from some exceptions ⁽⁴⁾,
- and does not draw up consolidated accounts and is not included in the accounts of an enterprise which draws up consolidated accounts and is thus not a linked enterprise ⁽⁵⁾.

Type 2: Partner Enterprise

This type represents the situation of enterprises which establish major financial partnerships with other enterprises, without the one exercising effective direct or indirect control over the other. Partners are enterprises which are not autonomous but which are not linked to one another.

The applicant enterprise is a partner of another enterprise if:

- it has a holding of more than 25 % ⁽³⁾ but less than 50 % ⁽³⁾ in the other enterprise,
- or the other enterprise has a holding of more than 25 % ⁽³⁾ but less than 50 % ⁽³⁾ in the applicant enterprise,
- and the applicant enterprise does not draw up consolidated accounts which include the other enterprise by consolidation, and is not included by consolidation in the accounts of the other enterprise or of an enterprise linked to it ⁽⁵⁾.

Type 3: Linked Enterprise

This type corresponds to the economic situation of enterprises which form a group through the direct or indirect control of the majority of the capital or voting rights (including through agreements or, in certain cases, through natural persons as shareholders), or through the ability to exercise a dominant influence on an enterprise. Such cases are thus less frequent than the two preceding types.

In order to avoid difficulties of interpretation for enterprises, the Commission has defined this type of enterprise by taking over — wherever they are suitable for the purposes of the Definition — the conditions set out in Article 1 of Council Directive 83/349/EEC on consolidated accounts ⁽⁶⁾, which has been applied for many years.

An enterprise thus generally knows immediately that it is linked, since it is already required under that Directive to draw up consolidated accounts or is included by consolidation in the accounts of an enterprise which is required to draw up such consolidated accounts.

The only two cases, which are however not very frequent, in which an enterprise can be considered linked although it is not already required to draw up consolidated accounts, are described in the first two indents of endnote 5 of this explanatory note. In those cases, the enterprise should check whether it meets one or other of the conditions set out in Article 3(3) of the Definition.

II. THE HEADCOUNT AND THE ANNUAL WORK UNITS (7)

The headcount of an enterprise corresponds to the number of annual work units (AWU).

Who is included in the headcount?

- The employees of the applicant enterprise,
- persons working for the enterprise being subordinate to it and considered to be employees under national law,
- owner-managers,
- 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 taken into account in the headcount.

How is the headcount calculated?

One AWU corresponds to one person who worked full-time in the enterprise in question or on its behalf during the entire reference year. The headcount is expressed in AWUs.

The work of persons, who did not work the entire year, or who worked part-time — regardless of its duration — and seasonal work is counted as fractions of AWU.

The duration of maternity or parental leaves is not counted.

(1) Henceforth in the text, the term 'Definition' refers to the Annex to Commission Recommendation 2003/361/EC on the definition of SMEs.

(2) Definition, Article 3.

(3) In terms of the share of the capital or voting rights, whichever is higher is applied. To this percentage should be added the holding in that same enterprise of each enterprise, which is linked to the holding company (Definition, Article 3(2)).

(4) An enterprise may continue being considered as autonomous when this 25 % threshold is reached or exceeded, if that percentage is held by the following categories of investors (provided that those are not linked with the applicant enterprise):

- 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. (Definition, Article 3(2), second subparagraph).

(5) — If the registered office of the enterprise is situated in a Member State which has provided for an exception to the requirement to draw up such accounts pursuant to the Seventh Council Directive 83/349/EEC of 13 June 1983, the enterprise should nevertheless check specifically whether it does not meet one or other of the conditions laid down in Article 3(3) of the Definition.

— There are also some very rare cases in which an enterprise may be considered linked to another enterprise through a person or a group of natural persons acting jointly (Definition, Article 3(3)).

— Conversely, there are very few cases of enterprises drawing up consolidated accounts voluntarily, without being required to do so under the Seventh Directive. In that case, the enterprise is not necessarily linked and can consider itself only a partner.

To determine whether the enterprise is linked or not, in each of the three situations it should be checked whether or not the enterprise meets one or other of the conditions laid down in Article 3(3) of the Definition, where applicable through a natural person or group of natural persons acting jointly.

