**Question:**

##### In the framework of group exemption scheme under article 53 the financing of state and municipal cultural infrastructure is foreseen. The funds will be granted to the owners of the infrastructure: municipalities (local government institutions) and the Ministry of Culture, which do not perform economic activities themselves. In the same time in the foreseen for financing infrastructureare set up state or municipal cultural organisations. They are registered according to the Law on protection and development of culture and can perform economic activity. The cultural organisations in question are established under a special law or with an act of the executive or local public authority and their activity is financed by the state or municipal budget. They are not companies, they are not NGO’s and they don’t have their own capital and other property. In the common case they are separate legal entities, secondary budget spenders under the corresponding public institutions – Ministry of Culture or municipalities, i.e. they dispose of delegated budgets, allocated each year by the corresponding public institutions and they have a separate accountancy. Hypotheses of art. 2 (18) of GBER are not applicable to these institutions, neither is para 20 of the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty. These organisations cannot be in difficulty unless the primary budget spender (the corresponding public institution) is in difficulty.

##### In the Bulgarian legislation there is a definition for a municipality in difficulty, but it is applicable to the municipalities and cannot be applied to the municipal cultural organisation. There is no definition of a state body (ministry) in difficulty. With regard to the described, is it necessary in this specific case to check whether the cultural organisations are „enterprises in difficulty” and if it is necessary which criteria should be applied?

In the platform there is a similar question from Estonia from 30.06.2016 concerning public institutions performing economic activity however analogy is not possible because in the Estonian case the “enterprises” are part of the public institutions and do not present separate financial reports; their financial figures are part of the consolidated reports of the corresponding ministry and the Commission has stated that in this case it is hard to meet the conditions for enterprise in difficulty, i.e. the ministry cannot be in difficulty. In our case the cultural organisations are separate legal entities with separate accountancy. Furthermore, if we accept that the state cultural organisations cannot be in difficulty as the financing ministry cannot be in difficulty, the case with the municipal cultural organisations is different because there can be a municipality in difficulty.

**Reply:**

From the description of the applicable national legal framework it seems that the cultural organisations in question do not have any capital or property on their own and are financed through the budget of the corresponding public institutes (the Ministry of Culture or the relevant municipality). As such, even though they formally are separate legal entities with separate accounting, it seems like it is not possible to verify whether they are, separately from the relevant public institution, undertakings in difficulty, but that this criterion will have to be established on the level of the public institution.

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.