



Consultation

State aid - review of rules on exemptions for small amounts of aid to services of general economic interest

Reference HT.6507

CEPES (Spanish Confederation of social economy enterprises - www.cepes.es) is the highest representative organisation of 43,000 social economy enterprises that employ 2.2 million people in Spain and represent 10% of the national GDP.

As representative social partner of the Spanish social economy, CEPES makes the following contributions:

INTRODUCTION

Current “*de minimis*” State aid rules for services of general economic interest (“SGEI”) allow exemptions from state aid control for small amounts of aid (up to EUR 500 000), as they are considered not to have any impact on competition and trade in the single market. These rules will expire on 31 December 2023.

The 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) showed that there is room for improvement. A draft for a Commission Regulation (hereinafter “the Regulation”) on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid granted to undertakings providing services of general economic interest (C (2023) 2578 final¹) has been submitted to public consultation.

In this context, CEPES takes this opportunity to submit some proposals to consider in this regulation the relevant role of social economy that represents 8% of EU GDP with 2,8 million enterprises and entities, that provide 14 million jobs in all economic sectors, also in the provision of health and social services, as highlighted by the EESC. CEPES is aligned with the EESC call for a stronger support to these enterprises by clarifying their access requirements regarding the SGEI sector as well as the amount of support available under State aid for social economy entities.

¹ Brussels, 19.4.2023

CONTRIBUTION TO THE CONSULTATION

In view of the draft elaborated by the European Commission, CEPES considers that the draft Regulation should be modified as follows:

Amendment 1

In Art. 2, paragraph 1. Include a paragraph d)

Current text:

Definitions

1. For the purposes of this Regulation, the following definitions shall apply:

- (a) 'agricultural products' means products listed in Annex I to the TFEU, with the exception of fishery and aquaculture products set out in Regulation (EU) No 1379/2013;
- (b) 'processing of agricultural products' means any operation on an agricultural product resulting in a product that is also an agricultural product, except on-farm activities necessary for preparing an animal or plant product for the first sale;
- (c) 'marketing of agricultural products' means holding or displaying an agricultural product with a view to sale, offering for sale, delivery or any other manner of placing on the market, except the first sale by a primary producer to resellers or processors and any activity preparing a product for such first sale; a sale by a primary producer to final consumers shall be considered as marketing of agricultural products if it takes place in separate premises reserved for that purpose.

Proposed text *(text to be included in bold italics)*

Definitions

1. For the purposes of this Regulation, the following definitions shall apply:

- (a) 'agricultural products' means products listed in Annex I to the TFEU, with the exception of fishery and aquaculture products set out in Regulation (EU) No 1379/2013;
- (b) 'processing of agricultural products' means any operation on an agricultural product resulting in a product that is also an agricultural product, except on-farm activities necessary for preparing an animal or plant product for the first sale;
- (c) 'marketing of agricultural products' means holding or displaying an agricultural product with a view to sale, offering for sale, delivery or any other

manner of placing on the market, except the first sale by a primary producer to resellers or processors and any activity preparing a product for such first sale; a sale by a primary producer to final consumers shall be considered as marketing of agricultural products if it takes place in separate premises reserved for that purpose.

(d) "Social economy enterprises" means entities sharing the following main common principles and features as set out in the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions "Building an economy that works for people: an action plan for the social economy (COM (2021) 778 final)":

- ***the primacy of people as well as social and/or environmental purpose over profit***
- ***the reinvestment of most of the profits and surpluses to carry out activities in the interest of members/users ("collective interest") or society at large ("general interest")***

For the purposes of this Regulation, this is considered to be a reinvestment of at least 80% of its profits for a financial year.

- ***and democratic and/or participatory governance.***

These are enterprises providing services of general economic interest, which are defined as social economy according to the national legal frameworks or in the legal form of cooperatives, mutual benefit societies, associations, foundations or which constitute a social enterprise in accordance with the legislation of the Member States.

Amendment 2

Article 3 (2) would read as follows:

Current text:

The total amount of de minimis aid granted per Member State to a single undertaking providing services of general economic interest shall not exceed EUR 650 000 over any period of 3 fiscal years. The period of 3 fiscal years shall be determined by reference to the fiscal years used by the undertaking in the Member State concerned.

