



Social Services Europe

SSE Contribution to the EC Call for Evidence on the revision of the SGEI de minimis Regulation

(1 June 2023)

[Social Services Europe](#) (SSE) – Transparency Register ID: 470169313931-02 – is a **network of eight European umbrella organisations** – comprising [Caritas Europa](#), [CEDAG](#), [E.A.N.](#), [EASPD](#), [EPR](#), [Eurodiaconia](#), [FEANTSA](#) and the [Red Cross EU Office](#) – **representing over 200,000 not-for-profit social and health care organisations**. We are **active in a sector employing over 11 million people, of which about half are employed by social economy organisations**. This also means that **more than a third of the (estimated) 13.8 million paid jobs in the social economy is in the sector of social services**.

In the last decade, since the adoption of the “State Aid Package”, **SSE and its members have systematically monitored the impact of EU State Aid Rules on social services**. They have regularly held exchanges of views with their members and with the relevant Commission Services.

SSE did not provide input into the call for evidence on the review of rules on exemptions for small amounts of aid to services of general economic interest (with the deadline for feedback of 9 January 2023).

SSE, however, on 20 July 2022, made a written submission to the [EC Consultation on exemptions for small amounts of state aid \(de minimis aid\)](#). SSE considers that many of the points raised in this contribution are generally valid¹ and thus has integrated them into this reply.

Directly linked to this call for evidence, SSE has also provided input and comments to the [EESC Opinion “Public subsidies/health and social services of general economic interest”](#) (INT/1016) adopted on 27 April 2023. SSE shares most of the analysis presented there and many of the proposals.

SSE structures its reply in line with the three main proposed changes in the DRAFT SGEI de minimis Regulation of 19 April 2023, as set out in the Explanatory Note issued by the Commission Services. We add additional aspects which cannot be attributed to those three issues in a fourth section.

1) Ceiling of SGEI de minimis Regulation

The DRAFT SGEI de minimis Regulation proposes an increase of the SGEI de minimis ceiling from 500,000€ to 650,000€. In our contribution of 20 July 2022, SSE has called for a “significant increase” of the threshold of de minimis aid set in Regulation 1407/2013 back then standing at 200,000€.

SSE had argued that if the de minimis threshold is raised under Regulation 1407/2013, the threshold for services of general interest (SGEI) set in Regulation 360/2012 - currently standing at 500,000€ of any period of three fiscal years (Art. 2, Paragraph 2) - must also be raised. This amount was fixed more than 16 years ago by Regulation 1998/2006. For SSE, this justifies and makes necessary a **significant adjustment to cater for price increases for products and services and for inflation**. As the

¹ This also includes the support for further specific demands for the revision of the general and SGEI de minimis regulations contained in a position paper issued in January 2022 by the BAGFW, which is available in English and German (<https://bit.ly/3AzHYgU>).

next adaptation of the SGEI de minimis threshold is planned to happen in 2030, future price and inflation developments have to be taken into account when defining the adapted threshold.

With the currently high inflation rates which are expected not to go quickly back to the decade-long low inflation rates in the Eurozone, with increases of prices for goods and services to be acquired by social service providers and with new investment needs in the years to come also for enterprises providing social services of general interest (SSGI) to reply to the ageing of our societies, to increased and more complex support needs of a number of vulnerable groups and in line with EU-level policy objectives², **the actual costs no longer correspond to the ceiling.**

For SSE therefore **a more substantial increase to 1.5 million € for any period of three fiscal years would ensure a more effective functioning of the SGEI de minimis Regulation** on the ground in the field of social services of general interest and the social economy.

- **Such a more substantial increase provides the appropriate scope for the application and effective use of the new SGEI de minimis Regulation**, valid as of 1 January 2024.
 - The increase of the SGEI de minimis ceiling proposed takes into account the **trade-off between a possible distortion of competition on the one hand and specificities of social services of general interest (SSGI) and their users** on the other:
 - The European Commission 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 a EU Member State**, this will significantly lower the probability of attracting providers from other EU Member State, implying that there is no (important) effect on the trade between Member States (see [Commission Notice 2016/C 262/01](#) of 19 July 2019, Paragraph 196 and Paragraph 197 c³).
 - The **evidence we have from public procurement** also strongly points in the same direction: In two important sub-sectors of social services for which comparable and EU-wide data has been analysed, “home care” and “youth welfare”, a study commissioned by the Dutch Government in 2022 concludes that **“The cross-border dimension of social health services in Europe (...) is negligible”**⁴.
 - **A very large majority of the not-for-profit providers of SSGI is active at a local or regional level.** SSE is not aware of relevant state aid cases providing counterevidence to this “sectoral reality” within the internal market. For SSE, this “sectoral reality” (which has not substantially changed from the time when the

² These include, e.g., better social inclusion and more inclusive labour markets, better accessibility, greening of the economy and our society in line with climate change obligations, shift to digital, smart and inclusive services.

³ “While it is not possible to define 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 Member States. 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 Member States. The document 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](#)).

