

EASPD

European Association of
Service providers for
Persons with Disabilities

Impact of State Aid on the Development of the Social Economy and on Service Providers for Persons with Disabilities



Contents

Executive summary	4
Acknowledgements	7
Abstract	8
List of acronyms	9
Introduction	10
Methodology	11
Chapter 1. State Aid regulations for the socio-professional inclusion of PwD, including through the social economy.	13
1.1 Context	13
1.2 The legal framework in force	15
1.2.1. Introduction	15
1.2.2. Relevant State aid rules in a nutshell	15
Chapter 2. Opportunities offered by State Aid regulations for the socio-professional inclusion of PwD, including by means of the social economy, and challenges encountered in their implementation	19
2.1 Opportunities for the promotion of the socio-professional inclusion of PwD, including by means of the social economy.....	19
2.2 Main challenges in the implementation of the State aid rules	23
Chapter 3. Promising practices in the application of State Aid rules for the socio-professional inclusion of PwD, including by means of social economy	28

Chapter 4.

Key research findings and recommendations to decision makers, service providers and other stakeholders.....	34
4.1 Key research findings.....	34
4.2 Recommendations to the European Commission	34
4.3 Recommendations to EU MSs and their public authorities at national, regional and local levels	38
4.4 Recommendations to service providers and other stakeholders	40

References.....41

Annex I – List of interviews..... 45

Annex II – State aid framework relevant for providers

and social economy organisations offering services to PwD	46
1. State aid essential concepts.....	46
2. Fundamentals of State aid rules.....	49
3. State aid rules applicable to the provision of services of general economic interest, including social services.....	52
3.1. The exemptions foreseen by the 2012 Commission SGEI Decision for the provision of social and health services	52
3.2. Exemptions for certain categories of aid	54
3.3. Summing up	57
4. Rules for the cumulation of different types of (legal) State aid	59
5. Links between EU State Aid Legislation and EU Public Procurement Legislation	60
6. Recent developments in the State aid legal framework.....	61
6.1. Jurisprudence of the Court of Justice of the EU acknowledging the peculiarities of certain entities belonging to the social economy	61
6.2. Evaluation of the State aid rules applicable to health and social SGEI package.....	62

Executive summary

Background

In European Union law, as general rule, State aid is prohibited, because public intervention should not have the effect of distorting the level playing field for economic operators. Exceptions are foreseen in those cases deemed essential for the well-functioning of the single market. With time the Court of Justice and the European Commission set out specific rules for entities that provide Services of General Economic Interest (SGEI). Moreover, social and health services, including those aimed at the social and professional inclusion of persons with disabilities (PwD), enjoy a special legal regime because of both the specific general interest purposes they help to achieve and their characteristics.

The reform of State aid rules adopted in 2012 with the so-called “Almunia package” marks an important step in acknowledging in law the specific features of social and health services, in the broader context of SGEI. State aid control comes into play when these services are provided as an economic activity on a market and are, at least partially, financed through public resources, irrespective of the legal status of the provider. Therefore, State aid rules are very relevant also for not-for-profit social service providers and entities belonging to the social economy.

The relevant legal framework on State aid has been in force for a decade and two key pieces of legislation, the general and the SGEI de minimis Regulations, will expire on 31 December 2023. For this reason, in 2019, the European Commission (EC) started the preparatory work in view of the revision of the rules, which is still ongoing. At the same time, on 9 December 2021, the EC launched the Social Economy Action Plan (SEAP), in which it recognises that social economy enterprises have specific features that distinguish them from other types of enterprises and that public financial support by means of State aid plays an essential role for the support of social economy organisations and for enabling the start-up of social enterprises. The SEAP provides formal recognition of the social economy sector and of its specificities by the EC, thus aligning

EU policies to the case law of the Court of Justice of the European Union (CJEU) which sometimes recognised the specific features of certain entities belonging to the social economy.

State aid rules are complex and are often not well known by both public authorities in the EU Member States (EU MSs) and social service providers and social economy organisations. Therefore, public authorities often do not make use of all the possibilities given by State aid rules to foster social economy’s growth.

Aim

The aim of this study is to give an overview of the State aid rules applicable to social economy organisations and social service providers, in particular those operating in the field of disability, to assess the opportunities that the legal framework in force offers to them and provide examples of promising practices. Another aim of the study is to identify the most recurrent challenges encountered in the implementation of the State aid framework and to propose recommendations addressing EU and national decision-makers, social economy actors and stakeholders to improve the application of State aid rules in view of supporting the social and professional inclusion of PwD, including by means of the social economy.

Key findings

Challenges in the application of State aid rules for the provision of social services and the development of the social economy

From interviews to key informants and literature and policy review, challenges have been identified in relation to three main areas: a) insufficient knowledge or awareness of the opportunities provided by the EU State aid Framework for the social and professional

inclusion of PwD, and more generally for the provision of social services and the development of the social economy; b) a legal framework that does not fully respond to the specific features of social and health services and of the social economy and uncertainty on the rules of cumulation of different aids, and c) deficiencies in the ecosystem.

Challenges related to the insufficient knowledge of the rules:

- Insufficient knowledge of and capability by public administrations to use the full potential of the State aid Framework to support social service provision and the development of the social economy.
- Very dominant recourse on the use of general de minimis Regulation, in particular in countries of Central eastern Europe (CEE), by Ministries and local and regional authorities deciding on State aid, coupled with insufficient knowledge of the potential of the General Block Exemption Regulation (GBER) and the SGEI Decision.
- “Fear” or “risk adverseness” or “strategy of avoidance” by many public authorities, especially at the regional and local levels, to “dialogue” with the European Commission to understand if an aid they would like to grant constitutes State aid and if so, if and how it could still be provided in a way to be considered compatible with the internal market.
- Reluctance by public authorities at all levels to define SGEIs in their specific contexts, due to fear that the European Commission could identify a “manifest error” in such definition.
- Lack of recognition as a SGEI of work integration of PwD and disadvantaged workers by some Member States’ authorities. Social enterprises (e.g., work integration social enterprise - WISE, custom work companies), might lack such an entrustment and thus State aid.
- Insufficient knowledge or awareness of the potential of State aid instruments by social service providers / social enterprises as leverage for service innovation and policy change.
- Insufficient knowledge or awareness of the options provided by the GBER on access to finance for social enterprises.

Challenges related to a legal framework that does not fully grasp the specific features of social and health services and of the social economy and uncertainty on the rules on cumulation of funding:

- Thresholds defined in the general (EUR 200,000) and in the SGEI (EUR 500,000) de minimis Regulation are clearly too low, in particular for entities employing more PwD or staff, testifying an insufficient consideration of inflation and higher costs.
- Lack of clarity about options for the cumulation of State aid for the same SGEI or from different sources (including EU funds) and non-use of combined funding due to overcomplicated rules and risk to be asked to pay back money.
- State aid rules are often stricter than ESF/ESF+ rules (e.g., requiring documents no longer needed when using a Simplified Cost Option or compliance checks for state aid), leading to a higher workload for beneficiaries and Managing Authorities.

Challenges related to an underdeveloped ecosystem:

- Underdeveloped social economy ecosystem, confronted with difficulties to access finance (due to asset lock), lack of insufficiently developed legal framework for the social economy and with ill-adapted legal statutes for social enterprises, including WISE, in particular in countries of CEE.
- Underdeveloped and/or understaffed public administrations, burdensome procedures, insufficient knowledge on the management of EU funds by LRA or Managing Authorities.
- Insufficient understanding of not-for-profit social service provision and of the social economy by the public administration.
- Lack of an EU-wide stakeholder mutual learning forum to exchange on solutions, promising practices, but also on common obstacles and issues as to the access to State aid.
- Persistent inadequate amounts of State aid, in particular for social enterprises/social service providers with more staff and getting subsidies for the recruitment of (at least 30%) PwD or for supporting their labour market insertion.

Opportunities

- ■ ■ An untapped potential of opportunities to use State aid rules for social purposes exist for providers entrusted with a public service mission, including to support the recruitment, employment and training of PwD, by means of wage subsidies and compensation of additional costs (reasonable accommodation; supported employment; transport).
- ■ ■ Better use of State aid to increase the employment of PwD and of other people in vulnerable situations and to support their transition into the mainstream labour market / non-segregated settings.
- ■ ■ Strategic use of the obligation for EU MS of UN CRPD Article 27 “Work and Employment” => Enact measures and do investments in freely chosen or accepted employment, decently paid for PwD, in inclusive labour settings.

The study concludes with a set of recommendations to the European Commission, EU Member States and their local and regional authorities, as well as social service providers and their stakeholders to address the identified challenges.

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Abstract

Following the Introduction which sets out the objectives of the research undertaken, and the methodology used, the study gives an overview of the State aid rules applicable to social service providers, including for persons with disabilities, and to social economy enterprises, also covering the most recent developments as to the revision of the EU State Aid Framework (Chapter 1). The explanation of State aid rules contained in Chapter 1 is complemented by a more thorough description of those rules in Annex 2. The study, then, assesses the opportunities that the EU-level legal framework on State aid in force offers to providers of social services and social economy enterprises, focusing in both cases on those delivering training and offering employment for persons with disabilities. It also presents and analyses the most recurrent challenges encountered by key stakeholders when making use of four main instruments of the EU State Aid Framework (Chapter 2). Moreover, the study presents promising practices which in this context refer to the correct application of State aid rules for the development of the social economy and of service providers for PwD (Chapter 3). Finally, Chapter 4 presents key findings from the research and proposes a range of policy recommendations addressed to the European Commission, to policy makers and public authorities in the EU Member States, and to those social economy/not-for-profit organisations delivering social services, with a focus on the field of disability. Annex I contains the list of organisations interviewed and a short description on the interview partners from the 8 EU Member States covered by this Study.

List of acronyms

- BAGFW** Bundesarbeitsgemeinschaft der Freien Wohlfahrtspflege (Federal Association of Non-Statutory Welfare), Germany
- BMAS** Bundesministerium für Arbeit und Sozialordnung (Federal Ministry for Employment and Social Affairs), Germany
- BMWK** Bundesministerium für Wirtschaft und Klimaschutz (Federal Ministry for Economy and Climate Protection), Germany
- CECOP** European confederation of industrial and service cooperatives
- CEPES** Confederación Empresarial Española de la Economía Social (Spanish confederation of social economy enterprises), Spain
- CSO(s)** Civil society organisation(s)
- CJEU** Court of Justice of the European Union
- DPO** Disabled persons' organisation
- EASPD** European Association of Service providers for Persons with Disabilities
- EC** European Commission
- EDF** European Disability Forum
- EESC** European Economic and Social Committee
- ENSIE** European Network of Social Integration Enterprises
- EPR** European Platform for Rehabilitation
- EPSR** European Pillar of Social Rights
- ESF(+)** European Social Fund (Plus)
- EU** European Union
- EUSE** The EU for Supported Employment
- IDESS** Initiatives for the development of employment in the field of personal and household services with a social objective (Initiatives de développement de l'emploi dans le secteur des services de proximité à finalité sociale), Belgium, Wallonia Region
- GBER** General Block Exemption Regulation
- MEAT** Most Economically Advantageous Tender
- MS(s)** (EU) Member State(s)
- PwD** Persons with disabilities
- SEAP** Social Economy Action Plan
- SEE(s)** Social economy enterprise(s)
- SEE** Social Economy Europe
- SGEI** Services of General Economic Interest
- SME(s)** Small and Medium-sized Enterprise(s)
- SSE** Social Services Europe
- SSGI** Social Services of General Interest
- TEU** Treaty on European Union
- TFEU** Treaty on the Functioning of the European Union
- UN CRPD** United Nations Convention on the Rights of Persons with Disabilities

Introduction

The European Association of Service providers for Persons with Disabilities (EASPD) assigned LinkinEurope with the task of developing a study on the impact of State aid rules on social economy organisations/enterprises – hereinafter social economy enterprises – and service providers for persons with disabilities (PwD), being not-for-profit, in one of the legal forms belonging to the social economy, or for profit.

The study gives an overview of the State aid rules applicable to social economy enterprises (SEEs) and social service providers, highlighting the most recent developments (chapter 1). It then assesses the opportunities that the legal framework in force offers to SEEs and social service providers, in particular service providers for PwD, and the most recurrent challenges encountered in its implementation (chapter 2). The study also presents some promising practices in the application of State aid rules for the development of the social economy and of service providers for PwD (chapter 3). Finally, it proposes some recommendations addressing European Union (EU) and national decision-makers, social economy actors and stakeholders on the impact of State aid rules (chapter 4).

Social economy enterprises are considered “undertakings”, which are defined in competition law as any entity engaged in an economic activity, regardless of the legal status of the entity and the way in which it is financed. The same can be said about social service providers. The fact that the activity in question is termed “social” is not of itself enough for it to avoid being regarded as an “economic activity”. At the same time, SEEs have specificities that distinguish them from other types of enterprises, as recognized by the Social Economy Action Plan (SEAP), with significant implications for the application of State aid rules. When analysing the role of State aid in supporting SEEs and social service providers, it is important to look both at the nature and at the sectors of activity of these organisations. Consequently, one should consider the specific rules that apply to the sectors in which these organisations typically operate (the so-called Social and Health Services of General Interest), as well as the flexibility that could be adopted with respect to

all State aid rules in light of the specificities of these organisations regardless of the sector of activity.

The Social Economy Action Plan (SEAP) provides formal recognition of the social economy sector and of its specificities by the European Commission (EC), thus aligning EU policies to the case law of the Court of Justice of the European Union (CJEU) which sometimes recognised the specific features of certain entities belonging to the social economy (see section 6.1 of Annex II).

The review of State aid rules applicable to Social and Health Services of General Economic Interest (SGEI) and of the general and SGEI de minimis Regulation is ongoing. The revision of the General Block Exemption Regulation (GBER) is also taking place, in view of its expiry in 2023.¹ In its roadmap, the EC has considered health and social services as a subgroup with autonomous features within the broader framework of SGEI.

This study largely reflects the opinions and the experience of the main actors who provide social services, including for PwD, and/or are active in the social economy, in the application of State aid rules, and takes into account the ongoing review of the rules by the EC.

¹ GBER foresees exemptions from notification of different types of aid which are very relevant for the provision of services for PwD and disadvantaged workers. See in particular section 3.2 of Annex II.

Methodology

The methodology used to carry out this study is based on:

- Desk research on State aid rules applicable to SGEI, considering EC's studies and reports from both the perspective of competition law and of the social economy, including stakeholder contributions to EC consultations and position papers, and biannual EU Member States (MSs)' reports to the EC on the implementation of EU State aid rules.
- Semi-structured interviews with representatives of relevant EU-level civil society organisations (CSOs), national CSOs and public authorities.
- A workshop with EASPD Secretariat and members to discuss draft key findings from the study, promising practices, and policy recommendations.

Interviews were carried out with 14 representatives of relevant organisations at EU and national level. At EU level, five interviews were conducted with the European Association for Service Providers for persons with disabilities (EASPD), the European Disability Forum (EDF), the European confederation of industrial and service cooperatives (CECOP), RREUSE (an international network representing social enterprises active in re-use, repair and recycling), and SGI Europe (a European social partner representing enterprises and associations providing Services of General Interest from across Europe). At national level, nine interviews were carried out, with *Groep Maatwerk*, Belgium, *Ústav sociálních služeb v Praze 4* (the Social Services Administration of Prague District IV), Czech Republic, *Humana Nova*, Croatia, *Financer Accompagner Impacter Rassembler (FAIR)*, a federation of social impact finance, France, *Union Social pour l'Habitat (USH)*, France, *Deutscher Caritasverband Büro Brüssel* and *Diakonie Deutschland*, both members of the umbrella organisation of the German not-for-profit welfare organisations *Bundesarbeitsgemeinschaft der Freien Wohlfahrtspflege (BAGFW)*, Germany, *Fundația Alături de Voi (ADV) România*, Romania, and *AMICA* (an association providing care for PwD), Spain. The researchers also exploited BAGFW material, including BAGFW (2022) and BAGFW (2023). Annex I provides the list of interviews.

The organisations interviewed are EU-level or national umbrella organisations of providers of services for PwD (in several cases among other groups of disadvantaged or vulnerable persons) and/or belonging to the social economy. They are active in the delivery of care, support, training, vocational rehabilitation, and services for employers in the sectors of disability (both physical and intellectual disabilities, but increasingly also mental health), work integration and the circular economy. In addition, one local and regional government agency was interviewed and one (EU-level) disabled persons' organisation (DPO). One contribution was received in writing.

All interviewees have indicated that their organisation(s)/enterprise(s) **combine an economic activity with a social mission** (understood in a broader sense, i.e., promoting objectives of social, employment and health policies and inclusiveness in labour markets and societies); interviewees representing organisations or networks active in the circular economy held that their organisations/social enterprises also pursue an environmental protection mission. All interviewees have also emphasised that the organisation(s)/enterprise(s) they represent **operate under a non-distribution constraint**, i.e., one of the constitutive features of social economy organisations, implying that a potential surplus made needs to be reinvested (usually from 50% to 100% depending on legal forms set out in national legislation) to fulfil the mission of the organisation/social enterprise. Based on the interviews, we can distinguish two main categories of not-for-profit organisations or social economy enterprises: on the one hand, not-for-profit providers of services for PwD – operating as an association or foundation –, on the other social enterprises active in the fields of work integration and the circular economy.

The **knowledge about and/or experience with State aid** also stems from the fact that all national organisations interviewed are beneficiaries of ESF/ESF+. The organisations and networks delivering social services are also beneficiaries of grants (operational grants; grants to reimburse costs incurred for the provision of services of general economy interest/

SGEI; etc.). Most of the interview partners have received aid in the form of wage subsidies or tax exemptions or compensation of the additional costs for the recruitment of persons with disabilities or with a disadvantage and/or aid related to training of disabled or (severely) disadvantaged workers.

Nearly all organisations interviewed had used public financial support in the form of State aid declared compatible with the EU State Aid Framework **on the basis of the general de minimis Regulation, some based on the SGEI de minimis Regulation.** Most of the providers of services for persons with disabilities had obtained State aid **based on the GBER**, either in the form of aid for the training of workers or for the recruitment of disadvantaged and disabled workers in the form of wage subsidies and/or the compensation of the additional costs of employing disabled workers for which the EU MS are exempted from the obligation to notify it to the EC.

The authors also built on **position papers and responses to EC consultations of 12 organisations:**

the European Association of Service providers for Persons with Disabilities (EASPD), the for Supported Employment (EUSE), the European Platform for Rehabilitation (EPR), CECOP, RREUSE, Social Economy Europe (SEE), and Social Services Europe (SSE); at national level, FAIR (France), the BAGFW (Germany), and the Spanish confederation of social economy enterprises (CEPES). Concerning Italy, relevant information was gathered from CECOP, whose President is Italian, and the European Research Institute on Cooperatives and Social Enterprises (EURICSE), based in Trento, Italy.

Overall, the research covers eight EU MS (Belgium, Croatia, Czech Republic, France, Germany, Italy, Romania, and Spain), including the four biggest EU MS, with both long-standing traditions and large shares of not-for-profit/social economy provision of social services, not least in the disability field, and three Central Eastern European countries, in which not-for-profit provision and the social economy are growing.



Chapter 1.

State Aid regulations for the socio-professional inclusion of PwD, including through the social economy.

1.1 Context

State aid can be present in many forms of support, such as grants, exemptions from general rules (e.g., the exemptions from the general obligation of notification of an aid to the European Commission, provided for in the State aid framework that will be described in section 1.2 and Annex II), exemptions from fiscal measures, reductions in taxation (tax benefits), granting of loans with preferential interest rates, providing guarantees on preferential terms, investments with a return lower than what is provided in the financial market, public purchases above the market price, etc.

According to State aid regulations, potentially any entity engaged in an economic activity (in competition law, the term “undertaking” is used), regardless of its legal form and the ways in which it is financed, could receive a compensation (an aid) from a public authority that could be considered State aid. This implies that the status of the entity under national law – e.g., if it is an association, cooperative or foundation, or another legal form of the social economy – is not decisive. For the purpose of this study, it is also essential to highlight that the application of the State aid rules does not depend on whether the entity is set up to generate profits: a) Where non-profit entities offer goods and services on a market, they fall within the scope of EU State aid control. b) When public authorities directly or indirectly carry out economic activities in any form, they are also subject – for these activities – to the EU State aid rules.

Public funding, including EU funding such as the European Social Fund (ESF) and the European Social Fund+ (ESF+), is very important to sustain social service providers, as well as to promote the creation and development of social economy enterprises. However, while the use of EU funding is subject to the

respect of State aid rules by EU MSs and their public authorities, EU funding schemes disbursed directly by EU institutions or agencies to final beneficiaries do not constitute State aid.

