

Definition of what is a “company facing difficulties” under EU law

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The definition of “companies facing difficulties” under EU law depends on whether a company qualifies as a “Small and Medium-sized Enterprises” (hereafter, a “SME”) or not

Identification of a “company facing difficulties”

<p>Criteria for establishing that an SME is facing financial difficulties</p>	<ul style="list-style-type: none"> - the net equity of a company fell below half of its share capital as of 31 December 2019 (the share capital includes share premiums, where applicable); or - the company is subject to insolvency proceedings or fulfills the conditions applicable under its national law for allowing its creditors to request the opening of insolvency proceedings against it; or - the company benefited from financial means (in the form of a loan or guarantee) in order to allow it to face financial difficulties and has not yet repaid the related loan or released the related guarantee, or the company benefited from other restructuring measures and is still subject to a restructuring plan
<p>Additional criteria for non-SMEs</p>	<p>Non-SMEs need, in addition to the above mentioned criteria, to meet the following additional criteria in order to fall within the scope of a “company facing difficulties” under the EU law:</p> <p>Over the last two financial years (i.e. 2018 and 2019) the company's financial accounts certified by a statutory auditor (or, if not available, the provisional accounts together with a certificate from an auditor) shows that:</p> <ul style="list-style-type: none"> - the company's debt to equity ratio exceeds 7.5; and - the company's interest coverage ratio, calculated on the basis of the EBITDA, is less than 1.0

Identification as a SME

<p>General definition</p>	<p>The category of micro, small and medium-sized enterprises (SMEs) consists of enterprises that:</p> <ul style="list-style-type: none"> - have less than 250 employees; and - whose annual turnover does not exceed EUR 50 million or whose annual balance sheet does not in total exceed EUR 43 million
<p>Calculation methods</p>	<p>In order to assess whether the above mentioned thresholds used to determine whether an enterprise qualifies as a SME are met, it is necessary to understand whether the concerned company operates as:</p> <ul style="list-style-type: none"> - an autonomous enterprise (“<i>entreprise autonome</i>”), which is an enterprise that: <ul style="list-style-type: none"> (i) does not own any stake exceeding 25% of the share capital and/or voting rights in another enterprise; (ii) is not held directly at 25% or greater than 25% by another enterprise or jointly by several enterprises owning greater than 25% of its share capital; and (iii) 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.

	<ul style="list-style-type: none"> - a partner company (“<i>entreprise partenaire</i>”), which is an enterprise that: <ul style="list-style-type: none"> (i) 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 enterprise; (ii) 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 (iii) 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. - an affiliated company (“<i>entreprise liée</i>”), which is a type of enterprise that 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. <p>Where an enterprise is deemed autonomous, the number of employees and the financial data used to calculate the above-mentioned thresholds will be those appearing in its annual financial accounts.</p> <p>Partner companies shall add to their own data a proportion of the workforce and financial data of their respective shareholdings in other entities in calculating those thresholds. Such proportion shall reflect the percentage of shares and/or voting rights so held (whichever is higher).</p> <p>Affiliated companies shall add to their own data 100 % of the workforce and financial data of their affiliates in calculating the thresholds.</p> <p><i>For more details on these calculation modalities: User's Guide for the definition of SMEs, EU publication.</i></p>
<p>Sources</p>	<ul style="list-style-type: none"> - Article 2 of the Annex to Recommendation 2003/361/EC. - User's guide to the definition of SMEs, EU publication. - 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. - State aid SA.56709 (2020/N) - France - Covid-19: Plan to secure corporate financing: European Commission publication dated 21 March 2020.