

In the 25-member EU, there are

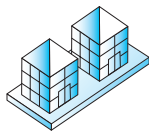
- some 23 million SMEs,
- representing 99% of all EU companies,
- employing around 75 million people.

SME thresholds

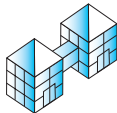
Micro enterprise	Staff: < 10
	Turnover: ≤ € 2 million
	Balance sheet: ≤ € 2 million
Small enterprise	Staff: < 50
	Turnover: ≤ € 10 million
	Balance sheet: ≤ € 2 million
Medium-sized enterprise	Staff: < 250
	Turnover: ≤ € 50 million
	Balance sheet: ≤ € 43 million



Autonomous enterprises



Partner enterprises



Linked enterprises

Common abbreviations

EIB: European Investment Bank
EIF: European Investment Fund
EU: European Union
AWU: Annual work unit
R&D: Research and development
SME: Small and medium-sized enterprise



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ENTERPRISE AND
INDUSTRY PUBLICATIONS

The new SME definition

User guide and model declaration



This guide contains:

- ★ Details and explanations of the new SME definition which took effect on 1/1/2005.
- ★ A model declaration that individual companies may complete themselves when applying to SME support schemes in order to establish their SME status.

DISCLAIMER:

This *SME User Guide* serves as a general orientation for entrepreneurs when applying the new SME definition. It does not have any legal value and does not bind the Commission in any way.

Commission Recommendation 2003/361/EC as published in the *Official Journal of the European Union* L 124, p. 36 of 20 May 2003 is the sole authentic basis for determining the conditions regarding qualification as an SME.



'Micro, small and medium-sized enterprises (SMEs) are the engine of the European economy. They are an essential source of jobs, create entrepreneurial spirit and innovation in the EU and are thus crucial for fostering competitiveness and employment. The new SME definition, which entered into force on 1 January 2005, represents a major step towards an improved business environment for SMEs and aims at promoting entrepreneurship, investments and growth. This definition has been elaborated after broad consultations with the stakeholders involved which proves that listening to SMEs is a key towards the successful implementation of the Lisbon goals'.

Günter Verheugen,
Member of the European Commission
Responsible for Enterprise and Industry

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Introduction

' The category of micro, small and medium-sized enterprises (SMEs) is made up of enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding 50 million euro, and/or an annual balance sheet total not exceeding 43 million euro.'

Extract of Article 2 of the Annex of Recommendation 2003/361/EC

Micro, small and medium-sized enterprises (SMEs) play a central role in the European economy. They are a major source of entrepreneurial skills, innovation and employment. In the enlarged European Union of 25 countries, some 23 million SMEs provide around 75 million jobs and represent 99% of all enterprises.

However, they are often confronted with market imperfections. SMEs frequently have difficulties in obtaining capital or credit, particularly in the early start-up phase. Their restricted resources may also reduce access to new technologies or innovation.

Therefore, support for SMEs is one of the European Commission's priorities for economic growth, job creation and economic and social cohesion.



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What EU support exists for SMEs ?

For an overview of the main funding opportunities available to European SMEs, consult the following internet page:

europa.eu.int/comm/enterprise/entrepreneurship/sme_envoy/index.htm



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Importance of a European SME definition

In a single market with no internal frontiers, it is essential that measures in favour of SMEs are based on a **common definition** to improve their consistency and effectiveness, and to limit distortions of competition. This is all the more necessary given the extensive interaction between national and EU measures to help SMEs in areas such as regional development and research funding.

In 1996, a recommendation establishing a first common SME definition was adopted by the Commission¹. This definition has been widely applied throughout the European Union. On 6 May 2003, the Commission adopted a new recommendation² in order to take account of economic developments since 1996 (for the complete text, see annex II, p. 32 of this guide). It entered into force on 1 January 2005 and will apply to all the policies, programmes and measures that the Commission operates for SMEs.

For Member States, use of the definition is voluntary, but the Commission is inviting them, together with the European Investment Bank (EIB) and the European Investment Fund (EIF) to apply it as widely as possible.

Objectives of this guide

This guide presents the changes being made by the new definition and the reasons for them (see chapter 1, p. 8). It then explains how to determine if an enterprise can qualify as an SME by following a step-by-step approach (see chapter 2, p. 11).

1. Commission Recommendation 96/280/EC of 3 April 1996 concerning the definition of small and medium-sized enterprises (Text with EEA relevance), *Official Journal* L 107, p. 4-9, of 30 April 1996.
2. Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (Text with EEA relevance), *Official Journal* L 124, p. 36-41, of 20 May 2003.



Since the average European enterprise employs no more than six people, most can be considered as SMEs. However, the new definition takes into account possible relationships with other enterprises. In certain cases, those relationships, particularly if they create significant financial links with other enterprises, may imply that an enterprise is not an SME.

This guide is primarily designed for two audiences.



The first are entrepreneurs running micro, small or medium-sized enterprises who are interested in applying for grants or loans aimed at SMEs. These entrepreneurs may also want to know if they satisfy the criteria to benefit from specific legislative provisions for SMEs.

The second audience are the European, national, regional and local officials who draw up and run the various schemes, process the applications and ensure that companies satisfy the eligibility criteria for support.

Efforts are also being made to facilitate the handling of SME applications for financial help or participation in specific programmes. This is achieved through a **model self-assessment declaration**³ which enterprises themselves can complete (a copy is included in annex III, p. 40). This can then be sent to the relevant administrative department to establish the company's SME status when submitting an application. Use of the declaration is voluntary for both enterprises and Member State administrations and its contents can be adapted to suit customary national usage.

3. Commission communication - Model declaration on the information relating to the qualification of an enterprise as an SME, *Official Journal* C 118, p. 5 -15, of 20 May 2003.

1. Why a new definition?



The new definition is the result of wide-ranging discussions between the Commission, Member States, business organisations and experts as well as two open consultations on the internet.

The changes reflect general economic developments since 1996, and a growing awareness of the specific hurdles confronting SMEs. The new definition is more suited to the different categories of SMEs and takes better account of the various types of relationships between enterprises. It helps to promote innovation and foster partnerships, while ensuring that only those enterprises which genuinely require support are targeted by public schemes.

To update thresholds

Developments in prices and productivity made it necessary to adjust the financial thresholds⁴. Their significant increase will allow an important number of enterprises to maintain their SME status and ensure their eligibility for support measures. The staff headcount thresholds remain at their previous levels, since to have raised them would have diluted the measures tailored for SMEs.

4. Staff and financial thresholds introduced by the new definition are maximum figures. Member States, the EIB and the EIF may fix lower ceilings if they wish to direct measures towards a specific category of SME.



To promote micro enterprises

Throughout the Union, more and more **micro enterprises** are being created. The new definition takes this development into account by setting financial thresholds for them. This refinement aims to encourage the adoption of measures addressing the specific problems micro enterprises face, especially during the start-up phase.

To improve access to capital

Access to capital is a perennial problem SMEs encounter, largely because they are often unable to give the guarantees traditional lenders require. To help tackle this, the new definition facilitates equity financing for SMEs by granting favourable treatment to certain investors, such as **regional funds, venture capital companies and business angels**⁵ without the enterprise losing its SME status (see p. 18-19 for more details).

