



European Committee  
of the Regions

# Network of Regional Hubs for EU Policy Implementation Review

Implementation Report  
Fourth Consultation, on State Aid

SGEIs, Regional State aid Framework  
and Temporary Framework for State aid



**RegHub**



*The content of this report has been approved by the European Committee of the Region's Subsidiarity Steering Group on 6 November 2020. More information on the Subsidiarity Steering Group is available on <http://portal.cor.europa.eu/subsidiarity/Pages/default.aspx>.*

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## 1. Executive summary

### 1.1 Two consultations and a study

In 2020, the European Committee of the Regions' (CoR) network of Regional Hubs ([RegHub](#)) has carried out **two stakeholder consultations** on the topic of State aid:

- The first one ran from 3 April 2020 to 31 May 2020 and covered the implementation of the rules on [Services of General Economic Interest](#) (SGEIs) and the [Regional State aid Framework](#).
- The second one ran from 18 June 2020 to 10 August 2020 and dealt with covid-19 related measures at the EU level, among which the [Temporary State aid Framework](#) (TF).

As was the case for previous RegHub consultations, both consultations were aimed at gathering the views of relevant stakeholders, to identify the difficulties they face when they implement these rules and to identify options for their improvement. In addition, the CoR ordered a **study on SGEIs**, encompassing:

- an analysis of Member State reports,
- the Commission's consultation on SGEIs in the health and social sectors and
- interviews conducted for the study.

### 1.2 Key findings

#### 1.2.1 SGEIs

It should be pointed out that the study confirms the findings of the relevant consultation and thus identifies three categories of recurring difficulties:

- uncertainty and lack of clarity about some basic concepts,
- lack of appropriateness of the current SGEI legislation for the market contexts and
- excessive administrative burden.

The consultation shows that overall, the hubs have a positive view of all **key notions**<sup>1</sup> covered by the concept of SGEIs, although they expressed reservations or concerns pertaining to the actual application of those notions.

These concerns are triggered by the **public authorities' obligations to provide public services**. Some hubs argue that this makes it difficult to define when a public authority provides a public service in line with the key values defined in Protocol 26 to the TFEU<sup>2</sup> or whether it performs an economic activity in the pursuit of profit.

A difficulty that was regularly mentioned by the hubs is **administrative capacity**. They explain how the complexity of rules often requires difficult investigations and specialist knowledge. This is a heavy burden on administrations, especially in small regions, cities and municipalities, due to limited resources.

Another key finding in the report is **the need to recognise that market failure is a dynamic concept**. This has consequences for the definition of 'economic' and for public authorities' flexibility to react to market changes. A telling example is the **definition of social housing** in the [2012 SGEI Decision](#), which seems to contradict the reference to market failure as a legitimate criterion to define SGEIs and their target group and thus limits the ability of public authorities to provide services in line with the EU values

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<sup>1</sup> **Key notions** (e.g. economic activity, undertaking, manifest error, reasonable profit, etc) are used by public authorities and the Commission in the area of SGEIs, when assessing whether a given public service can qualify as SGEI or not.

<sup>2</sup> A high level of quality, safety and affordability, equal treatment and the promotion of universal access and of user rights.

defined in Protocol 26 to TFEU. Especially the current rapidly changing socio-economic reality shows the need to intervene in case of market failure and therefore definitions and concepts in the State aid legal framework must be streamlined.

In light of the socio-economic challenges posed by the covid-19 pandemic, a large majority of hubs claims that there is a need to review the conditions for the *de minimis* aid. They are particularly in favour of increasing **the amount** of *de minimis* aid that can be granted under the [SGEI \*de minimis\* Regulation](#), i.e. up to EUR 500 000 over a period of three fiscal years.

The hubs were also asked how they experience the **interaction between State aid and public procurement rules** in light of the Commission's promotion of public procurement as an 'easier' way to comply with competition rules. Here, a differential treatment of the **services provided 'in-house'** under the State aid framework and under the public procurement Directives seems to cause particular difficulties.

When it comes to **the burden of proof** to establish that a provided service is incompatible with the single market, most hubs are in favour of shifting it towards the complainant and/or the European Commission. They argue this would increase legal certainty, and local and regional decision-makers' willingness to act, as well as reduce the number of complaints in total. They claim the current uncertainty hangs like a sword of Damocles over a large number of measures, because individual aid beneficiaries struggle to provide extensive evidence. In this context, it could be useful to expand the criterion of harm to trade or to specify the term 'local' in greater detail.

Most hubs share the view that the current framework for local and regional authorities to **provide SGEIs in line with Protocol 26** to the TFEU is adequate, although with some caveats. Exploiting discretion for the design of SGEIs might be possible in theory, but difficult in practice, because of considerable financial risks and far-reaching negative legal consequences in the event of errors.

Asked if **the efforts and administrative burden required for complying with SGEI rules is proportionate with the benefits**, the vast majority of the hubs argues that this is not the case: in-depth knowledge and/or experience with State aid rules is largely missing and prevents an effective application.

### 1.2.2 The regional State aid framework

The consultation highlights that regions and cities are facing **new challenges triggered by the covid-19 pandemic** that affect the assessment of the Regional State aid framework. A large majority of hubs considers the existing rules sufficient, but identifies issues that require more flexible approaches and instruments to help public authorities effectively address the impact felt at regional and local level.

In light of this, some hubs argue that the **current regional aid maps<sup>3</sup> do not adequately capture the true situation in the EU regions** caused by the covid-19 pandemic. Some hubs claim that the overall population coverage, the maximum permissible levels of aid, and the type of investments provided for in the regional State aid framework should therefore be increased/broadened.

The recently presented [draft Regional aid Guidelines](#) (RAG) **are not fully addressing all the concerns** raised by the hubs. For instance, the indicators and the methods of defining areas on the aid maps as well as aid intensities, are not appropriate. Some hubs argue that mapping out the eligible areas based on obsolete statistics will not adequately capture the real situation as a result of the covid-19 pandemic.

In addition, the permissible aid to large undertakings has been identified as a clear case for concern for some regions. Some hubs see a positive impact of investments in large companies, which occur thanks

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<sup>3</sup> The geographical areas where companies can receive regional state aid, and at which intensities.

to beneficial spill-over effects on the economic development of disadvantaged regions, the functioning of the single market and, consequently, on employment. Some even argue that support for large enterprises does not hold back or adversely affect SMEs.

Several replies highlighted the complexity of regional aid rules such as (1) the definition of the SMEs, (2) the "incentive effect" and (3) the definition of "new activities". Those definitions are considered to require refinement in order to be efficient.

Hubs note that the application of State aid rules is intrinsically intertwined with Cohesion policy instruments. They argue for the [Simplified Cost Options](#)<sup>4</sup> (referred to in the GBER<sup>5</sup>) to be transposed into the regional aid guidelines and not be limited to Cohesion financing. These provisions offer an interesting compromise between the necessary monitoring of public spending and a reasonable level of administrative burden that it implies.

### 1.2.3 Temporary State aid Framework

With respect to the [Temporary State aid Framework](#) (TF), the consultation shows that a vast majority of the respondents was aware of the updated measures and that their administrations implemented them under the TF. The most common measures have been aid in the form of direct grants, followed by aid in the form of guarantees and loans channelled through credit institutions.

In general, the respondents have a favourable view of the TF and agree that it facilitates an appropriate response to the challenges posed by covid-19. The majority of the hubs says TF enabled support measures at short notice and without complications to companies that had experienced liquidity bottlenecks and payment difficulties as a result of the pandemic.

The vast majority of respondents would be in favour of extending the TF beyond the original December 2020 end date. Indeed, the majority of the hubs expresses the fear that the effects of the pandemic would last much longer than initially presumed and in any case beyond December 2020. Others, however, pointed towards the risk of competition distortions within the EU. They argue that such distortions must be avoided by limiting the application of the TF in time. Respondents also stressed the importance of the Commission's role in preventing large disparities among Member States with regard to the amount or sums of aid covered by the TF. If the EC does not live up to the expectation of balancing out the different demands from Member States, the single market could suffer from the differences between Member States' financial capacity to support their businesses and recover from the crisis.

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<sup>4</sup> **Simplified Cost Options** (SCOs) are an innovative way of reimbursing grants and repayable assistance under the European Structural and Investment (ESI) Funds. Instead of reimbursing 'real costs', SCOs allow reimbursing expenditure according to predefined methods based on process, outputs or results. SCOs can take the form of flat rate financing, standard scales of unit costs, and lump sums.

<sup>5</sup> The **General Block Exemption Regulation** (GBER) allows State aid without prior notification to the Commission in certain areas and under certain conditions.



## 2. Introduction

### 2.1 Why an implementation report on State aid?

Long before the outbreak of the covid-19 pandemic, the CoR, on the basis of its annual work programme and after having discussed the priorities of the RegHub network for year 2020, both with RegHub members and within the competent political bodies of the CoR, decided to conduct a consultation of the members of the RegHub Network in the area of State aid. The focus of the consultation more specifically was on the Services of General Economic Interest (SGEIs) and the Regional State aid Framework.

In the framework of better regulation, the European Commission has launched a Fitness Check of a series of State aid legislative texts and guidelines reformed under the **State aid Modernisation (SAM) package**, including the **General Block Exemption Regulation (GBER)** and the guidelines on regional State aid.<sup>6</sup> Likewise, the European Commission conducted [another evaluation to check if the rules on health and social services of general economic interest \(SGEIs\) meet their objectives under the 2012 services package](#). Those objectives were to support EU Member States in funding the services that are vital to people and society as a whole while preserving the key concepts of state subsidy control and therefore avoiding distortions of competition<sup>7</sup>.

First, the CoR consultation aimed at identifying possible difficulties encountered by stakeholders in the area of SGEIs. SGEIs are economic activities which deliver outcomes in the overall public good that would not be supplied (or would be supplied under different conditions in terms of objective quality, safety, affordability, equal treatment or universal access) by the market without public intervention. The **SGEI package** consists of four instruments: The interpretative [Communication from the Commission](#), which clarifies key concepts, related to State aid for SGEIs and to the Commission's approach to how the [Altmark criteria](#)<sup>8</sup> should be fulfilled, the [Decision](#) and the [Framework](#), which specify the conditions under which State aid in the form of public service compensation is compatible with the TFEU. The [de minimis Regulation](#) establishes a threshold below which compensation is deemed not to be State aid. The Decision and Framework have been in force since 31 January 2012.

The CoR consultation also aimed at gathering, through the Hubs, relevant stakeholders' views on the application of the current **Regional aid Framework 2014-2020** to see whether the Hubs face any difficulties in this regard. The Regional aid Framework 2014-2020 consists of (i) the [Regional aid Guidelines \(RAG\) for 2014-2020](#) (RAG), (ii) the regional aid maps as part of the RAG, and (iii) the provisions applicable to regional aid in Commission Regulation (EU) No 651/2014 of 17 June 2014, declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty ([General Block Exemption Regulation](#), GBER).

Considering the key role of subnational governments (regions, cities and municipalities) as providers of SGEIs along with the decisive role of the Regional State aid Framework in the way Member States and regions address socio-economic challenges at regional level and thus regional disparities, the CoR

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<sup>6</sup> The roadmap for the consultation is accessible via [https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2018-6623981\\_en](https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2018-6623981_en).

<sup>7</sup> For further info: [https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2019-3777435\\_en](https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2019-3777435_en).

<sup>8</sup> In the **Altmark case** (24/07/2003) the ECJ **laid down four specific criteria** in order for the public service compensation to be considered as free of State aid elements and thus not be caught by Article 107(1) TFEU: 1) The recipient undertaking must actually have public service obligations to discharge, and the obligations must be clearly defined. 2) The parameters on the basis of which the compensation is calculated must be established in advance in an objective and transparent manner. 3) The compensation cannot exceed what is necessary to cover all or part of the costs incurred in the discharge of public service obligations, taking into account the relevant receipts and a reasonable profit for discharging those obligations. 4) Where the undertaking which is to discharge public service obligations, in a specific case, is not chosen pursuant to a public procurement procedure which would allow for the selection of the tenderer capable of providing those services at the least cost to the community, the level of compensation needed must be determined on the basis of an analysis of the costs of a typical, well run and adequately equipped undertaking.



RegHub consultation aimed at analysing the challenges and the opportunities that regions and cities see in implementing the State aid legal framework in the area of SGEI and of regional aid.

In the meantime, the outbreak of the coronavirus pandemic triggered a combined negative supply and demand shock, which is adversely affecting the production of goods and services and thus everyone's income with ensuing effects on unemployment. This creates new socio-economic challenges for public authorities at all levels of government, being national, regional or local, across the EU. To cushion the immediate effects of the crisis, national governments had to massively intervene to financially support distressed companies and households. This was made possible thanks to the adoption by the Commission of a [Temporary Framework](#) to support the economy in the context of the coronavirus outbreak adding further flexibilities in State control on top of the existing ones. This allowed Member States to guarantee a rapid response to the economic downturn and to the immediate needs of their companies, workers and human capital.

The pivotal role of State aid rules in defining public authorities' leeway to support companies and households and thus their ability to cushion part of the impact of the pandemic had already come up in the context of the RegHub consultation on SGEIs and the regional State aid framework, and more concretely in the part that covered the regional State aid framework. Under this part, it transpires that many stakeholders see the need for the Commission to reassess or reconsider key concepts and indicators on which the regional State aid framework is based to cater for the new socio-economic needs at regional level.

In light of the key role of the State aid Temporary Framework in helping public authorities address some of the new challenges, the CoR also conducted a flash consultation of the members of the Network of Regional Hubs in an effort to gather relevant user experience from regional and local stakeholders with the implementation of the Temporary Framework.

## 2.2 How did this report come about?

Like the previous RegHub implementation reports, this report reflects the European Committee of the Regions' (CoR) ambition to make EU legislation better tailored to the needs of cities and regions. It compiles technical information distilled from a **consultation of the regions and cities that are members of RegHub** and their stakeholders.

Like its predecessors, this report builds on the network's **unique three-step approach** for its consultations:

- First, the State aid topic was discussed with the contact points of the regional hubs during the network's workshop in Brussels in March 2020. Moreover, relevant institutional actors and stakeholders working in the area of State aid have contributed their expertise.
- Second, the RegHub secretariat submitted a draft questionnaire to the contact points for review. After receiving their feedback, the RegHub secretariat integrated the final changes in the final version of the questionnaire and sent it to the regional hubs in their respective languages.

The survey was conducted from 3 April 2020 to 31 May 2020. During that time, each of the participating RegHub contact points consulted the relevant stakeholders in their territories, aggregated their responses into a coherent reply and timely provided the RegHub secretariat with their contribution to the consultation. Based on the assessment of the replies to the State aid survey, the contact points consulted over 100 key stakeholders in total, all of which are involved in the implementation of State aid rules at the local and regional level.

- Third, the regional hubs' answers to the survey have been analysed, structured and compiled into a draft implementation report, which was again sent to the hubs' contact points for their review before this report was published in its final version.

This report includes additional evidence on the implementation of State aid policies, which has been drawn from an **exceptional flash consultation**. The consultation was specifically dedicated to the implementation of the Temporary Framework for State Aid and the adapted public procurement guidelines of the European Commission. It was carried out between 18 June and 10 August 2020 and yielded 20 responses, comprising the feedback from more than 90 stakeholders.

This report does not include the complete set of responses on all questions from all of the participating hubs and stakeholders. It encompasses a selection of the most frequent, relevant and useful replies on specific technical implementation issues. In this regard, it should be noted that some of the hubs are composed of different local and regional authorities, who - in some cases - might have divergent views on certain questions because their implementation practices or experiences differ from each other. Likewise, the stakeholders that were consulted by the hubs sometimes provided diverging answers; in particular, when respondents could select multiple answers for a given question. This diversity has been taken into account, when processing the regional hub's answers and compiling them into this final report. Therefore, this RegHub implementation report captures a wide variety of statements and reflects the difficult and multifaceted reality on the ground, where the same policy or rule may be judged differently by different actors.

It should be noted that the report does not represent the views of the CoR.

RegHub consultations do not comply with the usual requirements to obtain a statistically representative sample of all of the EU's local and regional authorities. However, the profile of the consulted stakeholders ensures a qualitatively relevant result. This is because many of the consulted stakeholders provide **highly granular and technical information based on their user experience of implementing State aid rules on the ground**. This information often includes implementation issues, which are rarely covered in other surveys and evaluations.

The CoR has also commissioned an **analytical study** on *"Regions and cities providing SGEIs: identifying difficulties resulting from the State aid framework"*.<sup>9</sup> The study provides a descriptive overview of the problems local and regional authorities face when trying to assess whether a service qualify as SGEI; an analysis/synthesis of the feedback submitted by public authorities and relevant stakeholders in the context of the evaluation of the rules on health and social SGEIs (public consultation conducted by the European Commission); an overview and analysis of the possible challenges with the implementation of the SGEI Decision as reported by the Member States in the latest country reports along with an overview of the drafting process of the Country Reports across Member States and the degree of involvement of local and regional authorities; and a number of case examples/experiences from individual regions/LRA with identification of specific proposals that key stakeholders have made. On the basis of this analysis the study puts forward policy conclusions and recommendations to different government/administration levels in view of needs and opportunities from the point of view of regions and cities for improving the legal framework with a view to facilitating its implementation in a regional and local context.

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<sup>9</sup> Alessandrini, M. (t33), Tarantino S. (t33), Zillmer, S. (Spatial Foresight), Dersniak-Noirjean, M. (ÖIR), Le Moglie, P. (t33). *Regions and cities providing SGEIs: identifying difficulties resulting from the State aid framework*, October 2020. **Hereafter: CoR study (2020)**.

### 3. State aid framework in the area of SGEIs

The concept of SGEI appears in Articles 14 and 106(2) the Treaty on the Functioning of the European Union (TFEU) and in Protocol No 26 to the TFEU, but it is not defined in the TFEU or in secondary legislation. The Commission has clarified that SGEIs are economic activities which deliver outcomes in the overall public good that would not be supplied (or would be supplied under different conditions in terms of objective quality, safety, affordability, equal treatment or universal access) by the market without public intervention.<sup>10</sup> A Public Service Obligation (PSO) is imposed on the provider by way of an entrustment and on the basis of a general interest criterion which ensures that the service is provided under conditions allowing it to fulfil its mission.

Public authorities in the Member States, whether at national, regional or local level, depending on the allocation of powers between them under national law, have considerable discretion when it comes to defining what they regard as SGEI. The only limits are those imposed by EU law and **manifest error** of assessment. The freedom of the Member States to define SGEIs is subject to review by the Commission and the Union's courts to check for manifest errors of assessment (paragraph 46 of the Communication).

State aid control comes into play when SGEIs are provided by a company and **financed through public resources**, in particular because overly generous compensation could enable the service providers to cross-subsidise their other commercial activities, and thereby distort competition<sup>11</sup>.

State aid rules, therefore, concern the precise conditions under which compensation for public service obligations constitutes State aid, the conditions under which they have to be notified to the Commission and the conditions under which State aid may be regarded as compatible with the TFEU.

The State aid SGEI package consists of **four instruments applicable to all authorities** (national, regional, local) that grant compensation for the provision of SGEIs:

1. The [Communication](#) which gives a comprehensive and practical overview of the EU State aid concepts relevant to SGEIs and provides explanations of key issues in a single document. It summarises the most relevant case law of the EU Courts and the Commission's decision-making practice. It aims at facilitating the application of State aid rules for national, regional and local authorities as well as public service providers. The Commission has sought to provide as much clarity as possible on key concepts, such as the notion of economic activity, effect on trade or SGEI, as well as on the relation between State aid and public procurement rules.
2. The [SGEI de minimis Regulation](#) provides that SGEI compensation not exceeding EUR 500 000 over any period of three fiscal years does not fall under State aid scrutiny. This is because the amount is so small that it can be deemed not to have an impact on cross-border trade or competition. Since the measures are not considered as State Aid, **there is no obligation to notify them in advance to the Commission.**
3. The [Decision](#) specifies the conditions under which compensation to companies for the provision of public services is compatible with the EU State aid rules and does not have to be notified to the Commission in advance.
4. The [Framework](#) specifies the conditions under which public service compensation not covered by the Decision is compatible with the EU State aid rules. **Such compensation will have to be notified to the Commission** due to the higher risk of distortion of competition, so that the

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<sup>10</sup> European Commission, Commission Staff Working Document, 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, 29 April 2013. [https://ec.europa.eu/competition/state\\_aid/overview\\_new\\_guide\\_eu\\_rules\\_procurement\\_en.pdf](https://ec.europa.eu/competition/state_aid/overview_new_guide_eu_rules_procurement_en.pdf).

<sup>11</sup> For further info on SGEIs and State aid: [https://ec.europa.eu/competition/state\\_aid/overview/public\\_services\\_en.html](https://ec.europa.eu/competition/state_aid/overview/public_services_en.html).

Commission can make an in-depth assessment and decide whether the measure in question is compatible with the internal market.