When EU funds are disbursed by the means of financial instruments in the form of loans, guarantees or equity investments, the latter may involve State aid. In the case of the ESF/ESF+, financial instruments typically provide microfinance, but could also include personal loans (fi-compass, 2018).

In European law, social and health services enjoy a special legal regime because of both the specific general interest purposes they help to achieve and their characteristics. The latter, together with the role and functions assigned to public bodies, define the organisational models adopted in the individual national healthcare and welfare systems. In accordance with the principle of subsidiarity outlined in the European Treaties, the planning and organisation of social and health services is attributed to the competence of the individual EU MSs (Santuari A., 2022).

The reform of State aid rules adopted in 2012 with the so-called “Almunia package” marks an important step in acknowledging in law the specific features of social and health services (Zhu, L., 2020), in the broader context of Services of General Economic Interest (SGEI). From a State aid perspective, health and social services belong to a subgroup of SGEI. Health and social services form an essential part of the welfare system of each EU MS and are of crucial importance for citizens. State aid control comes into play when these services are provided as an economic activity on a market and are, at least partially, financed through

² To be determined by the EC and the CJEU by the so-called market economy operator test.

public resources. The EC State aid practice, having as a key objective preventing public interventions from distorting the level playing field for operators, mainly focuses on ensuring that SGEI compensation finances genuine SGEIs and that there is no overcompensation or cross-subsidisation of commercial activities. This is particularly relevant considering the trend in some EU MSs to liberalise the market in the context of health and social services (European Commission, 2019).

State aid rules, namely the 2012 “Almunia package” or “SGEI package”, are beneficial to social service providers and social economy enterprises, for three main reasons:

- They lay down simplified rules for the provision of social and health services, which is the mission of many social economy enterprises across the EU.
- Support granted on the basis of the general and SGEI *de minimis* Regulations does not constitute State aid and social economy enterprises can benefit from it by the means of grants, guarantees, interest and tax reliefs, etc.
- The General Block Exemption Regulation (GBER) foresees exemptions from notification of aid related to training of workers, recruitment of disadvantaged workers and workers with disabilities in the form of wage subsidies and compensation of the additional costs of employing these workers (these rules are particularly beneficial to work integration social enterprises), as well as of regional aid, aid to Small and Medium Enterprises (SMEs), and aid for access to finance for SMEs.

Many social service providers and social economy enterprises also benefit from a widespread fiscal benefit, consisting in reduced or completely waived social insurance costs for the employment of disadvantaged people or PwD, when disadvantaged workers or workers with disabilities represent at least 30% of the workforce. The EC mapping study on social economy ecosystems points out that this fiscal benefit is granted by 16 EU MSs. Approaches differ across the EU, as some EU MSs such as The Netherlands provide subsidies covering part of the wages of workers with support needs to any company (Borzaga, C. et al., 2020).

The relevant legal framework on State aid has been in force for a decade and two key pieces of legislation, the general and SGEI *de minimis* Regulations, will expire on 31 December 2023. For this reason, in 2019, the EC started the preparatory work in view of the revision of the rules.

On 9 December 2021, the EC launched the Social Economy Action Plan (SEAP), in which it States that public financial support by means of State aid plays an essential role for the support of social economy organisations and for enabling the start-up of social enterprises. In addition, public authorities often do not make use of all the possibilities given by State aid rules to foster social economy’s growth. The SEAP mentions the most recurring challenges in the application of these rules, e.g.:

- First, *“stakeholders report that public authorities often unnecessarily limit the amount of aid they give to social enterprises to the general de minimis threshold (EUR 200,000 on a period of 3 years) and do not consider other possibilities that would be in line with State aid rules, such as regional aid, risk-finance aid or aid to the recruitment of disadvantaged workers, where maximum amounts of aid are generally higher.”*
- Second, *“existing EU rules in relation to services of general economic interest (SGEI) open up considerable possibilities for State aid. Entities can only benefit from this flexibility if they have been entrusted with a specific mission, i.e., the SGEI. Public authorities do not always use this possibility to its full potential, for example in relation to the activities of social enterprises.”* As many social economy enterprises are providers of social and health services of general interest, the Commission calls on the EU MSs *“to make better use of their margin of discretion in defining a SGEI wherever appropriate, with a view to allowing qualifying activities carried out by social enterprises to be covered”*.
- Third, regarding the full use of the provisions of the GBER, the SEAP announces that the EC will *“consider whether the available evidence justifies easing the rules in relation to aid for social enterprises’ access to finance and as regards aid for hiring disadvantaged or severely disadvantaged workers.”*

This is motivated by claims of stakeholders that the amounts of “*State aid support available to them is not always adequate, in particular with regards to aid for access to finance and subsidies for the recruitment of disadvantaged workers*” regulated by the GBER (European Commission, 2021, pp. 8-9).

1.2 The legal framework in force

1.2.1 Introduction

The current legal framework in place (as of 30 September 2023) builds on the following **six documents issued by the EC, four legislative and two non-legislative initiatives**, which are explained in Annex II.

- Communication from the Commission on the [application of the EU State aid rules to compensation granted for the provision of services of general economic interest](#) (EC, 2012a).
- [Commission Decision 2012/21/EU of 20 December 2012](#) on the application of Article 106(2) of the Treaty on the Functioning of the EU to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest (EC, 2012b).
- Communication from the Commission, [EU framework for State aid in the form of public service compensation](#) (EC, 2012c).
- [Commission Regulation \(EU\) No 360/2012 of 25 April 2012](#) on the application of Articles 107 and 108 of the Treaty on the Functioning of the EU to de minimis aid granted to undertakings providing services of general economic interest (EC, 2012d).
- [General de minimis Regulation \(EU\) No 1407/2013 of 18 December 2013](#) clarifying that certain compensation measures do not constitute State aid within the meaning of Article 107 of the Treaty (EC, 2013b).
- Council Regulation No 994/98 of 7 May 1998, amended by [Commission Regulation 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, so-called General Block Exemption Regulation (GBER).

Those six key documents are complemented by a guidance published by the Commission Services in April 2013, the [Guide](#) to the application of the EU rules on State aid, public procurement and the internal market to services of general economic interest, and in particular to social services of general interest (EC, 2013a). This EC guidance has not been officially updated ever since and thus, e.g., does not yet fully take into account the stipulations of the new Public Procurement Directive 2014/24/EU.

1.2.2. Relevant State aid rules in a nutshell

State aid law is a complex matter. This section gives a concise overview of the State aid rules that are applicable to social service providers and entities in the social economy. The authors recommend readers who are not familiar with State aid rules to complement the reading of this section with that of Annex II, which explains all the relevant rules in a thorough way, before moving to the remaining Chapters of this study.

The Treaty on the Functioning of the European Union, in particular Article 107 TFEU, contains a general prohibition of State aid, except for those cases deemed essential for the well-functioning of the single market.

State aid rules apply only if the potential recipient of a financial advantage, in other words an aid, is an “undertaking”, meaning an entity engaged in an economic activity, irrespective of its legal status and how it is financed.

According to Article 108(3), when a public authority intends to grant State aid to an “undertaking”, it has the obligation to notify such aid to the EC and cannot grant that aid until the EC approves it.

EU competition law has laid down a specific set of rules for SGEI, and within SGEI for the sub-group of social services of general economic interest, taking account of their importance for the social and economic development of our societies. In fact, under Article 106(2) TFEU State aid can be granted to compensate for the provision of SGEI, if this is necessary for the performance of particular tasks assigned to an undertaking entrusted with the operation of a SGEI.

In the application of the above-mentioned Treaty provisions, the first step is to assess if the “undertaking” receiving compensation has been entrusted with a “genuine” SGEI.

To determine if there is State aid in the compensation granted for the SGEI in question, the conditions set out in Article 107(1) TFEU have to be fulfilled. The following four fundamental questions have to be answered:

- Is the support granted by the **State** or through **State resources**?
- Is the final recipient an “**undertaking**”?
- Does the support “**favour**” an undertaking?
- Does the support **distort competition** and **affect trade** between Member States?

If the answer to all above questions is “yes”, we are in the presence of State aid. To be more explicit, if the recipient of a financial support performs an economic activity (in other words, if it is an “undertaking”), if support is granted by the State (any public authority at national, regional or local level) or by the means of State resources (by any public authority), if support distorts or risks distorting competition and affect trade between EU MSs, and if support gives an economic advantage to the recipient, the compensation given for the provision of such SGEI is State aid.

At this stage, it is still possible that the compensation granted by public authorities to an SGEI provider constitutes legal State aid, considered compatible with the internal market rules, if the four conditions laid down by the Court of Justice of the EU in the Altmark judgement³, the so-called Altmark criteria, are fulfilled. The EC further clarified these criteria in its

Communication on the application of the EU State aid rules to compensation granted for the provision of SGEI and in the guide mentioned in section 1.2.1.

Box 1 - The Altmark criteria

The Altmark criteria

First criterion: a requirement of a clearly defined public service obligation (the SGEI-mission) in an act of entrustment

The public authority must issue a legally binding public act (e.g., a legislative or a regulatory instrument or a contract) that formally entrusts a recipient with a specific service. The act of entrustment must contain: the content and duration of the public service obligations; the recipient and, where applicable, the territory concerned; the nature of any exclusive or special rights assigned to the recipient by the authority in question; the parameters for calculating, controlling, and reviewing the compensation; and the arrangements for avoiding and recovering any overcompensation.

Second criterion: a requirement that the parameters deciding the compensation are established beforehand in an objective and transparent manner

The compensation shall be based on the costs incurred in the performance of the SGEI plus a “reasonable profit”, while the revenue that is generated from the provision of the SGEI must be deducted. This is important as to avoid conferring an economic advantage which may favour the recipient over competitors.

Third criterion: a requirement that the compensation is limited to what is necessary to cover the net costs

The compensation must not exceed all or part of the costs incurred in the discharge of public service obligations, taking into account the relevant receipts and a “reasonable profit”. The EC defined the reasonable profit as the rate of return on capital that would be required by a typical company considering

³ Case C-280/00, Altmark Trans and Regierungspräsidium Magdeburg, EU:C:2003:415.

whether or not to provide the SGEI for the whole duration of the period of entrustment, taking into account the level of risk. The level of risk depends on the sector concerned, the type of service and the characteristics of the compensation mechanism.

Fourth criterion: a requirement that the level of compensation must be determined by reference to the cost that a typical undertaking would have, including a reasonable profit, that is adequately provided and well run

The EC clarified that the SGEI provider must be selected by the means of a public procurement procedure or a bench-marking exercise. In the second option, the compensation must be determined on the basis of an analysis of the costs which a typical undertaking, well-run and adequately provided with means to meet the public service requirements, would have incurred in fulfilling those obligations, taking into account the relevant receipts and a reasonable profit for the provision of such an SGEI.

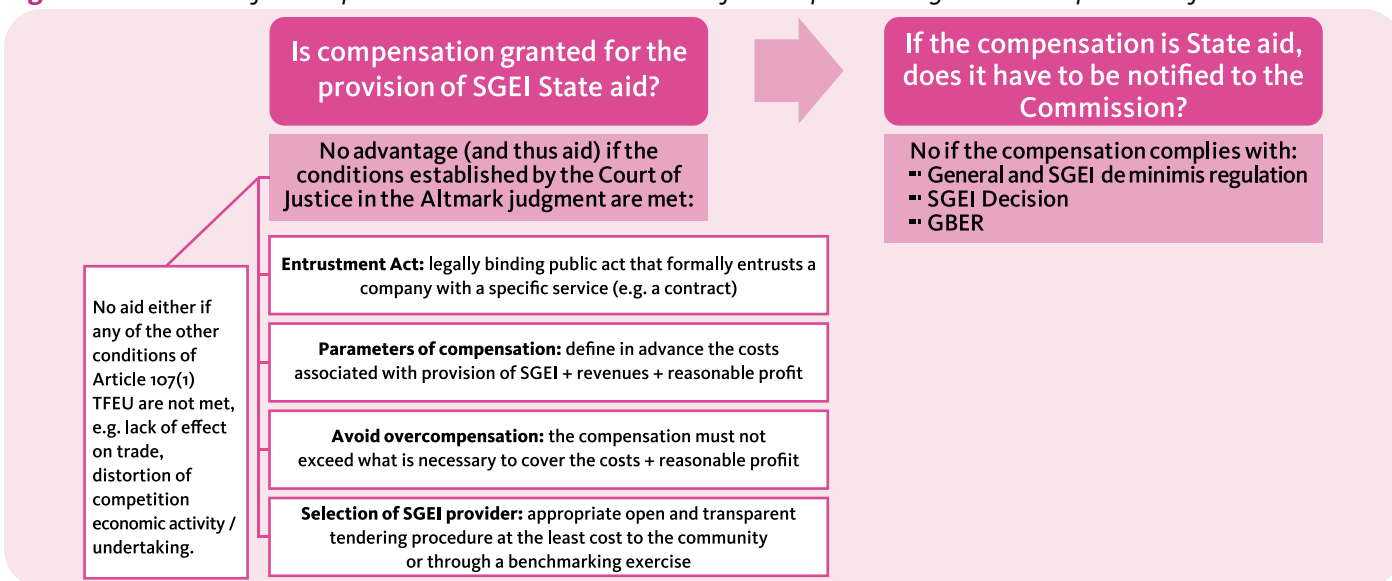
If an entrustment has been operated based on those criteria, then there is no selective economic advantage for the recipient concerned and thus no State aid. However, we stress that it is difficult to meet all four

Altmark criteria, thus in reality, it is likely that a public service compensation constitutes State aid.

The EC defined some rules according to which a public service compensation that constitutes State aid can be exempted from the obligation of notification. These rules are very important for social service providers and entities of the social economy, and they will be described in section 3 of Annex II.

The rules to be followed when a compensation granted for the provision of an SGEI constitutes State aid, and has to be notified to the EC, are defined in the SGEI framework (EC, 2012c). As these rules are seldom being applied to the provision of social and health services or entities of the social economy, we will not describe them in detail. For the aims of this study, it is sufficient to say that the EC assesses a notified-SGEI aid on the basis of the following criteria: existence of a genuine SGEI, presence of an act of entrustment which clearly defines the public service obligations, the duration of the entrustment, the correct application of public procurement rules, the methods for the calculation of the compensation and for the determination of a “reasonable profit”, the incentives introduced by a EU MS for the efficient provision of SGEI of a high standard of quality, and the transparency obligations for each granted SGEI compensation.

Figure 1 - Conditions for compliance with the Altmark criteria for compensation granted to a provider of a SGEI



Source: Authors’ elaboration of Juan Jorge Piernas López (2023), Presentation “The essentials of State aid – Key take aways of the thematic discussion paper”, available at: https://social-economy-gateway.ec.europa.eu/system/files/2023-07/WS1_Thematic%20expert%20ppt_State%20aid%20of%20fundamentals.pdf

If the compensation for the provision of a SGEI is State aid, it does not have to be notified to the EC if the compensation fulfils the criteria specified in the de minimis Regulation, the SGEI de minimis Regulation, the GBER and the SGEI Decision. These legal acts define the criteria and parameters by which a public authority

who is willing to grant a compensation for the provision of a SGEI to an economic operator is exempted from notifying such an aid to the EC.

Table 1 summaries the categories of exemptions that have been set out by the EC in its different legal acts.

Table 1: *Categories of exemptions accorded by State aid legislation and related amounts allowed*

Legal act	Amount allowed (for lines 1 and 2 until 31.12.23)
General de minimis Regulation	Up to EUR 200,000 in a three-year period
SGEI de minimis Regulation	Up to EUR 500,000 in a three-year period
GBER	<ul style="list-style-type: none"> •••• 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
SGEI Decision	<ul style="list-style-type: none"> •••• Up to EUR 15 million for SGEIs •••• No ceiling for the social services listed in Article 2(1)(c)

For a more comprehensive description of State aid rules applicable to SGEI, read Annex II.



Chapter 2.

Opportunities offered by State Aid regulations for the socio-professional inclusion of PwD, including by means of the social economy, and challenges encountered in their implementation

2.1 Opportunities for the promotion of the socio-professional inclusion of PwD, including by means of the social economy

As already alluded to in the heading, the opportunities identified are on the one hand strongly linked to the **social and employment objectives** which can be supported by specific provisions of the EU State aid framework⁴, i.e., the improved social and labour market integration of persons/workers with disability and of other categories of disadvantaged workers/ persons – more generally speaking, with transitions to more inclusive labour markets and societies. On the other, they have to do with **specific funding needs and conditions of social economy organisations and SEEs, as well as with their particular capacity, appropriateness and an untapped potential of the social economy** to play a key role in achieving the objectives set out above. These organisations operate on the basis of rights-based approaches (to realise more dignity, autonomy/self-determination, participation of the persons concerned in decision making and co-production) and adapted and proven models of economic operation with a social mission.

For providers of social services in the field of care and support of PwD and for social economy organisations active in social and labour market inclusion, State aid

rules, their use and the way they are applied on the ground are highly relevant in view of the **effective support for the recruitment, employment and training of disadvantaged and disabled workers** in the form of wage subsidies and for the **compensation of the additional costs of employing disabled workers**, e.g., in the context of supported employment (costs for the support by job coaches and other professionals) and for **reasonable accommodation of jobs** (e.g., by using techniques of job carving or job crafting) **and workplaces**.

This also explains the **key role of the GBER** confirmed by the interviews and the desk research, in particular of Articles 33 “Aid for the employment of workers with disabilities in the form of wage subsidies” and 34 “Aid for compensating the additional costs of employing workers with disabilities”, but also of Articles 31 “Training aid”, 32 “Aid for the recruitment of disadvantaged workers in the form of wage subsidies” and 35 “Aid for compensating the costs of assistance provided to disadvantaged workers”.

The interviewees, the policy documents of key stakeholders and the research done by the authors allow to identify, as **first opportunity**, the need to better use the potential of the EU State aid framework to **achieve an increase in the employment rates of vulnerable persons and groups, in particular of PwD**. This potential is seen when it comes to 1) the money mobilised, i.e. to the amounts, 2) the promotion

⁴ In this chapter, we use the term ‘EU State aid framework’ to indicate the broad State aid rules, and not the Communication from the Commission establishing the EU framework for State aid in the form of public service compensation, which is one of the components of the SGEI package from 2012.

of policy reforms in the context of labour market integration measures to facilitate the transition from models of sheltered employment, special employment centres – or more generally speaking – segregated work settings not offering full labour rights, including adequate pay, to models of supported employment and/or work/jobs in the mainstream labour market and 3) the use of public money with a “social investment” objective. The first point has been consistently mentioned from interviewees in countries lacking sufficient administrative capacities to make full use of EU funds. Lacking or underdeveloped administrative structures, inappropriate or too burdensome administrative procedures, coupled with insufficient technical knowledge on how to manage EU funds (here in particular the ESF, now: ESF+), imply – at the end of the day, as deplored by some of the interviewees – that less EU money is spent for the purposes listed above. For the second and third point, in each country the situation depends on the priority given in legislation, policy design and ear-marked government allocations, to the realisation of inclusive societies and labour market. The third potential was identified by providers of services for PwD aiming to overcome the underuse of State aid to co-finance the wage costs for the employment of PwD, who are often too quickly labelled as “unable to work”. Public money could then be better used for active labour market measures instead of paying wage-replacing/inactivity-compensating social benefits.

