CEEP POSITION TO THE AMENDING REGULATION (EU) NO 651/2014 (GBER)

CEEP - the European Centre of Employers and Enterprises providing Public Services and Services of General Interest represents the interests of the public sector in Europe - undertakes to respond to this Public Consultation with the purpose of contributing to a balanced and exhaustive appraisal by the European Commission of the amending Regulation (EU) No 651/2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty. In the following, we would like to take a stand on some essential aspects and - where appropriate - outline alternative approaches.

Addressing the genesis of services of general economic interest

CEEP welcomes the intention of the European Commission to adapt the GBER to the changed requirements since the last amendment. However, such an extension should be made with caution. After all, at a certain point an increasingly large expansion questions the whole system. In this sense, the GBER should above all address measures which pursue a general interest.

A conclusive and clearly defined definition of social services contradicts the genesis of services of general economic interest. It is precisely the flexibility of these services that makes them successful in European practice and guarantees the subsidiarity of each Member State. We must unfortunately note, though, that this genesis is not considered in the current proposal for the GBER.

Definitions for Aid involved in financial products supported by the InvestEU Fund – No 173:

> *"social services" means clearly identified services, meeting social needs, in particular as regards health and long-term care, childcare, access to and reintegration into the labour market, social housing (which means housing for disadvantaged citizens or socially less advantaged groups who due to solvency constraints are unable to obtain housing at market conditions) and the care and social inclusion of vulnerable groups"*

The Commission's Guide on the application of EU State aid, public procurement and internal market rules to services of general economic interest, and in particular to social services of general interest (SWD(2013) 53 final/2) has pointed out that in practice services of general economic interest (SGEIs) are differently framed and provided in the Member States. If the object of a SGEI - i.e. the performance of a public service obligation - is clearly defined, it is not necessary to categorise the respective service as a SGEI. The same applies to social services of general interest that are of an economic character.

As the European Commission's guide aptly points out, the scope and organisation of SGEIs vary considerably between Member States. SGEIs are therefore extremely diverse and the needs and preferences of users may also vary due to geographical, social or cultural circumstances. This means that it is primarily the state, at national, regional or local level, that decides on the nature and scope of a service of general interest. The EU acts to the extent necessary within the framework of the powers conferred on it by the TFEU. This is required by the principles of subsidiarity and proportionality. It is therefore not the Commission's responsibility to set criteria for the definition of "social services" or "general interest" in relation to individual services.

Consequently, in European State aid law, it is not the specific sector but the way in which it is provided that is decisive for the distinction between economic and social interest. This type of distinction is a very useful approach in view of the heterogeneity of the public sector in Europe. However, the above-mentioned exceptions for SGEIs leave this type of distinction and specify defined sectors which may be covered by the GBER. This may exclude sectors that would otherwise fall under the scope of social services under the methodology outlined above. In this sense, we do not consider the excluding approach to be appropriate. Instead, we propose to introduce a passage referring to the need for the existence of a general interest.

We note a similar exclusionary conception of SGEIs among others in the following article 56e (b) (i)):

> *"The following cumulative specific criteria shall apply for investments in networks capable of providing symmetric download and upload speeds of at least 1Gbps: The project aims to connect socio-economic drivers [..] that are public or private undertakings entrusted with the operation of services of general economic interest in the areas of education, social services including health, public administration, transport, postal services, culture [...];"*
> It further stipulates that *"[t]he project is based on an identified market failure verified by available appropriate mapping or, when such mapping is not available, by a public consultation."*

In its guide, the Commission stresses that the concept of service of general economic interest is mentioned in Articles 14 and 106(2) of the TFEU and in Protocol No 26 but is not defined either there or in secondary legislation. In its quality framework, the Commission defines SGEIs as economic activities which serve the general interest and which, in the absence of State intervention, would not be carried out in the market at all or would only be carried out to different standards in terms of quality, safety, affordability, equal treatment or universal access. The public service obligation is imposed on the service provider by means of a contract which includes a public service component, to ensure that the service is provided under conditions which enable the service provider to fulfil its mission. This approach taken in the guidelines is more in line with the general interest by not focusing exclusively on market failures but also by giving greater weight to the general interest.

