



State aid support for the social economy: State aid fundamentals

Thematic discussion paper

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Situation on 1st May 2023



EUROPEAN COMMISSION

Directorate-General for Employment, Social Affairs and Inclusion

Directorate G — Funds: Programming and Implementation

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Manuscript completed in April 2023

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Table of Contents

1	Introduction	1
2	Setting the scene.....	1
2.1	State aid fundamentals.....	1
2.2	State aid for the social economy	5
3	Concrete examples and cases	10
4	Conclusion.....	15
	References	16

1 Introduction

In 2021, the European Commission stated that ‘public financial support plays an important role in enabling the start-up and development of social economy actors.’¹ European Union (‘EU’) State aid law, under certain conditions, allows for the granting of public financial support to social economy actors. However, public authorities often do not make the most of these State aid possibilities. Reasons for this may be unawareness of possibilities, misinterpretation of rules or perceived legal risk.

The Commission’s Social Economy Action Plan (‘SEAP’)² identifies a number of challenges and opportunities related to State aid for social economy stakeholders. According to the SEAP, social economy stakeholders report that the size of State aid support available to them is not always adequate. Therefore, the European Commission committed to analysing whether the available evidence justifies easing the General Block Exemption Regulation’s (GBER) rules on aid for social enterprises’ access to finance, and for hiring disadvantaged or severely disadvantaged workers.

Public social enterprises could also receive compensation for activities that in a Member State qualify as services of general economic interest (‘SGEI’). With the SEAP, the Commission called on Member States to define SGEI wherever appropriate, for example in relation to the activities of social enterprises focusing on the provision of jobs for vulnerable people, so that social enterprises could receive public compensation under existing EU rules on SGEI-compensation.

Moreover, the SEAP invites Member States to further invest in training and capacity building for their administrations to increase their level of knowledge about State aid rules.³

This paper was prepared for the series of mutual learning events on ‘State aid support for the social economy’ that are designed to support public officials in increasing the use of State aid possibilities for the social economy by filling possible knowledge gaps with a thorough understanding of State aid rules that are relevant for the social economy. In this context, the paper 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 for SGEI, as well as of State aid rules to help social economy entities access finance.

2 Setting the scene

2.1 State aid fundamentals

The Treaty system of EU State aid control is based on:

- a general prohibition of aid, included in today’s Article 107(1) of the Treaty on the Functioning of the European Union (TFEU),
- a number of exemptions from this prohibition, enshrined mainly in Articles 107(2) and 107(3) TFEU, and
- an ex-ante control by the European Commission, meaning that Member States must notify any plans to grant new aid or alter existing aid to the Commission, for approval (Article 108 (3)).

¹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Building an economy that works for people: an action plan for the social economy, COM/2021/778 final, at page 8. Available at: <https://ec.europa.eu/social/main.jsp?catId=1537&langId=en>.

² Idem.

³ Id. at section 3.2, pp. 8-9.

Article 107(1) TFEU contains the basic elements of the notion of ‘aid’ (or State aid as it is usually referred to) and declares ‘any aid’ *a priori* incompatible with the internal market. The Court of Justice has clarified that the notion of aid requires the following four cumulative criteria to be met⁴:

1. There must be an intervention by the State or through State resources in any form whatsoever.
2. The intervention must be liable to affect trade between Member States.
3. It must confer an advantage on the recipient undertaking.
4. It must distort or threaten to distort competition.

The Court of Justice has also clarified that the advantage conferred must be selective as it has to favour ‘certain undertakings or the production of certain goods’.⁵ Therefore, State aid is essentially a transfer of State resources that favours an undertaking or a group of undertakings and distorts, or threatens to distort, competition.

Box 1 - What is an undertaking?

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.

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.

Source: [European Social Fund financial instruments and State aid \(2018\)](#)

Regarding the first criterion, State resources in this context refer to any form of public support. It can come directly from the State, i.e. a Ministry, funding authority or public promotional bank, or from a company in which the State – or any other administration – exercises a decisive influence because it is the majority shareholder (public companies) or because it has veto or other important powers of decision making. State aid can take many forms, such as:

- subsidies,
- cancellation or assumption of liabilities,
- exemptions,
- reductions,
- postponement or rescheduling the payment of taxes,
- granting of loans with preferential interest rates,
- providing guarantees on preferential terms,
- investments where the rate of return on them is lower than that normally expected by a prudent private investor,
- public purchases above the market price,
- or discounts on goods and services provided, including the sale of movable and immovable property below market price.

As for the second criterion, Union Courts have consistently held that ‘where State financial aid strengthens the position of an undertaking as compared with other undertakings competing in intra-[Union] trade, the latter must be regarded as affected by the aid.’⁶ Public support can therefore be usually considered as capable of having an effect on 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. This is the case where the beneficiary of aid supplies goods or services to a limited area within a Member State and is unlikely to attract customers from other Member States,

⁴ See in this regard, e.g., C-280/00 *Altmark* [2003] ECR I-7747, paragraph 75.

⁵ See e.g. Case C-409/00 *Spain v Commission* [2003] ECR I-1487.

