

MUTUAL LEARNING WORKSHOPS ON 'STATE AID SUPPORT FOR THE SOCIAL ECONOMY' STATE AID FACTSHEETS

1

KEY ELEMENTS OF STATE AID



Article 107(1) TFEU contains the basic elements of the notion of aid and states 'any State aid' a priori is incompatible with the internal market. The Court of Justice has clarified that the notion of aid requires the following four cumulative criteria to be met¹:

1

➤ **There must be an intervention by the State or through State resources in any form.**

State resources refer to any form of public support, coming directly from the State or from a company in which the State exercises a decisive influence. State aid can take various forms, ranging from subsidies, reductions, guarantees on preferential terms, etc.

2

➤ **The intervention must be liable to affect trade between Member States.**

Only where an aid demonstrably has a purely local impact, an effect on trade between Member States can be excluded, depending on a case-by-case analysis.

3

➤ **It must confer a selective advantage on the recipient undertaking.**

This criterion has two key elements. First, the recipient must be an undertaking, meaning it is engaged in an economic activity irrespective of its legal status, the way it is financed or whether it aims to make a profit. In a social economy context, social enterprises can be considered undertakings when they offer goods or services on the market or when they are entrusted by a public authority with the provision of social services of general economic interest, i.e. public services.² Secondly, the public intervention must confer an advantage – any economic benefit that an undertaking would not have obtained under normal market conditions – on the recipient, which must be selective.

4

➤ **It must distort or threaten to distort competition.**

This happens when the 'State grants a financial advantage to an undertaking in a liberalised sector where there is, or could be, competition'.³

Based on the above, in certain cases, it is possible to establish that **an intervention does not constitute State aid**, for instance:

➤ It can be possible that the proposed aid measure is so local that it does not affect intra-EU trade.

➤ A public intervention carried out on the same terms and conditions as a private measure could not entail granting an advantage, as this would be in line with the market economy operator principle. For example, a loan from a public financial institution to a hospital on the same terms as a commercial bank does not constitute State aid because it does not provide an advantage to the recipient compared to normal market conditions.

➤ Public authorities could design a measure that targets the final users, the individuals, which would thus not constitute State aid, such as a scheme of vouchers given to individuals that can be redeemed at any provider that employs disabled workers.

1. See in this regard, e.g., C-280/00 *Altmark* [2003] ECR I-7747, paragraph 75.

2. *European Social Fund financial instruments and State aid* (2018).

3. *Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union*, C/2016/2946, OJ C 262, 19.7.2016, p. 1–50, at page 41.

2 STATE AID TOOLBOX



DE MINIMIS REGULATION

Social economy entities may receive up to EUR 200,000 for each undertaking over a 3 year rolling period without prior notification to the Commission.

PROS


- › It can be used to subsidise any costs, including operating costs.
- › Straightforward calculation of aid received by a beneficiary in the case of grants.

PITFALLS

- › Since the 3 years is a rolling period, it must be ensured that the actual amount received by each beneficiary does not exceed the threshold in any 3 year period.
- › There are excluded sectors and administrative formalities (however, this is all laid down in the regulation and is easy to follow).
- › It is more complex to calculate the aid received by a beneficiary in the case of loans and guarantees.

CONS

- › An average of less than EUR 70,000 per year might not be sufficient for more ambitious programmes, especially considering that the amount is per company and not per project. Also, any aid received by, e.g., a parent company/subsidiary must be taken into account when calculating the threshold.

 The de minimis threshold will soon be raised. Please consult frequently the [DG Competition website](#).

GENERAL BLOCK EXEMPTION REGULATION (GBER)

Defines conditions for State aid measures ensuring that the benefits they generate outweigh the cost of the distortion they cause in the internal market. It also lays down thresholds for the amounts of State aid that are exempted from prior notification. More than 90% of State aid is currently granted under GBER. It is by far the most used State aid tool.

PROS

- › It has a streamlined process with only a few administrative obligations.
- › It offers plenty of flexibility, covering various aid measures in several sectors, as well as variable aid intensities, allowing for a quick response.

