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Opinion of the European Economic and Social Committee

How to support social economy entities in line with State aid rules: thoughts following the suggestions in Enrico Letta's report

(own-initiative opinion)

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1. Conclusions and recommendations

1.1. The European Economic and Social Committee (EESC) stresses the importance of reconciling the need for strong public support for social economy entities – which often perform functions and roles formerly performed by the State – with the EU rules on State aid.

1.2. Noting that the Draghi report on the future of European competitiveness also points out the link between competitiveness and the European social model, highlighting the importance of safeguarding European welfare and social protection systems, the EESC stresses the importance of social economy entities in ensuring concrete responses to the social needs of Europeans. These functions, which serve the common good, should therefore be recognised by the EU State aid rules.

1.3. The EESC points out that, in many cases and situations, the activities of social economy entities are solidarity-based and fall outside the scope of economic activities. At the same time, there are many instances in which the cross-border nature of the activities of such entities in the social and health sectors should be considered secondary and of a scale that does not substantially affect competition between the Member States. Further clarifications from the Commission on the concept of 'economic activity' and 'cross-border relevance' in relation to these areas are therefore urgently needed.

1.4. The EESC believes that the rules for granting aid for the recruitment of disadvantaged workers or workers with disabilities set out in Section 6 of the General Block Exemption Regulation (GBER, Regulation (EU) No 651/2014) should be strengthened and simplified. As suggested in the Letta Report on the single market, and in the communication on criteria for the analysis of the compatibility of State aid for the employment of disadvantaged and disabled workers subject to individual notification (communication on employment aid, OJ C 188, 11.8.2009), these rules should be updated to reflect the current economic situation.

1.5. The EESC believes that these two categories of aid need to be kept specific and separate in the planned revision of the GBER, and that the timeframes that have been set for updating the legal framework need to be respected.

1.6. The EESC also welcomes the additional proposal made in the Letta Report on the need to adapt the current legal framework on State aid in order to facilitate better access to credit and funding for social economy entities.

1.7. The EESC notes that the legal framework for aid for services of general economic interest (SGEIs) is not being properly harnessed by public authorities, who often fail to give sufficient attention to the high degree of discretion that is conferred on them by the Treaties with regard to the power to classify certain activities as SGEIs. The EESC believes that this discretion is particularly pronounced in the case of health and social services, both for reasons of vertical subsidiarity and social cohesion and because of the absence of the specific regulatory constraints that are found, for example, in other SGEIs of greater economic significance such as network industries. Since underfunding of social SGEI is common among the EU MS, the importance and relevance of Art. 2 (1) (c) of the SGEI Decision should be promoted. Instead of the predominant use of the general De-minimis Regulation in the area of social SGEIs, EU MS should as a matter of priority apply Art. 2 (1) (c) of the SGEI Decision, whenever the scope of the provision allows them to do so.

1.8. The EESC welcomes the announcement in the Political Guidelines for the incoming European Commission 2024-2029, published on 18 July 2024, stating that 'we will also revise our State aid rules to enable housing support measures, especially for affordable energy-efficient and social housing'. The EESC points out that the State aid rules applicable to compensation for the provision of SGEIs could be significant here, in part because of what social economy entities can accomplish in the way of tackling the housing crisis, as housing cooperatives, housing foundations, mutual societies and many philanthropic organisations have demonstrated they can do.

1.9. The EESC notes that flexibility provisions could be introduced by relaxing the application of the State aid rules in the case of funding that combines EU and national funds, such as in funding under the European Social Fund (ESF) and the European Regional Development Fund (ERDF), which is granted at Member State level. This type of funding – although to a large extent governed by EU law – is currently subject to the State aid rules due to the discretion that lies with the national authorities in respect of allocation, whereas the State aid rules do not apply to funding that comes fully from the EU and is managed at EU level without State involvement, such as under Horizon Europe.

1.10. Finally, the EESC urges the European Commission to continue its efforts to implement the Social Economy Action Plan, as detailed in the *Liège Roadmap for Social Economy in the European Union*, signed on 12 February 2024 by representatives of 19 governments and to assign to one of the new Commissioners a specific mandate to coordinate its implementation.

2. **Background**

2.1. According to the recent *Study on benchmarking the socio-economic performance of the EU social economy* published by the European Commission, more than 11 million people (or 6,3 % of the employed population) are employed by social economy entities in the 27 EU Member States. Of the four million social economy entities in the EU, 246 000 are structured as businesses and provide assistance and solutions to key challenges faced by Europeans. They cover a wide range of sectors, such as those for social and health care services, the circular economy, combating poverty, social housing, combating food waste and the participatory production of energy from renewable sources.

2.2. The European Commission's Social Economy Action Plan – COM(2021) 778 final – notes that 'patient, long-term investment capital is not always readily available to social economy entities. Public authorities do not fully use the existing possibilities to facilitate the access of social enterprises to public procurement, or funding, nor the flexibility offered by current EU State aid rules'.