⁶ C-518/13, *Eventech v The Parking Adjudicator*, ECLI:EU:C:2015:9, paragraph 66.

and where foreseeably there is not more than a marginal effect on the conditions of cross-border investments or establishment of other firms. For example, this may be the case where hospitals and other health care facilities provide the usual range of medical services for the local population and are unlikely to attract customers or investment from other Member States.⁷

Concerning the third criterion, Article 107(1) TFEU requires that the public intervention at stake confers an advantage on the recipient, which must be selective. The notion of advantage in this context refers to any economic benefit that an undertaking would not have obtained under normal market conditions. The analysis of this criterion thus compares the financial situation of the undertaking allegedly receiving aid, before and after the public intervention under examination. For example, the purchase by an undertaking of a good or a service from a public administration below the market price means that the undertaking at stake is receiving an advantage through State resources. Similarly, an undertaking will receive an advantage if it sells a good or service to the public authorities above the market price. In addition, only measures which selectively favour certain undertakings or certain economic sectors, fall within the scope of Article 107(1) TFEU. In this regard, for example, measures of purely general application, such as a generally applicable corporate tax rate, in principle do not fall within the scope of Article 107(1) TFEU.

Fourthly, for a measure to be defined as State aid it must distort or threaten to distort competition. As the European Commission has summarised, ‘for all practical purposes, a distortion of competition within the meaning of Article 107(1) of the Treaty is generally found to exist when the State grants a financial advantage to an undertaking in a liberalised sector where there is, or could be, competition.’⁸

The rules on State aid will apply only if the potential beneficiaries of the financial advantages at issue are undertakings, that is, if the beneficiaries are entities engaged in economic activity, regardless of their legal status and how they are financed.⁹ Consequently, social economy entities such as cooperatives, associations and foundations can be defined as ‘undertakings’, even if they offer goods or services without profit.¹⁰ In this regard, as the Action Plan for the Social economy clarifies, terms such as ‘social economy enterprises’, ‘social and solidarity enterprises’ and ‘third sector’ are also used to refer to social economy entities.¹¹ For a definition of social economic entity, and particularly of social enterprise, a number of EU regulations can be consulted.¹² If an entity such as a social enterprise carries out both economic and non-economic activities, it is an “undertaking” only with regard to the *economic* activities. That means that State aid rules only apply to the public financing for

⁷ See, for instance, Commission Decisions in State aid cases N 543/2001 Ireland — Capital allowances for hospitals (OJ C 154, 28.6.2002, p. 4); SA.34576 Portugal — Jean Piaget North-east Continuing Care Unit (OJ C 73, 13.3.2013, p. 1); SA.37432 — Czech Republic — Funding to public hospitals in the Hradec Králové Region (OJ C 203, 19.6.2015, p. 2); SA.37904 — Germany — Alleged State aid to medical center in Durmersheim (OJ C 188, 5.6.2015, p. 2); SA.38035 — Germany — Alleged aid to a specialised rehabilitation clinic for orthopaedic medicine and trauma surgery (OJ C 188, 5.6.2015, p. 3)

⁸ 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.

⁹ See, *inter alia*, Case C-41/90 Höfner and Elser [1991] ECR I-1979, paragraph 21. Concerning State aid cases see, among others, Case 172/03 Heiser v Finanzamt Innsbruck, [2005] ECR I-1627, paragraph 26, Case 237/04, Enirisorse SpA v Sotacarbo SpA, [2006] ECR I – 2843, paragraphs 26-29, Case C-222/04 Ministero dell’Economia e delle Finanze v Cassa di Risparmio di Firenze, [2006] ECR I-289, paragraphs 107-109, or Case T-196/04, Ryanair Ltd v Commission [2008] ECR Page II-03643, paragraph 87.

¹⁰ See, for example, Case C-222/04 Cassa di Risparmio di Firenze and Others [2006] ECR I-289, paragraphs 122 and 123.

¹¹ Action plan for the social economy, *cit.*, at page 5.

¹² See, e.g, Regulation (EU) No 1296/2013 of the European Parliament and of the Council of 11 December 2013 on a European Union Programme for Employment and Social Innovation (‘EaSI’) and amending Decision No 283/2010/EU establishing a European Progress Microfinance Facility for employment and social inclusion, OJ L 347, 20.12.2013, p. 238–252, at article 2(1). For the current definition see Art. 2(15) of Regulation (EU) 2021/1057 of the European Parliament and of the Council of 24 June 2021 establishing the European Social Fund Plus (ESF+) and repealing Regulation (EU) No 1296/2013, OJ L 231, 30.6.2021, p. 21–59.

these specific activities. The public financing for the entity's non-economic activity's remains outside the scope of EU State aid rules. This presupposes, though, that the entity is able to duly separate the financing, costs and revenues of both types of activities.

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. As the Court of Justice has underlined 'Member States are under an obligation, first, to notify to the Commission each measure intended to grant new aid or alter aid for the purposes of Article 107(1) TFEU and, secondly, not to implement such a measure until that institution has taken a final decision on the measure.'¹³ Therefore, Member States may not implement new State aid measures before they have been approved by the Commission. This is usually referred to as the 'standstill obligation' stemming from Article 108(3) TFEU. This obligation has a direct effect;¹⁴ therefore, individuals can rely on it before national courts if it is not observed.

