


# Art 1(4)(c) Undertakings in difficulty

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Article	Article 1(4)(c) Undertakings in difficulty
Key words	Undertaking in difficulty at group level
Member State	SK
Question	<p>The Commission answer to question number 5 of the GBER Frequently Asked Questions (regarding undertaking in difficulty at group level) states, that as long as the group acts as a single economic unit, it shall be considered as one undertaking and the economic situation of all the legal persons part of the group shall be considered when granting aid under the GBER. Otherwise, a company that is in difficulty might bypass the GBER prohibition of aid to enterprises in difficulty, by simply setting up a wholly owned subsidiary and transferring its liabilities to that company.“.</p> <p>We kindly ask for interpretation of following part of the answer: “the economic situation of <b>all the legal persons part of the group</b> shall be considered when granting aid under the GBER“. Does it mean that we should evaluate economic situation of each individual member of the group and if one legal entity is the undertaking in difficulty, then none of the legal entities of the same group is eligible for aid under the GBER? Or does it mean that we should evaluate economic situation of all the legal entities together (derived from consolidated statement of accounts) and if the group is the undertaking in difficulty, then none of the legal entities of the same group is eligible for aid under the GBER?</p> <p>We would like to ask for clarification on how to assess following situations in compliance with above mentioned answer.</p> <p>Situation 1</p> <p>Aid applicant is a member of the group which prepares the consolidated statement of accounts. Based on a data from this statement, the undertaking as a group is not in difficulty. Based on a data from individual statement of accounts of the aid applicant, it is not the undertaking in difficulty. Based on a data from individual statement of accounts of the other legal entity of the same group, this legal entity is the undertaking in difficulty. Is it possible to grant aid to the aid applicant in this situation?</p> <p>Situation 2</p> <p>Aid applicant is a member of the group which prepares the consolidated statement of accounts. Based on a data from this statement, the undertaking as a group is not in difficulty. Based on a data from individual statement of accounts of the aid applicant, it is the undertaking in difficulty. Based on a data from individual statement of accounts of the other legal entity of the same group, this legal entity is not the undertaking in difficulty. Is it possible to grant aid to the aid applicant in this situation?</p> <p>Situation 3</p>

	<p>Aid applicant is a member of the group which prepares the consolidated statement of accounts. Based on a data from this statement, the undertaking as a group is in difficulty. Based on a data from individual statement of accounts of the aid applicant, it is not the undertaking in difficulty. Based on a data from individual statement of accounts of the other legal entity of the same group, this legal entity is the undertaking in difficulty. Is it possible to grant aid to the aid applicant in this situation?</p> <p>Situation 4</p> <p>Aid applicant is a member of the group which does not prepare the consolidated statement of accounts. Based on a data from individual statement of accounts of the aid applicant, it is not the undertaking in difficulty. Based on a data from individual statement of accounts of the other legal entity of the same group, this legal entity is the undertaking in difficulty. Is it possible to grant aid to the aid applicant in this situation? Or is it necessary to prepare ad-hoc consolidated statement of accounts and consider the situation at group level.</p> <p>Situation 5</p> <p>Aid applicant is a member of the group which does not prepare the consolidated statement of accounts. The common source of control represents one natural person as the only owner of all legal entities in the group. Based on a data from individual statement of accounts of the aid applicant, it is not the undertaking in difficulty. Based on a data from individual statement of accounts of the other legal entity of the same group, this legal entity is undertaking in difficulty. Is it possible to grant aid to the aid applicant in this situation? It is not possible to draft consolidated statement of accounts in this situation, the only option to consider the overall financial situation of the group is to sum up the data from individual statements of accounts of each legal entity owned by this one natural person. Is this a viable option?</p>
Creation Date	2017.04.11

COMP Reply	<p><b>Answer:</b> As replied to a question from HR on 13 March in eWiki, when checking compliance with the State aid requirements regarding the existence of financial difficulty, what should be checked is the economic reality of that <b>economic unit</b>.</p> <p>In practice, <u>if the legal entity applying for aid is not in difficulty</u>, a plausibility check must be conducted at the level of the economic unit as a whole to confirm the overall financial situation. If there are no particular reasons to assume the existence of difficulties at the level of the economic unit as a whole (and not just for one of the sister companies), it should be possible to grant aid under the GBER.</p> <p>Replies to the scenarios described above:</p> <p>Situation 1: Yes.</p> <p>Situation 2: No. If the difficulty is not confirmed at undertaking level, the parent -or sister companies of the beneficiary of the planned aid may be able to provide the necessary funding to the beneficiary, after which it can receive aid under the GBER.</p> <p>Situation 3: No.</p> <p>Situation 4: It is necessary to prepare some type of aggregated financial situation in order to determine if the economic unit as a whole is in difficulty. If the economic unit is not in difficulty, aid can be granted.</p> <p>Situation 5: Yes. In the absence of consolidated statements, aggregation of the individual fin statements could be an option in order to determine the financial situation of the economic unit. If the economic unit is not in difficulty, aid can be granted.</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	2017.05.02
COMP Responsible	<input checked="" type="checkbox"/> COMPSupport ESTATE-AID-WIKI

<sup>1</sup> Article numbers & names

- Article 1 - Scope
- Article 2 - Definitions
- Article 3 - Conditions for exemption
- Article 4 - Notification thresholds
- Article 5 - Transparency of aid
- Article 6 - Incentive effect
- Article 7 - Aid intensity and eligible costs
- Article 8 - Cumulation
- Article 9 - Publication and information

<sup>2</sup> 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.