

Annex 3: Model SME Status Statement

SME Status Statement

With regard to application process for Cooperation Development Support co-financed by the the Applicant: *<fill in the Applicant's data as per the registration document>*

declares to have the status of a¹:

- micro-enterprise ☐
- small enterprise ☐
- medium-sized enterprise ☐

according to the criteria mentioned in Annex I to the Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 187 of 26.6.2014, p. 1, as amended).

1. **Applicant:** [full name as per the registration document]:
2. **Enterprise start date** [as per the registration document: month/year]:
3. **Historical data regarding the entrepreneur status**

Applicant status	In the reference period two years prior to the last reference period (from dd.mm.yy to dd.mm.yy)	In the reference period one year prior to the last reference period (from dd.mm.yy to dd.mm.yy)	In the last reference period ² (from dd.mm.yy to dd.mm.yy)
micro-enterprise	<input type="checkbox"/> (check box)	<input type="checkbox"/> (check box)	<input type="checkbox"/> (check box)
small enterprise	<input type="checkbox"/> (check box)	<input type="checkbox"/> (check box)	<input type="checkbox"/> (check box)
medium-sized enterprise	<input type="checkbox"/> (check box)	<input type="checkbox"/> (check box)	<input type="checkbox"/> (check box)
enterprise other than SME	<input type="checkbox"/> (check box)	<input type="checkbox"/> (check box)	<input type="checkbox"/> (check box)

Status change – details (if applicable)³:



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4. Enterprise type:

4a. Autonomous enterprise as per Article 3 of the Annex I to Commission Regulation (EU) No 651/2014⁴.

Attention:

If the Applicant is an autonomous entrepreneur, he or she selects „yes” in 4a and fills in **Attachment 1** to the SME Status Statement.

In **4b and 4c** „no” should be selected.

☐ yes

☐ no

4b. Partner enterprise as per Article 3 of the Annex I to Commission Regulation (EU) No 651/2014⁵.

Attention:

If the Applicant does not meet the criteria of an autonomous entrepreneur and remains in partnership relations with other entrepreneur(s), the correct answers are: in **4a** „no”, in **4b** „yes”. **Attachment 2** should be filled in.

☐ yes

☐ no

4c. Linked enterprise as per Article 3 of the Annex I to Commission Regulation (EU) No 651/2014⁶.

Attention:

If the Applicant does not meet the criteria of an autonomous entrepreneur and remains in linked relations with other entrepreneur(s), the correct answers are: in **4a** „no”, in **4c** „yes”.

Attachment 3 should be filled in.

☐ yes

☐ no



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5. Applicant information allowing to determine the SME status (if the Applicant has linked and/or partnership relations, total numbers should be taken into account).

Total numbers allowing to determine the SME status	In the reference period two years prior to the last reference period	In the reference period one year prior to the last reference period	In the last reference period ⁷
Reference period to which the data relate			
Staff headcount ⁸			
Annual turnover (net sales) ⁹ (in thousands, EUR)			
Balance sheet total ¹⁰ (in thousands, EUR)			

Date and signature:

Attention:

The Attachments to be filled in are 1 or 2 and/or 3 depending on whether the enterprise is autonomous, is in partnership relations with other entity(-ies) (partner enterprise) or linked relations to other entity(-ies). Should the Applicant has both linked and partner enterprises, he or she fills in both Attachment 2 and 3.



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Attachment 1 to SME Status Statement

Information provided by an autonomous enterprise

1. Does any of the following relationships exist between the Applicant's enterprise and another enterprise on the basis of a contract, agreement or arrangement with third parties?

1a. The Applicant holding shares/equities in another enterprise or another enterprise holding capital/shares in the Applicant enterprise?

- ☐ yes
☐ no

Details*:

1b. The Applicant exercising the voting rights as a shareholder/member in another enterprise or another enterprise exercising the voting rights as a shareholder/member in the Applicant's enterprise?

- ☐ yes
☐ no

Details*:

1c. If „yes” was selected in 1a or b), does the Applicant's enterprise own 25% or more of the capital/shares or voting rights in another enterprise?