The same applies to small **local autonomous authorities** with an annual budget of less than 10 million euro and fewer than 5,000 inhabitants. They can invest in an SME up to a certain percentage without the enterprise concerned being at a disadvantage when applying for grants.

5. Business angels can be defined as individuals or groups of individuals with a regular venture capital investment activity who invest equity capital in unquoted businesses (see Article 3.2 (a) of the annex of recommendation 2003/361/EC concerning the definition of micro, small and medium-sized enterprises, included at the end of this guide).



To promote innovation and improve access to Research & Development (R&D)

Specific provisions now apply to **universities and non-profit research centres** enabling them to have a financial stake in an SME.

This cooperation will benefit both parties. It strengthens an enterprise by giving it a worthwhile financial partner and access to R&D. It also offers universities and research centres a route for the practical application of their innovative work.

What about SME support agreed before 1/1/2005?

As a transitional measure, Community programmes which currently use the 1996 SME definition will continue to be implemented for the benefit of enterprises which were considered SMEs when those programmes were adopted. Legally binding commitments entered into by the Commission on the basis of such programmes will remain unaffected (see Article 8.2 of the definition, p. 37).

To take account of different relationships between enterprises

One of the main objectives of the new definition is to ensure that support measures are granted only to those enterprises which genuinely need them. For this reason, it introduces methods to calculate the staff and financial thresholds to gain a more realistic picture of the economic situation of an enterprise. To this end, a distinction has been introduced between different types of enterprises: autonomous, partner and linked (see chapter 2 on next page). The new definition also contains safeguards to prevent abuses of SME status (see annex IV, p. 50).

Clear instructions are given on how to treat particular relationships between an SME and other enterprises or investors when calculating the enterprise's financial and staff figures. In essence, the new definition takes into account an SME's ability to call on outside finance. For example, enterprises which are linked to others with large financial resources could come above the ceilings and would not qualify for SME status.

2. Applying the new SME definition



The new definition introduces three different categories of enterprises. Each corresponds to a type of relationship which an enterprise might have with another. This distinction is necessary in order to establish a clear picture of an enterprise's economic situation and to exclude those that are not genuine SMEs.

In general, most SMEs are **autonomous** since they are either completely independent or have one or more minority partnerships (each less than 25%) with other enterprises (see 2.3.1, p. 16). If that holding rises to no more than 50%, the relationship is deemed to be between **partner** enterprises (see 2.3.2, p. 20). Above that ceiling, the enterprises are **linked** (see 2.3.3, p. 23).

Depending on the category in which your enterprise fits, you may have to include data from one or more other enterprises when calculating your own data. The result of the calculation will allow you to check whether you comply with the staff headcount and financial thresholds set by the definition (see 2.3, p. 16). Enterprises coming above these lose their SME status.



2.1. Am I an enterprise? (Art. 1)*

The first step to qualify as an SME is to be considered as an enterprise.

According to the new definition, an enterprise is 'any entity engaged in an economic activity, irrespective of its legal form'.

The wording is not new. It reflects the terminology used by the European Court of Justice in its decisions. By being formally included in the recommendation, the scope of the new SME definition is now clearly marked out. Thus, the self-employed, family firms, partnerships and associations regularly engaged in an economic activity may be considered as enterprises.

It is the economic activity that is the determining factor, not the legal form.

2.2. What are the new thresholds? (Art. 2)

Once you have verified that you are an enterprise, you have to establish the data of your enterprise according to the following three criteria:

- **staff headcount,**
- **annual turnover,**
- **annual balance sheet.**

Comparing your data with the thresholds for the three criteria will allow you to determine whether you are a micro, small or medium-sized enterprise.

* The article numbers refer to the annex of the European Commission's Recommendation of 6 May 2003 (see Annex II, p. 32).

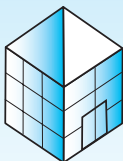
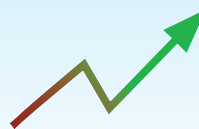
What data do I use?

When making the staff and financial calculations, you should use the data contained in your last approved annual accounts. For newly established enterprises which do not yet have approved annual accounts, you should make a realistic bona fide estimate of the relevant data during the course of the financial year (see Art. 4, p. 36).

It is necessary to note that while it is compulsory to respect the staff headcount thresholds, an SME may choose to meet **either** the turnover **or** balance sheet ceiling. It does **not** need to satisfy **both** and may exceed one of them without losing its status.

The new definition offers this choice since, by their nature, enterprises in the trade and distribution sectors, have higher turnover figures than those in manufacturing. Providing an option between this criterion and the balance sheet total, which reflects the overall wealth of an enterprise, ensures that SMEs engaged in different types of economic activity are treated fairly.

As the table on page 14 shows, the category of micro, small and medium-sized enterprises consists of enterprises which employ fewer than 250 persons and which have either an annual turnover not exceeding 50 million euro, or an annual balance sheet total not exceeding 43 million euro.

TO DEFINE SMEs**STAFF HEADCOUNT****+/-****BALANCE SHEET****ANNUAL TURNOVER**

Within this category:

Small enterprises are defined as enterprises which employ fewer than 50 persons and whose annual turnover or annual balance sheet total does not exceed 10 million euro.

Micro enterprises are defined as enterprises which employ fewer than 10 persons and whose annual turnover or annual balance sheet total does not exceed 2 million euro.

THE NEW THRESHOLDS (Art. 2)

Enterprise category	Headcount: Annual Work Unit (AWU)	Annual turnover	Annual balance sheet total
Medium-sized	< 250	≤ €50 million (in 1996 € 40 million)	≤ €43 million (in 1996 € 27 million)
Small	< 50	≤ €10 million (in 1996 € 7 million)	≤ €10 million (in 1996 € 5 million)
Micro	< 10	≤ €2 million (previously not defined)	≤ €2 million (previously not defined)

What is the definition of an 'employee'?

National labour rules apply. They vary from country to country, for instance, for temporary staff working as independent contractors or on hire from an interim employment agency. You should contact your own authorities to establish how your national legislation defines the term 'employee'.

For the contact details of your national authority please go to europa.eu.int/comm/employment_social/esf2000/contacts-en.htm

2.2.1 Staff headcount (Art. 5)

The staff headcount is a crucial initial criterion for determining in which category an SME falls. It covers full-time, part-time and seasonal staff and includes the following:

- Employees,
- Persons working for the enterprise being subordinated to it and considered to be employees under national law,
- Owner-managers,
- Partners engaged in a regular activity in the enterprise and benefiting from financial advantages from the enterprise.

Apprentices or students engaged in vocational training with apprenticeship or vocational training contracts are **not** included in the headcount. Nor do you include maternity or parental leave.

The staff headcount is expressed in annual work units (AWU). Anyone who worked full-time within your enterprise, or on its behalf, during the entire reference year counts as one unit. You treat part-time staff, seasonal workers and those who did not work the full year as fractions of one unit.

2.2.2 Annual turnover and balance sheet total (Art. 4)

The annual turnover is determined by calculating the income that your enterprise received during the year in question from its sales and services after any rebates have been paid out. Turnover should not include value added tax (VAT) or other indirect taxes⁶.