However, the European Commission has exempted certain categories of State aids from the notification obligation, provided that they comply with the conditions set forth in the so-called General Block Exemption Regulation (GBER).¹⁵ Thus, Member States are able to grant the aid directly and inform the Commission only *ex post*. Today, 'more than 90% of all new State aid measures excluding crisis measures are now implemented by Member States without the need for prior approval by the Commission.'¹⁶ The current GBER applies to 16 categories of aid, such as:

- regional investment aid;
- aid to small and medium enterprises (SMEs);
- training aid;
- aid for the recruitment of disadvantaged workers;
- aid for the employment of workers with disabilities; or
- aid for local infrastructure.¹⁷

In addition, small amounts of State aid to undertakings do not have to be notified to the European Commission by the EU Member States. In particular, EUR 200,000 for each undertaking over a 3-year period can be granted under the *de minimis* regulation.¹⁸

Under Article 106(2) TFEU, the Treaty allows the granting of State aid as compensation for the provision of services of general economic interest (SGEI) under the discretion of the Commission. These are services of general interest that can be provided either by the State or by the private sector – for example, public transport, postal services, social housing and healthcare¹⁹ – and are economical in nature at the same time. Thus they are offered within a market, sometimes alongside private providers of the same or similar services.²⁰

¹³ C-585/17, *Dilly's Wellnesshotel*, ECLI:EU:C:2019:969, paragraph 54.

¹⁴ C-284/12, *Deutsche Lufthansa*, ECLI:EU:C:2013:755, paragraph 29.

¹⁵ Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 187, 26.6.2014, p. 1.

¹⁶ European Commission, press release IP/23/1523 of 9.3.2023, https://ec.europa.eu/commission/presscorner/detail/en/IP_23_1523.

¹⁷ It is therefore key to have an in-depth understanding of the possibilities for granting State aid under the GBER, which will also be the subject of Workshop II.

¹⁸ Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid, OJ L 352, 24.12.2013, p. 1–8.

¹⁹ See, e.g, the information provided at https://commission.europa.eu/topics/single-market/services-general-interest_en.

²⁰ As regards the *economic* nature of SGEI, and their distinction from other *non-economic* services of general interest, see the explanations in the Communication from the Commission on the application of the European Union State aid rules to compensation granted for the provision of services of general economic interest, OJ C 8 of 11.1.2012, p.4.

2.2 State aid for the social economy

As mentioned, EU law allows the granting of State aid under certain conditions. In this section, we will briefly describe State aid rules and procedures that are most relevant for the social economy:

De minimis aid

Under the conditions included in the *De minimis* Regulation,²¹ social economy enterprises may receive up to EUR 200,000 for each undertaking over a three-year period without prior notification to the European Commission. These aids are deemed to have no impact on competition and trade between Member States and therefore do not fall under the scope of Article 107(1) TFEU. Only those aids that strictly fulfil all the conditions provided in the *de minimis* regulation are exempted from notification. Consequently, if any of the conditions is not met, for instance, because it is granted to firms in difficulty or for export activities – the aid at stake, even if of a very small amount, will have to be notified to the Commission. Note that there also exists a *De minimis* Regulation specifically for compensation for services of general economic interest (SGEI), with a significantly higher maximum amount, up to EUR 500,000 (→ see further below on State aid to compensate for the provision of services of general economic interest (SGEI), p. [insert page number])

The thresholds of EUR 200,000 (for the general *De minimis* Regulation) and EUR 500,000 (for the one specific to SGEI's) will in principle be somewhat increased in a near future in order to take the inflation into account.

Aid covered by a block exemption regulation

Article 108(4) TFEU provides that the Commission can adopt regulations relating to the categories of State aid that may be exempted from notification. The current conditions under which aid is exempt from the notification obligation are set out in Commission Regulation (EU) No 651/2014, which will be explained in detail in the context of Workshop II.²² This Regulation is commonly referred to as the “General Block Exemption Regulation”, or just “GBER” (“*djeeber*”)

The GBER enables Member States to implement State aid measures directly, with full legal certainty and without prior control by the Commission. In the Commission's view, the benefits such aids bring to society outweigh the possible distortions of competition. All aid granted under the GBER must have an incentive effect in the sense that it changes the behaviour of the company that receives it, and not just subsidises activities that would have been undertaken anyway. As a rule under the GBER, aid is presumed to have an incentive effect if its beneficiary has submitted an aid application before the start of the works; the application must contain information such as the name of the aid beneficiary and size, description and location of the project, list of project costs, and the type of aid required. However, the incentive-effect standard is more exacting where aid under the GBER is granted “ad hoc” outside an aid scheme to large enterprises, in which case a counterfactual impact evaluation must be carried out to analyse what would have happened in the absence of the aid. Note however, that certain categories of aid are not required to have or shall be deemed to have an incentive effect, among them projects related to the social economy, such as aid for the recruitment of disadvantaged workers in the form of wage subsidies or aid for the employment of workers with disabilities, or aid compensating for the additional costs of employing workers with disabilities and aid for compensating the costs of

²¹ Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid, OJ L 352, 24.12.2013, p. 1–8.

²² Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 187, 26.6.2014, p. 1.

assistance provided to disadvantaged workers, if the conditions of the relevant GBER articles are met, as provided for in Article 6(5) of the GBER.