Both the Decision and the Framework specify the conditions under which public service compensation constituting State aid is compatible with the TFEU. The most important difference lies in the fact that public service compensation covered by the Decision does not need to be notified to the Commission. Once the criteria of the Decision are met, the Member State concerned may grant the compensation without delay. However, when the conditions set out in the Decision are not met, the compensation would fall under the Framework. This means that it must be notified in advance to the Commission so that it can check whether the State aid concerned is compatible with the TFEU. In addition, given that cases falling under the Framework are typically large cases that could potentially create more significant distortions of competition, the compatibility conditions are generally stricter than under the Decision.

The State aid rules apply only to ‘**undertakings**’. This concept covers any entity engaged in an economic activity, regardless of the entity’s legal status or the way in which it is financed. In particular, it is irrelevant whether the entity is set up to generate profits or not.

The TFEU rules on State aid apply also to non-profit service providers. The mere fact that an entity is non-profit-making does not mean that the activities which it carries on are not of an economic nature. **The legal status of an entity providing SGEIs does not affect the nature of the activity concerned. The relevant criterion is whether the entity pursues an economic activity.** For example, a non-profit association or a charitable organisation pursuing an economic activity will constitute an ‘undertaking’ only for that specific activity. The competition rules will not apply to their non-economic activities.

Any activity consisting in offering goods and/or services in a given market is an **economic activity** within the meaning of the competition rules. In this context, the fact that the activity in question is termed ‘social’ or is carried on by a non-profit operator is not in itself enough to avoid classification as an economic activity. The classification of an activity may depend on the way in which the activity is organised in a Member State and it can change over time due to policy decisions on the way in which the activity is organised or as a result of market developments.

In the field of State aid law, **the effect on trade does not depend on the local or regional character of the service supplied**, or on the scale of the activity concerned. The relatively small amount of aid provided or the relatively small size of the entity which receives it do not in themselves rule out the possibility that trade between Member States might be affected. Even a small amount of aid can boost the services supplied by one service provider, thereby making it more difficult for other European companies to supply the same services on the local market. However, on the basis of its own experience, the Commission has established ceilings up to which it believes that aid will not affect trade or competition. For instance, aid for the provision of an SGEI not exceeding a ceiling of EUR 500 000 over any period of three years is, under the SGEI *de minimis* Regulation, deemed not to affect trade between Member States and/or not to distort or threaten to distort competition and therefore does not fall under Article 107(1) of the TFEU.

In an effort to identify possible difficulties encountered by stakeholders at regional and local level with the legal framework, the members of the RegHub network were asked to evaluate key notions that define the presence of State aid and thus structure the State aid control in the area of SGEIs (see detailed questionnaire in [Annex 5](#) - questions 1 to 20).

### **3.1 The notion of economic activity**

Only if a public service is regarded as 'economic', it is subject to internal market and competition rules. To clarify the distinction between economic and non- economic activities, the Court of Justice has consistently held that any activity consisting in offering goods and services on a market is an economic activity. The question whether a market exists for certain services may depend on the way those services are organised in the Member State concerned. The State aid rules only apply where a certain activity is provided in a market environment. The economic nature of certain services can therefore differ from

one Member State to another. Moreover, due to political choice or economic developments, the classification of a given service can change over time. What is not a market activity today may turn into one in the future, and vice versa. The [Notice on the Notion of State aid](#) also states that the in-house provision of a service does not rule out the existence of economic activity.

The members of the RegHub network and the subsequently consulted stakeholders were asked to express their views on the notion of economic activity. The majority of the respondents believe that the notion of economic activity is straightforward and easy to use when assessing whether the public services provided qualify as SGEIs. However, one quarter of the respondents have the opposite view and **even those hubs, who find the concept straightforward and easy to use, raise various concerns pertaining to the actual implementation of the concept.**

**It is stressed, among others, that the legal nature of public authorities, especially regions, cities and municipalities, and the obligations imposed on them by the legislation in relation to the provision of key public services (e.g. waste management) make it difficult to define when a public authority provides a service in order to fulfil its legal obligations aimed at ensuring the provision of public services in line with the key values defined in the Treaty<sup>12</sup> and when it performs an economic activity.** It transpires from the consultation that this aspect is particularly problematic in the area of social services such as social housing.

It is also noted that the legal ambiguity with regard to the economic or non-economic nature of a public service leads some administration to use SGEI as a tool used less frequently than might be possible. This means that certain services of general interest are more difficult to deliver or are not delivered. In a similar vein, it is underlined that it is very difficult for public authorities to define when there is a relevant market as this requires economic analyses and skills which are not always available internally in regional and local administrations.

The **Flanders** hub, for instance, express a more neutral view on this question. They share the view that in general the notion of economic activity is indeed straightforward and easy to use when assessing whether the public services provided qualify as SGEIs. It is stressed, however, that in some cases it is not entirely clear whether activities qualify as economic or non-economic. In these cases, the obligation to specifically mention the SGEI decision forces the regional administration to 'hand over' services in these grey areas to the application of not just state aid rules, but to competition rules in general, in exchange for protection under the current legislative framework. That leaves them in a difficult spot if the legislation changes over time and exceptions become less generous. The hub concludes that a slightly simplified definition to be used in the context of the SGEI framework would be very welcome.

The **Brandenburg** hub stresses that the term is not easy to use because a precise knowledge of the criteria and local situation is necessary for demarcation. Local decision-makers are therefore regularly overstretched. Although the demarcation examples in both the Notion of Aid (NoA) (2016/C 262/01) and the working document on SGEI (situation as at 2013) provide an initial overview, the demarcation between SGIs and SGEIs is not always clear, especially when it comes to market failure. Nevertheless, the NoA provides good guidance on how to deal with specific issues. However, it is desirable to regularly update case law and to specify the conditions for application of Article 107 TFEU.

As dealing with the term "economic activity" is not always satisfactory, particularly in the areas of social services (elderly care homes, day care establishments) and education and culture (environmental education establishments), LAG, a stakeholder consulted by the **Brandenburg** hub, argues that in

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<sup>12</sup> The essential role and the wide discretion of national, regional and local authorities in providing, commissioning and organizing SGEIs as closely as possible to the needs of the users; the diversity between various services of SGEIs and the differences in the needs and preferences of users that may result from different geographical, social and cultural situations; a high level of quality, safety and affordability, equal treatment and the promotion of universal access and of user rights (Article 14 TFEU + Protocol 26 to the Treaty)..

everyday parlance, economic activity is more associated with a profit-making perspective. In many people's minds, public services are not therefore an economic activity. In administration in practice, on the other hand, there has been a broad interpretation of this term in recent years and, in the end, **there is hardly any area of life in which profit-making economic service providers do not also operate.**

The Ministry of Infrastructure consulted by the **Brandenburg** hub notes that it is agreed that the term economic activity is extremely broad, such that all SGEIs are essentially also covered by this term. However, SGEIs are indeed SGIs provided by the State, which is covered by budget law and not competition or market law. Therefore, a distinction should be drawn between an economic activity which takes place in the context of competition and the market, and provision by the State of services of general interest in the form of SGEIs, which should in principle be implemented outside the context of competition and the market, and more on the basis of budgetary law.

The **Brandenburg** Chamber of Commerce and Industry (IHK) stresses that in broadcasting, waste management, and irrigation and drainage, economic activities can also take place alongside services. Municipal construction sites, housing authorities, kindergartens, cemeteries, libraries, youth clubs, museums, emergency services and a variety of other such bodies regularly provide services which could also be obtained from private entities in a market. This also applies to the internal services provided by the above-mentioned institutions.

The **Hauts-de-France** hub argues that it is often difficult to assess whether an economic activity exists, in particular because of the fine line between the commercial and non-commercial public sector, the variety of partnerships and possible ways of management (leasing, concession, public service delegation, etc.) whether there is profit, etc. For example: in the case of activities which mix general interest, the principle of solidarity and the business environment, such as the social and solidarity economy, integration through employment of people in difficulty (sales activities and services on a very limited market and without financial compensation for the body that organises it) or support for creating a business, is there a market that is likely to be affected? It is argued that this is very difficult to determine.

It is also stressed that in order to determine the concept of economic activity, **one needs to draw on economic analyses and skills which are not always available internally.** This could result in classifying service activities as economic, when in reality they are not in competition with others at all. Finally, the concept of economic activity being very broadly understood and going beyond its common meaning, it is sometimes difficult to convince stakeholders who do not have legal backgrounds of the economic or non-economic nature of an activity in the EU's meaning. A summary and educational memo would be useful to help people who are not used to legal analysis to identify whether or not an activity is economic in nature.

The **North Rhine-Westphalia** hub notes that the scope of the SGEI rules as a whole is very difficult to understand if they are not used very often. More guidance on the key terms would be useful – e.g. more practical examples as guidelines.

The **Umbria hub** although it agrees that the concept is straightforward reports that in previous work already carried out by the Italian regions, problems in implementing the SGEI legislation were identified, in particular with regard to the concept of economic activity, in relation to the different kinds of social housing existing in Italy: subsidised public housing; social or affordable housing. In the latter case, housing measures are implemented by private entities (companies, cooperatives, etc.), which receive public contributions in various forms in order to provide rental accommodation (or property at the end of the compulsory rental period), to lower middle income social categories at rents/prices lower than market rents/prices.

By contrast, with subsidised public housing the accommodation is constructed with exclusively public means and managed by public bodies, which rent it out to individuals in situations of financial and family vulnerability for a notional rent covering a minimum proportion of the cost of maintaining the existing property or creating new property (service partly free of charge); this rent does not, therefore, reflect the market price and is not equivalent to consideration.

Therefore, in the case of affordable housing, the public contributions relate to the supply by the enterprises providing the service and there are no particular difficulties in identifying a reference market and therefore an economic activity. On the other hand, in the case of subsidised public housing there is no contestable market: proof of this is the fact that, despite the long waiting lists for people in situations of vulnerability, there are not similar services provided by private individuals, either entrepreneurial or not for profit; in these cases, demand would not be met at all without the public measure.

The absence of a reference market is due, in addition to the low level of charges applicable, to the delinquency rate of landlords and the impossibility or great difficulty of recovering any debt, even symbolic, from debtors, who, even in the event of eviction, ought to be fully assisted by other public services for deprivation. Subsidised public housing is a way of fighting poverty and social exclusion that allows people in a socially disadvantaged situation or in a situation of severe economic vulnerability to find a housing solution; for these people there is no possibility of turning to either the free market or the affordable housing sector. For these reasons, the economic nature of subsidised public housing is not taken into account - it is considered to be part of a public service of general social interest, not an SGEI.

The **Veneto** hub also refers to the sector of social housing which notes that although the main elements of the definition are clear, there is some leeway when it comes to assessing specific cases, which is not always easy. A dedicated list would be useful, identifying the fields of social housing that are defined as SGEIs.

The **Dutch provinces** hub notes that there are considerable differences between Member States in relation to services of general economic interest. This makes a uniform definition of SGEIs difficult. Thus, for example, nature conservation can be deemed an economic activity in Member State X and not in Member State Y. This also applies, for example, to regional promotion, tourism, culture. There is also a lack of clarity in the area of social services (e.g. debt assistance, job coaches). The hub is wondering whether this is a prerogative of public authorities or something the market can deal with. This lack of clarity means that the SGEI is a tool used less frequently than might be possible. This means that certain services of general interest are more difficult to deliver or are not delivered.

The **Community of Valencia** hub reports that opinions differ significantly: the horizontal and employment support coordinators that are implementing this do not see problems with the definition. However, in other areas, opinions diverge: in the tourism field, for example, in which it is seen as straightforward when the recipient of the State aid is a business offering services to users, and therefore operates on the tourist market, but not in the case of non-profit-making business associations or research bodies in the field of tourism. More broadly in the economic field, some stakeholders feel that the concept is too open. For example, although a service may be provided by a single operator (there is no economic activity in the market), it is considered that a market does in fact exist because other operators can or are willing to start providing this service.

The **Catalonia** hub notes that although the theoretical concept is clear, that is not always the case for its practical application. There are many public services, especially social services that are defined as services of general interest, for which it is not easy to establish the relevant market. In other words, many services of a social nature would not be provided without funding from the public authorities. In such cases, no service provider would voluntarily offer these services on the market because, without public funding, these services would not be provided. The question is whether in this case, there is a market for these services.



The **Autonomous Province of Bolzano** hub notes that out of the bodies consulted, only the Department of German Culture — Film and Media Office disagrees. It is of the view that in the field of arts and culture it is very difficult to talk about a market. Although services are involved, the term "economic activity", i.e. "market", is not appropriate.

The Department for Regional Development and European Funds consulted by the **Mazovia Voivodeship** hub makes reference to the Act of 8 March 1990 on Local Self-Government in reference to the tasks of the municipality and economic activity conducted on the local market by entities outside of the public sector (e.g. municipal companies) and entities not affiliated with local government units [LGUs] (e.g. churches and religious associations, NGOs, private companies, individuals not carrying out economic activity) which carry out this type of activity under market conditions. They note that there is a noticeable close correlation between activity carried out in a certain field in market conditions by the municipality (or local government or state institution) and actions resulting from this activity which are subject to VAT. In the context of the structural funds, it is linked to the eligibility of expenditure on projects carried out by beneficiaries within an SGEI in areas where provision of these services is subject to VAT.

However, given that in Polish national legislation, the concepts of 'trader' and 'undertaking' function separately, it is proposed to request a change of application of the definition of this concept through harmonisation of this mechanism between EU law and the law of individual Member States. They mention the introduction into the regulation of an equivalent between the concept of trader and undertaking as a desired result.

The Mazowieckie Unit for the Implementation of EU Programmes also notes that in most cases of SGEIs, separation of the two activities is simple, or even explicitly defined by the relevant rules. The exception is the economic sectors where there are no dedicated guidelines or overriding provisions, such as the cultural sector. In such cases, there may be an interpretation gap when it comes to determining what should be economic activity and what shouldn't.

The **Thessaly** hub stresses that the concept of an economic activity (any activity associated with the placing of goods or services on the market) is not straightforward or simple. It is difficult to establish whether there is a market for certain services; this requires consideration of documentary evidence. Moreover, there are some services that may constitute both an economic and non-economic activity, depending on the body providing them and the purpose they serve. This distinction is not covered in the existing EU regulatory framework. For instance, it is mandatory for first-tier local authorities to collect waste for reasons of environmental protection ("... the cleanliness of all public spaces in their territory, waste disposal and treatment ...") and to ensure "... the protection, development and continual advancement of the interests and quality of life of the local community". The fact that an authority might generate revenue from waste recycling or biowaste does not mean that the collection and disposal of waste is an economic activity for it in the way it is for waste treatment plants. This is because the local authority is required to ensure the collection and disposal of waste regardless of the likely benefit to it of this activity. In other words, the specific provision of services in the market by the local authority should not be considered an economic activity. This distinction is not made clearly enough in the current EU regulatory framework.

It is argued that a clear distinction should be drawn between different categories of services of general economic interest, because the current regulatory framework for granting state aid further complicates procedures. SGEIs should include services that provide direct economic benefit, but should exclude services of a social nature. Activities relating to the provision of goods and services in the public interest by municipal bodies or other public entities are registered in many sectors in Greece. In some cases, these are explicitly prescribed/covered by national law, in others they are not. But a distinction is made even at local and regional level. For example, public health services provided by public bodies or by state-sanctioned third parties are uniformly regarded by law not to be an economic activity for Greece.

By contrast, certain welfare services provided to the public at local level have to be given special consideration to establish whether they constitute an economic activity or not. It is also problematic to determine whether there is a real, or even "potential" market for certain services, so that they would be considered under the heading of an "economic activity". Thus this assessment cannot be described as straightforward.

It is also argued that certain categories of activity that fall under the European Social Fund should be considered as of "special purpose".

The **Helsinki-Uusimaa** hub notes that generally SGEI regulation has still been used very little in Finland, in practice only at the state level based on special legislation. However, it could be further used for bus lines to routes where it is not profitable for private companies. Furthermore, taking the transportation service supervised by the Helsinki Regional Transport Authority, there is a blur understanding to define what is public and private economic activities.

The same difficulty in assessing the presence of economic activity notably in the social sector is highlighted in the CoR study.

As underlined in the Country Report of Belgium by the Flemish Government, social services are described from the perspective of an economic logic (i.e. economic activity) in the current SGEI regulations, which is mainly applicable to economic services concerning, for example, network industries or comparable sectors. Applying this logic to services and subsidies in the framework of work and social economy is more challenging and is certainly not applicable in all respects. Working with concepts such as reasonable profit, rate of return on capital or other profit level indicators and swap rates is suited to a business context, but cannot be easily applied, for example, to subsidising training courses, reintegration measures for job seekers or services of a predominately social nature, where profit-making is not always an objective.<sup>13</sup>

Moreover, it is stressed that a prominent issue frequently noted by stakeholders is the need to recognise dynamics in changing contexts of market failure as part of the framework of the SGEI provision. Interviewees from Latvia suggested that market dynamics contribute to a changing definition of an SGI as economic or non-economic, depending on whether there is an interest on the market to offer such a service. Based on this, **it is important that Member States have liberty and flexibility in defining SGIs as economic or non-economic, in order to be able to flexibly react to market changes.** Member States and/or LRAs should be able to intervene without any restrictions in case of market failure or when they consider that an SGI intervention is necessary.<sup>14</sup>

### 3.2 The notion of undertaking

The State aid rules apply only to 'undertakings'. This concept covers any entity engaged in an economic activity, regardless of the entity's legal status or the way in which it is financed. In particular, it is irrelevant whether the entity is set up to generate profits or not and the status of the entity under national law is not decisive. For example, an entity that is classified as an association or a sports club under national law may nevertheless have to be regarded as an undertaking within the meaning of Article 107(1) of the Treaty. The only relevant criterion in this respect is whether it carries out an economic activity. The same applies to an entity that is formally part of the public administration. The only relevant criterion is whether it carries out an economic activity.<sup>15</sup>

The vast majority of respondents have the view that the notion of undertaking is straightforward and

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<sup>13</sup> CoR study (2020), page 22.

<sup>14</sup> CoR study (2020), page 48.

<sup>15</sup> [Commission Notice on the Notion of State aid](#) as referred to in Article 107(1) TFEU, op. cit., paragraph 8.

easy to use in order to assess whether the provided public service qualify as SGEIs. Only 15% of the hubs express the opposite view.

It transpires that the uncertainty expressed with regard to the notion of *economic activity* is also valid under this question as many of the hubs stress that the definition of the status of an *undertaking* entails assessing the exercise of an economic activity. This seems again to be particularly challenging in the case of services related to social integration, welfare and other services of a social nature or when the provider is a church or an association. More guidance is also requested as regards public undertakings (e. g. municipal transport companies).

The **Brandenburg** hub, for instance, specifies that here too, as in the answer to the question on *economic activity*, a clearer distinction must be drawn between, on the one hand, undertakings that carry out an economic activity in competition and on the market and, on the other, public and private undertakings and State entities that are entrusted by the State with the provision of services of general interest in the form of SGEIs and that, in principle, do not operate in competition or on the market, but rather on the basis of budget law.

It is also argued that although the criterion is in principle straightforward, in practice there are also considerable difficulties in distinguishing between the various economic activities with a corresponding impact on the notion of "undertaking". It is thus noted that the notion of aid may apply well to "traditional" economic activities, but it may quickly come up against its limits in the cultural sector or, for example, in the sports sector (e.g. pensioners' sport may be an economic activity which sports facility organisers could classify as an undertaking).

The stakeholders consulted by the **Flanders** hub agree that the notion of *undertaking* is straightforward and easy to use in order to assess whether the provided public services qualify as SGEIs. They argue nevertheless that **it would be appreciated if the slightly simplified definition of an undertaking, used in article 2.2** of the regular *de minimis* regulation (no 1407/2013) could also be used in the successor to the *de minimis* regulation for aid to SGEI's (no 360/2012).

The **Hauts-de-France** hub reports that this concept raised some debate among respondents. It seems relatively clear to lawyers and people who work with State aid-SGEIs within the organisations contacted, who can draw on experience, clarifications and case law. However, it is noted that classifying a non-profit association as a business makes no sense from the perspective of the final beneficiary. The service is only slightly monetised (for example, to restore a sense of dignity to the beneficiaries of "social grocery shops"), the beneficiaries are not "clients", the association does not intend to make profits or compete with private companies. It is also noted that making such organisations appear to be companies in one capacity or another may also discourage some of their donors who see it as a loss of meaning, which reduces the own resources of these organisations and ultimately exacerbates the need for public assistance to provide these services to those most in need.

The **Hauts-de-France** hub also claims that the concept is not clear in the case of associations/companies which combine several types of activities, some of which are economic in nature and some of which are not. Since this entity is regularly subsidised, for specific activities or for its operation throughout the year, it is difficult in practice to split the economic activities for which a framework would be relevant from the non-economic activities.

The **North Rhine-Westphalia** hub claims that the notion of "undertaking" has proven to be tricky, and should be simplified, particularly for the purposes of the SGEI *de minimis* Regulation.

The **Dutch provinces** hub believes that the concept of an undertaking is clearly defined in the Notice on the notion of State aid and argues that one area that could be addressed is public undertakings such as, for example, (municipal) transport companies.

