The General Block Exemption Regulation, its content and application. Specific focus on access to finance for the social economy

Synthesis report

Written by ICF

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1 Introduction

This report presents the key findings from the mutual learning workshop 'The General Block Exemption Regulation (GBER), its content and application. Specific focus on access to finance for the social economy'. The workshop was the second in a series of mutual learning events organised by the European Commission's Directorate-General for Employment, Social Affairs and Inclusion (DG EMPL) to highlight the opportunities for using State aid to support the social economy.

The workshop aimed at providing a deeper understanding of the purpose and use of the GBER with a particular focus on its provisions relevant to access to finance for the social economy. It was also a space for Member States to showcase national and local State aid practices as well as discuss issues and challenges.

The event was held in Brussels on 12-13 June and brought together 48 participants, of whom 40 public officials from national, regional and local administrations of 23 Member States.

2 State aid and the social economy

2.1 European Commission's support to the social economy

The European Commission is strongly committed to creating the optimal conditions for the social economy to flourish due to its great potential to create jobs, boost the economy, and contribute to a fair and inclusive recovery, as well as the green and digital transitions. As of 2021, there are nearly three million social economy entities in Europe, employing 13.6 million people, aiming to resolve key challenges on the ground in a variety of sectors, such as work integration, healthcare and social housing.

Therefore, in December 2021, the European Commission launched the Social Economy Action Plan (SEAP) proposing a series of actions to:

- create the right conditions for the social economy to thrive;
- open opportunities for social economy organisations to start up and scale up; and
- ensure that the social economy and its potential are recognised.

The SEAP (Social Economy Action Plan) emphasised the need to address the underutilisation of State aid possibilities to advance social economy entities. This represents a significant challenge in expanding social economy ecosystems. Social enterprises, in particular, face the dual task of maintaining competitiveness while adhering to higher ethical and social standards in their operations. Although public financial support plays a crucial role in bolstering the social economy sector, the connection between State aid and social economy support remains largely unexplored and untapped. As a result, public authorities often fail to maximise the possibilities offered by State aid due to a lack of awareness about available options, misinterpretation of regulations, or concerns over potential legal risks. Consequently, social economy actors receive insufficient State aid support.

On 13 June 2023, the European Commission put forward concrete measures to support the social economy. To overcome the obstacles faced by social economy entities, the proposed Council Recommendation calls on Member States to develop comprehensive strategies that adapt policy and legal frameworks. These strategies aim to support employees in social enterprises, promote social entrepreneurship, ensure fair working conditions, and strengthen social and territorial cohesion. The proposal also focuses on improving access to funding, market opportunities, and public procurement, while utilising State aid rules to support the social economy. Additionally, tax incentives, simplified administrative procedures, and awareness-raising efforts are suggested to further support the social economy.

In conjunction with the proposal, the Commission launched the Social Economy Gateway, a one-stop shop website that provides social economy organisations with information on EU funding, training opportunities, events, and country-specific resources. This platform serves as a capacity-building tool to assist social economy entities in accessing the necessary support and resources. The Commission also encourages Member States to leverage EU funding programmes such as the European Social Fund Plus, the European Regional Development Fund, and InvestEU to promote further the social economy and its impact on the ground.

2.2 Building compliant State aid interventions

European Union (EU) State aid rules exist to ensure that aid is granted in a fair way, benefitting all businesses and consumers, as well as the economy and society at large. Thus, State aid control protects the internal market and prevents unfair competition. This has relevance in the social economy, as economic activities are subject to competition rules.

As emphasised by Maria Segura, Partner at Clayton&Segura State aid lawyers, in her keynote speech for the event, public intervention in the market is very common. However, there is still a lack of knowledge about the application of State aid rules, which leads to missed opportunities in the design of State aid measures. Therefore, two key pieces of advice were offered by the expert as explained below:

- **Consider State aid as one of the possible options from the start.** When designing public interventions, it is essential that State aid rules are considered from the beginning. Even though this may add additional steps in the design process, the long-term benefits of this choice far outweigh the burden of the additional work. Such preparatory work helps to eliminate potential problems that might arise after the implementation of measures.
- **Take into account all factual and legal elements to identify the most suitable approach in the State aid toolbox**. State aid rules offer plenty of solutions and flexibility for designing compliant interventions. Therefore, it is critical to assess which scheme might be more suitable for a given measure and its beneficiaries and then work with the rules from the outset. This approach allows modelling interventions based on State aid rules instead of trying to fit a programme under a regulation.