All aid measures under the GBER should respect the permitted aid ceilings, that is, the maximum gross aid amount a beneficiary may receive. There is a specific ceiling for every category of aid. Depending on the aid instrument, the ceiling is expressed, for example, as a maximum percentage of the eligible costs (the 'aid intensity'), a maximum amount of Euros, and the gross grant equivalent of an aid instrument such as a loan or a guarantee. For example, investment aid for SMEs shall not exceed 20% of the eligible investment costs in the case of small enterprises, and 10% in the case of medium-sized enterprises. Aid for the recruitment of disadvantaged workers shall not exceed 50% of the eligible wage costs. At the same time, an individual aid, although being within the permitted ceiling, cannot be block-exempted and must be notified to the Commission if it exceeds the applicable notification threshold. This means that if an individual aid is awarded under a block-exempted aid scheme, that aid must be notified, while the scheme as such, and its individual grants awarded below the notification threshold, remain block-exempted. For every category of aid, a specific notification threshold applies. For example, if investment aid for SMEs exceeds EUR 8.25 million per undertaking, per project, it cannot be granted under the GBER and must be notified to the Commission.

Box 2: Main GBER conditions

Transparency – Article (9)

Member States concerned shall ensure the publication on a comprehensive State aid website, at national or regional level of:

- (a) the summary information about the scheme sent to the Commission;
- (b) the full text of each aid measure; and
- (c) minimum information on each individual aid award exceeding EUR 500,000.

Evaluation – Article 1(2)(a)

An evaluation plan is required for aid schemes for regional investment aid, SMEs aid, aid for access to finance for SMEs, Research, Development and Innovation (RDI) aid, and aid for environmental protection with an average annual budget of EUR 150 million.

Exclusions – Article 1(2)

The GBER does not apply to:

- aid to export-related activities towards third countries or Member States;
- aid contingent upon the use of domestic over imported goods;
- aid to an undertaking which is subject to an outstanding State aid recovery order;
- aid to undertakings in difficulty, with the exception of aid schemes to make good the damage caused by certain natural disasters;
- Other (aid granted in aquaculture, fisheries and agricultural sectors...).

Main compatibility criteria

- Aid amount should remain below the notification and aid intensity thresholds per category (see below).
- The gross grant equivalent must be calculated precisely ex ante.
- All aid must have an incentive effect, which is presumed if the beneficiary has submitted an aid application before the start of works; more exacting standards apply to ad-hoc aid to large enterprises. Certain aid categories are not required to have or are deemed to have an incentive effect, though.

Some GBER provisions are particularly apt for supporting the social economy through State aid. In particular, the GBER allows the granting of:

- **Investment aid to SMEs** (Article 17), particularly to cover the costs of investment in tangible and intangible assets, as well as the estimated wage costs of employment directly created by the investment project up to a certain aid intensity.
- **Risk finance aid schemes in favour of SMEs** (Article 21), in this context 'risk finance investment' means equity and quasi-equity investments, loans including leases, guarantees, or a mix thereof to eligible undertakings .
- **Aid for start-ups** (Article 22), through various instruments (loans with interest rates that do not conform with market conditions, guarantees with premiums that do not conform with market conditions, grants, including equity or quasi-equity investment, interests rate and guarantee premium reductions, or a mix thereof).
- **Aid for process and organisational innovation** (Article 29), in relation to which the eligible costs, that is, the costs that are authorised for public funding under the EU rules, include:
 - personnel costs,
 - costs of instruments,
 - equipment,
 - buildings and land to the extent and for the period used for the project,
 - costs of contractual research,
 - knowledge and patents bought or licensed from outside sources at arm's length conditions, and
 - additional overheads and other operating costs, including costs of materials, supplies and similar products, incurred directly as a result of the project (up to the allowed aid intensity).
- **Aid for disadvantaged workers and workers with disabilities** (Arts. 32-35), which allows the granting of aid in the form of wage subsidies for the recruitment and employment of disadvantaged workers, as well as aid for compensating the additional costs of employing such workers, and the cost of additional assistance provided to them.
- **Investment aid for local infrastructures** (Article 56), which allows the granting of aid for the construction or upgrade of local infrastructures, which concerns infrastructure that contributes to improving the business and consumer environment at a local level, as well as modernising and developing the industrial base.

State aid to compensate for the provision of services of general economic interest (SGEI)

Under Article 106(2) TFEU, State aid can be granted to compensate for the provision of services of general economic interest (SGEI). The European Commission has defined SGEI as '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'.²³

The first step in the application of this provision consists in determining whether the undertaking at stake has been entrusted with a genuine service of general economic interest. To this extent, European Courts have not yet recognised a clear concept of SGEI,²⁴

²³ Communication from the European Commission, 'A Quality Framework for Services of General Interest in Europe', COM (2011)900, at 3.

²⁴ Case T-289/03, BUPA, EU:T:2008:29, para 165.

but some constituent elements of the SGEI can be inferred from the analysis of the Treaties and secondary law. Protocol No 26 to the Lisbon Treaty on services of general interest underlines the essential role and broad discretion of national authorities to define SGEIs, their diversity (geographical, social and cultural situations), and some of their features:

- a high level of quality,
- security and economic accessibility,
- equal treatment and promotion of universal access, and
- user rights.

Secondary law also provides some guidance as to what can be considered as SGEI. In particular, Directive 2006/123/EC (Services Directive), explains that SGEI are services performed for an economic consideration, which may be considered as SGEI only if they are provided in application of a special task in the public interest entrusted to the provider by the Member State concerned. Examples of these include postal services and utilities.

The case law of the EU Courts requires some conditions for the granting of State aid, namely:

- the need for an entrustment act;
- the obligation to define the parameters of compensation;
- the avoidance of overcompensation; and
- a number of principles concerning the selection of the SGEI provider.