The **Catalonia** hub also links the notion of undertaking to that of economic activity and sees more difficulties in defining the nature of a service as economic or not. It is argued that once it has been determined whether a public service is economic in nature and therefore whether it is an economic service of general interest, it is clear and easy to determine the notion of an undertaking.

The Department for Regional Development and European Funds consulted by the **Mazovia Voivodeship** hub specifies that in the case of churches and religious associations that provide services and immaterial goods on the market, it cannot be avoided that these entities are engaged in competitive activity in relation to each other. There is a similar situation in the case of associations and foundations, as well as societies (e.g. student sport clubs) because they can apply – in conditions of competition among entities of the same type – for funding to carry out the tasks of their municipalities/districts/provinces (this is a classic example of economic activity under market conditions). Therefore, both NGOs and churches and religious associations without exception meet the definition of an undertaking and should be treated as such. At the same time, it should be noted that NGOs with the status of public benefit organisations and Business Support Institutions (BSI) (which often operate in the form of commercial law companies) that do not work for profit, and whose profits are earmarked for statutory objectives, cannot be treated as undertakings.

The **Thessaly** hub reports contradictory replies by the stakeholders. Some argue that whether a body is engaged in an economic activity can be established relatively easily based on the regulatory framework in which it operates and on its records. Others believe that the term "undertaking" is not straightforward and easy to use: "(...) *The only relevant criterion is whether it carries out an economic activity (...) The same applies to an entity that is formally part of the public administration.*"

It is also argued that the provision of services by public authority entities in relation to the environment, social integration, welfare and other services of a social nature cannot be considered an economic activity and therefore subject to consideration of whether it has the characteristics of an SGEI. Such services when they are provided by the state (central or local government) constitute state obligations towards the population and guaranteeing of quality of life and social cohesion, and the bodies that provide them should not be regarded as undertakings.

The **Dubrovnik-Neretva County** hub points out that the State should specify, i.e. distinguish to what extent the entity in question is considered to be a market undertaking and to what extent is a public undertaking, i.e. performs an activity of general interest. Some stakeholders say that they do not think that a particular society, sports club or association can be considered to be an undertaking in comparison with a company or craft enterprise; for the latter this is their principal activity, from which they generate revenue. In addition, the taxes that are paid in each case are different and cannot be equated. It is also stressed that an economic activity will never be the primary aim of associations and sports clubs.

The **Helsinki-Uusimaa** hub notes that the definition of economic activities varies. For instance, the formal government was preparing social and health care reform (SOTE) which majorly being prepared in 2018. One of the obstacles was if the social and health care could be offered by the private sectors and how it would be in line with the SGEI principle.

From the CoR study also it transpires that there is a **lack of evidence of what should be considered as an undertaking**.<sup>16</sup> The determining factor relevant for the SGEI package is whether the undertaking performs an activity of an economic nature, which is further aggravated when different activities are performed by the same undertaking. For the French Community Commission in the Brussels Capital Region this problem can occur also at territorial level since "*an undertaking pursuing the same object can receive public aid from different levels of government. It is sometimes complicated to identify whether these activities come under the same general interest task. [...] For some undertakings, one level of government grants approval, but not public aid. This distribution of responsibility by level of*

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<sup>16</sup> CoR study (2020), page 22.

government complicates the application of the SGEI Decision” (Member State report Belgium, 2018, French Community Commission, p.11). Likewise, the correct identification of what should be considered as **an undertaking affects the basic principles regarding compensation, calculation of costs and a reasonable profit** which adds to the challenges.

**The French Community Commission, Brussels Capital Region** also notes that *“A key issue arose at the level of the very concept of ‘enterprise’. For the EC, this also applies to non-profit organisations with a social vocation while the profit made by the activities developed by this type of associations cannot be distributed to founders, members, directors or any other natural or legal person. This sets them apart from private companies whose purpose is instead the profit which is distributed to the directors. This issue is linked to the very nature of economic activity. Indeed, the subsidies that receive these associations rarely cover all the costs inherent to the service itself. In addition, some regulations impose co-financing of associations on the basis of own resources. They must therefore set up activities, that is to say, other services but always in line with their corporate purpose, to be able to earn income. So this is where there is difficult: the economic activity is intrinsically linked to other integrated activities, which do not have an economic vocation”*.

The CoR study also reports that stakeholders see a need for **modification of State aid rules so that they clearly recognise the difference between SGEI providers who are mutual health organisations and cooperatives as opposed to profit seeking companies**.<sup>17</sup> Even if they make surpluses, non-profit companies do not aim to distribute it for the personal enrichment of its members. Respondents argue that such changes will allow countries to provide better response to social problems. Increased State aid flexibility (for example, removing requirements on notifications of State aid in certain cases such as “open systems” as opposed to “closed systems”) would also allow more decision making in the hands of LRAs who are best aware of specific problems and the ways of addressing them via SGEI. In this context, respondents have made a reference to the [Paint Graphos judgement](#)<sup>18</sup>. The judgement is perceived favourably as it provides a tax system that may not be considered under State aid for cooperatives as these are recognised to have additional constraints as opposed to for-profit companies in funding their activities.

### 3.3 The notion of manifest error

The regulatory competence of the Commission to intervene in the definition and organisation of SGEI is limited to cases where there is a **manifest error**. The Commission assesses whether the market already provides the given service **satisfactorily and under conditions**, such as price, objective quality characteristics, continuity and access to the service, **consistent with the public interest**, as defined by the State, by undertakings operating under normal market conditions. If the service is provided satisfactorily, then the given service cannot qualify as SGEI. If it is provided by the market but unsatisfactorily, then the given service can qualify as SGEI. The Commission also assesses whether the market provides similar services and in the affirmative a given service can still qualify as SGEI under certain conditions (i.e. it is provided without any discrimination and there is clear determination of the specific characteristics of the SGEI). The Commission is not empowered to rule on the policy choices of Member States, the scope of the public services tasks, the level of costs of the SGEI or the economic efficiency of the operator.

From the regional hubs consultation, it is clear that more than half of the respondents agree that the notion of manifest error is straightforward and easy to use in order to assess whether the provided public

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<sup>17</sup> CoR study (2020), page 50.

<sup>18</sup> **The Paint Graphos judgement** concerned a tax concession for cooperatives in Italy. The judgement has established the difference between cooperatives and commercial companies in the mode of provision of services. As long as certain conditions apply and differences between such cooperatives and commercial companies are present, they can be exempted from tax and without this exemption constituting State aid.

services qualify as SGEI. A quarter of the hubs have a more neutral view on this with only 15% of the respondents expressing the opposite view. It transpires that it is particularly challenging for some hubs to practically assess the term “service provided satisfactorily” while it is not also clear how detailed the required knowledge of the market must be. They suggest that the Commission update its Communication on SGEIs to include a practical explanation of the cases in which it considers that there is no market failure (e.g. in FAQs). In this respect, it would be very helpful if the existence of a market failure could be presumed in case of doubt.

The **Brandenburg** hub claims that the term is neither straightforward nor easy to use and raises a number of questions. In-depth knowledge of the Commission’s SGEI package, the Commission’s decision-making practice and case law of EU and national courts is necessary in order to establish whether an error is “manifest”. This increases the probability of error in application.

The funding department consulted by the **Brandenburg** hub notes that the extent of the explanation required already shows that this term is neither straightforward nor easy to use. It is particularly difficult for newcomers having to deal with this subject for the first time to understand the definition of this term.

The **Brandenburg** Chamber of Industry and Commerce (IHK) argues that similarity of service provision is often limited or non-existent. This often leads to wrong decisions.

The **North Rhine-Westphalia** hub argues that there is a lack of certainty when it comes to determining the relevant market and on the question of market failure as a necessary condition for an SGEI. For example, the extent of the market failure – i.e. the point to which services are still normal – is difficult to determine. There is also the question of how detailed the required knowledge of the market must be. They suggest that the Commission update its Communication on SGEIs to include a practical explanation of the cases in which it considers that there is no market failure (e.g. in FAQs). In this respect, it would be very helpful if the existence of a market failure could be presumed in case of doubt.

The **Veneto** hub reports that the social housing sector points out that the limits of the concept of “service provided satisfactorily” are not clear. It might be useful to set parameters/criteria to define the term.

The **Community of Valencia** hub reports that while the central coordination services, as well as the employment services that apply it, find it clear, some managers have difficulties in identifying the principle of manifest error. With respect to the field of health, they argue that it is a matter of state competence. In the tourism field, where public tourism managers interact with private ones (businesses providing services to tourists in exchange for payment by those tourists), identifying manifest error is complicated. It is also underlined that there is no clear link in the texts to the fact that it is based on an (subsequent) evaluation by the Commission of the satisfactory performance or otherwise of the service in question by other operators.

The **Emilia-Romagna** hub argues that in the area of housing policy, ascertaining “satisfaction” is a problematic assessment; it is equally difficult to assess “similar services provided by the market”.

The Department for Regional Development and European Funds (Marshal’s Office of the Mazowieckie Voivodeship) consulted by the **Mazovia Voivodeship** hub proposes that the definition of reasonable profit contain a qualifier determined as a percentage threshold, margin, or through a reference to a generally accepted reference level for the particular industry or type of undertaking. In its current wording, the provision is vague and therefore subject to a number of interpretations.

The **Thessaly** hub notes that some stakeholders believe that the concept of manifest error is not straightforward and easy to use, because judging whether “the market already provides the given service satisfactorily and under conditions, such as price, objective quality characteristics, continuity and access to the service, consistent with the public interest, as defined by the State, by undertakings operating under normal market conditions” on the one hand requires documentary proof based on an analysis and

on the other entails a risk of the judgement being subjective if the service is provided by the market subject to quality requirements.

The **Community of Madrid** hub specifies that despite the fact that the majority of the stakeholders consulted find the notion straightforward, the region of Madrid considers that there are cases in which the services to which the market could provide a response can be mixed or not clearly differentiated with others in which such a response would not be viable, at least from an economic point of view. Therefore, these circumstances may require harmonization by the Commission.

### 3.4 The notion of reasonable profit

Pursuant to one of the four conditions set out in the [Altmark judgement](#), public service compensation does not constitute State aid when, among others, it does not exceed what is necessary to cover all or part of the costs incurred in the discharge of the public service obligations, taking into account the relevant receipts and a **reasonable profit**. ‘Reasonable profit’ means the rate of return on capital that would be required by a typical undertaking considering whether or not to provide the service of general economic interest for the whole period of entrustment, taking into account the level of risk. One other condition set out in the *Altmark* judgement specifies that if the undertaking which is to discharge public service obligations is not chosen pursuant to a public procurement procedure which would allow for the selection of the tenderer capable of providing those services at the least cost to the community, the level of compensation needed must be determined on the basis of **an analysis of the costs of a typical well-run company**.

Asked for their views on the notion of reasonable profit, a large majority of regional hub members found that the notion is straightforward and easy to use, with one quarter of them having the opposite view. The **Brandenburg** hub reports that the term is understandable in theory. However, there is no definition of when a profit is considered reasonable, nor is it really feasible to refer to a "typical undertaking" in practice in the field of SGEIs, since it is precisely those undertakings entrusted with the implementation of SGEIs that do not, in principle, follow competition and market rules. Therefore, the typical economic features of an undertaking operating in competition and on the market, such as the determination of return on investment, are not appropriate to an undertaking entrusted with provision of an SGEI.

Moreover, there is not always a willingness to provide information in terms of operational data. In [ECJ Judgement T-417/16](#), the Court recognised for the first time that if the internal rate of return was somewhat higher than the risk-free rate (4.84 %), but lower than the weighted average cost of capital and well below the average cost of capital for this sector, a reasonable profit could be assumed. For the large majority of cases, this judgment can only provide a rough guide.

The **Flanders** hub has a more nuanced view on this. It is argued that one of the difficulties they experience is the fact that a considerable amount of health and social services in Belgium are provided by non-profit organisations. For these organisations, it is, however, difficult to calculate the reasonable return on capital, as it is usually underestimated and not reflected on the balance sheet (in Belgium non-profit organisations do not have capital in a legal sense). Also, it is stressed that it is difficult to assess a reasonable profit for self-employed service providers, where compensation for labour and capital employed are mixed, where the SGEI Decision mainly focusses on a reasonable compensation for capital employed.

The **Hauts-de-France** hub notes that this concept should be clarified as it can be interpreted in many ways. It is noted that in the sector of social housing the concept is quite clear for thermal regeneration of the social housing stock as the concept of reasonable profit applied is equal to the rate of profit allowed for low-rent housing corporations and which takes into account the rate from the long term *livret A* + 1.5 base points in its calculations. On the other hand, the concept of reasonable profit is difficult to establish in the case of the regional authority of the Public Service for Energy Efficiency of Hauts-de-



France. It is the regulation on regional authorities that is applicable (i.e. without authorised profit) and it is not possible to make comparisons with a medium private enterprise.

The **North Rhine-Westphalia** hub argues that practical difficulties arise from the fact that the reasonable profit calculation is too focused on return on investment. It would be preferable to establish/require a stronger link to the SGEI in question – i.e. a more specific case-by-case approach – and to focus on choosing the appropriate calculation method instead of prioritising return on capital (recital 17 of the SGEI Decision). There is also a need to review the limitation of the safe harbour for return on capital to a maximum of 100 basis points above the relevant swap rate as a reasonable profit for services not involving a significant commercial risk (recital 19 and Article 5(5) of the SGI Decision). At the current low swap rates, the provision of SGEIs results in far too little profit if this requirement is applied.

The **Umbria** hub argues that concept is clear although so far it has not been applied. In the case of social and affordable housing, it was not applied because the last regional funds granted, following calls for tender, date from the period before the entry into force of the 2012 Decision on SGEIs. In the case of subsidised public housing, it has not been applied because it is considered that subsidised public housing does not fall within the scope of the legislative framework for SGEIs. The **Veneto** hub reiterates that a limit has also been placed on the reasonableness of the rate. A rate of return on capital that does not exceed the relevant swap rate plus a premium of 100 basis points is regarded as reasonable in any event. This rate is also the maximum reasonable profit if the service is not linked to a substantial risk. In any case, the social housing sector believes it would be useful to set parameters for defining the margin numerically.

The **Dutch provinces** hub believes that the concept is not sufficiently clear or explained in enough detail. There is no method or practical guidance for applying it.

The **Friuli Venezia Giulia** hub reports that the stakeholders consulted point out that in some cases clear criteria for defining reasonable profit are lacking, making it extremely complex to calculate in practice. With regard to social housing, the FVG region has complied with Regional Government Decision No 59 of 2018. It nevertheless regrets the complexity and difficulty involved in calculating a reasonable profit, especially for public services, such as in the social housing sector, which are under-compensated (sometimes with a rate below 0). In other sectors, such as public transport, the reasonable profit has been gradually defined inter alia as a result of the measures implemented by the independent authorities in the sector (such as the Regulatory Authority for Transport). It is also stressed that applying the rules on reasonable profit has made the procedures for awarding and monitoring SGEIs for social housing more onerous. It is even more complex for social housing as there is no corporate profit and no reference market.

The **Community of Valencia** hub reports that for the most part, the stakeholders consulted find the concept clear, especially in the areas of health and employment: it does not make sense to consider, as a public service, activities covered by the market under the conditions put by the State, or that can be covered by the market under the same conditions. However, the concept poses problems in the field of tourism and for anyone who does not have financial and business knowledge; this all points to the need for better clarification.

The **Catalonia** hub believes that it is sometimes difficult to apply in practice since, depending on the economic service of general interest in question, it is not always easy to define a typical undertaking for this sector that can then be used as a basis for making the relevant calculations.

The **Emilia-Romagna** hub argues that in social housing, there is no clear definition of reasonable profit.

The **Thessaly** hub notes that the concept of reasonable profit as a percentage of return on capital is simple, and this is easy to calculate because it is a measurable amount reached using a standardised,

predetermined methodology. It is also specified that there are, however, economic activities (where profits are not distributed) for which reasonable profit does not translate into return on capital.

The **Community of Madrid** hub believes that the concept is clearly defined, although there are cases in which reasonable profit is not the only criterion to be taken into account by a company that wishes to collaborate in the provision of public service, or directly (in the case of public companies) is not even one of the main ones to consider.

The analysis of the latest Country Reports and the interviews with stakeholders conducted in the context of the CoR study also show the same kind of difficulties.<sup>19</sup> The Flemish Government ([Belgium country Report](#)), is underlining that working with concepts such as reasonable profit, rate of return on capital or other profit level indicators and swap rates is suited to a business context, but cannot be easily applied in social activities, when fees are determined for the provision of a service, this is often based on anticipated costs not taking into account a reasonable percentage of profit. **The concept of activity of an economic nature and, therefore, of reasonable profit in such a context, creates many questions and uncertainties for policy-makers and service providers in the field.**

**A lack of clarity and detailed explanation on whether and under what conditions remuneration for a service should be regarded as a component of the compensation** is stressed by Polish authorities. Some entities commissioning a service had doubts as to whether the payment they made to the SGEI provider should be treated as remuneration (revenue reducing the value of the compensation) or a component of the compensation. Moreover, the Polish authorities had difficulties determining a reasonable level of profit for the social housing scheme implemented by the BGK Bank. **This problem is due to the gap between the longer SGEI entrustment period and the shorter period set up by the EC to calculate prices.** Owing to the 30-year entrustment period of the SGEI, it was difficult to obtain the appropriate interest rate to determine reasonable profit<sup>20</sup>.

In an interview<sup>21</sup> conducted in the context of the study with representatives Saxony (Germany) it is also stressed that *“There are persistent uncertainties about a reasonable profit. For small cases, a safe harbour based on turnover would be helpful (instead of return on capital or discounting). ... In general, it can be said that the rules on the act of entrustment in the SGEI decision - in particular the requirement of a description of the compensation mechanism and the parameters for calculation, monitoring and change - are hardly tangible and therefore remain a reason for less experienced funding authorities to avoid as far as possible an entrustment in the sense of the SGEI exemption decision. The need for advice on issues related to entrustments is still far too high. The really necessary specifications for SGEI grants should therefore - with the necessary flexibility - be formulated in the future set of rules. Models for this can be the more easily manageable infrastructure exemptions (such as Art. 55) in the GBER”.*

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<sup>19</sup> CoR study (2020), pp 40-42.

<sup>20</sup> The regulation regulating the terms of use of the scheme did not initially decide to use the IRS rates published by the European Commission on the website with regard to compensation for the provision of SGEI because the Commission calculates swap prices for up to 10 years on the basis of Bloomberg data. At the stage of drawing up the legislation, this was regarded as not being a suitable period in the light of the duration of entrustment of the public service for the social housing scheme (as a general rule 30 years). The average IRS quotation for the longest period available on the financial market, i.e. 20 years, was used to calculate a reasonable profit. This was established on the basis of data published by the Financial Markets Association ACI Polska. ([Member State report Poland, 2018](#)).

<sup>21</sup> CoR study (2020), page 42.

### 3.5 The notion of normal market conditions

Point 48 of the [SGEI Communication](#) provides that the Commission considers that it would not be appropriate to attach specific public service obligations to an activity which is already provided or can be provided satisfactorily and under conditions, such as price, objective quality characteristics, continuity and access to the service, consistent with the public interest, as defined by the State, by *undertakings operating under normal market conditions*. As for the question of whether a service can be provided by the market, the Commission's assessment is limited to checking whether the Member State has made a manifest error.

Overall, a large majority of the stakeholders consulted find the notion of *normal market conditions* straightforward and easy to use with almost one third of them having a neutral view on this or disagreeing. Here again, however, as it is the case with the other State aid notions covered with the previous questions, even the hubs that regard the notion of *normal market conditions* as easy and straightforward express concerns pertaining to the difficulties encountered when applying the notion in practice. Thus, some hubs argue that more specific and detailed guidance could help public authorities to correctly apply the notion and thus avoid manifest errors.

The **Hauts-de-France** hub reports that respondents were unanimous in saying that the concept was clear, but still complicated to understand theoretically and practically, and very difficult to apply. It seems that the emphasis here is also placed on the fact that the application of the concept requires the conduct of difficult analyses and specific knowledge that is not always available, especially in small local and regional administrations. It is stressed that to conclude whether a private initiative is at fault by using the notion of *normal market conditions*, the following is required which constitute at the same time barriers to the effective completion of the process:

- having a sound grasp of the rules in force for determining whether or not the conditions are fulfilled
- having sufficiently precise data on market conditions in the target area
- carrying out an economic study, and thus having the skills to conduct this study (outside of the legal and financial field).

In a similar vein, the **Brandenburg** hub claims that in practice, the term is neither straightforward nor easy to use, as it often requires difficult investigations and specialist knowledge that cannot be assumed, especially for local authority decision-makers. The term often leads to misinterpretations as to the existence of an adverse effect on the market, which is not the case in regional markets.

On another note, it is underlined that the limitation to "manifest error" in the assessment of whether a service can be provided by the market is regarded as appropriate since it can only be for the public authorities involved in the provision of services of general interest or in the performance of public service obligations (performance of State tasks) to implement those tasks and, accordingly, to determine the manner in which that obligation is to be implemented.