In line with the first advice, the first step is to establish whether the measure indeed constitutes State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union (TFEU). Box 1 provides an overview of the criteria a measure needs to meet to qualify as State aid.

Box 1 – Is it 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 met[1]:

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.

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

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 an 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 the financing under conditions that are not available on the market.
- 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.

Source: Prepared by ICF based on the thematic paper *'State aid support for the social economy: State aid fundamentals'* written by Juan Jorge Piernas López and the event's keynote speech *'State aid support for the social economy – insight on designing compliant public interventions'* of Maria Segura, Partner at Clayton&Segura State aid lawyers.

Once it is determined whether a measure is indeed State aid, compatibility with the existing rules can be explored. Table 1. provides an overview of the different elements in the State aid toolbox. A key takeaway is that public authorities must thoroughly understand the options they have at their disposal. An ill-designed intervention not respecting State aid rules could lead to the potential recovery of aid with compound interest by the Commission and thus, the loss of credibility for public authorities.

Table 1. Evaluation of the State aid toolbox

Key features / Pros / Pitfalls / Cons

[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.

<table>
<tr>
<td>De minimis regulation</td>
<td>Social economy entities may receive up to EUR 200,000 for each undertaking over a three-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 three years is a rolling period, it must be ensured that the actual amount received by each beneficiary does not exceed the threshold in any three-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 complicated 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.</td>
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<tr>
<td>GBER</td>
<td>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 GBER[4] even</td>
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[4] Amendments to the GBER were announced in March 2023.

	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:** • It does not provide legal security since a GBER-supported intervention might be challenged by private companies and brought to Court.
Services of general economic interest (SGEI) Package[6]	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.

Source: Prepared by ICF based on the event’s keynote speech *‘State aid support for the social economy – insight on designing compliant public interventions’* of Maria Segura, Partner at Clayton&Segura State aid lawyers, as well as the first thematic paper written for the workshop series by Juan Jorge Piernas López.

[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.

[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.

When it comes to designing GBER aid schemes specifically to support the social economy, the following key aspects should be emphasised:

- **Before design**: it is important to carry out an assessment of the needs/risks of the social economy ecosystem by engaging with its entities, conducting studies and public consultations, and evaluating the impact of former aid schemes (if any). National and regional authorities should collect data to assess the amount of support needed.
- **During the design process**: Authorities should strive to conduct a bottom-up co-creation process with grass-root social economy entities. This approach should be coupled with a clear definition of the primary objective of the scheme as well as a profound understanding of the national legislative framework, including regional specificities and potential gaps. Authorities should be aware of the notification thresholds, maximum aid amounts/intensities and other applicable general and specific GBER provisions. In this regard, it is essential for public authorities to make the link between the GBER – and the EU-level State aid framework – and their national legislations.
- **For better design**: a Community of Practice could be created to share best State aid practices across Member States. Member States should reinforce capacity building activities, such as training programmes within public administrations; facilitate the creation of checklists and guidance on procedural aspects, as well as the organisation of mutual learning activities.

3 The GBER

3.1 Overview

Article 108(4) of the Treaty on the Functioning of the European Union (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, commonly referenced as the General Block Exemption Regulation (GBER).

The GBER was introduced to:

- Relieve Member States from the notification obligation for measures that are compatible with the internal market as they are considered more likely to generate benefits and less likely to cause any undue distortion to competition;
- Reduce the administrative burden of Member States and enable the Commission to focus on the biggest and most complex cases of State aid, and thus reducing the length of procedures and avoiding delays; and
- Establish simple and harmonised rules applicable to all Member States.

The GBER is now the main instrument used by the Member States to deliver State aid. Its usage has considerably increased between 2010 and 2021 from around 1,300 measures (out of around 4,200) to almost 5,000 (out of around 7,600), showing the success of the GBER in reaching its objectives. In 2021, in Europe, the GBER aid represented EUR 61 billion out of EUR 144 billion non-crisis State aid and EUR 335 billion total State aid, which constitutes 42% of the non-crisis State aid[8].

[8] State Aid Scoreboard 2021, https://competition-policy.ec.europa.eu/system/files/2023-04/state_aid_scoreboard_note_2021.pdf

The number of notifications submitted to the Commission has naturally decreased with the implementation of the GBER, as its current scope is covering many measures that previously had to be notified to the Commission, for assessment and approval. Today, only aid measures that exceed the thresholds or other applicable limitations set out in the GBER, or aid schemes introducing new elements, even if otherwise in line with GBER conditions, must still be notified to the Commission.

