



Definitions of Undertaking and Undertaking in Difficulty A2E & IIS

Definition of Undertaking: An undertaking is considered to be any entity engaged in an economic activity, irrespective of its legal status and the way in which it is financed and includes a partnership, company, self-employed persons, family businesses, association or other bodies, whether vested with legal personality or not. The term Undertaking is defined by well-established case law of the Union Courts as a single economic entity having a common source of control. For the purpose of determining the size of the applicant, which is relevant so as to establish the applicable aid intensities under the Access to Employment and Investing in Skills Schemes, it must first be determined whether an enterprise is an autonomous enterprise, a partner enterprise, or a linked enterprise.

- **'Autonomous enterprise'**; is any enterprise, which is not classified as a partner enterprise within the meaning of 'partner enterprises' or as a linked enterprise within the meaning of 'linked enterprises' as explained below.
- **'Partner enterprises'** refers to all enterprises which are not classified as linked enterprises within the meaning of 'linked enterprises' and between which there is the following relationship: an enterprise (upstream enterprise) holds, either solely or jointly with one or more linked enterprises within the meaning of 'linked enterprises', 25 % or more of the capital or voting rights of another enterprise (downstream enterprise).

However, an enterprise may be ranked as autonomous, and thus as not having any partner enterprises, even if this 25 % threshold is reached or exceeded by the following investors, provided that those investors are not linked, within the meaning of 'linked enterprises', either individually or jointly to the enterprise in question:

- a) public investment corporations, venture capital companies, individuals or groups of individuals with a regular venture capital investment activity who invest equity capital in unquoted businesses (business angels), provided the total investment of those business angels in the same enterprise is less than EUR 1,250,000;
 - b) universities or non-profit research centres;
 - c) institutional investors, including regional development funds;
 - d) autonomous local authorities with an annual budget of less than EUR 10 million and less than 5,000 inhabitants; or
- **'Linked enterprises'** are enterprises which have any of the following relationships with each other:
 - a) an enterprise has a majority of the shareholders' or members' voting rights in another enterprise;
 - b) an enterprise has the right to appoint or remove a majority of the members of the administrative, management or supervisory body of another enterprise;
 - c) an enterprise has the right to exercise a dominant influence over another enterprise pursuant to a contract entered into with that enterprise or to a provision in its memorandum or articles of association;
 - d) an enterprise, which is a shareholder in or member of another enterprise, controls alone, pursuant to an agreement with other shareholders in or members of that enterprise, a majority of shareholders' or members' voting rights in that enterprise.

There is a presumption that no dominant influence exists if the investors listed in the second subparagraph of the definition of 'partner enterprises' are not involving themselves directly or indirectly in the management of the enterprise in question, without prejudice to their rights as shareholders.

Enterprises having any of the relationships described in the first subparagraph through one or more other enterprises, or any one of the investors mentioned in the definition of 'partner enterprises', are also considered to be linked.

Enterprises which have one or other of such relationships through a natural person or group of natural persons acting jointly are also considered linked enterprises if they engage in their activity or in part of their activity in the same relevant market or in adjacent markets.

An 'adjacent market' is considered to be the market for a product or service situated directly upstream or downstream of the relevant market.

Definition of an Undertaking in Difficulty: an undertaking in respect of which at least one of the following circumstances occurs:

- a) In the case of a limited liability company (other than an SME that has been in existence for less than 3 years where more than half of its subscribed share capital has disappeared as a result of accumulated losses. This is the case when deduction of accumulated losses from reserves (and all other elements generally considered as part of the own funds of the company) leads to a negative cumulative amount that exceeds half of the subscribed share capital. For the purposes of this provision, 'limited liability company' refers in particular to the types of company mentioned in Annex I to Directive 2013/34/EU of the European Parliament and of the Council and 'share capital' includes, where relevant, any share premium.
- b) (b) In the case of a company where at least some of its members have unlimited liability for the debt of the company (other than an SME that has been in existence for less than 3 years, where more than half of its capital as shown in the company accounts has disappeared as a result of accumulated losses. For the purposes of this provision, 'a company where at least some of its members have unlimited liability for the debt of the company' refers in particular to the types of company mentioned in Annex II to Directive 2013/34/EU.
- c) Where the undertaking is subject to collective insolvency proceedings or fulfils the criteria under its domestic law for being placed in collective insolvency proceedings at the request of its creditors;
- d) Where the undertaking has received rescue aid and has not yet reimbursed the loan or terminated the guarantee, or has received restructuring aid and is still subject to a restructuring plan; and
- e) In the case of an undertaking that is not an SME, where, for the past two years:
 - i. The undertaking's book debt to equity ratio has been greater than 7.5; and
 - ii. The undertaking's EBITDA interest coverage ratio has been below 1.0.



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