This first “avenue” is backed up by the **obligation** existing for all EU MS (being State Parties to the United Nations Convention on the Rights of Persons with Disabilities - UN CRPD) – **in accordance with Article 27 UN CRPD on Work and Employment** to support the employment of PwD and both in view of short-term training and recruitment measures to long-term workplace adaptations and support – to **use State aid for measures and investments in freely chosen or accepted employment in a labour market that is inclusive and accessible to PwD and where the workers with disabilities have access to fair remuneration and workers’ rights on the same level as any worker without a disability**⁵. To make this provision (and basic legal obligation, not only moral

obligation) effective, it should be accompanied by an increase of the thresholds – in particular of the SGEI de minimis Regulation, as mentioned by representatives of work integration social enterprise (WISE) with bigger-size enterprises, but also thresholds set by the GBER. It needs to take into account the evolving (and in recent years increased) employment/wage costs and cost of living across the whole EU. Taking this obligation seriously would, as a by-product, also helps to live up to political commitments made by the EU MS to make tangible progress towards the implementation of the UN CRPD (in particular Article 27), the 2017 European Pillar of Social Rights (EPSR) and the related Action Plan to effectively implement, i.a., principle 17 on “Inclusion of people with disabilities”⁶, the European Disability Strategy 2021-2030 “Union of Equality” (including the 2022 Disability Employment Package) and the EC’s

- 5 Recent Eurostat statistics from 2020 based on the EU-SILC show that in 2018 – across all levels/degrees of disability and for the EU27 – only 50.8% of PwD were employed, compared to 75% of those without disabilities (Source: European Disability Expertise (2020) [authors: Stefanos Grammenos/Mark Priestly]: Statistics on PwD). For women aged 20 to 64 the shares are 47.8% vs. 68.8%, for men 54.3% vs 81.2%, thus showing important employment gaps. The employment rate, however, does not inform about issues such as poor-quality and part-time employment for PwD, people being paid below minimum wage, workers’ rights of PwD not being respected. The statistics also exclude PwD living in institutional care settings. The same statistics also indicate that PwDs have a higher unemployment rate (18.6% vs. 8.82%, with an EU27 average of 10.1%) and a lower activity rate (62.4% vs. 82.2%, with an EU27 average of 78.7%). These few selected data well exemplify the essential role of State aid provisions aiming at higher employment rates, including in the GBER, and better employment qualify for PwD.
- 6 Principle 17 EPSR read: “People with disabilities have the right to income support that ensures living in dignity, services that enable them to participate in the labour market and in society, and a work environment adapted to their needs.” The EPSR AP lists related actions, such as the 2021: European Strategy for the Rights of PwD 2021-2030, the revision of the European Accessibility Act, the 2021 Report on the application of the Employment Equality Directive and the Racial Equality Directive and possible legislation required to address shortcomings.

objective of an economy that works for people as reflected in the regulatory and policy framework for the European Semester.

In order to be able to better use the third “avenue” mentioned above, the use of public money with a “social investment” objective, higher shares of national, regional and local budgets, but also from EU funds should be used to finance programmes bringing up the employment rates in quality jobs and in inclusive workplaces for PwD. This approach could be promoted even more by defining a special line for the employment of PwD by social economy organisations/ social enterprises and for the support of social entrepreneurship – not least, to be competitive – and also a specific grant operator.

A **second key opportunity** identified by the interviewees is to use public money in form of State aid both “in bigger numbers” and in an economically and socially more impactful manner to achieve inclusive growth – e.g., applying a cross-cutting approach starting with inclusive education and building on **inclusive and integrated services** – for the vocational training, recruitment, employment and retention in the labour market of disadvantaged groups, in particular PwD, to support to a maximum their independent living.

A **third opportunity** mentioned is the continued **need to support capacity building and training for public authorities and officials to better fully tap the potential offered by State aid** supportive of the realisation of social, employment, health, and housing-related policy objectives. This would directly benefit providers of social services in the field of care and support of PwD and for social economy organisations active in social and labour market inclusion.

A **last point** identified was the insufficient knowledge and awareness of State aid rules by social service providers, to be addressed at EU-level, by systematically including State-aid related aspects in the work of the Disability Platform and to have them anchored in the European Disability Strategy 2021-2030. One aspect not covered yet there and more in general in the EU

context, but identified by an expert interviewed as untapped potential, is **research on the use of State aid to support cross-country employment-related mobility of PwD**.

To sum up, the authors could pull out some **key insights from the interviews for the category “opportunities”**:

- Given the architecture of the EU State Aid framework, opportunities to use State aid rules for social purposes exist in particular for providers entrusted with a public service mission and thus categorised as SGEI. On the other hand, social enterprises – including WISE and custom work companies –, might, however, lack such an entrustment and thus State aid compliant with the State aid rules based on the act of entrustment of a service provider to compensate for the costs incurred by the delivery of a SGEI.
- The possibility to use higher amounts of State aid to support the recruitment, employment, and training of PwD on the basis of Articles 31-35 GBER – e.g., for wage subsidies and for the compensation of additional costs linked to measures of reasonable accommodation, to supported employment or costs for the transport of PwD – should be used more systematically.
- State aid could be used in a qualitatively better way to increase the employment of PwD – and thus to better realise inclusive labour markets and inclusive enterprises by ensuring the transition of more PwD into the mainstream labour market, in other words their employment outside segregated settings.
- The obligation for all EU MS stipulated in Article 27 “Work and Employment” UN CRPD which requests them to enact measures and to invest into freely chosen or accepted employment, into decent pay for PwD, or into inclusive labour markets and enterprises is often not yet systematically used.

It is interesting to note that **none of the interviewees focused on the considerable potential of the 2012 SGEI Commission Decision** (see above) for (co-) financing social services in the field of care and support of PwD and provided by social economy organisations

active in social and labour market inclusion, including in the WISE sector and in the circular economy. Such a service delivery would be perfectly in line with their respective missions, on the one hand strongly focused on providing training and employment possibilities for PwD – be they physical or intellectual – on the other for workers from other vulnerable groups facing the risk of (long or permanent) exclusion from the labour market, of precarious employment conditions or of segregated employment settings. This is in a way surprising for (not-for-profit/social economy) social service providers – operating in the legal form of either associations, foundations, or cooperatives – who have been entrusted, often for many years or even decades, with the delivery of SSGI, being part of the broader SGEI category. The only interviewee that mentioned the SGEI Decision was the representative from a social housing organisation.

- One possible explanation applicable for the first group of service providers could be that their classification as SSGI (and thus indirectly as SGEI) has never been explicitly questioned, exactly for their anchorage in the fabric of the national social protection/security systems, for the fact that they have provided services governed by social law for the reason that they have been (quite some time ago) licenced/authorised by the competent public authorities to offer those services to which a general interest orientation and a public service obligation is being attached to.
- Another explanation, again for the first group, could be recent changes by the competent national, regional, or local level government/public authority as to the EU State Aid Framework actually used for those services, e.g., involving a shift from the use of the SGEI de minimis Regulation to the application of the SGEI Decision by the Social Economy Directorate of Wallonia for the IDESS Initiative⁷.
- For the second type of services, those delivered by social economy organisations active in social and labour market inclusion, including in the work integration social enterprise (WISE) sector and in the circular economy, the likely underused potential can be due to the fact that their service has not yet been defined as a SGEI.

- At the same event, however, examples from Germany, Greece, Spain and Sweden were mentioned (and another one from Finland, in a way replicating the Swedish model and approach for the recruitment of staff specialised in giving support or assistance to vulnerable people, including PwD, during their labour market inclusion process) where this exactly has been done, with the effect to make the State aid amounts used compatible with the EU State Aid Framework.

Public authorities, social service providers and social economy actors active in the field of disability could also use more the exemptions granted by the SGEI Decision, in relation to social housing, to support the provision of inclusive housing solutions to PwD which would be compatible with the definition of “social housing” laid down in the Decision. OECD data and research indicate that PwD struggle much more than people without disabilities to find affordable housing solutions which are adapted to their needs. Indeed, in OECD countries more than one in ten people with disabilities spend more than 40% of their disposable income on housing.⁸

The authors of this study point out an additional opportunity, which has not been mentioned, except for by one interviewee, that could contribute to the implementation of Article 27 of the UN CRPD, namely letter f) “Promote opportunities for self-employment, entrepreneurship, the development of cooperatives and starting one’s own business”. As illustrated in

- 7 It offers support for the development of employment in the sector of local services with a social purpose in a Mutual Learning Programme Workshop on “leveraging State aid possibility related to services of general economic interest” end of June 2023. See for more details under section 3.
- 8 <https://www.oecd-forum.org/posts/breaking-down-housing-barriers-for-people-with-disabilities>; OECD Affordable Housing database, OECD Directorate of Employment, Labour and Social Affairs – Social Policy Division, HC4.1. Housing outcomes among people with disabilities, available at: https://www.oecd.org/els/family/HC4.1-Housing-outcomes-people-with-disabilities.pdf?_ga=2.52336939.383610217.1688224799-238952982.1688224799

Annex II, GBER provides for exemptions of aid related to risk finance with the objective to incentivise private investment in riskier but commercially viable SMEs (Article 21) and to start-ups, being them in the legal form of an SME or a social economy enterprise falling under the definition of SME (Article 22).

2.2 Main challenges in the implementation of the State aid rules

In 2022, the European Economic and Social Committee (EESC) issued an own-initiative opinion providing reflection and proposals on State aid rules applicable to social and health services.⁹ The EESC considers health and social services as a subgroup with autonomous features within the broader framework of SGEI. The opinion offers a clear overview of the main difficulties public authorities and stakeholders encounter in the application of the rules in force:

- Lack of expertise by public authorities in developing acts of entrustments, which are required by the SGEI Decision and the de minimis Regulation.
- The SGEI de minimis ceiling of EUR 500,000 over three fiscal years is too low.
- The legal concepts to be applied to SGEI are still objectively complex, not least given the greatly intertwined nature of the legal and economic assessments typical of the SGEI sector.
- The rule of the “reasonable profit” laid down by the SGEI Decision requires further clarification.
- Under-use of the discretion which competent government levels or public authorities have for the definition of SGEI based on Art. 14 TFEU and Protocol No. 26 on SEGI, including new SGEIs in the context of the green or digital transformations or to promote inclusive labour markets and societies.
- Too limited use of the GBER provisions concerning aid facilitating access to financing and credit and of incentives to employ workers deemed to have

a disadvantage or a disability. The EESC opinion suggests that one of the possible reasons for this situation is that EU rules authorising the reasonable cumulation and combination of different incentives for the same activities are not clear and flexible enough.

- The links between state aid and public procurement rules (based on the EU Public Procurement Directive and national procurement rules/procedures) often remain unclear for the social service providers.
- Lack of clear guidance by the EC on how to assess the cross-border dimension in the provision of health and social services¹⁰.

The feedback expressed by Eurodiaconia’s members (a European network of churches and Christian NGOs providing social and healthcare services) on the application of State aid rules goes in the same direction. *“Many public authorities have yet to fully implement State aid rules; instead, they only focus on de minimis declarations. It seems that there is still very little awareness of the wide range of diverse State aid rules. In general, the rules of the 2012 package leave wide space for interpretation, creating avoidable misunderstandings and an atmosphere of diminished trust between the public authorities and the provider requesting the funding.*

- *Diakonie Deutschland comments that in Germany the main issue in the implementation of State aid rules is that the SGEI-de-minimis threshold of EUR 500,000 within three years is too low for many social*

⁹ European Economic and Social Committee, Opinion, ‘State aid rules applicable to health and social services – SGEI in a post-pandemic scenario. Thoughts and proposals on the Commission evaluation to amend the 2012 legislative package’, INT/981

¹⁰ The interview partner from Spain deplored that the possibility to bid for public tenders to Special Employment Centers of social initiative and insertion companies are poorly developed. They would wish that the promotion and scaling up of pilot projects is not subject to rigid calls which do not tap the potential of new approaches and pilot projects with an improved economic, social and environmental impact.

services, mainly for two reasons. First of all, public authorities, to give subsidies, very often only ask to fill in a *de minimis* declaration, without asking to explain if the supported activity is State aid relevant or not. The authority asks if the organisation has to be characterised as an undertaking or not, but it doesn't check other criteria such as the cross-border element or the reasons underlying non-economic activities.

- The other reason why the threshold is too low is linked with the State aid notion of the undertaking. As described in the *de minimis* regulation and in the annex of the General Block Exemption Regulation (GBER), an undertaking can consist of several enterprises. Consequently, all the enterprises are categorised as one undertaking if there is a certain level of control and interdependency. In this way, an undertaking can easily go above the threshold of EUR 500,000.
- Furthermore, for a correct implementation of State aid rules, service providers often need intensive legal advice to prepare the required acts of entrustment and to ensure compliance, including with reference to the taxability of acts of entrustment as VAT-relevant.” (Eurodiaconia, 2020, pp. 13-14).

One recurring challenge highlighted by all interviewees is that **the thresholds defined in both the general de minimis Regulation and the SGEI de minimis Regulation are too low**, as they date back to 2012.

Since then, the EC has only allowed a very little increase which is the mere recovery of inflation. When treating aid related to social and health SGEIs, there has been no consideration from the EC that the social, employment and economic situation in the EU has worsened because of COVID-19 pandemic and the war in Ukraine. Both crises have caused an increase in the demand for social and health services. In the meantime, many exemptions from State aid rules have been accorded in sectors such as energy and defence. An interviewee pointed out that in the days close to the interview, the European Parliament would have voted on the support of cohesion funds to sell arms for Ukraine, while the State aid ceiling has not been corrected yet.

Another challenge highlighted during the interviews is the **insufficient use of State aid** – reported

mainly from interview partners from countries in Central and Eastern Europe – in the form of financial support or assistance to cover the costs of necessary accommodations at the workplace by means of training of PwD in general and inclusive training opportunities for PwD in partnership with employers, wage subsidies and grants to employers as incentives to hire and retain employees with disabilities and assistive technology, specialised equipment and support for a workplace redesign.

A third challenge coming up in the interviews is the **lack of knowledge, experience, and awareness of both social service providers and public authorities regarding the potential and correct use of the EU State Aid framework** to promote the social and labour market integration of PwD or of other disadvantaged employees, of social welfare, health, or (social) housing priorities.

Limited resources of social service providers in a number of countries hinder the effective utilisation of State Aid Legislation/Rules. Navigating the complex legal framework, ensuring compliance with the rules, and understanding the eligibility criteria to qualify for State aid can be challenging for them, especially for those social service providers lacking the adequate financial, administrative, and technical capabilities.

Inertia and risk averseness of local and regional public authorities when it comes to using the State aid rules for innovative services and new types of investments, which would require an adaptation of established practices, administrative procedures, or funding models, represent an additional important challenge. Interviewees, in particular from Central and Eastern Europe, reported frequent cases of resistance to change, of fear of mistakes (and subsequent complaints by competitors) as well as lacking political will by the competent public administrations to explore and adopt new approaches of State aid use to (co-) fund innovative services or investments in new fields (e.g., service integration; digitalisation; greening). The same respondents deplored another problem on the implementation side, namely the sluggishness of State aid regimes and procedures.

To sum up, the authors could pull out some **key insights from the interviews for the category “challenges”**:

- Due to fear by local and regional authorities or national ministries deciding on the attribution of and the concrete amounts of State aid to implement modalities of the State Aid Framework that could create legal uncertainty, provoke legal complaints by competitors and thus to create delays in the attribution of public support in the form of state aid, they very dominantly have recourse to the general de minimis Regulation, in particular in countries of Central and Eastern Europe.
 - There is still insufficient knowledge of opportunities provided by all instruments of the State Aid Framework “on the ground”, in particular in view of the use of the SGEI de minimis Regulation and the SGEI Decision.
 - The amounts of State aid attributed in particular to social enterprises or social service providers with more staff and to those of them getting subsidies for the recruitment of (at least 30%) PwD or for supporting their labour market insertion remain persistently inadequate.
 - The use the comprehensive range of tools from the EU State Aid Framework in an adequate manner is hindered, in most of the EU MS, by underdeveloped and/or understaffed public administrations, burdensome procedures, and/or the insufficient knowledge on the management of EU funds by local and regional authorities or Managing Authorities. This calls for investments in the training and capacity building for the relevant public authorities deciding about the attribution of State aid to social service providers and other actors of the social economy, including social enterprises.
 - Too many social service providers, including in the field of disability support and care, and social enterprises, still suffer from insufficient knowledge about the potential of the State aid instruments to make them function as a key leverage for service innovation and policy change. This insight makes the case for more investments in the training of their staff to more competently operate within the EU State Aid Framework.
 - An EU-wide stakeholder mutual learning forum to exchange on solutions, promising practices, but also when it comes to the common obstacles and problems regarding the access to State aid is lacking. This could be partly addressed by bringing the topic of better access to State aid into the working structures of the Disability Platform run by DG EMPL to involve key stakeholders in the implementation of the EU Strategy for the Rights of PwD 2021-2030.
 - There is still a lack of clarity about options for the cumulation of State aid for the same SGEI or from different sources (including EU funds) and, thus, in practice non-use of combined funding due to overcomplicated rules and risk to be asked to pay back money. The same problem was highlighted in view of a combination of money from the ESF/ ESF+ and in parallel from temporary frameworks (such as the EU Framework for State Aid to Support the economy in view of the current outbreak of the COVID-19 of 19 March 2020).
 - Some EU MS can still be characterised by an underdeveloped social economy ecosystem, leaving social enterprises and other social economy organisations, including social service providers, confronted with difficulties to access finance (due to the asset lock under which they operate). Interviewees in particular from countries for Central and Eastern Europe also reported still ill-adapted legal statutes for social enterprises, including work integration social enterprises (WISE).
 - Interviewees reported risks or actual barriers for the use of State aid when social economy organisations, in particular those operating as/defining themselves as social enterprises, are in competition with for-profit/commercial enterprises, i.e., enterprises or organisations not set up as a limited profitability legal entity.
- The same or similar difficulties have been reported by the different stakeholders who responded to the EC consultations, the EU MSs in their monitoring reports to the EC, and the interviewees.

Some stakeholders from the social economy¹¹ have been advocating for a **more refined consideration of the concept of “general interest”** in State aid rules applicable to SGEIs, namely to social and health SGEIs – in order to take better account of the general interest character of the services provided and/or of the specificities of sector, services and their users –, which could concretely translate into the establishment of higher thresholds for social economy enterprises in the SGEI de minimis Regulation. In particular, while revising State aid rules, the EC could take better account of:

- **The common principles and features of social economy enterprises (SEEs):** SEEs are run in the “collective interest” of their members or in the “general interest” of society, but not in the interest of external investors. The fact that the social economy is oriented towards a social purpose and not towards the remuneration of capital means that social economy enterprises have limited access both to capital markets and to external financing. In other words, social economy enterprises must have a higher level of self-financing in relation to other economic operators and, therefore, set aside reserves by reinvesting most of their profits and surpluses in order to carry out their activities and achieve their goals.
- **The obligation set by many national laws on SEEs to either reinvest the majority of their profits in the activity they carry out** or to set up reserved funds that cannot be distributed among the members of the company, since these reserves are intended for achieving a social purpose.
- **Public aid to social economy entities is much less likely to affect trade.** Investment will not be incentivised by the existence of State aid, since the capital will not be remunerated out of the profits made from the aid. There is therefore no economic incentive for investors to invest in such enterprises which might disrupt the functioning of the market in this area.
- **State aid allocated to social economy enterprises generates a multiplier effect higher in relation to other economic operators,** precisely due to the focus of the social economy on the activity, which enables these enterprises to ensure better quality in the provision of services and to have a greater social

impact in terms of quality jobs, local development, and social cohesion (OECD, 2022).

The opinion of the EESC goes in the same direction. In fact, the EESC calls for a distinction in favour of social economy when the “reasonable profit margin” shall be defined since social economy enterprises “are bound to reinvest the economic margins generated into their own statutory activities, (...) creating a virtuous economic effect which should be encouraged and supported”. This EESC call is consistent with the European Social Economy Action Plan that States: “developing coherent frameworks for the social economy entails considering its specific nature and needs (...)” to boost the social, economic, and environmental value added by the social economy.

Another barrier to the correct application of State aid rules highlighted by some interviewees is the **lack of knowledge of the rules by the public authorities, and in particular of the margins of flexibility that are granted to social and health services** by the State aid rules in force. In some EU MSs, public authorities operating in the social and health sector, especially at local and regional levels, are often in fear of asking the EC if an aid can be compatible. This translates into the practice that aids are granted within the thresholds of the general de minimis or the SGEI de minimis Regulations, with no consideration of the SGEI Decision. At the same time, other EU MSs or large companies in the aerospace, defence or pharmaceutical sectors ask for major derogations that have been obtained.

We have seen that one of the merits of GBER is that it provides for **exemptions for the training and recruitment of PwD and disadvantaged workers**, as well as to cover additional costs an employer bears for employing them. Public support measures designed by EU MSs target either WISEs (e.g., subsidies and grants to cover investments in fixed assets, support for workplace adaptation, support for training) or the recipients addressed (e.g., subsidies covering part of

¹¹ See CEPES response to the consultation ‘State aid – review of rules on exemptions for small amounts of aid to services of general economic interest’.

the wages of workers with support needs). From a comparative perspective, access to targeted public support measures vary to a significant extent across countries, including from region to region in the same country (Galera, G. et al., 2022, pp. 76-80). This fragmentation is another key obstacle in the use of the relevant GBER provisions. EU MSs could consider improving their frameworks and ensuring better coherence at national level.