The **Community of Valencia** hub reports that for most the concept is clear, although in the economic support sector, it is highlighted that there is no explanation of what is meant by businesses operating under normal market conditions; simply, it is underlined that when this does occur, it should not be regarded as SGEI.

The **Catalonia** hub believes that it all depends on the type of service of general economic interest to which we are referring and that this notion is more difficult to determine with regard to social services.

The **Mazovia Voivodeship** hub specifies that Point 48 of the *SGEI Communication* does not include a definition of the concept of "normal market conditions", only information that it would not be appropriate to apply obligations in connection with providing public services for undertakings that

operate under normal market conditions. It is not clear whether this rule refers to the totality of the activities of those undertakings or to the method of providing the services mentioned, which may in turn be subject to a market existing for these services.

The **Thessaly** hub argues that government data are required to show whether or not the market provides or can provide the service, and above all the term “satisfactorily” must be clarified for each category of activity. Some stakeholders say that the concept of "normal market conditions" is not straightforward and easy to use, because, as with the concept of manifest error, this requires documentary proof based on an analysis and because assessing whether a service is provided by the market subject to quality conditions entails the risk of a subjective judgement being made. It is stressed that it would help if the EU established a specific framework applying across all countries.

The **Helsinki-Uusimaa** hub believes that the concept is clear however, the implementation challenging in view of assessing quality and continuity of services.

The **Alentejo** hub reports that it was commonly agreed among all stakeholders that normal market conditions are often interpreted in different ways and might be easily misused. It was mentioned that normal market conditions should be more specified to prevent manifest errors.

### 3.6 De minimis aid

The [SGEI \*de minimis\* Regulation](#) applies to compensation measures which do not exceed EUR 500 000 over any period of three fiscal years granted to undertakings providing an SGEI and therefore shall be deemed not to constitute State aid in the sense of Article 107 paragraph 1 Treaty of the Functioning of the European Union (TFEU). More specifically, such compensation measures due to the local nature and the very limited effect of these services on intra-Union trade should be deemed not to affect trade between Member States and/or not to distort or threaten to distort competition.

Almost half of the regional hubs believe that **the amount** of *de minimis* aid that can be granted under the SGEI *de minimis* Regulation, i.e. up to EUR 500 000 over any period of three fiscal years, is not appropriate anymore with only one third of them expressing the opposite view.

With respect to the question of whether **the period** over which the *de minimis* aid that can be granted under the SGEI *de minimis* Regulation, i.e. over any period of three fiscal years, is still appropriate, a large number of respondents think that it is still appropriate with more than a third of the respondents having a neutral view on this. 15% think that this period is very long while 10% think that this period is very short.

**The Brandenburg** hub argues that in view of the rate of price increases and in order to maximise flexibility, a threshold of EUR 750 000 to EUR 1 million would be appropriate.

In relation to the period, **Brandenburg** notes that in principle, the period is still considered appropriate. However, it reports that several municipal representatives consider it too short. It is argued that if the amount is adjusted, then the period can be regarded as appropriate. If the amount should remain unchanged, then only one tax year should be considered. A municipality consulted by the Brandenburg hub notes that since calls for tenders should run for a maximum period of four years, the period should also correspond to the *de minimis* rules.

The **Hauts-de-France** hub stresses that in the light of the various studies, past projects and results, this amount seems too low. However, the *de minimis* framework is well received because it makes it possible to finance businesses. In practice, given the threshold, it can only apply to "small SGEIs". This threshold should be re-examined or flexibility should be granted in cases where it is clearly too low, when this action is justified.

The hub specifies that stakeholders consulted argue that the threshold is too low: in the case of the business creation aid scheme, public aid granted to operators included in the call for projects to implement an SGEI significantly exceed EUR 500 000 over three years. In order to comply with the rules, they apply a transparent beneficiary theory according to which the new company that is being supported is the final beneficiary of the aid, not the operator. Raising the threshold would make it possible to cover small businesses within the existing rules and would, on the one hand avoid creating other rules or the need to notify and, on the other hand, simplify the search for a solution. The goal is not to increase the exemptions, but to expand the circumstances which cover the maximum number of cases today. It is also argued that SGEIs on the regional scale, using free services, generate very high costs that exceed the *de minimis* threshold.

The **North Rhine-Westphalia** hub notes that in the light of general price trends, the ceiling applicable to SGEI *de minimis* aid should be increased from EUR 500 000 to EUR 1 000 000. At present, the ceiling is slightly exceeded in the case of municipalities acting as a "group of undertakings" or other large social institutions (such as hospitals), meaning that the only option is to apply the SGEI Decision as the aid exceeds the threshold of the *de minimis* Regulation.

The **Umbria hub** argues that in the context of social housing, the sum of EUR 500 000 over three financial years is too low. It is also noted that for social housing the period of three financial years is too long if the requirement of EUR 500 000 is maintained. For higher amounts, three financial years could be an appropriate period of time.

The **Veneto** hub reports that the social services sector believes that the threshold is too low given the nature of the activities dealt with (e.g. post, transport, etc.), although the limit on the amount is closely linked to the size of the market and to the undertaking (whether a medium-sized, small or large undertaking).

The **Friuli Venezia Giulia** hub holds the view that the amount is still appropriate but it notes however, that it could be raised for certain contexts, such as pilot projects, which require more support in the start-up phase, lead to significant positive effects on the ground, and are particularly useful for establishing fully-fledged initiatives. It is also stressed that the timeframe could be extended to five years in the case of the pilot projects, which require a longer start-up period.

The **Autonomous Province of Bolzano** hub reports that according to the Department of German Culture — Film and Media Office and the Department of Italian Culture, this amount - which in their Province is paid in particular to art-house cinemas in proportion to other contributions made by them to different cultural sectors - is too low. They claim that this is quite a significant problem for them, given that the presence of a German-speaking minority means that there is a need to develop German language cinema programmes.

The Department for Regional Development and European Funds (Marshal's Office of the Mazowieckie Voivodeship) consulted by the **Mazovia Voivodeship** hub argues that the *de minimis* aid ceiling of EUR 500 000 is too low, which can be seen in particular in the current situation of fighting the coronavirus pandemic. They argue that the limit set almost eight years ago is not adequate for the current increase of prices in services and the increase in costs borne by the providers of these services (compared to 2012 prices), and furthermore, this EUR 500 000 limit covers a three-year period. The EUR 500 000 threshold – on the basis of previous experience and analysis of EC documents, particularly the temporary aid framework in which the aid threshold is EUR 800 000, it is proposed to request to increase the threshold to EUR 800 000.

The Regional Labour Office (RLO), in Warsaw, specifies that in the area of the labour market where the Regional Labour Office in Warsaw is concerned, only *de minimis* aid is granted in ESF projects for which the RLO is the intermediate body. De minimis aid is issued by local, District and City Labour Offices on the basis outlined in the Act on Employment Promotion and Labour Market Institutions. It is

designed to support employers who wish to hire a jobseeker who is registered in a district/city labour office and for jobseekers and people who want to set up their own business. The support in question therefore takes the following forms:

1. Intervention works (only in the case of private entities) as referred to in Article 51 of the Act. The amount of support in this case may not exceed half of the minimum wage and social security contributions from the refunded remuneration for any unemployed person, i.e. PLN 1016.16 per month for each jobseeker.
2. Equipping or fitting workplaces (only in the case of private entities) as referred to in Article 46(1) of the Act. The amount of support in this case shall not exceed six times the average salary, i.e. PLN 31 191.48.
3. The one-off measures for business activities referred to in Article 46 (1)(2) of the Act. The amount of support in this case shall not exceed six times the average salary, i.e. PLN 31 191.48.

Taking into account the above data, as well as the fact that the support provided by the District Labour Offices is one of the many *de minimis* aid possibilities for undertakings, it is very difficult to determine whether the *de minimis* ceiling, which is granted under the SGEI *de minimis* aid Regulation, i.e. an amount of EUR 500 000 over any period of three fiscal years, is appropriate. Furthermore, in the case of DLO aid within ESF projects, these are small amounts and make up a small percentage of this aid ceiling.

In relation to the period, the **Mazovia Voivodeship** hub argues that if it is assumed that the amount of SGEI *de minimis* aid will remain at EUR 500 000, the three-year period of accumulation of aid is too long. Moreover, the most common practice is entrusting an SGEI in an annual period. In view of the significant changes in prices and the costs incurred by providers of services of general economic interest (compared to 2012 prices), the reduction in the period of accumulation of *de minimis* aid within the framework of the SGEI, in addition to the increase in the quota, is one of the expected ways of making the conditions for the provision of that aid by local government units (LGUs) more flexible. It is also proposed that the reference period should vary depending on the industry. For example, social housing, for which the reference period should also take into account the cycle of investment in the sector and the variable business cycles and availability of workforce.

The **Thessaly** hub notes that it all depends on the service being provided and the body providing it. There are services that require an increase in the threshold because of their cost. There are also bodies that have many responsibilities, which may or may not be similar, in which case the three-year period threshold is too restrictive. It is also stressed that the amount granted is so small that it is not considered likely to distort competition or intra-EU trade. The total amount of funding that may be granted under the SGEI *de minimis* regulation is considered adequate but it is also considered low in respect of social welfare services. There should be a reasonable adjustment in line with the adjustment envisaged for the *de minimis* regulation applicable to aid for undertakings from EUR 200 000 to EUR 500 000. This will allow undertakings to invest in updating their digital systems (as part of Industry 4.0), while also addressing the current challenges of recession at national and European level. Local authorities, in particular first-tier authorities, are required to provide social welfare services to vulnerable groups, solid waste disposal services, waste water management services, etc. These services are very often classified as SGEIs and their cumulative budget frequently exceeds EUR 500 000 over three years. In relation to the period, it is proposed that the period is shortened to two fiscal years.

The **Dubrovnik-Neretva County** hub thinks that the amount is not appropriate because the value of the projects often exceeds the default amount. It is also stressed that an undertaking that is just starting its business needs a smaller amount of support compared to an undertaking that has been in business for many years and has expanded its business. In that case, the amount of aid limits the growth and development of such an undertaking.

The **Community of Madrid** hub holds the view that the costs of activities are very high for the intensity of the aid and that depending on the service, it can sometimes be too short, although lengthening this period in general, would make control more difficult.

The **Alentejo** hub reports that among the stakeholders there was an overall consensus that the amount is too low and the period are too short. It was also discussed that it would be interesting to have some disaggregation between sectors as the demands are different from sector to sector. Some sectors demand higher amounts and time as to achieve the demands. The stakeholders consulted also considered that a larger period would be more favourable. Stakeholders also feel the need of a specific mechanism for preservation of public assets. Particularly in Alentejo where heritage and environment are of high value it would be important to have a dedicated mechanism for these areas.

### 3.7 Social housing

The [2012 SGEI Decision](#) (recital 11 of the preamble) limits the target group of social housing through the following definition: *Accordingly, undertakings in charge of social services, including the provision of social housing for disadvantaged citizens or socially less advantaged groups, who due to solvency constraints are unable to obtain housing at market conditions, should also benefit from the exemption from notification provided for in this Decision, even if the amount of compensation they receive exceeds the general compensation threshold laid down in this Decision.*

In light of the fact that key representatives of the housing sector in the EU, including the Housing Europe Observatory, have unfailingly claimed that the target group and the definition provided in the Decision are too restrictive and thus do not reflect the nature of needs and that the public, cooperative and social housing sector needs more clarity and legal certainty due to specific nature of social housing services and availability of financial means, the hubs were also asked **whether according to their experience the definition of social housing** as laid down in the Decision is still appropriate.

A vast majority of respondents argued that the definition is not appropriate with one third of them expressing the opposite view.

The **Flanders** hub argues that the definition must be widened.

The **Brandenburg** hub holds the view that the definition is too narrow and outdated as the housing market and housing policy are currently undergoing changes. In addition to rent ceilings in some *Länder* (states), the focus is on the re-municipalisation of housing construction companies. A review of the concept of “social housing” would be appropriate in this context. The definition would also have to take into account mixed aspects of housing management in order to avoid social disruption caused by housing management measures (avoid the development of ghettos and housing-related social hotspots).

The **Hauts-de-France** hub notes that expanding the definition of social housing would be welcome for the following reasons:

1. housing is a universal social need;
2. restricting social housing to the most disadvantaged leads to the stigmatisation of social housing and the people who live there. As a result, this limited definition undermines social inclusion and social integration and, furthermore, goes against the principle of equality;
3. In areas where the real estate market is strained, housing difficulties (lack of supply, price, state of the housing stock) affect many households and not only those in the most disadvantaged social group;
4. Expanding the definition would make it possible to include all State aid and associations that support landlords and tenants (loans with regulated rates, financial aid, personal assistance) under the term "assisted housing".



The **North Rhine-Westphalia** hub also recommends expanding the definition of social housing. The right to adequate and affordable accommodation should be given more priority, because the inability of the housing market to meet everybody's accommodation needs affects not just people who have no access to housing at all, but also the occupants of housing that is hazardous to health, inadequate or overcrowded, as well as people who are paying most of their income on rent or their monthly mortgage payments. In addition, it is necessary to establish how the criterion "disadvantaged citizens or socially less advantaged groups" should be defined.

In a similar vein, the **Umbria hub** argues that definition is not adequate as it does not cover all cases where support is needed: the cases of individuals or groups who may need social housing are varied and can change over time, including according to the economic or social situation. Indeed, there are cases of people who are not "technically disadvantaged" but still need support: for example, a woman who is in good health and has work, but is divorced with dependent children and a former spouse in financial difficulties who cannot contribute to family expenses. It is claimed that social housing authorities should not be bound by strict definitions but have the possibility to intervene flexibly in response to the actual social needs of the moment.

The **Dutch provinces** hub reiterates that there is a strong need and desire in the Netherlands to support the mid-priced rental market. There are clear market failures. However, the mid-priced rental market does not come within the current definition of social housing. This makes it very difficult in practice for public authorities to support the mid-priced rental market.

The **Friuli Venezia Giulia** hub reports that in the view of the stakeholders, the inclusion of social housing in the SGEIs is excessive, as the companies operating these social housing units are under-compensated, given the low rent received (e.g. the revenue comes from the regional contribution, where required, and from the very low rents, given the disadvantaged people involved. The rents are well below the management cost of maintaining the housing and do not cover the cost of managing the social housing). The hub reports that the stakeholders consulted would like to see social housing removed from the SGEI framework.

The **Autonomous Province of Bolzano** hub says that they agree with the CoR's attempt to delete the provision restricting its scope to "disadvantaged citizens or socially less advantaged groups", because social housing, taken as a social concept, should include all citizens. Moreover, housing shortages now affect all sectors of society, not only people in need.

The **Emilia-Romagna** hub holds the view that social housing should no longer be limited to a mere "poverty" criterion. Obviously, with lower incomes larger contributions will be needed. But the principle is that, by social housing we mean a wider range of needs than all citizens need to have a home.

The **Thessaly** hub believes that the definition should be reviewed in light of the current situation (COVID-19, unemployment, etc.). Account must be taken of the current socio-economic situation and the possibility considered of increasing financial support for social housing.

The **Community of Madrid** hub considers that the protection of social housing should be broadened to promote long-term rental, not only linked with disadvantaged groups but also to make housing accessible for all group without having to use particular aid to rent and with the purpose of finding a solution to the problem of housing in general.

The **Alentejo** hub stresses that the widening of the definition of social housing is necessary. This will make it possible to widen the coverage of social housing which is seen as a need also crucial for further development and evolution in the regions. Stakeholders considered it particularly important and also a priority.

The CoR study also points out the need to **recognise dynamics in changing contexts of market failure** since public authorities are called to flexibly react to market changes.<sup>22</sup> Thus, **the reference to a narrow target group in the Decision ("socially disadvantaged citizens") seems to contradict the reference to the market failures as legitimate criteria to define the target group of SGEI**. For Housing Europe, there remains an uncertainty regarding the criteria that are allowed in relation to the definition of the target group for the SGEI. State aid rules for health and social SGEIs are generally coherent and necessary to the wider EU policy applicable to health and social SGEI. However, for consistence with Protocol 26 of the TFEU, there is a need for improvement, since social housing is the only sector in the SGEI Decision with a reference to a specific target group.

As pointed out by the Amsterdam Federation of Housing Associations (the Netherlands), the Dutch housing market is characterised by steep housing cost increases. This applies in particular to rents in cities, making it difficult to find affordable housing at market prices. The current market pressure further widens the gap between social housing and commercial housing sectors. As further explained by AEDES (the Netherlands) the private rental sector and the owner-occupied sector is not affordable for many middle-income households but at the same time these households are not eligible for social housing. A recent report concluded that due to this fact around 400,000 middle-income households struggle to find affordable housing. Since the introduction of the SGEI decision, the housing market has changed. The group that is unable to obtain housing at market conditions has moved beyond disadvantaged citizens or socially less advantaged groups to middle income households.

This issue is also supported by the International Union of Tenants (Belgium). It points out that the currently applicable EU State aid rules, in particular recital 11 of the Decision, by enforcing the single market rules on the housing sector, force Member States to limit access to social and affordable housing solely to socially disadvantaged groups while the needs of other groups have been largely neglected. Such application of legislation denies the fact that housing alternatives are not readily available for low and middle-income groups due to possible market failures in the housing sector.

### **3.8 The relation between the use of State aid rules and the use of public procurement rules**

The hubs were also asked to give their view on the relation between the use of State aid rules and the use of public procurement as well as to indicate whether they have ever used public procurement procedures as a way to prove compliance of the provided services with State aid rules or whether they have used State aid rules instead of using public procurement for the provided services.

As already mentioned, according to the conditions set out with the [Altmark judgement](#), among others, when the undertaking which is to discharge public service obligations is chosen pursuant to a public procurement procedure, it is considered that this would allow for the selection of the tenderer capable of providing those services at the least cost to the community, and there is no need for the public authority to determine the level of compensation on the basis of an analysis of the costs of a typical well-run company. State aid rules and the Commission's practice promote public procurement as an 'easier' way of complying with EU competition rules and avoiding challenges of 'over-compensation.'

It is also worth mentioning that the right for public authorities to provide and organize their services directly was approved and concepts of 'in-house' and 'public-public cooperation' were defined in the context of the 2014 review of the public procurement Directives. Thus, public procurement remains only one of many alternative ways of providing public services. The 'in-house' provision of public services in particular - including public-public cooperation - remains a legitimate, sustainable and transparent way of providing public services. Indeed, there are many municipalities bringing previously outsourced services back under their control, not least because of negative experiences of liberalisation.

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<sup>22</sup> CoR study (2020), pp 29-30.

However, there is no equivalent in a State aid context to the "in-house exemption" available under the public procurement rules and the [Notice on the Notion of State aid](#) makes it clear that the in-house provision of a service does not rule out the existence of economic activity.

Those hubs who regard the relation between the use of State aid rules and the use of public procurement as straightforward are equal to those who have the opposite view. Most of the hubs replied that they have never used public procurement procedure as a way to prove compliance of the provided services with State aid rules with almost one third of them replying that they have used it (10% very often and 23% rarely). It transpires that the number of those who have used State aid rules instead of public procurement is slightly higher though. The treatment of services provided 'in-house' under the State aid framework and under the public procurement Directives seems to cause difficulties and confusion to the stakeholders consulted.

The **Brandenburg** hub claims that the relationship between the application of State aid rules and the use of public procurement rules is very complex and inconsistent. It is argued that this relationship is not conclusively clarified, even in law. Neither is there guidance on the demarcation of both areas of law in practice. This is compounded by the fact that certain procedures permitted under public procurement law are not accepted under State aid law. This concerns, for example, the negotiated procedure without calls for tender (competition). In accordance with point 93 of the Commission communication on the concept of aid, this procedure is not permitted under State aid law for determining the market price. Public procurement law implications are also triggered when certain State measures are classified as SGEIs (e.g. emergency services and patient transport).

To the question of using public procurement as a way to prove compliance with State aid rules, the **Brandenburg** hub notes that where this approach is appropriate, it is used on a regular basis. In other areas, however, it is not relevant. In order to exclude an indirect advantage under 107 TFEU and to document the constituent elements of open, transparent and non-discriminatory conditions and market price within the meaning of Article 56 of the GBER, recourse to procurement rules is deemed appropriate.

The **Hauts-de-France** hub notes that the relation between the two kind of rules is clear somewhat when it comes to a classic case of public procurement, but it is less clear in the case of in-house services. Unfortunately, apart from this general case, the line is less easy to determine. For experts, it is easy enough to see the keywords, access regulatory texts and choose between public procurement or State aid.

**Hauts-de-France** also indicates that they make more use of State aid rules than those on public procurement in particular in the case of aid for business creation, when the initiative comes from the operator and not the association, it was consistent to frame the subsidies with the rules on State aid – SGEIs. On the other hand, in the field of vocational training, for example, the public procurement market is still an appropriate form that operators know.

