



The new size criteria applicable to companies

The Belgian law of 18 December 2015 and the Royal Decree of 18 December 2015¹ implement Directive 2013/34/EU of the European Parliament and of the Council dated 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (the « **Law** »).

The Law amends the size criteria applicable to companies and introduces a new category of companies, namely the « micro-companies ».

This new classification applies to the financial years which start as of 1 January 2016².

Article 15 of the Belgian Companies Code (« **BCC** ») maintains the fundamental distinction between, on the one hand, the « small companies » and, on the other hand, the « large companies ». Under this provision, companies which do not fall within the category of « small companies » automatically qualify as « large companies ».

We will first examine this new concept of « micro-companies » (1) and then analyze the amended concepts of « small companies » (2) and « reduced-size groups » (3). Finally, we will review the amendment regarding the criteria applicable for the determination of the company's size (4).

1. A new category of companies: the micro-companies

The Law introduces a new Article 15/1 in the BCC which provides for a new category of companies, the so-called micro-companies.

The micro-companies correspond to a sub-category of « small companies »³. Therefore, they benefit from all the advantages pertaining to small companies. Furthermore, they have the possibility to draw up their annual accounts on the basis of a very simplified accounting plan, entitled the « micro-scheme »⁴.

¹ Belgian Official Gazette, dd. 30 December 2015.

² Except for articles 15, paragraph 2; 15/1, paragraph 2 and 16, paragraph 2, subparagraph 2 (« consistency principle ») for which the Law provided for a transitional regime (see section 4); Article 63 « Final provisions » of the Law.

³ Accounting Standards Commission, opinion nr. 2016/3, dd. 13.04.2016, « Application des critères de taille visés aux articles 15 et 15/1 C.Soc ».

In order to qualify as a « micro-company », the companies must benefit from a separate legal personality. Moreover, upon closing of their annual accounts, said companies must not have exceeded, during two consecutive financial years, more than one of the following criteria:

- a maximum annual average number of 10 employees;
- a maximum annual turnover of 700.000 euros (excl. VAT);
- a maximum total balance sheet of 350.000 euros.

Moreover, a company cannot qualify as a « micro-company » if it is a member of a group of companies. As a result, a parent company or a subsidiary that is a member of a group can never benefit from the so-called « micro-company » qualification.

2. The revised concept of small companies

The thresholds referred to in Article 15 BCC have been increased.

The **small companies** are the entities with legal personality that, upon closing of their last financial year, have not exceeded, during two consecutive financial years, more than one of the following criteria:

- a maximum annual average number of 50 employees;
- a maximum annual turnover of 9.000.000 euros (excl. VAT) (previously 7.300.000 euros);
- a maximum total balance sheet of 4.500.000 euros (previously 3.650.000 euros).

In principle, the analysis of these criteria must be carried out on an individual basis (non-consolidated). As an exception to this rule, the analysis of the aforementioned criteria in the hands of parent companies must be performed on a consolidated basis. This method of analysis of the thresholds will be further discussed below (see section 4).

3. The concept of reduced-size groups

The concept of « small groups », previously provided for in Article 16 BCC, has been deleted and replaced by the notion « reduced-size groups ». Beyond the change of name, the thresholds referred to in Article 16 BCC have been increased.

A group can now qualify as « reduced-size groups », when a company and its subsidiaries (or the companies which together form a consortium) do not exceed, on a consolidated basis and during two consecutive financial years, more than one of the following criteria:

- a maximum annual average number of 250 employees;
- a maximum annual turnover of 34.000.000 euros (excl. VAT) (previously 29.200.000 euros);
- a maximum total balance sheet of 17.000.000 euros (previously 14.600.000 euros).

⁴ The micro-scheme applicable to the micro-companies is provided for by Articles 82, paragraph 2/1 and 94/3 of the Royal Decree implementing the Companies Code ; Royal Decree dd. 18 December 2015, comments on the Articles : « *Les microsociétés qui utilisent le microsystème bénéficient dès lors d'une simplification, dans ce sens, qu'elles peuvent limiter l'annexe à leurs comptes annuels aux informations visées à l'article 94/3 nouveau. Cette simplification permet aux microsociétés de se limiter à certaines informations relatives aux règles d'évaluation, à l'état des immobilisations, aux droits et engagements hors bilan, aux rémunérations des membres des organes de la société et aux actions propres* ».

Apart from the increase of the thresholds, the new concept of « reduced-size groups » does not bring any substantial amendments in comparison with the former concept of « small groups ».