With several texts, the Commission provided further guidance on how State aid could be granted to compensate for the provision of SGEI. Often, these texts are referred to as the 'SGEI Package' and include:

- The 'SGEI-Communication'²⁵ that clarifies key concepts related to State aid for SGEIs, for example, the economic nature of certain activities;
- The SGEI *de minimis* Regulation²⁶ that clarifies that certain compensation measures not exceeding EUR 500,000 over any period of three fiscal years do not constitute State aid and therefore do not need to be notified to the European Commission;
- The 'SGEI-Decision'²⁷, that declares certain types of SGEI compensation constituting State aid beyond EUR 500,000 compatible and exempted from notification;
- Finally, the SGEI-Framework²⁸ that sets out the conditions under which all other State aid for SGEIs can be declared compatible, after notification.

Please note that in the absence of specific Union rules defining the scope for the existence of an SGEI, Member States have a wide margin of discretion in defining a given service as an SGEI and in granting compensation to the service provider. The European Commission's competence in this respect is limited to checking whether the Member State has made a manifest error when defining the service as an SGEI.²⁹

The SGEI Package makes specific reference to social services in recognition of their specific characteristics and particularly positive impact. Specifically, Decision 2012/21/EU

²⁵ Communication from the Commission on the application of the European Union State aid rules to compensation granted for the provision of services of general economic interest, OJ C8 of 11.1.2012, p. 4.

²⁶ Commission Regulation (EU) No 360/2012 of 25.4.2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid granted to undertakings providing services of general economic interest Official Journal L 114 of 26.4.2012, p. 8

²⁷ Commission Decision 2012/21/EU of 20.12.2011 on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest, OJ L 7 of 11.1.2012, p. 3.

²⁸ Communication from the Commission — European Union framework for State aid in the form of public service compensation (2011) Text with EEA relevance, OJ C 8 of 11.1.2012, p. 15.

²⁹ SGEI Communication, at point 46 with reference to the case-law of the Union Courts.

clarifies that significant amounts of State aid can be granted for the provisions of, among others, many social services, such as:

- social housing and hospitals,
- services meeting social needs as regards health and long-term care,
- childcare,
- access to and reintegration into the labour market, or
- the care and social inclusion of vulnerable groups.

Table 1. State aid not requiring notification to the European Commission (as foreseen in the 2023 review)

Type of exception	Amount allowed	Requirements
De minimis aid Regulation	<ul style="list-style-type: none"> • Up to EUR 200,000 in a three-year period 	No other State aid should be provided beyond the limit
GBER	<ul style="list-style-type: none"> • Investment aid to SMEs, up to EUR 8.25 million per undertaking, per project • Aid for consultancy and participation in fairs in favour of SMEs, up to EUR 2.2 million per undertaking, per project • Risk finance aid, up to EUR 16.5 million per undertaking • Training aid, up to EUR 3 million per training project. • Aid for the recruitment of disadvantaged workers, up to EUR 5.5 million per undertaking, per year • Aid for the employment of workers with disabilities in the form of wage subsidies, up to EUR 11 million per undertaking, per year • Aid for compensating the additional costs of employing workers with disabilities, up to EUR 11 million per undertaking, per year; or • Investment aid for local infrastructures, up to EUR 11 million aid or total costs exceeding EUR 22 million per infrastructure. 	Undertaking activity/project should fall into one of the GBER categories
SGEI de minimis Regulation	<ul style="list-style-type: none"> • Up to EUR 500,000 in a three fiscal year period 	Undertaking activity/project should fall under the SGEI framework
SGEI-Decision	<ul style="list-style-type: none"> • Up to EUR 15 million 	

Other aid categories following notification

As mentioned before, Articles 107(2) and 107(3) TFEU allow granting State aid under certain conditions. The European Commission has published these conditions in guidelines, and frameworks applicable to different categories of aid. These soft-law instruments do not modify the existing legal framework under Art. 107 TFEU, nor introduce directly applicable rules or exempt from the notification obligation. They merely state the criteria under which the Commission considers State aid measures in different areas as compatible with the internal market. Soft-law instruments have also been employed to cope with the effects of recent crises through the adoption of Temporary Frameworks, for instance, to deal with the effects of the COVID-19 pandemic or the War in Ukraine. Some guidelines are particularly relevant for the social economy, as they refer to categories mentioned in the Commission's SEAP and could support measures such as the setting up of financial institutions to ease funding for social enterprises, or the creation of labs in a public or private university to

promote studies in the circular and social economy. The following guidelines can be mentioned:

- the Guidelines on State aid to promote risk finance investments,³⁰
- the Guidelines on regional State aid,³¹ and
- the Framework for State aid for research and development and innovation.³²

Finally, in the absence of an applicable guideline to assess a notified measure, the Commission may analyse directly under the Treaty provisions, for instance, under Article 107(3)(c) TFEU. To this extent, the Court of Justice of the EU has recently underlined that this provision includes two conditions, 'the first being that it must be intended to facilitate the development of certain economic activities or of certain economic areas and the second, expressed in negative terms, being that it must not adversely affect trading conditions to an extent contrary to the common interest.'³³

3 Concrete examples and cases

As mentioned before, public authorities can provide financial support to social enterprises in several ways. Some of the granted support may not qualify as State aid, for example, if the beneficiary entity is not an undertaking operating an economic activity. In this case, the State aid rules do not apply. It can also be that the financial support involves State aid under Article 107(1) TFEU, but can be provided without notification under the GBER, or after notification and Commission approval on the basis of the applicable compatibility criteria set out. Finally, State aid can also be approved as compensation for a duly defined SGEI under Article 106(2) TFEU.