(6) Seventh Council Directive 83/349/EEC of 13 June 1983, based on Article 54(3)(g) of the Treaty and concerning consolidated accounts (OJ L 193, 18.7.1983, p. 1), as last amended by Directive 2001/65/EC of the European Parliament and of the Council (OJ L 283, 27.10.2001, p. 28).

(7) Definition, Article 5.

ANNEX TO THE DECLARATION

CALCULATION FOR THE PARTNER OR LINKED TYPE OF ENTERPRISE

Annexes to be enclosed if necessary

- Annex A if the applicant enterprise has at least one partner enterprise (and any additional sheets)
- Annex B if the applicant enterprise has at least one linked enterprise (and any additional sheets)

Calculation for the partner or linked type of enterprise ⁽¹⁾ (see explanatory note)Reference period ⁽²⁾:

	Headcount (AWU)	Annual turnover (*)	Balance sheet total (*)
1. Data ⁽²⁾ of the applicant enterprise or consolidated accounts (copy data from box B(1) in annex B ⁽³⁾)			
2. Proportionally aggregated data ⁽²⁾ of all partner enterprises (if any) (copy data from box A in annex A)			
3. Added up data ⁽²⁾ of all linked enterprises (if any) — if not included by consolidation in line 1 (copy data from box B(2) in annex B)			
Total			

(*) EUR 1 000.

⁽¹⁾ Definition, Article 6(2) and (3).⁽²⁾ All data must be relating to the last approved accounting period and calculated on an annual basis. In the case of newly-established enterprises whose accounts have not yet been approved, the data to apply shall be derived from a reliable estimate made in the course of the financial year (Definition, Article 4).⁽³⁾ The data of the enterprise, including the headcount, 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.

The data entered in the 'Total' srow of the above table should be entered in the box 'Data used to determine the category of enterprise' in the declaration.

ANNEX A

Partner enterprises

For each enterprise for which a 'partnership sheet' has been completed (one sheet for each partner enterprise of the applicant enterprise and for any partner enterprises of any linked enterprise, of which the data is not yet included in the consolidated accounts of that linked enterprise ⁽¹⁾), the data in the 'partnership box' in question should be entered in the summary table below:

Box A

Partner enterprise (name/identification)	Headcount (AWU)	Annual turnover (*)	Balance sheet total (*)
1.			
2.			
3.			
4.			
5.			
6.			
7.			
Total			

(*) EUR 1 000.

(attach sheets or expand the present table, if necessary)

Reminder: This data is the result of a proportional calculation done on the 'partnership sheet', for each direct or indirect partner enterprise.

The data entered in the 'Total' row of the above table should be entered in line 2 (regarding partner enterprises) of the table in the Annex to the declaration.

⁽¹⁾ If the data of an enterprise are included in the consolidated accounts to a lesser proportion than the one determined under Article 6(2), the percentage rate according to that article should be applied (Definition, Article 6(3), second subparagraph).

PARTNERSHIP SHEET

1. Precise identification of the partner enterprise

Name or business name:

Address (of registered office):.....

Registration/VAT number ⁽¹⁾:

Names and titles of the principal director(s) ⁽²⁾:

2. Raw data regarding that partner enterprise

Reference period:

	Headcount (AWU)	Annual turnover (*)	Balance sheet total (*)
Raw data			

(*) EUR 1 000.

Reminder: These raw data are derived from the accounts and other data of the partner enterprise, consolidated if they exist. To them are added 100 % of the data of enterprises which are linked to this partner enterprise, unless the accounts data of those linked enterprises are already included through consolidation in the accounts of the partner enterprise ⁽³⁾. If necessary, add 'linkage sheets' for the enterprises which are not yet included through consolidation.

3. Proportional calculation

a) Indicate precisely the holding ⁽⁴⁾ of the enterprise drawing up the declaration (or of the linked enterprise via which the relation to the partner enterprise is established) in the partner enterprise to which this sheet relates:

.....

.....

Indicate also the holding of the partner enterprise to which this sheet relates in the enterprise drawing up the declaration (or in the linked enterprise):

.....

.....

b) The higher of these two holding percentages should be applied to the raw data entered in the previous box. The results of this proportional calculation should be given in the following table:

'Partnership box'

Percentage: . . .	Headcount (AWU)	Annual turnover (*)	Balance sheet total (*)
Proportional results			

(*) EUR 1 000.