The GBER is structured around four chapters including 76 articles and four annexes:

- Chapter I (9 articles) on general provisions applying to all State aid measures falling within its scope,
- Chapter II (3 articles) on obligations concerning information that Member States must provide to the Commission, records to be kept and information to be published by Member States,
- Chapter III (61 articles) on specific provisions for the different categories and types of State aid and
- Chapter IV (3 articles) on final provisions.

The Commission has amended the GBER to ensure consistency with new State aid guidelines, alignment with EU policy priorities and allow Member States to support their economic recovery post covid-19. Changes include the addition of ten articles as well as an extension of the validity of the GBER until 31 December 2026 to provide for legal certainty and regulatory stability[9].

When it comes to applying the GBER, any State aid measure must comply with the general and the relevant specific provisions. The GBER applies to all sectors and undertakings, except sectors relating to primary agricultural productions, fisheries or closure of mines and undertakings subject to recovery order or in difficulty. Furthermore, measures with annual budgets exceeding EUR 150 million and individual awards, export aid, and measures contingent on the use of domestic products or violating other EU law provisions can never benefit from the GBER.

These opportunities have been used by several Member States to support the social economy entities also together with de minimis (see the Spanish and France examples in Boxes #2 and #3).

To fall under the GBER, State aid measures should satisfy the five following conditions:

- Aid must be transparent;
- Aid must have an incentive effect and be capable of changing the behaviour of the recipient, which includes that the project or investment cannot start before the aid application is submitted; for certain aid measures, though, the GBER provides for an assumption that the incentive effect is present;
- Aid must not exceed the maximum allowable intensity or the maximum allowable amount, which is calculated on the basis of the percentage of eligible costs and amounts to different thresholds depending on the situation;

[9] Commission Regulation (EU) 2023/1315 of 23 June 2023 amending Regulation (EU) No 651/2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty and Regulation (EU) 2022/2473 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 167, 30.6.2023, p. 1, EUR-Lex - 32023R1315 - EN - EUR-Lex (europa.eu)

- State aid from different Member State sources (this includes EU-resources that are handled by Member States, e.g. ERDF or ESF+ funds) can be cumulated in relation to the same eligible costs, partly or fully overlapping, if such cumulation does not result in exceeding the highest aid intensity aid amount applicable to this aid under GBER; the aid can also be cumulated in relation to the same costs, with EU-funds directly handled by EU-institutions without Member State involvement (e.g. the R&I Framework Programme), in which case provided the total amount of public funding, e.g. Member State aid plus EU-funding, must not exceed the most favourable funding rate laid down in the applicable rules of Union law;;
- Individual awards exceeding EUR 100,000 must be published in the Commission's transparency award module or on a comprehensive State aid website, at the national or regional levels.

The GBER allows for several opportunities to support SMEs from the social economy with State aid. An overview of the principal ones is detailed in the table below. Section 3.2 will focus on articles supporting upskilling and inclusion of disadvantaged workers and people with disabilities.

Table 2. GBER articles relevant to State aid for SMEs

GBER Article	Eligibility	Form	Maximum funding and notification threshold
Article 17: SME investment	• SMEs	• Investment in tangible and intangible costs, • jobs created by investment for two-year wage cost	• 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	• 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	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	• 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	• Unlisted small enterprises (below EUR 10 million annual	• Loans, • guarantees, • grants	• Between EUR 0,5 and 2,48 million depending on the form and the area

	revenue) of less than five years, • that have not distributed profit • and have not taken over or been taken over by other undertakings	• IP transfer from research organisation	• These maximum aid amounts per undertaking are also the notification thresholds.
Article 28: Innovation aid for SMEs	• SMEs	• Obtaining /defending patents, • secondment of highly qualified personnel from large enterprises or research organisations, • innovation advisory services and innovation support services	• 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	• SMEs, • large enterprises collaborating with an SME bearing at least 30% of the costs	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.	• 50% for SMEs • 15% for large enterprises • The notification threshold is EUR 12.5 million per undertaking, per project.

Source: Prepared by ICF based on the event's thematic presentations on the GBER of Phedon Nicolaides, as well as the first two thematic papers written for the workshop series by Juan Jorge Piernas López.

Box 2 – Promoting the social economy in Spain

Spain has various measures in place to promote the social economy – all of which are temporary benefits –, including:

- specific tax benefits for cooperatives,

- reductions in social security contributions, and
- grant programmes.

