

# Social Services Europe's contribution to the draft for a new General Block Exemption Regulation (GBER)

## General Remarks

Social Services Europe (SSE) is Europe's leading organisation representing non-profit social service providers, amounting to around 200.000 social and health-care organisations. As such, the organisations covered by SSE represent the significant majority of the 3.3 million employed in the Social Economy-driven health and social care sector alone, alongside the millions of workers with disabilities and disadvantaged workers it employs and trains too.

Building on its considerable experience and broad representation, SSE wishes to contribute to the public consultation on the draft proposal for a revised General Block Exemption Regulation.

In general terms, SSE recognises the broader willingness and ambition of the European Commission to consider and propose ways to better use state aid tools for the not-for-profit social services sector, in particular in terms of maximising its social and employment impact and ensuring a level playing field.

We recognise that an improved use of GBER in our field depends on two inter-related issues. Firstly, the European State Aid rules, including SGEI de minimis and GBER, should be more pro-actively used by public authorities at the national level. This represents a huge missed opportunity for public authorities across Europe to create the right enabling framework for quality social services across the continent. Rather than leave it like that, the European Commission has to be very pro-active in encouraging, supporting and enabling public authorities to make the best use of the EU State Aid rules. Secondly, and a more relevant point for the current consultation, is that the European Commission should make several changes to its GBER rules in the ongoing review.

The proposed draft proposal by the EU Commission is a decent start, in particular with regard to the general ambition to seek to provide specific state aid measures for social enterprises (especially training) and the increase in state aid densities for the training and employment of persons with disabilities and disadvantaged workers.

But certain fundamental issues remain, including:

1. Outdated definition of Social Enterprises; when better, more consistent definitions exist at the EU level. The exclusion of "purpose-driven businesses" is, however, positive, as the concept would then become meaningless.
2. Exclusion of a specific definition of "Non-Profit Entities", and as such does not recognise differences in access to finance for non-profit organisations, whilst also proposing risk-financing for social enterprises, which very predominantly favours for-profit organisations.

3. Weakened clarity around the sheltered employment definition, which risks creating more problems than it solves at the national level.
4. Exclusion of specific references to “supported employment”, which will weaken the use of State Aid for such hugely effective measures.
5. Largely insufficient increases to notification thresholds for the employment of persons with disabilities and disadvantaged workers, which, alongside increases in aid densities, could have a detrimental and limiting impact on employment opportunities for persons with disabilities. Changes to the undertaking rules as proposed would help, but not in all cases.

The following position outlines our opinion on these matters in more detail and proposes specific amendments.

## 1: Definition of a “social economy entity”

### Article 2

#### Definitions

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

(...)

#### Definitions of terms that first appear in Section 3 of Chapter III

(...) (92) [**While taking into account the existing legal frameworks of the Member States**], ‘**social economy entity**’ means an undertaking which, regardless of its legal form, in accordance with its articles of association, statutes or any other legal document that may result in liability under the rules of the Member State where a social enterprise is located: **(i)** has the achievement of measurable positive **social or environmental objectives** as its primary objective **by providing goods and services in the market in accordance with the principles and features of the social economy as set out in Annex I**, **(ii)** reinvests all or most of its profits **or surpluses** to achieve its primary social objective **(iii) is managed in an entrepreneurial, participatory, responsible and transparent manner, in particular by involving its employees or members, customers and stakeholders affected by its economic activities, and (iv)** has predefined procedures and rules **to (a) protect and lock-in its primary purpose and assets long term and (b)** ensure that **where the procedures and rules permit** the distribution of profits, **this** does not undermine the primary social **or environmental objectives**;

#### Justification:

For the purposes of this Regulation, ‘social economy’ should be understood in line with the definition set out in the Council Recommendation of 27 November 2023 on developing social economy framework conditions, while taking into account the existing legal frameworks of the Member States. This Recommendation states that ‘social economy’ means a set of private law entities providing goods and services to their members or to society, encompassing organisational forms such as cooperatives, mutual societies, associations (including charities), foundations or social enterprises, as well as other legal forms, that operate in accordance with the following key principles and features: (i) the primacy of people as well as social or environmental purpose over profit; (ii) the reinvestment of all or most of the profits and surpluses to further pursue their social or

environmental purposes and carry out activities in the interest of their members/users ('collective interest') or society at large ('general interest'); and (iii) democratic or participatory governance.

SSE considers this definition to be a clearer and more operational definition of social economy. It would also **simplify** the regulatory framework, **avoid fragmentation** of concepts and reduce the need for multiple or overlapping definitions.

