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EU JOINT TRANSFER PRICING FORUM

Background information on SMEs

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This revised document now includes a new contribution from Spain as well as new contributions from: Slovak Rep, Finland, Hungary, Bulgaria, Greece, Czech Rep, Sweden, Austria.

A new table has also been added in annex 3: answers received on the EUTPD questionnaire relating to SMEs.

The following statement is included in the JTPF work programme:

The JTPF noted that there was considerable interest in this topic and that the particular problems faced by SMEs needed to be identified to see if any solutions could be developed to ensure the better functioning of the internal market. A balance would need to be struck between removing disproportionate burdens on smaller businesses while not giving them an inappropriate competitive advantage over larger ones. To develop this topic, Business members in particular would consult widely with SMEs. If possible, the Commission would invite representatives of SMEs to present to the JTPF.

The aim of this document is to provide you with the contributions received from JTPF members on the SME topic. In annex three tables are included: one providing information on what is the SME definition applied by each MS for SMEs; a second table providing information on what specific measures related to transfer pricing have been designed for SMEs and the last table includes answers received on the EUTPD questionnaire.

More general background information about the whole subject of SMEs in the EU is available on Europa website:

http://ec.europa.eu/enterprise/policies/sme/index_en.htm

http://ec.europa.eu/internal_market/accounting/sme_accounting/index_en.htm

1. JTPF members' contributions

1.1. First Business members' contribution:

Business Members

New Topic (Small and Medium Sized Enterprises (SMEs): BM are still actively contemplating SME issues and one final position paper has not yet emerged. It was however thought useful to present two work in progress papers to inform discussion.

A. Objective

Main Objective of the Topic could be:

To minimise the compliance burden for SMEs

To ensure that the reduced burden is consistently implemented / accepted in all member countries in order to be effective.

B. Mutual Benefit

If the compliance burden can be significantly reduced this will equally significantly reduce the drain on resources for both SMEs and the fiscal authorities of the member states.

C. Definition of an SME

In order to achieve the objectives a clear and consistent definition of what constitutes an SME is required. We suggest to use the EU definition. This ensures consistent treatment across the European Union, thus avoiding new distortions.

- The definition is: employs fewer than 250 persons and
- has an annual turnover not exceeding EUR 50 million and/or
- an annual balance sheet total not exceeding EUR 43 million

For background also see:

http://ec.europa.eu/enterprise/policies/sme/files/sme_definition/sme_user_guide_en.pdf

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:124:0036:0041:en:PDF>

D. Simplification / Relief for the SME

To achieve a relief for the SME the OECD guidelines could be translated into the field of the SME. This could be achieved by simplification and / or the development of certain standards. Furthermore, procedures could be simplified and/or streamlined for example by introduction of an “APA - light”; a simplified procedure to get an agreement with the authorities.

E. Health warning; simplified rules do not prevent a potential audit on TP matters

In a potential final paper it should be made explicitly clear that potential simplified compliance requirements for SMEs does not shield them from tax audits on Transfer Pricing. The local tax authorities maintain the right to conduct a full audit, during which SMEs should be able to provide a reasonable rationale for the transfer pricing methodology applied.

F. The relationship SME versus MNE

Certain MNEs are an amalgamation of SMEs and as such compete directly with SMEs. An advantage accorded to SMEs but not to such MNEs will hinder competition and should be avoided.

1.2. *Second Business members' contribution:*

Small and Medium Sized Enterprises (SMEs) and Transfer Pricing

1. Background

The OECD Guidelines sets forth treatments of transfer pricing issues with respect to “multinational enterprises” (“MNEs”). Throughout the text, the Guidelines make no direct

distinction between types or sizes of MNEs. Thus, in theory, all enterprises, regardless of their size, are subject to the same principles and recommendations.

In reality, however, all MNEs are not in the same situation: the variation in sizes of the MNEs is vast in terms of revenue, assets, and number of employees and is subject to the types of activities performed. However, the compliance and procedural costs to meet the recommendations set forth under the OECD Guidelines can be viewed as the same. Thus in relative terms, the costs associated with transfer pricing matters for SME's can be disproportionately larger in comparison to MNEs for both the taxpayer and the tax administration.

For the taxpayer, the economic and human resources cost of complying with the arm's length principle increases in an inverse correlation to the size of the company, i.e. the smaller the company, the higher the marginal cost of compliance. The OECD Guidelines provide one paragraph on this subject:

“when requesting submission of these types of (transfer pricing) documents, the tax administration (should) take great care to balance its need for the documents against the cost and administrative burden to the taxpayer of creating or obtaining them.”¹

It should not be overlooked that the burden which lies with the tax administration is also significant; tax audits of SMEs carry larger costs in proportion to the size of the company and the amounts at stake.

Given the different costs for both sides, it seems reasonable to consider the overall approach to transfer pricing for SMEs and envisage different requirements/expectations for both parties concerned. The suggestion here is not to propose new transfer pricing rules but to recommend at a final stage Members States to adopt an approach that would consider the size of the MNEs in dealing with transfer pricing issues. This should not be viewed as a relaxation of application of the arm's length principle, but rather as a pragmatic and more realistic approach to deal with transfer pricing matters.

2. Lack of common definition of SMEs in European Union

From a pure State perspective, diversified approaches already exist in many European tax jurisdictions, to take into consideration the different corporate sizes existing within the European Union.

A Member State may apply different SMEs definitions concerning various aspects of its tax legislation, for example to grant particular tax exemptions or to set-up simplified tax return modalities.

Concerning the transfer pricing documentation, the United Kingdom (“UK”) contemplates certain exemptions for SMEs, which therefore will be allowed to provide none or a very limited transfer pricing documentation. However such UK SMEs would be liable to complete a full documentation in the other jurisdictions, as this exemption is not applicable in other countries.

¹ OECD Guidelines, 5.6

Similarly, France has introduced transfer pricing documentation requirements in early 2010 only for companies with turnover or total assets exceeding 400 million euro or which are (directly or indirectly) controlled by a company with turnover or total assets exceeding 400 million euro.

There are other examples of specific treatments of SMEs, such as a simplified accounting system allowed only for SMEs in France and UK. France has also set-up simplified procedures for advance pricing agreements (“APA”) for SMEs.

These examples point to the fact that the pragmatic reality of SMEs is sometime recognized at the national level, which need special considerations from an European tax point of view, particularly for transfer pricing practice.

Moreover, from an economic perspective, the SMEs in the European Union (comprised of 27 States) in 2005 represented 99% of the total European enterprises and provide for 75 million jobs. This makes the safeguard and the promotion of the SMEs one of the priorities, not only for the national governments but also for the European Union.

