

# SOTECIN FACTORY

Open Call 2 for Social Innovators

Annex 5: Declaration of Conducting Business (SME)



## DECLARATION OF CONDUCTING BUSINESS (ONLY FOR SME)

### Glossary

**SME** – an entity that complies with the following European Commission Recommendation 2003/361/EC criteria:

- Headcount in Annual Work Unit (AWU) less than 250.
- Annual turnover less or equal to €50 million OR annual balance sheet total less or equal to €43 million

**Dominant influence** – An influence that can be exercised over a company to achieve the operating and financial policies desired by the holder of the influence, notwithstanding the rights or influence of any other party. If one organization exerts such a dominant influence over a company, this company should be treated as a subsidiary of the organization and consolidated into the group accounts of the organization – in other words, it should be treated as a linked entity.

**Holding** – share of capital or voting rights, whichever is higher.

**Partner enterprises** - If holdings with other enterprises rise to at least 25% but not more than 50%, the enterprises in questions are treated as partner enterprises.

**Linked enterprises** – If holdings with other enterprises exceed the 50% threshold, these enterprises are considered linked enterprises.

**Autonomous enterprise** – If the enterprise is either completely independent or has one or more minority partnerships (each less than 25%) with other enterprises, it is considered an autonomous enterprise. These are also some cases where an enterprise is considered autonomous even if the holding thresholds of 25% and 50% are exceeded – if that percentage is held by the following categories of investors:

- I. Public investment corporations, venture capital companies, individuals or group 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 1,250,000€,
- II. Universities or non-profit research centres,
- III. Institutional investors, including regional development funds,
- IV. Autonomous local authorities with an annual budget of less than EUR 10 million and less than 5,000 inhabitants

**Consolidation** – to consolidate means to combine assets, liabilities and other financial items of two or more entities into one. In the context of financial accounting, the term consolidate often refers to the consolidation of financial statements wherein all subsidiaries report under the umbrella of a parent company. In case an enterprise draws up consolidated accounts voluntarily, without being required to do so under the Seventh Directive (Council Directive 83/349/EEC), the enterprise is not necessarily linked and can be considered only a partner.

**Headcount** – The number of people who are employed by a company.

**AWU (Annual Working Unit)** - 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.

**VAT Number** – A unique number that identifies a taxable person (business) or non-taxable legal entity that is registered for VAT. Every country issues its own national VAT number.

**Principal director** – Chairman, CEO, Director-General or equivalent.

## Declaration on information on the Legal Entity Status

### Precise identification of the applicant enterprise

Business name .....

Address (of registered office) .....

Registration / VAT number .....

Names and titles of the principal director(s) .....

### Type of applicant (see explanatory note)

Tick to indicate which case(s) applies to the applicant enterprise:

<input type="radio"/> 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.
<input type="radio"/> Partner enterprise <input type="radio"/> Linked 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.

\*In order for an applicant to be considered a Freelancer, they must not exert dominant influence in another enterprise, nor have a holding of 25% or more in another enterprise.

### Data used to determine the category of enterprise

Calculated according to Article 6 of the Annex to the Commission Recommendation 2003/361/EC on the SME definition

Reference period (*)		
Headcount (AWU)	Annual turnover (**)	Balance sheet total (**)

(\*) All data must be relating to the last approved accounting period and calculated on an annual basis. In the case of newly established enterprises whose accounts have not yet been approved, the data to apply shall be derived from a reliable estimate made in the course of the financial year.

(\*\*) EUR 1,000.

**Important:**

Compared to the previous accounting period there is a change regarding the data, which could result in a change of category of the applicant enterprise (micro, small, medium-sized or big enterprise).

No

Yes (in this case fill in and attach a declaration regarding the previous accounting period).

**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

## EXPLANATORY NOTE ON THE TYPES OF ENTERPRISES TAKEN INTO ACCOUNT FOR CALCULATING THE HEADCOUNT AND THE FINANCIAL AMOUNTS

In order for an applicant to be considered a Freelancer, they must not exert dominant influence in another enterprise, nor have a holding of 25% or more in another enterprise.