PITFALLS

- › It has a list of eligible costs for each aid measure. Only some operating costs are allowed, and the conditions are strict. It is important to be careful with cumulation rules. While cumulating different identifiable eligible costs within the GBER is relatively straightforward, the cumulation of de minimis and GBER aid for the same eligible costs might lead to errors.
- › It is not possible to circumvent the thresholds laid down in the GBER by artificially splitting aid schemes or individual aid projects into several schemes or projects with similar characteristics, objectives or beneficiaries.
- › It is compulsory to send an information sheet to the Commission, via the Commission's electronic notification system, about each aid measure exempted under the GBER in a standardised format (laid down in Annex II of the GBER), together with a link providing access to the full text of the aid measure, including its amendments, within 20 working days following its entry into force. A lack of knowledge of the responsible contact point within the national administration can lead to significant delays.
- › Nothing prevents Member States from selecting aid beneficiaries and determining the aid amount in a competitive bidding process, as long as the maximum aid amounts/intensities are complied with. The new GBER⁴ even allows higher aid intensities if the beneficiary is selected through a competitive bidding process.⁵ Anyway, competitive tendering may not be the most appropriate instrument in the context of the social economy, as it may, e.g. put young small and medium enterprises (SMEs), who usually have less liquidity, at a disadvantage.

CONS

- › GBER-supported interventions might be challenged by private companies, as any legal act, and brought to Courts.

4. Amendments to the GBER were announced in March 2023.

5. As explained by Maria Segura in her keynote speech for the event, competitive bidding in principle ensures that the amount of aid needed is kept to a minimum, making aid more efficient and leading to fewer distortions of competition. It often leads to the granting of more aid, and public authorities can integrate social, environmental and economic considerations into bidding processes (in particular for procurement activities), ensuring that State aid measures complement and reinforce the desired outcomes. However, competitive tendering also requires more preparation for the public authorities and it often leads to more complaints.

SERVICES OF GENERAL ECONOMIC INTEREST (SGEI) PACKAGE⁶

SGEI are 'economic activities which deliver outcomes in the overall public good that would not be supplied (or would be supplied under different conditions in terms of quality, safety, affordability, equal treatment or universal access) by the market without public intervention'.⁷

PROS

- › The legal texts of the Package contain clear and detailed provisions with guidance to be respected for a public measure to be considered compatible aid.
- › Allows for flexibility to intervene in the economy pursuing policy objectives.

PITFALLS

- › It is important to put in place a proper entrustment act, i.e. a mandate that clearly identifies the undertaking(s) entrusted with performing the SGEI, the service, the duration, the eligible costs and the parameters for the compensation.
- › Whenever necessary, it is key to impose a separation of accounts

CONS

- › Putting in place a compensation SGEI scheme requires significant administrative work.

NOTIFICATION TO THE COMMISSION

If the public intervention is not in line with the above tools or exceeds the set thresholds, the Member State must notify the compensation aid measure to the European Commission.

PROS

- › Brings legal certainty.

CONS

- › Submitting a full notification is resource-intensive and time-consuming, and the compensation cannot be granted prior to approval by the Commission.



6. As detailed on p. 8 of the thematic paper 'State aid support for the social economy: State aid fundamentals' written by Juan Jorge Piernas López, the SGEI package contains the 1) SGEI-Communication, 2) the SGEI de minimis Regulation, 3) SGEI-Decision, and 4) the SGEI-Framework.

7. Communication from the European Commission, 'A Quality Framework for Services of General Interest in Europe', COM (2011)900, at 3.

ARTICLES RELEVANT FOR THE SOCIAL ECONOMY

GENERAL BLOCK EXEMPTION

REGULATION



ARTICLE 17: SME INVESTMENT

ELIGIBILITY

- > Small and Medium Enterprises (SMEs)

FORM

- > Investment in tangible and intangible costs,
- > jobs created by investment for two-year wage cost

MAXIMUM FUNDING AND NOTIFICATION THRESHOLD

- > 20% of eligible costs for small enterprises
- > 10% of eligible costs for medium-sized enterprises
- > Notification threshold: EUR 8.25 million per undertaking per investment project

