

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.

- (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 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).