


# Art. 2 (18) "Undertaking in difficulty and economic entity" - Link between exemption clause and economic entity

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 2 (18)  |
| Key words     | Undertaking in difficulty and economic entity   |
| Member State  | LU  |
| Question      | <p>According to Article 2 (18) of the GBER, an enterprise is exempted from conditions (a) and (b) if it is an SME that has been in existence for less than three years. Could the Commission please confirm that this exemption would apply in the following scenario:</p> <ul style="list-style-type: none"> <li>■ An SME with less than three years existence forming an economic entity with another enterprise that is also in existence for less than three years. The economic entity were to be considered as an undertaking in difficulty according to conditions (a) and (b).</li> </ul> <p>Could the Commission please confirm that the exemption would no longer apply in the following scenario:</p> <ol style="list-style-type: none"> <li>1. An SME with less than three years existence forming an economic entity with another enterprise that is in existence for longer than three years. The economic entity would still be considered as an SME.</li> <li>2. An SME with less than three years existence forming an economic entity with another enterprise that is in existence for longer than three years. The economic entity would be considered as large undertaking.</li> <li>3. Same as scenario 1 but where the whole economic entity were to be considered as an undertaking in difficulty.</li> <li>4. Same as scenario 2 but where the whole economic entity were to be considered as an undertaking in difficulty.</li> </ol> <p>It is clear that even if an SME is exempted from conditions a and b of article 2 (18) a granting authority would still have to check whether the company does not fulfill one of the remaining conditions under the "undertaking in difficulty" definition.</p> |
| Creation Date | 2016.12.09  |

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| COMP<br>Reply       | <p>The definition of an SME (Annex I of the GBER) requires that both "linked enterprises" and "partner enterprises" are taken into account to determine whether an enterprise is an SME. The SME definition does not only look at the individual unit. Therefore, in practice in many situations the "undertaking" in the sense of the State aid rules will be the same or very similar to the enterprise that is relevant to determine whether an enterprise is an SME. It will therefore only be in exceptional circumstances that an SME can form an economic unit in the sense of the State aid rules with another non-SME (because that fact would typically mean that there is no SME in the first place).</p> <p>If such economic unit still qualifies as a SME, its eligibility for the exceptions provided for in Article 2 (18) (a) and (b) shall be assessed in the course of analysing all the circumstances from the Article 2(18). However, if one of the entities that form part of the single undertaking has been in existence for more than 3 years, the whole single undertaking cannot be considered eligible for the exceptions which are provided for in Article 2 (18) (a) and (b) for the SMEs that have been in existence for less than 3 years.</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<br>date  | 2017.01.09   |
| COMP<br>Responsible | <input checked="" type="checkbox"/> COMPsupport ESTATE-AID-WIKI  |

- Article 2 - Definitions