## 2: Definition of a “non-profit entity”

### Article 2

#### Definitions

For the purposes of this Regulation the following definitions shall apply:

(...)

#### Definitions of terms that first appear in Section 5 of Chapter III

*(109 new) 'non-profit entity' means an entity irrespective of its legal status (organised under public or private law) or way of financing, whose primary purpose is to undertake social tasks, which reinvests any profits gained and which predominantly engages in non-commercial activities. Where such an entity also pursues commercial activities, it must ensure accounting separation for the financing, the costs and the revenues of those commercial activities from the non-commercial activities;*

#### Justification:

Non-profit entities within the meaning of Article 2(1) (h) of the SGEI de minimis Regulation differ fundamentally from both traditional commercial enterprises and for-profit social enterprises, as defined in Article 2 (92) of the draft GBER. The key characteristic of non-profit social service providers is the full re-investment of their profits in line with their objectives and missions. In this respect, the inclusion of “social enterprises” in the Draft GBER is positive but not sufficient to cover this reality because for-profit social enterprises have an economic model that is very different from the one of non-profit entities. Compared to social enterprises, non-profit entities are generally not able to rely on private sources of funding or many forms of risk financing. Non-profit entities and for-profit social enterprises can be seen as lying on a spectrum of organisations with an increasing degree of social character, with for-profit social enterprises combining strong social objectives with market-based activities and limited profit distribution, while non-profit entities represent the fully non-commercial, entirely mission-driven end. Due to their specific legal constitution and the restrictions to build up financial reserves, or raise investment capital, non-profit entities require higher aid intensities under the GBER. This is particularly the case given new elements under the draft proposal to support risk-financing for social enterprises. On top of the aforementioned challenges in accessing financing for non-profits, this new proposal to better support risk-financing seriously risks hindering the level playing field between such organisations. Furthermore, to ensure consistency with the SGEI instruments, the definition of a "non-profit entity" contained in Article 2 (1) (h) of the SGEI de minimis Regulation must be included in the GBER.

### 3: Exception for non-profit entities in the definition of a “single undertaking”

#### Article 2

##### Definitions

For the purposes of this Regulation the following definitions shall apply:

#### Definitions of terms that first appear in Chapter I

(...)

(3) ‘undertaking’ or ‘single undertaking’ means any entity engaged in an economic activity. Several separate legal entities may be considered to form one economic unit, and therefore one undertaking, because of controlling shares and other functional, economic and organic links. The mere fact of holding shares, even controlling shareholdings, is insufficient to characterise such a link. ***Enterprises that have no relationship with each other, except for the fact that each of them has a direct link to the same public body or bodies, or to the same non-profit entity or entities, shall not be treated as a single undertaking;***

#### Justification:

The exception for non-profit entities that applies in the SGEI De-minimis Regulation and the SGEI Decision must also be included in the GBER, in order to reduce bureaucracy and increase legal certainty. Structural links that may exist between non-profit entities and other economically active legal entities are not sufficient to consider them as a single undertaking. This is due to the fact that there is no sufficient degree of control and that their economic strength does not increase in a way that would be typical of a single undertaking. Hence, non-profit entities can neither be part nor a link in the formation of a single undertaking, which flows directly from the concept of a single undertaking. For instance, separate organisations delivering social services (e.g., healthcare, elderly care, and employment) under the same umbrella of a non-profit entity, but with independent power of decision should not be considered as part of the same single undertaking. Since the Commission is clarifying that controlling shareholding is insufficient to be characterised as a “single undertaking”, it should also explicitly clarify that the exception for non-profit entities in the “single undertaking” definition also applies in the GBER. The reasoning for why the exception applies (independent power of decision) holds true irrespective of whether non-profit entities provide SGEI or other social services that are not formally entrusted as SGEIs. A coherent understanding of a “single undertaking”, which includes the exception for non-profit entities, is particularly important so that the aid recipient can be identified and correctly reported in the transparency register. If different transparency registers rely on different concepts of a “single undertaking”, frequent errors occur that consequently create very high bureaucratic administrative burdens for authorities and aid recipients alike. Finally, such an understanding of a “single undertaking” is also important for the correct calculation of the proposed top-ups “per undertaking”, as for example foreseen in Art. 56 (11) (c) Draft GBER. By explicitly incorporating the exception for non-profit entities, funding authorities and funding recipients will gain legal certainty and prevent complicated, lengthy and overly bureaucratic assessments of the often umbrella-like structures of non-profit entities, which in practice leads to delays and blockage of funds. Lastly, such an addition would require the inclusion of the definition of “non-profit entity” as under the SGEI rules (see previous amendment).