### I ENTERPRISES

The definition of an SME<sup>1</sup> 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<sup>2</sup>.

#### **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%<sup>3</sup> or more in any other enterprise,
- and is not 25%<sup>3</sup> or more owned by any enterprise or public body or jointly by several linked enterprises or public bodies, apart from some exceptions<sup>4</sup>,
- 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<sup>5</sup>.

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<sup>1</sup> Henceforth in the text, the term "Definition" refers to the Annex to Commission Recommendation 2003/361/EC on the definition of SMEs.

<sup>2</sup> Definition, Article 3

<sup>3</sup> In terms of the share of the capital or voting rights, whichever is higher is applied. To this percentage should be added the holding in that same enterprise of each enterprise, which is linked to the holding company (Definition, Article 3 paragraph 2)

<sup>4</sup> An enterprise may continue being considered as autonomous when this 25% threshold is reached or exceeded, if that percentage is held by the following categories of investors (provided that those are not linked with the applicant enterprise):

- a) public investment corporations, venture capital companies, individuals or groups of individuals with a regular venture capital investment activity who invest equity capital in unquoted businesses ("business angels"), provided the total investment of those business angels in the same enterprise is less than EUR 1 250 000,
- b) universities or non-profit research centres,
- c) institutional investors, including regional development funds,
- d) autonomous local authorities with an annual budget of less than EUR 10 million and less than 5000 inhabitants

<sup>5</sup> If the registered office of the enterprise is situated in a Member State which has provided for an exception to the requirement to draw up such accounts pursuant to the Seventh Council Directive 83/349/EEC of 13 June 1983, the enterprise should nevertheless check specifically whether it does not meet one or other of the conditions laid down in Article 3 paragraph 3 of the Definition.

- There are also some very rare cases in which an enterprise may be considered linked to another enterprise through a person or a group of natural persons acting jointly (Definition, Article 3 paragraph 3).

- Conversely, there are very few cases of enterprises drawing up consolidated accounts voluntarily, without being required to do so under the Seventh Directive. In that case, the enterprise is not necessarily linked and can consider itself only a partner. To determine whether the enterprise is linked or not, in each of the three situations it should be checked whether or not the enterprise meets one or other of the conditions laid down in

## Type 2: Partner Enterprise

This type represents the situation of enterprises which establish major financial partnerships with other enterprises, without the one exercising effective direct or indirect control over the other. Partners are enterprises which are not autonomous, but which are not linked to one another.

The applicant enterprise is a partner of another enterprise if:

- it has a holding or voting rights equal to or greater than 25% in the other enterprise, or the other enterprise has a holding or voting rights equal to or greater than 25% in the applicant enterprise,
- the enterprises are not linked enterprises within the meaning defined below, which means, among other things, that the voting rights of one in the other do not exceed 50%,
- 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<sup>5</sup>.

## Type 3: Linked Enterprise

This type corresponds to the economic situation of enterprises which form a group through the direct or indirect **control of the majority of the voting rights** (including through agreements or, in certain cases, through natural persons as shareholders), or through the ability to exercise a dominant influence on an enterprise. Such cases are thus less frequent than the two preceding types.

In order to avoid difficulties of interpretation for enterprises, the Commission has defined this type of enterprise by taking over – wherever they are suitable for the purposes of the Definition – the conditions set out in Article 1 of Council Directive 83/349/EEC on consolidated accounts<sup>6</sup>, which has been applied for many years.

An enterprise thus generally knows immediately that it is linked, since it is already **required** under that Directive to **draw up consolidated accounts** or is included by consolidation in the accounts of an enterprise which is required to draw up such consolidated accounts.

The only two cases, which are however not very frequent, in which an enterprise can be considered linked although it is not already required to draw up consolidated accounts, are described in the first two indents of endnote 5 of this explanatory note. In those cases, the enterprise should check whether it meets one or other of the conditions set out in Article 3 paragraph 3 of the Definition.

## III. THE HEADCOUNT AND THE ANNUAL WORK UNITS<sup>7</sup>

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,

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

<sup>6</sup> 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, 27/10/01, p. 28).

<sup>7</sup> Definition, Article 5.

- 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.