⁴ “Of the 830 contract award notices published between 2016 and 2018 in the field of, only 0.5% of awards had a cross-border dimension.” (p. 3) “(...) in 0.5% of the awards (830), a foreign party won at least one lot of the tender, and in all these tenders a minority of the lots were won by a foreign party.” (p. 5). “(...) The 830 awards between 2016-2018 represented 3 609 lots. When winning is defined as winning a majority of the lots within a contract, none of the 830 awards was to a foreign party (0%).” (ibid.) [Source: Deloitte (2020): Report Public Procurement of Social Health Services: Study of regulatory burden and the level of cross-border dimension. Commissioned by the Dutch Ministry of Health, Welfare and Sport (VWS), the Department of Legislation and Legal Affairs (WJZ)]

- current threshold was set) and the above evidence taken together⁵ - and not fictional future cases - could well justify a significantly higher SGEI de minimis threshold to support the effective operation of social services of general interest.
- **Not-for-profit social service providers do also not share profits with any shareholders.** They also operate in areas that are economically not profitable for for-profit providers (including in rural areas). This is partly also due to the “reasonable profit margin” fixed in relevant (sub-)sectoral legislation and regulation within the EU MS, including in the field of social services. Not-for-profit social service providers often depend on financial support by public authorities.
 - This all seen together and that fact that the services in question, **social services of general economic, are part of the (as a rule strongly regulated) national welfare state systems and social protection schemes** – also when it comes to the relevant reimbursement rules for social service providers –, reduces the likelihood that these services will be offered by public or private sector competitors from other EU Member States.
 - If one juxtaposes the specific social and societal roles and the specific funding needs of SSGI providers to the **low “risk” of a significant impact on cross-border competition and trade, the first objective and the specificities of the SSGI sector must be given much greater weight** and thus could easily justify a substantial increase of the SGEI de minimis ceiling.
- Such a **more substantial increase would also do justice to the short- to long-term financing needs of SGEI providers, including social service providers**, and this twofold:
 - It would be instrumental in view of the **manifold current and future investments in the social services sector**, not least as to challenges linked to the climate change mitigation in line with policy priorities of the EU or even “mandated” by the EU, but also for the purchase and use of digital aids for care and support services which cannot always be fully refinanced by fees fixed in the reimbursement rules of the respective national social legislation.
 - It would also be more than welcome and needed on the backdrop of a likely **reduced availability of public money for investments to support the realisation of important (EU-level and national) goals in the social services sector**, such as “high service quality”, “rights-based service design and delivery”, “strong user orientation” and “effective recruitment and retention conditions for a well-qualified and adequately staffed workforce”.
 - Last, but not least, for the threshold of the general de minimis Regulation the EC has tabled a proposal of 275,000€ (compared to the current ceiling of 200,000€), following a stakeholder consultation and a coordination with the EU MS. For SSE, the proposed increase of 150,000€ for the ceiling for SGEI state aid thus is relatively small. It would **imply the same percentage increase for both ceilings, the one for the general de minimis Regulation** – for which an increase of 37,5% to 275,000€ has been proposed – **and the one for the SGEI de minimis Regulation**. Such an only slightly increased ceiling would quickly be attained by non-profit/social economy enterprises in the social services sector in the EU MS with a higher population (of which several are also countries where the not-for-profit sector is well represented). It would thus **neither make the state aid rules more practice oriented on the ground nor better suited in view of future investment needs in the field of SSGI**.

⁵ “The results indicate that there is a negligible level of cross-border activity in social health services, and that there is no single European market for these services. This is supported by the contracting authorities and care providers interviewed, who indicated that social health services are organised locally. Contracting authorities and care providers pointed out that the unique nature of these services, and cultural and linguistic barriers, are a disincentive to cross-border activity. Differences in law and regulation in social health services were mentioned as barriers, but removing these barriers would not dramatically increase cross-border activity as the remaining barriers weigh heavily.”, p. 5 [Source: Deloitte (2020): Report Public Procurement of Social Health Services: Study of regulatory burden and the level of cross-border dimension. Commissioned by the Dutch Ministry of Health, Welfare and Sport (VWS), the Department of Legislation and Legal Affairs (WJZ)]

A **possible alternative** to an increase of the SGEI de minimis ceiling to 1.5 million € for any period of three fiscal years is an **increase to a slightly lower amount than 1.5 million € and the introduction of an annual indexation of the ceiling in line with the actual inflation rate in the € zone.**

2) Alignment of certain concepts

Social Services Europe generally agrees with the recommendations included in [EESC Opinion “Public subsidies/health and social services of general economic interest”](#) (INT/1016) that *“in addition to the modification of the maximum de minimis thresholds, some clarifications be put forward with regard to: i) a more extensive definition of “social housing”; ii) a better definition of the “reasonable profit margin” concept, considering a distinction for the social economy enterprises whose economic margins are linked to a social purpose; iii) the concept of “market failure”.*” (p. 3, 1.5)

Social Services Europe – as a network of EU umbrella organisation largely made up of social economy organisations – below **focuses on the concepts “single enterprise”, “reasonable profit margin” and “market failure”:**