- ☐ yes
☐ no

Details*:

1d. If „yes” was selected in 1a or b), do other enterprises or public entities hold, solely or jointly with one or more linked enterprises or public entities, 25% or more of the capital/shares or voting rights in the Applicant's enterprise?

- ☐ yes
☐ no

Details*:

1e. If „yes” was selected in 1d), are these enterprises or entities:

- public investment corporations, venture capital companies or business angels, i.e. individuals or groups of individuals with a regular venture capital investment



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activity who invest equity capital in unquoted businesses, provided the total investment of those business angels in the same enterprise is less than EUR 1,250,000;

- universities or non-profit research centers;
- institutional investors, including regional development funds ¹¹;
- autonomous local authorities with an annual budget of less than EUR 10 million and less than 5000 inhabitants.

- and the above-mentioned entities hold from 25% to 50% of the capital/shares or the voting rights?

(this is the sole condition under which the data of such entities are not taken into account when determining the Applicant's enterprise status).

☐ yes

☐ no

Details*:

1f. If the enterprises or entities mentioned in 1e) hold more than 50 %, are they involving themselves directly or indirectly in the management of the Applicant's enterprise?

☐ yes

☐ no

Details*:

1g. The possibility to appoint or remove members of the administrative, management or supervisory body of another enterprise or by a third entity with respect to the Applicant's enterprise?

☐ yes

☐ no

Details*:

1h. 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 the articles of association etc., or dominant influence of another enterprise entity on the Applicant's enterprise pursuant to a contract or to a provision in its memorandum or the articles of association etc.?

☐ yes

☐ no

Details*:

1i. Being in relationship mentioned in 1a, 1 b, 1g, 1h) through a natural person or group of natural persons acting jointly if they engage in their activity or in part of their activity in the same relevant market or in adjacent markets¹²?

☐ yes

☐ no

Details*:

2. Does the enterprise prepare consolidated financial statements or is it included in financial statements of an enterprise that prepares consolidated financial statements?¹³

☐ yes

☐ no

Date and signature:

* In „Details” the Applicant should fully describe how a given criterion is met.

In particular, the Applicant is expected to name the enterprises with which he or she is in a particular relationship, mention the percentage share in capital or voting rights, describe previous changes in the ownership structure with their dates, legal grounds and types.



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Attachment 2 to SME Status Statement

Information provided by a partner enterprise

1. Does any of the following relationships exist between the Applicant's enterprise and another enterprise on the basis of a contract, agreement or arrangement with third parties?

1a. The Applicant holding shares/equities in another enterprise or another enterprise holding capital/shares in the Applicant enterprise?

- ☐ yes
☐ no

Details*:

1b. The Applicant exercising the voting rights as a shareholder/member in another enterprise or another enterprise exercising the voting rights as a shareholder/member in the Applicant's enterprise?

- ☐ yes
☐ no

Details*:

1c. If „yes” was selected in 1a or b), does the Applicant's enterprise own 25% or more of the capital/shares or voting rights in another enterprise?

- ☐ yes
☐ no

Details*:

1d. If „yes” was selected in 1a or b), do other enterprises or public entities hold, solely or jointly with one or more linked enterprises or public entities, 25% or more of the capital/shares or voting rights in the Applicant's enterprise?

- ☐ yes
☐ no

Details*:

1e. The possibility to appoint or remove members of the administrative, management or supervisory body of another enterprise or by a third entity with respect to the Applicant's enterprise?

☐ yes

☐ no

Details*:

1f. 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 the articles of association etc., or dominant influence of another enterprise entity on the Applicant's enterprise pursuant to a contract or to a provision in its memorandum or the articles of association etc.?

☐ yes

☐ no

Details*:

1g. Being in relationship mentioned in 1a, 1 b, 1g, 1h) through a natural person or group of natural persons acting jointly if they engage in their activity or in part of their activity in the same relevant market or in adjacent markets?