These data should be entered in Box A in Annex A.

⁽¹⁾ To be determined by the Member State according to its needs.
⁽²⁾ Chairman (CEO), Director-General or equivalent.
⁽³⁾ Definition, Article 6(3), first sub-paragraph.
⁽⁴⁾ In terms of the share of the capital or voting rights, whichever is higher. To this holding should be added the holding of each linked enterprise in the same enterprise (Definition, Article 3(2) first subparagraph).

ANNEX B

Linked enterprises**A) Determine the case applicable to the applicant enterprise:**

- Case 1:** The applicant enterprise draws up consolidated accounts or is included by consolidation in the consolidated accounts of another enterprise. (Box B(1))
- Case 2:** The applicant enterprise or one or more of the linked enterprises do not establish consolidated accounts or are not included in the consolidated accounts. (Box B(2)).

Please note: The data of the enterprises, which are linked to the applicant enterprise, are derived from their accounts and their other data, consolidated if they exist. To them are aggregated proportionally the data of any possible partner enterprise of that linked enterprise, situated immediately upstream or downstream from it, unless it has already been included through consolidation ⁽¹⁾.

B. Calculation methods for each case:

In case 1: The consolidated accounts serve as the basis for the calculation. Fill in box B(1) below.

Box B(1)

	Headcount (AWU) (*)	Annual turnover (**)	Balance sheet total (**)
Total			

(*) Where in the consolidated accounts no headcount data appears, the calculation of it is done by adding the data from the enterprises to which the enterprise in question is linked.

(**) EUR 1 000.

The data entered in the 'Total' row of the above table should be entered in line 1 of the table in the Annex to the declaration.

Identification of the enterprises included through consolidation

Linked enterprise (name/identification)	Address (of registered office)	Registration/ VAT number (*)	Names and titles of the principal director(s) (**)
A.			
B.			
C.			
D.			
E.			

(*) To be determined by the Member State according to its needs.

(**) Chairman ((CEO)), Director-General or equivalent.

Important: Partner enterprises of such a linked enterprise, which are not yet included through consolidation, are treated like direct partners of the applicant enterprise. Their data and a 'partnership sheet' should therefore be added in Annex A.

In case 2: For each linked enterprise (including links via other linked enterprises), complete a 'linkage sheet' and simply add together the accounts of all the linked enterprises by filling in Box B(2) below.

⁽¹⁾ Definition, Article 6(3), second subparagraph.

Box B(2)

Enterprise No.:	Headcount (AWU)	Annual turnover (**)	Balance sheet total (**)
1. (*)			
2. (*)			
3. (*)			
4. (*)			
5. (*)			
Total			

(*) attach one 'linkage sheet' per enterprise.

(**) EUR 1 000.

The data entered in the 'Total' row of the above table should be entered in line 3 (regarding linked enterprises) of the table in the Annex to the declaration.

LINKAGE SHEET

(only for linked enterprises not included by consolidation in Box B)

1. Precise identification of the enterprise

Name or business name:

Address (of registered office):

Registration/VAT number ⁽¹⁾:Names and titles of the principal director(s) ⁽²⁾:**2. Data on the enterprise**

Reference period:

	Headcount (AWU)	Annual turnover (*)	Balance sheet total (*)
Total			

(*) EUR 1 000

These data should be entered in Box B(2) in Annex B.

Important: The data of the enterprises, which are linked to the applicant enterprise, are derived from their accounts and their other data, consolidated if they exist. To them are aggregated proportionally the data of any possible partner enterprise of that linked enterprise, situated immediately upstream or downstream from it, unless it has already been included through consolidation ⁽³⁾.

Such partner enterprises are treated like direct partner enterprises of the applicant enterprise. Their data and a 'partnership sheet' have therefore to be added in Annex A.

⁽¹⁾ To be determined by the Member State according to its needs.

⁽²⁾ Chairman (CEO), Director-General or equivalent.

⁽³⁾ If the data of an enterprise are included in the consolidated accounts to a lesser proportion than the one determined under Article 6 (2), the percentage rate according to that article should be applied (Definition, Article 6 (3), second subparagraph).