When it comes to the opportunities provided by GBER on **access to finance**, it emerges that these opportunities are very little known by social service providers and entities in the social economy, except for those organisations such as Fair that work in the field of social finance. This was highlighted also in the EESC opinion on the matter. This situation is a paradox, as social economy enterprises generally have greater difficulty in accessing finance than standard enterprises. Among the reasons for these difficulties are the usually small size of social economy enterprises¹², the fact that their securities are not listed, the effects of the non-distribution constraint, their low return on capital, which makes them less attractive to investors, and barriers to access to credit. These difficulties hamper their development and thus their ability to achieve their social objective. That is why it is necessary for social economy enterprises to be able to benefit from support for access to financing in a sustainable way. Another reason why these provisions from GBER are less used is that despite their specificities, social economy enterprises do not benefit from a special recognition under the GBER; they are assimilated to SMEs (when they meet the conditions). The aids from which social economy enterprises may benefit are therefore limited to companies with less than 10 years' seniority and to a total amount of €15 million in the proposed regulation (FAIR, 2023). In chapter 4, we will provide some specific recommendations on this point.

We complement the analysis of the main issues encountered in the application of State aid rules looking at the **specific challenges ESF Managing Authorities reported in the combination of the application of ESF rules with State aid rules**. Source of this section is the work carried out by the Thematic

Network on Simplification in the framework of the ESF Transnational Platform from 2015 to 2019 (ESF Transnational Platform, 2018).

The main issues reported by the 17 ESF Managing Authorities from 14 EU MSs that participated in this exercise can be summarised as follows:

- ◆◆◆ *The scope of State aid rules, which apply only insofar as trade between EU MSs is affected.* It can be very difficult to assess whether trade is affected or not because there are no clear criteria, neither in the Treaty and the regulations nor in the EC guidance. Meanwhile, many ESF projects are very small and likely to fall under this new provision, but there is no assessment method, only EC case law. The assessment must be made on a case-by-case basis, which provides flexibility to the Managing Authorities on one hand. On the other hand, there is no legal certainty, and the assessment is time-consuming. The legal analysis may vary from EU MS to EU MS and probably even from Managing Authority to Managing Authority.
- ◆◆◆ *State aid rules are often stricter than ESF rules and therefore lead to a higher administrative workload for beneficiaries* (more supporting documents to provide, longer retention period) *and Managing Authorities* (more checks to perform). State aid rules often require supporting documents that are no longer needed when a Simplified Cost Option (SCO) is applied. Combining SCOs with State aid rules still raises some questions regarding eligibility, as certain State aid provisions define “eligible costs” which are not in line with the “eligible costs” under the rules applicable to the European Structural and Investment Funds.
- ◆◆◆ *The Managing Authority has to go beyond ordinary management verifications under ESF rules, to ensure compliance with State aid rules.* Examples are the verifications requested to check if the beneficiary is a single undertaking or an undertaking in difficulty, as required by the *de minimis* regulation and GBER.

¹² The interview partner from Spain mentioned that Special Employment Centers are not eligible for aid for SMEs when the number of workers in a specific Special Employment Center alone which would like to request public support is too low.

Chapter 3.

Promising practices in the application of State Aid rules for the socio-professional inclusion of PwD, including by means of social economy

The authors of the study have identified a number of promising practices. In the context of this study, “promising practice”, however, corresponds to the correct application of the EU State Aid Framework, not to an innovative or effective use of State aid. It was not possible to identify promising practices during the interviews¹³ or by doing desk research. Sources of the practices have been the [EU MSs reports to the Commission on the application of the SGEI Decision and State Aid Framework](#) or have been identified based on earlier work experience and personal contacts of the authors.

In the identification of the promising practices, the authors took into consideration the following criteria: a) geographical balance; b) different State aid regulations as legal basis; c) different types of social services; d) different types of service providers or social economy entities; and e) variety of social policy objectives to be reached by the public authority.

Good practices showing the correct application of the EU State Aid Framework

BELGIUM, Wallonia Region

“Creation of employment in proximity services with a social purpose”

Since 2008, the Social Economy Directorate of Wallonia Region has developed initiatives aimed at creating employment in the sector of proximity services with a social purpose, in French: [Initiatives de développement de l'emploi dans le secteur des services de proximité à finalité sociale \(IDESS\)](#). Until 2017, these initiatives were financed on the basis of the SGEI de minimis Regulation. In 2018, the region decided to use the SGEI Decision to allow for more flexibility and the attribution of higher state aid amounts. The services offered include small household repairs, maintenance of small courtyards and gardens, transportation of

persons from the 3 targets group to help realising the societal participation, social laundries or social stores. These services are provided by long-term unemployed, and persons excluded from the workplace. The customers of the services offered must be persons with low incomes, PwD or people older than 65, or associations from the social economy, which, due to their frequently low capital stock or the limited credit lines they have access to, have restricted possibilities to invest large sums of money.

Further reading (in French): [IDESS = Initiatives de développement de l'emploi dans le secteur des services de proximité à finalité sociale.](#)

BULGARIA, Ministry of Labour and Social Policy

Implementation of operations for social and economic integration of vulnerable groups under the Operational Programme “Human Resources Development”

After having gone through the applicability of relevant pieces of the EU State Aid Framework and their possible effects, the EC in a Decision of 31.03.17

- ¹³ The authors had planned to ask the interview partners to share “good/promising practices” for the effective use of State aid which on one of the four following aspects: 1) Wage subsidies for the employment of socially disadvantaged persons or PwD; 2) Use for supported employment, also covering job coaching, and accommodations to help individuals with disabilities secure and maintain employment; 3) Financial support provided as State aid to businesses and organisations for making their premises, products, and services accessible to PwD, not least as this could encourage private enterprises to invest in accessibility and promote the social inclusion of PwD; 4) A case study showcasing how public authorities (can) report better about the positive social, environmental and circular economy impact of using public money in form of State aid provided to the social economy/social economy entities providing services for PwD and/or other vulnerable groups. As explained above, this objective could, however, not be realised as not a single case was identified.

advised the Bulgarian Ministry of Labour and Social Policy to use the 2012 SGEI Decision instead of the de minimis Regulation.

Article 2c) of this Decision specifies the compensation for the provision of SGEIs meeting social needs in the fields of health and long-term care, childcare, access to and reintegration into the labour market, social housing and the care and social inclusion of vulnerable groups. Under the hypothesis that all the conditions set out in the 2012 SGEI Decision are met (including an entrustment act containing all the elements indicated in Article 4 of the SGEI Decision and the avoidance of overcompensation and cross-subsidisation stipulated in Articles 4 and 5), the compensation of services providers delivering social support measures for vulnerable groups are deemed to be compatible with the internal market and exempted from notification to the EC.

Further reading: [Decision of EC of 31 March 2017 on the Operational Programme “Human Resource Development”](#)

GERMANY, Federal Ministry for Employment and Social Affairs (BMAS)

Use of ESF-funded pilot project (“Rückenwind” = tail wind) by the German Welfare Associations (members of BAGFW) to support the effective recruitment, retention, and training of staff in different sectors of social services

For the ESF+ programming period 2021-2027, the initiative supports innovative pilot projects in three areas (with a total of 74 mio. €): 1) Personnel development: developing new training programmes, leadership coaching, concepts for staff retention, skills development; 2) Organisational development: digitalisation processes, streamlining work and administration procedures, developing new work models; 3) Culture change: implementing and making new ways of work and communication, adapting to new work environments. Given the focus areas 2 and 3, the pilot project could be a source of inspiration for social economy organisations/enterprises, including in the sector of care and support for PwD, even though two aspects should have been designed in a more appropriate manner. This concerns too high

co-financing rates, which risk excluding smaller not-for-profit organisations and social economy organisations/enterprises (due to insufficient own reserves), the lack of funding to upscale the pilot projects and insufficient follow-up funding from the ESF+ to provide incentives for change management processes. The problems encountered in the implementation of this measure point to the challenge of combining funding from ESF/ESF+ with complementary funding from national sources and to issues related to the cumulation of public money – as State aid – from ESF/ESF+ and ERDF (or Just Transition Fund, etc., for green transitions).

Further reading (in German): [rückenwind+](#)

GERMANY, Federal Ministry of Labour and Social Affairs (BMAS)

Guidance on the correct application of State aid rules for investments in the field of social services

Provision of guidance by the Federal Ministry of Labour and Social Affairs (BMAS) on the correct application of (mainly) the general de minimis Regulation for beneficiaries of State aid for investments to reduce the negative consequences of climate change in social care institutions or, more generally, in the field of social services. The guidance explains core concepts (such as enterprise, economic activity, regional activity, effect on/possible distortion of trade in the internal market), the thresholds to be respected, the rules to cumulate different types of State aid¹⁴, the facts relevant to the (future) subsidy, the obligations of the public authorities deciding on the State aid, the obligations of the receiver of State aid as well as the consequences of mergers or the splitting up of enterprises, including from the social

¹⁴ It clarifies that under certain conditions State aid on the basis of the general de minimis Regulation may be cumulated with State aid on the basis of the SGEI de minimis Regulation if the threshold of general de minimis Regulation, i.e., as of 30 September 2023 200,000€, is not exceeded. It also explains the additional requirements for the cumulation with other forms of State aid/public financial support.

economy, which had earlier received State aid. In the process of requesting State aid, the (later) beneficiary is normally “only” asked to provide a self-declaration, as a rule also not checked, on the current and previous use of State aid.

Source: Various types of guidance and forms for the self-declaration on current and previous use of State aid provided for by BAGFW Members

GERMANY, Federal Ministry of Economic Affairs and Climate Protection (BMWK)

Compensation of labour market inclusion services based on direct grants

Coverage of personnel costs of staff in social enterprises for the provision of socio-educational support to long-term unemployed persons, including PwD, based on direct grants, for maximum 36 months (and for an amount of 588,000€ in 2020):

In order to integrate the long-term unemployed into the labour market within the meaning of Article 2(1) (c) of the SGEI Exemption Decision, compensation is paid for the provision of services of general economic interest (SGEI) to cover the personnel costs of social enterprises for socio-educational support and professional guidance of people who were formerly unemployed for long periods of time and are now employed staff subject to social security contributions in such enterprises. The beneficiary must provide accounting evidence that the aid does not exceed the net costs of providing the SGEIs. Final proof is provided at the end of the entrustment period. Regular checks are carried out to ensure that compensation for the SGEIs in question meets the conditions laid down in the SGEI Decision and, above all, that the beneficiary does not receive more compensation¹⁵ than that provided for in Article 5 of the SGEI Decision.

Further reading: Communication from the Government of the Federal Republic of Germany to the EC: Letter from the Federal Ministry of Economic Affairs and Climate Protection, 30 November 2021, Services of general economic interest: guidance for the report to be submitted in accordance with the

2012 SGEI Decision and the 2012 SGEI framework – Section “Report by the Land of Brandenburg on services of general interest under the 2012 SGEI Decision and the 2012 SGEI framework for 2020 and 2021”, pp. 4-7

GREECE, Ministry of Finance

Tailored Actions to Integrate Young People with Disabilities into Employment

The National Confederation of persons with disabilities was entrusted by the Ministry of Finance for the provision of integrated services aimed at ensuring access to and reintegration into the labour market of 3000 young persons with disabilities and/or chronic conditions. The beneficiaries are persons who are on the National Employment Organisation unemployment registers, up to the age of 29 (i.e., who have not yet completed their 30th year), who have completed secondary school or are graduates of vocational training institutes, universities or technical colleges and who are not in employment, education or training (NEETs), with a view to setting up a structured path to enter or reintegrate into the labour market.

The services provided are based on an integrated package of measures including counselling, continuing vocational training (theoretical training and placements), certification and work experience. The services are provided free of charge to all beneficiaries of the target group under the same conditions. The service is entrusted to the National Confederation of persons with disabilities as State aid in the form of public service compensation, in

- ¹⁵ If the checks conducted by the granting authority to ascertain whether the payment made to the beneficiary in the form of a grant has been used correctly show that the revenues earned by the beneficiary for providing services of general economic interest exceed the net costs (overcompensation), the authority asks the beneficiary to repay the surplus amount at the same time as it informs the latter of the audit outcome. This does not apply if the overcompensation does not exceed 10% of the amount eligible for compensation. In this case, the surplus amount not exceeding 10% is credited to the following calendar year in such a way as to reduce the compensation scheduled for that year by 10%.

accordance with Article 2(1)(c) of the SGEI Decision. The service is conceptualised as a SGEI serving social needs¹⁶. The provider has to undertake publicity obligations in accordance with the entrustment act.

Further reading: Hellenic Republic, Ministry of Finance, Secretariat-general for economic policy directorate-general for State aid and assistance central State aid unit, SGEI report for the year 2022 (In accordance with the 2012 SGEI Decision and the SGEI Framework 2012), pp. 34, 49, and 51.

ITALY, Autonomous Province of Trento

Multi-service cooperative supermarkets offering social services to the local population

The territory of the Province of Trento is characterised by a high fragmentation of population centres, as most municipalities are very small, with an average of 50 inhabitants, often in mountainous areas. These are often places that are characterised by the absence or closure of commercial establishments for the distribution of food and basic necessities or, on the contrary, where these places are the only social gathering places for the inhabitants. In these areas, there are issues of isolation and lack of basic services, including social services.

As in the territory of the Province of Trento many supermarkets are provided by cooperatives, which are often the only existing social gatherings, the Province developed an initiative to encourage these cooperatives to offer additional social services, such as the support for the booking of specialised medical consultations and to serve as delivery point for medicines sent from neighbouring pharmacies. These multi-service consumer shops are recognised as SGEI and receive a compensation under the de minimis Regulation.

Source (in Italian): EURICSE, 2019, Research report no. 17, La cooperazione in Trentino. Punti di forza e sfide per l'economia locale, pp. 55-68

ITALY, Invitalia

“Social Economy Italy” (in Italian “Italia Economia Sociale”)

Invitalia is the National Agency for attraction of investments and business development. In the context of “Italia Economia Sociale”, eligible for aid

are investment programmes aimed at the creation or development of social economy enterprises that carry out investment programmes or increase the employment opportunities for workers with disabilities. Investment programmes shall achieve at least one of the following objectives: increased employment of disadvantaged groups; social inclusion of people in vulnerable situations; enhancement and protection of the environment; urban regeneration and sustainable tourism; the environmental sustainability of the company's activities; safeguarding and enhancement of historical and cultural heritage or pursuit of cultural purposes or of social utility, of significant public interest, within a community or a territory.

The social economy enterprises that can benefit from this funding scheme can operate in all economic sectors and in any area of the country. Eligible programmes must submit expenses, net of VAT, of no less than EUR 100,000.00 and no more than exceed EUR 10,000,000.00.

This initiative was previously based on the de minimis Regulation, while now it is based on the GBER. Eligible costs are costs of adapting premises, adapting or acquiring equipment or software; for the use of workers with disabilities; costs of staff time devoted exclusively to assisting workers with disabilities; costs directly related to the transport of workers with disabilities to the workplace and for work-related activities.

Source: [Italia Economia Sociale – Invitalia](#)

¹⁶ This is done as the provision of continuing vocational training services to facilitate access by the unemployed to the labour market is a service that the State must provide to citizens to tackle unemployment and strengthen social cohesion. However, it is a social service provided free of charge to the public if it targets young people with disabilities and/or chronic conditions and is aimed at all beneficiaries under the same conditions, free of charge and without payment, is in the interest of society as a whole, because it contributes to strengthening social cohesion, and does not financially benefit the implementing body.

ITALY, Italian authorities (not further specified)

Provision of web-based video-remote interpreting services for deaf people

In 2017, the European Commission received a complaint from a company providing web-based video-remote interpreting services for deaf people alleging that the grant of 1 million EUR given by the Italian authorities to the Italian Association for Deaf People to set up and operate a “Centre for the Autonomy of Deaf People” was unlawful State aid.

After examination, the EC considered the Italian Association for Deaf People an “undertaking” in the meaning of competition rules, in light of the economic activities that the Centre for the Autonomy of Deaf People would carry out after its creation by means of the grant received. The EC thus defined the measure as State aid, but because it met the requirements of the SGEI Decision, it finally declared the grant of 1 million EUR compatible with the internal market.

Source: 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, available at: https://ec.europa.eu/competition/state_aid/cases1/202225/SA_49313_80537181-0000-CC63-8E6A-341AD3672973_278_1.pdf

SPAIN, Region of Catalonia

Aid to support the social and professional inclusion of people experiencing or at risk of social exclusion, including persons with disabilities

In 2020 and 2021, the Region of Catalonia launched a call to grant funds to undertakings that specialise in assisting people experiencing exclusion or at risk of social exclusion (ensuring protection and inclusion of vulnerable people), to enable them to re-enter the mainstream labour market. This aid is compatible with the SGEI Decision.

The measure consists of two lines of action in 2020 and 2021:

Line 1 - Aid for the recruitment of staff who are specialised in giving support or assistance to vulnerable people during the integration process (e.g., subsidies to cover the wage costs of specialist

staff who provide support to those persons during the integration process).

Line 2 - Aid to encourage the employment of vulnerable people by the beneficiary undertakings (partial subsidising of wage costs).

The beneficiary entities are work integration undertakings as defined in Law No 27/2002 of 20 December 2002.

The target population includes: recipients of guaranteed minimum income; people with physical, mental or sensory disabilities or with mental illnesses who can prove that they are at risk of social exclusion, and who have a real possibility of entering the labour market; young people (aged over 16 and under 30) from child protection institutions or who are at risk of exclusion; people with drug or alcohol addiction problems under specified circumstances; inmates in prisons whose status allows them access to employment as well as people on conditional release and former prisoners; people who may not be able to access the guaranteed minimum income and are at risk of exclusion; long-term unemployed people aged over 45.

Source: (Spanish) Ministry of Foreign Affairs, EU and Cooperation, Secretary of State for the EU, Directorate-General for Internal Market Coordination and other EU policies, State aid. Services of General Economic Interest. 2022 report (for 2020 and 2021) submitted pursuant to the 2012 SGEI Decision and the 2012 SGEI Framework, pp. 64, 83, and 101.

SWEDEN, Swedish Public Employment Service

Entry jobs

In 2022, the European Commission approved a measure set out by the Swedish Public Employment Service (PES) aimed at creating new jobs for currently unemployed disadvantaged and severely disadvantaged workers (newly arrived immigrants and long-term unemployed). This measure falls under the scope of GBER.

Target population are people who, at the time of the decision by the PES, have reached the age of 20, are unemployed and registered as jobseekers with the PES, and who have been unemployed, or participated

in a labour market policy programme, on a full-time basis for at least 24 out of the 27 months preceding the date of application. In addition, the beneficiaries must also fulfil one of the following additional conditions: (a) Being assigned to the labour market policy programme setting up measures for certain newly arrived immigrants; or (b) Having been granted residence permit or residence card as a family member of an EEA national within the last 36 months prior to the date of application.

Under the approved measure, for one year, employers will pay wages significantly lower than the minimum wage under regular collective agreements. A State aid will be paid directly to the worker and not to the employer, to compensate workers for receiving a lower salary for work carried out in Entry Jobs compared to regular work, so that the total of paid wages and state compensation 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.

Source: State Aid SA.100209 (2022/N) – Available at: https://ec.europa.eu/competition/state_aid/cases/202236/SA_100209_4060F882-0100-C787-9574-B6775321705B_62_1.pdf

SWEDEN, Legal, Financial and Administrative Services Agency

Creating Sheltered Employment

The origin of this case was a complaint brought before the European Commission about an aid granted to Samhall, a state-owned company whose assignment is to create work that furthers the

development of people with functional impairment. At first, the Commission found that this was a State aid not compatible with the internal market. After several exchanges, the Swedish authorities modified the legislation (entrustment act).

Finally, the Commission declared the measure compatible with the SGEI Decision.

The entrustment is carried out using an owner's instruction, usually for one year at a time, requiring an evaluation every 10 years before further entrustment. The beneficiary is Samhall. The compensation paid for performing the task is decided before each calendar year. The compensation shall not exceed Samhall's additional costs compared with the costs it would have incurred had the activities been performed without the requirement to employ staff with disabilities resulting in a reduced capacity for work. Samhall's costs for technical modifications are the costs for special aids and adjustments to equipment, machinery, vehicles, premises, etc. required in order to enable the activities to be performed by staff with disabilities that reduce their capacity for work. The case study contains information on how Samhall's additional staff costs are calculated in a way to prevent overcompensation but allowing a reasonable profit. The Legal, Financial and Administrative Services Agency shall check that the compensation Samhall received for the year covered by the statistics did not exceed its additional costs for that year.

Further reading: State Aid SA.38469 (2017); Government Offices of Sweden, Ministry of Enterprise and Innovation, Report on services of general economic interest 2018-2019, Memorandum, 31.08.20, pp. 4-8 & [Ordinance on State compensation for Samhall Aktiebolag for a service of general economic interest](#) (in Swedish)

Chapter 4.

