


# Art [2.2] - linked enterprises through natural person - possibilities

1. **Page title:** Please insert the full Article reference (e.g. "Art. 1(4) a)") and a short title (e.g. "Deggendorf principle")
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Article	[Article 3]
Key words	De minimis rule – linked enterprises through natural person
Member State	HR
Question	<p>According to Article 3 of Commission regulation (EU) No 1407/2013, the total amount of de minimis aid granted per Member State to a single undertaking shall not exceed EUR 200 000 over any period of three fiscal years. The notion of “single undertaking” is defined by Article 2 and includes all enterprises having at least one of the following relationships with each other:</p> <p>(a) one <b>enterprise</b> has a majority of the shareholders’ or members’ voting rights in another enterprise;</p> <p>(b) one <b>enterprise</b> has the right to appoint or remove a majority of the members of the administrative, management or supervisory body of another enterprise;</p> <p>(c) one <b>enterprise</b> has the right to exercise a dominant influence over another enterprise pursuant to a contract entered into with that enterprise or to a provision in its memorandum or articles of association;</p> <p>(d) one <b>enterprise</b>, which is a shareholder in or member of another enterprise, controls alone, pursuant to an agreement with other shareholders in or members of that enterprise, a majority of shareholders’ or members’ voting rights in that enterprise.</p> <p>Enterprises having any of the relationships referred to in points (a) to (d) of the first subparagraph through one or more other enterprises shall also be considered to be a single undertaking.</p>

Having in mind the above stated provisions, it is presumed that rules of the de minimis Regulation only apply to **undertakings**. An undertaking is defined as an entity engaged in an economic activity, regardless of its legal status and the way in which it is financed. Such an entity can be a natural or a legal person, but it has to be engaged in an economic activity, i.e. offering goods or services on a market. In this regard, a mere shareholding by a natural person would normally not be considered as an economic activity. The question is however raised in situations where link between two enterprises operating on the same or adjacent relevant market (for example two limited liability companies) is established through a natural person that has a majority of the shareholders or/and voting rights. These two enterprises could be considered to be linked according to Annex I of Commission Regulation (EU) 651/2014. But, none of the two enterprises as a legal person engaged in economic activity has a majority of the shareholders' or members' voting rights in the other enterprise or has the right to appoint or remove a majority of the members of the administrative, management or supervisory body of another enterprise or controls alone, pursuant to an agreement with other shareholders in or members of that enterprise, a majority of shareholders' or members' voting rights in the other enterprise. Does a Member state need to take into consideration these two enterprises when calculating the de minimis aid total amount of 200.000 euros?

In this respect, we present two scenarios related to the above mentioned situation:

#### ***Scenario 1***

Company A (Limited company) and company B (Limited liability company) having the same owner (natural person - 100% of shareholders and voting rights) are considered not to be linked according to provisions of Annex I of Commission Regulation (EU) 651/2014 because they are not engaging economic activity on the same or adjacent relevant markets.

#### ***Question***

May each of the companies A and B benefit from the 200.000 euros de minimis aid ceiling during three fiscal years?

#### ***Scenario 2***

Company C (Limited company) and company D (Limited liability company) having the same owner (natural person - 100% of shareholders rights) are considered to be linked according to provisions of Annex I of Commission Regulation (EU) 651/2014 because they are engaging economic activity on the same relevant market.

#### ***Question***

May each of the companies C and D benefit from the 200.000 euros de minimis aid ceiling during three fiscal years?

	<p><b>Scenario 3</b></p> <p>Company E is a craft, an enterprise in which natural person/owner is personally liable and responsible for the company's debts or liabilities. The natural person/owner is also owner and manager (100% of shareholders and voting rights) of company F (Limited liability company) engaging economic activity on the same relevant market.</p> <p><i>Question</i></p> <p>May each of the companies E and F benefit from the 200.000 euros de minimis aid ceiling during three fiscal years?</p>
Creation Date	2019.05.16
COMP Reply	<p>In order to apply the rules on de minimis, the relevant criterion is to assess whether the legal or natural persons is engaged in an economic activity (and not whether it operates on the same or adjacent relevant market).</p> <p>It follows that in Scenario 1 it depends whether the natural owner of the 2 companies is engaged in an economic activity. To this end, the Court's case-law states that if a person performs only the mere acquisition and holding of shares, that person is not engaged in an economic activity. However, if the person manages the shares, then that person is engaged in an economic activity. In Scenario 1, since the owner is a natural person which has all the voting rights, it appears to be engaged in an economic activity. If so, the companies A and B as well as the owner are regarded as a single undertaking.</p> <p>In Scenario 2, if the owner performs an economic activity, companies C and D as well as the owner are regarded as a single undertaking.</p> <p>In Scenario 3, it appears that the owner performs an economic activity. Therefore, companies E and F as well as the owner are regarded as a 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	2020.02.05
COMP Responsible	<input checked="" type="checkbox"/> <a href="#">COMPsupport ESTATE-AID-WIKI</a>

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