The **Dutch provinces** hub notes that difference between public procurement and State aid rules is sufficiently clear for experts in European law. From their experience, they have noted that officials in local and regional authorities are not always aware of the difference and they need the help of Europa Decentraal.

The **Community of Valencia** hub reports that there are many managers who are not familiar with or recognise this relationship and that the responses differ greatly.

The **Catalonia** hub stresses that either the State aid rules or the directives governing public procurement rules should include more references and indicators in one area or another that could lead to the conclusion that no aid within the meaning of Article 107(1) TFEU is involved in public procurement. Confirmation that State aid is excluded during a public procurement process would provide greater legal

certainty. It is not at all clear in which cases public procurement could give rise to State aid.

The **Autonomous Province of Bolzano** hub reports that stakeholders are of the opinion that the two concepts should be viewed separately, in the sense that public procurement rules amount to direct proof of compliance with market conditions and therefore the absence of state aid.

It is also noted that the majority of bodies consulted answered that they had not used public procurement procedure as a way to prove compliance of the provided services with State aid rules. It is also noted that in practice the question of state aid did not arise in procurement procedures, except in the case of calls for tender under the Structural Investment Funds, in which case the criteria for granting of contributions that constitute aid are indicated (e.g. calls for tender in the research, development and innovation sector).

The **Mazovia Voivodeship** hub notes that entrusting an SGEI to its own organisational units (budget enterprises and/or budget units) raises serious doubts, because, in light of CJEU case law, this does not exclude the performance of economic activities. Therefore, the relevant LGU and its organisational unit and all bodies constituting "a single undertaking" (in the understanding of Commission Regulation No. 1407/2013) is subject to a single *de minimis* aid limit.

By contrast, entrusting an SGEI to municipal undertakings in-house leads to circumvention of the rules for state aid and, de facto illegal granting of state aid or *de minimis* aid (i.e. breach of the rules on cumulating *de minimis* aid). This concept is not precise, the rules on public procurement and state aid consist of a large number of regulations, which means that traders have problems understanding them in full.

The **Thessaly** hub believes that the relation between state aid and public procurement is not always clear and there is often disagreement between the bodies involved and that the rules should be simplified in both cases, so as to avoid confusing stakeholders and blurring of lines. The hub also confirms that they have used public procurement rules as a way to prove compliance of the provided services with State aid rules in particular during implementation of measures funded by the ESIF through Thessaly's operational programme and the sectoral operational programmes. The framework provided can be described as complicated and dysfunctional: it created problems during implementation of the measures.

The **Dubrovnik-Neretva County** hub does not find the relation as clear and notes that there are many grey areas.

The **Community of Madrid** hub stresses that doubts may arise regarding the applicable regulations and that most of the stakeholders consulted have not used a public procurement procedure to prove that the services provided comply with state aid rules.

The **Helsinki-Uusimaa** hub does not find the relation between the two kind of rules clear and stresses that the situation is obviously changing. It is moving more towards to public procurement (private companies), e.g. the employment services in the ESF programme.

The **Alentejo** hub reports that the consulted Stakeholders consider the definition of this relation confusing. The companies are interested in following the rules but also to be able to access opportunities without compromising the access to funds and to state aid. Among the stakeholders there was a strong belief that the biggest problem is on the burden of procedures and the time that goes from the need, identifying the procedure and the effective state aid. This often is seen as a disadvantage for the companies as when they are deciding to choose their location to work.

The CoR study also shows that many authorities face difficulties in combining the rules of State aid with those on public procurement. It is noted, for instance, that the State of Saxony in Germany ([Member State report Germany, 2018](#)) refers to the fact that the Commission considers that a call for tenders is

not sufficient for ensuring that no State aid is provided for which only one bid is made. This can be problematic in practice, especially for emergency services. This anticipation should be relaxed, at least according to the Notice.<sup>23</sup>

### 3.9 Awareness about key guidance documents in the area of SGEI

It transpires from the consultation that stakeholders are well aware of key guidance documents in the area of State aid and SGEIs i.e. the Notice on the notion of State aid, the Guidance in the [2012 SGEI Communication](#) on the concept of 'market failure', on when the SGEI rules apply, and on the definition of a 'genuine' SGEI with the highest lack of awareness noted in relation to the guidance on the concept of market failure and on the definition of a genuine SGEI.

The **Brandenburg** hub indicates that all stakeholders consulted are aware of the Notice on the notion of State aid which they regard as a useful tool. They claim, however, a regular review, in particular with regard to legal training, would be desirable. Most of the stakeholders consulted were also aware of the 2012 SGEI Communication which they regard as a good source of information on the subject of SGEIs.

The **Hauts-de-France** hub argues that only people who work with State aid are aware of the Notice on the Notion of State aid. It is noted that the 2012 SGEI Communication is most commonly known to the respondents.

The **Dutch provinces** hub reports that Europa Decentraal knowledge centres are familiar with the Notice on the Notion of State aid. It is noted however that it is less known among local and regional authorities. On the Communication and the notion of market failure, the hub argues that it is a very outdated and obsolete communication. Since the communication, there have been three judgments of the Court of Justice which have given a completely different interpretation to the concept of market failure. The definition in the Communication is therefore no longer in line with case law.

The **Thessaly** hub reports that stakeholders are aware of the documents and specifies that the regulatory framework for state aid and SGEI was the subject of seminars organised by Greece's Special Service for State Aid (EYKE) in the managing authorities of the 2014-2020 National Strategic Reference Framework. It is also argued that the rules must encourage well-designed state aid to correct market failures and motivated by shared European interest, and should focus on monitoring state aid in cases that have more repercussions for the internal market.

The **Community of Madrid** hub reports that awareness of the Notice on the Notion of State aid and the Communication is not uniform among the stakeholders.

The **Helsinki-Uusimaa** hub specifies that the ESF funding agency and the Centre for Economic Development, Transport and the Environment is informed of the Notice and the Communication in general. But in practice they are not widely used and could be promoted more to the local level.

### 3.10 Involvement in the reporting exercise

According to Article 9 of the [SGEI Decision](#) and point 62 of [SGEI Framework](#) Member States have to submit a report on the implementation of the Decision and the Framework to the Commission every 2 years.

Given that many regions, cities and municipalities are providers of SGEIs, the consultation also looked into whether those subnational levels are involved in the drafting of the reports submitted by the central level to the Commission. 60% of the respondents say that they are involved in this reporting exercise

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<sup>23</sup> CoR study (2020), page 37.

while 40% are not. On the question whether they have experienced administrative burden in relation to the reporting procedure, almost half of them replied in the affirmative.

The **Brandenburg** hub says that they are involved in the reporting exercise. When reporting on current SGEI grants, bodies which (may) at least potentially issue grants are included — i.e. all departments of the *Land* Government and the funding bank are consulted. Districts and municipalities are consulted via the Ministry of the Interior in its capacity as local government authority.

The contact point reports some administrative burden linked to the reporting exercise but this is rare. The Ministry of Infrastructure considers this administrative burden in the context of SGEI reporting as appropriate. Administrative burdens have also been experienced by a district and a municipality.

The **Hauts-de-France** hub reports that respondents answer "no" to this question as, individually, they are not involved in preparing these reports. They are indirectly involved through the balance sheet which it draws up every year and provides to the national government for the report for the Commission. As for the administrative burden linked to the reporting the hub notes that the contrasting responses indicate very different experiences.

The **Dutch provinces** hub notes that Europa Decentraal coordinates this on behalf of central government and local and regional authorities in the Netherlands and claims that the format provided by the Commission for the reporting is not tailored to local and regional authorities (it is primarily geared towards Member States). Moreover, the format is to be used per SGEI. In practice, this can mean that one regional or local authority has to report on some 80 SGEIs. As a result, a given local or regional authority must itself play around with formats in order to report on a large number of SGEIs. The Commission can play a constructive role in reducing the administrative burden by tailoring the format better for local and regional authorities and for reporting a large number of SGEIs at the same time.

The **Friuli Venezia Giulia** hub reports that the regions consulted, along with the other Italian regions, are working with the relevant Italian ministries in terms of framing the issue and providing data.

The **Community of Valencia** hub clarifies that this happens via the state aid coordinating body, the rest of the organisation is not necessarily aware. Account should be taken of the fact that this body receives all the information concerning possible aid under Council DECREE 128/2017 of 29 September, regulating the procedure for notification of and communication to the European Commission of the projects undertaken by the Community of Valencia aimed at establishing, granting or modifying public aid. In relation to the administrative burden, reference is made to the work of coordinating and collecting information from the centres managing SGEIs and the forwarding of this information to the Ministry. An example of specific burden is also mentioned: subsidies to local bodies in 2019 in the field of tourism. Furthermore, some managers point out the particular burden of repeated requests for the clarification of the same data that has already been provided.

The **Thessaly** hub specifies that the reports are submitted by central bodies: the Special Service for State Aid (EYKE) and the State Aid Unit at the Ministry of Finance (KEMKE) and the data are collected by the Managing Authorities of the programmes.

The **Helsinki-Uusimaa** hub specifies that they are not involved as the report is conducted at the state level.

The CoR study stresses that the degree of involvement of LRAs in drafting or contributing to the Country Report varies across Member States.<sup>24</sup> They:

- are authors of the whole report in Austria, Belgium and Germany;

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<sup>24</sup> CoR study (2020), page 16.

- are authors of chapters or parts of the report in Lithuania, the Netherlands, Poland, Portugal, Spain and the United Kingdom;
- contribute with information within chapters in Hungary, Latvia, France, Romania and Sweden;
- neither appear as authors nor as contributors in Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, Greece, Ireland, Italy, Luxembourg, Malta, Slovakia and Slovenia.

The CoR study also elaborates on the experience of some authorities with the reporting.<sup>25</sup> Belgium (French Community Commission, Brussels Capital Region), for instance, stresses that: *"The reporting procedure is very heavy to ensure at the level of our administration. We can consider that this work mobilizes on average per sector analyzed (social, health, disabled people, vocational training, integration of foreign populations) from 7 to 10 working days per sector (i.e. 15 hours per agent involved), every two years. As an indication, in 2014 it mobilized 37 officials to a total of 567 hours including 522 hours of file analysis and 45 hours of preparation, information and coordination. Moreover, problems did not change since the last progress report. We can only notice that some competences changed, for instance we are now in charge of health promotion, but we lost other competences such as support for people suffering violence. Each time that a new competence is added, we have to study granted subventions, and this can generate administrative complexity"*. They also note that *"In fact, sometimes the complexity of the documents is such that it requires the use of specialized law firms, which generates additional costs for the institutions. But we did not hire an external expert to prepare the report. We did it internally. The activity is part of the tasks of the project managers. In some cases, considering that the reporting could be very time-consuming, this can also cause some delays."*

Interestingly, they also note that their administration is currently working on the gradual introduction of the generalisation of the digitisation of administrative documents and that it is expected the control of aid granted, whether State aid or not, will be faster and more easily identifiable when the operators can submit their financial aid request as well as their annual financial report in a computerised manner. They believe that with the digitalisation and informatisation of the procedures, reporting could be more efficient but they do not expect to be able to digitalise these procedures before 2024.

### 3.11 Overall assessment of the State aid framework in the area of SGEIs

- A very large majority of the hubs shares the view that the current framework makes it possible for Member States/LRAs to **provide SGEIs in line with the EU values defined in Protocol 26** to the TFEU although with some caveats. Only 10% of the hubs have the opposite view on this.

In relation to the reservations raised by some hubs, the **Brandenburg** hub, for instance, recalls that Protocol 26 to the TFEU underlines, with reference to the EU's common fundamental values, the broad discretion enjoyed by national, regional and local authorities in organising and commissioning SGEIs, the fact that a diversity of SGEIs best serves the various preferences of users and geographical, social and cultural circumstances, and that this is the best way to achieve a high level of quality, safety and affordability, equal treatment and the furthering of universal access and users' rights. In light of this the hub notes that the current legal framework for SGEIs undermines these objectives due to high demands that can only be met with legal expertise. For example, massive legal uncertainty is often created for the players involved, which presumably in some cases encourages risk-averse behaviour. While the possibility of exercising discretion as to the design of SGEIs is technically available, exercise of this discretion is very difficult as it is linked to considerable financial risks and far-reaching negative legal consequences in the event of errors. One stakeholder (ESIF administration/audit) also wonders whether Protocol 26 relates only to SGIs and not to SGEIs.

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<sup>25</sup> CoR study (2020), page 33 and 35.



The **Emilia-Romagna** hub holds the view that the rules are very complex and strict.

The **Thessaly** hub stresses that it is obvious that the current legal framework does not make a distinction and does not facilitate the provision of social welfare services by public bodies (central government, first- and second-tier local government) as compared with private provision.

The **Community of Madrid** hub reports that those stakeholders that have a better understanding of SGEIs consider that the framework is in accordance with the aforementioned values in Protocol 26. In this regard they state that the values are clear and concise, it should not alter the competence but still be within the States' discretion.

- The majority of the hubs is in favour of **shifting the burden of proof** that a local service poses a threat to intra-Community trade to the complainant and/or the European Commission with only one fifth of them supporting the opposite.

The **Brandenburg** hub claims that the burden of proof lying with the Commission would increase legal certainty and willingness to act on the part of local decision-makers and reduce the number of complaints. There is an urgent need to change the current situation, as a sword of Damocles regarding the recovery of funds hangs over a large number of measures, since individual aid beneficiaries are unable to provide extensive evidence. In this context, it could also be useful to expand the criterion of harm to trade or to specify the term 'local' in greater detail.

It is also noted that the Commission bears the burden of proof when assessing the internal market impact of national procurement. The relevant guide on financial corrections in cases of non-compliance with public procurement rules states that for the purpose of assessing the existence of cross-border interest, the burden of proof lies with the Commission. If the burden of proof lay with the Commission, this would increase legal certainty and willingness to act on the part of local decision-makers and reduce the number of (unfounded) complaints.

The ESIF management claims that in principle, all efforts to facilitate a clear and reliable allocation of projects to the non-aid area or to the aid-related area should be encouraged. In order to determine whether a project is to be classified as local and thus does not affect competition between Member States, it would make more sense from a systematic point of view to expand the concept of harm to trade or to specify the concept of 'local' in greater detail (by replying to questions such as: How to interpret a geographically limited area? What percentage of customers can be attracted from other MS? When are the effects on cross-border investment more than marginal?) and thus create more security for aid beneficiaries and donors. Alternatively, reversal of the burden of proof is also an appropriate means of ensuring greater legal certainty for aid beneficiaries and administrative simplification for aid donors.

The **North Rhine-Westphalia** hub indicates that the criteria developed by the Commission in individual cases (see paragraph 196 of the Notice on the notion of State aid, OJ C 262, 19.7.2016, p. 1) have been applied differently in previous decisions on the basis of various indicators (e.g. catchment area, amount of aid, standard services, small number of foreign customers, linguistic and systemic barriers, local competition etc.). This has created uncertainty in administrative enforcement and made it virtually impossible to have legal certainty in the application of the criteria, especially in cases where no decisions have yet been taken. Particularly in border regions, almost all projects in the field of social services are problematic – the ever-increasing degree of interconnection makes it very difficult to definitively rule out cross-border effects in such cases. A presumption could counter this legal uncertainty.

The **Friuli Venezia Giulia** hub reports that the stakeholders consulted are in favour of shifting the burden of proof as regards the non-distortion of competition and the impact on trade in cross-border local public services onto the complainant or the Commission. It is argued that since these local services are services for the community, albeit on an economic basis, it is a matter of ascertaining when we are dealing with a genuine market and a distortion of competition and an effect on trade. This issue arises

for example with regard to kinder gardens and residential care facilities for the elderly, which are public and not private. It comes down to ascertaining how there can be a distortion of competition if the facilities are local and managed by operators in the area. For example, the regional housing agencies are the four companies that manage 30 000 housing units across the region to be rented out at a minimum rent to disadvantaged users, and there are no other entities in the region that are able to manage a similar service.

The **Community of Valencia** hub argues that it would be advisable for the burden of proof to be passed on to the complainant in order to avoid complaints due to economic interests that go against the foundations of the EU. The Commission would have to check the evidence and weigh it against the declarations made by the local service.

The **Catalonia** hub stresses that assessing how a measure (whether or not it is an SGEI) affects trade between Member States is fundamental as it is the criterion that determines whether or not the aid in question falls within the scope of Article 107(1) TFEU and, consequently, within the scope of the EU's State aid rules. In the case of local services, especially social services, which have a very specific scope, they believe that the burden of proof should be shifted to the complainant or the Commission.

The **Thessaly** hub believes that the burden of proof should lie with the complainant as this is the only way of demonstrating whether there are really parties that have a legitimate interest and are affected and believe that a local service constitutes a threat to intra-EU trade. This also releases central government and local and regional authorities from the obligation to disprove a claim.

- The hubs were also asked to comment on whether there have experienced or not **inconsistencies between the elements of the SGEI package**. Most of them report that they have not.

The **Brandenburg** hub notes however that in some cases there are inconsistencies, e.g. the redevelopment capacity is not defined in a consistent fashion.

The **Hauts-de-France** hub claims that these documents are complementary but not necessarily accessible and comprehensible for those without experience.

The **North Rhine-Westphalia** hub argues that the documents of the package are arguably coherent with each other, but there is an inconsistency with regard to the citation requirement under Article 4 of the SGEI Decision (the introductory part of Article 4 uses "shall", while recital 14 uses "should").

The **Mazovia Voivodeship** hub stresses that the current binding regulations of Commission Decision 1407/2013 on granting *de minimis* aid define the concept of "a single undertaking" differently, which is contrary to the general principle of transparency of state aid.

The **Thessaly** hub believes that although the above texts (SGEI Decision, Framework, Communication and Regulation) endeavour to avoid creating conflicting provisions, questions arise with their interpretation.

- Asked about whether **the effort and administrative burden required for complying with the SGEI package is proportionate to the benefits of the rules**, the majority of the hubs argues that they are not proportionate with only almost 15% having the opposite view.

The **Brandenburg** hub claims that the burden is disproportionate, or the ratio between the burden and the benefits of the rules is proportionate only if the players have in-depth knowledge and/or experience of State aid law and in particular of SGEI law, which is not so in most cases. The Ministry of

Infrastructure however considers that the efforts to date and the administrative burden involved in application of the SGEI exemption decision are proportionate to the benefits of this set of rules.

The **Hauts-de-France** hub reports that all of the respondents regard the burden as not proportionate as it seems to be very heavy for them. Implementing an SGEI requires a cross-cutting approach and involvement of various experts (legal, financial, commercial, operational), which entails quite a difficult task for operational services that do not fully understand the use and benefits of such a procedure to implement it. As the level of awareness is quite low in general, sometimes a lot of time is needed to clarify everyone's roles. With regard to operational feedback when the concept of SGEIs is involved in discussions, the question would be more about knowing whether we have the appropriate resources (trained staff, for example) internally to make these efforts and take on the administrative burden. Efforts for simplification, flexibility, monitoring and communication are requested.

It is also noted that the administrative burden is very heavy in terms of setting up, implementing and follow-up and execution. Moreover, this complexity is a significant source of risk and the administrative processing time is such that many posts are funded solely for managing European funding cases (both for businesses and the Region). The complexity of the administrative burden means that skills and specialists have to be added, or sometimes internalised.

Stakeholders also note that even if it is necessary to have rules to maintain competition, the sheer amount of rules and the burden of regulation means it is a job for accounting or legal specialists. This could result in a limitation of the number of projects because, below the amount for a large business, the administrative burden and the risk entailed in the event of monitoring are off-putting for project initiators and make them less willing to participate. This discourages operators from applying for European funds as these are the ones that are subject to the most oversight.

In a similar vein, it is noted that there is a need for the EU calls for funds to be managed with due diligence because creating rules that are only accessible to specialists, it entails management costs that are sometimes disproportionate for the business. In this case, the public money does not benefit the final recipient.

It is proposed that, in order to ease the burden, there could be a move towards multiannual monitoring linked to the beneficiary's activity and all of its operations. Verification of the rules specific to the SGEI and the absence of overcompensation would be more relevant, quick and simple than monitoring carried out for every operation. This would be sensible, for example, in the case of a social landlord, as overall monitoring would cover all their public service obligations and management, including reinvestment of its cash flows.

The **North Rhine-Westphalia** hub holds the view that the burden is not proportionate to the benefits and claims that the reporting requirement under Article 9 of the SGEI Decision does not reduce the administrative burden, as was the Commission's intention, but generates a great deal of administrative work every two years, and should at least be reduced or simplified, or the reporting period should be extended to five years.

The **Dutch provinces** hub reports that they have noted that in practice in some cases the SGEI instrument is dispensed with as it is perceived as complex (e.g. due to lack of clarity in certain areas), while the instrument could indeed be applicable.

The **Friuli Venezia Giulia** hub believes that the issue that seems to emerge is not so much a European matter, but a national matter of having clear criteria and parameters for defining the SGEI sector to which the regions refer. The key issue is ascertaining upstream whether or not a sector is in fact an SGEI and the factual analysis to be carried out by the Member State. It comes down to working out what is economic and what is not, what is of local interest and what is not.