For these reasons, in 1996, the European Union Commission adopted a recommendation to establish the first common definition for an SME. On May 6, 2003, the Commission adopted a new recommendation that further distinguishes micro, SME and large enterprises. The new definition entered into force on January 1, 2005 and has been applied for policies, programs, and measures of the Commission related to the SMEs (see European Commission document entitled “The new SME Definition”).

The application of the similar considerations for SMEs on transfer pricing matters would not be out of context. SMEs continue to increase their international transactions to remain competitive within the market by taking advantage of economies of scales and other market opportunities. At the same time, they do not have the same resources to bear the high administrative burden to comply with the arm’s length principle.

3. Is a common “treatment” of SMEs in Transfer Pricing matters possible in the European Union?

A common “treatment” of SME at the EU level would require a common “definition”, i.e., a list of minimum criteria for an enterprise to qualify it as an SME for transfer pricing matters. Such shared definition would be necessary to identify which enterprises may be eligible for specific recommendations under the Forum works. As previously stated, there is currently no single definition which applies to all Members States.²

For instance, under the European Union recommendation, an enterprise is considered to be an SME if it employs less than 250 persons and has an annual turnover not exceeding 50 million euro or an annual balance sheet total not exceeding 43 million euro.

At the same time, in the UK for example, an EU Member State, SMEs are enterprise that meets at least two of the following criteria:

² Article 2 of the Annex of Recommendation 2003/361/EC

- Annual turnover must be no more than £ 25.9 million (approximately 28.6 million euro)
- Balance sheet total must be no more than £ 12.9 million (approximately 14.3 million euro)
- Average number of employees must be no more than 250.

To gain a clear understanding of the definition of SMEs currently being applied within the European Union, the Secretariat could request each Member State to indicate whether it applies the European Union definition for tax, particularly for transfer pricing purposes, or if it applies any other definition in internal law.

4. Need for considering special transfer pricing recommendations for SMEs

Once a common/tentative definition for SMEs is considered (consisting for example of a list of minimum criteria to be used), the next step would be to contemplate specific recommendations to address the resource constraints of SMEs in transfer pricing matters. Such recommendations would seek to set appropriate requirements that would be proportionate to the size of the companies.

Possible areas of work for the Forum, with the aim to determine possible recommendations for SMEs for before, during, and after the tax audit, are detailed below:

4.1 Before the tax audit

- Development of specific guidance for SMEs for Transfer Pricing:

In order to assist SMEs to gain better understanding of transfer pricing issues, the Forum may consider developing specific practical guidance for SMEs relating to transfer pricing. The idea is not be seen as deviating from the OECD Guidelines, but to facilitate the application of the Guidelines, and to provide reasonable protections (as much as possible) to SMEs against transfer pricing risks.

The French guidance for SMEs (“Les prix de transfert, guide à l’usage des PME” November 2006) could illustrate this approach.

The Secretariat could request the Member States to share their experience/practice in this regard.

- Agreement with the tax authorities prior to tax audit on transfer pricing matters:

One consideration would be to develop a simplified approach for APA procedures for SMEs at the EU level that specifies: i) the deadline for the completion of the APA; ii) the number of meetings with the tax administrations; iii) the required documentation to be submitted and iv) a reasonable delay to conclude.

It should be underlined that some Members States, such as France, have already developed specific simplified APAs for SMEs.

The Secretariat could ask the Member States to provide their respective experience/practice on APAs specific to SMEs.

Furthermore, given the various Member States' experiences at the national level, the Forum could study the opportunity to start a preliminary discussion to evaluate if a simplified version of the EU Code of Conduct on APAs adapted for SMEs is needed.

- Documentation supporting transfer pricing to be prepared before the tax audit:

A number of Member States already have specific transfer pricing documentation requirement rules. Within this context, a simplified documentation standard is recommended for SMEs. The requirement should include mapping of the intra-group transactions, a list of the available intra-group agreements, simplified functional analysis, and a description of the applied transfer pricing method.

The Forum could also start a discussion to assess the feasibility of a simplified version of the EUTPD.

4.2 During the tax audit

- A simplified procedure for the tax audit of SMEs

There should be a specific approach of tax audit on transfer pricing for SMEs designed to simplify the process. Request for benchmarking analysis by the tax authorities should be limited to specific circumstances for example: it might require that the results of the SME be considered by the tax authorities as being unusual relatively to i) the industry in which it operates, ii) the characteristics of the intra-group transactions, etc.

Considering the sensitivity of these subjects, the Forum could ask to the Member States if a preliminary discussion could be envisaged?

4.3 After the tax audit

- A simplified procedure to eliminate double taxation for SMEs.

The European Union Arbitration Convention includes a heavy process to manage for both companies and tax administrations.

A simplified practice for the Mutual Agreement Procedure ("MAP") launched by SMEs under the European Arbitration Convention could enable SMEs to ask more easily for relief in case of double taxation, following a reassessment on transfer pricing by one Member State. In this respect, special conditions could be granted to SMEs, in terms of timing, costs and documents to be provided, etc. For example, it could be useful to recommend to the Member States to have an accelerated process for SMEs as there are no substantial financial issues.

Could the Forum reflect this approach by providing a specific code of conduct (or a revised version of the existing one) in order to apply the European Arbitration Convention in a way to simplify the MAP process for SMEs?

5. A simplified approach based on the size of the intra-group transactions rather than on the size of the companies

Another approach would be to simplify the treatment of the intra-group transactions for SMEs by developing a safe harbor by setting certain thresholds, such as the nominal value of the transactions, value of the intercompany transactions relatively to the size of the SME, etc.

This latter approach, which is simpler than the former ones, may be easier to implement and could also be used as a preliminary approach. Considering that only 5% of European Union SMEs have reported having subsidiaries or joint ventures abroad (source: 2007 EU Observatory survey on SMEs), this approach may be a short-cut for a preliminary consensus on transfer pricing on SMEs.

1.3. Belgian contribution

Issue 1 : Awareness of SMEs of TP problems and issues

Issue 2 : related with issue 1, knowledge of TP and compliance burden

Issue 3 : Description of what constitutes a SME (not a definition, rather a description)

e.g. a SME, part of a large MNE, is it still a SME ?

Should we not rather speak of Small or Medium Sized groups with international activities ? (without actually defining what constitutes this group, figure wise) – the members of that group – for TP purposes – are considered SMEs

Issue 4 : in general, for financing needs, SMEs have less access to the open market than big MNEs. This leads to the issue that a lot of SMEs are either financed

- “intra group”; or
- “intra family”
- “intra shareholders”

This may lead to thin cap issues.