The public sector is the most effective way to achieve policy objectives, such as climate change or cohesion policy. However, the public sector is often unable to meet these policy objectives in time because of constraints such as market failures. This also prevents them from fulfilling their public mission to the appropriate extent: firstly, it takes too long to identify market failures in a sector, especially in the fast-moving digital economy. Moreover, either the investment is not necessarily based on a market failure or a market failure is identified too late. Secondly, the concept of market failure can be a suitable means of funding, but it should not be the only solution, even for the public sector. We therefore argue for the implementation of a more open approach, which does not put market failure at the centre of state aid rules, but rather the instrumental character of public infrastructure.

In this framework, there is another aspect that should be further assessed: social housing or publicly supported housing is an important resource for fighting poverty and social exclusion, and for improving social cohesion. It should not be limited to those most in need of affordable housing. The exemption of social housing from state aid notification in the Almunia package is welcomed in principle. However, we do not agree with the restriction of access to social housing to 'disadvantaged citizens or socially less advantaged groups' as stipulated in the package. This is contradictory to subsidiarity and to the local right to define, organise and finance services of general economic interest, such as social housing. Focusing only on low-income groups limits social cohesion, as it can prevent social mix. We recommend deleting the reference to 'disadvantaged citizens or socially less advantaged groups' in recital 11 of the decision of the Almunia package.

In this sense, our suggested wording is as follows:

Definitions for Aid involved in financial products supported by the InvestEU Fund – 173:

"social services" means services of general or social interest, meeting social needs and the care and social inclusion;"

Conditions for aid involved in financial products supported by the InvestEU Fund - Article 56e (b) (i):

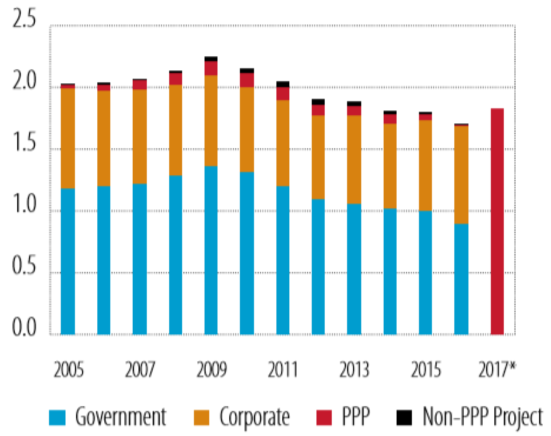
"[...] The project aims to connect socio-economic drivers [..] that are public or private undertakings ***entrusted with the operation of services of general economic interest as referred to in Article 106(2) of the Treaty and in line with the Commission Decision 2012/21/EU or subsequent legal acts replacing said decision "*** *[...]. The project* ***addresses the public mission by implementing the objectives of the European Union****."*

Public services and SGEI providers' investment need legal security and administrative simplification

Legal clarity in State aid regulations is vital concerning the high level of investment needed for SGEI providers to fulfil their mission at the public's satisfaction in the long term. In the field of infrastructure, such security is missing. The Commission emphasised in its Guide on the application of EU State aid, public procurement and internal market rules to services of general economic interest, and in particular to social services of general interest (SWD(2013) 53 final/2) that infrastructures can be subject to economic interests and are therefore also subject to the State aid framework.

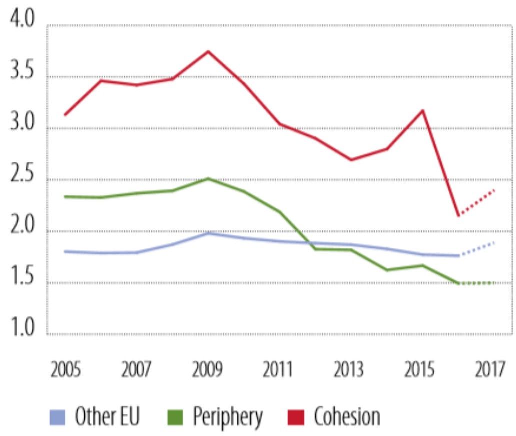
In practice, this understanding of infrastructure raises problems for the entire society. SGEIs often provide particularly cost-intensive infrastructures for the general public. These infrastructures are subject to special regulatory requirements. However, instead of supporting these very costly infrastructure projects, we are observing an increasing decline in infrastructure expansion throughout Europe.