The **Emilia-Romagna** hub stresses that the system is entirely based on medium- and long-term service contracts and on the principle of avoiding overcompensation. The procedures are incompatible with the current need to support citizens, in a way that involves frequently changing the way the support is provided as a result of changing economic conditions and circumstances.

The **Thessaly** hub holds the view that the procedures (reports, approval of reports, reports to the EU) create an extremely high administrative burden which are out of proportion to the benefits, since very often the SGEIs are being provided for services in the public interest that are delivered by public bodies and should be considered acceptable *a priori* under the regulatory framework for state aid.

The **Dubrovnik-Neretva County** hub says that due to verification, the allocation process takes longer.

The **Community of Madrid** hub believes that more often than not, the administrative effort and burden is too high for SGEI packages to be applied.

The **Alentejo** hub believes that the administrative burden required for complying with the rules is not proportionate to the benefits and stresses that stakeholders agreed that easing of administrative burden would be welcomed.

The CoR study also refers to issues of excessive administrative burden experienced by relevant authorities. It is worth noting that in some cases local authorities require significant support from central authorities in understanding, applying and complying with SGEI rules. For the central authorities at the Member State level this need for guidance is a substantial resource requirement. At the same time, interviewees admitted that this should not suggest that SGEI and State aid rules are not important. The example shows how important it is to have a central authority, whether at national or regional level, that is endowed with resources to guide and support local actors (beneficiaries) and local authorities that cannot afford employing State aid specialists.<sup>26</sup>

- The hubs were also asked whether in case of **co-financing SGEI with European funds and regional aid** it is clear which framework has to be applied. Most of the hubs seem not to face any difficulty with this with only some exemptions.

The **Brandenburg** hub claims that as ESIF and State aid rules are not harmonised, it is not clear which legal framework is applicable. The scope of application is sufficiently clear only where stakeholders have in-depth knowledge of the rules on State aid and structural funds.

The **Community of Valencia** hub reports that the variation in replies points to a lack of clarity. In the tourism sector, for example, it is stressed that it is not straightforward because of the interdependence at key destinations, between businesses and public players. By contrast, public subsidies granted in the field of employment, using ESF resources, are included in the calculation of the compensation for the provision of those services and must be granted in accordance with the SGEI Package.

The **Helsinki-Uusimaa** hub notes that it is foreseen that SGEI will become a more important instrument/issue in the future in view of State aid rules. What the regional funding agencies will be asking is the extent of the effort and work that may be needed for supporting and implementing the SGEI in the future.

The **Alentejo** hub believes that the application of framework is not clear and creates confusion.

### 3.12 Other challenges reported by the hubs

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<sup>26</sup> CoR study (2020), page 48.

The **Flanders** hub argues that in some cases, the constant monitoring and recovery of overcompensation is overly burdensome, especially when tens or hundreds of small and medium sized care providers receive compensation, exceeding the limits of the SGEI *de minimis* regulation. In these cases, the 2012 SGEI Decision is burdensome both for care provider and the subsidising governments, because it requires a meticulous bookkeeping and screening of overcompensation which does not fit well with the size of the care provider.

In their region, to reduce administrative burdens, they started to provide 'envelope' subsidies some 20 years ago. Under this system, they sometimes pay care providers a fixed sum, without them having to prove all the expenses related to the service. If they can provide the service more cheaply, they can keep the extra, if their service provision is more expensive, they have to pay for the extra costs themselves. To avoid overcompensation, every couple of years, the size of the 'envelope' is adjusted to the costs a typical service provider might incur providing the service.

The stakeholders consulted by the Flanders hub are wondering whether next to the SGEI *de minimis* regulation and the SGEI decision, a third path could be elaborated which creates room for envelope subsidies to undertakings. In their view, this path could be built on the concept of the typical well-run company (Altmark-decision) and the idea of giving incentives to gains in productive efficiency (article 5, 6 of the 2012 SGEI Decision). Every couple of years, a peer reviewed study or an audit could then adjust the size of the envelope to the costs a typical service provider might incur.

The **Brandenburg** hub reports that the line between State aid rules in the area of SGEIs and tax law is difficult to define. In order to make an act of entrustment compatible with State aid, the obligations of SGEIs should be described in detail and comprehensively. In order to avoid tax law implications, a taxable exchange of services must be excluded. This would only be possible if the services were not defined in detail and in concrete terms. In the current situation, a "tax" increase in the cost of SGEI services can be expected as they are subject to VAT.

The **Hauts-de-France** hub notes that establishing an SGEI requires time to study the situation, set it up, provide explanations, which is not always compatible with the time the associations have to work. However, it is an interesting framework that guarantees that each expense is verified.

The **North Rhine-Westphalia** hub raises the following issues:

- In connection with the assessment of the existence of overcompensation, it would be useful to allow for a degree of flat-rate reporting, in order to avoid complicated calculations on both sides.
- Even the most minor of errors may invalidate the entire act of entrustment, resulting in the risk that the aid granted may need to be repaid, with interest. Further simplification and clarification of the requirements for a simple design of the act of entrustment would therefore be welcome.
- It is sometimes difficult in practice to design the act of entrustment lawfully. In view of the associated long-term increase in the administrative burden, it is questionable, for example, whether the requirements of the SGEI exemption decision relating to verification and documentation are still up-to-date.
- It is very time-consuming and labour-intensive for larger undertakings, e.g. as part of a group (large hospital groups with local directors at each site) to find out the information required on aid applications and aid granted. In such cases, *de minimis* support is therefore not really an option for practical reasons, so it is necessary to derogate from the SGEI Decision.
- The possibility should be provided of notifying an SGEI as *de minimis* aid electronically as well as in writing (see the first sentence of Article 3(1) of the SGEI *de minimis* Regulation).
- Recital 6 of the SGEI *de minimis* Regulation (as well as the answer to question 76 of the SGEI Guide) states that the undertaking should be entrusted "in writing" and that the act of entrustment should "inform the undertaking of the SGEI in respect of which it is granted", but the entrustment act "must not necessarily contain all the detailed information as set out in Commission Decision 2012/21/EU". They strongly welcome this. It would, however, be helpful

to clarify what information should, in the Commission's view, be included in the entrustment act and which of the details in the SGEI Decision are optional.

The **Umbria** hub reiterates that the application of the SGEI legislation, including the notification exemption, to the subsidised public housing service, for which there is considered to be no economic activity, is problematic.

The **Veneto** hub also refers to the housing sector which is experiencing difficulties dialoguing with the regional reference structures and colleagues in order to standardise the application of the legislation.

The **Catalonia** hub stresses that terminology is one challenge since the terminology used at national level does not always correspond to that used at EU level, which can cause confusion and lead to the State aid rules being applied incorrectly.

The **Mazovia Voivodeship** hub argues that the starting point for changes in EU regulations regarding SGEIs should be the issues that result in a large amount of interpretive actions by the Commission services of a legislative nature. Reducing administrative burdens, understood as a clarification of the rules, should be the goal of these actions.

The **Community of Madrid** hub stresses that SGEI system and regulations are not adapted to administrations such as the Spanish ones, in particular the Madrid regional administration, since there are other more flexible frameworks that are better adapted to their reality as a public administration and, in this regard, the SGEI framework has not been able to promote the provision of services such as those defined by improving the conditions of quality and competition.

The **Helsinki-Uusimaa** hub comments that Finland will need to start solve the challenges of applying the state aid rules in the field of SGEIs for (un)employment services, e.g. developing education and training services.

### **3.13 Summary of main difficulties reported in the Country Reports, the EC consultation and interviews**

The CoR study on the basis of an analysis of the Country Reports, the EC consultation on SGEIs in the health and social sectors and interviews conducted for the study, groups the main difficulties of public authorities with the SGEI State aid framework into three categories:<sup>27</sup>

- difficulties caused by uncertainty and lack of clarity about some basic concepts;
- challenges posed by the lack of appropriateness of the current SGEI legislation to the market contexts;
- problems linked to the excessive administrative burden.

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<sup>27</sup> For a detailed overview see Table 1, p. 47.

**Table 1: Summary of main difficulties reported in the Country Reports, the EC consultation and interviews (CoR study on SGEIs, 2020, page 18)**

Difficulties		Country Report (national level)	Country Report (LRA level)	Public consultation (stakeholder level)	Interviews (national/LRA level)
Uncertainty about basic concepts	Dealing with the concept of undertaking		<ul style="list-style-type: none"> <li>• French Community Commission (Brussels Capital Region, Belgium)</li> <li>• Flanders (Belgium)</li> </ul>		<ul style="list-style-type: none"> <li>• French Community Commission (Brussels Capital Region, Belgium)</li> </ul>
	Distinguishing across different services	<ul style="list-style-type: none"> <li>• Poland</li> <li>• Latvia</li> </ul>	<ul style="list-style-type: none"> <li>• French Community Commission (Brussels Capital Region, Belgium)</li> </ul>	<ul style="list-style-type: none"> <li>• Housing Europe</li> </ul>	<ul style="list-style-type: none"> <li>• French Community Commission (Brussels Capital Region, Belgium)</li> <li>• Latvia</li> <li>• Spain (Asturias)</li> <li>• Germany (Saxony)</li> <li>• Italy (Sardinia)</li> </ul>
Uncertainty about the market	Dealing with market evolution: operators			<ul style="list-style-type: none"> <li>• FEEC (France)</li> <li>• Groupe VYV (France)</li> <li>• Build Europe (Belgium)</li> </ul>	<ul style="list-style-type: none"> <li>• Latvia</li> </ul>
	Dealing with market evolution: disadvantaged groups			<ul style="list-style-type: none"> <li>• Amsterdam Federation of Housing Associations (the Netherlands)</li> <li>• AEDES (the Netherlands)</li> <li>• International Union of Tenants (Belgium)</li> <li>• Housing Europe</li> <li>• Union Sociale pour l'Habitat (France)</li> </ul>	<ul style="list-style-type: none"> <li>• Latvia</li> <li>• Italy (Sardinia)</li> </ul>
	Appropriateness of the <i>de minimis</i>		<ul style="list-style-type: none"> <li>• French Community Commission (Brussels Capital Region, Belgium)</li> </ul>	<ul style="list-style-type: none"> <li>• EC consultation questionnaire</li> </ul>	<ul style="list-style-type: none"> <li>• Germany (Saxony)</li> <li>• French Community Commission (Brussels Capital Region, Belgium)</li> <li>• Spain (Asturias)</li> </ul>
Excessive administrative burden	Dealing with the overall SGEI package	<ul style="list-style-type: none"> <li>• The Netherlands</li> <li>• Czech Rep.</li> <li>• France</li> </ul>	<ul style="list-style-type: none"> <li>• French Community Commission (Brussels Capital Region, Belgium)</li> <li>• Flanders (Belgium)</li> </ul>	<ul style="list-style-type: none"> <li>• EC consultation questionnaire</li> <li>• CEEP (Belgium)</li> <li>• Amsterdam Federation of Housing Associations (the Netherlands)</li> </ul>	<ul style="list-style-type: none"> <li>• French Community Commission (Brussels Capital Region, Belgium)</li> <li>• Spain (Asturias)</li> <li>• Latvia</li> <li>• Germany (Saxony)</li> <li>• Italy (Sardinia)</li> </ul>
	Complying with public procurement rules	<ul style="list-style-type: none"> <li>• Czech Rep.</li> </ul>	<ul style="list-style-type: none"> <li>• Saxony (Germany)</li> <li>• French Community Commission (Brussels Capital Region, Belgium)</li> </ul>		<ul style="list-style-type: none"> <li>• Spain (Asturias)</li> <li>• Germany (Saxony)</li> </ul>



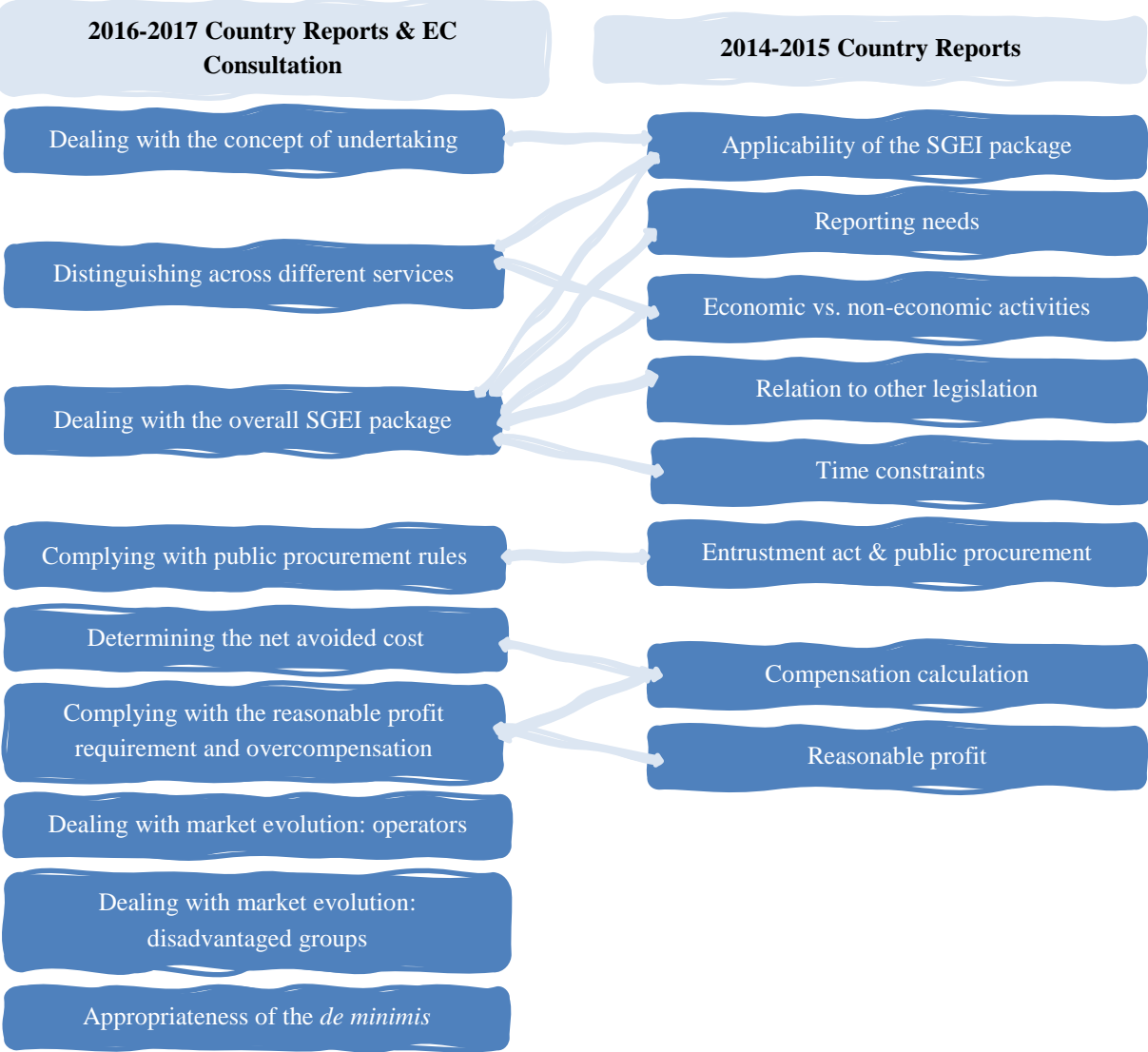
	<b>Determining the net avoided cost</b>	<ul style="list-style-type: none"> <li>• Denmark</li> <li>• France</li> </ul>	<ul style="list-style-type: none"> <li>• Asturias (Spain)</li> <li>• Saxony (Germany)</li> </ul>		<ul style="list-style-type: none"> <li>• Germany (Saxony)</li> </ul>
	<b>Complying with the reasonable profit requirement and overcomp.</b>	<ul style="list-style-type: none"> <li>• Czech Rep.</li> <li>• Sweden</li> <li>• Poland</li> <li>• Latvia</li> <li>• Hungary</li> </ul>	<ul style="list-style-type: none"> <li>• Saxony (Germany)</li> <li>• Flanders (Belgium)</li> </ul>	<ul style="list-style-type: none"> <li>• EC consultation questionnaire</li> <li>• Housing Europe</li> <li>• Union Sociale pour l'Habitat (France)</li> </ul>	<ul style="list-style-type: none"> <li>• Poland (Warsaw)</li> <li>• Germany (Saxony)</li> <li>• French Community Commission (Brussels Capital Region, Belgium)</li> <li>• Latvia</li> <li>• Italy (Sardinia)</li> </ul>

The CoR study also makes a comparison of the difficulties reported by the Member States in their reports for the years 2014-2015 with those reported for the years 2016-2017 (see Table 2, p. 49). It is noted that the EC public consultation on SGEIs in the health and social sectors adds and specifies challenges compared to the Country reports. However, **the mentioned challenges for the 2014-2015 reports are similar to those mentioned for the 2016-2017 period.**

Particularly the challenges related to uncertainties about basic concepts and the excessive administrative burden were mentioned in the previous reporting period. These challenges have been discussed in different detail in the two reporting periods. In addition, challenges on market uncertainties have been added for the latest reporting period. These have mentioned, however, only by stakeholders in the EC public consultation. This highlights **the need to consider not only national and LRA perspectives but service providers or their associations when assessing the adequateness and applicability of the SGEI package.**

Some countries continue to report the challenges they have mentioned previously. Examples are the mentioning of compensation calculation challenges in the reports of the Czech Republic and Poland or the challenges of applying the SGEI concepts to non-economic services as outlined in the Belgium report. Only few Member States that previously reported challenges did not mention any in their 2018 report. Examples are Italy, Romania and Ireland. Simultaneously, Member States that previously did not report challenges mentioned them in the 2018 reports. This holds e.g. for Denmark, Hungary, Spain and Sweden. Since the reported challenges cannot be linked to changed framework conditions or legislation, it may be concluded that they existed already previously and that not all Country Reports contain corresponding information.

**Table 2: Comparison of challenges mentioned in the 2014-2015 and 2016-2017 Country Reports and EC Consultation**



Source: own elaboration based on Zillmer et al. (2017)

#### 4. Regional State aid framework

The second part of the RegHub consultation covered the current Regional State aid Framework as in force for the programming period 2014-2020 in an effort to gather the users' experiences with the framework and identify possible difficulties and room for improvement in the upcoming programming period (see detailed questionnaire in [Annex 5](#) -questions 21 to 34).<sup>28</sup>

From the RegHub consultation it transpires that the COVID-19 pandemic rapidly changes the socio-economic situation in many regions and this leads to the need for change in policy responses and thus in policy tools. In light of this, some hubs argue that the current regional aid maps (programming period 2014-2020) do not adequately capture the true situation in the EU regions due to the new challenges emerging from the COVID-19 pandemic and its short- and medium-term economic effects. In a similar vein, some hubs claim that the overall population coverage, the maximum permissible levels of aid and the type of investments provided for in the Regional State aid Framework should be increased/broadened in order to cater for the new socio-economic challenges in the EU regions as a result of the pandemic.

The replies received from the Hubs also show that the recently presented draft regional aid guidelines are not fully addressing all the concerns raised. For instance, although the Commission acknowledges significant regional disparities which risk being exacerbated by the economic risk of the current COVID-19 outbreak, the indicators and the methods of defining the 'a' and 'c' areas as well as aid intensities, are not appropriate. Indeed, some regions argue that mapping out the eligible areas based on obsolete statistics (even though to be reassessed in 2024) will not adequately capture the real situation as a result of COVID-19 pandemic. Among other issues related to the areas' definition, the difference in economic and social patterns at NUTS 2 and 3 levels as well as the concrete indicators to be used for 'a' and 'c' calculation were mentioned at several occasions.

It is worth noting that the concerns posed by the coronavirus pandemic are not highlighted only by the Hubs but are also shared by several regions and not only by the Hubs. The [CPMR \(Conference of Peripheral Maritime Regions\) contribution](#)<sup>29</sup> to the ongoing Commission's consultation on the review of the Regional Aid Guidelines argues that **a more flexible approach to regional aid should be adopted in light of the long-term effects of the crisis and the emergence of new territorial challenges.**

On the basis of Article 107(3) (a) and (c) of the Treaty on the Functioning of the European Union (TFEU), regional State aid may be considered compatible with the internal market in order to promote the economic development of certain disadvantaged areas within the European Union. The regional aid framework 2014-2020 establishes the methodology and criteria for the determination of regions eligible for regional State aid in the Member States. The GBER sets out conditions on eligibility and

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<sup>28</sup> The Regional aid Framework 2014-2020 consists of (i) the [Regional aid Guidelines \(RAG\) for 2014-2020](#) (RAG)<sup>28</sup>, (ii) the regional aid maps as part of the RAG, and (iii) the provisions applicable to regional aid in Commission Regulation (EU) No 651/2014 of 17 June 2014, declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty ([General Block Exemption Regulation](#), GBER).