Issue 5 : burden of documentation, gathering of information and comparability issues (detailed public information on SMEs may even be less available than information on MNEs)

Issue 6 : in the field : SMEs tend to take more adversarial approach (it is the actual business of the owner) – how to avoid conflict

Issue 7 : comparability aspects : accounting and reporting requirements may be different, not always obliged to make financial records public. Are SME covered by commercial databases ? (see also issue # 5)

Issue 8 : field work : are SMEs actually audited for TP purposes ?

Very, very limited experience on TP audit on SMEs

Additional information provided by Belgium:

Belgian tax law and administrative practices contain a number of provisions or features specifically addressed towards SMEs. However, those provisions or features do not address transfer pricing.

Only the following administrative practices are SME specific .

Documentation :

Description	Nature	Definition SME
The tax administration should not request as much and detailed information from Smaller and less complex enterprises (SMEs included) than it does from large and complex enterprises. Facts and circumstance test	Administrative Circular letter nr. Ci.RH.421/580.456 (AOIF 40/2006) of 14 November 2006 Paragraphs 25 - 28	No clear cut definition; however guidance is given what should be understood as a SME such as : - Definition of small companies in company law (cf annex): - Definition mentioned in the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (2003/361/EC) (cf annex)

This measure is derived from the Resolution of the Council and of the representatives of the governments of the Member States, meeting within the Council, of 27 June 2006 on a code of conduct on transfer pricing documentation for associated enterprises in the European Union (EU TPD) (2006/C 176/01) where it is mentioned in point 5 of the COC : Member States undertake not to require smaller and less complex enterprises (including small and medium-sized enterprises) to produce the amount or complexity of documentation that might be expected from larger and more complex enterprises.

Performing a TP study on behalf of the SME

Description	Nature	Definition SME
The Advance Decision Service may perform a limited TP study (including comparability and functional analysis) on behalf of the SME	Administrative / only valid in case of an advance decision request	No clear cut definition / Whether the company involved can be categorised as an SME is assessed on a case by case basis

Summary of relevant Belgian Company Law

Small Companies

Art. 15, § 1, of the Company law provides that a small company does not exceed more than one of the following criteria for the last and one but last accounting period³ :

- Yearly average of numbers of staff employed : 50
- annual turnover (ex VAT) 7.300.000 eur;
- balance sheet total 3.650.000 eur, unless the yearly average on a yearly basis of numbers of staff employed exceeds 100

For companies that have started up their business these figures are estimated at the beginning of the accounting period (art. 15, § 2).

The amount of the annual turnover (ex VAT) is calculated pro rata temporis for accounting periods that are longer or shorter than twelve months; each month started is taken into consideration as one month (art. 15, § 3).

The average number of staff employed is the average at the end of each month of the accounting period of the staff employed, registered according to relevant Social Legislation, expressed in FTE. For part-time staff, the staff employed expressed in FTE is equal to the work volume related to full-time FTE, calculated on the basis of the number of working hours in relation to the normal work time of a comparable full time employee (reference employee). (art. 15, § 4, Alinea, 1 and 2))

When the revenue of the company is composed for more than 50 % of revenue that does not fall under the description of “turnover”, than for the purpose of applying the annual turnover test, the total of the revenue, with the exception of exceptional revenue, is taken into consideration (art. 15, §4, alinea 3).

The balance sheet total is the total book value of the assets as derived from the relevant legislation (art. 15, § 4, alinea 4).

When the company is associated with one or more other companies, the criteria in relation to turnover and balance sheet total are consolidated. For the criterion “numbers of staff employed”, the yearly average number of staff employed by each of the associated companies is combined (art. 15, § 5).

Small groups

art. 16, § 1 of the Company law defines a “small group” as a company that together with its subsidiaries or companies with which it forms a consortium⁴ do not exceed more than one of the following criteria on a consolidated basis⁵ :

- annual turnover (ex VAT) 29.200.000 eur;
- balance sheet total : 14.600.000 eur
- average on a yearly basis of number of staff employed : 250

³ The figures may be liable to change through Royal decree.

⁴ A consortium exists when two or more companies are placed under central control, although the companies themselves are no subsidiaries of one another.

⁵ The figures may be liable to change through Royal decree.

The figures are tested at the date of the annual accounts of the company under consolidation, on the basis of the annual accounts of the companies to be consolidated. Exceeding the criteria will have effect only when the criteria are exceeded for two years. (art. 16, § 2).

For "Average number of staff employed", "revenue, other than turnover", please refer to "small companies" (art. 16, § 3).

Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized Enterprises (2003/361/EC)

Article 2 :

Staff headcount and financial ceilings determining enterprise categories

1. The category of micro, small and medium-sized enterprises (SMEs) is made up of 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.

2. Within the SME category, a small enterprise is defined as an enterprise which employs fewer than 50 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 10 million.

3. Within the SME category, a micro-enterprise is defined as an enterprise which employs fewer than 10 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 2 million.

See the Official Journal of the European Union (L 124/36 of 20 May 2003) for more information.

1.4. Czech Republic

Definition of SMEs

In Czech Law there are few areas in which subjects are differed according their size.

Accounting

For the purpose of accounting there are 4 groups of persons according its size. Law gives them different duties according their sizes.

1) persons without duty to keep the accounts

- natural persons with turnover less then 25 000 000 Kč (approximately 96 000 EUR) which are not registered as an entrepreneurs in trade register. There are some other specific exceptions.

2) persons with duty to keep the accounts in easy form

Legal persons (domicile is not important) which are:

- clubs, communities, churches, public utilities and the like.
- housing associations
- municipalities
- further

3) persons with duty to keep the accounts fully

All subjects which don't fall into the other groups.

4) persons with duty to keep the accounts fully and with duty to audit of its financial statements

There are three conditions:

- total assets over 40 000 000 Kč (approximately 153 000 EUR),
- annual turnover over 80 000 000 (approximately 356 000 EUR),
- average number of employees over 50.

In the case of public limited liability company is enough fulfilling one condition. Rest subjects have to fulfill two conditions to have duty to audit its financial statements.

Summary:

For the purpose of SME the subjects in group 4) can be big enterprises and on the other hand the subjects in group 1) can be small enterprises and the rest fall into medium enterprise.

Law to support SMEs

Czech law which supporting SMEs refers to definition SME to Annex I of Commission Regulation (EC) No 70/2001.

Definition of small and medium-sized enterprises

(extract from the Commission Recommendation 96/280/EC of 3 April 1996 concerning the definition of small and medium-sized enterprises (OJ L 107, 30.4.1996, p. 4))

"Article 1

1. Small and medium-sized enterprises, hereinafter referred to as 'SMEs', are defined as enterprises which:

- have fewer than 250 employees, and
- have either,
 - an annual turnover not exceeding EUR 40 million, or
 - an annual balance-sheet total not exceeding EUR 27 million,
- conform to the criterion of independence as defined in paragraph 3.