In this context, this section provides some examples of the interplay between State aid rules and the social economy. In particular, it includes:

- two examples of aid measures notified and approved by the European Commission in order to improve **access to finance of social organisations** and **support the employment of disadvantaged workers** (n. 1-2);
- four examples of aid measures related to social services approved by the European Commission as compensation for the provision of SGEI, in particular **hospital services, social housing and services aiming at the integration of people with disabilities** (n. 3-6); and
- five examples of public support measures related to the social economy that were **not considered as State aid** for failing to meet the requirements foreseen by Article 107(1) TFEU (n. 7).

The case examples are explained below.

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

In 2011, the European Commission decided not to raise objections to the 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. In particular, the BSC would support the development and growth of a market for social investment products in the UK, for both social and financial returns. The measure aimed to address the funding gap of the social sector by contributing through investment in Social

³⁰ Guidelines on State aid to promote risk finance investments (2021/C 508/01)

³¹ Communication from the Commission Guidelines on regional State aid 2021/C 153/01 C/2021/2594

³² Framework for State aid for research and development and innovation C(2022) 7388 final

³³ C-594/18 P, Austria v Commission, EU:C:2020:742, at paragraph 19.

Investment Finance Intermediaries (SIFIs) to the development of a market infrastructure (intermediaries, dedicated funds, ad hoc investment instruments, investment and information platforms) that addressed the funding needs of social frontline social organisations capital more effectively. To this extent, social sector organisations were not defined by their legal form but by their aim to deliver social (including environmental) results, as opposed to the traditional private sector goal to generate profit for owners or shareholders. The entity created, BSC, was a wholesale investment institution. Therefore, it did not invest directly in social sector organisations but only through dedicated investment vehicles (in particular funds and innovative financial instruments). The Commission considered that the measure under review amounted to State aid which could be found compatible on the basis of Article 107(3)(c) TFEU, particularly after noting that there was a market failure in the funding of the social sector that could be remedied by the proposed measure, increasing welfare as a result.³⁴

2. Aid to create new jobs for disadvantaged workers.

In 2022, the Commission authorised a measure proposed by Sweden to create new jobs for currently unemployed disadvantaged and severely disadvantaged workers (newly arrived immigrants and long-term unemployed) that would help them to enter the labour market (so-called 'Entry Jobs'). Under the approved measure, with a budget of circa EUR 404 million, employers will pay wages significantly lower than the minimum wage under regular collective agreements. This will allow employers to hire workers at a lower cost than they would otherwise have to. In order to compensate workers for receiving a lower salary for work carried out in Entry Jobs compared to regular work, a State compensation will be paid directly to the worker and not to the employer. The State compensation will complement their wages so that the total corresponds to the minimum wage level under regular collective agreements. Swedish authorities anticipated that Entry Jobs would mainly be created by small and medium-sized enterprises in sectors such as hotels, restaurants, real estate services, other support services, as well as manufacturing. As the measure could exceed the GBER thresholds, the Commission analysed the measure under Article 107(3)(c) TFEU and approved it after noting, inter alia, that the absence of financial incentives has been cited as a barrier to creating new jobs for workers from vulnerable groups, such as newly arrived immigrants and long-term unemployed. Therefore, this case constitutes an example of a positive measure that can favour SMEs, which could also include social economy entities, in order to achieve social goals.³⁵

3. Aid to cover the budget deficit of hospitals.

The European Commission received a complaint in 2005 concerning an alleged State aid granted by the Belgian authorities to cover the budget deficit of the hospitals belonging to the IRIS health network (Interhospitalière Régionale des Infrastructures de Soins). In 2009, the Commission decided not to raise objections without opening a formal investigation based on Article 106(2) TFEU.³⁶ This decision was appealed before the General Court, alleging the existence of serious difficulties that should have led the Commission to undertake a more detailed analysis (a formal investigation). The General Court concluded in 2012 that the Commission was required to initiate the formal investigation procedure under Article 108(2) TFEU. The Commission started the procedure in 2014 and concluded in 2016 that the funding to the IRIS hospitals was compatible with Article 106(2) TFEU, in particular under the SGEI-Decision and the SGEI-Framework.³⁷

4. Aid for social housing.

³⁴ State Aid n° SA.33683 (2011/N) – United Kingdom Big Society Capital.

³⁵ State Aid SA.100209 (2022/N) – Sweden Entry Jobs

³⁶ Decision on State aid NN 54/09, C74/1. See for a publication related to the public impact in the first years of application of the initiative the following link: <https://www.centreforpublicimpact.org/case-study/social-impact-big-society-capital-uk>

³⁷ Brussels, 5.7.2016, C (2016) 4051 final.