☐ yes

☐ no

Details*:

2. Data regarding partner enterprises

(full data about the partner enterprises and other enterprises linked to them)

Name and seat of the enterprise(s) being partner enterprise(s) to the Applicant's enterprise	Applicant's percentage share in capital or voting rights of the partner enterprise (if applicable) (for the proportional calculation of the partner enterprises data the higher value of these two shares should be used)	Percentage share of the partner enterprise in capital or voting rights of the Applicant's enterprise (if applicable) (for the proportional calculation of the partner enterprises data the higher value of these two shares should be used)
1)		
2)		

Name and seat of the enterprise(s) being partner enterprise(s) to the Applicant's enterprise	Applicant's percentage share in capital or voting rights of the partner enterprise (if applicable) (for the proportional calculation of the partner enterprises data the higher value of these two shares should be used)	Percentage share of the partner enterprise in capital or voting rights of the Applicant's enterprise (if applicable) (for the proportional calculation of the partner enterprises data the higher value of these two shares should be used)
3)		
...		

3. Does the enterprise prepare consolidated financial statements or is it included in financial statements of an enterprise that prepares consolidated financial statements??¹⁴

- ☐ yes
☐ no

Date and signature:

* In „Details” the Applicant should fully describe how a given criterion is met.
In particular, the Applicant is expected to name the enterprises with which he or she is in a business partnership, mention the percentage share in capital or voting rights, describe previous changes in the ownership structure with their dates, legal grounds and types.



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4. Data used to determine the Applicant's SME status in a partner business relationship.

Data used to determine the SME status of the enterprise	In the reference period two years prior to the last reference period (from dd.mm.yy to dd.mm.yy)			In the reference period one year prior to the last reference period (from dd.mm.yy to dd.mm.yy)			In the last reference period ¹⁵ (from dd.mm.yy to dd.mm.yy)		
	Staff headcount ¹⁶	Annual turnover (net sales) ¹⁷ (in thousands, EUR)	Balance sheet total ¹⁸ (in thousands, EUR)	Staff headcount	Annual turnover (net sales) (in thousands, EUR)	Balance sheet total (in thousands, EUR)	Staff headcount	Annual turnover (net sales) (in thousands, EUR)	Balance sheet total (in thousands, EUR)
Applicant's data									
Data of partner enterprise no. ... (full data of the enterprise and other enterprises linked to it)									



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Information about the enterprises linked to the partner enterprise no. ... (name, registration number, description of link type)									
Data of partner enterprise no. ... (full data of the enterprise and other enterprises linked to it)									
Information about the enterprises linked to the partner enterprise no. ... (name, registration number, description of link type)									



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Data of all partner enterprises cumulated proportionally¹⁹

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Date and signature:



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Attachment 3 to SME Status Statement`

Information provided by a linked enterprise

1. Does any of the following relationships exist between the Applicant's enterprise and another enterprise on the basis of a contract, agreement or arrangement with third parties, including the following entities:

- public investment corporations, venture capital companies or business angels, i.e. individuals or groups of individuals engaged in regular venture capital investment activities that invest in unlisted companies, provided that the total amount of business angel investment in the same enterprise does not exceed: EUR 1,250,000;
- universities or non-profit research centers;
- institutional investors, including regional development funds;
- autonomous local authorities with an annual budget of less than EUR 10 million and less than 5000 inhabitants;
- natural person or group of natural persons, if they engage in their activity or in part of their activity in the same relevant market or in adjacent markets.

1a. Does the Applicant's enterprise have the majority of shareholders' or members' voting rights in another enterprise or does another enterprise have the majority of shareholders' or members' voting rights in the Applicant's enterprise?

☐ yes

☐ no

Details*:

1b. Does the Applicant's enterprise have the right to appoint or remove the majority of members of the administrative, management or supervisory body of another enterprise or does another enterprise have the right to appoint or remove the majority of members of the administrative, management or supervisory body of the Applicant's enterprise?