Key research findings and recommendations to decision makers, service providers and other stakeholders

4.1 Key research findings

The research conducted identified five main challenges that hinder an effective implementation of the State aid rules in force for the support of social services, namely those provided to PwD, and the development of the social economy:

- insufficient knowledge of the opportunities provided by the EU State aid Framework for social service provision and for the development of the social economy by EU MSs and their public authorities; one aspect of this is the “fear” - one could also say “risk averseness” or “strategy of avoidance” - that many public authorities, especially at the regional and local levels, have to “dialogue” with the Commission to understand if an aid they would like to grant constitutes State aid and if so, if and how it could still be provided in a way to be considered compatible with the internal market;
- overall complexity of the EU State aid Framework in force and lack of clarity about some concepts, as well as of certain rules for the cumulation of different types of aid, including EU funding;
- limited knowledge of the relevant State aid rules by social service providers and entities in the social economy which translates into an untapped use of the existing opportunities;
- an underdeveloped social economy ecosystem in some EU MS; for example, in some countries work integration of disadvantaged workers and PwD is not considered as an SGEI and, therefore, does not receive public funding;
- in some EU MS, lack of public sector awareness of the relative weight of and of the specificities of not-for-profit social service provision, social economy enterprises and their potential.

An overall consideration that emerged from several interviews is that the potential of the EU State Aid Framework to provide funding for SGEIs and social innovation could be improved, if the use of public money started from the analysis of the needs of PwD and disadvantaged persons, as well as from the recognition of the specific characteristics of the entities operating in the social economy which make them different from other economic operators.

The following section provides recommendations for action which can be taken by EU institutions, EU MSs and their public authorities, social service providers and entities in the social economy, for a more effective implementation of State aid rules under the existing legal framework. Recommendations in view of the future reform of the EU legal framework are also included.

The recommendations stem from the authors, as well as from some interviewees.

4.2 Recommendations to the European Commission

Recommendations to tackle the insufficient knowledge of the relevant EU State aid rules in force

- Ensure appropriate EU funding to organise training and capacity building seminars addressed both to EU MS public authorities at national, regional, and local levels on the EU State aid Framework applicable to social service provision and the entities in the social economy, including by the

means of EU funding. Interviewees from a number of countries saw a need for better guidelines by the EU on State aid for the social economy, implying that these guidelines are revised in a way for them to take into account the specificities of the social economy (organisations/enterprises).

- Set up an EU-wide stakeholder mutual learning forum in which public authorities, social service providers and actors of the social economy can exchange experiences, disseminate good practices, and discuss common challenges and how they can be overcome. The Disability Platform could serve as such a forum or synergies should be established between the forum and the Platform.
- Ensure that access to State aid compatible with the internal market is covered in the works around the Disability Employment Package and the EU Disability Rights Strategy.
- Set up a helpdesk to which public authorities from EU MS can address questions to the EC and get some advice/guidance before they formally send a request for notification.
- After the revision of the rules, update the EC guidance, with reference both to the new State aid rules and Directive 2014/24/EU on public procurement. The EU Guidance and Regulatory Framework should be more open to innovations in line with the EU policy objectives in the field of social inclusion and labour market integration, in particular of PwD. The EC should also make the following opportunities more visible:
 - the funding of/investments in the purchase of assisted technologies;
 - the funding of start-ups and social enterprises led by PwD which employ at least 30% of PwD.
- Provide more clarity and guidance on the interpretation of the concepts such as “single undertaking” or “linked undertaking”, as requested by many representatives of countries where members are organised in umbrella structures. Some interviewees also recommended to better clarify what is identified as the relevant “juridical structure” to obtain State aid and how “single enterprise” is being conceptualised in cases where enterprises which provide labour market integration in the form of supported employment

or sheltered employment in parallel also run (not-for-profit) daycare centres for PwD. These enterprises are interested in receiving State aid for both structures.

- Conceptualise what is understood by “market failure” (cf. also European Economic and Social Committee 2023), including in the field of custom work companies. In the field of social services, the right question to ask is “Would a service be offered at an adequate level (quantity; quality) by the market if there was no public financial support”? or “Which types of services would be offered under such circumstances?”. For a social service conceptualised as a SGEI also as a consequence of “market failure” and being entrusted to a private provider by the competent public authority, public support by means of State aid service is justified.
- Ensure that EC studies not only collect and disseminate good practices, but also provide guidance on recurring mistakes to avoid. Include examples of social and health SGEIs defined by EU MS, as well as of acts of entrustment.

Recommendations in view of the revision of the legal framework

General recommendation:

- While revising State aid legislation which refers to the Altmark criteria, reformulate the fourth criterion to make it consistent with the possibility to award contracts on the basis of the most economically advantageous tender (MEAT) as set out by Directive 2014/24/EU on public procurement and not just on the lowest price or cost, as implied in the wording of the fourth Altmark criterion (“an open and transparent tendering procedure at the least cost for the community”).

SGEI Decision:

- Update the definition of “social housing” included in the Decision to make it applicable to additional target groups that suffer from housing exclusion such as women victim of violence, perhaps to a

lesser extent than the target groups covered by the current definition. In addition, allow EU MSs to better specify the EU definition to their national and regional needs, by adding target groups that are not covered by the EU definition.¹⁷

General and SGEI de minimis Regulations:

- Increase the ceilings/thresholds in the general de minimis Regulation, and in particular in the SGEI de minimis Regulation, also to recognise specific public service missions, ways of operating and barriers to access to finance.¹⁸ Thus, for social services and SGEIs provided by entities in the social economy, also go beyond the accumulated amounts of State aid under the general de minimis Regulation (up to 275,000€ in the draft revised Regulation) and the SGEI de minimis Regulation (up to 675,000€ in the draft revised Regulation) foreseen to be appropriate for bigger-sized customised enterprises and social enterprises in the circular economy.¹⁹
- Foresee a specific and higher threshold in the SGEI de minimis Regulation for social economy enterprises, to recognise their specific mission, ways of operating and characteristics.

GBER:

- Maintain and possibly improve the provisions allowing the use of State aid to support the employment of persons with all types of disabilities. The reasoning behind this recommendation is the evidence-based fact that investment through the use of State aid boosts employment opportunities for PwD. This allows people otherwise excluded from/outside the labour market to take paid employment/quality jobs, to overcome segregated employment settings and to support transitions of PwD from school education, vocational education, unemployment, or inactivity to employment in the open/mainstream labour market, to become an active member of their local communities, to live with greater autonomy, etc.
- Maintain the provisions of Section 6 “Aid for disadvantaged workers and for workers with disabilities” in the GBER:

- Section 6 allows the consideration of aid within the meaning of Article 107(3) TFEU granted for the employment of workers with disabilities or for compensating the additional costs of employing workers with disabilities compatible with EU Competition and Internal Market Legislation. It also exempts aid from the notification requirement of Article 108(3) TFEU if other conditions of the GBER are fulfilled. This recommendation is motivated by the evidence collected from across Europe that these exemptions have encouraged EU MS, regions, local authorities and other public authorities to allocate State aid to enterprises and organisations which are recruiting and employing PwD and, thus, help the realisation of more inclusive enterprises and labour markets.
- GBER also guarantees legal certainty and the possibility to use common European criteria and definitions, e.g., for “PwD” or “sheltered employment”. In this context interviewees considered a broad definition of “sheltered employment” for the purpose of obtaining State aid useful, as long as the minimum employment rate for PwD is 30%, while higher thresholds could be set in national legislation defining conditions for public tenders (as this is, e.g., the case for Spain) – not implying any changes or advantages in the context of the State aid rules.
- Develop a specific framework for social economy enterprises, distinct from that applicable to SMEs, regarding the conditions for exempting risk finance aid schemes in favour of SMEs provided for in Article 21.²⁰

¹⁷ This recommendation was suggested by Union Sociale pour l'Habitat.

¹⁸ Many stakeholders have been advocating for an increase of the SGEI de minimis threshold up to EUR 800,000 (e.g., CEPES, CECOP, ENSIE, RREUSE, SEE, etc.), others even up to EUR 1,500,000 (BAGFW, SSE)

¹⁹ This recommendation stems from stakeholders such as BAGFW, ENSIE and RREUSE.

²⁰ See specific proposals in Fair (2023), Targeted review of the GBER. Fair's contribution for a recognition of social enterprises

- For future revisions of GBER²¹, possible reforms advised by interviewees are:
 - to consider if the legal provisions on State aid densities could be increased for State aid financing measures supporting the training, recruitment and employment of persons with intellectual disabilities e.g., also by earmarking certain or minimum shares compared to other disadvantaged groups (to not “dilute” the support for this sub-group of PwD), as persons with intellectual disabilities most importantly needs support²²;
 - to increase the threshold of EUR 10 mio. per undertaking per year in the GBER to current prices as inflation, etc. has substantially decreased its real value.

Specific recommendations to better tailor State aid rules to the needs of PwD and disadvantaged persons

- Ensure better recognition of specific characteristics of the social economy (in line with its guiding principles) in the EU State Aid Framework, as the State aid schemes are conceptualised for the for-profit/commercial sectors of the economy. The reasons underlying this recommendation are the need to take account of the obligation set for social economy organisations to reinvest any profit in line with their objectives and missions and the difficulties they face in access to financing.
- Improving the options for the cumulation of State aid from different sources, including EU funds. There is the need to adapt rules relevant for the use of State aid in a manner that they can have a complementarity effect and permit the adding up of add State aid from different sources if the objectives of each source/EU fund can be implemented in parallel.
- Reformulate the definition of “handicap” in a way to even target more public financial support (or bigger shares thereof) to those in particular needs, as persons with intellectual disabilities.
- Set stronger financial incentives for enterprises to support in particular persons with severe disabilities, facing high risks of social exclusion.

Persons with severe disabilities and PwD combining different types of impairments need other types of support, guidance and promotion than e.g., long-term unemployed persons. A recommendation thus is not to put PwD into the same category as other disadvantaged or vulnerable groups for which State aid is earmarked.

- Increase the maximum State aid density from 75% to 100% for workers needing vocational rehabilitation and support after long-term illness/sickness absence.

Recommendation to improve EU MSs’ capacity to absorb and effectively use EU funds

- Develop initiatives to improve the regulatory frameworks of EU MS and support the administrative and managerial capacity of the public administration and their Managing Authorities to increase the absorption of the EU funds. Persistent imbalances between EU MS in the full use of the potential of State aid often stem from the different level of administrative capacity of the public administration to absorb EU funds. Initial attributions to an EU MS (as set out in the Programmes) dedicated to the labour market and social inclusion of PwD should not be diminished due to underuse caused by insufficient administrative and technical capacity of the public administration.

²¹ Thus, likely as of 2027, as the GBER – with some new categories for block exemptions, however, not directly relevant for the thematic focus of this study – was recently prolonged to 31.12.2026.

²² An inspiration example in this context is legislation introduced in Spain in 2021: The Royal Decree 368/2021 of 25 May 2021, on positive action measures to promote access to employment for people with limited intellectual capacity aims – in accordance with the sixth additional provision of Law 26/2011 of 1 August 2021 – on regulatory adaptation to the UN CRPD, to establish a set of positive action measures to promote access to ordinary employment for people with limited intellectual capacity. Read the legislation (in Spanish) [here](#).

4.3 Recommendations to EU MSs and their public authorities at national, regional and local levels

- Make a more extensive use of the opportunities offered by the EU State aid Framework for the provision of social services and for the promotion of an enhanced inclusion in society and in the labour market of PwD and people suffering from different kinds of disadvantage. This should be done not only at political level, but also at operational level, by increasing the knowledge of State aid rules by the public administration, and thus their capacity to design more effective funding schemes or other types of aid. In particular:
 - .. Better specify the definition of social SGEIs provided in the SGEI Decision to adapt it to the national context and the social and employment needs, in particular of PwD and vulnerable groups.
 - .. Engage in a “dialogue” with the EC to ask for guidance/advice about a possible aid to be granted, to check its compatibility with the internal market, with no “fear” of being “punished” by the EC.
 - .. Make more extensive use of the provisions on training aid and the aid for disadvantaged workers and for workers with disabilities in sections 5 and 6 of the GBER.²³
 - .. When designing support measures for enterprises engaging in the employment and labour market integration of PwD or a disadvantaged person, in particular in the open/mainstream labour market or in the transition from a social enterprise to it, do not limit the disbursement of an aid to self-declarations. Monitor instead the outcomes of the operation, i.e., the effective and actual support offered for the labour market inclusion of PwD and of other vulnerable groups, and request evidence to this respect to the enterprise concerned.
- .. In the same vein, design measures and funding (from national sources or from EU funds) in a way that they help realise the optimal support for the PwD needing it, not for the benefit of the social economy/not-for-profit organisations/enterprises receiving aid.
- In countries such as Italy, in which there is legislation about co-designing and co-programming of social services to realise a cooperation and partnership approach, clarify the concepts of “contribution” for the provision of a service and “remuneration” that is paid to deliver a service which is purchased by a public authority, as well as the interplay with State aid rules.
- Governments, the competent public authorities, non-profit/social economy actors and sectors to better cooperate to overcome policy fragmentation and to foster improved policy coherence by aligning the conditions set for State aid in different policy frameworks, such as social inclusion strategies, employment policies, and health promotion initiatives. Such an approach is expected to ensure a better exploitation of the potential of State aid and to maximise the impact and effectiveness of public money by means of State aid to achieve social and employment policy objectives. This also implies an assessment of the existing regulatory and policy frameworks and formats of cooperation and partnerships between the public administration and service providers with the aim to create an environment that encourages and facilitates the utilisation of State aid for inclusive societies, labour

²³ Interviewees were interested to get this extension in particular by more widespread use of the provisions of Article 33 “Aid for the employment of workers with disabilities in the form of wage subsidies” and of Article 34 “Aid for compensating the additional costs of employing workers with disabilities”, but also in view of State aid provided to providers of social services in the field of care and support of PwD and for social economy organisations active in social and labour market inclusion in line with Article 31 “Training aid”, Article 32 “Aid for the recruitment of disadvantaged workers in the form of wage subsidies” and Article 35 “Aid for compensating the costs of assistance provided to disadvantaged workers”

markets and workplaces. This should be coupled with national strategies for the social inclusion and labour market insertion of PwD, as they allow for a more structured, systematic, and strategic use of public money to help realising these objectives by means of State aid.

- Governments and the competent public authorities – starting from the national level – to elaborate monitoring mechanisms to track the utilisation of State aid in the field of social services, including services for PwD, and the social economy. Such regular monitoring, evaluation and continuous learning procedures should focus on the effectiveness of the use of public money and on areas needing improvement, e.g., by developing simplified procedures and clear guidelines, providing support for capacity building and the organisation of training courses for staff working on State aid in the competent public authorities.
- National, regional and local authorities to organise training seminars, develop guidelines, disseminate good practice, set up help desks, support structures, capacity building projects to provide advice and information on the opportunities offered by State aid rules, including by the means of EU funding. This should also help addressing a broadly perceived “risk” mentioned in a number of interviews and stakeholder documents analysed, namely staff working in public authorities at local and regional level and deciding on the application of the EU State Aid Framework.²⁴ Another “risk” to be better addressed in the implementation process and mentioned several times by interview partners is that actual (strict) procedures put in place by the Court of Auditors or the fact that reporting requirements become known to the relevant public authority only ex-post, i.e., during the audit process, lead to significant underuse of the provisions contained in the GBER.
- Facilitate the creation of national multi-stakeholder networks of experts (with representatives from the public administration, social service providers, social economy entities, academia and legal experts) and permanent for a at national level, to exchange knowledge and expertise on social and health SGEIs and the EU State aid framework, increase mutual

understanding of the different sectors and how they operate, address obstacles in the application of State aid rules and enable mutual learning.

- Develop appropriate legal framework for the operation and financing of entities of the social economy in case they are lacking, unclear, incomplete, or ineffective for “social enterprises” (as, e.g., in Croatia or Romania). In other EU MSs such as Croatia and Romania, existing legal frameworks, such as for cooperatives, cannot be used to operate as an “integrative workshop” or as a “protective workshop”, which in turn would bring about more advantageous conditions when it comes to access public funding, including State aid. Such social enterprises, otherwise, find themselves excluded from call for grants and tenders and/or the possibility to apply for instruments of public financial support for the social economy and/or the social services sector.
- Explore and realise models of financing using State aid to realise integrated social services infrastructures, e.g., linking labour market inclusion programmes in the form of supported employment with social housing and community-based day care centres for adult PwD.
- Overcome the risk adverseness and lack of flexibility of the relevant public authorities of competent local and regional public authorities to use State aid via EU funds, in particular the ESF+, for the financial support of employers to recruit and retain more PwD, including by designing call for proposals with thresholds above the general de minimis ceiling.
- Make the business case – given the different economic and societal benefits – of using public money for active labour market policies in favour of PwD and persons from other vulnerable groups instead of paying (passive) unemployment benefits to them and of keeping them outside the labour

²⁴ Some interviewees highlighted that often public authorities hide behind the complexity of EU-level State aid rules and the risk of a recourse in court by a commercial provider instead of taking decisions to use the potential of the State aid rules to support the realisation of objectives of social and employment policies even in cases where the EU State Aid Framework provides a solid basis to do so.

market. This implies a need to re-shift public budgets, e.g., towards integrated services to support the social and labour market inclusion, including with housing offers and mental health services.

- Use ESF+ funding to start up social enterprises, not to (partially) run social services, i.e., to pay the operative costs. Abolish the condition, set by governments in some EU MS, that NGOs need to use public support from the budget of ministries as co-funding for ESF projects as otherwise they – as social economy organisations – would not be able to access private financing for their investments.

aid rules, especially those less known, such as: the opportunities offered by GBER on wage subsidies for the employment of PwD, financial support for the acquisition of different aids to support the accessibility of their enterprise and/or of workplaces, to adapt the accommodation of workplaces in line with the needs of PwD, the opportunities on access to finance and for the setting up of start-ups by PwD and disadvantaged people, as well as the dissemination of information and good practices.

- Devote time and energy to build trustful relationships with public authorities at all levels, including by helping them to understand State aid rules applicable to the financing of social services.
- Call on the relevant public authorities to organise training and set-up helpdesks and support structures in view of a more correct application of State aid rules, including for the financing of social services. The same support structures could cover both State aid and public procurement rules.
- Finance the elaboration of specific information and training material adapted to the good use of Organisations for PwD.

4.4 Recommendations to service providers and other stakeholders

- EU umbrella organisations to support the capacity building of their members on State



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Learning Workshops “State aid support for the social economy” organised in Q2/2023 by DG EMPL and DG COMP by ICF for representatives of national ministries, regional and local public authorities and Managing Authorities for the ESF+: 1) [State Aid Fundamentals](#); 2) [General Block Exemption Regulation](#); 3) [State aid support for the social economy: Services of General Economic Interest](#). One can also access the slide sets of the presentations given at the workshops, the workshop reports, videos to introduce the three main topics, etc.

- (in French) [IDESS = Initiatives de développement de l'emploi dans le secteur des services de proximité à finalité sociale](#)
- (in Italian) [Italia Economia Sociale – Invitalia](#)
- (in German) [rückenwind[±]](#)



Annex I – List of interviews

European level

- European Association for Service providers for Persons with Disabilities (EASPD)
- European confederation of industrial and service cooperatives (CECOP)
- European Disability Forum (EDF)
- RREUSE (an international network representing social enterprises active in re-use, repair, and recycling)
- SGI Europe (one of the three European general cross industry social partners, representing enterprises and associations providing Services of General Interest from across Europe both public and private at national, regional and local level whatever their legal ownership status).

National level

- AMICA (an association made up of family members, persons with disabilities and professionals, whose aim is to promote the comprehensive development, autonomy and independence of PwD as much as possible, providing support through social care services, assessment and multidisciplinary follow-up, childcare, day care, accommodation, training, employment, leisure, sports and access to culture, rehabilitation, personal and home support and the promotion of independent living; running special employment centres in the fields of washing, rental and clothing, waste management, landscape recovery and environmental dissemination, ecological production and care of nature, and industrial services), Spain
- Deutscher Caritasverband Büro Brüssel and Diakonie Deutschland, both providing a broad range of social services to persons in need, ranging from childcare to elderly care, care and support for

PwD, services for homeless people and persons at the risk of poverty, services for migrants, refugees and asylum seekers, labour market inclusion services for disadvantaged groups and persons, and both members of the umbrella organisation of the German not-for-profit welfare organisations (BAGFW), Germany.