For the same purpose, Annual Subsidy Plans are announced by the State for the social economy entities in each of the 17 autonomous communities, and there are also Annual National Plans with a budget of nearly EUR 12 million. These plans aim to promote corporate social responsibility (CSR), job creation for the self-employed and in the social economy. Grants provided under these plans cannot exceed 150.000 EUR per beneficiary – thus, they fall under the de minimis Regulation. EUR 3 million of the budget is specifically devoted to financing the activities connected to the Spanish Social Economy Strategy.

The Spanish government approved the Integral Plan to Promote the Social Economy in 2022 and will be supported by the next generation of EU funds. This Plan will finance five innovative programmes and it will fall under the GBER.

Source: Ministry of Labour and Social Economy, Spain.

Box 3 – Case of the 'ESUS' label in France

The ESUS (Enterprises with social utility) label was created in France in 2014 in the framework law on social economy and is granted by local governments to organisations that:

- Pursue social utility as a main objective,
- Are able to prove the pursuit of social utility directly impacts the business model, and
- Respect maximum salary differential conditions (1-10).

The ESUS label provides benefits, including special access to private financing, a fiscal advantage for individuals investing in an ESUS enterprise, and free recruitment of civic volunteers. The label also gives a positive signal to the public and impact investors[10]. Individual investors in small and medium-sized enterprises (SMEs) have been eligible for a 25% income tax reduction since 2020. This tax benefit applies to SMEs established within the past seven years and extends to enterprises created up to ten years ago, provided they possess the ESUS label.

France notified the Commission of the measure in two folds:

- The benefits to SMEs of less than seven years were notified using GBER article 21 on risk finance aid schemes for SMEs.
- Regarding the extension to ten years for enterprises with the ESUS label, France used the Commission's Guidelines on State aid to promote risk finance investments under the justification that ESUS enterprises address vulnerable public or territories, need extra capital resources, take specific risks linked to social innovation, face specific risk aversion from investors and therefore need more time to reach a sustainable business model.

Source: French Ministry of Economy and Finance.

3.2 Upskilling and inclusion of disadvantaged workers and people with disabilities

GBER dedicates five articles specifically to addressing upskilling challenges as well as the inclusion of disadvantaged workers and people with disabilities. These provisions offer aid in the form of wage subsidies for recruitment and employment, compensation for extra expenses, and assistance. It is important to note that these provisions do not require aid to have a stimulating effect. The articles are summarised in the table below.

[10] Impact investors are individuals or firms managing an investment fund that specifically seeks to support beneficial social or environmental outcomes, in addition to generating financial returns.

Table 3. GBER articles related to upskilling and the inclusion of disadvantaged workers and people with disabilities

GBER Article	Eligibility	Form	Maximum funding; notification threshold
Article 31: Training aid	• 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	• Reimbursement	• 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	• Any undertaking	• Subsidy for wage costs over 12 months • or 24 months for severely disadvantaged workers	• 50% of eligible costs • The notification threshold is EUR 5.5 million per undertaking, per year.
Article 33: Employment of workers with disabilities	• Any undertaking	• Subsidy for wage costs over any period of employment	• 75% of eligible costs • The notification threshold is EUR 11 million per undertaking, per year.
Article 34: Additional costs of employing workers with disabilities	• Any undertaking	• Adaptation of premises, • employment of staff to assist worker with disabilities, • special equipment, • transportation of workers with disabilities, • rehabilitation, etc.	• 100% of eligible costs • The notification threshold is EUR 11 million per undertaking, per year.
Article 35: Costs of assistance provided to disadvantaged workers	• Any undertaking	• Employment and training of staff to assist disadvantaged workers	• 50% of eligible costs • The notification threshold is EUR 5.5 million per undertaking, per year.

Source: Prepared by ICF based on the event's thematic presentations on the GBER of Phedon Nicolaides, as well as the two first thematic papers written for the workshop series by Juan Jorge Piernas López.

Box 4 – Key definitions of target groups of GBER Articles 31-35

GBER provides an ample definition of the key target group for articles 31-35.

Disadvantaged worker:

- A person who

- Has not been in regular paid employment for the previous six months, or
- Is between 15 and 24 years of age, or
- Is over 50 years of age, or
- Has no secondary or professional qualifications, or
- Is single with dependents, or
- Works in a sector or profession in a Member State where the gender imbalance is at least 25 % higher than the average and belongs to the underrepresented gender groups a member of an ethnic minority within a Member State and requires development of their linguistic, vocational training or work experience.

Severely disadvantaged worker:

A person who:

- Has not been in regular paid employment for at least 24 months, or
- Has not been in regular paid employment for at least 12 months and belongs to one of the categories mentioned above, under the definition of 'disadvantaged worker'.