ARTICLE 21: RISK FINANCE FOR SMES

ELIGIBILITY

- > SMEs unlisted and either
 - > not on any market already,
 - > registered less than ten years ago or had their first sale less than seven years ago,
 - > or invest in a new activity representing more than 50% of their average annual turnover

FORM

- > Risk finance instruments are:
 - > loans,
 - > guarantees,
 - > equity,
 - > quasi-equity investments, implemented through financial intermediaries selected through open, transparent and non-discriminatory procedures based on objective criteria

MAXIMUM FUNDING AND NOTIFICATION THRESHOLD

- > EUR 16.5 million per undertaking (this is also the notification threshold)
- > Contrary to grants where the return on investment is unlikely, risk finance products are viable in theory but very risky. Public investors may accept profit later, above a threshold or bear the first loss (up to 25% of the total investment). The minimum private participation depends on the age and needs of the SME (between 10, 40 and 60%), with the smallest participation for the riskiest products.

ARTICLE 22: START-UPS

ELIGIBILITY

- > Unlisted small enterprises (below EUR 10 million annual revenue) of less than five years,
- > that have not distributed profit
- > and have not taken over or been taken over by other undertakings

FORM

- > Loans,
- > guarantees,
- > grants
- > IP transfer from research organisation

MAXIMUM FUNDING AND NOTIFICATION THRESHOLD

- > Between EUR 0,5 and 2,48 million depending on the form and the area
- > These maximum aid amounts per undertaking are also the notification thresholds.

ARTICLE 28: INNOVATION AID FOR SMES

ELIGIBILITY

- > SMEs

FORM

- > Obtaining /defending patents,
- > secondment of highly qualified personnel from large enterprises or research organisations,
- > innovation advisory services and innovation support services

MAXIMUM FUNDING AND NOTIFICATION THRESHOLD

- > 50% of eligible costs
- > The notification threshold is EUR 10 million per undertaking, per project
- > The aid can cover up to 100% of costs of innovation advisory services (consultancy and training on knowledge transfer or acquisition and exploitation of intangible assets) and innovation support services (office space, data, market research, quality labelling, testing for more effective products) if the aid does not exceed EUR 220,000 per 3-year period.

ARTICLE 29: AID FOR PROCESS & ORGANISATIONAL INNOVATION

ELIGIBILITY

- > SMEs,
- > large enterprises collaborating with an SME bearing at least 30% of the costs

FORM

- > For process innovation (improved production or delivery method) or organisational innovation (new organisational method in business practices):
 - > Personnel,
 - > instruments,
 - > equipment,
 - > buildings,
 - > contract research,
 - > patents,
 - > overheads, etc

MAXIMUM FUNDING AND NOTIFICATION THRESHOLD

- > 50% for SMEs
- > 15% for large enterprises
- > The notification threshold is EUR 12.5 million per undertaking, per project.

ARTICLE 31: TRAINING AID

ELIGIBILITY

- > All SMEs for costs relating to training, including trainer and trainee personal costs and operating costs (e.g. travel, accommodation) and advisory services linked to training

FORM

- > Reimbursement

MAXIMUM FUNDING AND NOTIFICATION THRESHOLD

- > 50% of the costs
- > up to 60% for disadvantaged workers or workers with disabilities or medium-sized enterprises
- > up to 70% for small enterprises
- > the notification threshold is EUR 3 million per training project.

ARTICLE 32: RECRUITMENT OF DISADVANTAGED WORKERS

ELIGIBILITY

- > Any undertaking

FORM

- > Subsidy for wage costs over 12 months
- > or 24 months for severely disadvantaged workers

MAXIMUM FUNDING AND NOTIFICATION THRESHOLD

- > 50% of eligible costs
- > The notification threshold is EUR 5.5 million per undertaking, per year.

ARTICLE 33: EMPLOYMENT OF WORKERS WITH DISABILITIES

ELIGIBILITY

- > Any undertaking

FORM

- > Subsidy for wage costs over any period of employment

MAXIMUM FUNDING AND NOTIFICATION THRESHOLD

- > 75% of eligible costs
- > The notification threshold is EUR 11 million per undertaking, per year.