The European Commission qualified in 2005 the financial support granted by The Netherlands to housing corporations ('woningcorporaties' – WOCOS) as State aid. The Commission considered that the Netherlands should amend the public service definition of WOCOS so that aid to social housing would be provided to a clearly defined target group of disadvantaged citizens or socially less advantaged groups. In addition, any commercial activities by the WOCOS should be carried out on market terms and should not benefit from State aid, and the offer of social housing should be adapted to the demand from disadvantaged citizens or socially less advantaged groups. Subsequently, the Dutch authorities and the Commission negotiated over the way in which aid to housing in the Netherlands should be adjusted in order to bring it in line with EU law. As a result of these negotiations, the Dutch Government presented to the Commission on 3 December 2009 a number of commitments for amending the existing aid scheme and made it compatible with the Treaty under Article 106(2) TFEU, as a SGEI. The Commission accepted these commitments and, in the same decision, also accepted a newly notified aid for the revival of declining urban regions to social housing associations. The General Court confirmed this decision.³⁸ It should be noted in this context that Article 34(3) of the Charter of Fundamental Rights provides that 'in order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Union law and national laws and practices.'

5. Aid for an association of deaf people.

In 2017, the European Commission received a complaint from a company developing and operating web-based video-remote interpreting ('VRI') services for deaf people about alleged unlawful aid to Ente Nazionale Sordi, the Italian Association for Deaf people. The complaint concerned an envisaged grant of EUR 1 million to create and operate a 'Centre for the Autonomy of Deaf People'. The Commission noted that the association did not appear to constitute an undertaking within the meaning of Article 107(1) TFEU when carrying out its social and institutional activities; however, it could not be excluded that – after setting up the proposed Centre – the association might be offering services on the market for the provision of VRI services for deaf people. Consequently, the association was considered an undertaking in light of the economic activities it would perform after carrying out the measure for which public funding was granted. Therefore the proposed measure was defined as State aid, as all other criteria under Article 107(1) TFEU were met. However, the Commission declared it compatible under Article 106(2) TFEU as it met the requirements of the 2012 SGEI Decision.³⁹

6. Aid for the integration of people with disabilities via labour market insertion.

This case originated from a 2014 complaint concerning alleged aid granted to Samhall, a state-owned company whose assignment is to create work that furthers the development of people with functional impairment. It should be noted that public funds granted to a state-owned company by the State can be considered as State aid if the conditions of Article 107(1) TFEU are met, given that public companies are also undertakings under that provision. The Swedish State provided the funding as compensation for the additional costs of employing workers with disabilities. The Commission concluded that the measure constituted existing aid but did not fulfil all requirements laid down in the 2012 SGEI Decision – since the Swedish legislation:

- did not comply with the time limitation provided in that decision or refer to it,
- did not ensure that the amount of compensation would not exceed what was necessary for the provision,

³⁸ T-202/10 RENV II y T-203/10 RENV II, T :2018 :795.

³⁹ State Aid SA.49313 (2017/FC) – Alleged illegal State aid to ENS and SA.61536 (2021/N) – compensation to the CAPS project for the provision of services to deaf mutes – Italy.

- did not provide for mechanisms to avoid overcompensation and recovery in case of overcompensation, and
- did not provide for the necessary separation of accounts.

The Swedish authorities submitted commitments in 2015 and 2016 to make the measure compliant with the 2012 SGEI Decision, notably by modifying the legislation (entrustment acts) to address all the deficiencies identified by the Commission. Following several exchanges, the Commission concluded that the proposed commitments constituted appropriate measures to make the measure by Sweden in favour of Samhall compliant with the 2012 SGEI Decision.⁴⁰

7. Compensation for social services that does not constitute aid for failing to meet one or more of the requirements enshrined in Article 107(1) TFEU.

7.1 No State aid if health insurers are not undertakings under Article 107(1) TFEU. In 2014, the Commission adopted a decision concluding that the Slovak health insurance sector was based on solidarity and, consequently, that the entities operating under that system – even though some of them were private operators – were not carrying out an ‘economic activity’, and hence were not ‘undertakings’, in the sense of the EU Courts’ case law.⁴¹ The Commission decision did acknowledge that certain features of the Slovak compulsory health insurance system could point to the economic nature of the activities involved in that system – particularly, the presence of several insurance operators (public and private), some degree of competition between these health insurers, and the fact that the regulation of compulsory health insurance in Slovakia allowed health insurers to make profits. Indeed, the Commission’s notice on the notion of State aid considers the ‘profit-making nature’ of a social security scheme as an indication of economic activity. However, those features did not, according to the Commission, call into question the conclusion that compulsory health insurance in Slovakia was a non-economic activity. The General Court annulled the Commission decision in 2018, yet in 2021 the Grand Chamber of the Court confirmed it.⁴² The Court clarified, *inter alia*, that:

- (i) insurance bodies managing a compulsory health insurance scheme which has a social objective and applies the principle of solidarity under State supervision are not ‘undertakings’ under EU competition law, even if they are for-profit companies governed by private law, and that
- (ii) other bodies involved in the scheme may not be classified as ‘undertakings’ on the ground that some bodies operating in the context of the same scheme are seeking to make a profit.

7.2 No State aid due to the absence of effect on trade (i). In 2014, the Commission received a complaint concerning an alleged State aid granted by the Portuguese authorities to Santa Casa de Misericórdia de Tomar (SCMT), an entity providing social support services to older people. The Commission noted that the services provided by SCMT were purely local in nature and available only within a limited geographic area. It also underlined that the services offered by SCMT for older people were in Portuguese only, did not present unique nor highly specialised characteristics that could be particularly attractive for citizens from other Member States, and had not been promoted outside Portugal. The Commission also noted the alleged aid could not have more than a marginal effect, if any, on the conditions of cross-border investments or establishment. Therefore, the Commission concluded that the measure did not amount to State aid under Article 107(1) TFEU.⁴³

⁴⁰ State Aid SA.38469 (2017/E) – Sweden Sheltered employment in Sweden.

