

## Art.2(2) - Single undertaking

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Article	Article 2, paragraph 2
Key words	Single undertaking, natural person, partner undertaking
Member State	LU
Question	<p><i>As regards the application of the notion of a single undertaking in regulation 1407/2013, while taking into account the Commission's previous responses and case-law, can the Commission confirm the following interpretation?</i></p> <p><i>Imagine a natural person being a shareholder of three different companies (A, B and C). Whilst he sits in the shareholder board of each company, he holds 100% of company A and B but only 39% of company C. At the same time, no de jure links exist between the three companies.</i></p> <p><i>When applying the de minimis regulation, one would have to consider the natural person as an "undertaking", thus linking company A and B. Company C, on the other hand, cannot be considered to form part of the single undertaking. Is this correct?</i></p>
Creation Date	2020.11.03
COMP Reply	<p>The <i>de minimis</i> Regulation is interpreted in such a way that a natural person, who carries out an economic activity in one company, is regarded as an undertaking. Hence, any entity in which this person has control within the meaning of Article 2(2) of the <i>de minimis</i> Regulation will be regarded as part of the single undertaking.</p> <p>In the given example, since the natural person holds 100% of A and B, he/she carries out an economic activity and has control over them. Hence, A and B are part of a single undertaking.</p> <p>As for C, it depends as to whether the person has one of the relations listed in Article 2(2) of the <i>de minimis</i> Regulation. In particular, since the person sits in the shareholder board the company, it remains to be seen as to whether he/she can appoint or remove a majority of the members of the administrative, management or supervisory body. If not, C is not part of the single undertaking.</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	2020.12.18

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