#### 4: Necessary increases in aid intensities for non-profit entities

	Article of the Draft GBER	Increase in aid intensity	Justification
1.	44 § 5	+ 20%	According to their definition under Article 2 No. 92 of the Draft GBER, social enterprises only have to reinvest half of their profits and are able to distribute the remaining half to their shareholders. Non-profit entities are economically disadvantaged, since they must reinvest all their profits and are not distributing any profits to shareholders. Accordingly, they should receive double the increase of the aid intensity that is envisaged for social enterprises, i.e. a supplement of 20%.
<p><b>Amendment:</b></p> <p>5. The aid intensity shall not exceed 50% of the eligible costs.</p> <p>(a) It may be increased, up to a maximum aid intensity of 100 % of the eligible costs, as follows:</p> <ul style="list-style-type: none"> <li>- (...)</li> <li>- <b>by 20 percentage points if the aid is granted to a non-profit entity</b></li> </ul>			
2.	55 § 8 (c) (i)	+ 50 %	Non-building-related energy efficiency measures play an important role in the organization and provision of social, health, care and education-related services. However, the aid intensity envisaged here to date is clearly too low for non-profit entities due to their specific legal constitution and the restrictions to build up financial reserves, or raise investment capital.
<p><b>Amendment:</b></p> <p>8. The aid intensity shall not exceed:</p> <p>(a) (...)</p> <p>(b) (...)</p> <p>(c) The aid intensities under points (a) and (b) may be increased by:</p> <p>(i) 5 percentage points for aid granted to medium-sized undertakings <b>and</b>, 10 percentage points for aid granted to small undertakings <b>and 50 percentage points for non-profit entities</b> or, alternatively, 10 percentage points where the total aid amount does not exceed EUR 1.5 million per undertaking, per project, for aid to any undertaking, regardless of its size;</p>			
3.	56 § 11 (c) (v) <i>(new)</i>	+ 40 %	The investment gap for climate protection and climate resilience-related renovation of buildings that are used for the organization and provision of social, health, care and education-related services is immense. Social service providers need to be able to continue to use them in the future and to ensure the provision

		<p>of the relevant services to the population. However, the aid intensities currently provided for in the Draft GBER are far too low for non-profit entities. According to their definition under Article 2 No. 92 of the Draft GBER, social enterprises only have to reinvest half of their profits and are able to distribute the remaining half to their shareholders. Non-profit entities are economically disadvantaged, since they must reinvest all their profits and are not distributing any profits to shareholders. Accordingly, they should receive double the increase of the aid intensity that is envisaged for social enterprises, i.e. a supplement of 40%.</p>
<p><b>Amendment:</b>  (c) The aid intensities in points (a) and (b) may be increased by the following percentage points up to a maximum of 90 % of the eligible costs:  (i) - (iv) (...)  <b><i>(v) by 40 percentage points for aid granted to non-profit entities</i></b></p>		

## 5: Definition of “sheltered employment”

<p style="text-align: center;"><b>Article 2</b> Definitions</p> <p>For the purposes of this Regulation the following definitions shall apply:  (...)</p> <p><b>Definitions of terms that first appear in Section 5 of Chapter III</b></p> <p>(108) ‘sheltered employment’ means employment in an undertaking <b>where at least 30% of workers are workers with disabilities, and</b> where the work arrangements are designed specifically for workers with disabilities in an environment that engages <b>predominantly significantly</b> with workers with disabilities and that has as its primary objective to offer employment, <del>protection</del> and support to such workers, which are typically not available to them in the open labour market.;</p> <p><u>Justification:</u></p> <p>SSE welcomes the European Commission’s efforts in the draft GBER to clarify definitions related to employment models supporting persons with disabilities. Legally robust and internationally compliant definitions are essential to ensure that State aid instruments effectively contribute to inclusive labour markets to maintain a level playing field for employers of workers with disabilities, while respecting the EU obligations under the United Nations Convention on the Rights of Persons with Disabilities (UN CRPD) and the European Pillar of Social Rights. In this context, SSE believes that the proposed definition of sheltered employment should be further revised to provide more legal certainty, reflect current EU disability policies, and ensure coherence with other EU legal frameworks.</p>
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SSE therefore calls for reinstating the 30% threshold of workers with disabilities in the definition of sheltered employment (as per the previous GBER definition) to:

- Maintain legal certainty; to avoid undertakings that take advantage of less clear rules. There is an existing risk that undertakings could formally qualify as sheltered employment despite employing only a limited proportion of workers with disabilities or with very limited working hours. For example, an entity employing persons with disabilities representing X% of staff but working only minimal hours, while the rest of the workforce is employed full-time. In such cases, the undertaking could still benefit from state aid for infrastructure support, even if the aid would not primarily benefit workers with disabilities. Removing the 30% threshold only adds to that risk. In this case, legal certainty is therefore necessary.
- Ensure coherence with other EU and national legislation: removing 30% is inconsistent with EU Directive 2014/24/EU on public procurement, and specifically the condition of reserved contracts, which also stipulates that at least 30% of employees in such entities must be disabled or disadvantaged;
- Reflect the situation in different MS: “environment that engages predominantly with workers with disabilities” could be interpreted as requiring that a majority of workers are persons with disabilities, potentially implying a threshold of at least 50%. Such an interpretation could inadvertently exclude certain national models of sheltered employment where the applicable legal framework sets a lower proportion of workers with disabilities or disadvantaged workers (for example, in Italy), thereby limiting their access to the measure.

Removing the word “protection” avoids reinforcing a paternalistic approach to persons with disabilities. This term reflects an older model of disability policy, where persons with disabilities were seen primarily as passive recipients of care rather than workers with equal labour rights. The current EU disability policy has shifted toward rights-based, person-centred approaches, which implies equal participation in the labour market, among others.

## 6: Inclusion of “supported employment”

### Article 2

#### Definitions

For the purposes of this Regulation the following definitions shall apply:

(...)

Definitions of terms that first appear in Section 5 of Chapter III

***(110 new) ‘supported employment’ means support to persons with disabilities or other disadvantaged groups to secure and maintain paid employment in the open labour market. The term comprises all approaches that contain some or all of the following: provision of tailored support in the form of professional and personal guidance, information, strengthening of job search skills, medical and psychological profiling of working possibilities, job identification and placement in cooperation with committed employers, ongoing support which is individualised and provided as needed for both the employee and the employer. Also included is customised employment, which typically involves job carving. All types of supported employment require the role of a job coach or an equivalent position. For some forms of supported employment, such***

*as Individual Placement and Support (IPS) targeting persons with serious mental health issues, strict guidelines exist which need to be adhered to for benefitting from existing evidence for its effectiveness. Supported self-employment refers to programs that provide budding entrepreneurs with disabilities or other disadvantaged groups with upfront and continuous support. They seek to promote self-employment as a realistic option for them;*

#### Article 46

Aid for compensating the costs of assistance provided to disadvantaged workers

3. The eligible costs shall be the costs of:

a. employing staff solely for time spent on the assistance of the disadvantaged workers over a maximum period of 12 months following recruitment of a disadvantaged worker or over a maximum period of 24 months following recruitment of a severely disadvantaged worker, *including, where appropriate, the cost of job coaches in supported employment;*

#### Article 48

Aid for compensating the additional costs of employing workers with disabilities

3. The eligible costs shall be limited to the costs arising in relation to the worker with disabilities and shall be the following:

[...]

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, *including, where appropriate, the cost of job coaches in supported employment;*

#### Justification:

There is general recognition that public authorities at the national level tend to use GBER conservatively. As highlighted in stakeholder research and policy analysis, public authorities often rely on more restrictive instruments, such as de minimis aid or adopt a cautious approach to State aid implementation.<sup>1</sup> This can lead to situations where GBER is either not used or used only to favour sheltered employment-related matters. Whilst sheltered employment continues to be a significant contributor for job opportunities, supported employment is also underdeveloped, despite its huge success rates in creating labour market opportunities for persons with disabilities. Supported employment provides individualised support through job coaching, workplace adaptation, and employer guidance, enabling persons with disabilities to obtain and sustain paid work in the labour market on an equal basis with others.

This is in large part because the legal frameworks, in this case GBER, favour already established employment practices, and insufficiently support new innovative models. Evidence also shows that the GBER already offers significant opportunities to support such measures, for example, through wage subsidies and the compensation of additional costs linked to reasonable accommodation or job coaching, but these possibilities remain insufficiently used in practice.

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<sup>1</sup> EASPD (2023). *Impact of State Aid on the Development of the Social Economy and on Service Providers for Persons with Disabilities*. Brussels. Available at: <https://easpd.eu/resources-detail/impact-of-state-aid-on-the-development-of-the-social-economy-and-on-service-providers-for-persons-with-disabilities/>

For this reason, the clear reference to supported employment within the scope of the GBER would provide a clear and legally certain framework for Member States and send a clear signal encouraging a more ambitious use of the Regulation's Section 6, further supporting employment into the open labour market. By recognising supported employment as an eligible form of aid, the GBER would further enable the financing of job coaching, workplace adaptations, and other tailored supports necessary for sustainable labour market participation.