⁴¹ Commission Decision (EU) 2015/248 of 15 October 2014 on the measures SA.23008 (2013/C) (ex 2013/NN) implemented by Slovak Republic for Spoločná zdravotná poisťovňa, a. s. (SZP) and Všeobecná zdravotná poisťovňa, a. s. (VZP) (notified under document C (2014) 7277), OJ L 41, 17.2.2015, p. 25–40.

⁴² C-262/18 P and C-271/18 P, *Dovera*, EU:C:2020:450.

⁴³ State aid SA.38920 (2014/NN) – Alleged State aid to Santa Casa de Misericórdia de Tomar (SCMT).

7.3 No State aid due to the absence of a selective advantage I. In 2014 the Commission received a complaint alleging that only the private providers of socio-sanitary services – as opposed to the public, non-profit, autonomous ones – would be:

- (i) admitted to the insurance system managed by the Italian Social Security Institute as regards maternity and paternity leave contributions, and
- (ii) eligible for reimbursement of the compensation for leave for dependents assisting family members with serious disabilities as well as other types of leaves.

The European Commission concluded that 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, and in particular, the private providers of socio-sanitary services. In addition, the Commission noted that, even if such an advantage were to exist, it was clearly not selective; consequently, two of the cumulative criteria of the notion of aid were not met. This case confirms that public and private operators, including social economy entities, can be providers of social services in the European markets. Public authorities can support them financially in compliance with Article 107(1) TFEU and other Treaty principles such as Article 345 TFEU, which enshrines the principle of neutrality of the Treaties as regards the system of property ownership in the Member States. It follows from this principle that the Treaties are neutral as regards public or private ownership of undertakings.⁴⁴

7.4 No State aid due to the absence of a selective advantage II. The European Commission received a complaint concerning alleged aid granted to the bodies administering the Irish supplementary health care scheme, which were engaged in a system of risk equalisation on the private medical insurance market. The European Commission concluded that the risk equalisation scheme at issue 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 in the sense of Article 107(1) TFEU.⁴⁵ The decision was appealed before the General Court, which confirmed the Commission's decision through a flexible interpretation of the Altmark judgment of the Court of Justice (which had been adopted after the decision was taken).⁴⁶ Interestingly for the social economy, the General Court recognised the specificity of the social security sector in relation to other SGEI in more economic sectors.⁴⁷

7.5 No State aid due to the absence of selectivity III. The Court of Justice of the EU recognised in the *Paint Graphos* case, a preliminary ruling procedure, that 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 to the cooperatives under certain circumstances.

The Court reached this conclusion in light of the specific operating principles which distinguish cooperatives from other economic operators, particularly commercial companies. The Court underlined, *inter alia*, the principle of the primacy of the individual, stating that:

- net assets and reserves should be distributed on winding-up to another cooperative entity pursuing similar general interest purposes,
- that cooperative societies are not managed in the interests of outside investors,

⁴⁴ State Aid SA.38825 – Italy Alleged State aid for private providers of socio-sanitary services

⁴⁵ State Aid N 46/2003 – Ireland, Risk equalisation scheme in the Irish health insurance market.

⁴⁶ Judgment of the Court of Justice of 24 July 2003 in case C-280/00 Altmark Trans GmbH and Regierungspräsidium Magdeburg v Nahverkehrsgesellschaft Altmark GmbH, ECLI:EU:C:2003:415. In this landmark decision the Commission concluded that compensation for the provision of services of general economic interest that meets certain criteria does not provide an economic advantage to the provider and can therefore not be qualified as State aid.

⁴⁷ T-289/03 - BUPA and Others v Commission, EU:T:2008:29.

- that reserves and assets are non-distributable and must be dedicated to the common interests of members.

These features, together with the observance of the principles of proportionality and consistency, could justify an exemption for cooperatives from the normal corporate tax. Therefore, based on the guidance provided by the Court, the absence of selectivity and State aid is a matter ultimately left for the referring national judge to decide.⁴⁸ To be noted that this judgment is related to aid in the form of tax benefit and is not relevant to assess the situation of social economy organisations that would not have the same specific operating principles as the cooperatives in question.

4 Conclusion

Current EU State aid rules open up significant opportunities for funding the activities of social economic entities. These opportunities take several forms, from *de minimis* aid, to aid that can be granted fairly easily without previous Commission approval, or as compensation for SGEI, which have different substantive and procedural implications.

The planned workshops will explore these possibilities and formulate practical questions concerning the most suitable instruments for different social economy activities and goals.

Importantly, the rules on State aid are applicable only if all the criteria enshrined in Article 107(1) TFEU are met. To this extent, the workshops will discuss these criteria with the support of examples and case studies relevant to the social economy. Similarly, the State aid rules only apply if the potential beneficiaries of the financial advantages at issue are undertakings for the purposes of Article 107(1) TFEU, that is, if the beneficiaries are entities engaged in economic activity, regardless of their legal status and how they are financed. The workshops will shed light on these notions by discussing examples from the Commission practice and the case law of the EU Courts.

Finally, other concepts, such as that of services of general economic interest or social services of general economic interest, will be discussed with relevant examples.

⁴⁸ C-78/08 - Paint Graphos and Others, EU:C:2011:550.

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