People with disabilities

- a person recognised by national law to have long-term physical, mental, intellectual, or sensory impairments.

Source: Phedon Nicolaides, Maastricht University, based on GBER article to Art. 2(18)(a) and Art. 2(3)

It is worth noting that other opportunities to assist disadvantaged workers without using State aid exist. For instance, a Member State could decide to introduce a general measure in the tax law to increase the tax reduction for companies employing disadvantaged workers. Financing upskilling and reskilling of workers who lose their job is also possible as they are not linked to a company and the assistance would therefore not be considered as State aid.

For instance, Poland uses the European Social Fund (ESF) to develop the social economy in the regions and support people at risk of social exclusion.

Box 5 – Social economy support in the European Social Fund in Poland

Poland identified several lessons learned and challenges from projects relating to the social economy that were financed by ESF during the 2007-2013 and 2014-2020 programming periods. The social economy is considered a good tool for the reintegration of disadvantaged workers, a service which is not usually provided by mainstream market entities. Despite its positive impact, the social economy has low sustainability when funding from ESF ends. Poland assessed that the lack of a legal definition of the social economy impacted the capacity to provide support to those entities. As a result, Poland decided to define social economy related to work integration.

In August 2022, Poland adopted an Act on social economy setting the rules for certification of social enterprises which will implement the reintegration of people at risk of social exclusion.

Support to the social economy is provided through de minimis regulation under the European Social Fund (ESF) in two strands:

1. **Social Economy Support Centres** were created in various regions as a one-stop-shop for social economy entities. The centres offer incubation, training, various soft support, and financial support for job creation specifically for people at risk of social exclusion (up to 15,000 EUR per entity in the first 12 months of work and up to 10 job places).
2. **Financial instruments** have been designed, including a dedicated fund to offer loans with low rates to social economy entities. The fund is distributed nationally to cope with the gap social economy entities face in accessing finance. Organisations can receive up to EUR 150,000 in loans.

Source: Ministry of Development Funds and Regional Policy, Poland.

Member States face several challenges in using State aid to develop measures to upskill the workforce and integrate workers with disabilities or disadvantaged workers in the labour market. One of these is related to key State aid definitions:

- The concept of single undertaking[11] proved challenging to be implemented as it prevents entrepreneurs from receiving State aid for two different companies. In Slovakia, this definition disincentivises established entrepreneurs from developing social enterprises as they are not considered new on the labour market and cannot benefit from upskilling opportunities offered under the GBER.
- The distinction between regular costs and additional costs linked to the employment of disadvantaged workers is also not clear and easily implementable in all countries.

Member States also observe strong resistance from companies to include disadvantaged workers or people with disabilities in their workforce. There is a lack of trust in the capacities of these workers and awareness must be raised among employers about the value that persons with disabilities can bring to the workplace. Good practices exist to overcome this challenge. For instance, in Italy, employers must compulsorily hire 3% of employees with disabilities in companies with more than 35 employees.

Some Member States flagged that assessing the skill gap is challenging. For instance, in Luxembourg, the government has difficulties assessing the skills needs as many workers live across the border. There is also a risk of double financing as information on measures for upskilling offered in neighbouring countries is not available, which could lead two neighbouring countries to finance upskilling measures for the same target audience or the same undertaking, potentially going over the funding threshold.

3.3 Challenges and the way forward to increase the use of GBER

Further challenges have also been identified throughout the mutual learning workshop. Some of these relate to conceptual and procedural difficulties concerning the interpretation and application of State aid rules for the benefit of the social economy. Several Member States are **facing obstacles in identifying the most suitable tool in the EU State aid toolbox for public interventions**. In addition, even if, for instance, the GBER is identified as the most relevant scheme, uncertainty often remains around the applicable GBER provisions. Establishing **whether a public intervention constitutes State aid** is also a challenge in this regard since verifying the four cumulative criteria of aid is not always a straightforward exercise. For example, distinguishing between economic and non-economic activities can be complicated in certain cases, especially if the strict separation should be carried out in non-profit organisations.

Another challenge is **the lack of a common standardised definition of social economy entities**.[12] The concepts related to the social economy sector vary across the Member States, and in some cases, are not defined by a national legal framework. In some countries,

[11] The meaning of 'single undertaking' is set out in de minimis aid legislation under European Union (EU) State aid rules. All entities controlled on a legal, or de facto, basis by the same entity are considered a single undertaking.

