**Question:**

I. With view to the correct interpretation of the definition of an undertaking in difficulty, when the undertaking is not a SME, we would be grateful to receive some clarifications from the EC on the questions below, related to the provisions of art. 2, para. 18 (d) of Regulation (EC) № 651/2014 of the Commission.

In particular, we would like to receive some more clarity on the following sentence of the above provision “the ratio between liabilities and own capital of the undertaking should not exceed 7.5”.

Balance sheet of the respective undertaking shall include:

Section В. Liabilities

I. Bond loans

II. Liabilities to financial entities

III. Advance payments received

IV. Liabilities to suppliers

V.  Promissory notes Payables

VI. Liabilities to group undertakings

VII. Liabilities related to Associates and jointly controlled entities (undertakings)

VIII. Other liabilities (liabilities to staff, liabilities for social security payments and taxes)

According to the answers available on the ECN-ET regarding the calculation of the “difficulty” for large undertakings, the amount of the liabilities should be calculated as the book value of the short-term and long-term financial liabilities on which interest is payable. In particular, such liabilities include financial instruments such as bank loans, loan capital instruments and financial lease contracts, but they do not include the capital. It should be taken into account that the liabilities also exclude provisions. All liabilities listed above in Section В of the Liabilities category of the balance sheet can be both short-term and long-term financial liabilities and can be subject to interest.

We would like to ask you to specify if in the process of calculation of the ratio between liabilities and owned capital, all the above liabilities such as bond loans, liabilities to financial entities, advances received, payments to suppliers, promissory notes Payables, liabilities related to Associates and jointly controlled entities (undertakings), liabilities to staff, liabilities for social security payments and tax liabilities, which form part of Section B of the Liabilities category in the balance sheet are taken into consideration, or just bond loans and liabilities to financial entities.

Option 1:  Liabilities = I + II + III + IV + V + VI + VII + VIII or

Option 2 Liabilities = I + II

 The balance of the respective undertaking in Section А (Owned capital) includes:

A. (Owned capital)

I. Subscribed capital

II. Share premium account

III. Revaluation reserve

IV. Reserves

1. Legal reserves.

2. Reserve related to purchased own shares

3. Reserves according to the articles of association.

4. Other reserves.

V. Accumulated profit (loss) from previous years

VI. Current profit (loss).

According to another answer published on the ECN-ET with respect to the calculations concerning large undertakings in difficulty, the owned capital includes the share capital, the share premiums, the capital reserves and the undistributed profit, but excludes, however, any subsidies and provisions.

As regards the correct calculation of the value of the subscribed capital, we would like to ask you the following: are all kinds of reserves such as: revaluation reserve, legal reserves, reserves with purchasing of own shares, reserves according to the articles of association and other reserves included in the proper calculation of the owned capital? Are the accumulated profits (losses) from previous years and the current profit (loss) included in the owned capital?

In case none of the above options is a correct approach to determining whether a large undertaking is in difficulty or not, we would highly appreciate it if you provide us with additional instructions regarding the interpretation of the above provision of the regulation and a specific formula for calculation.

II. For the purpose of calculating EBITDA please confirm that we should not include incomes from other investments and loans recognized as non-current (long-term) assets as part of financial revenues in the total amount of the operating revenues. In previous reply on EBITDA calculation EC referred that only cash dividends received from investments accounted for under the equity method should be included.

We would be very grateful if the European Commission services could provide us with answers to the questions above in the nearest possible time.

**Reply:**

The term "debt" should be understood as the book value of interest-bearing short-term and long-term financial liabilities. It should include such items as bank loans, debt capital market instruments (e.g. bonds) and finance leases. In principle, it should exclude short-term obligations, such as accounts payable and other accrued liabilities, because they are regarded as trade credit rather than the incurrence of long-term debt. However, to the extent that a company defers payment beyond the term customary for its supply chain, that amount may be added to debt.

Applying the above general rule to the above example:

Bonds, loans (I) and (interest-bearing) financial liabilities (II) should be clearly considered as debt. Advance payments received (III) constitute accrued liability and thus should not be included in debt calculation. Liabilities to suppliers (IV) and promissory notes payable (V) constitute accounts payable, therefore they should not be added to debt, unless payment terms go beyond what can be considered normal for the industry concerned. Liabilities to subsidiaries and associates (VI and VII), to the extent they constitute trade liabilities, should not be included in debt. On the other hand financial liabilities (e.g. intra-group loans) should be included in debt, where appropriate, after consolidation adjustments. Other liabilities (VIII) should be considered on a case by case basis. Liabilities to staff (e.g. wages) should not in principle be included in debt, whereas e.g. recognised workers' compensation obligations or share-based arrangements payable in cash should be added to debt. Social security and tax liabilities should in principle not be included in debt, unless they are subject to debt settlement.

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.