**Question:**

Art. 2, para. 18 of Regulation (EC) № 651/2014 contains definition of “undertaking in difficulty”. Common overall concept of Regulation (EC) № 651/2014 requires applicability of rules to any entity carrying out economic activities.

In this particular case, state aid is addressed to candidates/partners, which are non-government organizations, carrying out economic activities. Based on national legislation, governing the private benefit NGOs at the national level, this type of entities are established as non-profit organizations. They can carry out additional economic activities to support the main non-economic activities. Under national accounting legislation (standards) economic and non-economic activities should be clearly separated and must contain different profit and loss accounts. In relation to insolvency, bankruptcy, liquidation proceedings, respectively the powers of the liquidator, the provisions of Trade law shall be applied accordingly.

Regarding specific characteristics of non-governmental organizations, their activities and accountability, our understanding is that private benefit NGOs can only be assessed “in difficulty” upon the basis of Article 2, para. 18, (c), (d) of Regulation (EC) № 651/2014.

The reason for our position in case of NGOs, carrying out economic activities, are the following:

1. On one part, NGOs are not traditional capital companies and they have no obligation to register (subscribe) capital, which does not permit application of Article 2, para. 18, (a), (b) of Regulation (EC) № 651/2014. On the other part, NGOs may form capital reserves, which also does not allow the application of Article 2, para. 18, (a), (b) of Regulation (EC) № 651/2014 because they apply to registered (subscribed) capital.

2. Under this procedure the eligible candidates are only small and medium-sized enterprises. Therefore NGOs that correspond to large enterprises are not eligible. As a result, it is impossible to implement Article 2, para. 18, (a), (b) of Regulation (EC) № 651/2014.

Taking into account the above, our opinion is that in respect to private benefit NGOs it is possible and sufficient to make the analysis whether it is “undertaking in difficulty” only according to the criteria laid down in Article 2, para. 18, (c), (d) of Regulation (EC) № 651/2014.

We would be grateful, if you could confirm or not the correctness of our understanding of the matter. We would also highly appreciate if you provide us with further clarifications or ‘good practices’, where relevant.

If the Commission considers that the above approach is not correct and Article 2, para. 18, (a), (b) of Regulation (EC) № 651/2014 should be applied for the private profit NGOs despite the absence of a registered capital, please provide concrete instructions on how to apply Article 2, para. 18 in the case of NGOs.

**Reply:**

If the NGO carries the economic activity and is considered an undertaking for the purposes of State aid rules, in order to establish whether it is in difficulty the analysis of all circumstances described in Article 2(18) should be done. However, if the particular NGO is not a 'limited liability company' as described in Article 2 (18) (a) nor 'a company where at least some members have unlimited liability for the debt of the company' as described in Article 2 (18) (b), the circumstances described in points (a) and (b) are not relevant for the assessment.

 *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.*