☐ yes

☐ no

Details*:



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1c. Does the Applicant's enterprise have 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 or does another enterprise have the right to exercise a dominant influence over the Applicant's enterprise pursuant to a contract entered into with the Applicant's enterprise or to a provisions in its memorandum or articles of association?

- ☐ yes
☐ no

Details*:

1d. Does the Applicant's enterprise, which is a shareholder in or a member of another enterprise, control alone, pursuant to an agreement with other shareholders in or members of that enterprise, the majority of shareholders' or members' voting rights in that enterprise or another enterprise, which is a shareholder in or a member of the Applicant's enterprise, control alone, pursuant to an agreement with other shareholders in or members of that enterprise, the majority of shareholders' or members' voting rights in the Applicant's enterprise?

- ☐ yes
☐ no

Details*:

1e. Being in relationship mentioned in 1a, 1b, 1c, 1d) through a natural person or a group of natural persons acting jointly if they engage in their activity or in part of their activity in the relevant market or in adjacent markets?

- ☐ yes
☐ no

Details*:

1f. If the enterprises and entities mentioned in 1 hold more than 50% of the capital/shares or voting rights in Applicant's enterprise, do these enterprises engage directly or indirectly in the management of the Applicant's enterprise?

- ☐ yes
☐ no

Details*:

2. Data regarding linked enterprises



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(full data about the linked enterprises and other enterprises linked to them)

Name and seat of the enterprise(s) being linked enterprise(s) to the Applicant's enterprise	Applicant's percentage share in capital or voting rights of the linked enterprise (if applicable)	Percentage share of the linked enterprise in capital or voting rights of the Applicant's enterprise (if applicable)
1)		
2)		
3)		
...		

3a. Is the Applicant's enterprise a member of a capital group, of a vertically integrated chain or any other group preparing consolidated financial statements?²⁰

- ☐ yes
☐ no

3b. Does the consolidated financial statement, such as mentioned in 3a, include the data of the Applicant's enterprise?

- ☐ yes
☐ no

3c. Does the Applicant's enterprise or at least one of the enterprises linked to it prepare consolidated financial statement or is included in a consolidated financial statement of another enterprise linked to it?

- ☐ yes
☐ no



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4. Data used to determine the Applicant's SME status in a linked business relationship.

Information used to determine the SME status of the enterprise	In the reference period two years prior to the last reference period (from dd.mm.yy to dd.mm.yy)			In the reference period one year prior to the last reference period (from dd.mm.yy to dd.mm.yy)			In the last reference period ²¹ (from dd.mm.yy to dd.mm.yy)		
	Staff headcount ²²	Annual turnover (net sales) ²³ (in thousands, EUR)	Balance sheet total ²⁴ (in thousands, EUR)	Staff headcount	Annual turnover (net sales) (in thousands, EUR)	Balance sheet total (in thousands, EUR)	Staff headcount	Annual turnover (net sales) (in thousands, EUR)	Balance sheet total (in thousands, EUR)
Applicant's data									
Data of linked enterprise no. ... (full data of the enterprise and its partner/linked enterprises) ²⁵									



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Information about linked enterprises and partner enterprises with the linked enterprise No ... (name, registration number, description of the link type)									
Data of linked enterprise no. ... (full data of the enterprise and its partner/linked enterprises)									



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Information about linked enterprises and partner enterprises with the linked enterprise No ... (name, registration number, description of the link type)									
Summarized data of all linked enterprises*/ Data from the consolidated financial statement of the linked enterprises*²⁶ *delete as appropriate									



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SME Status Statement and Attachments - Instruction

The basic purpose of determining the SME status is to limit the financial support only to those enterprises struggling with problems common for SMEs (such as access to financial resources, access to markets etc.).

Determining the SME status of the Applicant's enterprise is therefore crucial in order to approve the financial aid.

The Applicant shall determine its status on the day when the financial aid was granted (the day when the agreement was signed: is it a microenterprise, a small enterprise or a medium-sized enterprise. In order to determine the size of the enterprise, the Applicant shall apply Annex I to the Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (referred to as Annex I to the Commission Regulation (EU) No 651/2014)).