2. Where it is necessary to distinguish between small and medium-sized enterprises, the 'small enterprise' is defined as an enterprise which:

- has fewer than 50 employees and
- has either,
 - an annual turnover not exceeding EUR 7 million, or
 - an annual balance-sheet total not exceeding EUR 5 million,
- conforms to the criterion of independence as defined in paragraph 3.

3. Independent enterprises are those which are not owned as to 25 % or more of the capital or the voting rights by one enterprise, or jointly by several enterprises, falling outside the definitions of an SME or a small enterprise, whichever may apply. This threshold may be exceeded in the following two cases:

- if the enterprise is held by public investment corporations, venture capital companies or institutional investors, provided no control is exercised either individually or jointly,

- if the capital is spread in such a way that it is not possible to determine by whom it is held and if the enterprise declares that it can legitimately presume that it is not owned as to 25 % or more by one enterprise, or jointly by several enterprises, falling outside the definitions of an SME or a small enterprise, whichever may apply.

4. In calculating the thresholds referred to in paragraphs 1 and 2, it is therefore necessary to cumulate the relevant figures for the beneficiary enterprise and for all the enterprises that it directly or indirectly controls through possession of 25 % or more of the capital or of the voting rights.

5. Where it is necessary to distinguish microenterprises from other SMEs, these are defined as enterprises having fewer than 10 employees.

6. Where, at the final balance sheet date, an enterprise exceeds or falls below the employee thresholds or financial ceilings, this is to result in its acquiring or losing the status of 'SME', 'medium-sized enterprise', 'small enterprise' or 'microenterprise' only if the phenomenon is repeated over two consecutive financial years.

7. The number of persons employed corresponds to the number of annual working units (AWU), that is to say, the number of full-time workers employed during one year with part-time and seasonal workers being fractions of AWU. The reference year to be considered is that of the last approved accounting period.

8. The turnover and balance sheet total thresholds are those of the last approved 12-month accounting period. In the case of newly-established enterprises whose accounts have not yet been approved, the thresholds to apply shall be derived from a reliable estimate made in the course of the financial year."

Proposal in area of tax procedure

Selected subject will have according the proposal the Special Tax Office with seat in Prague.

Selected subject will be:

- a) bank
- b) insurance company
- c) any other subject, with annual turnover over 1 000 000 000 Kč (approximately 38 314 000 EUR)

If this proposal will be successfully implemented there will be special jurisdiction over the biggest subjects. The special institution could lead to special procedure practice which could differ from practice of ordinary Tax Offices.

1.5. German contribution

Transfer pricing treatment of small and medium-sized enterprises in Germany

1. In General the German transfer pricing rules contain nothing specific relating to small or medium-sized enterprises (“SME”). For example, the German rules for profit adjustments are applicable to all enterprises and are not confined to enterprises that exceed certain turnover or profit thresholds. Accordingly, the arm’s length principle is the general yardstick for cross-border transactions of German enterprises irrespective of their size.
2. This being said, there is some alleviation for SME concerning the general documentation obligation in the field of transfer pricing. It follows from the principle of proportionality (which is rooted in German constitutional law) that the documentation obligation is less burdensome for SME than for big enterprises. This is also in line with sec. 5 of the EUTPD. Such alleviation can also be derived from the relevant German ordinance. According to this ordinance, the kind, content and scope of the documentation that must be provided depend on the circumstances of the individual case. This implies that as an assumption the documentation that has to be provided for by a small enterprise might be less complex than the one by a big enterprise.
3. It should also be noted that the possibility to use a masterfile for documentation purposes is of relevance for SME, too. Albeit the use of a masterfile is open to all enterprises irrespective of their size, it may be expected that it is especially useful for SME since the relative benefit of the corresponding reduction of administrative burden is higher for them than for big enterprises.

Finally, a specific alleviation in the German ordinance concerning “small enterprises” should be mentioned. This alleviation means, *inter alia*, that “small enterprises” are exempt from the obligation to provide and submit the documentation in writing. Instead, for them it is sufficient to provide the relevant information orally to the tax authorities and only submit all relevant (written) documents they actually possess. However, the definition of “small enterprises” in this specific German context differs from the EU concept of SME as this definition relates to the value of the enterprise’s cross-border transactions. This means that an enterprise with high turnover and high profit can qualify as a “small enterprise” as long as its cross-border transactions are of low value.

1.6. Dutch contribution

In the Netherlands article 8b of the Corporate Income Tax Act includes the arm’s length principle and the documentation requirements. There are no specific rules for SME companies. In the Netherlands a flexible rule for documentation is applied, i.e. there are no specific lists or requirements. In general the more complex the case is the more documentation is required.

In the APA Decree (IFZ 2004/124M) it is mentioned that in some cases it could be disproportional burdensome for a small company to deliver comparables when they apply for

an APA. This will be considered to be the case if the fiscal balance total is less than € 5 million and if this company has less than 50 employees (average). In these cases the small company can apply for assistance from the tax administration for a search for comparables

1.7. *UK contribution*

The issues faced by the UK in respect of transfer pricing and SMEs are no different to the ones that arise with larger enterprises and we have no specific comments on the issues set out in the draft summary record, such as administrative aspects, problems etc.

Annex I: Table on SME definition in each MS

Member State	
Austria	Austria also does not define the term SME for tax or transfer pricing purpose.
Belgium	<p>art. 16, § 1 of the Company law defines a “small group” as a company that together with its subsidiaries or companies with which it forms a consortium⁶ do not exceed more than one of the following criteria on a consolidated basis⁷ :</p> <ul style="list-style-type: none"> - annual turnover (ex VAT) 29.200.000 eur; - balance sheet total : 14.600.000 eur - average on a yearly basis of number of staff employed : 250 <p>See also Belgian contribution</p>
Bulgaria	<p>1. Definition of small and medium - sized enterprises</p> <p>The legal definition of small and medium - sized enterprises is contained in the Law on Small and Medium Sized Enterprises (LSME). An updated definition has been effective since 2006 when LSME was amended to adopt the definition contained in Recommendation 2003/361/EC.</p> <p>Within the sense of Art. 3, para. 1 of LSME a medium-sized enterprise is an enterprise:</p> <ul style="list-style-type: none"> - with average number of employees less than 250, and - which generates annual turnover not exceeding BGN 97 500 000 and/or possesses assets of a value not exceeding BGN 97 500 000. <p>Within the sense of Art. 3, para. 2 of LSME a small-sized enterprise is an enterprise:</p> <ul style="list-style-type: none"> - with average number of employees less than 50, and - which generates annual turnover not exceeding BGN 19 500 000 and/or possesses assets of a value not exceeding BGN 19 500 000. <p>Within the sense of Art. 3, para. 3 of LSME a micro-sized enterprise is an enterprise:</p> <ul style="list-style-type: none"> - with average number of employees less than 10, and - which generates annual turnover not exceeding BGN 3 900 000 and/or possesses assets of a value not exceeding BGN 3 900 000 <p>For taxation purposes, incl. transfer pricing purposes, the same definition is applied as the one contained in LSME.</p>
Cyprus	
Czech Republic	Czech law which supporting SMEs refers to definition SME to Annex I of Commission Regulation (EC) No 70/2001

⁶ A consortium exists when two or more companies are placed under central control, although the companies themselves are no subsidiaries of one another.

