**Question:**

With view of the correct interpretation of the definition of an undertaking in difficulty, we would be grateful to receive some clarifications from the EC on the questions below, related to the provisions of art. 2, para. 18 of Regulation (EC) № 651/2014 of the Commission:

If Company A is the candidate could we consider said company as eligible for the grant of state aid under the GBER if the company itself is in difficulty, as long as the whole group is not in difficulty?

*Regarding  the answer published on 31/10/2016 , given on the ECN-ET, if the legal entity applying for aid is in difficulty, a check at the level of the economic unit (“the Group”) should either confirm or not this economic situation. If the difficulty is confirmed also at the level of the economic unit, no aid can be granted under the GBER. If the difficulty is not confirmed at undertaking level, the parent -or sister companies of the undertaking may be able to provide the necessary funding to the undertaking, after which it can receive aid under the GBER. In this regard, could you provide some clarifications on the specific kind of evidence or activity which shall be considered as eligible to provide the necessary funding from parent -or sister companies to the undertaking, after which this undertaking can receive aid under the GBER?  Would you consider as acceptable for the purposes of the case above if the parent or sister companies provide affidavits/declarations where they take the full responsibility of covering the necessary funding?*

**Reply:**

As stated in the answer of 14/7/2016 to an interpretation question by LV, an undertaking is defined, in accordance with the case law, as a single economic entity having a common source of control. Therefore, as long as a group acts as a single economic unit, it shall be considered as one undertaking and the situation of all individual entities being 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 undertakings in difficulty, by simply setting up a wholly owned subsidiary and transferring all its liabilities to that company.

In light of this principle, an individual aid applicant being part of a group that falls under this definition of an undertaking is, in principle, eligible for aid under the GBER if the group it belongs to is not in difficulty. In other words, for the definition of "undertaking in difficulty" of Article 2(18) GBER the group level is the relevant one and not the one of the individual aid applicant.

The answer in eWiki you refer to in your question concerns exceptional circumstances in which an entity applying for aid, but which is part of a group (undertaking) that is not in difficulty, is nevertheless to be considered as company in difficulty under the Rescue and Restructuring Guidelines and is, therefore, eligible for aid under those Guidelines. This is the case if it can be demonstrated that the entity's difficulties are intrinsic and are not the result of an arbitrary allocation of costs within the group, and that the difficulties are too serious to be dealt with by the group itself (see point 22 of the R&R Guidelines). In such a situation the individual entity is eligible for rescue and restructuring aid. This, however, means that it is to be considered an undertaking in difficulty and is, therefore, not eligible for aid under the GBER. As indicated in the answer you refer to, this can be avoided if the other entities of the group can provide the necessary funding to the entity applying for aid so that it is not to be considered as in difficulty anymore (as, if this is the case, the group can deal with the difficulties itself and point 22 of the R&R Guidelines is not applicable). This funding must be real and in a form that ensures that the entity applying for aid does not fulfil the definition of company in difficulty anymore (e.g. equity contribution, taking over of debt). Affidavits or declarations as referred to in your question are not enough, as this would not provide the necessary increase in the own resources of the company or decrease of the debts/accumulated losses of the company that would make it possible to conclude that the definition of being in difficulty is not fulfilled anymore.

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.