



## ASSESSMENT OF THE SME STATUS AS ELIGIBILITY CRITERION

### Introduction

The assessment of the SME status defined in the Commission recommendation [2003/361/EC](#), as well as in Annex I of Commission Regulation (EU) No [651/2014](#)<sup>1</sup>, is key for operations where such SME status of beneficiaries is a condition for a grant or for higher aid intensity/co-financing. The consequences of non-compliance with the SME status are significant, leading to ineligible expenditure and operations. It is therefore important that applicants/beneficiaries are well informed on this condition and the SME status is timely and adequately verified by responsible authorities.

This present document sets out the main principles/elements regarding the assessment of the SME status of ESIF beneficiaries, with regard to the timing and scope of the assessment. In addition, it refers to certain particular areas/elements of the SME assessment where issues have been detected by EU and national auditors in the last years.

This document does not provide detailed guidance on the SME status. Such guidance is provided by the User guide to the SME definition referred to further below. Certain aspects are also further clarified in the Court judgements and Commission decision listed further below.

### Timing of the assessment

Where a condition for beneficiaries to be a SME applies, this condition has to be fulfilled at the date of granting the aid, i.e. the date when the legal right to receive the aid is conferred on the beneficiary under the applicable national legal regime<sup>2</sup>.

Unless stated otherwise in the national/OP rules, there is no requirement to maintain the SME status during the entire project implementation or durability period.

Consequently, the applicants/beneficiaries are in general requested to confirm their SME status (usually in a form of self-declaration) when submitting the project application. In this respect, it is important that the responsible national authorities provide to the

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<sup>1</sup> Micro, small and medium-sized enterprises (SME) defined in the Commission recommendation [2003/361/EC](#) as well as in Annex I of Commission Regulation (EU) No [651/2014](#) (GBER) as 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.

<sup>2</sup> For example, if the legal right to receive the aid is conferred on the beneficiary in the moment the grant agreement is signed, that date is to be considered the date of granting the aid. Or, if such a right is conferred in the grant decision by the managing authority, then the date of this grant decision is to be considered the 'date of granting the aid'

applicants/beneficiaries comprehensive guidance on the self-assessment to be carried out before confirming their SME status, to prevent misstatements and ambiguities<sup>3</sup>.

Subsequently, the SME status should be assessed by the managing authority (MA) or its intermediate body (IB) during the process of selection of operations.

In addition, as in many cases the time elapsed between the submission of the project application and the signature of the grant agreement is rather substantial, the national authorities concerned should also address the risk of change of the SME status during this time period. This can be done for example by (1) requesting from the beneficiary an updated self-declaration at the time of signature of the grant agreement, (2) requesting the applicants to immediately notify any change of status after the date of the project application, up to the date of the grant signature or, (3) re-verifying the SME status during management verifications (e.g. at the time of the administrative verification of the first payment application from the beneficiary).

Moreover, the audit authority (AA) should also assess the SME status of the beneficiary during the audits of operations, as far as possible based on the files available at the MA/IB level (and depending on their completeness). This assessment should be included in the standard scope of the audit, where applicable.

The verification of the SME status carried out during management verifications and audits of operations addresses notably the risk of "artificial SME status" created/maintained only for the grant purposes<sup>4</sup>.

### **Scope of the assessment**

As already mentioned above, the SME status is usually claimed by the beneficiary via a self-declaration. However, based on experience<sup>5</sup>, in general such self-declarations of beneficiaries do not appear sufficient to draw adequate/reliable conclusions on the SME status. (The SME definition is quite complex and the beneficiaries often do not identify all partner and linked companies in their self-declaration and/or do not correctly calculate relevant thresholds).

Therefore, the national authorities (MA, IB and AA) should carry out further in-depth verifications based on the information provided by the beneficiary and use information from other available sources (e.g. Arachne, relevant national registers, specific dedicated web sites, companies web sites etc.) to assess whether the information from beneficiaries is correct and complete and the SME status can be indeed confirmed.

In this respect, with regard to the selection of operations (and also management verifications), the MA/IB, after reviewing for each project application the information provided in the beneficiary's self-declaration, should carry out the further in-depth verifications at least on a sample basis. It is recommended to select the sample based on a risk assessment, taking into account the risks related to this area (e.g. specifics of different types and sizes of companies, level of publicly disclosed information etc.) The element of randomness should also be considered.

With regard to the audits of operations, the AA should verify the SME status for all operations in their sample, where relevant (i.e. the in-depth verification should be carried out for all

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<sup>3</sup> A self-declaration template with one line declaring the SME status has a different value than a detailed self-assessment questionnaire leading the beneficiary through the SME definition.

<sup>4</sup> E.g. cases of agreed company acquisitions formally postponed after the date of the grant agreement.

<sup>5</sup> Findings from recent EC and ECA audits.

operations in the sample where the SME status of the beneficiary has been set as an eligibility criterion).

### **Specific considerations**

- ✓ In addition to the legal entity of the beneficiary itself, also the following enterprises should be taken into account for the assessment:
  - Partner enterprises of the beneficiary situated immediately upstream or downstream from the beneficiary and enterprises which are linked to these partner enterprises.
  - Enterprises linked (directly or indirectly) to the beneficiary and partner enterprises of these linked enterprises, situated immediately upstream or downstream from them.
- ✓ Enterprises linked to the beneficiary through a natural person or group of natural persons acting jointly, should also be considered if they engage in their activity or in part of their activity in the same relevant market or in adjacent markets. An ownership of the enterprise by such natural person(s) is not a condition for the link.
- ✓ Data from at least the two latest closed accounting years should be considered for the assessment<sup>6</sup>.
- ✓ A change of the ownership structure of the beneficiary has an immediate impact on the SME status (i.e. in such cases the SME status is to be assessed on the basis of the ownership structure valid at the time of granting the aid and not at the time of closure of the latest accounts).
- ✓ For newly created enterprises, estimates of the relevant data (e.g. from business plans) should be considered for the calculation of the respective thresholds.

### **Sources of information**

DG GROW – web page dedicated to SME

([https://ec.europa.eu/growth/smes/business-friendly-environment/sme-definition\\_en](https://ec.europa.eu/growth/smes/business-friendly-environment/sme-definition_en))

including [User guide to the SME Definition](#) (issued by the Commission, providing general guidelines for enterprises and other stakeholders when applying the SME Definition)

ECJ cases:

- [C-110/13 HaTeFo](#)
- [T-675/13 - K Chimica v ECHA](#)
- [T-587/14 Crosfield Italia v ECHA](#)
- [T-604/15 \(ERTICO\)](#)
- [C-91/01 Italy v Commission](#)

[Commission Decision](#) of 7 June 2006 on State Aid No C 8/2005 (ex N 451/2004).

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<sup>6</sup> Paragraph 1 of Article 4 of the SME definition refers only to the last closed accounting year, but paragraph 2 of the same article "adds" also previous year(s), i.e. condition of "two consecutive accounting periods".