

Art.2(2) Single undertaking, investors

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Article	Article 2 (2) Reg. 1407/2013 - Single undertaking
Key words	<i>Single undertaking, institutional investors, venture capital companies, investment funds</i>
Member State	LV
Question	<p>Question</p> <p>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 (<i>de minimis</i> Regulation), simplified definition of 'single undertaking' is used, which includes all enterprises having at least one of the following relationships with each other (<i>de minimis</i> Regulation Art.2(2)):</p> <p>a) one enterprise has a majority of the shareholders' or members' voting rights in another enterprise;</p> <p>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;</p> <p>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;</p> <p>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.</p> <p>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</p>


According to Commission's *User guide to the SME definition* public investment corporations, venture capital companies, business angels (less than EUR 1 250 000) and institutional investors, including regional development funds - one or more of the above investors may individually have a stake of up to 50 % in an enterprise, provided they are not linked, either individually or jointly, to the enterprise in question (e.g., enterprise is considered autonomous).


Once the participation of investor in a company exceeds 50%, the investor and the company are considered linked undertakings (in line with Commission reply in e-wiki as of 2016.07.12 to LV question). Nevertheless, practically it is burdensome and restrictive to link all companies that have received support from one investor in order to comply with *de minimis* thresholds.

A) Please clarify that in example "where investment fund A has a share of 50% in enterprise B and share of 50% in enterprise C, provided that no majority powers for A are present neither in B, nor in C" no links are present in definition of 'single undertaking' for the purpose of *de minimis* Regulation.

B) Please clarify that in example "where investment fund A has a share of 50%+1 in enterprise B and share of 50%+1 in enterprise C" links are present for all entities in definition of 'single undertaking' for the purpose of *de minimis* Regulation (A+B+C).

C) Please clarify that in example "where investment fund A has a share of 50%+1 in enterprise B and share of 50% in enterprise C, provided that no majority powers for A are present in C" links are present only for A and B in definition of 'single undertaking' for the purpose of *de minimis* Regulation (A+B).

	<p>D) Please clarify that in example “where investment fund A provides <i>de minimis</i> state aid by obtaining share of 50%+1 in enterprise B (irrespective of investment amount) and at the time of this investment fund A already has a share of 50%+1 in enterprise C, links are not present neither for B and C, nor B and A at the time of this investment (i.e., <i>de minimis</i> aid for B is calculated apart from A+ C) . For correct application of <i>de minimis</i> limits do we understand correctly that links between A, B and C will be established after this investment and will be present (for A+B+C) only for further investments.</p> <p>Or, taking into account, that for investment fund there are numerous companies, should the investment fund not to be taken into account and only other existing links, if any, between B and C should be taken into account?</p> <p><i>Is there any exception for follow-up investments from the same investor in the meaning of single undertaking under de minimis Regulation?</i></p>
Creation Date	2019.01.07.
COMP Reply	<p> Reply</p> <p>A. According to Article 2(2)(a) of the De minimis Regulation, a single undertaking includes enterprises having one enterprise with a majority of the shareholders’ or members’ voting rights in another enterprise. Therefore, if a company has 50% and no contractual or other majority rights are granted to either A or B (hence no majority powers), the criterion under Article 2(2)(a) is not satisfied.</p> <p>B. If a company has a share of 51 % in another company, it has a majority of the shareholders’ or members’ voting rights. Therefore, in the example that you provided, companies A, B and C would form a single undertaking within the meaning of the De minimis Regulation.</p>

	<p>C. According to Article 2(2)(a) of the De minimis Regulation, a single undertaking includes enterprises having one enterprise with a majority of the shareholders' or members' voting rights in another enterprise. Therefore, in the example that you provided, companies A and B would form a single undertaking, but not company C (provided that A does not have any contractual or other majority rights in C).</p> <p>D. Our understanding of the facts described in your question is that company A holds a majority (50%+1) in company C. It then acquires a majority in company B through an investment. As such, before the investment only companies A and C constituted a single undertaking, B not being part of this single undertaking. Through the investment B becomes part of this single undertaking. This means that for <i>de minimis</i> aid granted to B before the investment, any potential <i>de minimis</i> aid granted to the single undertaking A+C is not to be taken into account. Following the investment and the formation of the single undertaking A+B+C for any future <i>de minimis</i> aid to this new single undertaking the granting authorities need to take Article 3(8) into account, which stipulates that for future aid all <i>de minimis</i> aid granted to any of the merging undertakings needs to be taken into account. <i>De minimis</i> aid granted before the merger or acquisition remains lawful.</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	 COMPSupport ESTATE-AID-WIKI

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