- *Financer Accompagner Impacter Rassembler*, FAIR (a federation of social impact finance), France
- Fundația Alături de Voi (ADV) România (offering support for young PwD looking for a job, partly with autism/on the autistic spectrum, work integration, WISE, sheltered workshops, comprising a human resource agency offering a package of services, including consultancy, for employers about the recruitment and employment of PwD in the open labour market, and being an accelerator for social enterprises and social entrepreneurship (having helped to set up 42 social enterprises), Romania
- [Groep Maatwerk](#) (represents the interests of companies and organisations that provide adapted labour to people distanced from the labour market; *maatwerkbedrijven*, i.e., custom work companies, the former sheltered and social workshops, are companies that employ people who cannot enter the “regular” employment circuit. Their goal is social, their means are economic), Belgium, Flanders
- Humana Nova (a non-profit eco-social enterprise dealing with the work integration of persons with disabilities and other socially excluded persons through a textile waste management model and producing and selling innovative textile products from recycled, locally supplied, or eco-certified materials for the domestic and international markets), Croatia
- Union Social pour l’Habitat (USH), France
- Ústav sociálních služeb v Praze 4 (Social Services Administration of Prague District IV; offering a broad range of social services, in particular elderly care – both residential care and home care –, and housing services and projects for PwD), Czech Republic.

Annex II – State aid framework relevant for providers and social economy organisations offering services to PwD

In order to understand the functioning of EU State aid rules and both opportunities and challenges they present for providers of services for PwD and/or organisations of the social economy, we will first shortly introduce some **key concepts**. In a second step, we will list the **criteria to identify if public financial support has to be classified as State aid**¹. In a third section, we explain the **conditions for aid to be fulfilled to be in conformity with the EU State aid rules**.

1. State aid essential concepts

State aid law is a complex matter. For this reason, we deem useful to explain the main concepts of State aid to facilitate a full understanding of the specific rules that are relevant for the provision of social services, namely addressed to PwD, and for entities in the social economy.

Box 1 - Essential concepts of State aid law

Essential concepts

State aid: An advantage in any form whatsoever conferred by national public authorities to undertakings on a selective basis. It is, however, important to note what is not State aid, namely a) subsidies granted to individuals (e.g., cash benefits in the context of social protection schemes) or b) general measures open to all enterprises (including, e.g., general taxation measures, employment, or labour legislation).

State resource: Made up of two separate and cumulative conditions for State aid to exist: a) The granting of an advantage directly or indirectly through State resources² and b) the attribution of such a measure to the State. In this context it is important to note that the transfer of State resources to enterprises/undertakings may take different forms, e.g., direct grants, loans, guarantees, direct investment in the capital of companies or benefits in kind.

Undertaking (in common language, one would use the term “enterprise”): Following a functional approach, undertakings are defined as entities engaged in an economic activity, regardless of their legal status and the way in which they are financed. This also implies that the status of the entity under national law – e.g., if it is an association, cooperative or foundation, i.e., a legal form of the social economy – is not decisive. For the purpose of this study, it is also essential to highlight that the application of the State aid rules does not depend on whether the entity is set up to generate profits: a) Where non-profit entities offer goods and services on a market, they fall inside the scope of EU State aid control. b) When public authorities directly or indirectly carry out economic activities in any form³, they are also subject – for these activities – to the EU State aid rules.

Economic activity: Any activity consisting in offering goods and services on a market. The way how services are organised in a given EU MS decides on the question if a market exists for services in a given economic sector, also in the field of social services and/or with regard to services or goods produced by social economy entities. We can thus conclude that the distinction between economic and non-economic activities – in line with the functional approach pursued by EU law – depends to quite some extent on political choices in a given economic sector, the institutional set-up there and more generally the economic development in a given EU MS. It can thus also shift over time.

- ¹ The EC highlights that a) the notion of “State aid” is an objective and legal concept defined directly by the Treaty for the Functioning of the EU (TFEU), as interpreted by the Court of Justice and the General Court. Art. 107(1) TFEU reads and b) that it is bound by this objective notion and enjoys only a limited margin of discretion in applying it, e.g., in complex economic assessments.
- ² In this context, “State” is to be understood broadly. It also covers situations where a public authority designates a private or public body to administer a measure conferring an advantage.
- ³ To be determined by the EC and the CJEU by the so-called market economy operator test.

Economic advantage: Any economic benefit (i.e., a positive economic advantage, but also any relief from an economic burden, in both cases of a selective nature) which an enterprise/undertaking could not have obtained under normal market conditions, in other words in the absence of the State financial intervention. The granting of an economic advantage can be excluded or denied if the four cumulative conditions⁴ of the Altmark Trans ECJ Ruling (2003) are fulfilled.

Effect on trade in the internal market: Public support to undertakings only constitutes State aid if it “distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods” (Art. 107(1) TFEU). The aid thus must be liable to improve the competitive position of the recipient compared to other undertakings with which it competes, but only to the extent that it has an effect on the trade between EU MS, i.e., “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.” (Art. 107(1) TFEU)

Services of General Economic Interest (SGEI): They are defined in Art. 14 TFEU on SGEI⁵ & Protocol 26 on SGEI⁶. In addition, Art. 36 of the European Charter of Fundamental Rights (EU CFR), incorporated into the Lisbon Treaty and thus into the TFEU, is another relevant legal source⁷. Lacking a Treaty-based definition for the scope for the existence of an SGEI, the EU MS have a wide margin of discretion in defining a given service as an SGEI and in granting compensation to the service provider. The EC can only check whether the EU MS has made a manifest error when defining the service as an SGEI or when defining the amount of the State aid compensation.

In relation to the concept “enterprise/undertaking” as specified in EU State aid legislation, it is important for this study to elaborate on the **“perspective” the State aid rules have on social security schemes and health care**. In relation to the potential distortion of trade⁸, it is essential to recall that a large majority of the not-for-profit providers of social services/SSGI is active

⁴ See Box 3 at page 6 of Annex II.

⁵ Article 14 TEU provides: “Without prejudice to Article 4 of the Treaty on EU or to Articles 93, 106 and 107 of this Treaty, and given the place occupied by services of general economic interest in the shared values of the Union as well as their role in promoting social and territorial cohesion, the Union and the EU MSs, each within their respective powers and within the scope of application of the Treaties, shall take care that such services operate on the basis of principles and conditions, particularly economic and financial conditions, which enable them to fulfil their missions. The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall establish these principles and set these conditions without prejudice to the competence of EU MSs, in compliance with the Treaties, to provide, to commission and to fund such services.”

⁶ Protocol No. 26 on SGEI reads: “Article 1 The shared values of the Union in respect of services of general economic interest within the meaning of Article 14 of the Treaty on the Functioning of the EU include in particular:

- the essential role and the wide discretion of national, regional and local authorities in providing, commissioning and organising services of general economic interest as closely as possible to the needs of the users;
- the diversity between various services of general economic interest and the differences in the needs and preferences of users that may result from different geographical, social or cultural situations;
- a high level of quality, safety and affordability, equal treatment, and the promotion of universal access and of user rights.

Article 2 The provisions of the Treaties do not affect in any way the competence of EU MSs to provide, commission and organise non-economic services of general interest.”

⁷ Art. 36 EU CFR on “Access to SGEI” reads: “The EU “recognises and respects access to services of general economic interest as provided for in national laws and practices, in accordance with the Treaty establishing the European Community, in order to promote the social and territorial cohesion of the Union.”

⁸ The EC shares the view that where beneficiaries of State aid offer goods and/or services – including social services – operating mainly in a geographically limited area in an EU MS, this will significantly lower the probability of attracting providers from other EU MS, implying that there is no important effect on the trade between EU MSs. [Commission Notice 2016/C 262/01](#) of 19 July 2019, Paragraph 196 and Paragraph 197c formulates: “While it is not possible to define »

at a local or regional level only. This “sectoral reality” has not substantially changed from the time when the current threshold was set up.

Box 2: *Social security schemes and health care as seen through the “lense” of State aid rules*

Social security schemes

Whether **social security schemes** are to be classified as economic activity depends on the way they are set up and structured. The case-law of the CJEU uses the dichotomy of schemes based on the principle of solidarity and economic schemes:

- **Solidarity-based social security schemes** that do not involve an economic activity typically have the following characteristics: (a) affiliation with the scheme is compulsory; (b) the scheme pursues an exclusively social purpose; (c) the scheme is non-profit; (d) the benefits are independent of the contributions made; (e) the benefits paid are not necessarily proportionate to the earnings of the person insured; and (f) the scheme is supervised by the State.
- **Economic/private commercial schemes**, involving an economic activity. The latter are regularly characterised by: (a) optional membership; (b) the principle of capitalisation (dependency of entitlements on the contributions paid and the financial results of the scheme); (c) their profit-making nature; and (d) the provision of entitlements which are supplementary to those under a basic scheme.

Health care

Whether and to what degree different health care providers compete depends on these national specificities.

- **National Health Systems:** In some EU MS, public hospitals are an integral part of a national health service and are almost entirely based on the principle of solidarity. Such hospitals are directly funded from social security contributions and other State resources and provide their services free of charge on the basis of universal coverage. The ECJ

has classified the organisations operating in those systems not as undertakings/enterprises and with their activities not subject to EU State aid rules.

- In countries and systems where hospitals and other health care providers offer their **services for remuneration**, be it directly from patients or from their insurance, there is a certain degree of competition. The fact that a health service is provided by a public hospital is here not sufficient for the activity to be classified as non-economic. The ECJ and the General Court have clarified that health care services where independent doctors, other private practitioners and pharmacies are providing their services for remuneration at their own risk are to be regarded as an economic activity.

- » general categories of measures that typically meet these criteria, past decisions provide examples of situations where the Commission found, in the light of the specific circumstances of the case, that public support was not liable to affect trade between EU MSs. Some examples of such cases are: (...): (c) hospitals and other health care facilities providing the usual range of medical services aimed at a local population and unlikely to attract customers or investment from other EU MSs.” Underpinning the local and regional nature of the services covered by this study, the document cited above refers to the Commission Decisions in State aid cases such as 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](#)); and Santa Casa da Misericórdia de Tomar, Portugal, illustrating the granting of public support for the provision of social services – here: health services – not having an effect on trade, and therefore does not qualifying as State aid. SA.38920 (2016/NN) Portugal ([OJ C 406, 4.11.2016, p. 6](#))

2. Fundamentals of State aid rules

The Treaty on the Functioning of the EU, in particular Article 107 TFEU, contains a general prohibition of State aid, except for those cases deemed essential for the well-functioning of the single market.

State aid rules apply only if the potential recipient of a financial advantage is an “undertaking”, in other words an entity engaged in an economic activity, irrespective of its legal status and how it is financed. Any activity consisting in offering goods and/or services in a given market is an economic activity within the meaning of competition rules. Therefore, these rules apply to social service providers, even when they are not-for-profit, and to organisations of the social economy, despite their legal form, but only insofar as they perform an economic activity. If an entity carries out non-economic and economic activities, State aid rules apply only in relation to the economic activities performed.

In the recent *Casa Regina Apostolorum* case, the Court of Justice of the EU clarified that in order to assess whether an activity pursued within the framework of a social security scheme is not of an economic nature, it is necessary to carry out an overall assessment of the scheme in question and to take account of the following factors: the pursuit by the scheme of a social objective, the implementation by the scheme of the principle of solidarity, the absence of any profit-making purpose of the activity pursued and the supervision of that activity by the State. In addition, it also stated that the fact that private healthcare providers operated within the public healthcare system and patients had – to some extent – a free choice between public and private providers did not alter the conclusions that the social security system at issue was not of an economic nature. In conclusion it found that support measures to those hospitals did not therefore constitute State aid within the meaning of Article(107) TFEU. Consequently, in the absence of activities of an economic nature and, hence of undertakings, the Commission did not need to apply Article(106) TFEU⁹.

According to Article 108(3), when a public authority intends to grant State aid to an “undertaking”, it has the obligation to notify such aid to the EC and cannot grant that aid until the EC approves it.

EU competition law has laid down a specific set of rules for SGEI, and within SGEI for the sub-group of social services of general economic interest, taking account of their importance for the social and economic development of our societies. In fact, under Article 106(2) TFEU State aid can be granted to compensate for the provision of SGEI, if this is necessary for the performance of particular tasks assigned to an undertaking entrusted with the operation of a SGEI.

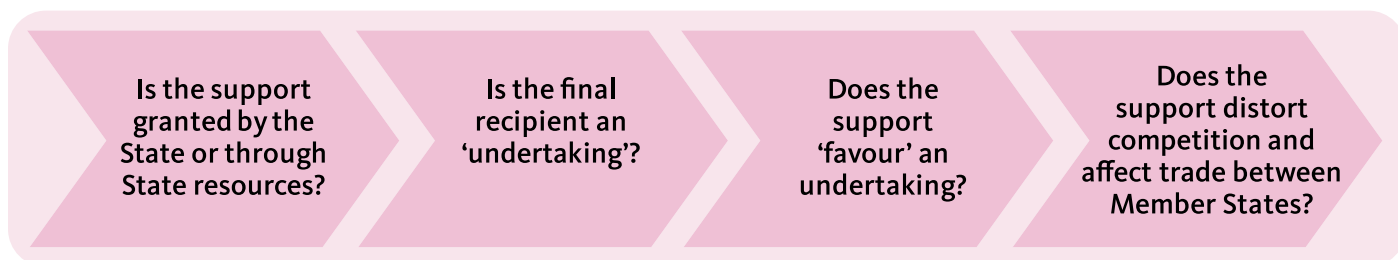
In the application of the above-mentioned Treaty provisions, the first step is to assess if the “undertaking” receiving compensation has been entrusted with a “genuine” SGEI.

At EU level, there is no legal definition of SGEI nor an exhaustive list of SGEIs exists. In the common language, SGEI can be considered as the equivalent of “public services”. SGEI are defined by public authorities at national level and include, for example, healthcare, education, public transportation, social housing, energy, water supply, waste management, and telecommunications. EU MSs and their public authorities have a wide margin of discretion in defining a given service as an SGEI. The EC competence in this respect is limited to checking whether the EU MS has made a manifest error when defining the service as an SGEI.

When it is found that a genuine SGEI has been defined by an EU MS/public authority, to determine if there is State aid in the compensation granted for the SGEI in question, the conditions set out in Article 107(1) TFEU have to be fulfilled. To simplify, we can say that the following four questions illustrated in Figure 1 have to be asked. If the answer is positive to all the questions, the presence of State aid can be confirmed.

⁹ Case C-492/21 P, *Casa Regina Apostolorum*, EU:C:2023:354

Figure 1: Conditions to be fulfilled to determine the presence of State aid in the compensation granted for a SGEI



Source: *f-compass, European Social Fund financial instruments and State aid*

If the recipient of a financial support performs an economic activity (in other words, if it is an “undertaking”), if support is granted by the State or by the means of State resources, if support distorts or risks to distort competition and affect trade between EU MSs, and if support gives an economic advantage to the recipient, the compensation given for the provision of such SGEI is State aid.

At this stage, it is still possible that the compensation granted by public authorities to an SGEI provider does not constitute State aid, if the four conditions laid down by the Court of Justice of the EU in the Altmark judgement¹⁰, the so-called Altmark criteria, are fulfilled. The EC further clarified these criteria in its Communication on the application of the EU State aid rules to compensation granted for the provision of services of general economic interest and in the above-mentioned guide.

Box 3: *The Altmark criteria*

The Altmark criteria

First criterion: Requirement of a clearly defined public service obligation (the SGEI-mission) in an act of entrustment

The public authority must issue a legally binding public act (e.g., a legislative or a regulatory instrument or a contract) that formally entrusts a recipient with a specific service. The act of entrustment must contain: the content and duration of the public service obligations; the recipient and, where applicable, the territory concerned; the nature

of any exclusive or special rights assigned to the recipient by the authority in question; the parameters for calculating, controlling, and reviewing the compensation; and the arrangements for avoiding and recovering any overcompensation.

Second criterion: Requirement that the parameters deciding the compensation are established beforehand in an objective and transparent manner

The compensation shall be based on the costs incurred in the performance of the SGEI plus a “reasonable profit”, while the revenue that is generated from the provision of the SGEI must be deducted. This is important as to avoid conferring an economic advantage which may favour the recipient over competitors.

Third criterion: Requirement that the compensation is limited to what is necessary to cover the net costs

The compensation must not exceed all or part of the costs incurred in the discharge of public service obligations, taking into account the relevant receipts and a “reasonable profit”. The EC defined the reasonable profit as the rate of return on capital that would be required by a typical company considering whether or not to provide the SGEI for the whole duration of the period of entrustment, taking into account the level of risk. The level of risk depends on the sector concerned, the type of service and the characteristics of the compensation mechanism.

¹⁰ Case C-280/00, Altmark Trans and Regierungspräsidium Magdeburg, EU:C:2003:415.

Fourth criterion: Requirement that the level of compensation must be determined by reference to the cost that a typical undertaking would have, including a reasonable profit, that is adequately provided and well run

The EC clarified that the SGEI provider must be selected by the means of a public procurement procedure or a bench-marking exercise. In the second option, the compensation must be determined on the basis of an analysis of the costs which a typical undertaking, well-run and adequately provided with means to meet the public service requirements, would have incurred in fulfilling those obligations, taking into account the relevant receipts and a reasonable profit for the provision of such an SGEI.

If an entrustment has been operated based on those criteria, then there is no selective economic advantage for the recipient concerned and thus no State aid. However, we stress that it is difficult to meet all four Altmark criteria, thus in reality, it is likely that a public service compensation constitutes State aid.

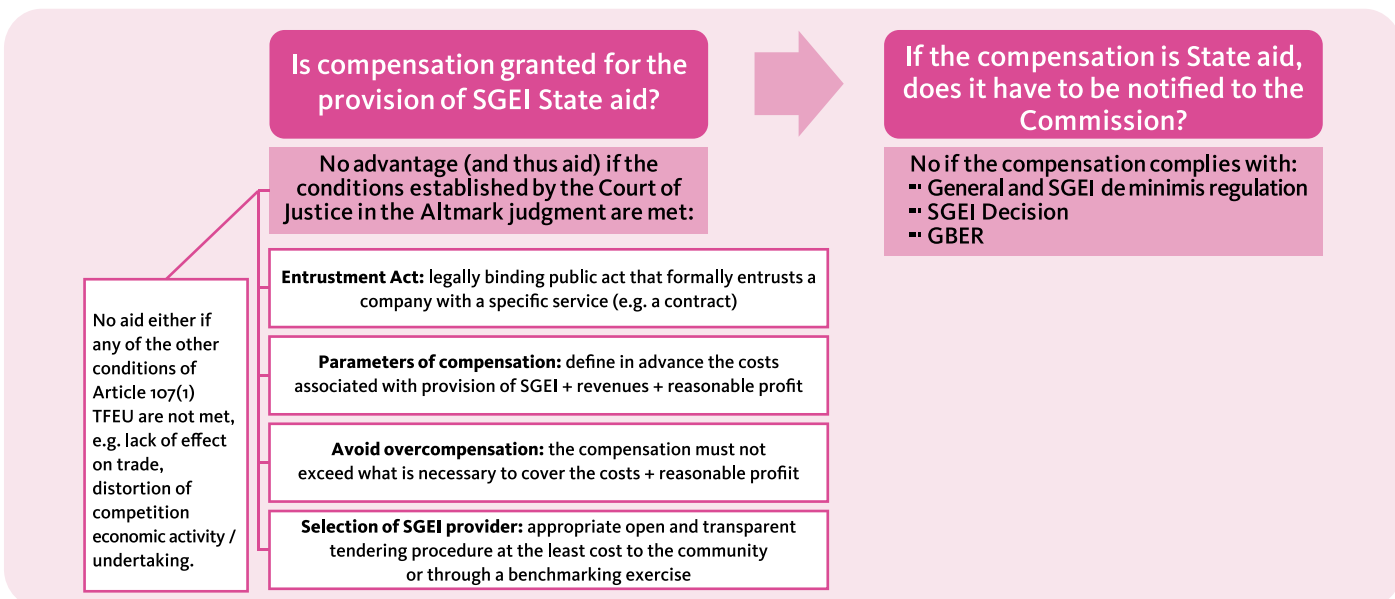
The EC defined some rules according to which a public service compensation that constitutes State aid can

be exempted from the obligation of notification. These rules are very important for social service providers and entities of the social economy, and they will be described in section 3 of Annex II.

The rules to be followed when a compensation granted for the provision of an SGEI constitutes State aid, and has to be notified to the EC, are defined in the SGEI framework.¹¹ As these rules are seldom being applied to the provision of social and health services or entities of the social economy, we will not describe them in detail. For the aims of this study, it is sufficient to say that the EC assesses a notified-SGEI aid on the basis of the following criteria: existence of a genuine SGEI, presence of an act of entrustment which clearly defines the public service obligations, the duration of the entrustment, the correct application of public procurement rules, the methods for the calculation of the compensation and for the determination of a “reasonable profit”, the incentives introduced by a EU MS for the efficient provision of SGEI of a high standard of quality, and the transparency obligations for each granted SGEI compensation.