⁷ The figures may be liable to change through Royal decree.

Denmark	
Estonia	Estonia does not use the exact definition of SMEs but in some stages we distinguish large companies from others so we can derive the definition of SMEs from there - in relation to that we consider as SMEs resident companies and non-resident persons operating in Estonia through a permanent establishment which, when considered <u>with related persons</u> , fulfill <u>all the following conditions</u> : (1) they hire less than 250 employees, (2) their turnover in the financial year preceding the transaction was less than EUR 50 million or (3) their consolidated balance sheet total is less than EUR 43million. So the criteria are based on the Commission recommendation No 2003/361/EC of 6 May 2003 <u>with some amendments</u> .
Finland	According to article 14 a of Act on Assessment Procedure SME:s are not entitle to draft the transfer prising documentation. SME is defined as enterprise that 1) employs less than 250 persons per year; 2) which turnover is less that 50 million euros or balance sheet is less than 43 million euros and 3) fulfil the requirements set in the recommendation of Commission 2003/361/EY particularly regarding the independence of the ent
France	
Germany	See contribution
Greece	There is no specific definition of SME for tax purposes
Hungary	Definition of small and medium-sized enterprises (SMEs): - An enterprise is considered to be an SME a) which employs fewer than 250 persons and b) which has an annual turnover not exceeding the HUF equivalent of EUR 50 million, and/or an annual balance sheet total not exceeding the HUF equivalent of EUR 43 million. - Within the SME category, a small enterprise is defined as an enterprise which a) employs fewer than 50 persons and b) whose annual turnover and/or annual balance sheet total does not exceed the forint equivalent of EUR 10 million. - Within the SME category, a micro enterprise is defined as an enterprise which a) employs fewer than 10 persons and b) whose annual turnover and/or annual balance sheet total does not exceed the forint equivalent of EUR 2 million. - Any enterprise in which the state or any local self-government holds, either directly or indirectly and either solely or jointly, 25 per cent or more of the capital or voting rights, shall not be classified as an SME.
Italy	

Ireland	we have no specific rules/practices or definition of SME
Latvia	<p>Latvia's legislation provides the definition of SMEs in Financial Instrument Market Law which comply with Commission Regulation (EC) No 800/2008 of 6 August 2008 where Article 2 of ANNEX I (Definition of SME) provides that staff headcount and financial thresholds determines enterprise categories:</p> <ol style="list-style-type: none"> 1. The category of micro, small and medium-sized enterprises ("SMEs") is made up of 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. 2. Within the SME category, a medium-sized enterprise is defined as an enterprise which employs fewer than 250 persons and whose annual turnover does not exceed EUR 50 million, and/or an annual balance sheet total does not exceed EUR 43 million. 3. Within the SME category, a small enterprise is defined as an enterprise which employs fewer than 50 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 10 million. 4. Within the SME category, a micro-enterprise is defined as an enterprise which employs fewer than 10 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 2 million.
Lithuania	In Lithuania we don't apply a definition of SME for TP purposes and there is no definition of SME in the Law on Corporate Income Tax. The definition of SME could be found in the legislation of the expansion of small and medium businesses, but this definition isn't used for the taxation purposes
Luxembourg	
Malta	There is no definition of SMEs that applies across the board to all income tax legislation in Malta. However, certain tax provisions relating to SMEs use the definition found in the Recommendation 2003/361/EC. These provisions deal with particular issues that do not concern transfer pricing
Netherlands	<p>We do not apply a definition of SME for TP.</p> <p>There is no definition of SME in the Corporate Income Tax Act</p>
Poland	<p>Answering the first question, Poland does not have any specific regulations concerning SMEs, in the context of transfer pricing issues.</p> <p>Nevertheless, in our law system, precisely in Economic Freedom Act of 2 July 2004 (which regulates undertaking, running and closing businesses on the territory of Poland, as well as tasks of the public administration within this regard), exist general definitions of micro, small and medium enterprises.</p> <p>According to its provisions:</p> <p>by micro enterprise it is understood an enterprise which, at least in one of two recent accounting years:</p> <ul style="list-style-type: none"> - employed on average less than 10 employees and - a turnover or balance sheet total of not more than €2 million. <p>by small enterprise is understood an enterprise which, at least in one of two recent accounting years:</p> <ul style="list-style-type: none"> - employed on average less than 50 employees and - a turnover or balance sheet total of not more than €10 million. <p>by medium enterprise is understood an enterprise which, at least in one of two recent accounting years:</p>

	<ul style="list-style-type: none"> - employed on average less than 250 employees and - a turnover of not more than €50 million or balance sheet total of not more than €43 million
Portugal	
Romania	<p>In Romania, by <i>Law no. 346/2004 on the setting up and development of small and medium size enterprises, modified</i>, SMEs are defined as being those enterprises meeting cumulatively the following criteria:</p> <ol style="list-style-type: none"> 1. average annual number of no more then 250 employees; 2. annual net amount of the turnover up to 50 mil. Euro or total assets evaluated at no more then 43 million Euro, as per the last annual financial situation approved. <p>Small and medium size enterprises are classified into 3 categories:</p> <ol style="list-style-type: none"> 1. Micro-enterprises: up to 9 employees, annual net turnover/total assets up to 2 million Euro; 2. Small enterprises: between 10 – 49 employees, annual net turnover/total assets up to 10 million Euro; 3. Medium enterprises: between 50 – 249 employees, annual net turnover up to 50 million Euro and total assets evaluated up to 43 million Euro.
Slovak Republic	<p>The Slovak Republic does not have specific rules or administrative practices for SMEs and SMEs definition in the context of TP. As it was mentioned in the questionnaire concerning transfer pricing documentation there are simplified TPD requirements in case of entities who are not obliged to keep the international accounting standards. It means that special TPD requirements are defined for entities with the international accounting standards obligations. Other entities (including SMEs) can provide only simplified TPD but it was not necessary to define special definition for SMEs in this context</p>
Slovenia	
Spain	<p>In Spain, in order to consider a company as SME, its global turnover has to be lower than 8 million Euros</p>
Sweden	<p>There are no SME definition within the transfer pricing area.</p>
United Kingdom	