This would not only strengthen compliance with Article 27 of the UN Convention on the Rights of Persons with Disabilities (UN CRPD) and the principles of the European Pillar of Social Rights, but also ensure that disadvantaged workers and workers with disabilities can access employment on an equal basis, while safeguarding employers against disproportionate costs; therefore levelling the playing field.

## **7: Increase of notification thresholds for wages and aid for the employment of workers with disabilities**

### **Article 47**

Aid for the employment of workers with disabilities in the form of wage subsidies

2. This Article shall not apply to aid which exceeds **EUR ~~11-15~~** million per undertaking, per year.

### **Article 48**

Aid for compensating the additional costs of employing workers with disabilities

2. This Article shall not apply to aid which exceeds **EUR ~~11-15~~** million per undertaking, per year.

#### **Justification:**

SSE welcomes the Commission's recognition of the need to increase the notification thresholds for employment aid under the GBER, recognising that these adjustments are necessary to maintain the effectiveness of State aid instruments in supporting employment for disadvantaged and workers with disabilities. However, in order to fully reflect economic developments and maximise the impact of these, further adjustments should be made.

Therefore, SSE notes that the proposed increase from EUR 10 million to EUR 11 million remains insufficient and does not reflect the inflation rate since 2014 and does not recognise the social impact of the work done by entities employing persons with disabilities. SSE therefore urges that the threshold for aid granted under Articles 47 and 48 be increased to EUR 15 million per undertaking per year. This recommendation is based on several considerations:

It is unclear why the threshold has been set specifically at EUR 11 million compared to the EUR 10 million in the original legislation, and whether this figure is supported by evidence on the

operational realities of enterprises employing persons with disabilities. Given the social objective of these measures, such as promoting labour market participation of persons with disabilities, the thresholds should be designed to facilitate, rather than constrain, the expansion of inclusive employment opportunities.

The current thresholds no longer reflect economic realities, as the current legislation was concluded in 2013. According to the [Harmonised Index of Consumer Prices \(HICP\)](#), cumulative inflation since 2013 is approximately 25%, significantly reducing the real value of the thresholds established in the current regulation. This means that increasing the threshold to EUR 11 million effectively reduces the real value of the aid ceiling. Adjusting the threshold to EUR 15 million would more appropriately reflect inflationary developments and preserve the original policy intention of the regulation, also considering the factors laid down below.

The amendment also proposes increasing aid intensities for wages of persons with disabilities (from 75% to 85%). While this is a positive development, it also means that the maximum aid thresholds could be reached more quickly, particularly for organisations employing larger numbers of workers with disabilities. Without a corresponding increase in the notification threshold, the practical impact of the higher aid intensity may therefore be limited. This issue is further compounded by developments in the sector over the past decade, where many organisations that employ persons with disabilities have merged in order to remain competitive and sustainable in the market, but also to provide better quality services and working conditions. As a result, larger organisational structures have become more common, meaning that existing notification thresholds can become a constraint even more quickly. Although improvements to the undertaking definition for social economy entities will help, it will not help in all situations; thus, the need for increased and more ambitious notification thresholds.

The proposed increases for employment aid for persons with disabilities and disadvantaged workers are significantly lower than some of the increases proposed in other areas of the regulation. For example, aid for training projects increases from EUR 2 million to EUR 3 million, representing a 50% increase, while the increase for employment aid for persons with disabilities is only 10% (from EUR 10 million to EUR 11 million). Given the EU's commitment to improving labour market participation of persons with disabilities, this amount should be adjusted.

Last but not least, the notification requirements create significant administrative burdens for both public authorities and beneficiaries. The need to notify aid exceeding the threshold to the European Commission more often than not discourages public authorities from granting such support due to the complexity, legal uncertainty, and time required for notification procedures.<sup>2</sup> As a result, organisations employing large numbers of persons with disabilities may be disincentivised from continuing their activities and implementing their role, or from creating additional employment opportunities. This outcome would be contrary to the objectives of the GBER. For the reasons laid down above and considering the current threshold levels, large employers of persons with disabilities may be effectively penalised for creating and sustaining employment opportunities for thousands of workers who face barriers to the labour market, and for whom the public sector lacks employment solutions. Since the goal of state aid tools is to level the playing field for different economic actors, the notification thresholds should not create disincentives for employers that actively contribute to inclusive labour markets.

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<sup>2</sup> Ibid.