

Article 2(2) - single undertaking in case of public ownership (2)

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Article	Article 2(2) - single undertaking in case of public ownership (2)
Key words	[Single undertaking, public body]
Member State	[LV]
Question	<p>In its reply provided to LV dated 12.07.2021 the European Commission has explained that <i>"If a public body carries out an economic activity and is therefore regarded as an undertaking, it should fulfil the criteria under Article 2(2) of the de minimis Regulation 1407/2013 ('the Regulation') to assess whether it forms part of a single undertaking with the other undertakings that it owns. The provision on the public body under Recital 4 does not apply when the public body is considered to be an undertaking."</i></p> <p>According to paragraph 10 of the Notion of state aid: <i>"The classification of an entity as an undertaking is always relative to a specific activity. An entity that carries out both economic and non-economic activities is to be regarded as an undertaking only with regard to the former."</i></p> <p>We would like to note that, public bodies in general act in their capacity as public authorities and only in rare individual cases carry out economic activities, for example, renting out their real estate.</p> <p>Most often economic activities are performed by companies of public bodies. And if public body itself carries out economic activity, it must separate accounts in order to avoid cross-subsidization.</p> <p>In this context, are we correct to assume that if public body acts in general in its capacity as public authority and separation of accounts is at place, then this public body shall be regarded as economic entity only with respect to its economic (ancillary) activity and thus Recital 4 can be applied (and two companies of public body shall not be regarded as single undertaking)?</p>
Creation Date	2021.07.21

COMP Reply	<p><u>Reply</u></p> <p>The de minimis Regulation 1407/2013 applies to economic activities carried out by undertakings owned by a public company. If the undertakings carrying out the economic activities do not fulfil the criteria under Article 2(2), they should not be regarded as a single undertakings. If there is a separation of accounts, the application of de minimis Regulation 1407/2013 should be assessed on a case-by-case basis in the light of the concrete facts.</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	2021.09.17
COMP Responsible	<input checked="" type="checkbox"/> COMPsupport ESTATE-AID-WIKI

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