2.3. The same document points out that the Member States are not fully tapping the potential that the State aid rules provide when it comes to services of general economic interest, nor are they making full use of the potential offered by the General Block Exemption Regulation, which offers scope to grant State aid compatible with the internal market.

2.4. For its part, the Council Recommendation on developing social economy framework conditions (2023/0179 (NLE)) points out that 'public authorities often do not make the most of the current scope of the State aid rules to support the social economy, where the market alone is unable to achieve satisfactory access to the labour market and social inclusion,

limiting themselves to measures under the general de minimis threshold and not using the option to establish measures under Commission Regulation (EU) No 651/2014 (the General Block Exemption Regulation) such as regional aid, risk-finance aid, and aid to recruit disadvantaged workers'.

2.5. A recent study on *State aid for access to finance for social enterprises and for the recruitment of disadvantaged workers in the form of wage subsidies* ([1]) examined the application and impact of the GBER on social enterprises that employ disadvantaged workers in the Member States. The results showed that national authorities often apply alternative rules to the GBER, citing reasons such as a lack of knowledge of the EU rules on State aid, the complexity of the GBER and other administrative difficulties.

3. **General comments**

3.1. The Draghi report on the future of European competitiveness stresses the link between competitiveness and the European social model, and points to the importance of safeguarding European welfare and social protection systems. To this end, this opinion stresses the importance of reconciling the need for strong public support for social economy entities – which often perform functions and roles formerly performed by the State – with the EU rules on State aid. In particular, due consideration should be given to the distinct nature of the health and social services market, in which social economy entities operate. In this respect, the EESC points out that the objective of social economy entities is not to maximise profits to be distributed among investors, but rather to reinvest these profits back into their activities, or, in any case, to achieve social or general interest objectives.

3.2. In this vein, it is pertinent to refer here to the landmark judgment of 8 September 2011, in joined cases C-78/08 to C80/08 – Paint Graphos and others, in which the Court of Justice of the EU ruled on the Italian corporation tax exemption for cooperatives, arguing that precisely because of their characteristics, cooperatives are not in a comparable situation to that of commercial companies. This recognition of the legitimacy of a specific tax regime according to the specific characteristics of an entity should inspire the co-legislators to adopt the same policy orientation for the various entities of the social economy.

3.3. While the EESC warmly welcomes the recent increase in the de minimis ceilings to EUR 300 000 and EUR 750 000 over three years for ordinary companies and SGEI companies respectively, it points out that de minimis aid cannot be considered a sufficient legal basis under EU State aid rules for granting public aid to social economy entities in the health and social field ([2]). Nevertheless, many national administrations predominately use the de minimis framework instead of the GBER, the communication on employment aid or the SGEI State aid framework due to its simplified structure and ease of application, and due to an unfamiliarity with the GBER, even though it has been in force since 2014.

3.4. While aware that it is not possible to establish in advance default lists of economic and non-economic activities and to set out how this concept is ultimately to be assessed in each specific case, the EESC points out that the activities of social economy entities – be they carried out by association-based structures with the contribution of volunteers in a non-profit context, or in some cases by social economy entities such as cooperatives, mutual societies or foundations – can be solidarity-based and not economic in nature. These should therefore be considered to fall outside the scope of Article 107 TFEU.

3.5. The EESC notes that, in the field of health and social services, cross-border mobility and relevance are often absent on the demand side, since these services are exclusively local and focused on proximity. In some cases there is even a lack of internal mobility between the various regions of the same State, which further underlines the strong locally-rooted nature of health and social services.

3.6. While there can potentially be cross-border mobility in the supply of health and social services, the EESC believes that national authorities should ensure non-discriminatory access to a robust system of financial support for health and social services compatible with Article 107 TFEU, without the State aid framework becoming the justification for reducing public funding in a sector that is fundamental to social cohesion at local level.

([1]) *Study on State aid for access to finance for social enterprises and for the recruitment of disadvantaged workers in the form of wage subsidies.*

([2]) For the definition of 'social and health services', see the European Pillar of Social Rights Action Plan or, more specifically, the Communication on the European Care Strategy (COM(2022) 440 final).

3.7. In line with the political will expressed in the Social Economy Action Plan and in the recommendation, in which the institutions are urged to act to unlock the potential of social economy entities, the EESC believes that the State aid rules should recognise the specific nature and tasks of these entities, and provide them with regulatory provisions that take into account the characteristics of the social economy, and primarily the statutory obligation to reinvest all or most of the profits in pursuit of general interest objectives, as set out in the national legal frameworks and in the Council recommendation.

4. **Towards a State aid framework that is aligned with the aims of the social economy**

4.1. With reference to the possible granting of aid compatible with the internal market, the EESC believes that the rules for granting aid for the recruitment of disadvantaged workers or workers with disabilities set out in Section 6 of the General Block Exemption Regulation (Regulation (EU) No 651/2014) should be strengthened and simplified, and that the communication on employment aid should be updated to reflect the current economic situation. In this regard, one concrete and quick action that the Commission could carry out would be to adjust the maximum thresholds for the aid that can be granted for activities related to reintegration into labour market. The EESC also stresses that these two categories of aid need to be kept specific and separate, and that the timeframes that have been set for updating the GBER need to be respected.