- “Single enterprise”: SSE does not consider it appropriate for SGEI and in particular for SSGI to take over this concept from the general de minimis Regulation. The **categorisation of regional or national networks or regional or national umbrella organisations of (social economy/not-for-profit) enterprises providing SSGI on the basis of national legislation or regulation as a “single enterprise” would not appropriately take into account their role in the welfare state and in the respective national social protection schemes.** It would be tantamount to a structural ban on subsidies for legally codified key tasks in the social infrastructure outlined above.
 - In the area of SSGI the focus is on the **important role for, and contribution of those services provided to social, territorial and also economic cohesion, the social inclusion and the pursuit of objectives of social, health, employment and (social) housing policies.**
 - The same argument can be made if we consider **their “operational and business model” as well as the specificities of SSGI and their users.**
 - SSE would also interpret the mere prolongation of the SGEI de minimis Regulation dating from 2012 by the EC The EC in December 2018 and October 2020 without including this concept there as a deliberate and well considered decision.
- “Reasonable profit margin”: SSE agrees with the proposal made in the [EESC Opinion “Public subsidies/health and social services of general economic interest”](#) (INT/1016), p. 6, 3.9., that in the “reasonable profit margin” definition, **“a distinction should be made in favour of social economy enterprises, which are bound to reinvest the economic margins generated into their own statutory activities, thereby creating a virtuous economic effect which should be encouraged and supported.”**
- “Market failure”: SSE is in line with the [EESC Opinion “Public subsidies/health and social services of general economic interest”](#) (INT/1016), p. 7, 3.13., which notes that **“a market failure can be flagged not only in the event that a given service is not delivered by the market, but also and especially when the market is not able to deliver adequate quality, as well as fair and affordable access for everybody to the service, with adverse consequences on social cohesion and equal opportunities”.** SSE would like to see this type of market failure linked to the specific objectives and legally defined purposes of SSGI reflected in the revised SGEI de minimis Regulation.

3) Strengthening of the transparency requirements

Improving the transparency requirements is a joint objective of the EC and SSE. Those requirements must be formulated as simply as possible to allow for a non-bureaucratic application of the (general and SGEI) de minimis regulations enabling speedy and easy checks at all levels of administration.

SSE agrees with the proposal for a mandatory public register to improve the transparency on the use of state aid in all EU MS.

- It would **prefer such a register at the national level** in order to be able to use nationally applicable legislation and regulations in case of erroneous entries – which should allow for a speedy and easy way for deletions – or specific national data protection rules concerning the service providers or the users of the services to be respected.
- SSE underlines that **such a register to improve transparency should in no way add additional administrative burden or reporting obligations on the providers of SSGI.**

4) Other aspects which cannot be directly attributed to the three issues of the EC Explanatory Note

a) Cumulations

As explained above, **for SSE the proposed ceiling is not appropriate in the light of the infrastructure investment needs and funding programmes to support the ecological and digital transitions.** Art. 5(2) of the Draft Regulation proposes that SGEI and general de minimis aid may only be cumulated for one enterprise up to the maximum amount applicable under the draft SGEI de minimis Regulation in three fiscal years (i.e., up to 650,000€). **SSE proposes a reformulation to allow that the respective de minimis ceilings can be added up.** The scope for investment by social economy actors should be as broad as permitted to comply with the “competitive neutrality” – set out by the ceilings of the general and SGEI de minimis thresholds respectively – by realising this “additive approach”.

b) Explicit inclusion of act of entrustment in the legal text of the SGEI de minimis Regulation

SSE proposes to link the act of entrustment more clearly to the concept of an enterprise being entrusted (and thus obtaining the “selective advantage”), in our case with social services of general interest (SSGI). SSE would thus **support the codification of the act of entrustment in the legal text of the SGEI de minimis Regulation⁶.**

c) Reference to Art. 14 TFEU and Protocol No 26 on SGI annexed to the TEU and TFEU

In addition, **if the conditions laid down in Article 107 TFEU are not met, EU State Aid Law should also not be applied.** To give more weight and effect to this clarification, SSE would like to see an **explicit reference to Art. 14 TFEU and Protocol No 26 on SGI annexed to the TEU and TFEU** and a description of a SGEI in the text of the SGEI de minimis Regulation. The EU MS should be reminded of the broad discretion they have to define a SGEI and encouraged to also use it, too.

d) Simplifications

In order to ensure the effective, transparent and unbureaucratic provision of social services on the one hand and compliance with EU State aid rules on the other, SSE underlines the **need for all actors not only to lawfully apply the EU State Aid Rules, but also to simplify their application in practice to work in the ground and to support an effective delivery of social services of general interest.** These adaptations concern both the general de minimis Regulation (1407/2013) and the SGEI de minimis Regulation (360/2012).

⁶ SSE is aware of the fact that it is already contained in the recitals of the SGEI de minimis Regulation. The national members of the members of SSE, however, can report cases where the national authorities are not certain about the (legal consequences and the potential of the) act of entrustment. It should hence be featured more prominently in the legally binding text of the SGEI de minimis Regulation.