When determining the SME status and examining the relationships with other entities, the Applicant may use the explanations published by the European Commission in 2015 in „[User guide to the SME definition](#)” (available only in English).

Alternatively, [this website](#) may be used in order to determine the size of the Applicant's enterprise.

The institution responsible for reviewing the evaluation of the SME status may use the financial information provided by the Applicant in the submitted proposal for the cooperation development support in order to verify the information provided in the SME Status Statement. Should any doubts arise as far as the SME status is concerned, the institution may:

- 1) demand that the Applicant provide more documents necessary in the verification process, such as:
 - financial statements of the linked and partner enterprises or other accounting or financial documents which confirm the information provided in the SME Status Statement;
 - explanations regarding the information provided in the SME Status Statement, including the manner in which the Applicant determined the type and the level of attachment to other entities.
- 2) use legal information systems (such as Lex, Beck),



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3) seek help from a data collection agency.

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 50 million euro, and/or an annual balance sheet total not exceeding 43 million euro.

The limits defining the size of an enterprise are presented below.

Size	Staff headcount	Annual turnover	Annual balance sheet total
Micro	< 10	≤ 2 mln euro	or ≤ 2 mln euro
Small	< 50	≤ 10 mln euro	or ≤ 10 mln euro
Medium	< 250	≤ 50 mln euro	or ≤ 43 mln euro

The Applicant is free to choose the financial indicator used to determine the status (annual turnover or annual balance sheet total).

Important! Being a part of a network composed of partner or linked enterprises influences the manner of calculating the number of staff headcount and financial levels which determine the SME status.

If the indicators exceed or fall below the staff headcount threshold or the financial limits on the accounting closing day, the SME status is granted or removed **only when such a situation occurs in two consecutive reference periods in a row.**

The above rule does not apply when the ownership structure has been changed, for instance:

- 1) when an SME enterprise is taken over by a large-sized enterprise and becomes a linked or partner enterprise,
- 2) a micro or small enterprise may lose its status when a micro-enterprise it is taken over by a small or medium-sized enterprise, or when a small enterprise is taken over by a medium-sized enterprise.

When the ownership structure is changed, **the status changes on the day when this change takes place if such is the result of the repeated analysis of the staff headcount and the financial data.**



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This mechanism applies also for the opposite situation: when the dominant entity sell its shares and cut the links among the enterprises - in such case the enterprise can gain or regain the SME status immediately, provided that the data for this enterprise is within the thresholds defined for the given enterprise status.

The above interpretation is a result of the purposeful interpretation of the Annex I to the Commission Regulation (EU) No 651/2014 and it is based on the standpoint of the European Commission and the case law of the Court of Justice of the European Union. The European Commission stated that if at the accounting closing day an enterprise finds that, on an annual basis, it has exceeded or fallen below the headcount or financial thresholds stated in Article 2 of the Annex I to the Commission Regulation (EU) No 651/2014, this will not result in the loss or acquisition of the status of medium-sized, small or micro-enterprise unless those thresholds are exceeded over two consecutive reference periods. This approach allows to help the enterprises running their activities on highly unstable markets.

The purpose of the Annex I to the Commission Regulation (EU) No 651/2014 is to identify real SMEs. The definition of SMEs ensures that the aid will be given only to those enterprises that really need it. A change in the ownership structure resulting in a change of the SME status has to be considered according to both above-mentioned regulations. For example, if an SME is taken over by a large enterprise and becomes therefore a partner/linked enterprise as defined in Article 3 of the Annex I, it loses the SME status and it can't keep the SME status for two consecutive years as per Article 4 (2) of the Annex I. Such SME doesn't have to face the same problems anymore as it was the case before the acquisition and, in consequence, is not anymore a true SMEs according to the meaning of the SME definition.

