


De minimis Art.2(2) Single undertaking

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Article	Article 2 (2) Reg. 1407/2013 - Single undertaking
Key words	Single undertaking, natural person
Member State	LV

Question

For the purpose of Commission Regulation 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid (de minimis Regulation), simplified definition of 'single undertaking' is used, which includes all enterprises having at least one of the following relationships with each other (de minimis Regulation Art.2 (2)):

- a) one enterprise has a majority of the shareholders' or members' voting rights in another enterprise;
- b) one enterprise has the right to appoint or remove a majority of the members of the administrative, management or supervisory body of another enterprise;
- c) one enterprise 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;
- d) one enterprise, 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.

It is also stated that 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

According to de minimis Regulation Art.2 (2) points (a) to (d) only relations between enterprises are considered for definition of a single undertaking. Having in mind that an enterprise is 'any entity engaged in an economic activity, irrespective of its legal form' (terminology used by the European Court of Justice in its judgments), in previous clarifications by Commission it was explained that links through natural persons which are engaged in economic activity should be taken into account in definition of 'single undertaking'. For example, Commission reply in e-wiki as of 2014.11.28 to IT question ("The answer therefore depends on whether the natural person carries out an economic activity and thus qualifies as an undertaking or not (...). A mere shareholding by a natural person would normally not be considered as an economic activity") and Commission reply as of 2014.12.14 to PL question ("To the extent that the natural person also acts as an undertaking, the link created is relevant from a de minimis perspective (...)).

Nevertheless, according to the very recent answer in e-wiki provided to SK question (as of 2018.08.27), in particular, "(...) For the notion of 'single undertaking', links through natural persons are not taken into account (...)", no reference to possible economic activity of natural person is included.

Question: Please, confirm that in sake of simplification according to de minimis Regulation links through natural persons should not be considered in definition of 'single undertaking' irrespective of whether this natural person itself is or is not engaged in economic activity.

Creation Date	2017-01-07
COMP Reply	<p>The De minimis Regulation provides for criteria under Art. 2 for defining a single undertaking. To this end, links through natural persons are in principle not taken into account inasmuch as the natural persons are not engaged in an economic activity (see Recital 4 of the De minimis Regulation). However, if the natural person is engaged in an economic activity, it is deemed to be an enterprise itself (in relation to that economic activity) and, therefore, must be taken considered for the assessment of a "single undertaking" within the meaning of Article 2 of the De minimis Regulation.</p> <p>With regard to the question whether and when a natural person owning shares in several companies performs an economic activity, i.e. is an "enterprise", and hence can link several companies so that they become a "single undertaking" in the meaning of the De minimis Regulation, the Union Courts (see C-222/04 Cassa di Risparmio di Firenze, in particular para. 112) state that a natural person "owning controlling shareholdings" in several companies and who "actually exercises that control by involving itself directly or indirectly in the management" of those companies needs to be regarded as taking part in the economic activity of those companies. In this line of reasoning, the natural person, through the ownership and management of the companies, exercises an economic activity and may therefore connect those different companies into a single undertaking. For example, a majority shareholder who appoints appoint 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". By contrast, this is not the case for a shareholder (even majoritarian) who has put in place corporate arrangements that preclude him/her from direct or indirect involvement in the management of the company (see also Paragraph 16 of the Notice on the Notion of Aid).</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	2019.04.23
COMP Responsible	<input checked="" type="checkbox"/> COMPsupport ESTATE-AID-WIKI

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