


## Art. 2(18) - Undertaking in difficulty that is an SME

1. **Page title:** Please insert the full Article reference (e.g. "Art. 1(4) a)") and a short title (e.g. "Deggendorf principle").
2. **Table:** Fill in **only the green** fields. Please respect the instructions (they are essential to optimise search).
3. **Questions:** Please create 1 question page per question
4. **Creation date:** will be inserted automatically when page is first saved.
5. When ready, click on *Save* at the bottom of the page: 
6. Please be aware that you will not more be able to edit the page after the DG COMP has provided the answer.

Article	Article 2 - Definitions
Key words	undertaking in difficulty, limited liability company, SME, subscribed share capital, linked enterprises, natural person, consolidated financial report
Member State	HR
Question	<p>We hereby kindly ask for clarification of the provisions of the Block Exemption Regulation for State Aid (GBER), i.e. 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.</p> <p>We hereby kindly ask for interpretation of GBER related to the following issue:</p> <p><b><u>Clarification of the conditions that need to be fulfilled to consider an SME „an undertaking in difficulty“</u></b></p> <p>1.1. Article 2(18) of Regulation 651/2014 states the following: "(a) In the case of a limited liability company <u>other than an SME that has been in existence for less than three years or, for the purposes of eligibility for risk finance aid, an SME within 7 years from its first commercial sale that qualifies for risk finance investments following due diligence by the selected financial intermediary</u>), where more than half of its subscribed share capital has disappeared as a result of accumulated losses.</p> <p>Please explain to which cases does the underlined part above apply? Is this applicable for grants or does this definition only apply when EU funds are invested into owner's equity as risk capital?</p> <p>1.2. Related parties and definition of an undertaking in difficulty</p>

	<p>1.2.1 We are giving a hypothetical example through which we would like to get clarification on the definition of an undertaking in difficulty. Company A had been founded in 2008, but was not operating until 2015, in which year it recorded a loss above capital value. Company A has been submitting the financial reports for the last 4 years, although it realized the first commercial sale in 2015. Question related to this hypothetical example: Is company A an undertaking in difficulty, taking into account that it was founded more than 3 years ago, but it realized its first commercial sale only in 2015?</p> <p>1.2.2. If companies A and B are linked entities through natural persons (e.g. one natural person controls both of them), and company A is in difficulty as per definition in Article 2(18) of Regulation 651/2014, is company B considered a company in difficulty too?</p> <p>1.2.3. If the answer to 2.2. is no, how do we prove that the group of companies A and B is not in difficulty? Do we need to prepare a consolidated financial report?</p> <p>1.2.4. If we need to prepare a consolidated financial report to prove that the group of companies A and B is not in difficulty, please clarify how to prepare it, since companies A and B are related through natural persons, for which there are no standards for consolidated financial reporting and audit?</p>
Creation Date	2016.05.20
COMP Rep	<p>1.1 Please note that there are two separate exceptions regarding SMEs in the Article 2 (18) (a) of GBER:</p> <p>i) the first exception refers to those SMEs which were in existence for less than 3 years – in case of such SMEs even if the circumstance described in Article 2(18) (a) occurs i.e. more than half of the subscribed capital of the given SME disappears as a result of accumulated losses, such SMEs are not considered undertakings in difficulty for the purposes of eligibility <u>for aid granted in any form</u> on the basis of GBER;</p> <p>ii) the second exception refers to those SMEs which are within 7 years from its first commercial sale and which at the same time qualify for risk finance investments following due diligence by the selected financial intermediary – in case of such SMEs even if the circumstance described in Article 2(18) (a) occurs, i.e. more than half of the subscribed capital of such SME disappears as a result of accumulated losses, such SMEs are not considered undertaking in difficulty - but this is only for the purposes of eligibility <u>for risk finance aid</u> granted on the basis of GBER.</p>

	<p>1.2.1 In the given example the situation of Company A (which we assume is an SME according to the definition in Annex 1 to GBER) depends on the purposes of assessment of the criteria of undertaking in difficulty. If the circumstance described in Article 2 (18) (a) of GBER occurred and more than half of the subscribed capital of the Company A disappeared as a result of accumulated losses, and:</p> <p>a) Company A was in existence from year 2008 – then the first exception described in Answer 1.1 i) above cannot apply;</p> <p>b) Company A was in existence since year 2008, however the first commercial sale of the Company A was realized a year ago in the year 2015 – then in line with the rule described in the Answer 1.1. ii) above, Company A can be considered an undertaking not being in difficulty but only for the purposes of eligibility for risk finance aid (provided that all the other applicable criteria of the second exception are met).</p> <p>1.2.2 If Companies A and B are linked through a natural person who controls those companies, they should normally be considered as one undertaking, as in accordance with the case law, an undertaking is defined as a single economic entity having a common source of control. Therefore, in such case, financial situation of the entire single undertaking should be verified in order to establish if it is an undertaking in difficulty as indicated by the Commission in question 5 of its GBER FAQ document:</p> <p>(<a href="http://ec.europa.eu/competition/state_aid/legislation/practical_guide_gber_en.pdf">http://ec.europa.eu/competition/state_aid/legislation/practical_guide_gber_en.pdf</a>).</p> <p>1.2.3 and 1.2.4 There is no obligation to prepare consolidated financial statements if they do not already exists under the national law provisions, although of course such statements can be prepared 'ad hoc' specifically in order to calculate the financial data for the purposes of assessment in connection to aid application. However, according to Annex 1 Article 6 of GBER, the necessary information can be derived and calculated on the basis of the accounts and other data existing for each entity that forms part of the given single undertaking as understood under GBER.</p> <p><i>Disclaimer: This reply does not represent a formal and definite position of the European Commission but is only an informal guidance provided by the services of DG Competition to facilitate the application of the GBER. It is therefore not binding and cannot create legal certainty or legitimate expectations.</i></p>
COMP Reply date	2016.11.08
COMP Responsible	<input checked="" type="checkbox"/> COMPsupport ESTATE-AID-WIKI

<sup>1</sup> Article numbers & names

- Article 1 - Scope
- Article 2 - Definitions
- Article 3 - Conditions for exemption
- Article 4 - Notification thresholds
- Article 5 - Transparency of aid
- Article 6 - Incentive effect
- Article 7 - Aid intensity and eligible costs
- Article 8 - Cumulation
- Article 9 - Publication and information

<sup>2</sup> AU, BE, BG, HR, CY, CZ, DK, EE, FI, FR, DE, EL, HU, IE, IT, LV, LT, LU, MT, NL, PL, PT, RO, SK, SI, ES, SE,