The Polish Office of Competition and Consumer Protection expressed a similar view in its correspondence with the European Commission: "The financial and staff headcount data of a developing enterprise may fluctuate, and the transitional period (i.e. the requirement for such a trend to repeat for two consecutive reference periods) guarantees that the situation has become permanent. On the other hand, the economic situation and strength of enterprises that have been taken over or sold by another entity changes from day to day, and in principle is of a permanent nature, therefore there is no reason to change the status after two years. It should be remembered that, due to their size, SMEs have difficult access to capital, sales markets and distribution networks, or new technologies, and therefore they



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are entitled to use special aid instruments intended for them or from increased aid intensity. On the other hand, enterprises which, thanks to actual or legal links with other entities, do not experience these market failures, are not entitled to benefit from advantages dedicated to SMEs.”

In case of a **newly established enterprise** which has had no closure of accounts, the data to be considered are evaluated in good faith and according to best practices during the fiscal year on the basis of a business plan.

² **Reference period:** According to Article 4 (1) of the Annex I to the Commission Regulation (EU) No 651/2014, 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 annual turnover is calculated excluding value added tax (VAT) and other indirect taxes.

Where, at the accounting closing day, an enterprise finds that, on an annual basis, it has exceeded or fallen below the headcount or financial thresholds stated in Article 2 of the Annex I to the Commission Regulation (EU) No 651/2014, this will not result in the loss or acquisition of the status of medium-sized, small or micro-enterprise unless those thresholds are exceeded over two consecutive accounting periods. If it is not possible to confirm the acquisition of the status based on 3 accounting periods, the previous periods should be taken into account until the status is reached in two consecutive periods.

According to Article 4 (3) of the Annex I to the Commission Regulation (EU) No 651/2014, 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.

³ If the SME status has changed, the Applicant should provide a brief description of how the status of a micro/small/medium-sized/other than SME was acquired or lost.

⁴ **An autonomous enterprise:**



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-
- does not hold shares of a third enterprise and third enterprises do not hold shares of this enterprise;
 - holds less than 25% of the capital or voting rights (depending on which value is higher) in one or several enterprises and/or third enterprises hold less than 25% of the capital or voting rights (depending on which value is higher) in that enterprise;
 - if an enterprise is autonomous, it means that it's neither a partner enterprise nor a linked enterprise.

An **enterprise** may have several investors each holding less than 25% of the capital or voting power and still remain an autonomous enterprise, provided that these investors are not linked to each other (linked enterprises). If these investors are linked to each other, the enterprise will be considered as a partner or linked enterprise depending on individual circumstances.

Exceptions:

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:

- 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;
- universities or non-profit research centers;
- institutional investors, including regional development funds;
- autonomous local authorities with an annual budget of less than EUR 10 million and less than 5 000 inhabitants.

In order to verify whether an autonomous enterprise respects the limit values, the staff headcount and the financial data included in the financial statements are taken into account.



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⁵ **Partner enterprises** are all enterprises which are not classified as linked enterprises within the meaning of Article 3 (3) of the Annex I to the Commission Regulation No 651/2014 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 Article 3 (3) of the Annex I to the Commission Regulation No 651/2014), 25 % or more of the capital or voting rights of another enterprise (downstream enterprise).

In order to determine the SME status of a given enterprise, the data describing this enterprise should be accompanied by the data related to partner enterprises, proportionally to the percentage share in capital or voting rights (depending on which value is higher).

⁶ **Linked enterprises** are enterprises which have any of the following relationships with each other:

- an enterprise has a majority of the shareholders' or members' voting rights in another enterprise;
- an enterprise has the right to appoint or remove a majority of the members of the administrative, management or supervisory body of another enterprise;
- 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;
- 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.

Enterprises having any of the relationships described above through one or more other enterprises, or any one of the investors mentioned in Article 3 (2) of the Annex I to the Commission Regulation No 651/2014, 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, as



announced in Commission Notice on the definition of relevant market for the purposes of Community competition law (Journal of Laws WE C 372/5).

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

Exceptions:

There is a presumption that no dominant influence exists if the investors listed in Article 3 (2) (2nd paragraph) of the Annex I to the Commission Regulation (EU) No 651/2014 are not involving themselves directly or indirectly in the management of the enterprise in question, without prejudice to their rights as shareholders.