<sup>29</sup> Some key elements of their position are the following:

- Aid intensity ceilings in both 'a' and 'c' areas should be revised upwards compared to 2014-2020 given the long-term effects of the crisis.
- The calculation of the aid intensity ceilings should be based on Net Grant Equivalent (NGE) against proposed Gross Grant Equivalent (GGE) which would de facto lower the ceilings and penalise Member States with higher taxation rates.
- The guidelines for 2021-2027 should establish a sub-category of pre-defined 'c' areas for the islands with differentiated and favourable aid intensity ceilings.
- The guidelines for 2021-2027 should include a mechanism whereby Member States can designate assisted areas for short periods, outside the national quota, in response to specific serious situations
- To promote the priorities of the European green new deal a higher aid intensity should be set for the "green" investments in assisted areas
- A new intermediate category of enterprises between SMEs and large companies should be introduced based on the definition of mid-cap companies.

compatibility that have to be met to benefit from the provisions of the GBER and to be exempted from the obligation to notify the aid to the Commission. The regional aid guidelines (RAG) set out eligibility and compatibility conditions for regional aid that is not covered by the GBER.

Regional state aid aims at promoting the development of disadvantaged regions in Europe by supporting private productive investment or, in limited cases, by providing operating aid. The RAG set the rules under which Member States can grant state aid to support regional economic development.

They also set out the rules for drawing up regional aid maps that define in which areas (assisted areas) companies can receive regional state aid and at what intensity. The criterion for selection of an Area is based upon the Average Gross Domestic Product per Capita across all EU member states:

1. Areas with less than 75% of the average EU GDP per capita are considered most disadvantaged, and are automatically designated as 107(3) 'a areas' named after the EU Treaty article which permits enhanced aid.
2. Areas with long-standing or permanent difficulties, such low population densities, transition from former 'a region' status, or island geography are also automatically selected for the sparsely populated 'c area' status.
3. Member states are then allocated a population envelope which they can use to cover other 'c areas' which are disadvantaged compared to the national average – either lower GDP or higher unemployment.

The regional aid framework applies, in principle, to all sectors of economic activity. However, the following activities are currently excluded (with some exceptions for operating aid and outermost regions):

- Regional aid to the steel and synthetic fibres sectors is considered incompatible with the internal market in the RAG due to the particularities of those sectors and is excluded from the scope of the regional aid section of the GBER;
- The sectors of fisheries and aquaculture, agriculture (with some specific exceptions), transport, airports and energy are subject to sector-specific State aid rules and are therefore excluded from the scope of the RAG and the regional aid section of the GBER;
- -In addition, the GBER excludes the coal and shipbuilding sectors from regional aid.
- -Furthermore, regional operating aid is not allowed in favor of undertakings whose principal activities fall under Section K 'Financial and insurance activities' of the NACE Rev. 2, or to undertakings that perform intra-group activities whose principal activities fall under classes 70.10 'Activities of head offices' or 70.22 'Business and other management consultancy activities' of NACE Rev. 2.

#### 4.1 Draft Regional Aid Guidelines

It is also worth mentioning that on 23 July 2020, the Commission published its [draft Regional Aid Guidelines](#) that will apply to aid granted as of 1 January 2022 and launched a [consultation](#) inviting stakeholders for comments on whether and to what extent it would be appropriate to include in the RAG additional measures, based on clear and objective criteria that contribute to the achievement of the Green Deal objectives. The Regional Aid Guidelines are the first of the next generation guidelines to be made available for public consultation.

The Commission reiterates that the EU is characterised by a significant regional disparity in terms of economic well-being, income and unemployment, **which risk being exacerbated by the economic impact of the current COVID-19 outbreak.**

It is also stressed that the RAG 2014-2020 are due to expire at the end of 2020 and were extended on 2 July 2020 until the end of 2021. The adoption of the new RAG is envisaged for the beginning of 2021 to provide Member States sufficient time for the preparation and notification of their regional aid maps given the intended entry into force of the new RAG at the beginning of 2022.

The Commission clarifies that the regional aid provisions in the GBER were also evaluated during the ongoing Fitness Check exercise and the results will be published in Q3 2020. On 2 July 2020, the Commission announced a three-year prolongation of the GBER until the end of 2023.

More concretely, according to the [Explanatory note accompanying the proposal for the revision of the Regional aid guidelines](#), the guidelines are revised with focus, amongst others, on the following areas:

- The RAG excludes from its scope sectors that are covered by specific State aid guidelines and sectors that were facing historic structural overcapacity, namely steel and synthetic fibres. **Synthetic fibres are no longer excluded**, since the preliminary results of the fitness check indicate that this sector is no longer in structural overcapacity. Conversely, the exclusion of the steel sector appears to remain justified. The production of lignite and coal is not considered to be compatible with the internal market as investments in that sector are not in line with the European Green Deal objectives: it is therefore proposed to exclude this sector from the scope of the future RAG. Finally, **the possibility to grant aid under the RAG to broadband and research infrastructures was removed**, as the Commission is not aware of an actual use of those provisions and since there are specific guidelines for both, which are also in the process of being revised to remain fit for purpose for the Commission's policy objectives. It appears therefore preferable that any aid to those two sectors should be governed by the specific guidelines.
- The assisted areas designated as a-areas and predefined c-areas will be determined by the Commission based on the methodology defined in the regional aid guidelines and the most recent statistics available on GDP and unemployment. It is proposed that the methodology remains unchanged. However, the current regional aid maps were determined based on the statistics of 2008-2010 and **are therefore no longer reflecting the economic reality**. As a consequence, the regional aid coverage, a-areas and predefined c-areas are updated based on the methodology mentioned above, based on most recent statistics on GDP and unemployment, which is in line with the procedure in the last period. The population ceiling has been set at 47%. The regional aid maps will be valid for the period 2022-2027.

As regards the economic disturbance created by the COVID-19 outbreak, the Commission put in place more targeted instruments. At the same time, the shock caused by the pandemic might have more long-lasting effects on certain regions. At this point in time, **it is too early to predict the impact of the COVID-19 crisis in the mid- and long- term and which regions will be particularly affected. To address the difficulties of Member States that have been most affected by the crisis, the Commission plans a mid-term review of the regional aid maps in 2024, which will take into account statistics of the years 2020 to 2022.**

- The current RAG introduced a generalised reduction of aid intensity ceilings for all categories of regions, except the worse-off. In the proposed draft, **the maximum aid intensities have still been increased back to the levels of the previous RAG to support the European Green Deal and Digital Strategy objectives** by enabling additional incentives for private investments in those regions, including by large undertakings in a-areas<sup>30</sup>.

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<sup>30</sup> For Article 107(3) (a) areas, the maximum rates of aid vary from 30% to 50%, depending on regional GDP. The poorest outermost regions can benefit from a 20% top-up. For Article 107(3) (c) areas, the rates of aid vary from 10% to 20%, depending on regional GDP. Former 'a' areas can benefit from a 15% top-up. Small enterprises may receive 20% more aid and medium-sized enterprises 10% more aid.

- At the same time, because aid to large undertakings was found to be unlikely to have an incentive effect for investment, the RAG authorised aid for investments of large enterprises in c-areas to a lower extent than investments by SMEs. Indeed the current RAG restricts the possibility of aid to large undertakings in c-areas to initial investments that bring new economic activities to the area (greenfield investment; diversification into new products). The current RAG introduced the possibility of aid to large undertakings in c-areas for the diversification of existing establishments into new process innovation, subject to notification and approval by the Commission.

The current provisions on State aid for investments related to new process innovations induce a heavy administrative burden, leading to the preferential use of other aid types. **It is therefore proposed to remove that specific provision**, while keeping the possibility to receive aid for greenfield investment and diversifications, which has not been questioned in the evaluation.

- The process related to the selection of assisted regions involves, after the designation of a-areas and pre-defined c-areas by the Commission, the selection of so-called non-predefined c-areas by Member States. Under the existing rules (paragraph 168 of the current RAG), there are five – rather heterogeneous – categories of non-predefined c-areas: (i) the first two are defined by reference to the number of inhabitants, GDP per capita, and the unemployment rate; (ii) the third category refers to geographically isolated areas (islands, mountains, peninsulas), subject to conditions; (iii) the fourth refers to regions adjacent to an ‘a’ area or a third country, subject to conditions; and (iv) the fifth concerns regions that are undergoing major structural change or are in serious relative decline, subject to conditions.
- The five criteria of paragraph 168 of the current RAG, based on which Member States could designate non-predefined c-areas have been maintained, since no fundamental issues were raised at the time of the design of the regional aid maps or in the public consultation in that regard. However, with a view to avoid double work for Member States with regard to Just Transition Areas, **it is proposed that Member States can assign the status of non pre-defined c-areas to Just Transition Areas without providing further justification that is normally required to provide for the application of criterion 5**. Indeed, for Just Transition Areas, the existence of a structural change is considered to be sufficiently demonstrated as part of the respective Just Transition Plan.

## 4.2 Regional aid maps

The hubs were asked whether the indicators and methods for the definition of the maps related to the regional aid framework 2014-2020 allow an effective coverage of the areas eligible for regional State aid in the EU. It transpires that the majority of the hubs believe that the indicators and methods for the definition of the maps allow indeed an effective coverage of the areas eligible for regional State aid in the EU, with one fourth of them expressing the opposite view.

A large number of the hubs however argue that the regional aid maps **do not adequately reflect the actual economic situation in their region/area** with one fourth of them expressing the opposite view.

The **Flanders** hub believes that the RAG give sufficient freedom to the Member States/regions to select the eligible areas. It is also argued that the basic criteria (GNP compared to EU-27 or unemployment rate compared to national average) are quite general and that GNP is rarely usable in Belgium and the unemployment rate alone is not always as meaningful as a main selection criterion. Other indicators may also be useful which are currently used only in the subsequent selection of the municipalities within the districts eligible under the EU criteria.

The **Brandenburg** hub reports that the indicators and methodology used to define maps related to the regional aid framework are deemed to be appropriate to the economic circumstances of the regions and

therefore relevant. However, it is also noted at the same time that the methodology and criteria are very complex and sometimes not easy to understand. The ESIF administration/audit argues that the methodology and criteria are very complex and not easy to understand.

The **Umbria** hub indicates that the criteria and methodology applied in Umbria in the period 2014-2020 are those referred to in paragraph 168(a) of the RAG, as there were neither 'a' areas nor predefined 'c' areas at that stage in the region. With regard to non-predefined 'c' areas, these criteria and methods are clear because they are based on objective criteria of a statistical nature.

However, it is reported that the following problems have been identified:

- on the basis of these criteria and methods, the size of the population living in non-predefined 'c' areas in Umbria is very small: around 185 000 inhabitants out of a total population of around 880 000 inhabitants;
- the criterion of “contiguous areas of at least 100000 inhabitants” combined with the very low population included means that it is not certain that the areas where it is most necessary to encourage economic development will be covered: for instance, areas where there are a significant number of businesses may be excluded.
- On the other hand, without the ‘contiguity’ criterion, the region would have more flexibility to include in 'c' areas those where there are more businesses and where further development is needed. This method would be simpler and more effective. In conclusion it is argued that, once the allocated coverage quota has been established, the region should be given the possibility of managing the areas to be included with more flexibility.

In relation to the question whether the regional maps adequately reflect the actual economic situation in their region/area, the **Umbria** hub notes that where an area of the region is only partially eligible, with the areas identified at the beginning of the programming period on the basis of parameters relating to a population share that is not particularly large, **it is not possible during the period to provide the necessary support for other areas whose parameters have changed for the worse in the meantime.** This is particularly true in exceptional situations, as in the current period of emergency due to coronavirus, where the effectiveness of the Charter needs to be assessed in the light of changes in the regional economic environment owing to the emergency. After this assessment, it should be possible to amend the Charter with a simplified procedure: i.e. to allow the region, within the allocated population share, to directly change the areas covered by Article 107(3)(c) of the TFEU.

The **Dutch provinces** hub reports that experience in the Netherlands is that certain disadvantaged regions are not included in the aid map. While other regions which are included in the map are not necessarily more disadvantaged.

The **Friuli Venezia Giulia** hub notes that when it comes to identifying 107(3)(c) areas, it is proposed that the emphasis not be placed on statistical criteria. This point follows from the wording of the Treaty: as the Court has pointed out, in the case of 'a' areas, the criteria are "abnormally low standard of living" and "serious underemployment"; the derogation for 'c' areas provides for the identification of areas (which do not necessarily coincide, or normally do not coincide with the statistical territorial units), which have certain characteristics in terms of economic development that may justify aid (in particular investments) to a greater extent than other areas, provided that they are compatible with the common interest. It is therefore necessary to establish criteria suitable for ensuring the pursuit of the common interest in the relationship between the distortion of trade on the one hand and combating weaknesses or pursuing the general interest on the other.

The **Community of Valencia** hub believes that the indicators and the methods used allow areas of the EU eligible for regional State aid to be covered effectively and that the criteria are objective. With respect to the maps, however, it is stressed that in principle, they seem to be an appropriate reflection, but there are imbalances within regions that are not taken into account. In addition, as a result of the



COVID-19 pandemic and its short- and medium-term economic effects, it does not adequately capture the true situation.

The **Emilia-Romagna** hub stresses that mapping out the eligible areas based on old statistics, which do not reflect the current situation and are not particularly meaningful, leads to the identification of areas that are merely groupings of cadastral districts created to comply with the limits imposed by the mapping rules and which thus do not reflect the need to manage the aid under Article 107.3(c) as an industrial policy instrument. It would make much more sense to set parameters for determining the maximum amount of regional aid that can be granted over six years in a given region, rather than setting very complicated criteria for mapping out eligible areas.

The **Mazovia Voivodeship** hub argues that the methodology adopted by the Commission to determine the status of regions eligible for regional aid in the regional aid framework for 2014-2020 does not take into account the very important factor of economic diversity within the NUTS 2 regions and therefore does not take into account the significant differences between the city of Warsaw and the former regional capitals (now the main cities of the NUTS 3 subregions) and does not at all take into account the identical economic level in the municipalities and districts directly adjacent to less developed regions (NUTS 2), where the regional aid level is the highest in Poland, with the result that the difference between the neighbouring municipalities/districts of the Mazowieckie and Podlaskie provinces and the Lubelskie province is 15%, but in fact the economic and social conditions are similar. It would be appropriate to have different criteria so as to take into account the geographical location of the subregion (NUTS 3).

It is also added that **Mazowieckie region** (NUTS 2) is very diverse in terms of social and economic circumstances. In addition to the districts located in the immediate vicinity of Warsaw and the capital city itself, there are subregions (NUTS 3) that vary widely in terms of potential and socio-economic conditions next to regions defined as less developed regions, i.e. Warmia-Mazury, Podlaskie and Lubelskie provinces, where the regional aid map allows for a maximum grant ceiling of 50% of eligible expenditure plus an additional 10 or 20% for small and medium-sized enterprises. A regional aid map formed in such a way is conducive to the migration of the population, transfer of economic activities from the Ostrołęka-Siedlce subregion to neighbouring districts or municipalities belonging to eastern flank provinces. This is a worrying phenomenon as it fosters deepening of the economic diversification within the Mazowieckie province, while at the same time moving taxes and the availability of offers from companies in Mazowieckie to other regions.

The **Thessaly** hub argues that the method does not adequately address: (a) the pronounced internal distinctions at local level in the region where they exist, (b) specific conditions that distort the data used to classify a region. Additional criteria for determining eligibility could be considered. In relation to the maps, it is stressed that **clarification is needed at a lower level than the regional level and that, as the maps are drawn up on the basis of data from previous years, conditions will have diverged (in a negative way) during the life of the map and as a result the maps often no longer reflect the current situation of a region.**

The **Dubrovnik-Neretva County** hub notes that because of the fact that the map of regional aid is divided into two areas (continent and Adriatic Sea area) there is a large disparity with regard to the development of individual regions.

With respect to the maps, the **Community of Madrid** hub stresses that in general, quite a few affected municipalities are collected. However, the population coverage limit prevents other municipalities with the same socioeconomic characteristics from being included and forces the inclusion of smaller units, that is, municipal districts. This subdivision, which does not have a clear reflection on the administrative organization structure, is what determines the application of one aid scheme or another and makes it difficult for the managing bodies to control the requirements. On the other hand, the potential beneficiaries do not know if their company is located in a NUTS 3 zone or not, which makes it difficult for them to calculate the return on investment and the incentive effect.

### 4.3 Overall population coverage

On the overall population coverage, which serves to identify which regions are eligible for regional State aid, the majority of the hubs argue that the overall population coverage is not appropriate with only 10% expressing the opposite view.

The **Brandenburg** hub reports that using overall population coverage as a criterion for determining the basic eligibility of regions is considered appropriate in the absence of any other proven findings. However, coverage should be greater. At present, there are still too many areas which fall outside the current regional aid map but which should in fact be treated as eligible for aid.

The **Umbria** hub - reporting what was already established in a previous document of the Conference of the Italian Regions - notes that for 'c' areas, for Italy the population coverage ratio is 5.03% or about 3 million inhabitants, to be split between all the central and northern regions and some regions in the south of Italy. Therefore, coverage in terms of regional populations is too low.

The hub also stresses that at this stage the regions eligible for derogation 107(3) (c) were identified on the basis of a European eligible population ceiling (corresponding, as decided by the Commission, to 47% of the EU28 population), minus the population resident in the regions eligible under derogation 107(3) (a). The remaining availability was then distributed among all the Member States, taking into account, on the one hand, the total eligible for each one for the derogation provided for in Article 107(3) (c) (on the basis of specific criteria for identifying the vulnerable areas), and, on the other hand, the quota already used, for each country, by the 107(3) (a) regions. As a result, countries with a substantial area whose development is “lagging behind”, such as Italy, have obtained a lower proportion of the quota for theoretically eligible vulnerable areas than that allocated to countries which do not have substantial regional imbalances, such as the Federal Republic of Germany, France or the United Kingdom.

It is true that the total areas eligible for the two derogations ('a' and 'c') are certainly higher in Italy than in countries such as Germany or France. However, in Italy, this coverage concerns mainly regions (those in the south) with a very low density of businesses and with little possibility that this situation will change significantly in the medium term. Coverage of 25.85% (in terms of resident population) in Germany, 21.24% in France, 23.14% in the United Kingdom, 33.51% in Spain, 25.87% in Austria, 26.03% in Finland, 12.26% in Sweden and 29.95% in Belgium, often for highly industrialised regions, as against 5.03% in Italy (much lower in terms of the areas eligible in principle), means that there is a clear advantage for those countries in terms of competitiveness of local economic systems. In addition to this, among other things, the way the quota is split between the various regions has resulted in low and substantially ineffective use of the regional derogation.

The **Community of Valencia** hub underlines that regions contain subregions, where the population is unevenly distributed and with imbalances in the overall number. Furthermore, in light of the circumstances generated by COVID, in areas such as tourism, particularly in countries and regions in the Mediterranean, that change with seasonality. The overall impact is of such proportions that aid for eligible regions should be extended into the medium term too, and not only granted via the temporary aid scheme.

The **Mazovia Voivodeship** hub notes that in the case of the Mazowieckie province, establishing certain authorisations/principles on the basis of average data from the entire NUTS 2 region is inadequate in reality, since it is influenced by data from Warsaw (where a large proportion of GDP, population, etc. are generated by people from outside Warsaw – sometimes even from outside Mazowieckie), which significantly increases it, thus creating a false picture of economic and social conditions in the region and discriminating against the subregions (NUTS 3) with significantly worse economic and social conditions and weaker economic parameters.

The **Thessaly** hub argues that population criterion must be considered a sub-criterion, given that it does not necessarily reflect the strength and endogenous development of a region.

The **Dubrovnik-Neretva County** hub does not consider this criterion as appropriate due to the fact that most of the population is located in continental Croatia.

The **Community of Madrid** hub stresses that according to Regulation 651/2014, the total coverage must be less than 50% of the EU population. In the 2014-2020 period it was 46.53%, that is, close to the maximum limit. The financial crisis of 2008 and its subsequent sovereign debt crisis and the current epidemic of COVID-19 make it necessary to increase this limit as much as possible. This increase would allow avoiding the problem described in the definition of the maps and giving an adequate response to the COVID-19 crisis.

The **Friuli Venezia Giulia** hub notes that without disputing the derogatory nature of regional aid, it is pointed out that the Commission, in the 1998 Guidelines cited, infers from that characteristic that "the population coverage of regions falling under Article 92(3)(c) must not exceed 50% of the national population not covered by the derogation under Article 92(3)(a)": this is quite different from the solution adopted today, which meets a criterion of "fairness" between States, not in keeping with the rules on competition, which refers to the relationships between companies.

The hub also raises the following issues:

- **regarding 'a' areas**

With regard to the 'a' areas, while endorsing the rather extensive use of regional aid, they would call for the mapping of such areas to be better structured by means of small adjustments that better structure the method of defining 107(3)(a) areas.

Statistical parameters taking into account the (nominal) per capita GDP could continue to be used, corrected by the current methods provided for under the regional aid guidelines related to standard of living and purchasing power (subject to further statistical/methodological considerations), and with the introduction of the labour cost parameter (often the indirect root cause of relocations).