4. Amendments regarding the application of the thresholds

After an inertia of more than ten years, the Law finally amended the thresholds applicable to small companies and reduced-size groups in order to align the relevant amounts on the increase of consumer price index.

Furthermore, a certain number of changes were made to the calculation method of said thresholds. These changes fall within the scope of the general objective of administrative simplification provided for in Directive 2013/34/EU of 26 June 2013⁵ and seek to reduce, as far as possible, administrative burdens which are imposed on small companies. These adaptations can be briefly summarized as follows⁶:

- the abolition of the rule stating that companies with an annual average number of more than **100 employees** automatically qualify as large companies⁷.
- the calculation of the size criteria relating to (i) micro-companies, (ii) small companies and (iii) reduced-size groups must be carried out on an **individual basis** and not on a consolidated basis.

However, one can note that the criteria regarding the turnover and the total balance sheet⁸ will continue to be computed on a consolidated basis in respect of (i) parent companies and (ii) companies which have been incorporated for the sole purpose of avoiding a specific qualification which would have forced them to disclose financial information.

Considering the abovementioned objective of reducing the administrative burden, a simplified calculation method has however been introduced for the assessment which has to be performed on a consolidated basis. In this respect, the parent company might decide to avoid computing the consolidated total balance sheet and the consolidated turnover by opting for a simple addition of the amounts of the turnover and of the total balance sheet of all affiliated companies. In this case, the thresholds relating to the total balance sheet and the net turnover will be increased by 20%⁹. For the purposes of this simplified calculation method, Article 15, paragraph 7, subparagraph 2 BCC states that companies which are part of a consortium can be assimilated to parent companies¹⁰.

- the overrun of more than one of the thresholds applicable to (i) micro-company, (ii) small companies and (iii) reduced-size groups, shall only have an impact on the corporate qualification if it occurs during a minimum of **two consecutive financial years** (the so-called « consistency principle »).

⁵ Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC.

⁶ Accounting Standards Commission, opinion nr. 2016/3, dd. 13.04.2016, « Application des critères de taille visés aux articles 15 et 15/1 C.Soc ».

⁷ Former version of Article 15, paragraph 1 BCC.

⁸ With regard to the number of employees, the annual average number of employees for each affiliated companies is added.

⁹ Article 15, paragraph 6, subparagraph 2 BCC; annual turnover (excl. VAT) : 10.800.000 euros and total balance sheet : 5.400.000 euros.

¹⁰ There is a « consortium » when one company and one or more other companies of Belgian or foreign law, which are not subsidiaries of each other or of a same company, are placed under a single direction (see Article 10 BCC: « § 2. Ces sociétés sont présumées, de manière irréfragable, être placées sous une direction unique : 1° lorsque la direction unique de ces sociétés résulte de contrats conclus entre ces sociétés ou de clauses statutaires, ou, 2° lorsque leurs organes d'administration sont composés en majorité des mêmes personnes. § 3. Des sociétés sont présumées, sauf preuve contraire, être placées sous une direction unique, lorsque leurs actions, parts ou droits d'associés sont détenus en majorité par les mêmes personnes (...) »).

For instance, a small company will only be deprived of its corporate qualification as from the financial year following the financial year during which, for the second time, the thresholds have been exceeded. Should this small company exceed said thresholds only one time, it will, however, continue to benefit from its status of “small company” and will not be requalified as a “large company”.

As a matter of principle, the companies are therefore deemed to qualify as “small companies”. The latter will only lose their status if the relevant criteria are exceeded during at least two consecutive financial years¹¹. In the light of the foregoing, one can observe that the Law rebuts the former presumption under which all companies qualified as large companies unless they fulfilled the criteria provided for in Article 15 BCC.

With regard to the entry into force of the consistency principle, the Law provides for a transitional regime. For the first financial year starting after 31 December 2015, it must only be determined if the company exceeds more than one of the thresholds provided for in article 15 (or 15/1) BCC at the balance sheet date of the last completed financial year.

- the number of employees is calculated on the basis of the data registered in the **DIMONA database**. Previously, the number of employees taken into account derived from the number mentioned in the staff register. To the extent that the registration in the DIMONA database is not required, one will have to take into account the average number of full-time equivalent employees referred to in the staff register or in an equivalent document at the end of each month of the relevant financial year¹².

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¹¹Explanatory memorandum, *Parl. Doc. Ch.*, 2015-2016, n°54 – 1444/001, p. 8.

¹² Article 15, paragraph 5 BCC.