ANNEX TO THE DECLARATION CALCULATION FOR THE PARTNER OR LINKED TYPE OF ENTREPRISE

**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 (see explanatory note):**

<b>Reference period<sup>8</sup>:</b>			
	<b>Headcount (AWU)</b>	<b>Annual turnover (*)</b>	<b>Balance sheet total (*)</b>
1. Data <sup>9</sup> of the applicant enterprise or consolidated accounts (copy data from box B (1) in annex B)			
2. Proportionally aggregated data of all partner enterprises (if any) (copy data from box A in annex A)			
3. Added up data of all linked enterprises (if any) – if not included by consolidation in line 1 (copy data from box B(2) in annex B)			
<b>TOTAL</b>			
<b>(*) EUR 1,000</b>			

<sup>8</sup> 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.

<sup>9</sup> The data of the enterprise, including the headcount, are determined on the basis of the accounts and other data of the enterprise or, where they exist, the consolidated accounts of the enterprise, or the consolidated accounts in which the enterprise is included through consolidation.



The data entered in the "Total" row of the above table should be entered in the box "Data used to determine the category of enterprise" in the declaration.

ANNEX A

**Partner enterprises**

For each enterprise for which a 'partnership sheet' has been completed (one sheet for each partner enterprise of the applicant enterprise and for any partner enterprises of any linked enterprise, of which the data is not yet included in the consolidated accounts of that linked enterprise), the data in the 'partnership box' in question should be entered in the summary table below:

**BOX A**

<b>Partner enterprise (name/identification )</b>	<b>Headcount (AWU)</b>	<b>Annual turnover (*)</b>	<b>Balance sheet total (*)</b>
1.			
2.			
3.			
4.			
5.			
<b>TOTAL</b>			
(*) EUR 1,000			

(attach sheets or expand the present table, if necessary)

**Reminder:**

This data is the result of a proportional calculation done on the 'partnership sheet' for each direct or indirect partner enterprise.

The data entered in the "Total" row of the above table should be entered in line 2 (regarding partner enterprises) of the table in the Annex to the declaration.

## PARTNERSHIP SHEET

### 1. Precise identification of the applicant enterprise

Business name .....

Address (of registered office) .....

Registration/VAT number .....

Names and titles of the principal director(s).....

### 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. If necessary, add “linkage sheets” for the enterprises which are not yet included through consolidation.

### 3. Proportional calculation

a) Indicate precisely the holding 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.

ANNEX B

Linked enterprises

**DETERMINE THE CASE APPLICABLE TO THE APPLICANT ENTERPRISE:**

<input type="radio"/> <b>Case 1</b>	The applicant enterprise draws up consolidated accounts or is included by consolidation in the consolidated accounts of another enterprise. (Box B(1))
<input type="radio"/> <b>Case 2</b>	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.

**CALCULATION METHODS FOR EACH CASE:**

**In case 1:** The consolidated accounts serve as the basis for the calculation. Fill in Box B(1) below.

<b>Box B(1)</b>			
	<b>Headcount (*)</b>	<b>Annual turnover (**)</b>	<b>Balance sheet total (**)</b>
<b>Total</b>			
(*) 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.

<b>Identification of the enterprises included through consolidation</b>			
<b>Linked enterprise (name / identification)</b>	<b>Address (of registered office)</b>	<b>Registration / VAT number (*)</b>	<b>Names and titles of the principal director(s) (**)</b>
1.			
2.			
3.			
4.			
5.			
6.			
<b>Total</b>			
(*) 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.

<b>Box B(2)</b>			
<b>Enterprise No.:</b>	<b>Headcount (AWU)</b>	<b>Annual turnover (**)</b>	<b>Balance sheet total (**)</b>
1 (*)			
2 (*)			
3 (*)			
<b>Total</b>			
(*) 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 applicant enterprise**

Name or Business name .....

Address (of registered office) .....

Registration/VAT number .....

Names and titles of the principal director(s) .....

**2. Data on enterprise**

Reference period			
	Headcount (AWU)	Annual turnover (*)	Balance sheet total (**)
<b>Total</b>			
(*) 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.

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.