Annex II: Table on specific measures related to transfer pricing for SMEs

Member State	
Austria	In Austria, there are no specific rules or administrative practices specifically for SMEs available.
Belgium	See Belgian contribution
Bulgaria	<p data-bbox="448 528 1455 566">Transfer pricing rules and administrative practices applicable to SMEs</p> <p data-bbox="448 600 1455 1256">Transfer pricing rules in Bulgaria are contained in the Tax Procedure Code, Corporate Income Tax Act and Regulations № H-9 on the application of TP methods. Such rules are applicable as regards all resident enterprises or foreign enterprises carrying out business activity in Bulgaria through a PE. It is important to mention that there are not prescriptive rules on how to prepare and maintain TP documentation in Bulgaria. The law only states that controlled transactions should be documentarily substantiated by the taxpayers involved in the transaction. This rule however does not entail documentation-related penalties for those taxpayers who do not prepare or provide to the Revenue Administration a relevant documentation in a TP audit. In the light of the above it is quite understandable that no special documentation rules exist for small and medium – sized enterprises. Two main reasons can be pointed out in this respect. First of all Bulgaria is a small market and the size of the most of the Bulgarian enterprises is relatively small. It is quite possible that an enterprise falls under the definition of a medium-sized enterprise and at the same time it ranks among the top 100 companies in Bulgaria. The second factor is that TP is a relatively new area of tax control.</p> <p data-bbox="448 1294 1455 1995">All said above however does not mean that no efforts are being made to gain more expertise in the field of TP. Bulgarian revenue administration has drafted Guidelines for the application of the TP methods which are used as a reference material by the Bulgarian tax inspectors. These Guidelines will be published by the end of January on the Internet site of the NRA and thus being publicly accessible will also help taxpayers have some more information and certainty on how to apply TP methods. The Guidelines contain special section devoted to TP documentation elaborating on different problem areas: what information should be included in a TP documentation file; who has the obligation to prepare such documentation; for how long the documentation is to be stored by the taxpayers, etc.. Although not a legislative instrument the Guidelines will create administrative practice in a field not covered by the NRA efforts so far, i.e. elaboration of clear TP documentation requirements. The Documentation chapter in the Guidelines provides for an exception from the general recommendation on the preparation and maintenance of TP documentation. Within the scope of this exception fall first, controlled transactions undertaken by micro-sized enterprises and second, controlled transactions of a value not exceeding BGN 200 000 (for goods and services) and BGN 400 000 (for intangibles).</p>

Cyprus	
Czech Republic	Czech Republic has no specific rules or administrative practice in relation to transfer pricing and SMEs. However Tax procedure in Czech Republic is established on several principles and one of them is principle of proportionality. This generally guarantee smaller administrative burden of SMEs. This principle is applicable through the administrative practice only.
Denmark	<p>In Denmark we have transfer pricing documentation requirements.</p> <p>However if the group has less than 250 employed <i>and</i> either a total balance of less than DKK 125 mio. (on a yearly basis) <i>or</i> a turnover of less than DKK 250 mio. the transfer pricing documentation requirements applies only for the following transactions:</p> <ul style="list-style-type: none"> - controlled transactions with persons (individuals and legal persons) which are residents of a state without a DTC with Denmark and that state is neither a EC-member state or a EEA-member state <p>and</p> <ul style="list-style-type: none"> - controlled transactions with a permanent establishment which is located in a state without a DTC with Denmark and that state is neither a EC-member state or a EEA-member state <p>and</p> <ul style="list-style-type: none"> - controlled transactions with a permanent establishment which is located in Denmark provided that the taxable entity is a resident of a state which do not have a DTC with Denmark and that state is neither a EC-member state or a EEA-member state. <p><u>In relation to transfer pricing issues we do not distinguish in any other way between SME's and MNE's.</u></p>
Estonia	SME's do not need to submit specified transfer pricing documentation to the tax authorities. However general requirements for documentation - obligations of taxable person to co-operate with tax authorities (e.g. obligation to notify a tax authority of all facts known to tht taxable person which are or may be relevant for taxation purposes) as well as obligation to keep accounts and to keep records cover all taxpayers.
Finland	Finland has exempted SME's from responsible of drafting transfer prising documentation.
France	
Germany	See contribution
Greece	Paragraph 4 of the new article 39A of the Income Tax Code that introduces transfer pricing documentation rules, foresees that enterprises, whose gross income do not exceed 1.500.000 Euro, shall keep simpler and limited documentation.

	<p>The content of documentation and any other detail for the application of this provision are expected to be addressed with the issuance of the Ministerial degrees and circulars that are being elaborated at the moment, as the new law provisions will entry into force on and after 1-1-2011.</p>
Hungary	<p>Section 18 of the Hungarian Corporate and Dividend Tax Act (CDTA) states that if associated enterprises use prices other than arm's length prices in their transactions (including transactions between the taxpayer and its permanent establishment) the corporate tax base of the taxpayer must be adjusted accordingly. This tax base adjustment shall not apply to taxpayers qualified as small or medium-sized enterprises on the last day of the tax year with regard to their long-term contracts concluded with affiliated companies in the interest of joint purchases and sales to overcome competitive disadvantage, if the voting rights of the small and medium-sized enterprises in question held in the affiliated company exceeds 50 per cent on the aggregate.</p> <p>Definition of small and medium-sized enterprises (SMEs):</p> <ul style="list-style-type: none"> - An enterprise is considered to be an SME <ul style="list-style-type: none"> a) which employs fewer than 250 persons and b) which has an annual turnover not exceeding the HUF equivalent of EUR 50 million, and/or an annual balance sheet total not exceeding the HUF equivalent of EUR 43 million. - Within the SME category, a small enterprise is defined as an enterprise which <ul style="list-style-type: none"> a) employs fewer than 50 persons and b) whose annual turnover and/or annual balance sheet total does not exceed the forint equivalent of EUR 10 million. - Within the SME category, a micro enterprise is defined as an enterprise which <ul style="list-style-type: none"> a) employs fewer than 10 persons and b) whose annual turnover and/or annual balance sheet total does not exceed the forint equivalent of EUR 2 million. - Any enterprise in which the state or any local self-government holds, either directly or indirectly and either solely or jointly, 25 per cent or more of the capital or voting rights, shall not be classified as an SME. <p>According to the main rule transfer pricing documentation has to be prepared for each separate contract (agreement) by the time the corporate tax return is due. Consolidated documentation may be prepared in the case of group of identical or closely related transactions. The documentation does not need to be submitted with the tax return but should be readily available at the request of the tax authority.</p> <p>The documentation requirement does not apply to small or micro enterprises as defined above.</p>
Italy	
Ireland	we have no specific rules/practices or definition of SME
Latvia	In reply to your request to provide the information about SMEs in the context of transfer pricing, we would like to inform you that in Latvia's legislation

