



# Annex I art. 6 Establishing data of the enterprise

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Article	Annex I article 6
Key words	<i>other data of the enterprise", data of the enterprise, SME, accounts, consolidated accounts,</i>
Member State	CZ
Question	<p>Dear representativess of DG Competition,</p> <p>We kindly ask your services in the European Commission to provide us with the reply to the below mentioned issue related to the determination of the status of an SME.</p> <p><u>Background:</u></p> <p>A national control body assessed the SME status of a beneficiary in line with the Annex I of the GBER regulation No. 651/2014 where it is stated the following in the Article 6: <i>„...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...”</i> And furthermore in the same regulation and same article it is stated the following: <i>„...To the data referred to in the first and second subparagraph are 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...”</i></p> <p>Firstly, the control body obtained consolidated accounts (holding structure) of the beneficiary and accounts of another linked enterprise through a natural person. These are standard accounting documents existing at the moment of the submission of the project application. The project application was submitted on 31 August 2015. Based on these two sets of accounts added together the control body assessed the SME status of the beneficiary and concluded in the control report that the enterprise does not meet the SME status in terms of exceeding the threshold of annual turnover and annual balance sheet.</p> <p>Secondly, still during the ongoing control procedure, the controlled body provided an internal document confirmed by an audit company on 19 July 2018. Further, after the control report was finalised, the controlled body provided another internal document (signed by a tax consultancy company) dated 10 June 2015. In both of these documents data were recalculated in such a way as it would appear that if the control body would compile the consolidated accounts of the beneficiary (holding) plus the linked enterprise through a natural person mentioned above. According to the opinion of the controlled body these data were calculated from the two sets of accounts mentioned above for the purpose of establishing the criteria of the annual turnover and annual balance sheet in relation to the determination of the SME status and according to the controlled body it serves for internal needs of the enterprise..</p>

	<p>Our question:</p> <p>Is it possible to take into account data from documents which was not part of the <b>accounts</b> or <b>consolidated accounts</b> of the enterprise under assessment and this data was only <u>calculated</u> from these standard accounting documents for the purposes of determination of the SME status? The above stated documents provided by the controlled body do not constitute <b>the accounts</b> nor <b>the consolidated accounts</b> of the enterprise and were prepared solely for the internal needs of the enterprise in question. However, they could constitute (depending on the definition) „<i>other data of the enterprise</i>“ according to the Annex I of the GBER regulation.</p> <p>Articles 6.2 to 6.4 of the Annex I of the GBER regulation No. 651 /2014 states that the data of an enterprise having partner enterprises or linked enterprises are determined:</p> <ul style="list-style-type: none"><li>- <u>on the basis of the accounts and <b>other data of the enterprise</b></u></li><li>or</li><li>- <u>where they exist, the consolidated accounts of the enterprise, or the consolidated accounts in which the enterprise is included through consolidation</u></li></ul> <p>In our opinion only duly established accounts or consolidated accounts and other data of the enterprise (according to the established rules) may be taken into account as relevant documents for assessing the size of an enterprise and not an internal document of the enterprise in question. In the absence of consolidated accounts only duly established accounts and other data of the enterprise can be used.</p> <p><i>In this context we kindly ask for the interpretation of what kind of documents may be considered under the wording stated in Article 6 "other data of the enterprise". Therefore, in view of DG COMP, is it possible to consider the above stated internal documents (confirmed by an audit company, or respectively by a tax consultancy company) as "other data of the enterprise" according to Annex I of the GBER regulation? From the content of the project application it is clear that not all the enterprises that are reflected in these additional internal documents were taken into account in the approval of the initial project application.</i></p>
Creation Date	2018.11.09

COMP Reply	<p>The eWiki tool is intended to be used for guidance on abstract questions on the interpretation of State aid rules. This means that the Commission services cannot provide answers concerning the concrete application of these rules in specific cases. Such concrete cases should rather be assessed in a pre-notification procedure. However, we understand your question as asking whether, generally speaking, "other data" of undertakings (other than the accounts or consolidated accounts) can be taken into account for the assessment of whether this undertaking constitutes an SME, especially in situations where this assessment leads to different conclusions depending on whether the accounts/consolidated accounts or such other data are taken into account.</p> <p>Article 6 of Annex I to the GBER gives a clear preference to taking consolidated accounts into account and indicates that the assessment of whether an entity constitutes an SME should only be done on the basis of its accounts or other data if such consolidated accounts are not available. In case such consolidated accounts do not exist and, as in the situation described in your question, the assessment on the basis of the accounts of the aid applicant and another enterprise(s) linked to it comes to the conclusion that the applicant does not constitute an SME, it would be difficult to accept an alternative conclusion based on "other data of the enterprise" (i.e. a conclusion contradicting the conclusion based on the accounts of the enterprises involved).</p> <p>However, since the purpose of any assessment of whether an undertaking fulfills the conditions of constituting an SME or not is always to ensure that measures intended to benefit SMEs genuinely (and only) benefit undertakings for which their size actually represents a handicap (see also T-137/02 Pollmeier, para. 61), the use of other, internal, documents of a company cannot generally be excluded from the assessment. Yet, as already stated above, in situations in which an analysis on the basis of the accounts (or consolidated accounts) leads to a different conclusion than one on the basis of such other internal documents, particularly strong arguments would need to be presented to convincingly prove that these internal documents, rather than the official accounts of the company, represent the genuine situation of the aid applicant (or group it belongs to).</p> <p><i>Disclaimer: This reply does not represent a formal and definite position of the European Commission but is only an informal guidance provided by the services of DG Competition to facilitate the application of the GBER. It is therefore not binding and cannot create legal certainty or legitimate expectations.</i></p>
COMP Reply date	2018.12.19
COMP Responsible	 <a href="#">COMPsupport ESTATE-AID-WIKI</a>

<sup>1</sup> AT, BE, BG, HR, CY, CZ, DE, DK, EE, EFTA, EL, ES, FI, FR, HU, IE, IT, LT, LU, LV, MT, NL, PL, PT, RO, SK, SE, SI, UK.