[12] In the context of the SEAP and related EU initiatives, the social economy covers entities sharing the following main common principles and features: the primacy of people as well as social and/or environmental purpose over profit; the reinvestment of most of the profits and surpluses to further pursue their social and/or environmental purposes and carry out activities in the interest of members/users ('collective interest') and/or society at large ('general interest'); and democratic and/or participatory governance.

this legislative void leads to a lack of political support for leveraging State aid possibilities and developing the social economy.

Matching **social economy actors' capacity with the expectations of public administrations** also remains difficult when implementing public interventions. Social economy entities are not always able to meet the expectations of public administrations due to, for instance, a lack of sufficient financial resources when it comes to co-financing measures.

Box 6 – Fiscal treatment for social economy enterprises in Luxembourg

In Luxembourg, social economy enterprises are not considered as enterprises. The government can therefore treat them differently from a fiscal point of view thanks to their legal status and support social economy enterprises by reducing their taxation, which leads to a reduction of their costs. This approach may not count as preferential treatment because of their different legal status and represents a form of support not related to State aid.

Source: Luxembourgish participant during the workshop.

To help overcome these challenges, Member States flagged the support they would need, building on the key findings of the first workshop. **Ensuring harmonised guidance from the Commission** remains a key necessity as countries are seeking legal certainty. Participants also stressed that it would be useful to **create a mutual learning community among Member States to share best State aid practices** and better understand social economy entities. As a result, participants welcomed the opportunity provided by this series of workshops to facilitate the use of State aid to benefit the social economy as a good starting point for future mutual learning. Workshops like these provide opportunities for valuable informal networking and advice.

In order to address conceptual difficulties, **a harmonised definition of terms related to State aid and the social economy** would be considered helpful. A useful tool in this regard is the guidelines developed by the European Commission and the OECD to help Member States aiming to create a legal framework for the social economy.

Many participants would also see a strong value in **creating ex post monitoring mechanisms for tracking the effect of aid schemes**. It is essential to better monitor the results of State aid schemes to understand their effectiveness and impact on the ground. This will, in turn, also contribute to the creation of more efficient State aid interventions.

Coordination and collaboration remain crucial at the EU, national, regional and local levels, as well as between and within stakeholder groups – both horizontally and vertically. At the EU level, this could mean aligning messages and guidance across the various Directorate-Generals that are concerned with dealing with State aid and the social economy, as well as facilitating mutual learning exchanges. Countries can also build on EU-level networks such as EUCLID, which collects relevant data and provides a wide range of information on State aid opportunities for the social economy. On the other hand, there is also a need for **better interdepartmental and inter-ministerial communication** when it comes to the use of the State aid toolbox. This means, that collaboration must be fostered not only among the various departments of national, regional and local public administration bodies, but also across different ministries that deal with State aid and/or the social economy. This could be done through an inter-ministerial co-ordination group or task force, the creation of champions and mentors for supporting State aid measures for the social economy and building networks. These public bodies need to be in regular contact concerning the design and implementation of State aid measures for the social economy, since in most cases, none of them has a full overview of both the sector as well as the applicable regulations, and some of them may have limited legal resources. Consistent knowledge exchange among the relevant ministries and departments plays a key role in creating synergies across public administrations that can lead to better leveraging State aid possibilities for the social economy sector.

Better coordination across the different levels and with stakeholders also contributes to building the capacity of the relevant organisations and the creation of contact points for stakeholders to turn to with their questions. It is important for Member States to focus on building or reinforcing the capacity of their national social economy sector. For instance, in Poland, social economy entities do not enjoy the same benefits as NGOs. Therefore, the Polish social economy perspective plan 2021-2022 enabled the creation of a social enterprise network to bridge the gap between sectors and offer equal or even tailored benefits to social economy actors. On a different note**, social economy entities could also benefit from establishing centralised contact points at regional or national levels** to gather their interests and represent their needs to the government institutions. It is also crucial to build the capacity of public authorities – both concerning the application and interpretation of State aid rules, as well as regarding the specificities of the social economy sector. This could be done through trainings, the creation of checklists, guidance on procedural aspects and mutual learning activities.

In line with the above, it is also key **for public administrations to engage with social economy entities, to better understand and map their needs and assess the amount of support they need**. Member States need to proactively improve the information that reaches social economy actors and stakeholders, to ensure their involvement in designing public interventions and the consideration of their inputs. Strategies include organising meetings with stakeholders, carrying out open consultations, conducting field research, and gathering feedback from stakeholders. For instance, at the local level in Italy, some municipalities organise workshops for their stakeholders and potential beneficiaries as public authorities are required to explain State aid measures. In Croatia and in Ireland, dedicated working groups work on setting up financial instruments.

