

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

## 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.