4.2. The EESC therefore shares and strongly supports the suggestion contained in the Letta Report on the single market that these rules should be reassessed and improved (p. 106).

4.3. The EESC welcomes the proposal made in the Letta Report to adapt the current legal framework on State aid in order to facilitate better access to credit and funding for social economy entities.

4.4. The EESC believes that any revision of the GBER (Regulation (EU) No 651/2014) – that sets out the specific conditions for the 'compatible aid' that can be granted without prior approval by the Commission – should explicitly recognise social economy entities. This would, as suggested in the Letta Report, require a legal definition in the GBER of 'social economy entities'. This is precisely why in many cases and situations, the activities of social economy entities would not be in breach of EU competition rules governing markets, as they are carried out within an enterprise model that does not seek to maximise profits, but to reinvest them to achieve social or environmental objectives based on solidarity.

4.5. Moreover, the EESC notes that national authorities are making insufficient use of Article 56 of the General Block Exemption Regulation – which relates to investment aid for local infrastructure – with specific reference to the investments that need to be made in health and social services, despite the fact that this article can in many cases provide a suitable legal basis for compatibility, with a potential that outstrips that deriving from the de minimis rules.

4.6. Additionally, the EESC notes that the legal framework for aid for SGEIs is not being properly harnessed by public authorities with regard to health and social services. Indeed, the competent state authorities often fail to give sufficient attention to the high degree of discretion that the Treaties confer on them with regard to the power to classify certain activities as services of general economic interest. The EESC believes that this discretion is particularly pronounced in the case of health and social services, both for reasons of vertical subsidiarity and social cohesion and because of the absence of the specific regulatory constraints that are found, for example, in other SGEIs of greater economic significance such as network industries.

4.7. The EESC notes that Article 2(1)(c) of Decision No 2012/21/EU, which makes certain forms of compensation for SGEIs compatible with the internal market, does not provide for any upper limit on 'compensation for the provision of services of general economic interest meeting social needs as regards health and long term care, childcare, access to and reintegration into the labour market, social housing and the care and social inclusion of vulnerable groups'. The EESC therefore urges national authorities to make greater use of these rules.

4.8. The EESC agrees with the observation that the field of health and social services has long constituted a 'dividing line between the negative understanding of SGEI as a derogation from EU competition law and the new, positive understanding of SGEI as an expression of citizenship rights' (Fiedziuk, N.A., *Services of general economic interest and the Treaty of Lisbon: Opening doors to a whole new approach or maintaining the 'status quo'*, European Law Review, 2011, p. 229).

4.9. National authorities often find the SGEI rules difficult to apply from a technical and bureaucratic point of view, particularly when it comes to developing specific entrustment acts and being able to apply complex legal concepts such as 'reasonable profit'. This appears to be due to the fact that the bureaucratic and compliance burden imposed on network industries with a strong commercial structure is also extended to the quite different sector of health and social services, which may become problematic in relation to services that are purely social in nature, which are provided on an eminently local scale (Merola, M., 2012, European State Aid Law Quarterly, 2/2012, p. 29).

4.10. The EESC therefore calls for specific investments at national and European level to promote training for national administrations on unlocking the potential that lies in the SGEI rules, with particular reference to health and social services, and calls for national best practices and experiences to be collated and made available and accessible as reference examples.

4.11. On this point, we would highlight a document entitled *Guide to the application of the European Union rules on state aid, public procurement and the internal market to services of general economic interest, and in particular to social services of general interest* – SWD(2013) 53 final/2, published in 2013 – which proved to be of great practical use in the past, and call for it to be updated more than ten years on from its initial publication.

4.12. The EESC welcomes the announcement in the Political Guidelines for the incoming European Commission 2024-2029 stating that 'we will also revise our State aid rules to enable housing support measures, especially for affordable energy-efficient and social housing'. The EESC points out that the State aid rules applicable to compensation for the provision of SGEIs could be significant here, in part because of what social economy entities can accomplish in the way of tackling the housing crisis, as housing cooperatives, housing foundations, mutual societies and many philanthropic organisations have demonstrated they can do.

4.13. Furthermore, the EESC notes that flexibility provisions could be introduced by relaxing the application of the State aid rules in the case of funding under the ESF, ERDF, etc. This type of funding – although to a large extent governed by EU law – is currently subject to the State aid rules due to the discretion that remains with the national authorities, whereas the State aid rules do not apply to funding that comes fully from the EU and is managed at EU level without State involvement.

4.14. On 12 February 2024, under the auspices of the Belgian presidency, the representatives of 19 governments signed the *Liège Roadmap for Social Economy in the European Union*, proposing 25 specific commitments for the implementation of the Social Economy Action Plan. The EESC hopes that the incoming Commission will take these proposals on board during its mandate.

Brussels, 22 January 2025.

The President
of the European Economic and Social Committee
Oliver RÖPKE