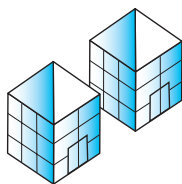
The annual balance sheet total refers to the value of your company's main assets⁷.

6. See Article 28 of Council Directive 78/660/EEC of 25 July 1978 based on Article 54 (3) (g) of the Treaty on the annual accounts of certain types of companies, *Official Journal* L 222, p. 11-31, of 14 August 1978.

7. For more details see Article 12.3 of Council Directive 78/660/EEC of 25 July 1978 based on Article 54 (3) (g) of the Treaty on the annual accounts of certain types of companies, *Official Journal* L 222, p. 11-31, of 14 August 1978.

What happens if I go above a particular threshold?

If your enterprise exceeds the headcount or financial ceilings during the course of the reference year, this will not affect your situation. You retain the SME status with which you began the year. However, you will lose the status if you go above the ceilings over two consecutive accounting periods. Conversely, you will gain SME status if you were previously a big enterprise, but then fall below the ceilings for two consecutive accounting periods⁸ (see Art. 4.2, p. 36).

**2.3. What else do I take into account when calculating my data?**

To work out your individual data, you will have to establish whether your enterprise is **autonomous** – by far the most common category – a **partner** or **linked**. To do this, you must take account of any relationships you have with other enterprises. Depending on the category in which your enterprise fits you may then need to add some, or all, of the data from those enterprises to your own. The calculations for each of the three types of enterprise are different and will ultimately determine whether you meet the various ceilings established in the SME definition.

Enterprises which draw up consolidated accounts or which are included in the accounts of an enterprise which does so are usually considered as linked.

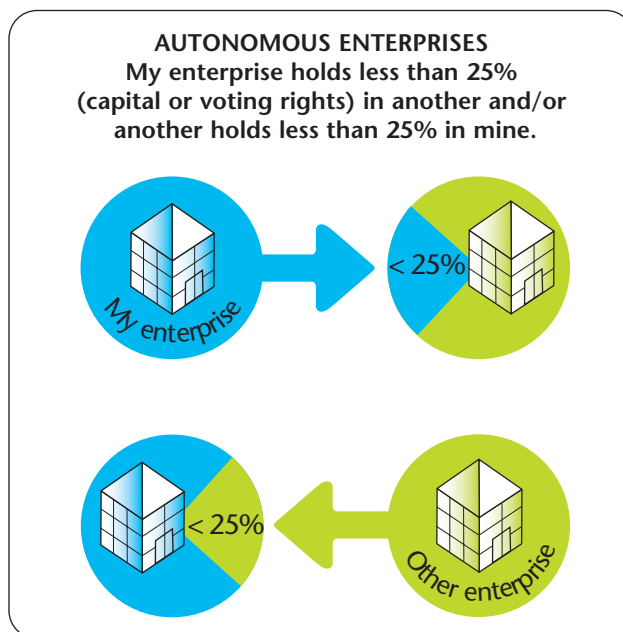
2.3.1 Am I an autonomous enterprise?
(Art. 3.1)**Definition**

You are autonomous if:

- You are totally independent, ie you have no participation in other enterprises and no enterprise has a participation in yours.
- You have a holding of less than 25% of the capital or voting rights (whichever is the higher) in one or more other enterprises and/or outsiders do not have a stake of 25% or more of the capital or voting rights (whichever is the higher) in your enterprise.

If you are autonomous, it means that you are not a partner or linked to another enterprise (see Art. 3.1, p.35).

8. When completing the model declaration you should indicate whether there are any modifications in your data from the previous accounting period that could result in a change of category for your enterprise (micro, small, medium-sized or big) (see model declaration at the end of this guide).



Note: It is possible for you to have several investors each with a stake of under 25% in your enterprise and still remain autonomous, provided these investors are not linked to each other in the sense of 2.3.3 ('linked enterprises'). If the investors are linked, you may be considered as a partner or linked enterprise, depending on your individual situation (see graphic on page 30 for an illustration).

Establishing the data of my enterprise (Art. 6.1)

If you are autonomous, you use only the number of employees and the financial data contained in your annual accounts to check if you respect the thresholds mentioned in 2.2, p. 12.

What are institutional investors ?

The European Commission does not formally define the concept of 'institutional investors'. They are usually seen as investors, which trade large volumes of securities on behalf of a great number of individual small investors and which have no direct involvement in the management of the firms they invest in. Mutual funds or pension funds, for instance, may be considered as institutional investors.

Exceptions (Art. 3.2 (a-d))

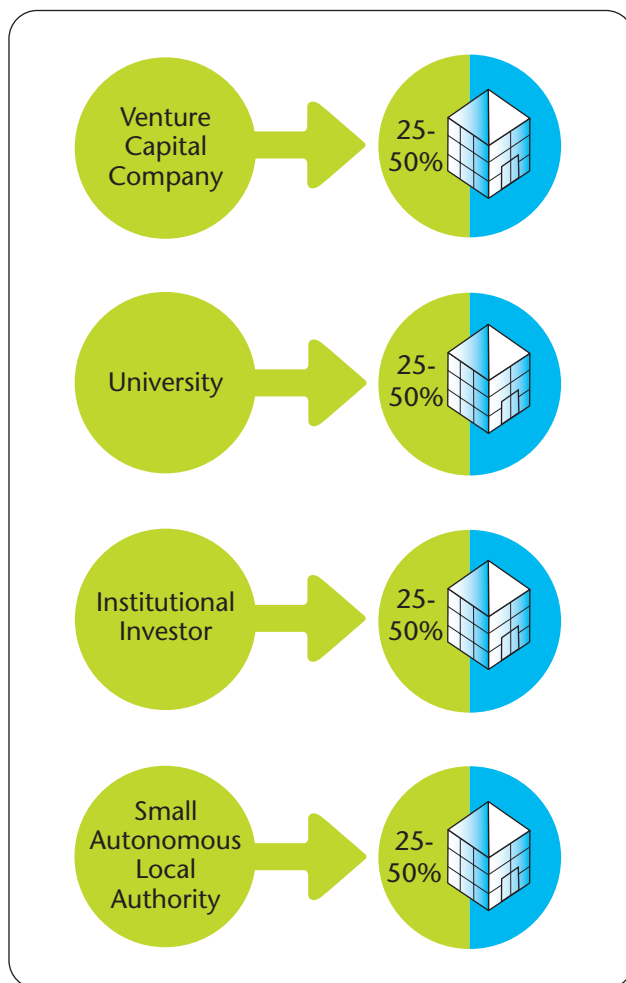
You may still be ranked as autonomous, and thus as not having any partner enterprises, even if this 25% threshold is reached or exceeded by any of the following investors:

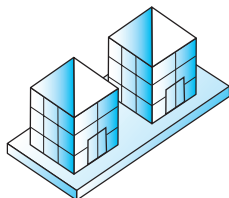
- Public investment corporations, venture capital companies and business angels⁹.
- Universities and non-profit research centres.
- Institutional investors, including regional development funds.
- Autonomous local authorities with an annual budget of less than 10 million euro and fewer than 5,000 inhabitants.