	there are not any specific rules and we do not have any administrative practice for SMEs.
Lithuania	In Lithuania we have no specific rules for SME
Luxembourg	
Malta	Malta has no specific rules or administrative practices in relation to SMEs and transfer pricing
Netherlands	<p>In the Netherlands article 8b of the Corporate Income Tax Act includes the arm's length principle and the documentation requirements. <u>There are no specific rules for SME companies.</u></p> <p>In the Netherlands a <u>flexible rule for documentation is applied</u>, i.e. there are no specific lists or requirements. In general the more complex the case is the more documentation is required.</p> <p>In the APA Decree (IFZ 2004/124M) it is mentioned that <u>in some cases it could be disproportional burdensome for a small company to deliver comparables when they apply for an APA.</u> This will be considered to be the case if the fiscal balance total is less than € 5 million and if this company has less than 50 employees (average). In these cases the small company can apply for assistance from the tax administration for a search for comparables</p>
Poland	Poland does not have any specific regulations concerning SMEs, in the context of transfer pricing issues
Portugal	
Romania	As regards transfer pricing legislation, national regulations do not distinguish between transfer pricing documentation requirements for SMEs and MNEs. However, in case of APAs the fee to be paid is lower (10.000 Euro) in case of SMEs then in case of MNEs (20.000 Euro).
Slovak Republic	The Slovak Republic does not have specific rules or administrative practices for SMEs and SMEs definition in the context of TP. As it was mentioned in the questionnaire concerning transfer pricing documentation there are simplified TPD requirements in case of entities who are not obliged to keep the international accounting standards. It means that special TPD requirements are defined for entities with the international accounting standards obligations. Other entities (including SMEs) can provide only simplified TPD but it was not necessary to define special definition for SMEs in this context
Slovenia	
Spain	SME are subjected to the general Transfer Pricing rules; however, SME have reduced documentation requirements. Furthermore, if the whole group can be considered as a SME, because the turnover of the whole group is under 8 million €, then the group is not obliged to prepare a Master File.
Sweden	Sweden has documentation regulations in the transfer pricing area since 1 st of January 2007. In these regulations there are some exceptions for companies with transactions of minor value. For intra-group transactions of minor value the documentation may contain a simplified report compared to the information required in Chapter 19, Section 2 b, first paragraph of the Tax Return and Statements of Income Act (2001:1227). Transactions of minor value refers to transactions with goods where the total market value does not exceed 630 'base amounts' (approximately 27 MSEK for the income year 2009) per enterprise within the enterprise group as well as other

	<p>transactions where the total market value does not exceed 125 ‘base amounts’ (approximately 5 MSEK for the income year 2009) per enterprise within the enterprise group. The possibility of submitting a simplified report does not apply to transactions which involve sale and purchase of intangible property. The simplified report shall contain a description of:</p> <ol style="list-style-type: none"> 1. the legal structure of the enterprise group as well as the business of the enterprise and the enterprise group 2. the counterparty in the intra-group transaction and information about its business 3. the transactions in question, stating the type, scope and value 4. the method used to establish that the transfer pricing of the intra-group transactions is on an arm’s length basis, and 5. any comparable transactions that may have been used. <p>Thus, there are no specific regulations for SMEs and also no SME definition within the transfer pricing area, instead Sweden has chosen to make exceptions for companies with transactions of minor value. However, it can be assumed that the simplified documentation rules will be applicable for many SMEs.</p>
United Kingdom	<p>the UK legislation exempts SMEs from its transfer pricing rules unless: The taxpayer elects for the exemption not to apply It relates to transactions with a resident of a territory with which the UK does not have an appropriate non-discrimination clause in the relevant tax treaty The UK tax administration gives a notice to a taxpayer requiring that the transfer pricing rules apply. This applies to medium-sized companies only.</p>

Annex III: MS' answers on the EUTPD questionnaire as regards SMEs :

How have you sought to differentiate between the documentation requirements of SMEs and MNEs?

Member State	Question 6A
Austria	According to the basic concept as explained under Q1.B the documentation requirements are flexible enough to avoid unreasonable documentation obligations for SMEs
Belgium	<p>Point 25 of the administrative circular explicitly takes over the wording of point 5 of the Code of Conduct, providing that Member States should not require smaller and less complex enterprises (including SMEs) to produce the amount or complexity of documentation that might be expected from larger and more complex enterprises.</p> <p>This provision has to be read in conjunction with the principle set out in point 2 of the administrative circular that the information required in order to examine transfer pricing depends on the facts and circumstances of the case. Point 4 of the administrative circular is also highly relevant. It refers, among other things, to the need to assess whether it is appropriate to request certain information in the light of the factual circumstances of each individual case. Without question, the status of SMEs must be taken into account.</p>
Bulgaria	<p>No concrete measures have been taken in Bulgaria to differentiate between the documentation requirements for SMEs and those for multinational enterprises. In many cases, the very purpose of the transfer pricing audit process is really to ensure that SMEs are safeguarded against excessive and complicated documentation requirements. Transfer pricing will, of course, be monitored more often in the case of multinational companies, and more infrequently in the case of SMEs.</p> <p>For this reason, it is the multinational companies that are most often monitored with regard to the fulfilment of certain requirements concerning observance of/adherence to the arm's length principle in their commercial and financial relations, which should be substantiated by means of the relevant documentation.</p> <p>As already mentioned, no special rules apply in Bulgaria with regard to the form and substance of transfer pricing documentation. Thus, every taxpayer is free to prepare and submit to the Revenue Administration whatever documentation he/she finds most suitable in view of the actual transactions and market conditions; provided that this documentation demonstrates that the prices fixed are in line with the market. If the Revenue Administration is not satisfied with the documentation submitted, the revenue bodies are entitled by law to set the market prices themselves.</p> <p>In other cases, the very fact that a company has a simpler structure, also means that its transfer pricing documentation is shorter and less complex. It should naturally follow in these cases, without having to be stipulated explicitly, that such taxpayers should not be required to submit the same information as a complex, integrated multinational group.</p> <p>In light of the above, we think that SMEs are not put under excessive administrative pressure from having to observe documentation requirements</p>