Except in the cases set out in Article 3 (2) (2nd paragraph) of Annex I to the Commission Regulation (EU) No 651/2014, 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.

Important! The main premise for recognizing an enterprise as linked is the issue of dominant influence. It is irrelevant whether the dominant enterprise is the Applicant or a third enterprise having a dominant influence on the Applicant, and therefore these dependencies should be considered in both directions.

When determining the links between entrepreneurs, one should consider also all possible links through natural persons or a group of natural persons (e.g. family members) including:

- economic links (achieving turnover from sales within related entities by natural persons or groups of persons; financial relations - the existence of mutual financial relations, indicating the possibility of supporting the Applicant's enterprise from related entities by natural persons or groups of natural persons, such as loans, loan guarantees, joint property or capital investments, lending, rental or lease agreements, franchise agreements, etc.; image of the entities - brand / name of the entity, entity logo, website address; common presence on the market - common clients, common suppliers, common service providers - e.g. accounting, advertising, legal, IT services, a common range of products or services offered),



-
- organizational links (for example, a spouse running his/her business on the same market or on an adjacent market).

Remaining in a network of linked enterprises influences the way of determining the level of staff headcount and financial data on which the possession or loss of the SME status depends. Determining the status of an SME requires the addition of 100% of staff headcount, annual turnover or balance sheet value of the enterprise which holds the majority of votes in the audited enterprise, or 100% of the value of staff headcount, annual turnover or balance sheet value of the enterprise in which the audited enterprise holds the majority of votes, to the data of the audited enterprise.

⁷ See endnote 2.

⁸ **Staff 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:

- employees;
- persons working for the enterprise, being subordinated to it and deemed to be employees under national law;
- owners-managers;
- partners engaging in a regular activity in the enterprise and benefiting from financial advantages from the enterprise.

Temporary employees should be included in the staff headcount and taken into consideration in the evaluation of the SME status.

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.

The general rule that should be applied when converting the work of a given person into numerical values of AWU should be a reflection of their contribution to the company's



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potential. 1 AWU is any person who regularly, full-time and throughout the reference year performs work, regardless of the legal form regulating the scope of his official duties for the enterprise. For people who have not worked a full year or are in part-time work, the AWU value is calculated as a fraction of their working time related to the time spent on the benchmark AWU (40 hours per week). However, in the case of people whose working time has not been standardized, the actual time of performing official duties up to a single AWU should be taken into account.

⁹ **The annual turnover** is determined by calculating the revenue that the company received from selling products and providing services during the year to be taken into account, minus any rebates. The turnover should be calculated without VAT and other indirect taxes. Annual turnover amounts for the accounting closing day, if expressed in PLN or other currency than EUR, are converted into EUR according to the relevant national regulations.

¹⁰ **The annual balance sheet total** relates to the value of the enterprise's main assets. The amounts for the accounting closing day, if expressed in PLN or other currency than EUR, are converted into EUR according to the relevant national regulations.

¹¹ The European Commission has no formal definition of "institutional investors", such investors are usually those who buy and sell securities on behalf of a large group of small investors and do not participate directly in the management of the enterprises they invest in. For example, pension funds and joint investment funds are institutional investors.

Regional development funds in Poland are entities operating on a regional level. Their objective is to develop entrepreneurship and create jobs. They do not trade securities on a large scale.

¹² **Relationship through a natural person:** enterprises which have one of the relationships mentioned in Article 3 (3) of the Annex I to the Commission Regulation (EU) No 651/2014 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.

Only relationships that relate to relationships through natural persons (having a decisive impact on the management / decision-making in given enterprises or having a majority stake



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/ shareholding) with other entities that operate on the same market or related markets are relevant here, where an adjacent market is a market that is directly adjacent to the production chain (e.g. energy production - energy distribution). Therefore, when filling in the SME Status Statement, it is the entrepreneur who has to decide whether the influence of a given natural person on another enterprise has the characteristics of the relationship described in Article 3 (3) of the Annex I to the Commission Regulation (EU) No 651/2014. If, for example, a person is the president of an enterprise, and at the same time, for example, is a member of the management board of another entity or is its owner, then these entities are considered to be related through that person if it exercises a dominant influence on the activities of these enterprises.