EU infrastructure investment by institutional sector (% of GDP)



Source: *EIB Infrastructure Database.*
Note: *Based on Eurostat, Projectware, EPEC data. Data for 2017 are provisional. Data are missing for Belgium, Croatia, Lithuania, Poland, Romania and the UK.*

Infrastructure investment by region (% of GDP)



Source: *EIB Infrastructure Database.*
Note: *Based on Eurostat, Projectware, EPEC data. Data for 2017 are provisional. Data are missing for Belgium, Croatia, Lithuania, Poland, Romania and the UK.*

Our members reflect to us that lack of infrastructure investment is often a consequence of high legal uncertainty as well as high investment and follow-up costs. These high costs result, among other things, from the static modelling of the State aid framework and the inefficiencies for the entire public sector resulting from public procurement law.

Public infrastructures that are subject to a general interest should therefore generally not be subject to State aid rules. This is because they face completely different requirements and therefore different frameworks.

The need for an appropriate framework of operation to maximise the potential of the InvestEU programme

Consistency of GBER with InvestEU targeted sectors

We understand GBER should match the eligible sectors under the InvestEU regulation (namely the five windows). However, some loopholes were brought to our attention that should be added in the GBER to allow effective deployment of InvestEU:

- Offshore decarbonisation:
    - floating wind farms;
    - port developments to shift them from transport nodes to hubs for servicing offshore industry;

  - cabling for an offshore grid with a particular focus on AC connections from the turbines to hubs which then use DC interconnectors to shore;
  - devices for wave and tide energy;
  - offshore aquaculture.
- Digital connectivity:
  - Projects supporting broad range of communications and information technology-related products and services. This can include, for example, projects supporting a universal (i.e. including rural/peripheral areas) roll-out of infrastructure, deployment of very high capacity digital networks, including through the deployment of wired and wireless connection systems including fibre and 5G connection systems, and investments needed to reach the Union's strategic digital connectivity objectives.
  - satellite systems, storage/cloud infrastructure (data centres & HPC), edge infrastructure (IoT/Smart City), and public protection and disaster relief networks
  - projects supporting the digital transformation of key public services.
  - projects aiming at reduction or avoidance of greenhouse gas emissions of digital connectivity infrastructure, for example through more energy efficient networks, digital connectivity services and data centres.
- smart and sustainable urban mobility projects, in particular multi-modal hubs for passenger transport, active modes, inland waterways and innovative mobility solutions, digital transport infrastructure for seamless and effective connection of travel modes;
- flood protection, networks efficiency, leakages reduction, coastal infrastructure and other water-related green infrastructure
- investment in waste-to-energy projects and projects and enterprises that implement circular economy, including the sustainable supply of raw materials.
- renovations of existing buildings that target or achieve an increase of their energy performance as determined through one or more of the criteria laid down in Article 10(6) of Directive 2010/30/EU on the Energy Performance of Buildings;
- construction of highly energy efficient new buildings, including the modernisation of buildings thanks to smart ready technologies and their integration into a connected energy, storage, digital and transport system including through the deployment of infrastructure for e-mobility in line with Directive 2010/31/EU on the Energy Performance of Buildings;
- reduction of energy intensity of enterprises through improved efficiency of processes or production of products with lower carbon footprint as well as the development of innovative zero and low emission heat supply systems and combined production of electricity and heat;
- projects targeting the decarbonisation of buildings;
- the use of renewables in industrial processes.

Aid for social, educational, cultural and natural heritage infrastructure and activities below our proposal

*Aid for social, educational, cultural, **tourism, urban renewal,** and natural heritage infrastructure and activities*

Paragraph i) should be amended as follows:

*EUR 100 million per project for investments in infrastructure used for the provision of social services, for education, ~~or~~ for cultural purposes**, for tourism, for urban renewal including building renovation,** and activities set out in Article 53(2), including natural heritage*

Paragraph ii) should be amended as follows:

*EUR ~~30~~ **40** million for the ~~activities~~ **projects** related to social services and culture**, or having a social and environmental impact;***

Indeed, such projects can be supported through investment funds (indirect financing).

