

The essentials of State aid – Key take aways of the thematic discussion paper

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Introduction

- Public financial support plays an important role in enabling the start-up and development of social economy entities.
- EU State aid law allows for the granting of public financial support to social economy entities.
- However, public authorities often do not make the most of these State aid possibilities (SEAP, 2021).
- The workshop aims to provide participants with a strong basis to grant State aid support for the social economy in general and cover the fundamentals of State aid rules.

2.1 State aid fundamentals

What is State Aid?

A financial transfer of public resources that benefits a selective group of undertakings and is capable of distorting competition and trade

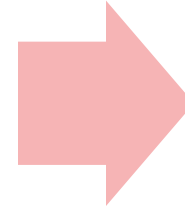
Public resources: Any form of financial benefit (grant, tax break, cancellation of a debt, land/property) for free or abnormally low price

Advantage: Is the situation of the undertaking better after the measure? Could the undertaking obtain the same on the market?

Selective: If the financial benefit is not open to all undertakings that are in the same situation as the beneficiary.

Distortion of competition/trade: Is the beneficiary competing with other undertakings?...if so competition/trade is liable to be distorted.

An **undertaking** is any entity that is engaged in an economic activity irrespective of its legal status, the way it is financed or whether it aims to make a profit.



Which are the main rules on State aid ?

Articles 107 and 108 TFEU
Article 106 TFEU (SGEI)

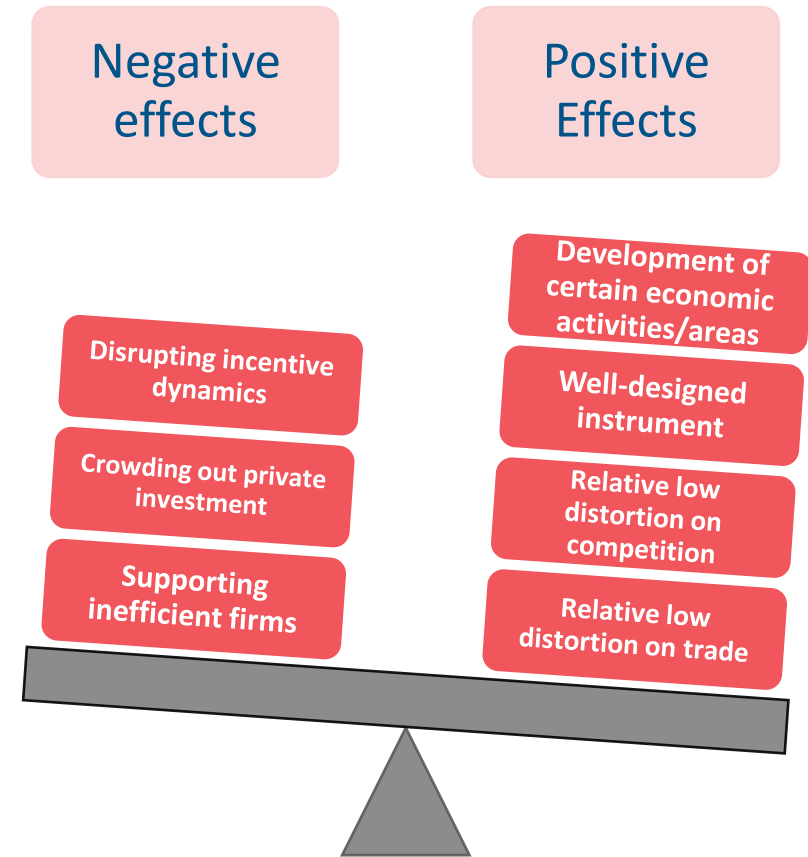


State aid main legislation :

GBER regulation
De minimis regulation
SGEI de minimis regulation
SGEI Decision/Framework
Soft law (guidelines, frameworks...)

2.1 State aid fundamentals

- In principle, according to EU Law (Article 108(3) TFEU), all planned State aids must be notified to the European Commission before they can be granted.
- The Commission carries out a balancing test between negative and positive effects.
- Most State new aid measures are currently exempted from notification GBER (ex ante assessment by Commission, strict compliance)



2.2 State aid for the social economy

De minimis

- Up to EUR 200K for each undertaking over a 3-year period without notification to the Commission (! under revision).
- Strict conditionality (notification otherwise).
- SGEI de minimis: EUR 500K (! under revision).

Block exempted aid

- The GBER enables Member States to implement State aid measures directly, with full legal certainty and without prior control by the Commission.
- Some examples: Investment aid to SMEs, Risk finance aid schemes in favour of SMEs, or Aid for start-ups.
- All aid granted under the GBER must have an incentive effect.
- certain categories of aid are not required to have an incentive effect, e.g.. Aid for the recruitment of disadvantaged workers.