It is possible to remain autonomous while having one or more of the investors listed above. Each of these may have a stake of no more than 50% in your enterprise, provided they are not linked to one another (see 2.3.3, p. 23 for the notion of linked enterprise).

Of course, each investor has its rights as shareholder, but may not go beyond these and influence the management of the enterprise, in the sense of Art. 3.3 of the definition ('linked enterprises').

9. See footnote 5 page 9 for a definition of business angel. The financial involvement of business angels in an enterprise must be below 1,250,000 euro.





2.3.2 Am I a partner enterprise? (Art. 3.2)

This type of relationship represents the situation of enterprises which establish major financial partnerships with other enterprises, without one exercising effective direct or indirect control over the other. Partners are enterprises which are neither autonomous nor linked to one another.

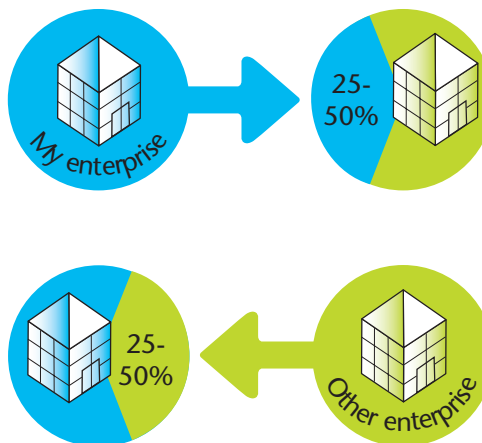
Definition

You are a partner enterprise if :

- You have a holding equal to or greater than 25%, of the capital or voting rights in another enterprise and/or another enterprise has a holding equal to or greater than 25% in yours.
- You are not linked to another enterprise (see 2.3.3 page 23). This means, among other things, that your voting rights in the other enterprise (or vice versa) do not exceed 50%.

PARTNER ENTERPRISES

My enterprise holds at least 25%, but no more than 50% in another and/or another holds at least 25%, but no more than 50%, in mine.



What about the data of my partner's partner ?

To avoid a complicated and endless calculation, the definition foresees the following rule: where your partner enterprise itself has other partners, you must add only the data of the partner enterprise(s) situated immediately upstream or downstream from yours (see Art. 6.2, p. 37 and graphic on p. 29).

What if my partner is linked to another?

In this case, 100% of the data of the linked enterprise must be included in the data of your partner enterprise (see 2.3.3, p. 23). You then include in your own data the percentage equal to the holding of your partner enterprise. (see Art. 6.3, p. 37 and illustrations, p. 28-30).

Establishing the data of my enterprise

(Art. 6.2 , 6.3 and 6.4)

If you are a partner enterprise, you must add a **proportion** of the other enterprise's staff headcount and financial details to your own data when determining your eligibility for SME status. This proportion will reflect the percentage of shares or voting rights – whichever is the higher – that are held.

Thus, if you have a 30% stake in another enterprise, you add 30% of its headcount, turnover and balance sheet to your own figures. If there are several partner enterprises, the same type of calculation must be done for each partner enterprise situated immediately upstream or downstream from yours.

Case of public bodies (Art. 3.4)

An enterprise is not an SME under the new definition if 25% or more of its capital or voting rights are directly or indirectly controlled, jointly or individually, by one or more public bodies. The reason for this stipulation is that public ownership may give such enterprises certain advantages, notably financial, over others financed by private equity capital. In addition, it is often not possible to calculate the relevant staff and financial data of public bodies.

Investors listed on pages 18-19, such as universities or autonomous local authorities, which have the status of a public body under national law are not concerned by this rule. They may hold a participation of between 25%, but no more than 50%, in an enterprise without it losing its SME status.

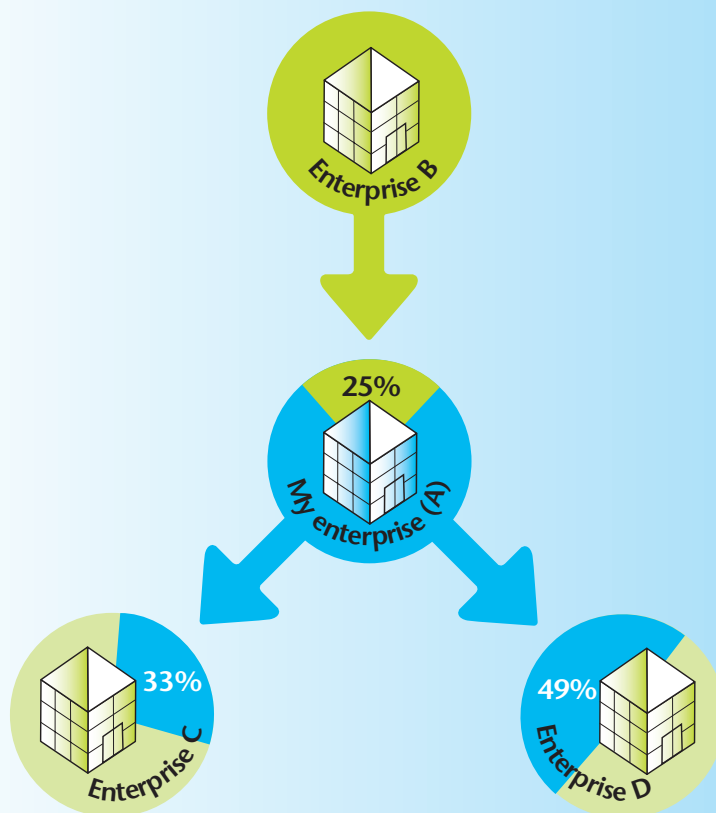
How to calculate the data of partner enterprises

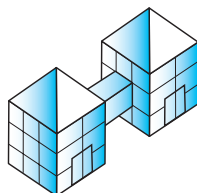
(The percentages given below are purely illustrative. For further examples, see annex I.)

My enterprise A owns 33% of C and 49% of D, while B has a 25% stake in my business.

To calculate my headcount and financial data, I add the relevant percentages of the data for B, C and D to my total data.

MY TOTAL = 100% of A + 25% of B + 33% of C + 49% of D.





2.3.3 Am I a linked enterprise? (Art. 3.3)

This type of relationship corresponds to the economic situation of enterprises which form a **group** through the direct or indirect control of the majority of voting rights of an enterprise by another or through the ability to exercise a **dominant influence** on an enterprise. Such cases are, thus, less frequent than the two preceding types.

Definition

Two or more enterprises are linked when they have any of the following relationships:

- One enterprise holds a majority of the shareholders' or members' voting rights in another.
- One enterprise is entitled to appoint or remove a majority of the administrative, management or supervisory body of another.
- A contract between the enterprises, or a provision in the memorandum or articles of association of one of the enterprises, enables one to exercise a dominant influence over the other.
- One enterprise is able, by agreement, to exercise sole control over a majority of shareholders' or members' voting rights in another.