Accordingly, Article 56d, point 4 should be amended as follows:

4. The maximum thresholds laid down in Articles 56e and 56f shall apply to the total outstanding financing, in so far as that financing contains aid, provided under any financial product supported by the InvestEU Fund. The maximum thresholds shall apply:

*(a) per project in the case of aid covered by Article 56e(2) and (3), Article 56e(4)(a)(i) **and (ii)**, Article 56e(5) and (6), Article 56e(7)(a) and (b) and Article 56e(8);*

(b) per final beneficiary in the case of aid covered by Article 56e(4)(a)~~(ii) and~~ (iii), Article 56e(7)(d), Article 56e(9) and Article 56f.

Additionally, the ceilings seem too low for a number of investments. We suggest to raise them:

1. Digital connectivity: from 100 mn to 200 mn;
2. Energy: 150 mn for all projects (a-infrastructure and b-renewable energy);
3. social, educational, cultural and natural heritage: from 30 mn to 40 mn;

7. environmental protection, including climate protection: from 50 mn to 100 mn for a) and b) and from 30 mn to 60 mn for d).

These levels are consistent with the amounts currently observed in infrastructure projects.

Article 56f Commercially driven financial products

We would like to make it explicit that Article 56f covers exclusively investments below € 7.5mn the current wording can be understood as applicable to private investments; which would be limited to € 7.5 mn. In this sense our proposal is as follows:

Commercially-driven financial products **below € 7.5 mn**

The Green Deal will only work with the right framework

Given the magnitude of the challenge of preventing increased climate change and maintaining social stability, climate protection measures and affordable construction and housing must be combined. In its Green Deal, the EU Commission wants to leave no one behind and at the same time, with the Renovation Wave, it wants to significantly increase the rate of energy-related renovation. This can only succeed if the gap between affordable housing and the financing of climate protection measures is closed by means of subsidies. However, the effect of these necessary subsidies is not sufficient for the housing industry to ensure affordable housing if they are covered by State aid law. This does not allow the rate of renovation to be increased.

In order to increase the effectiveness of the planned subsidy measures, it is necessary to adapt the corresponding regulations under State aid law at European level. This also serves the purpose of the Renovation Wave proposed by the Commission and currently being planned as part of the Green Deal. The GBER should be adapted to solve the problem for rented residential buildings, so that climate protection measures for residential buildings can receive the necessary aid intensity.

CEEP considers it necessary that grants for climate protection measures should be excluded from the State aid rules, i.e. generally do not constitute aid if they are passed on to the lessee. For the exemption from the notification requirement under State aid law, it should be sufficient if one of the above-mentioned exemption regulations applies.

The de-minimis regulation is not useful for the energy-related refurbishment of buildings. In the case of an exemption under the general de minimis regulation, the permissible funding is exhausted in three fiscal years with the first energy-related refurbishment of a large apartment building, given the exemption limit of EUR 200,000 under state aid law. This should be adjusted accordingly in view of the adjustment of the GBER.

In a working paper[1], the EU Commission itself recognises the need to adapt the state aid rules:

> *"To facilitate the uptake of renovation as well as the effectiveness of its new facility, the commission will also revise the relevant state aid rules by 2021 to provide an enabling framework for public authorities to support high quality renovation while making the most efficient use of limited public funds. Pending the revision, current state aid rules will be applied with flexibility, focusing on a number of areas, which seems crucial to support an increase in rate and depth of renovation."*

In this respect, the requirements of the GBER should be adapted in such a way that state support measures have a noticeable effect on the achievement of the stated climate protection goals. This could be ensured by completely exempting certain energy-related measures from notification. Furthermore, the individual calculation of the aid intensity should also be dispensed. The level of aid intensity should be adjusted in line with the achievement of the objectives and should also be allowed to include necessary ancillary work.

[1] https://www.euractiv.com/section/energy-environment/news/leaked-europes-draft-green-recovery-plan/