

# Art 2(2) and point 4 of the Preamble - enterprises controlled by the same public body

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Article	Art. 2 - Definitions and point 4 of the Preamble
Key words	enterprises controlled by the same public body, independent power of decision
Member State	BG
Question	<p>Regulation 1407/2013, preamble point 4 (two last sentences) says:</p> <p><i>Those criteria should ensure that a group of linked enterprises is considered as one single undertaking for the application of the de minimis rule, but that enterprises which have no relationship with each other except for the fact that each of them has a direct link to the same public body or bodies are not treated as being linked to each other. The specific situation of enterprises controlled by the same public body or bodies, which may have an independent power of decision, is therefore taken into account.</i></p> <p>In the light of the Commission's replies given to Latvia on 10<sup>th</sup> of August 2017 and to Estonia on 27<sup>th</sup> of November 2017, we understood that:</p> <ol style="list-style-type: none"> <li>1. The exception above refers to situations where several municipal owned undertakings are owned by one local authority and each such municipal undertaking may therefore receive up to the de minimis ceiling for a period of 3 years.</li> <li>2. In those situations the Municipality itself can receive aid up to the ceiling.</li> </ol> <p>Nevertheless, we would like to ask the Commission the following:</p> <ol style="list-style-type: none"> <li>1. Is the mere fact that having no relationship with each other, except for the fact that each of the municipal enterprises has a direct link to the same public body, enough for not treating such enterprises as linked to each other? Or something else in the area of independent power of decision is needed?</li> <li>2. What exactly is meant by wording "independent power of decision" (what kind of decisions should they take independently) in the last sentence of preamble point 4?</li> </ol>
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COMP Reply	<p>1. Yes, the mere fact that undertakings are owned by the same public body is not enough to consider these undertakings as linked to each other. Indeed, this common ownership does not qualify as a common source of control; therefore, undertakings controlled by the same public body are not part as a 'single undertaking'. Should however the undertakings be controlled not by the same public body, but by the same undertaking, then the criteria laid down in Article 2(2) apply.</p> <p>2. The reference to the independent power of decision in Recital 4 is for explanatory purposes to show the difference with the SME Recommendation 2003/361/EC. This is irrelevant to apply the conditions laid down in Article 2(2).</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>
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