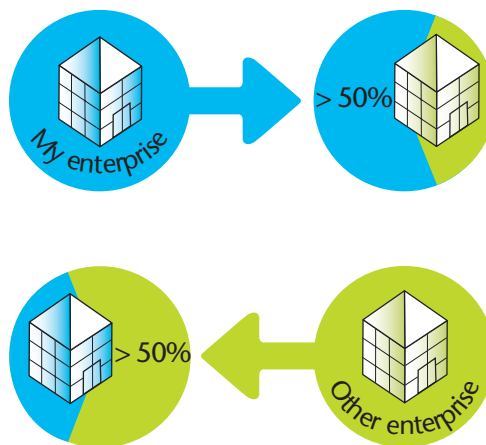
A typical example of a linked enterprise is the wholly-owned subsidiary.

What about franchises ?

Two enterprises with a franchise are not necessarily linked. It depends on the terms of each individual franchising agreement. Only if this includes one of the four relationships listed on the previous page are the enterprises considered to be linked.

LINKED ENTERPRISES

My enterprise holds more than 50% of the shareholders' or members' voting rights in another and/or another holds more than 50% in mine.

**Establishing the data of my enterprise**

(Art. 6.2, 6.3 and 6.4)

All 100% of the linked enterprise's data must be added to those of your enterprise to determine if you comply with the staff headcount and financial thresholds of the definition.

An enterprise generally knows immediately that it is linked, since in most Member States it is required by law to draw up consolidated accounts or is included by consolidation in the accounts of another enterprise.

Where you do not draw up consolidated accounts and the enterprise to which you are linked is also linked in a chain to other enterprises, you must add 100% of the data of all these linked enterprises to yours.

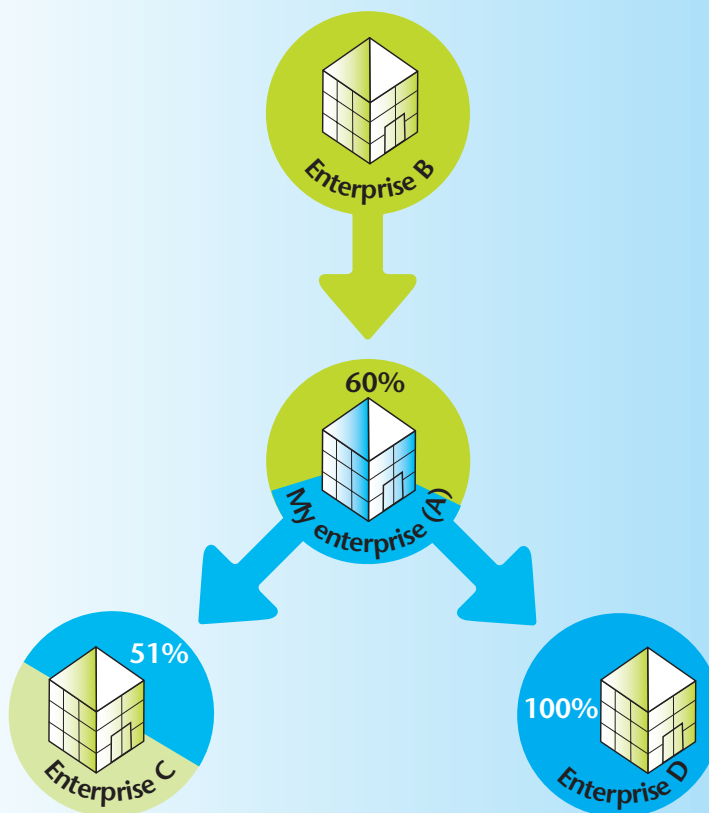
How to calculate the data of linked enterprises

(The percentages given below are purely illustrative. For further examples, see annex I.)

My enterprise A owns 51% of C and 100% of D, while B has a 60% stake in my business.

As the holding in each case is above 50%, I take 100% of the data from each of the four enterprises concerned when calculating my headcount and financial thresholds.

MY TOTAL = 100% of A + 100% of B + 100% of C + 100% of D.



Conclusion

The definition is an important tool for implementing efficient measures and programmes to support the development and success of SMEs. Therefore Member States, together with European Investment Bank and the European Investment Fund are invited to apply it as widely as possible.

We hope that this guide will be useful to SMEs wishing to benefit from the measures introduced by European, national, regional and local authorities according to this new definition.

Further refinements may be made to the new definition and the Commission will, if necessary, adapt it in the coming years to take account of experience and economic developments in the European Union.

The text of the 2003 Commission recommendation and the model declaration can be found from page 32 onwards.



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Annexes

- I. Illustrative examples
- II. Text of the Recommendation
- III. Model Declaration
- IV. Measures to prevent abuse of the definition

A communication containing a model declaration was published in the *Official Journal of the European Union* C 118 of 20 May 2003. It has since been the subject of two corrigenda.

The consolidated version contained in the annex has been drawn up for the purpose of this guide.

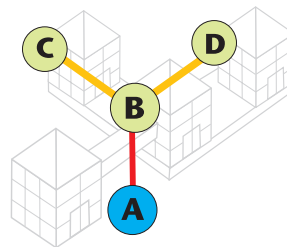
Example 1 :

My enterprise A is **linked** to enterprise B through the holding of 60% that B has in my enterprise.

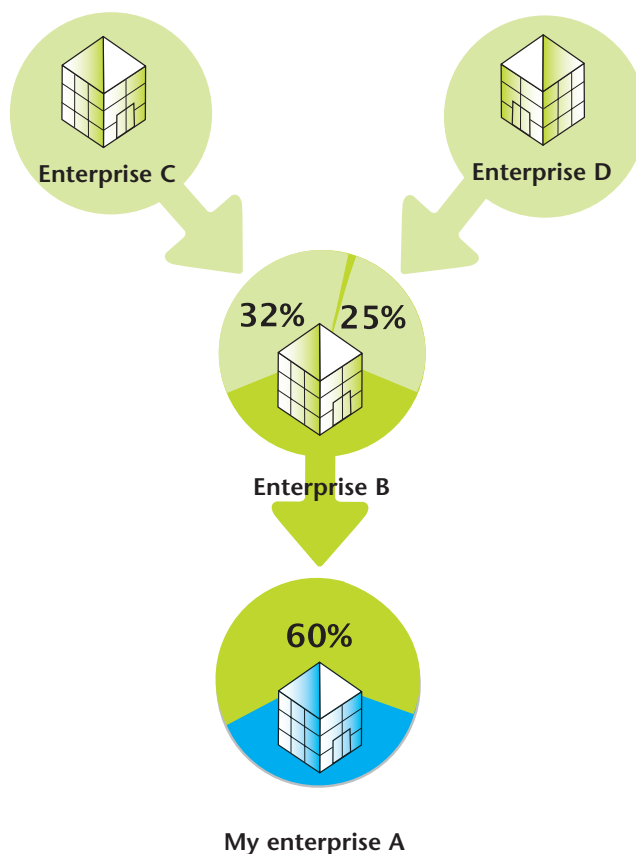
But B also has two **partners**, enterprises C and D, which own respectively 32% and 25% of B.

To calculate my data, I must add 100% of the data of B, plus 32% of the data of C and 25% of the data of D to the data of my own enterprise.