¹¹ Communication from the Commission (2011), EU framework for State aid in the form of public service compensation

Figure 2 - Conditions for compliance with the Altmark criteria for compensation granted to a provider of a SGEI



Source: Authors' elaboration of Juan Jorge Piernas López (2023), Presentation “The essentials of State aid – Key take aways of the thematic discussion paper”, available at: https://social-economy-gateway.ec.europa.eu/system/files/2023-07/WS1_Thematic%20expert%20ppt_State%20aid%20fundamentals.pdf

We will now describe the rules applicable to the provision of social services of general economic interest and secondly, the rules with which the EC has exempted certain categories of State aid from the notification obligation.

3. State aid rules applicable to the provision of services of general economic interest, including social services

Before examining the rules set out by the SGEI Decision that lays down specific provisions for social services, it is interesting to mention the arguments used by the EC that support a preferential treatment accorded to them in comparison to other SGEIs.

Article 14 TEU requires the Union, without prejudice to Articles 93, 106 and 107 TFEU, to use its powers in such a way as to make sure that SGEIs operate on the basis of principles and conditions which enable them to fulfil their missions.

For certain SGEIs to operate on the basis of principles and under conditions which enable them to fulfil their missions, financial support from the State may prove necessary to cover some or all of the specific costs resulting from the public service obligations. State aid may be deemed compatible only if it is granted in order to ensure the provision of services of general economic interest as referred to in Article 106(2) TFEU.

Hospitals and undertakings in charge of social services, which are entrusted with tasks of general economic interest, have specific characteristics that need to be taken into consideration. In particular, account should be taken of the fact that, in the present economic

conditions and at the current stage of development of the internal market, social services may require an amount of aid beyond the threshold established in the SGEI Decision to compensate for the public service costs. A larger amount of compensation for social services does thus not necessarily produce a greater risk of distortions of competition. Accordingly, undertakings in charge of social services, including the provision of social housing for disadvantaged citizens or socially less advantaged groups, who due to solvency constraints are unable to obtain housing at market conditions, should also benefit from the exemption from notification provided for in the SGEI Decision, even if the amount of compensation they receive exceeds the general compensation threshold laid down in the Decision. The same should apply to hospitals providing medical care, including, where applicable, emergency services and ancillary services directly related to their main activities, in particular in the field of research. In order to benefit from the exemption from notification, social services should be clearly identified services, meeting social needs as regards health and long-term care, childcare, access to and reintegration into the labour market, social housing and the care and social inclusion of vulnerable groups.

We will now describe the specific rules designed for social services.

3.1. The exemptions foreseen by the 2012 Commission SGEI Decision for the provision of social and health services

The 2012 Commission SGEI Decision¹² sets out the conditions under which State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of SGEIs is compatible

¹² Commission Decision 2012/21/EU of 20 December 2012 on the application of Article 106(2) of the Treaty on the Functioning of the EU to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest.

with the internal market and exempt from the requirement of notification to the EC laid down in Article 108(3) TFEU. This Decision applies to certain types of SGEI compensation constituting State aid of an amount between EUR 500,000 (amounts up to EUR 500,000 are covered by the SGEI de minimis Regulation) and EUR 15 million per service per year (compensation provided above this threshold must generally be notified to the EC under the SGEI Framework).

This SGEI Exemption Decision only applies where the period for which the undertaking is entrusted with the operation of the service of general economic interest does not exceed 10 years. Under the Decision, SGEI providers do not need to be selected under a public tender procedure.

This Decision recognises the importance and the specific characteristics of social services. Therefore, it establishes that there is no ceiling for public service compensations granted by public authorities to providers of services “meeting social needs as regards: health and long-term care, childcare, access to and reintegration into the labour market, social housing, and the care and social inclusion of vulnerable groups”. In this way, the social services defined in Article 2(1)(c) of the Decision can receive compensation for any amount that is considered appropriate by the public authority in question and are exempted from notification.

The Decision, however, sets out some conditions to be fulfilled, which also apply to social services:

- There must be a clear definition by the EU MS or its public authority in question of the concerned SGEI.
- There must be an act of entrustment, containing the elements specified in Article 4 of the Decision, including the parameters for calculating, controlling, and reviewing the compensation¹³; and the arrangements for avoiding and recovering any overcompensation¹⁴.
- The amount of compensation shall not exceed what is necessary to cover the net cost incurred in discharging the public service obligations, including a reasonable profit. Article 5 of the Decision

provides guidance on the acceptable compensation to SGEI providers.

- The Decision includes transparency requirements for compensation exceeding EUR 15 million given to a recipient that provides SGEIs and operates outside the scope of SGEIs.

It is important to acknowledge that the list of social services included in Article 2(1)(c) of the Decision is exhaustive and EU MSs cannot amend it. However, as clarified in the EC guidance, as long as EU MSs stay within the scope of Article 2(1)(c), they can specify in more detail in the entrustment act the specific services they want to be provided. We report three clarifications that are very relevant for services provided to PwD.

First of all, in relation to “the care and social inclusion of vulnerable groups”, EU MSs can specify the type of services, under which conditions and for which beneficiaries. In the EC view, this allows the necessary flexibility to EU MSs to define the services they need and for whom. “The care and social inclusion of vulnerable groups” is a broad concept and could cover, for example, social integration services for people with disabilities, social assistance services for migrants, services for the homeless, parenting support services, services supporting over-indebted persons or social services for the lesbian, gay, bisexual and transgender (LGBT) community.

Secondly, the EC guide also specifies that the term “access to and reintegration into the labour market” refers to different types of services that aim at

- ¹³ Where the authority decides to compensate all cost items of the provider, it must determine at the outset how those costs will be determined and calculated. b) Only the costs directly associated with the provision of the SGEI can be taken into account in that context. c) All the revenue accruing to the undertaking from the provision of the SGEI must be deducted.
- ¹⁴ Where the undertaking is offered a reasonable profit as part of its compensation, the entrustment act must also establish the criteria for calculating that profit. b) If the SGEI is assigned under a tendering procedure, the method for calculating the compensation must be included in the information provided to all the undertakings wishing to take part in the procedure.

facilitating the employability. Professional training only falls under Article 2(1)(c) of the Decision if it allows access to or reintegration into the labour market or if it fosters the social inclusion of a vulnerable group. Therefore, for example, professional training for the long-term unemployed falls under Article 2(1)(c) of the Decision. If the professional training, in contrast, is for persons already in employment, it would normally not fall under Article 2(1)(c) of the Decision, unless it were to provide for the inclusion of a vulnerable group. It should be noted, however, that State aid for professional training can be granted under the conditions set out in GBER (see section 3.2).

Thirdly, public authorities in the EU MSs might also define social and work integration as a social service of general interest and entrust social and work integration enterprises with an SGEI. In these cases, the SGEI Decision applies to those services.¹⁵ Some entities in the social economy and work integration social enterprises can also benefit from specific provisions of the GBER.

3.2. Exemptions for certain categories of aid

In this section, we will describe the exemptions provided for in the general de minimis Regulation, the SGEI de minimis Regulation and the General Block Exemption Regulation (GBER).

Exemptions provided for in the de minimis Regulation and in the SGEI de minimis Regulation

The SGEI de minimis Regulation¹⁶ clarifies that certain compensation measures not exceeding EUR 500,000 over any period of three fiscal years do not need to be notified to the EC. SGEI de minimis aid may not be granted to undertakings in difficulty.

The EUR 500,000 ceiling includes any form of the de minimis aid (thus those accorded on the basis of the general de minimis Regulation) and cannot be cumulated with any compensation for the provision of the same SGEI.

There is still the need for an act of entrustment, but requirements are much lighter than those foreseen for acts of entrustment under the SGEI Decision or the SGEI framework. No verification of the costs incurred in providing the service is requested and consequently no check for overcompensation is needed.

The SGEI de minimis Regulation is complemented by the general de minimis Regulation¹⁷, which allows EU MSs and their public authorities to grant to a single undertaking aid not exceeding EUR 200,000 over any period of three fiscal years.

Exemptions provided by the General Block Exemption Regulation

With the General Block Exemption Regulation (GBER)¹⁸ the EC can declare specific categories of State aid compatible with the Treaties if they fulfil certain conditions. This implies that they are exempted from the requirement of prior notification and EC approval.

GBER does not apply to undertakings in difficulty, meaning an undertaking that is likely to fail without any State assistance because it has lost most of its capital or it has very high indebtedness and/or very low liquidity.

¹⁵ Commission Staff Working Document, Guide to the application of the EU rules on State aid, public procurement and the internal market to services of general economic interest, and in particular to social services of general interest, Brussels, 29.4.2013 SWD(2013) 53 final/2, pp. 56-58.

¹⁶ Commission Regulation (EU) No 360/2012 of 25 April 2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the EU to de minimis aid granted to undertakings providing services of general economic interest Text with EEA relevance, OJ L 114, 26.4.2012, p. 8-13.

¹⁷ 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 EU to de minimis aid, OJ L 352, 24.12.2013, p. 1-8.

¹⁸ 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 (Text with EEA relevance), OJ L 187, 26.6.2014, p. 1-78, Consolidated text available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02014R0651-20230525>.

When applying GBER, EU MSs do need to comply with certain general rules:

- Aid must be transparent, meaning that it must be possible to precisely calculate the gross grant equivalent (GGE) of the aid ex ante without any need to undertake a risk assessment.
- Aid must have an “incentive effect”.
- Aid has to remain below the maximum allowable rate of aid intensity or threshold defined for each category of aid by the specific provisions in chapter III of GBER.
- EU MSs need to publish any aid that exceeds EUR 500,000.
- EU MSs should submit summary information on each State aid measure to the EC within 20 days of its entry into force.
- EU MSs need to submit annual reports to the EC.
- EU MSs must keep records for ten years of all the State aid they grant.

Covering i.a. the category of **aid for training, recruitment and employment aid for disadvantaged workers and workers with disabilities** (art. 1 (f)), the GBER is highly relevant for providers of services for PwD and social economy organisations. Article 2 contains the relevant definitions which will later decide on the State aid densities permitted. It is important to highlight that the main relevant categories for this study are “workers with disabilities”¹⁹ and “disadvantaged workers”²⁰ (for which a sub-category, “severely disadvantaged worker”²¹ is defined, too). It also specifies what should be understood by “sheltered employment”²². Article 4 sets the thresholds not to be exceeded by aid if it is not to be notified to the EC, amounting to EUR 10 mio. per year for the first category²³ and EUR 5 mio. for the second category²⁴.

In Section 5 of Chapter III “Specific provisions for different categories of aid” the GBER sets out the conditions for training aid (Article 31), aid in the form of wage subsidies (Article 32²⁵ and 33), aid for compensating the additional costs of employing workers with disabilities (Article 34) and for compensating the costs of assistance provided to disadvantaged workers (Article 35²⁶). The State aid

densities – or shares of eligible costs – permitted vary between 50% and 70% for “disadvantaged workers” and 75% and 100% for “workers with disabilities”.

- ¹⁹ (a) is recognised as a worker with disabilities under national law; or (b) has long-term physical, mental, intellectual or sensory impairment(s) which, in interaction with various barriers, may hinder their full and effective participation in a work environment on an equal basis with other workers.
- ²⁰ (a) has not been in regular paid employment for the previous 6 months; or (b) is between 15 and 24 years of age; or (c) has not attained an upper secondary educational or vocational qualification (International Standard Classification of Education 3) or is within two years after completing full-time education and who has not previously obtained his or her first regular paid employment; or (d) is over the age of 50 years; or (e) lives as a single adult with one or more dependents; or (f) works in a sector or profession in a EU MS where the gender imbalance is at least 25 % higher than the average gender imbalance across all economic sectors in that EU MS, and belongs to that underrepresented gender group; or (g) is a member of an ethnic minority within a EU MS and who requires development of his or her linguistic, vocational training or work experience profile to enhance prospects of gaining access to stable employment; (...).
- ²¹ (a) has not been in regular paid employment for at least 24 months; or (b) has not been in regular paid employment for at least 12 months and belongs to one of the categories (b) to (g) mentioned under the definition of ‘disadvantaged worker’.
- ²² Employment in an undertaking where at least 30 % of workers are workers with disabilities.
- ²³ (p) for aid for the employment of workers with disabilities in the form of wage subsidies; (q) for aid for compensating the additional costs of employing workers with disabilities.
- ²⁴ (o) for aid for the recruitment of disadvantaged workers; (r) for aid for compensating the costs of assistance provided to disadvantaged workers.
- ²⁵ Wage costs over a maximum period of 12 months following recruitment of a disadvantaged worker (and the double period, up to 24 months for a severely disadvantaged worker).
- ²⁶ Art. 35, 3.: The assistance provided shall consist of measures to support the disadvantaged worker’s autonomy and adaptation to the work environment, in accompanying the worker in social and administrative procedures, facilitation of communication with the entrepreneur and managing conflicts.

For persons with disability in (future) employment, the key Articles are 31, 33 and 34:

Article 31 foresees that the aid intensity for **training** shall not exceed 50 % of the eligible costs. It may be increased, up to a maximum aid intensity of 70 % of the eligible costs, as follows: (a) by 10 percentage points if the training is given to workers with disabilities or disadvantaged workers; (b) by 10 percentage points if the aid is granted to medium-sized enterprises and by 20 percentage points if the aid is granted to small enterprises. Excluded, however, is aid for training which undertakings carry out to comply with national mandatory standards on training.

Article 33 concerns the **employment of workers with disabilities**. It specifies that aid may be granted in the form of wage subsidies, up to 75% of the eligible costs, and that wage costs can be covered “over any given period during which the worker with disabilities is employed”. Hired workers with disabilities must be entitled to employment for at least the minimum period that is laid down in national law. Individual aid for the employment of workers with disabilities must be notified to the EC if it exceeds EUR 11 million per undertaking, per year.

Article 34 contains **four categories of specific public financial support in form of State aid for the employment of workers with disabilities**: (a) costs of adapting the premises; (b) costs of employing staff solely for time spent on the assistance of the workers with disabilities and of training such staff to assist workers with disabilities; (c) costs of adapting or acquiring equipment, or acquiring and validating software for use by workers with disabilities, including adapted or assistive technology facilities, which are additional to those which the beneficiary would have incurred had it employed workers who are not workers with disabilities; and (d) costs directly linked to transport of workers with disabilities to the working place and for work related activities.

The aid intensity may be up to 100% of the eligible costs. This type of aid must be notified to the Commission if it exceeds EUR 11 million per undertaking, per year.

Two additional Articles are relevant for social economy organisations that employ **disadvantaged workers**: Articles 32 and 35.

Article 32 stipulates that **aid for the recruitment of disadvantaged workers may be granted in the form of wage subsidies**, up to 50% of the eligible costs. The eligible costs are the wage costs over a 12-month period or a 24-month period in the case of severely disadvantaged workers such as those that are not in regular employment for at least 24 months. If the period of employment is less than 12 or 24 months, the aid must be reduced pro rata. However, recruited workers must be entitled to employment for at least the minimum period that is laid down in national law. Individual aid for the recruitment of disadvantaged workers must be notified to the Commission if it exceeds EUR 5.5 million per undertaking, per year.

Article 32 is complemented by Article 35 which provides that the **additional eligible costs for hiring disadvantaged workers** are the expenses incurred as a result of employing staff solely to assist disadvantaged workers and training such staff in assisting disadvantaged workers, whose aid intensity may not exceed 50% of the eligible costs.

Aid to compensate for the costs of assistance provided to disadvantaged workers must be notified to the Commission if it exceeds EUR 5.5 million per undertaking, per year.

GBER contains other provisions concerning access to finance, SMEs and innovation, that might be relevant to some social economy enterprises or social service providers, in general and not necessarily directly linked with PwD. For this reason, we will mention them, without describing them in detail:

- Article 17 regulates aid whose aim is to support new investments by SMEs.
- Article 21 sets out the rules concerning risk finance and has the objective to incentivise private investment in riskier but commercially viable SMEs.
- Article 22 concerns start-ups.
- Article 28 is about aid that may support innovation activities within SMEs.

- Article 29 regards aid for process and organisational innovation, and it applies to both large enterprises and SMEs.
- Article 56 regulates investment aid to local infrastructures and requires that the aided infrastructure is open to users on non-discriminatory terms and at market rates.

3.3. Summing up

To recapitulate, table 1 summaries the categories of exemptions that have been set out by the EC in its different legal acts.

Table 1: Categories of exemptions accorded by State aid legislation and related amounts allowed

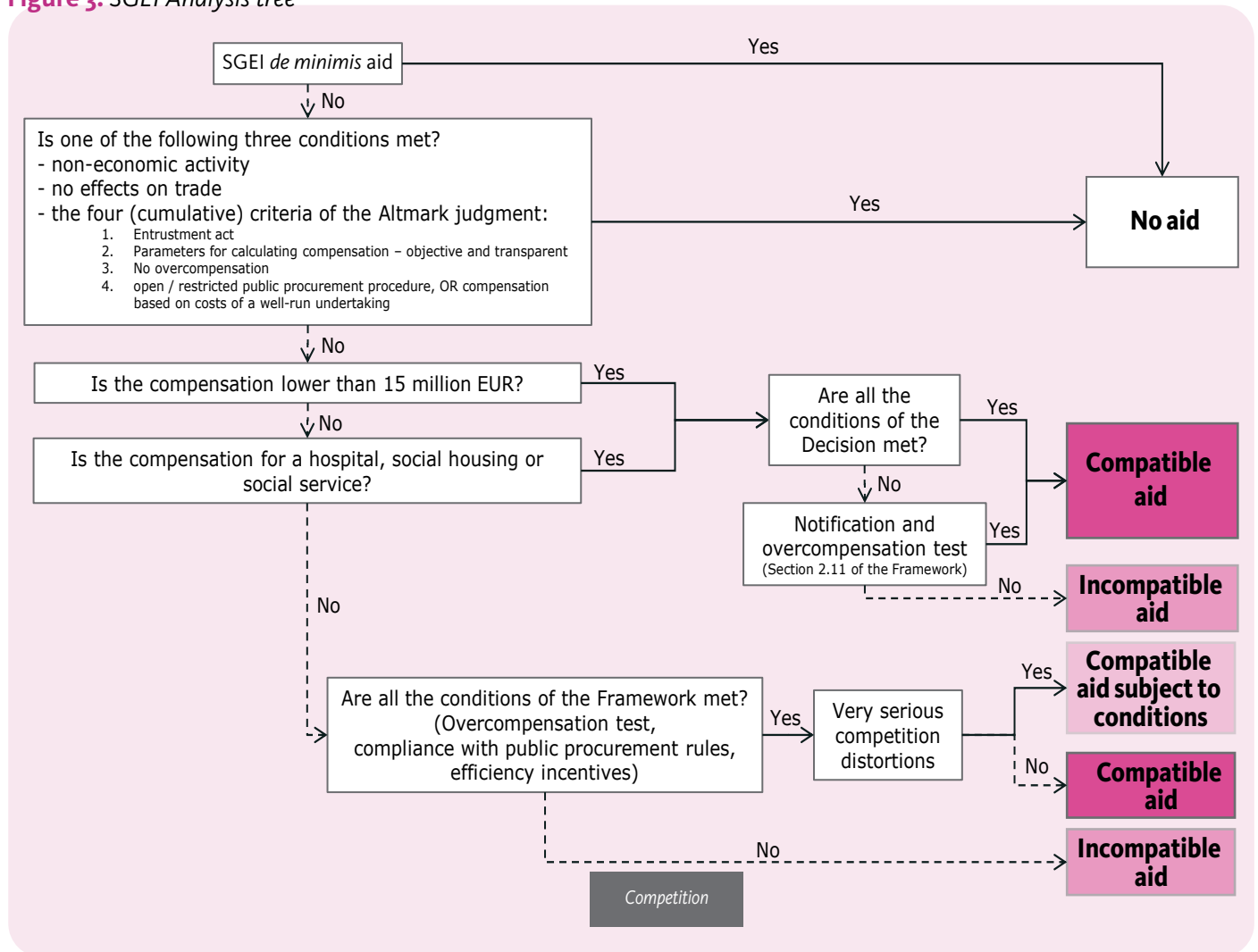
Legal act	Amount allowed (for lines 1 and 2 until 31.12.23)
General de minimis Regulation	Up to EUR 200,000 in a three-year period
SGEI de minimis Regulation	Up to EUR 500,000 in a three-year period
General Block Exemption Regulation (GBER)	<ul style="list-style-type: none"> ---- Training aid, up to 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
SGEI Decision	<ul style="list-style-type: none"> ---- Up to EUR 15 million for SGEIs ---- No ceiling for the social services listed in Article 2(1)(c)



To facilitate the understanding and assimilation of the State aid rules explained so far, an excellent

source is the SGEI decision tree elaborated by the EC, reproduced below.

