


Art [3(2)] - [de minimis limit for a single undertaking composing of companies from different member states]

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Article	3(2)
Key words	single undertaking, de minimis limit per member state,
Member State	CZ
Question	<p>Article 3(2) de minimis limit for a single undertaking composing of companies from different member states. Dear Madame or Sir,</p> <p>We need a clarification on how to establish the de minimis limit for a single undertaking that has branches in other member states.</p> <p>I. the question was first asked as the new de minimis regulation 1407/2013 was approved.</p> <p>Example 1</p> <p>(graph was sent to COMP-03-ESTATE-AID-WIKI@ec.europa.eu)</p> <p>In the above situation, the reporting structure of the undertakings (parent company A) is based in Germany and has two subsidiaries (in which it holds the majority of voting rights). Companies D, E and F were set up with company A's consent (companies D and E are wholly owned by company B and company F is wholly owned by company C). (similar question was answered by the EC also in answer that is saved in the e-state aid wiki archive as <i>COMP_Answer to EE question about de minimis aid to single undertaking of 3.09.14.doc</i>)</p> <p>The EC provided us with an answer that: <i>if there was the above structure then as the de minimis limit is 200 000 EUR per member state, the companies C and F would be considered a single undertaking. D and E would not be considered a single undertaking as they are connected through a foreign company and it would be too complicated to find these kinds of connections and so the member states need to concern themselves only with the companies on their own territory. In case that the Czech Republic granted de minimis aid to company B it might be seen as a way to evade rules and the aid should be considered as aid actually granted to companies D or E.</i></p> <p>II. This September we received an answer to our question (in e-State Aid Wiki registered as <i>Article 3(2) - limit of de minimis aid granted per one Member State</i> of 24 August 2016), how should we deal with the situation described below:</p>


	<p>Company A (undertaking) has a seat in the Czech Republic and carries out activities only in the Czech Republic. Company B (undertaking) has a seat in Slovakia and carries out activities only in Slovakia. Company A has a 100% stake in company B. Both of the companies receive de minimis aids from Czech authorities. EC answered: A and B together can receive from CZ de minimis aid in the maximum amount of EUR 200 000 over any period of three fiscal years as they are part of the single undertaking. A and B can also receive 200,000 de minimis aid from Slovakia. CZ does not need to take into account the aid received from SK.</p> <p>Example 2</p> <p>(graph was sent to COMP-03-ESTATE-AID-WIKI@ec.europa.eu)</p> <p>The above described answers lead us to following question:</p> <p>Example 1</p> <p>(graph was sent to COMP-03-ESTATE-AID-WIKI@ec.europa.eu)</p> <p>We need to clarify how to correctly apply the regulation as there now seem to be two slightly different approaches. The first one, where we do not concern ourselves with aid granted to a foreign company therefore the Czech Republic can grant aid to company A and company D because companies A and D are not a “single undertaking” and both A and D can receive 200 000 EUR. Similarly the CR can grant 200 000 EUR to company D and E as they are not a “single undertaking”. Or is there a need to consider even companies connected through/to foreign subjects as single undertaking (second approach)? Therefore (in example 1) if company A receives 200 000 EUR from the CR, companies B, C, D, E and F cannot receive any de minimis aid from the CR because it would exceed the de minimis limit of the single undertaking? For the same reason in situation described above in example 2 companies A(Czech Republic) and B(Slovakia) are a single undertaking and have a common de minimis limit? Or is there a third approach and we need to consider only direct first level connections to foreign companies meaning that if (in example 1) company B receives 200 000 EUR, company D and E cannot receive any de minimis aid but if company A receives 200 000 EUR company D as well as company E can each receive 200 000 EUR. Also C and F together cannot receive any aid as the limit was depleted by company A.</p>
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COMP Reply	

Please note that Article 2(2) of the de minimis Regulation provides for the definition of single undertaking that should in principle be applied across MS. It can be very difficult or not possible for the Member State to determine the foreign links (i.e. links existing through a foreign enterprise) between the companies for the purpose of establishing whether they form a single undertaking within the meaning of de minimis Regulation. Therefore, for the reasons of practicability and having in mind the above difficulties, the EC has stated that the Member States are not obliged to verify the foreign links between companies for the purposes of granting de minimis aid. This means that the Member State granting the de minimis aid does not need to check whether the enterprise receiving de minimis aid forms a single undertaking with foreign entities – and/or with domestic entities through the foreign parent company – and whether such enterprise have already received de minimis aid from this MS on the level of the single undertaking. (Similarly, the Member State is also not obliged to verify whether the given enterprise – or other enterprises within the single undertaking – have received the de minimis aid from another Member State.)

However, please note that the above interpretation, which serves to simplify matters in cases where the Member State cannot identify links that may exist between the given company and foreign enterprises, does not apply to situations where the same Member State is fully aware that a given enterprise forms part of a single undertaking and is the one granting the aid to both. For example, if the Czech Republic grants de minimis aid to a German Company A from the first graph, and is aware that Company A forms a single undertaking, within the meaning of the minimis Regulation, with the Czech Companies D and E, the threshold of 200 000 EUR of de minimis will apply to this single undertaking. The Czech Republic does not need to take into account any de minimis aid that may have been granted to this single undertaking by Germany but it has control over its granting decisions and can check cumulation at the level of the Czech Republic. In a different case of granting de minimis aid by the Czech Republic to the Companies D and E (first graph) which are only linked through the Company B based in Germany, as the Commission explained it can be too complicated for the Czech Republic be aware of this link and therefore is not obliged to verify such foreign connection.

However, if the Czech Republic grants de minimis aid to Company A or B in Germany and then subsequently it intends to grant de minimis aid also to Czech Companies D, E and F, although the Czech Republic has established that those companies form a single undertaking with Companies A and B, ignoring this known link and granting de minimis aid to the companies forming this single undertaking in the amount higher than the 200 000 EUR ceiling would be a circumvention of the de minimis aid ceiling.

Therefore, please note that the simplification that the Member State does not need to concern itself with the foreign links between the companies in the context of determining whether a construction is a single undertaking does not mean that the Member State can use this possibility to grant aid to beneficiaries part of the same single undertaking in different MS, while being aware of their corporate links.

	<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>
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¹ AT, BE, BG, HR, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HU, IE, IT, LT, LU, LV, MT, NL, PL, PT, RO, SK, SE, SI, UK.