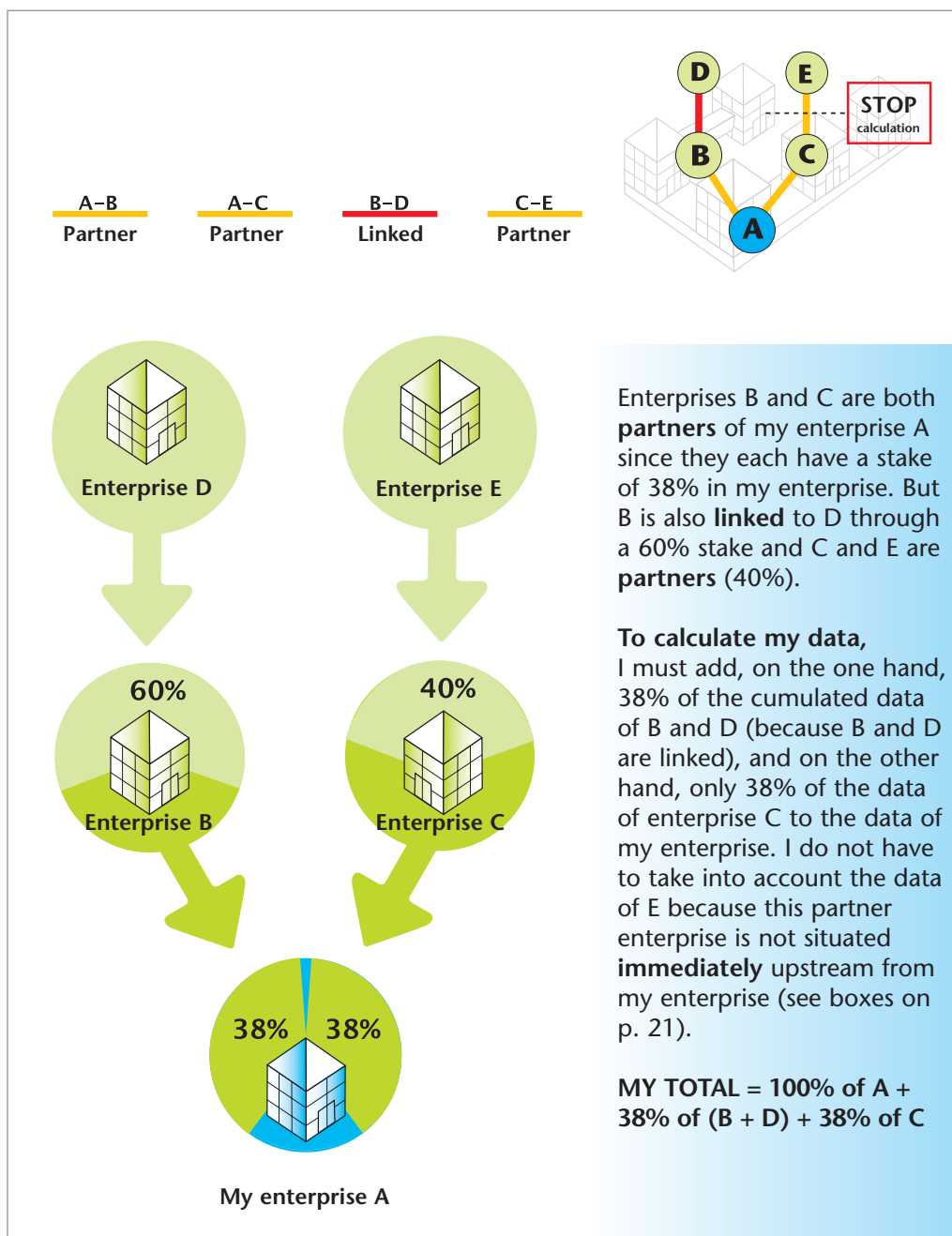
**My TOTAL = 100% of A
+ 100% of B + 32% of C
+ 25% of D.**



<u>A-B</u>	<u>B-C</u>	<u>B-D</u>
Linked	Partner	Partner

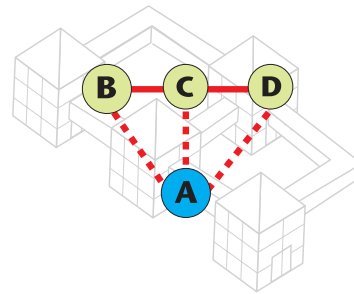


Example 2:

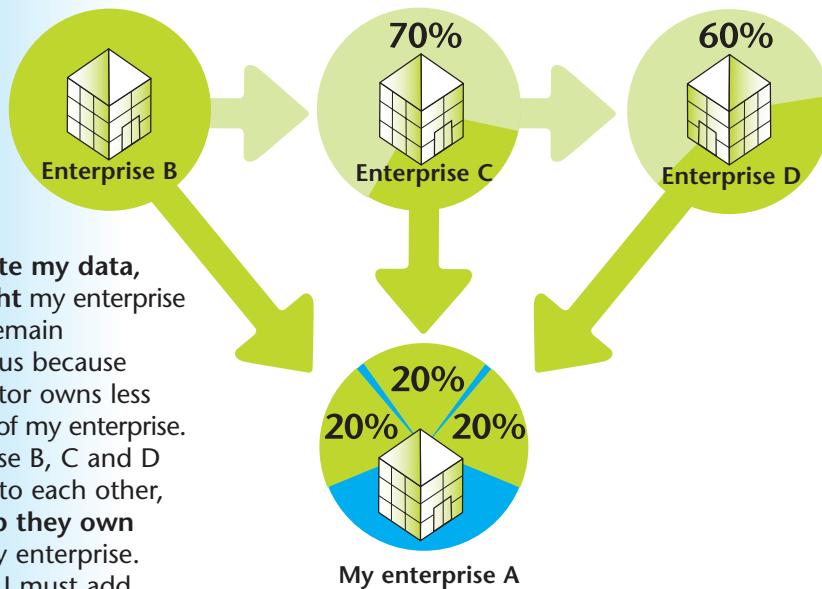


Example 3 :

My enterprise A has three investors, B, C and D, each owning 20% of my capital or voting rights. These investors are themselves linked to each other, forming a **group of linked enterprises**: B has a stake of 70% in C which itself has a stake of 60% in D.



B-C
C-D	
Linked	Autonomous at first sight but linked to a group



To calculate my data, at first sight my enterprise A would remain autonomous because each investor owns less than 25% of my enterprise. **But** because B, C and D are linked to each other, **as a group they own 60% of my enterprise**. Therefore, I must add 100% of the data of B, C and D to the data of my own enterprise.

My TOTAL = 100% of A + 100% of B + 100% of C + 100% of D.