ARTICLE 34: ADDITIONAL COSTS OF EMPLOYING WORKERS WITH DISABILITIES

ELIGIBILITY

- > Any undertaking

FORM

- > Adaptation of premises,
- > employment of staff to assist worker with disabilities,
- > special equipment,
- > transportation of workers with disabilities,
- > rehabilitation, etc.

MAXIMUM FUNDING AND NOTIFICATION THRESHOLD

- > 100% of eligible costs
- > The notification threshold is EUR 11 million per undertaking, per year.

ARTICLE 35: COSTS OF ASSISTANCE PROVIDED TO DISADVANTAGED WORKERS

ELIGIBILITY

- > Any undertaking

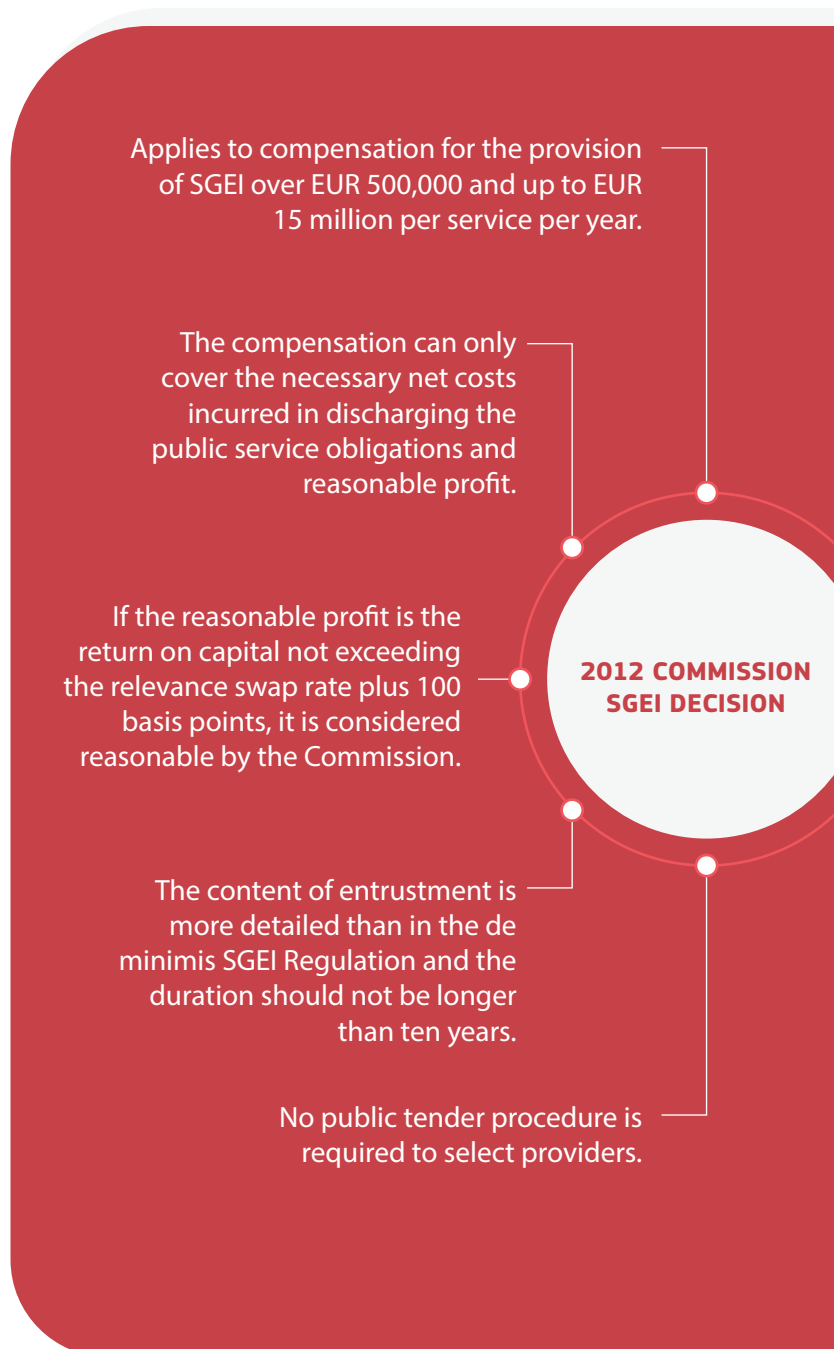
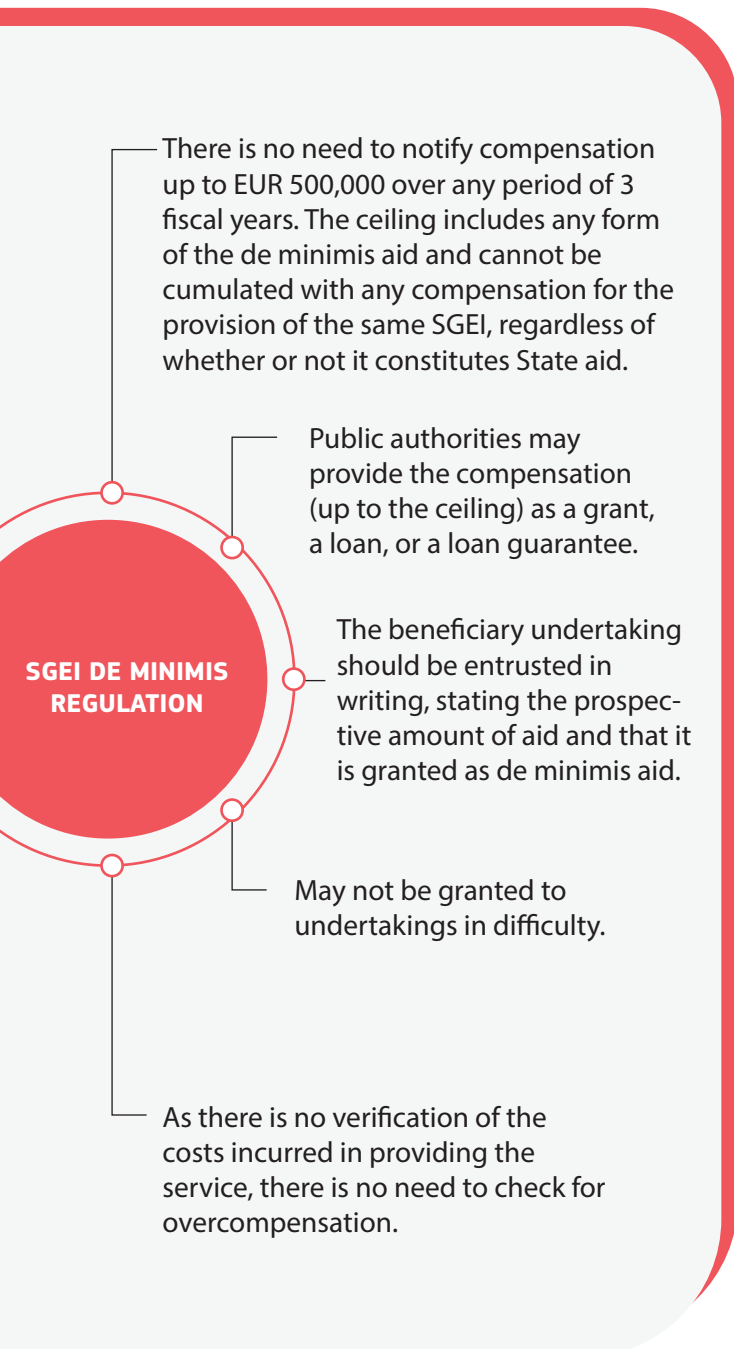
FORM

- > Employment and training of staff to assist disadvantaged workers

MAXIMUM FUNDING AND NOTIFICATION THRESHOLD

- > 50% of eligible costs
- > The notification threshold is EUR 5.5 million per undertaking, per year.

KEY FEATURES OF STATE AID UNDER SGEI DE MINIMIS REGULATION AND SGEI DECISION



Source: The tables above are based on the papers and presentations prepared for the [three mutual mutual learning workshops on 'State aid support for the social economy \(May-June 2023\)](#). The workshops were organised by Directorate-General for Employment, Social Affairs and Inclusion.