Proposed text ***(text to be incorporated is indicated in bold italics, and text to be deleted is struck through)***:

The total amount of de minimis aid granted per Member State to a single undertaking providing services of general economic interest shall not exceed EUR ~~650 000~~ **800 000** over any period of 3 fiscal years. **The ceiling shall not**

exceed EUR 1 000 000 over any period of 3 fiscal years in case of aid granted by Member State to a single social economy enterprise providing services of general economic interest. The period of 3 fiscal years shall be determined by reference to the fiscal years used by the undertaking in the Member State concerned.

Amendment 3

Article 3(4) would be amended as follows:

Current text:

The ceiling of EUR 650 000 laid down in paragraph 2 shall apply irrespective of the form of the de minimis aid or the objective pursued by that aid and regardless of whether the aid granted by the Member State is financed entirely or partly by resources of Union origin under the control of that Member State.

Proposed text **(words to be incorporated are indicated in bold italics and words to be deleted are struck through)**:

The ceilings of ~~EUR 650 000~~ laid down in paragraph 2 shall apply irrespective of the form of the de minimis aid or the objective pursued by that aid and regardless of whether the aid granted by the Member State is financed entirely or partly by resources of Union origin under the control of that Member State.

JUSTIFICATION OF AMENDMENTS

Firstly, an increase in the proposed threshold for the de minimis limit is advocated up to EUR 800 000. The “EUR 650 000” ceiling is considered insufficient to fully achieve the objectives behind the Regulation, also to allow Member States to increase public aid to SEIG providers (undertakings) without creating an excessive bureaucratic burden.

Secondly, a specific threshold is justified for social economy enterprises – as defined by the COM (2021) 778 final (see above) and by official documents adopted by the EU Institutions² - for the following reasons when they act as SGEI providers:

- 1. The common principles and features of the social economy enterprises shall be considered when state aid public thresholds for SGEI providers are to be adopted by the Regulation.**

² “The promotion of the social economy as a key driver of economic and social development in Europe” - Council Conclusions (7 December 2015), European Parliament resolution of 6 July 2022 on the EU action plan for the social economy.

Social economy enterprises 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 social economy is oriented towards a social purpose and not towards the remuneration of capital means that social economy enterprises both have limited access to capital markets or to external financing.

In other words, social economy enterprises must have 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.

It must be said that this operational feature is reflected in the legal structure of the enterprise. Social economy enterprises are required, according to the regulations that govern them, either to reinvest their profits completely in the entity itself (e.g. in the case of Spain: social initiative special employment centres for disabled people) or mostly (i.e. Spanish work integration social enterprises – “empresas de inserción”) or either 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, as in the case of Spanish social initiative cooperatives.

2. **The distinguish feature of social economy enterprises to be obliged - according to their statutes and by Law - to reinvest the majority of their profits in the activity they carry out, makes the difference from other economic operators.** Specific treatment for social economy enterprises as SEIG providers shall be considered when State aid support mechanisms are adopted for undertakings providing SEIG.

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.

The EESC highlights - opinion on “Public subsidies / Social and health services of general economic interest”³ – the need to take into account the distinguish features of social economy when setting the specific State aid thresholds for social economy SGEI providers.

Indeed, although with regard to the limits laid down in the decision of 20 December 2011 on the application of Article 106(2) of the Treaty on the Functioning of the European Union to state aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest⁴, the EESC calls for a distinction in favour of social economy when the "reasonable profit margin" shall be

³ April 2023. INT/1016

⁴ C (2011) 9380

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 added value of the social economy (see OECD - LEED, 2022⁵).

3. **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 better provide services of general economic interest.

Indeed, given that their main goal is not to maximise profits to be distributed among investors, but to reinvest them in the activity itself, social economy enterprises have a greater social impact in terms of quality jobs, local development and social cohesion (see OECD, 2021⁶). Therefore, public support to social economy as SGEI provider results in the better provision of these services by an organisation that can adequately remunerate its staff and contribute to sustainable development goals.

In conclusion, setting a specific threshold for the amount of aid to social economy enterprises may be appropriate for the achievement of the objectives of the SGEI itself.

⁵ OECD Local Economic and Employment Development (LEED) Papers. “Legal frameworks for the social and solidarity economy”.

⁶ Case study “Beyond the traditional strategies in the assessment of SSE Impact: Monetary assessment of the social value created by SSE entities linked to their principles and values”.