- II. Text of the Recommendation
- III. Model Declaration
- IV. Measures to prevent abuse of
the definition

COMMISSION

COMMISSION RECOMMENDATION

of 6 May 2003

concerning the definition of micro, small and medium-sized enterprises

(notified under document number C(2003) 1422)

(Text with EEA relevance)

(2003/361/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Article 211, second indent, thereof,

Whereas:

- (1) In a report submitted to the Council in 1992 at the request of the 'Industry' Council held on 28 May 1990, the Commission had proposed limiting the proliferation of definitions of small and medium-sized enterprises in use at Community level. Commission Recommendation 96/280/EC of 3 April 1996 concerning the definition of small and medium-sized enterprises ⁽¹⁾ was based on the idea that the existence of different definitions at Community level and at national level could create inconsistencies. Following the logic of a single market without internal frontiers, the treatment of enterprises should be based on a set of common rules. The pursuit of such an approach is all the more necessary in view of the extensive interaction between national and Community measures assisting micro, small and medium-sized enterprises (SME), for example in connection with Structural Funds or research. It means that situations in which the Community focuses its action on a given category of SMEs and the Member States on another must be avoided. In addition, it was considered that the application of the same definition by the Commission, the Member States, the European Investment Bank (EIB) and the European Investment Fund (EIF) would improve the consistency and effectiveness of policies targeting SMEs and would, therefore, limit the risk of distortion of competition.
- (2) Recommendation 96/280/EC has been applied widely by the Member States, and the definition contained in the Annex thereto has been taken over in Commission Regulation (EC) No 70/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises ⁽²⁾. Apart from the need to adapt Recommendation 96/280/EC to

economic developments, pursuant to Article 2 of the Annex thereto, consideration must be given to a number of difficulties of interpretation which have emerged in its application, as well as the observations received from enterprises. In view of the number of amendments now requiring to be made to Recommendation 96/280/EC, and for the sake of clarity, it is appropriate to replace the Recommendation.

- (3) It should also be made clear that, in accordance with Articles 48, 81 and 82 of the Treaty, as interpreted by the Court of Justice of the European Communities, an enterprise should be considered to be any entity, regardless of its legal form, engaged in economic activities, including in particular entities engaged in a craft activity and other activities on an individual or family basis, partnerships or associations regularly engaged in economic activities.
- (4) The criterion of staff numbers (the 'staff headcount criterion') remains undoubtedly one of the most important, and must be observed as the main criterion; introducing a financial criterion is nonetheless a necessary adjunct in order to grasp the real scale and performance of an enterprise and its position compared to its competitors. However, it would not be desirable to use turnover as the sole financial criterion, in particular because enterprises in the trade and distribution sector have by their nature higher turnover figures than those in the manufacturing sector. Thus the turnover criterion should be combined with that of the balance sheet total, a criterion which reflects the overall wealth of a business, with the possibility of either of these two criteria being exceeded.
- (5) The turnover ceiling refers to enterprises engaged in very different types of economic activity. In order not to restrict unduly the usefulness of applying the definition, it should be updated to take account of changes in both prices and productivity.

⁽¹⁾ OJ L 107, 30.4.1996, p. 4.

⁽²⁾ OJ L 10, 13.1.2001, p. 33.

- (6) As regards the ceiling for the balance sheet total, in the absence of any new element, it is justified to maintain the approach whereby the turnover ceilings are subjected to a coefficient based on the statistical ratio between the two variables. The statistical trend requires a greater increase to be made to the turnover ceiling. Since the trend differs according to the size-category of the enterprise, it is also appropriate to adjust the coefficient in order to reflect the economic trend as closely as possible and not to penalise microenterprises and small enterprises as opposed to medium-sized enterprises. This coefficient is very close to 1 in the case of microenterprises and small enterprises. To simplify matters, therefore, a single value must be chosen for those categories for the turnover ceiling and balance sheet total ceiling.
- (7) As in Recommendation 96/280/EC, the financial ceilings and the staff ceilings represent maximum limits and the Member States, the EIB and the EIF may fix ceilings lower than the Community ceilings if they wish to direct their measures towards a specific category of SME. In the interests of administrative simplification, the Member States, the EIB and the EIF may use only one criterion — the staff headcount — for the implementation of some of their policies. However, this does not apply to the various rules in competition law where the financial criteria must also be used and adhered to.
- (8) Following the endorsement of the European Charter for Small Enterprises by the European Council of Santa Maria da Feira in June 2000, microenterprises — a category of small enterprises particularly important for the development of entrepreneurship and job creation — should also be better defined.
- (9) To gain a better understanding of the real economic position of SMEs and to remove from that category groups of enterprises whose economic power may exceed that of genuine SMEs, a distinction should be made between various types of enterprises, depending on whether they are autonomous, whether they have holdings which do not entail a controlling position (partner enterprises), or whether they are linked to other enterprises. The current limit shown in Recommendation 96/280/EC, of a 25 % holding below which an enterprise is considered autonomous, is maintained.
- (10) In order to encourage the creation of enterprises, equity financing of SMEs and rural and local development, enterprises can be considered autonomous despite a holding of 25 % or more by certain categories of investors who have a positive role in business financing and creation. However, conditions for these investors have not previously been specified. The case of 'business angels' (individuals or groups of individuals pursuing a regular business of investing venture capital) deserves special mention because — compared to other venture capital investors — their ability to give relevant advice to new entrepreneurs is extremely valuable. Their investment in equity capital also complements the activity of venture capital companies, as they provide smaller amounts at an earlier stage of the enterprise's life.
- (11) To simplify matters, in particular for Member States and enterprises, use should be made when defining linked enterprises of the conditions laid down in Article 1 of Council Directive 83/349/EEC of 13 June 1983 based on Article 54(3)(g) of the Treaty on consolidated accounts ⁽¹⁾, as last amended by Directive 2001/65/EC of the European Parliament and of the Council ⁽²⁾, in so far as these conditions are suitable for the purposes of this Recommendation. To strengthen the incentives for investing in the equity funding of an SME, the presumption of absence of dominant influence on the enterprise in question was introduced, in pursuance of the criteria of Article 5(3), of Council Directive 78/660/EEC of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies ⁽³⁾, as last amended by Directive 2001/65/EC.
- (12) Account should also be taken, in suitable cases, of relations between enterprises which pass through natural persons, with a view to ensuring that only those enterprises which really need the advantages accruing to SMEs from the different rules or measures in their favour actually benefit from them. In order to limit the examination of these situations to the strict minimum, the account taken of such relationships has been restricted to the relevant market or to adjacent markets — reference being had, where necessary, to the Commission's definition of 'relevant markets' in the Commission notice on the definition of relevant market for the purposes of Community competition law ⁽⁴⁾.
- (13) In order to avoid arbitrary distinctions between different public bodies of a Member State, and given the need for legal certainty, it is considered necessary to confirm that an enterprise with 25 % or more of its capital or voting rights controlled by a public body is not an SME.
- (14) In order to ease the administrative burden for enterprises, and to simplify and speed up the administrative handling of cases for which SME status is required, it is appropriate to allow enterprises to use solemn declarations to certify certain of their characteristics.

⁽¹⁾ OJ L 193, 18.7.1983, p. 1.

⁽²⁾ OJ L 283, 27.10.2001, p. 28.

⁽³⁾ OJ L 222, 14.8.1978, p. 11.

⁽⁴⁾ OJ C 372, 9.12.1997, p. 5.

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(15) It is necessary to establish in detail the composition of the staff headcount for SME definition purposes. In order to promote the development of vocational training and sandwich courses, it is desirable, when calculating staff numbers, to disregard apprentices and students with a vocational training contract. Similarly, maternity or parental leave periods should not be counted.