	that include the drawing up of complex, detailed and comprehensive documents.
Cyprus	The issue is under consideration.
Czech Republic	In accordance with the Code, guideline No D-293 stipulates that the use of the EU TPD option is voluntary and in justified cases enterprises can submit documentation in simplified form. The submission of simplified or less complex documentation concerns in particular smaller enterprises in cases where the creation of full-scale documentation would be too burdensome. However, the guideline has laid down minimum documentation requirements to demonstrate that transfer prices have been set up correctly.
Denmark	According to the Danish legislation SME's are under no obligation to prepare the transfer pricing documentation.
Estonia	<p>In Estonia, determining the market value of transfer prices is documented following general financial transaction documentation requirements (i.e. those set out in the Accounting Act and the Taxation Act).</p> <p>The additional documentation requirements laid down in the Regulation of the Minister for Finance are mandatory for those companies whose operations are of greater public interest (resident credit institutions, insurers and companies listed on the stock exchange).</p> <p>Detailed documentation requirements are also mandatory in respect of transactions with associated persons carried out by resident companies and non-residents operating out of a permanent place of business in Estonia, except SMEs. The definition of SMEs is based on Commission Recommendation 2003/361/EC of 6 May 2003⁸. The Recommendation uses staff, turnover and balance sheet total criteria to distinguish SMEs.</p> <p>The Regulation also gives a workforce of 250 or more, annual turnover of €50 million or more, and a balance sheet total of €43 million or more as criteria for making detailed documentation mandatory. Workforce, turnover and balance sheet total are therefore taken into account in consolidated form and each criterion can be considered separately, meaning that if just one of the criteria is met, this is enough to make detailed documentation mandatory for transactions with associated individuals.</p> <p>Detailed rules for documenting transfer prices are not mandatory for SMEs, except for transactions between associated persons where the other party is located in a low tax rate territory. The circumstances surrounding transactions with parties located in a low tax rate territory must be documented in detail, irrespective of the activities, workforce, turnover or balance sheet total of the Estonian party.</p> <p>Tax-payers (for whom the Regulation does not make detailed documentation mandatory) must document transactions with associated persons on the basis of the general principles of the Taxation Act and the Accounting Act.</p>
Finland	According to Finnish law, for small and medium-sized enterprises, transfer pricing documentation obligations are waived. The European Commission's Recommendation on the definition of micro, small and medium-sized enterprises 2003/361/EC has been taken into account. The reason for this limitation is to avoid excessive costs for SMEs to carry, especially because these costs would probably be out of proportion considering the fiscal interest

⁸

Commission Recommendation concerning the definition of micro, small and medium-sized enterprises.

France	
Germany	Article 6(2) of the GAufzV differentiates between small and multinational enterprises according to the number of transactions with related persons. The limit is €5 million in the case of the consideration for supplies of goods and €500 000 in the case of that for all other supplies
Greece	The new Article 39A foresees that Medium and Small enterprises shall keep simpler and limited documentation.
Hungary	National regulations also distinguish between the documentation requirements of SMEs and MNEs. According to the Decree the documentation requirement does not refer to SMEs in Hungary.
Italy	
Ireland	See answer to Q1.A.
Latvia	
Lithuania	
Luxembourg	
Malta	This question is not relevant to Malta since the adoption of EUTPD cannot materialise in Malta
Netherlands	
Poland	The documentation requirement applies in Poland above a given transaction threshold in a given year. In other words, SMEs are not caught by the requirement to produce TPD if they do not exceed the thresholds indicated in the rules.
Portugal	SMEs whose annual turnover in the previous year not exceeds € 3 000 000 are fully exempted from the TP documentation requirements
Romania	
Slovak Republic	For the purposes of determining the requirements and scope of TPD in the Slovak Republic, taxpayers are divided into two groups. Accounting units (taxpayers) that report a trading income and tax base in accordance with the Accounting Act, based on IAS/IFRS, that is, accounting units with overall assets and annual turnover greater than SKK 5 000 000, 000, or, from 1 January 2009, greater than EUR 165 969 594.40, must keep so-called "general documentation" for the whole group of dependent persons, and, alongside this, "specific documentation" only for individual taxpayers. Other taxpayers must keep only so-called "simplified documentation" whose purpose is to provide documentary evidence of adherence to the principle of independence in the controlled transactions that are carried out. This documentation must be produced only to the extent required by accounting regulations: specifically, as footnotes to the annual accounts.
Slovenia	Enterprises whose cumulative turnover with an individual associated entity over the reference period does not exceed EUR 50 000 have fewer obligations when it comes to filling in the forms for calculating corporate income tax. In examining transfer pricing the tax inspector must ensure that the requests for the supply or production of specific documentation, the costs incurred and the administrative restrictions encountered by enterprises in obtaining data on transactions with non-associated entities are proportionate.
Spain	The regulations described above establish a differentiated treatment depending on whether the undertaking is a small and medium-sized enterprise (SME) or a multinational enterprise. According to the provisions of article 19.2 of the RIS, as now amended,

	<p>compliance with the group-related documentation (masterfile) will not be required of groups with a net turnover (aggregate of all group members) of less than 8 million euros. This is the limit established in article 108 of the TRLIS as cut-off for consideration as a smaller undertaking.</p> <p>Also, article 20 of the RIS, in the new wording, in relation to the specific documentation of the taxable person, requires that simplified documents be kept when one of the parties involved in the transaction is a smaller undertaking, within the meaning of article 108 of the TRLIS, and the transactions do not involves persons or entities with residence in countries or territories considered tax havens.</p>
Sweden	<p>The Tax Agency makes a distinction in its regulations: companies with transactions below certain given limits can supply simplified documentation.</p>
United Kingdom	<p>Legislation was enacted in 2004 (FA 2004, s31(4)) to exempt micro, small and medium enterprises, (“SMEs”), from the UK’s transfer pricing legislation (Schedule 28AA ICTA 88). The definition of small and medium enterprises is that set out in the Commission Recommendation 2003/361/EC of 6th May 2003. There are exceptions to the exemptions:</p> <ol style="list-style-type: none"> a) Where the enterprise elects for the transfer pricing legislation to apply. Such an election is irrevocable. b) Where the UK enterprise has transactions with a related enterprise in a territory with which the UK does not have a double taxation with an appropriate non-discrimination article. A list of countries where the UK considers there is such an appropriate non-discrimination article is at INTM 432112. c) For medium-sized enterprises only, (not micro or small-sized enterprises), UK may give a “transfer pricing notice” that the transfer pricing legislation applies for a specified period. The notice can only be authorised by a designated officer, who is very senior within the UK tax authority, HMRC. It is rare for such a notice to be given. <p>It therefore follows that the transfer pricing legislation does not apply to the vast majority of SMEs and therefore they are not required to keep any documentation for transfer pricing purposes.</p> <p>The UK applies the OECD TPG at 5.4 which says that the demonstration of an “arm’s length” result should be “in accordance with the same prudent business management principles that would govern the process of evaluating a business decision of a similar level of complexity and importance”. We would expect the documentation to reflect this.</p>