Box 7 presents how cooperation with ethical banks can improve access to finance for the social economy.

Box 7 – Cooperation with ethical banks for access to finance for the social economy

FEBEA is the European Federation of Ethical and Alternative Banks and Financiers. Ethical finance is an alternative approach to financing that goes beyond sustainable finance and impact investing. It is a comprehensive framework that appears as a solution for filling the gap in the funding of social enterprises. Italy approved its first law on ethical finance in 2016. Cooperation and coordination with the public sector are essential in ethical finance, and this happens on two levels:

1. **Changing the mindset.** The public sector improves the situation for ethical finance, promoting a cultural shift to an alternative economy, and reorienting the economy towards a fair society.
2. **Practical cooperation.** The public sector can share specific projects with ethical finance organisations at the municipal level which can decide to collaborate.

An ethical bank does not solely aim to make a profit as their credit activities always seek to achieve social, environmental and economic added value. Money from ethical finance is transparent, and ethical banks refuse speculation in short-term financial transactions or investments in countries/operations that do not share their vision of society.

Public sector institutions, especially at the municipality level, can work on certain initiatives with ethical finance organisations. An example of this is that the City of Lyon has committed to working with ethical banks in 2021, and selected several ethical finance providers for the mobilisation of a EUR 20 million loan over 15 years. This decision was made in line with Lyon's commitment to an ecological and social transition, and considering that ethical banks offer traceability of the origin of funds. Another example was presented from Spain, where the Barcelona City Council is working to maintain a framework of stable collaboration with the ethical finance system. Barcelona approved an agreement with two ethical finance providers to 1) set up a fund dedicated to financing new projects and new lines of activity for social and solidarity economy companies, and 2) to promote an impact fund to strengthen the development of the social and solidarity economy of Barcelona.

Source: European Federation of Ethical and Alternative Banks and Financiers (FEBEA).

Successful initiatives from Italy were also presented as seen below in Box 8.

Box 8 – State aid provision in the City of Turin

The Metropolitan City of Turin is a local public authority in Italy with a high percentage of micro, small and medium-sized enterprises (MSMEs). Two of its institutional competencies include strategic planning and the socioeconomic development of the territory. These are put into practice by the Department of Economic Development of the City via various measures:

- Fostering business creation;
- Innovation and internalisation in MSMEs;
- Collaboration with business incubators, accelerators, and innovation hubs;
- Promoting clusters and networks of enterprises;
- Encouraging urban regeneration and resilience through negotiated procedures, such as Territorial Pacts projects, Integrated Area Plans and Integrated Territorial Programs; and
- Supporting administrative simplification for enterprises.

One of the best practices in Turin is the **MIP 'Start up your own business'** programme. As part of this, professional trainers – selected with a public procurement procedure – provide aspiring entrepreneurs with free and individual consultancy services. These services include not only 1) ex ante accompaniment – helping entrepreneurs to define a detailed business plan –, but also 2) ex post tutoring for the first few months of the newly set-up enterprise's operation, implementing potentially necessary corrective measures and identifying opportunities to develop the business. Enterprises that go through the whole process also receive financial support in the form of a grant. The evaluation of the MIP shows that the mortality rate of enterprises that were started as part of the programme was significantly lower than that of others.

Another experimental project is the **'InnoSocialMetro'**, aiming to have a significant impact on the social economy of the territory – in line with the SEAP principles – by increasing the ability of micro and small enterprises to generate socially desirable impacts in their community. Two instruments of financial support – a grant and an interest subsidy – will be proposed to these enterprises, obtainable only after having undertaken individual training with experts in consulting services and an impact evaluation. Although at the design phase there was a lot of hesitancy and reluctance to directly engage with State aid regulations, an agreement has been stipulated with the in-house company of the Piedmont Region 'FinPiemonte', that will manage the practical and financial aspects of the initiative. The company will take care of the administrative procedures relating to State aid rules. The expected outcomes of the three-year project are:

- Support the implementation of innovative projects with a positive impact;
- An increased level of social economy literacy of the entrepreneurial ecosystem; and
- Improved knowledge of the social economy's needs in the territory facilitates the transition to a fair, sustainable and resilient economic model.

Source: Metropolitan City of Turin.

4 Conclusions and key learnings points

The second workshop in the series of mutual learning events on the use of State aid to support the social economy provided a platform for participating public officials and other stakeholders to explore opportunities provided by the GBER, exchange best practices and discuss common challenges in detail, with a view to identifying possible solutions.