(16) The various types of enterprise defined according to their relationship with other enterprises correspond to objectively differing degrees of integration. It is therefore appropriate to apply distinct procedures to each of those types of enterprise when calculating the quantities representing their activities and economic power,

HEREBY RECOMMENDS:

Article 1

1. This Recommendation concerns the definition of micro, small and medium-sized enterprises used in Community policies applied within the Community and the European Economic Area.

2. Member States, the European Investment Bank (EIB) and the European Investment Fund (EIF), are invited:

- (a) to comply with Title I of the Annex for their programmes directed towards medium-sized enterprises, small enterprises or microenterprises;
- (b) to take the necessary steps with a view to using the size classes set out in Article 7 of the Annex, especially where the monitoring of their use of Community financial instruments is concerned.

Article 2

The ceilings shown in Article 2 of the Annex are to be regarded as maximum values. Member States, the EIB and the EIF may fix lower ceilings. In implementing certain of their policies, they may also choose to apply only the criterion of number of employees, except in fields governed by the various rules on State aid.

Article 3

This Recommendation will replace Recommendation 96/280/EC as from 1 January 2005.

Article 4

This Recommendation is addressed to the Member States, the EIB and the EIF.

They are requested to inform the Commission by 31 December 2004 of any measures they have taken further to it and, no later than 30 September 2005, to inform it of the first results of its implementation.

Done at Brussels, 6 May 2003.

For the Commission

Erkki LIIKANEN

Member of the Commission

ANNEX

TITLE I

DEFINITION OF MICRO, SMALL AND MEDIUM-SIZED ENTERPRISES ADOPTED BY THE COMMISSION

Article 1

Enterprise

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

Article 2

Staff headcount and financial ceilings determining enterprise categories

1. The category of micro, small and medium-sized enterprises (SMEs) is made up of enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding 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 microenterprise 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 fewer than 5 000 inhabitants.
3. 'Linked enterprises' are enterprises which have any of the following relationships with each other:
 - (a) an enterprise has a majority of the shareholders' or members' voting rights in another enterprise;
 - (b) an enterprise has the right to appoint or remove a majority of the members of the administrative, management or supervisory body of another enterprise;
 - (c) an enterprise has the right to exercise a dominant influence over another enterprise pursuant to a contract entered into with that enterprise or to a provision in its memorandum or articles of association;
 - (d) an enterprise, which is a shareholder in or member of another enterprise, controls alone, pursuant to an agreement with other shareholders in or members of that enterprise, a majority of shareholders' or members' voting rights in that enterprise.

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

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

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

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

4. Except in the cases set out in paragraph 2, second subparagraph, an enterprise cannot be considered an SME if 25 % or more of the capital or voting rights are directly or indirectly controlled, jointly or individually, by one or more public bodies.

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

Article 4

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

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

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

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

Article 5

Staff headcount

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

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

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

Article 6

Establishing the data of an enterprise

1. In the case of an autonomous enterprise, the data, including the number of staff, are determined exclusively on the basis of the accounts of that enterprise.

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

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

To the data referred to in the first and second subparagraph is 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 is 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 is 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.

TITLE II

SUNDRY PROVISIONS

Article 7

Statistics

The Commission will take the necessary measures to present the statistics that it produces in accordance with the following size-classes of enterprises:

- (a) 0 to 1 person;
- (b) 2 to 9 persons;
- (c) 10 to 49 persons;
- (d) 50 to 249 persons.

Article 8

References

1. Any Community legislation or any Community programme to be amended or adopted and in which the term 'SME', 'microenterprise', 'small enterprise' or 'medium-sized enterprise', or any other similar term occurs, should refer to the definition contained in this Recommendation.

2. As a transitional measure, current Community programmes using the SME definition in Recommendation 96/280/EC will continue to be implemented for the benefit of the enterprises which were considered SMEs when those programmes were adopted. Legally binding commitments entered into by the Commission on the basis of such programmes will remain unaffected.

Without prejudice to the first subparagraph, any amendment of the SME definition within the programmes can be made only by adopting the definition contained in this Recommendation in accordance with paragraph 1.

Article 9

Revision

On the basis of a review of the application of the definition contained in this Recommendation, to be drawn up by 31 March 2006, and taking account of any amendments to Article 1 of Directive 83/349/EEC on the definition of linked enterprises within the meaning of that Directive, the Commission will, if necessary, adapt the definition contained in this Recommendation, and in particular the ceilings for turnover and the balance-sheet total in order to take account of experience and economic developments in the Community.

Commission communication**Model declaration on the information to the qualification of an enterprise as an SME**

(consolidated version)

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 the Commission Recommendation on the definition of SMEs. A more precise definition will ensure greater legal certainty. More suited to the various sub-categories 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.

⁽¹⁾ JOL 124 of 20.05.2003, p. 36

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

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.

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 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 paragraph 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 or voting rights equal to or greater than 25% in the other enterprise, or the other enterprise has a holding or voting rights equal to or greater than 25% in the applicant enterprise,
- the enterprises are not linked enterprises within the meaning defined below, which means, among other things, that the voting rights of one in the other do not exceed 50%,

⁽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 paragraph 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,
- d) autonomous local authorities with an annual budget of less than EUR 10 million and less than 5000 inhabitants.

(Definition, Article 3 paragraph 2, second sub-paragraph)

- 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 paragraph 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 paragraph 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 paragraph 3 of the Definition, where applicable through a natural person or group of natural persons acting jointly.

- 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 ⁽⁶⁾.

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 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 paragraph 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.

⁽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 of 18.7.1983, p. 1), as last amended by Directive 2001/65/EC of the European Parliament and of the Council (OJ L 283 of 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 period²:

	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 paragraphs 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" row 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 ⁽⁴⁾), 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.

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 paragraph 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 paragraph 2 first sub-paragraph).

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 paragraph 3, second sub-paragraph

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.

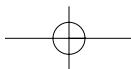
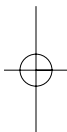
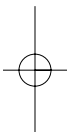
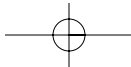
Important: The data of the enterprises, which are linked to the applicant enterprise, are derived from their accounts and their other data, consolidated if they exist. To them are aggregated proportionally the data of any possible partner enterprise of that linked enterprise, situated immediately upstream 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 paragraph 2, the percentage rate according to that article should be applied (Definition, Article 6 paragraph 3, second sub-paragraph).



Measures to prevent abuse of the definition

One of the main objectives of the new definition is to ensure that support measures are granted only to those enterprises which genuinely need them. It is important to stress that the definition contains several anti-circumvention measures designed to reserve the advantages of SME support programmes to real SMEs. In this respect, the simplified approach of the present guide must not be used to justify artificial corporate architecture aimed at by-passing the definition.

Thus, an enterprise, for instance, having three investors each owning 20% of its capital or voting rights will not be considered as autonomous, but as linked to a group of enterprises if the three are themselves linked to each other either directly or via one or more enterprises (see Art. 3 of the definition and example on p. 30).

Relationships between enterprises through natural persons are also taken into account when calculating the data of an enterprise if

- the enterprises in question are linked to the natural person in the sense of Article 3.3 of the definition,
- they are active on the same market or in adjacent markets (see Article 3.3 for a definition of an 'adjacent market').