Important! Self-employed natural persons are treated as enterprises and not as natural persons referred to above.

¹³ Enterprises preparing consolidated financial statements or included in consolidated financial statements of a third enterprise are not considered as **autonomous enterprises**.

¹⁴ See endnote 13.

¹⁵ See endnote 2.

¹⁶ See endnote 8.

¹⁷ See endnote 9.

¹⁸ See endnote 10.

¹⁹ **Determining the data of a partner enterprise:**

In order to determine whether a given enterprise (which is a partner enterprise for third entities) fulfills the SME status, its **staff headcount and financial data should be added to the data of the partner enterprise proportionally to the percentage share in capital or voting rights** (depending on which value is higher). If a partner enterprise has a connection with another enterprise, the data (staff headcount, annual turnover, balance sheet total) of that enterprise are added to the data relating to the partner enterprise. The rules of establishing the data of an enterprise in a partner relationship are explained in Article 6 (2-3) of the Annex I to Commission Regulation (EU) No 651/2014.



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Example: if an enterprise holds 30% of shares in a third enterprise, it should add to their own data 30% of the staff headcount, annual turnover or balance sheet total of the third enterprise. If there is more than one such third enterprise, the same calculation should be made for all upstream and downstream enterprises.

Example:

A is the Applicant

A holds 33 % of shares in enterprise C

A holds 49 % of shares in enterprise D

B holds 25 % of shares in enterprise A

Enterprise	Staff headcount	Annual turnover	Annual balance sheet total
A's data	100 % of A's data	100 % of A's data	100 % of A's data
C's data	33 % of C's data	33 % of C's data	33 % of C's data
D's data	49 % of D's data	49 % of D's data	49 % of D's data
B's data	25 % of B's data	25 % of B's data	25 % of B's data

Data used to calculate A's status:

100 % A + 33 % C + 49 % D + 25 % B.

²⁰ See footnote 13.

²¹ See footnote 2.

²² See footnote 8.

²³ See footnote 9.

²⁴ See footnote 10.

²⁵ If an enterprise linked to the Applicant's enterprise is a partner/linked enterprise for a third entity, the data of that third entity (staff headcount, annual turnover, balance sheet) should be added to the data of the audited enterprise linked to the Applicant.



²⁶ In order to determine **whether a given enterprise being in a linked business relationship respects the limits set in the SME definition**, the Applicant should provide the data regarding the staff headcount, the annual turnover and the annual balance sheet total by adding 100% of the data of the given linked enterprise to its own data.

However, if the enterprise has no consolidated financial statements and the enterprise with which the Applicant has a relationship is also linked with other enterprises, the Applicant should add to its own data 100% of the data of all linked enterprises. The rules of establishing the data of partner enterprises are explained in Article 6 (2) of the Annex I to the Commission Regulation (EU) No 651/2014.

Example:

A is the Applicant

A holds 51% of C

A holds 100% of D

B holds 60% of A

In all cases the share is greater than 50% so in calculating the staff headcount and financial thresholds for A the Applicant should include 100% of all four enterprises.

Total data of the linked enterprise A:

100 % A + 100 % B + 100 % C + 100 % D.

Important! The exception are enterprises whose data are included in consolidated financial statements. In such cases, the data (referring to the above-mentioned amounts) resulting from the consolidated financial statements should be entered into the table. In this case, enter the data in question in the row "Summarized data of all linked enterprises*/Data from the consolidated financial statement of the linked enterprises" of the table.

Filling in other rows (regarding the individual entities included in a group preparing consolidated financial statements) is not necessary.

Where there is no data on the number of employees of a given enterprise in the consolidated financial statements, the staff headcount data is calculated by adding data from the enterprises to which the enterprise is linked.



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