Figure 3: SGEI Analysis tree



Source: https://competition-policy.ec.europa.eu/system/files/2021-04/SGEI_analysis_tree_en.pdf

4. Rules for the cumulation of different types of (legal) State aid

Aid provided under the SGEI de minimis Regulation shall not be cumulated with aid for the same eligible costs if such cumulation would result in an aid intensity exceeding that stipulated in the specific circumstances of each case by a block exemption regulation as included in the GBER or in the SGEI Decision adopted in 2012 by the EC.

The authors would like to highlight an important learning from the COVID-19 pandemic which was also touched upon by some interviewees when asked about their experiences with the combination of State aid already received under one of the EU State Aid Frameworks introduced above and the [Temporary Framework for State Aid Measures to Support the Economy in the current Covid-19 Outbreak](#). Given the fact that this unforeseeable and extraordinary situation affected all competitors in the internal market, State aid from this framework²⁷ and used for the purposes set out therein would not substantially risk a preferential treatment of specific providers of social services as the status quo that would have existed without this extraordinary situation had been largely preserved. The COVID19 pandemic meant special, unforeseeable funding needs also for providers of social services, not least in particular for those from the social economy²⁸. Many non-profit organisations which back then received funding classified as State aid, e.g., via EU funding programmes, which are exempted under the GBER, could not obtain additional funding due to the requirements of Art. 8 GBER and the required compliance with aid intensities set out there²⁹.

Interviewees from different countries and regions in Europe mentioned that a combination of funding from COVID Temporary EU State Aid Framework with State

aid they had already received from other EU funds (in particular from the ESF+ or ERDF) “on the ground” often had proved to be too complex. It would have implied more reporting obligations, on new criteria or conditionalities too, and could have meant potential future demands to pay back parts of the public funding already received. It thus was often not requested, even though regulators were well intentioned to exactly avoid this situation.³⁰

²⁷ See for the [consolidated version](#) of 18.11.21

²⁸ The interview partner from Spain mentioned a positive legislative initiative to react to the challenges created by the COVID-19 pandemic: Based on [Order TES/501/2021 of 20 May 2021](#) the Spanish government implemented the maintenance of subsidies in form of state aid of jobs for people with disabilities in Special Employment Centres established by the Order of the Ministry of Labour and Social Affairs of 16 October 1998. This legislation had established the basis for the granting of public aid and subsidies aimed at promoting the labour integration of people with disabilities in special employment centres and self-employment.

²⁹ “In the EU Commission’s “Temporary framework for State aid in connection with the current outbreak of COVID-19”, which has been adapted several times, it was stipulated that in principle aid can be cumulated, but the cumulation rules of the relevant regulations (thus also Art. 8 of the GBER) must be observed.¹⁹ According to Art. 8 (3) (b) of the GBER, cumulation with other State aid is permitted, but only if the aid intensity applicable under the GBER is complied with. In order to comply with this aid intensity, additional funds of the undertaking itself must then be used parallel to the aid, even though additional aid will be necessary to surmount the crisis. This is impossible for recipients, especially in view of their problematic financial situation. In actual practice, it has therefore not been possible to call up (additional) aid. In order to avoid such a situation in extraordinary situations in future as well, Art. 8 (3) (b) of the GBER must be amended to the effect that in those cases mentioned in Art 107 (2) (b) and (3) (b), aid intensities or the greatest aid amounts applicable under the GBER may be exceeded”. Source: BAGFW 2022, pp. 8-9.

³⁰ The interviewee from Belgium, Flanders, however, provided a possible example, confirming that his group of custom work enterprises could receive COVID-related aid on top of structural aid. Initial problems could be solved with the support of a task force in the competent regional ministry bringing together providers and administration.

5. Links between EU State Aid Legislation and EU Public Procurement Legislation

In some cases, EU State aid rules have to be combined with EU public procurement rules. The EC guidance is very useful to clarify this subject. We summarise the most common situations:

Satisfying the fourth criterion of the Altmark judgement

We have seen that the fourth criterion of the Altmark judgement provides that the compensation offered must either be the result of a public procurement procedure which allows for the selection of the tenderer capable of providing the service at the least cost to the community, or the result of a bench-marking exercise with a typical undertaking, well run and adequately provided with the necessary means. Tendering out the service can facilitate compliance with the Altmark criteria so that the compensation is considered not to constitute State Aid under Article 107 (1) TFEU.

If a public procurement procedure in line with the fourth Altmark criterion has been carried out and the other Altmark criteria are fulfilled, there is no State Aid and therefore there is no scope for applying the Framework.

Choosing the operator that will be entrusted with the provision of an SGEI

The EC guide clarifies that the State Aid rules and the rules on public contracts and concessions have different aims and scope. The State Aid rules relate to the conditions for financing SGEIs (including economic social services of general interest) and are aimed at preventing distortions of competition caused by financing or similar benefits granted by the State

and its emanations. The rules on public contracts and concessions, on the other hand, concern the conditions for awarding these services to operators, such as ensuring equal treatment and transparency and preventing distortions of competition that may arise from the management of public funds by the contracting authorities when awarding these services.

When the State Aid Framework applies, public authorities wishing to set up an SGEI must comply not only with the State Aid rules but also with the rules on the award of public contracts or concessions to select the operators that will be entrusted with the provision of an SGEI. In the event of non-compliance with EU procurement rules, the aid would not be considered compatible with the internal market.

By contrast, when the SGEI Decision applies, SGEI providers do not need to be selected under a public tender procedure.

Outside the scope of EU public procurement law, it is up to the EU MSs to set out the conditions under which national public procurement rules should apply. An EU MS is free to design the scope of application of its national public procurement law in such a way that those rules in practice always apply if a provider is entrusted with an SGEI. If an EU MS thus links EU State Aid law and public procurement law, however, that is an autonomous decision of the EU MS and not a consequence of the application of EU law.

Going beyond the legal stipulations, another link between these two highly relevant pieces of EU-level legislation exists via the instrument of “reserved markets”, Art. 20 Dir 2014/24/EU. It allows for the competent public body to reserve a contract, or elements thereof, to certain types of suppliers – in “real life” these are as a rule organisations of the social economy, often operating as social enterprises. Reserved procurement procedures are possible for “sheltered workshops” – defined as defined as an organisation in which at least 30% of the employees are either disabled or disadvantaged³¹ – as well as for

³¹ In line with Commission Regulation (EU) No 651/2014 of 17 June 2014, see footnote 25.

economic operators whose main aim is the social and professional integration of disabled or disadvantaged persons under the condition that at least 30% of the company's employees must fall under one of the categories defined as "disadvantaged".

6. Recent developments in the State aid legal framework

6.1. Jurisprudence of the Court of Justice of the EU acknowledging the peculiarities of certain entities belonging to the social economy

The Court of Justice of the EU (CJEU) has sometimes recognised the subjective features of certain entities belonging to the third sector or the social economy³². We refer in particular to the *Paint Graphos* decision (C-78/08) rendered on 8 September 2011.

The judgement concerned a number of cases pending before the Italian Court of Cassation regarding the total or partial exemptions from various taxes granted by Italian law in favour of cooperative companies in view of the specific economic objective pursued by such companies, recognised by Article 45 of the Italian Constitution, which emphasises the social function and essentially mutualistic nature of this type of enterprise.

The Court of Cassation had decided to make a reference to the Court of Justice for a preliminary ruling to verify the compatibility of the advantages in question with the internal market within the meaning of Article 107(1) TFEU.

The CJEU, while holding that the various tax exemptions constituted an advantage, concluded that it could not be said to be selective, because the particular nature of Italian cooperatives could be such as to justify a different tax treatment of them compared to ordinary commercial companies. According to the CJEU cooperatives are governed by peculiar operating principles, which clearly differentiate them from other economic operators. These characteristics are reflected in the principle of the primacy of the individual, which is reflected in the specific rules concerning the conditions of admission, withdrawal and exclusion of members. Moreover, in the event of liquidation, the net assets and reserves must be donated to another cooperative entity with similar aims or objectives of general interest.

With regard to the management of cooperatives, it should be emphasised that they are not run for the profit of external investors and control of the company is equally divided among the members, thus reflecting the "one person, one vote" rule. Reserves and profits are consequently held in common, are indivisible and must be allocated to the common interest of the members.

³² To start with, the "groundbreaking" ECJ *Sodemare* Ruling (Case C-70/95) from more than 25 years ago, which came to the same conclusion, has to be recalled. It allowed public authorities to reserve a public service contract or concession to non-profit organisations, i.e., to make a distinction based on the type of provider – and here in favour of providers from the third sector/not-for-profit sector/social economy), if such a restriction is provided by a national law that is compatible with Community law and if it is necessary and proportionate to attain certain social goals of the national welfare system: "6. The 1980 Law governs the conclusion in Lombardy of contractual arrangements with the bodies managing the *Unità Socio-Sanitarie Locali* (local health and welfare centres, hereinafter 'USSLs') for the provision of social welfare services, including services of a health-care nature. Article 18(2) of the 1980 Law provides that private operators wishing to participate in the planning and organisation of USSL services must apply for and obtain from the regional authorities a certificate of suitability to enter into contractual arrangements with the bodies managing the USSLs; 7. Pursuant to Article 18(3) of the 1980 Law, a condition for such suitability is that the body in question must be non-profit making".

Furthermore, with regard to the functioning of cooperative societies, the CJEU emphasised that, taking into account the primacy of the individual, they are aimed at the mutual benefit of their members, who are at the same time users, customers or suppliers, so that each of them may profit from the cooperative's activity on the basis of their participation in it and in proportion to their transactions with that company.

Finally, cooperative societies have no or little access to capital markets, as their development depends on their own funds or credit. The profit margin of this specific type of company is, therefore, significantly lower than that of corporations, which are better able to adapt to market requirements.

The CJEU agreed that these characteristics were also reflected in Council Regulation (EC) No 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society, from which it follows that co-operative societies cannot be considered to be in a legal and factual situation analogous to that of commercial companies.

As mentioned in the introduction to this study, the Social Economy Action Plan (SEAP) provides formal recognition of the social economy sector – based on the four legal forms “association”, “cooperative”, “foundation” and “mutual benefit society” and on 5 main categories – the four aforementioned social enterprises – and of its specificities by the EC. It thus opens the avenue to a new possible treatment for the social economy (organisations) in the ongoing revision of State aid rules.

6.2. Evaluation of the State aid rules applicable to health and social SGEI package

In 2019 the EC launched an evaluation to assess if the relevant legal framework is still appropriate. As pointed out by the EC in its [roadmap](#) announcing the evaluation, EU MSs have made considerable use of these rules. However, from the SGEI reports that EU

MSs have to submit to the EC, it emerges that some EU MSs and stakeholders have reported conceptual and operational challenges in the application of these rules. For this reason, from July to December 2019, the EC launched a broad [consultation](#) on the SGEI rules applicable to social and health services and the SGEI de minimis Regulation (2020) and received 51 responses from businesses, confederations, trade unions, NGOs, private individuals and public administrations (summarised [here](#)). In parallel, it launched a targeted consultation addressed to EU MSs and an expert study on healthcare and social housing.

The findings of the EC consultation highlighted that the main issues around the application of these rules lie in the development of acts of entrustment, in how to calculate a “reasonable profit” and a too low SGEI de minimis threshold.

At the end of 2022, the EC published the results of the evaluation³³, which concludes that the 2012 SGEI package as regards social and health services is fit for purpose. At the same time, it highlights that further clarification of certain concepts is needed, such as the notion of economic and non-economic activity, effect on trade, reasonable profit and market failure. The evaluation also indicates that the impact of COVID-19 crisis and the war in Ukraine cannot be fully assessed yet and that further adaptations may be considered to fully meet the needs of stakeholders such as the recognition in the SGEI rules of operators active in the social economy or the recognition of quality services.³⁴

An important finding arising from the evaluation which might indicate the direction towards which

³³ Commission Staff Working Document, Evaluation of the State subsidy rules for health and social services of general economic interest (“SGEIs”) and of the SGEI de minimis Regulation. {SWD(2022) 389 final}, Brussels, 1.12.2022

³⁴ Commission Staff Working Document, Executive summary of the evaluation. Evaluation of the State subsidy rules for health and social services of general economic interest (“SGEIs”) and of the SGEI de minimis Regulation. {SWD(2022) 388 final}, Brussels, 1.12.2022

the EC intends to go in its future revision is the acknowledgement that “certain activities have a purely local impact and consequently no effect on trade if (i) the beneficiary supplies goods or services to a limited area within a EU MS and is unlikely to attract customers from other EU MSs; (ii) it cannot be foreseen, with a sufficient degree of probability, that the measure will have more than a marginal effect on the conditions of cross-border investments or establishment.”³⁵

6.2.1. Commission’s call for evidence on the general and SGEI de minimis Regulations and proposals for reviewed Regulations

The general de minimis Regulation and the SGEI de minimis Regulation are set to expire in December 2023.

Following the results of the evaluation, the EC decided to revise both regulations. Concerning the general de minimis Regulation, the EC proposed to review the *de minimis* threshold to adapt it to the current economic context by increasing the ceiling up to EUR 250,000 over a period of three fiscal years. Secondly, to improve transparency requirements, it added an obligation on EU MSs to set up a central de minimis aid register containing complete information on all de minimis aid granted by any authority within the EU MS concerned to undertakings providing SGEIs, within six months after the entry into force of the Regulation.³⁶ These changes were subject to a call for evidence launched in June 2022 with the closing date of 28 July 2022.³⁷

Further on, the SGEI de minimis Regulation has been reviewed along three lines: to update the ceiling, also in light of inflation, to align certain concepts such as “single undertaking” and “undertaking in difficulties” with those included in the general de minimis Regulation, and to increase transparency. To this aim, in December 2022, the EC published a call for evidence, inviting the public and stakeholders to provide their views and any relevant information on the matter.³⁸

In April 2023, the EC published the draft revised SGEI de minimis Regulation³⁹, which was subject to consultation until 1 June 2023. The main novelties proposed by the EC are the following:

- The ceiling has been increased up to EUR 650,000 over a period of three fiscal years. *De minimis* aid under SGEI Regulation may be cumulated with the general *de minimis* aid up to the ceiling of EUR 650,000.
- Obligation on EU MSs to set up a central de minimis aid register containing complete information on all de minimis aid granted by any authority within the EU MS concerned to undertakings providing SGEIs, within six months after the entry into force of the Regulation.

³⁵ Ibid., p. 38

³⁶ Annex to the Communication from the Commission ‘Approval of the content of a draft for a Commission Regulation on the application of Articles 107 and 108 of the Treaty on the Functioning of the EU to de minimis aid’, C(2022) 8067 final, Brussels, 15.11.2022, available at: <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13458-State-aid-exemptions-for-small-amounts-of-aid-de-minimis-aid-update-en>

³⁷ Call for evidence ‘State aid – Exemptions for small amounts of aid (de minimis aid) (update)’ – Ares(2022)4676878, available at: <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13458-State-aid-exemptions-for-small-amounts-of-aid-de-minimis-aid-update-en>. The EC received 132 replies.

³⁸ Ref. Ares(2022)8613537 - 12/12/2022, Call for evidence without impact assessment, available at: <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13568-State-aid-review-of-rules-on-exemptions-for-small-amounts-of-aid-to-services-of-general-economic-interest-en>. The EC received 28 replies.

³⁹ Annex to the Communication from the Commission, Approval of the content of a draft for a Commission Regulation on the application of Articles 107 and 108 of the Treaty on the Functioning of the EU to de minimis aid granted to undertakings providing services of general economic interest, C(2023) 2578 final, Brussels, 19.4.2023, available at: <https://competition-policy.ec.europa.eu/public-consultations/2023-sgei-en>.

- Alignment of the concept of “single undertaking”⁴⁰ with that included in the general de minimis Regulation in force.

The EC has announced a rather strict timeline for the finalisation of the revisions and the publication and adoption of the final version, to be able to close the process in November or December 2023, as the revised SGEI de minimis Regulation will enter in force on 1 January 2024. The contributions to the public consultation on the revision of the SGEI de minimis Regulation can be accessed from this [link](#) on this [webpage](#). The EC has received 42 (non-confidential) replies, 24 from public authorities from 19 EU MS and from Norway, 16 from registered organisations, at least 10 of which are active in the field of social services and/or being social economy organisations and 2 non-registered organisations, 1 of which also active in the social services sector. As of 30 September 2023, the EC had not yet published a (detailed or summary) analysis of those replies.

6.2.2. Prolongation of the General Block Exemption Regulation (GBER) until 31 December 2026

The GBER allows EU MS to implement certain aid measures directly, with full legal certainty. Currently, based on the 2014 [GBER](#), more than 90% of all new State aid measures excluding crisis measures are now implemented by the 27 EU MS without the need for prior approval by the Commission.

In order to reflect the changes to the various sets of EU State Aid Guidelines, in October 2021 the EC invited for [comments](#) on a number of amendments it proposed to the GBER. This was followed by the [amendment of the GBER](#) in July 2021 to [align the relevant EU State Aid Rules with funding rules under the new Multiannual Financial Framework \(MFF\)](#).

In a [Press Release of 9 March 2023](#), the EC declared the **prolongation of the (amended) GBER until 31 December 2026** “for legal certainty and regulatory stability”. An earlier prolongation had been [enacted](#)

in 2020, as explained in a [Press Release of 2 July 2020](#). It also announced that having amended the GBER to further facilitate, simplify and speed up support for the EU’s green and digital transitions would offer “more flexibility to design and implement support measures in sectors that are key for the transition to climate neutrality and to a net-zero industry”. The [amendments enacted in spring 2023](#) also covers the aspect of training and reskilling across economic sectors by exempting from notification training aid related to the new features of the GBER if it stays below EUR 3 million.

It is not clear yet if the EC will start the process of the revision of the GBER already in 2024. In order to be well prepared for this future process, DG EMPL has launched in the autumn of 2023 a “Study on State Aid for access to finance for social enterprises and for the recruitment of disadvantaged workers in the form of wage subsidies”, to be finalised in the first half of 2024. This exercise is undertaken to produce more evidence on the relevance of and persisting unclarities or barriers in relation to two aspects of relevance for social enterprises – the use of risk finance (art. 21) or of start-up funding (art. 22) – and/or for providers of services for PwD (art. 31-35). DG EMPL has invited all relevant

- ⁴⁰ The definition of ‘single undertaking’ has been aligned with that included in the de minimis Regulation in force. ‘Single undertaking’ includes, for the purposes of this Regulation, all enterprises having at least one of the following relationships with each other:
- (a) one enterprise has a majority of the shareholders’ or members’ voting rights in another enterprise;
 - (b) one enterprise has the right to appoint or remove a majority of the members of the administrative, management or supervisory body of another enterprise;
 - (c) one enterprise has the right to exercise a dominant influence over another enterprise pursuant to a contract entered into with that enterprise or to a provision in its memorandum or Articles of association;
 - (d) one enterprise, which is a shareholder in, or member of, another enterprise, controls alone, pursuant to an agreement with other shareholders in or members of that enterprise, a majority of shareholders’ or members’ voting rights in that enterprise.

stakeholders to contribute to a survey – designed in two versions, the [first](#) for networks and umbrella organisations of social economy entities, the [second](#) for individual enterprises – which will be kept open at least until the end of October 2023, but very likely still throughout November 2023.

In view of the financial support which can be provided for the training, recruitment and employment of disadvantaged persons and in particular for PwD, as stipulated in the Articles 31 to 35 of the GBER, the researchers entrusted with the study are interested to learn, e.g.:

- to which extent the technical conditions set by the GBER in the Articles 31 to 35 are adequate and effective. In this context they look into

the “incentives structure” set by the different categories of disadvantaged workers and severely disadvantaged workers, the appropriateness of the length of the financial support, the effect of the cap set for the eligible percentage of wage costs, the appropriateness of the different rates of State aid density for disadvantaged worker or workers with disabilities and into the need to increase the cap of public funding which currently stands at 5.5 mio. per year and undertaking;

- to what extent support schemes for the recruitment of PwD and other disadvantaged workers are being used by employers in a given EU MS and if this measure leads to long-term employment;
- which other regulatory features of the GBER could likely improve the recruitment of (severely) disadvantaged workers.



EASPD is the European Association of Service providers for PwD. We are a European not-for-profit organisation representing over 20,000 social services and disability organisations across Europe. The main objective of **EASPD** is to promote equal opportunities for people with disabilities through effective and high-quality service systems.



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