


# Art. 2, point 18 - undertaking in difficulty, group of undertakings

1. **Page title:** Please insert the full Article reference (e.g. "Art. 1(4) a)") and a short title (e.g. "Deggendorf principle")
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3. **Questions:** Please create 1 question page per question
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Article	Article 2 - Definitions
Key words	<i>undertaking in difficulty, group of undertakings</i>
Member State	BG
Question	<p>Bulgaria would like to ask two questions related to the determination of a group of undertakings to which should be investigated the circumstances under Art. 2, item 18 of the GBER:</p> <p>1. In the following factual setting:</p> <p>Company B applies for assistance under the GBER.</p> <p>Company A owns 30% of Company B, as in some cases it is required to prepare consolidated financial statements with it, but in others it is not.</p> <p>Company C owns 70% of Company B.</p> <p>We would like the EC to indicate which of the following two options for identifying a group of undertakings is correct in this case:</p> <p>Option 1 - The group consists of company C and company B. Company A and Company B do not form a group of undertakings, although they are "partner enterprises" within the meaning of ANNEX I of the GBER.</p> <p>Option 2 - The group consists of companies A, B and C, as the partner company A is participating in the group with a corresponding share of its investment in enterprise B - 30%.</p> <p>2. Is it correct to understand that for the definition of a group of undertakings it is sufficient to examine the hypotheses provided for in Art. 3, par. 3, points "a" to "d" of the GBER and to the group should not be added "partner enterprises", within the meaning of ANNEX I of the GBER?</p>
Creation Date	2020.03.10

COMP Reply	<p><i>According to a constant case-law, an undertaking is defined as a single economic entity when it has a common source of control. This concept relies on the ability of one of the stakeholders to influence the economic behaviour of the downstream enterprise. It follows that independently of what the entity is called (business group, partner company, etc.), the analysis should be based on objective elements such as articles of association, voting rights, any other special rights or economic links that would prove to be relevant. If the conclusion is that there is no such influence of any of the undertakings considered, regardless of the percentage of ownership shares they hold in the entity which is the beneficiary of the State support, then it can be considered that they do not constitute a single economic entity with that beneficiary.</i></p> <p><i>The purpose of Article 3, paragraphs 2 and 3 of the Annex I to the GBER is to embody that case law and set out clear rules allowing to easily discern between the entities which should be considered as a part of one undertaking, i.e. 'linked enterprises', and those who should not, i.e. 'partner enterprises'. Indeed, the definition of 'partner enterprise' of Article 3, paragraph 2, of the Annex I to the GBER is founded on the assumption that such enterprise does not have the ability to influence the economic behaviour of another enterprise, even though it holds an important stake in it. Consequently, if the company A of the example provided in your question does not have the actual ability to influence the economic behaviour of the company B and can thus be considered as being merely a 'partner enterprise', it should not be considered as a part of the group consisting of companies B and C.</i></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>
COMP Reply date	2021.05.31
COMP Responsible	<input checked="" type="checkbox"/> COMPethree ESTATE-AID-WIKI

<sup>1</sup> Article numbers & names

- Article 1 - Scope
- Article 2 - Definitions
- Article 3 - Conditions for exemption
- Article 4 - Notification thresholds
- Article 5 - Transparency of aid
- Article 6 - Incentive effect
- Article 7 - Aid intensity and eligible costs
- Article 8 - Cumulation
- Article 9 - Publication and information

<sup>2</sup> AT, BE, BG, HR, CY, CZ, DE, DK, EE, EFTA, EL, ES, FI, FR, HU, IE, IT, LT, LU, LV, MT, NL, PL, PT, RO, SK, SE, SI, UK.