The GBER contains several provisions to support SMEs financing, including the areas of upskilling of disadvantaged workers as well as the inclusion of people with disabilities, using State aid. The GBER, together with de minimis, is one of the State aid tools which is the most used by Member States, as it has a streamlined process and reduced administrative obligations. Its potential could, however, be further exploited, as, in general, State aid is disregarded because perceived as too complex and legally uncertain.

It was pointed out that knowledge of using State aid for the social economy is already present across the EU but needs to be brought together and shared more widely with the relevant stakeholders. Indeed, several good practices emerged from the exchanges based on initiatives at local, regional and national levels. The Commission could support Member States by collecting available knowledge and distributing it back to countries in a more streamlined and accessible format, together with information developed at EU level, for instance, through the Social Economy Gateway.

Capacity building and awareness raising for both public authorities and social economy entities are important. It will help first to get familiarised and develop expertise on State aid and its opportunities to support the social economy and second to improve their visibility and develop and structure their activities. Organising trainings and workshops, developing checklists and guidance were all mentioned by participants. Some Member States, including Croatia, Ireland and Italy, organised working groups to help their stakeholders and advise them on the most appropriate State aid scheme they can use.

Social economy and State aid are themes usually under the responsibility of different institutions or different departments within a national institution. It is therefore important that they communicate effectively on their work and expertise. The development of inter-ministerial working groups can encourage knowledge transfer. In France, the collaboration and cooperation between different Ministries and departments were key in developing effective measures such as the ESUS label.

Participants also reiterated their strong interest in the creation of a Community of Practice on State aid for the social economy for sharing best practices, common challenges and informal advice at EU level, as already discussed during the first workshop.

Throughout the workshop, the following key advice was suggested to help participants to build compliant State aid measures to support the social economy in their Member States.

Considering State aid as a possible option from the early stages of designing public interventions.

- When designing public interventions, it is essential that State aid rules are considered from the beginning, even if this may add additional steps in the design process. The earlier State aid rules are brought into the discussions concerning a new support measure – or the amendment of an existing one – the better it is in order to achieve the given policy objective whilst being compliant with State aid law. This preparatory work helps to eliminate potential inconsistencies that may arise during and after the implementation of measures.

Starting the State aid assessment by establishing whether the measure constitutes State aid and exploring compatibility with the existing rules only after this first step is confirmed.

- The first step of State aid assessment must be to establish whether the measure indeed qualifies as State aid within the meaning of Article 107(1) of TFEU. In line with this rule, measures must meet four cumulative criteria – detailed in Box 1 – to be considered State aid. In certain cases, it can be established that an intervention is not State aid if at least one of the four criteria is not met. Public officials need further guidance on how to exclude these non-State aid cases.

Taking into account all factual and legal elements to identify the most suitable approach in the State aid toolbox for building compliant measures.

- The State aid toolbox offers plenty of solutions and flexibility for designing compliant interventions. Hence, it is critical to assess which set of rules might be more suitable for a given measure and beneficiaries, and work with the rules from the outset, designing public support accordingly. This approach allows modelling interventions based on State aid rules instead of trying to make a programme fit under a regulation retroactively. Therefore, it is essential for public authorities to have a thorough understanding of the different elements of the State aid toolbox, as well as their national legislations. Some countries use *de minimis* as a first option, while others as a last resort. However, it is important to consider all of the tools available to Member States and avoid singling out one specific regulation.

Designing State aid interventions for the benefit of the social economy must be a bottom-up process.

- It is important to start designing public interventions by assessing the needs and risks of the social economy ecosystem by engaging with its entities. State aid measures for the social economy must be built based on the results of this assessment, as well as based on a profound understanding of the national legislative framework, and the applicable EU-level State aid rules and thresholds. The primary objective of the scheme needs to be established in line with the above.

Strengthening the capacity of public authorities in charge of implementation to deliver State aid measures.

- Public authorities may not always have the in-house capacity or expertise to assess the creditworthiness of a loan recipient or assess business plans submitted to request aid. Therefore, the delivery of State aid measures could be more effective in achieving the set targets if they were implemented by expert organisations hired through competitive selection, even if it would add another layer of bureaucracy.

State aid is only one axis to support the social economy and other tools are also available.

- While State aid can be an important way to provide access to finance to the social economy, it remains to be only one of the tools in the wider toolbox accessible to Member States. Member States can provide support to the social economy ecosystem without threatening to disrupt EU competition, for instance, by creating a voucher system for specific services, by organising awareness campaigns or by pushing towards partnerships between social enterprises and mainstream ones.

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