

Art.2(2) - concept of single undertaking - natural persons

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Article	[Art.2(2) - concept of single undertaking - natural persons]
Key words	[single undertaking; natural persons]
Member State	[LV]
Question	<p>Art.2(2) of Regulation 1407/2013 define an exhaustive list of relationships that form a single undertaking. Links through natural persons are in principle not taken into account inasmuch as the natural persons are not engaged in an economic activity.</p> <p>Referring to given example published on E-wiki 23.04.2019 (question created by Latvia) a majority shareholder who appoints the management of a given company (or who is involved in that company's management in a different way) would in principle be carrying out an economic activity and, therefore, could link the companies concerned to a "single undertaking".</p> <p>The provided reply is not clear to Latvian authorities since the Latvian Commercial Law grants the major shareholder with rights to vote, appoint board and supervisory board, receive dividends, participate in annual shareholder's meetings, etc. and it is not possible to include any restrictions regarding shareholder rights in the articles of association. Such possibility may occur in the shareholders agreement, however usually it is confidential.</p> <p>In the light of above we understand that under state aid rules a natural person holding shares (50%+1) in several companies will be always deemed as economic activity and therefore will link the companies into single undertaking.</p> <p>Referring to reply to Slovakia published on E-wiki on 2019.07.19 if a natural person owns shares (even the majority of shares) in a company, but is not directly or indirectly involved in the management of that company, this natural person is not considered an undertaking.</p> <p>Question: Please provide a guidance what is meant by "involving in the company management" - should we take into account if the company owner simultaneously acts in the company board or supervisory board?</p>
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COMP Reply	<p>For the purposes of the de minimis Regulation, the mere acquisition and holding of shares in a company is not regarded as an economic activity, in accordance with the case-law of the Court of Justice of the European Union. For instance, in the example that you provide, a person who owns 50%+1% is not necessarily regarded as an economic activity inasmuch as his activity is limited to the mere acquisition and holding of the shares. However, if a natural person is involved in any kind of form of managements (such as rights to vote, appointment of board, acting in supervisory board, management of shares), the person is deemed to have an economic activity. It follows that if the company owner acts in the company board or supervisory board of different companies, it is considered to have an economic activity. Hence, the owner and the companies constitute a 'single undertaking' within the meaning of the de minimis Regulation.</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	2020.03.13
COMP Responsible	<input checked="" type="checkbox"/> COMPsupport ESTATE-AID-WIKI

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