SGEI

- Member States can grant compensation for the provision of SGEI (wide discretion in defining them).
- Examples include social housing and hospitals, access to and reintegration into the labour market, or the social inclusion of vulnerable groups.
- SGEI Decision: State aid > EUR 500K compatible (! under revision).
- SGEI Framework: Larger schemes.

Other aid following notification

- Articles 107(2) and 107(3) TFEU allow granting State aid under certain conditions.
- The Commission has published these conditions in guidelines, and frameworks.
- Need to notify and wait for approval (Art. 108(3) TFEU).

3. Concrete examples and cases



A. Aid measures notified and approved by the European Commission



B. Social services considered SGEI



C. Public support measures related to the social economy that were not considered as State aid

3. Aid measures notified and approved by the European Commission

Aid to help social organisations increase their social impact by improving their access to affordable finance

- Setting up of the Big Society Capital (BSC) with a capital injection of GBP 400 million to help frontline social organisations increase their social impact, by improving their access to affordable finance.
- The measure aimed to address the funding gap of the social sector by contributing through investment in Social.
- Social sector organisations defined by their aim to deliver social (including environmental) results, as opposed to the traditional private sector goal to generate profit
- The Commission considered the measure State aid but compatible on the basis of Article 107(3)(c) TFEU: market failure in the funding of the social sector that could be remedied by the measure.

Aid to create new jobs for disadvantaged workers

- Swedish measure to create new jobs for unemployed disadvantaged and severely disadvantaged workers (newly arrived immigrants and long-term unemployed).
- Employers will pay wages significantly lower than the minimum wage under regular collective agreements
- A State compensation is paid directly to the worker and not to the employer
- Mainly benefitted SME.
- Approved under Article 107(3) TFEU

3. Social services considered SGEI

Aid to cover the budget deficit of hospitals

- Brussels hospitals case, initiated by private complaint.
- Funding to cover the budget deficit of hospitals considered compatible with Article 106(2) TFEU
- The Commission applied both the SGEI-Decision and the SGEI-Framework)

Aid for social housing

- Financial support granted by The Netherlands to housing corporations ('woningcorporaties' – WOCOS) is State aid.
- Compatible with Art. 106(2) TFEU if provided to a clearly defined target group of disadvantaged citizens or socially less advantaged groups.
- General Court confirmed Commission decision.
- Social housing and assistance recognized by Charter of Fundamental rights (Art. 34)

Aid for an association of deaf people

- EUR 1 million aid to create and operate a 'Centre for the Autonomy of Deaf People'
- The Commission declared it compatible under Article 106(2) TFEU as it met the requirements of the 2012 SGEI Decision
- The Commission expressed doubts about nature of undertaking of association but it was clearly in competition with others

Aid for the integration of people with disabilities

- Aid to public company providing sheltered employment.
- Compensation for the additional costs of employing workers with disabilities
- Finally compliant 2012 SGEI Decision

3. Public support measures related to the social economy that were not considered as State aid

Beneficiaries are not undertakings under Article 107(1) TFEU

- Health insurance operators, even if private companies not undertakings.
- The system was based on solidarity not capitalization
- The Commission found that there was no economic activity (confirmed by CJEU)

Absence of effect on trade

- Santa Casa de Misericordia de Tomar: operates purely local market,
- Services are not specialized
- Do not attract customers from other Member States.
- No international investors either
- Therefore no effect on trade: one of the constitutive elements under Article 107(1) TFEU

Absence of selective advantage

- Italy: it was not possible to demonstrate that a cost advantage existed in favour of the undertakings governed by the private social security system as opposed to the public one (both can compete). Even if there was advantage, it was not selective (two criteria of notion of aid missing)
- Irish risk equalisation scheme involved payments which were limited to the minimum necessary to compensate insurers for service of general economic interest obligations and therefore did not involve State aid (there was no advantage)
- A tax benefit conferred to producers' and workers' cooperative societies (to which profit-making companies are not entitled), may not be selective and therefore does not constitute State aid due to the specific features of cooperatives.

Conclusions

- Current EU State aid rules open up significant opportunities for funding the activities of social economic entities
- These include de minimis aid, block-exempted aid, or aid as compensation for the provision of SGEI.
- Importantly, the rules on State aid are applicable only if all the criteria enshrined in Article 107(1) TFEU are met, including the notion of undertaking for competition law purposes.
- It is essential to be familiar with the different possibilities for granting/receiving State aid and their main substance and procedural implications.

Thank you very much!