On this basis, the aid intensities should be established, further mitigating the overlap between eligibility for the convergence objective for the distribution of the ESI Funds and the regional aid map (which, regarding 'a' areas, could be differentiated in terms of the different purposes, e.g. infrastructure for ESI Funds and companies for regional aid).

This adjustment to the correction in respect of labour costs could help, inter alia, to discourage relocations, in a way that is perhaps more indirect but that is more effective than the regulatory changes proposed by other Member States that would have a direct impact on the investigations of the granting public administrations (which do not have sufficient means of investigation).

- **regarding 'c' areas**

With regard to the operational complexities of the rules on regional aid, even without regard to the rigidity of the requirements and the stringency of the constraints, the rules are not easy to read, especially when the provisions are broken down between general provisions, specific definitions and cross-references, which sometimes use similar but not matching terms for similar but not matching situations, leading to – if not errors in application – at the very least difficulties in interpretation, resulting in reluctance to use the specific exemption.

There is a need to rethink the classification for 107(3)(c) areas by not anchoring it solely to statistics and adhering to the dictates of the Court of Justice.

The **Friuli Venezia Giulia** hub further puts forward some proposals to address the above issues. They argue that the solution is to require the Commission and the Member States to establish a mix of criteria which, together with the percentage of population criterion, does not take account of the share of 'a' areas that a Member State would receive from the application of statistical data but which would also be based on specific and objective needs in demarcating 'c' areas that correspond to needs regarding hardship and related development research (to be notified to the Commission when mapping 'c' areas).

The following should be brought forward:

- In general terms, any doubt should be dispelled around ERDF mapping, which in the view of the hub, should remain independent from 'a' and 'c' mapping as the ERDF objectives are now different (RDI, environmental protection, innovation) compared to the funding of companies' initial investments. Running the risk of a reduction in ERDF areas as regards limiting them to the 'c' mapping is not acceptable.

The effects of relocation not only to other 'a' areas of the EU but also to non-EU countries should be tackled more effectively by increasing the time period laid down in Article 14(16) of Regulation (EU) No 651/2014 from two to five years at least in relation to the completion of the investment.

In addition, in order to reduce competition between 'c' areas and 'a' areas, if this were possible, a system should be designed and assessed in which under certain aid/investment thresholds there could be different aid ceilings between 'a' areas: such differences should be eliminated in the case of investments above the threshold. The ban on relocation would remain.

Another corrective measure to consider could be allowing the financing of initial investments outside the 107(3)(c) regional aid map for mid-caps as currently defined in the Guidelines on State aid to promote risk finance investments (2014/C 19/04) – both "small mid-caps" (499 employees, with annual turnover not exceeding EUR 100 million or an annual balance sheet not exceeding EUR 86 million) and "mid-caps": "an undertaking whose number of employees does not exceed 1 500, calculated in line with Articles 3, 4 and 5 of Annex I to the General Block Exemption Regulation".

- Other corrective measures that could be considered, as alternatives or cumulatively, could include introducing a reserve with respect to national coverage, considering not only the population of a given area but also the businesses operating in that area, introducing parameters that are not statistical but that pinpoint areas marked by particular disadvantage/hardship which, for these reasons, need to be developed beyond the existence of a quota per Member State of 'a' areas: this would involve including the following types of area within 'c' areas, to be agreed with the Commission in an ad hoc notification during the mapping process: areas formerly hit by full-blown industrial crises, mountain areas, areas affected by major natural disasters, island areas, areas on the outskirts of large cities, etc. In these areas Member States would not be allowed to finance everything as regional aid, but only to finance specific investments as compatible aid, which would have been agreed in the appropriate forum of the notification to the Commission (e.g. in mountain areas only tourism investments and not manufacturing or heavy industry, in former industrial areas only redevelopment and not in the same sector that suffered the full-blown crisis).

These corrective measures need to be proposed because it is common in the case of regional areas that are only partially eligible that the areas identified at the beginning of the period, based on parameters relating to a not particularly large share of the population, may during the period concerned not allow for necessary investments in other areas that in the meantime see their parameters worsen. To do this, it would be desirable for a certain percentage (on a regional basis or across uniform areas) to be used by

way of derogation, even temporarily, to deal with these crisis situations, which are often very localised and can occur after the initial mapping exercise.

#### **4.4 Assessment of the eligibility conditions to grant aid under GBER**

The regional hubs consultation also looked at the view of the stakeholders on whether the eligibility conditions to grant aid to large enterprises in ‘a’ and ‘c’ areas and to SMEs in those areas as specified under article 14 (3) of the General Block Exemption Regulation ([GBER](#)), are appropriate to allow for the development of disadvantaged areas in the EU, while maintaining a competitive internal market.

##### **4.4.1 Aid to large enterprises in ‘a’ areas**

In relation to aid to **large enterprises in ‘a’ areas**, 41% of the hubs concerned regard the eligibility conditions as appropriate with 33% expressing the opposite view.

The **Brandenburg** hub notes that the job constraints associated with investment by large enterprises and the wider spill-over effects of such investment have a positive impact on the economic development of disadvantaged regions and on the functioning of the internal market.

The **Friuli Venezia Giulia** hub argues that in order to be more attractive as a type of aid, forms of funding or incentives for large enterprises could also be introduced for projects that constitute an economic driving force including for boosting/involving/creating spill over benefits for SMEs in the area. For example, in the case of large enterprises that, due to the nature of the investment and the sector or the fact that it is labour-intensive, include within their business plan competitive development collaboration also with local SMEs.

The **Community of Valencia** hub argues that in the area of support for economic sectors, the conditions for aid to all kind of companies in all areas are considered to be overly strict.

The **Thessaly** hub claims that these conditions mean that enterprises already operating in the areas in question and which are a crucial link in the local economic chain are excluded from the regional aid system. It is also noted that aid to large enterprises only for an initial investment reduces their ability to develop and adapt to market conditions so that they can remain competitive. Support for large enterprises in general does not hold back or adversely affect SMEs.

##### **4.4.2 Aid to large enterprises in ‘c’ areas**

In relation to aid to **large enterprises in ‘c’ areas**, 44% of those concerned regard the eligibility conditions as not appropriate with 25% expressing the opposite view.

The **Flanders** hub specifies with respect to the aid to large enterprises in ‘c’ areas that the requirement that it must relate to new activities should be scrapped. Large companies that make a large investment in an existing location within the same NACE code and thus innovate, anchor or expand economic activity and employment, should also be eligible for regional aid. It is also noted that the criterion of "independent establishment" is also difficult to apply in practice.

The **Brandenburg** hub argues that the conditions are too strict. Limiting the granting of aid under the GBER can prevent the development of less favoured areas. The presence of large enterprises has a knock-on effect on the region and attracts suppliers. This is not taken into account and is also underestimated for the regions concerned. The restrictions on the granting of aid under the GBER may hinder the development of less favoured areas if, for example, a large enterprise were necessary or desirable as a “magnet” or “anchor” in a region. The ESIF administration also notes that the conditions are too strict.

The **Umbria** hub agrees with the condition that aid to large enterprises in 'c' areas can only be granted for an initial investment for a new economic activity. Moreover, large enterprises, compared to small and medium-sized enterprises (SMEs), have more opportunities to access significant aid such as research aid.

The **Catalonia** hub believes that, to truly promote development in these areas, aid to large enterprises should not be limited to initial investments in favour of a new economic activity. It should be possible to grant aid for any form of initial investment, as is the case with SMEs.

#### **4.4.3 Aid to SMEs in 'a' and 'c' areas**

With respect to aid to **SMEs in 'a' and 'c' areas**, 37% of the hubs concerned argue that the conditions are appropriate with one fourth of them having the opposite view.

**Brandenburg** claims that the granting of aid to SMEs is absolutely essential for the economic development of disadvantaged areas and for the functioning of the internal market, since SMEs as a whole provide the largest number of jobs and ensure a desirable diversification of economic activities in an area.

The **North Rhine-Westphalia** hub raises the issue of the definition of SMEs which they regard as too narrow.

The **Umbria** hub agrees with the condition that aid to SMEs in 'a' and 'c' areas can be granted for any form of initial investment. Indeed, in order to achieve the social cohesion objectives, it is important to grant aid first and foremost to SMEs while preserving the aid opportunities already provided for large enterprises.

The **Friuli Venezia Giulia** hub says that in some cases (such as under Article 14 of the GBER), the combination of eligible costs makes it possible to define a share of funding that may be – even with the application of the relevant percentages to the expenditure items – lower or at least not very effective in relation to the non-assisted areas (Article 17 of the GBER).

The **Thessaly** hub recommends broadening the aid for SMEs and stresses that the "initial investment" condition is not only difficult to define but is considered particularly restrictive in the case of SMEs.

The **Community of Madrid** hub stresses that the eligibility conditions encourage the presentation of projects that promote the development of these regions. However, at the management level there are problems:

- Regarding size: companies are in continuous transformation (in number of employees, turnover and balance sheet) and it is not always easy to stay within the generally established conditions. Size is conditioned by maintaining various requirements for 2 consecutive years, but companies fluctuate and grow and decline at a rapid rate.
- Regarding the type of investment and the eligible expenses, there should be clearer and more exhaustive definitions. For example, with regard to 'tangible and intangible assets': the implementation of some intangible assets requires other essential complementary investments (costs in transport, installation, commissioning, etc.) which, as they are not expressly included, cannot be subsidised, discouraging investment.

#### **4.4.4 Assessing the conditions on eligibility and compatibility under GBER**

On the overall question about whether the conditions on eligibility and compatibility that have to be met to benefit from the provisions of the GBER are still appropriate and easy to implement, the hubs who agree are equal to those who disagree with the statement.

The **Brandenburg** hub argues that the rules on environmental protection, energy efficiency and the promotion of renewable energy production are no longer in line with current needs. As only extra investment costs are eligible, investment in environmental protection becomes relatively unattractive. In addition, the rules are complicated and give rise to many questions of interpretation, some of which are difficult or impossible to resolve. Finally, aid differentials, especially in border areas, lead to restrictions on the relevant applicability of the GBER. It is also noted that there are numerous questions of interpretation which are not defined in Article 2 of the GBER and which can only be answered with in-depth knowledge of Commission practice or cannot even be answered at all.

The **Hauts-de-France** hub argues that the definitions of an economic activity, a business and eligibility for State aid are not always straightforward.

The **Dutch provinces** hub claims that the conditions laid down in Article 14 of the GBER are numerous and complex. As a result, local and regional authorities are discouraged from making use of this exemption within the State aid rules.

The **Friuli Venezia Giulia** hub says that, with respect to the targets to be met, the eligibility conditions, and particularly the "entry" thresholds, are appropriate and easy to implement. The effect of the health crisis may make it necessary in the near future to review the parameters, given the need for less selective measures, geared towards supporting entire production sectors.

The **Thessaly** hub believes that the conditions for holding an investment should not be modified for the period set and that eligibility should be broadened.

The **Community of Madrid** hub stresses that the maintenance of the eligibility conditions (article 14, sections 5 and 7), although they do not offer theoretical difficulties, imply a high cost for the administrative manager, who must maintain control of the subsidized investments for very long periods of time, with the consequent cost in resources, which is not always available. Some kind of self-control mechanism should be established to allow for more agile management and more adequate control.

#### **4.5 Maximum permissible levels of aid**

The hubs were also asked whether the maximum permissible levels of aid (aid intensity ceilings), as set in the Regional State aid framework, are still appropriate. 40% of the hubs think that those levels are not appropriate while almost 29% find them appropriate.

The **Brandenburg** hub agrees that, in the light of the current developments, it would be appropriate to adjust the aid ceilings.

The **Hauts-de-France** hub says that contribution rates are still low in terms of the needs of businesses.

The **Umbria** hub notes that in normal situations, the aid ceilings could have been sufficient as indeed granting aid amounting to a certain percentage of the eligible costs and not the total was an attempt to ensure a balance between support for enterprises and the need to stimulate them. Now, many companies are in the process of closing down due to the measures put in place by the State and the regions to tackle the health emergency brought about by coronavirus. In this situation, the permitted levels of aid should be increased as much as possible.

The **Community of Valencia** hub argues that the levels of support are not sufficient to act as an incentive for investment. In the area of tourism, they should be increased in order to respond to the effects of COVID on businesses. It is stressed that account should be also taken of the fact that problems are usually budgetary, and not about a maximum authorised aid rate.

The **Emilia-Romagna** hub believes that the intensity ceilings for 'c' areas are not conducive to incentivising companies to invest in "marginal" areas located on the outskirts of areas with high levels



of industrial development and close to the main transport links. There is, inter alia, a lack of interest in these "marginal areas" – often at one-time agricultural land – even on the part of workers, given the lack of connections and food services. More significant incentives could in theory spur on businesses, especially those that are more structured, to find solutions with local authorities.

The **Mazovia Voivodeship** hub argues that the aid intensity ceiling for Mazowieckie province varies widely, from 10% to 35% plus 10-20% for SMEs, but the subregion Ostrołęka-Siedlce, which is adjacent to the Warmia-Mazury region, the Lubelskie region and the Podlaskie region, is actually not very economically different, but maximum aid intensity there is 50% plus 10-20% for SMEs. It is therefore necessary to create a realistic regional aid map in the next funding period, taking into account the lack of differences between the less developed regions on the eastern side of Poland and the Ostrołęka-Siedlce subregion in a more developed region.

The **Thessaly** hub stresses that an increase in the amount of aid, regardless of what category a region falls into, should be considered. In any case, when data are examined with a view to reclassifying a region, account must be taken of the latest data, given the recent changes that have taken place.

The **Alentejo** hub believes that due to changes in priorities since 2014, level of aid in some categories could be reconsidered.

#### 4.6 Type of investments

With respect to the type of investments that qualify as regional aid according to the Regional State aid framework, 43% of the respondents find them appropriate with only 20% expressing the opposite view. The **Flanders** hub stresses that the requirement that the new investment must relate to "new activities" should be scrapped.

The **Hauts-de-France** hub holds the view that the type of investments is not appropriate and they are wondering why there is the restriction that large companies can only receive aid if the investment is made for a new economic activity, not for initial investments.

The **Umbria** hub indicates that investment falling within the definition of regional aid, intended to promote the development of disadvantaged areas is in itself adequate. However, it should be specified that in emergency situations, such as the current health situation, the disadvantaged regions need more support in order to be able to get going again. Therefore, investment aid must be increased and include the widest possible spectrum of investment.

The **Friuli Venezia Giulia** hub claims that in respect of the pre-crisis scenario, the investment package is complete and adequate. In the near future, there might be a need to adjust this, including in coordination with the *Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak*.

The **Community of Valencia** hub argues that the market in general is changing at great speed and the typology is now out of date. In particular, the type of investments to deal with the effects of COVID-19 on the EU economy should be expanded and updated. Businesses and public agents managing tourist destinations must be able to access state aid in better conditions because the situation has radically changed and access to technology is now essential to ensure the safety of users of a product or service.

The **Thessaly** hub recommends broadening the scope.

The **Community of Madrid** hub holds the view that the definitions pose practical problems in aid management. It is argued that a rigorous work of definition of concepts should be undertaken, which would allow adjusting the current reality of scientific-technical knowledge and business reality. Some examples are:

- The definition of initial investment is neither clear nor exhaustive and gives rise to legal misunderstandings. An initial investment is one with which a new project is started, or one that allows transforming a pre-existing company into a different one, or simply one that allows a company to renew itself, or one that allows it to transform technologically. It is not easy to answer this question, because there is no single and unequivocal answer, therefore it is not easy to apply in practice as an eligibility requirement.
- The concept that “acquired assets must be new” (article 14.6) is also not clear.
- The definition of consulting in practice produces great complications since it is difficult to differentiate the concepts of "consulting" (eligible) and "start-up" (not eligible). In practice, there are consulting invoices that are not accepted as eligible expenses, since it is understood that what is invoiced are costs related to the start-up and training associated with the implementation of new projects.
- Tangible assets should detail what is included in the acquisition, indicate whether it is only covered by permanent availability, or also limited availability in time.
- Intangible assets should indicate which concepts are covered, since there are intimately associated costs that cannot be differentiated.

#### 4.7 Type of companies

In relation to the type of companies that can receive regional aid according to the Regional State aid framework, a large majority of the hubs regard them as appropriate with only 10% expressing the opposite view.

The **Brandenburg** hub argues that the different treatment of SMEs and large enterprises under regional aid is considered appropriate.

The **Umbria** hub notes that both SMEs and large enterprises should be eligible for regional aid. Especially in emergency situations, such as the coronavirus emergency, support to the latter should be ensured because any damage caused by the closure/difficulties of large enterprises has a major impact in terms of employment. It is argued that in emergency situations, aid should be granted to all kinds of enterprises for all types of investment.

The **Friuli Venezia Giulia** hub argues that the broad spectrum of companies eligible for aid is in line with current needs. Moving away from more selective aid would adequately address the most immediate needs, also in view of the significant financial support that the Commission is pouring into the system.

The **Community of Valencia** hub argues that as regards the type of companies, the emergence of new models make it unsuitable. Once again, the scope has to be widened to take account of the effects of COVID -19.

The **Community of Madrid** hub stresses that aid is intended for both SMEs and large companies and holds the view that modulating aid intensity is preferable to limiting the type of companies that can receive aid.

#### 4.8 Incentive effect

As per Paragraph 26(d) of the [Regional Aid Guidelines](#) the aid must change the behaviour of the undertaking(s) concerned in such a way that it engages in additional activity which it would not carry out without the aid or it would carry out in a restricted or different manner or location. Moreover, Article 6 of the GBER specifies that aid shall be considered to have an incentive effect if the beneficiary has submitted a written application for the aid to the Member State concerned before work on the project or activity starts.

The majority of the hubs believe that the provisions on the incentive effect of aid are sufficiently defined in both the RAG and the GBER and allow for an effective and smooth application. One fifth of the respondents has the opposite view though.

The **Brandenburg** hub argues that the rules are too complicated and often not user friendly. This leads to legal uncertainty. As regards large enterprises in particular, it is difficult to determine when a “significant” modification of plans/projects can be considered to have an incentive effect. Uniform requirements on the part of the Commission would result in greater user-friendliness and legal certainty here.

The **Umbria** hub holds the view that the definition in the RAG is the correct one but the problem is that it is difficult to apply as the incentive effect is difficult to assess and prove. Indeed, counterfactual assessments would need to be carried out in agreement with the company, usually some years after the aid has been granted. This means that information would have to be found when the situation changed (e.g. on the basis of changes in the situation of the company), which makes the procedure particularly burdensome.

On the other hand, the definition set out in the GBER is less effective but simpler to implement. It is less effective because enterprises often submit invoices displaying dates very close to the date when the request for aid was submitted, sometimes even before the publication of the scales for eligibility for the aid: this means that the enterprise had already planned the activity and would have carried it out irrespective of whether it obtained the aid.

The fact, however, that the definition is simple to implement and not burdensome is important, especially at a time of emergency such as the present, when rather than providing incentives it is necessary to ensure enterprises’ survival.

The **Dutch provinces** hub reports that it is often unclear in situations where aid is requested and later withdrawn. When aid is finally applied for, it is not clear at what point the application was submitted.

The **Friuli Venezia Giulia** hub argues that submission of an application before work starts is considered to be an effective factor in assessing the incentive effect. As regards the incentive effect of the aid in the sense that it "must change the behaviour of the undertaking(s) concerned in such a way that it engages in additional activity which it would not carry out without the aid or it would carry out in a restricted or different manner or location", this condition is not always consistent with the practical and objective circumstances of production on the ground in the sense that the local productive fabric requires incentives that are not always aimed at significant additional initiatives and/or significant changes in production systems. In some cases, the incentive effect can be very constraining in terms of access to funding for situations or initiatives that are in any case interesting. The effect of the health crisis may have a significant impact on the concept of the incentive effect.

The **Thessaly** hub notes that the incentive effect in the Regional Aid Guidelines is unclear and difficult to interpret, while in the GBER the incentive effect should also be modified to reflect whether work began before the invitation to tender was published (as under the *de minimis* regulation) rather than before the application for aid. This change will make it easier to start the preparatory and basic work of investment projects, without changing the substance of the provision; in either case investment can begin before it has been evaluated.

The **Community of Madrid** hub argues that the definition of incentive effect is very difficult to apply to digital transformation or business innovation projects. It is not easy to delimit a line of rupture between the work that was carried out and the post-digital transformation work and, therefore, to ensure that the project has an incentive effect. This concept should not reduce the relationship between the issuance of an invoice and the request for aid, because that seems to undermine the spirit of the rule. On the other hand, there are certain actions or preparatory works –which are due to good economic management– that must be carried out before the application for the aid (in accordance with the

regulatory bases for the aid) and which should not break the incentive effect. All this if you work from the real perspective of meeting deadlines for implementation, project start-up, receipt of investments and maintenance of the same.

#### 4.9 Relocation

As per Paragraph 122 of the [Regional Aid Guidelines](#) ‘where the beneficiary closes down the same or a similar activity in another area in the EEA and relocates that activity to the target area, if there is a causal link between the aid and the relocation this will constitute a negative effect that is unlikely to be compensated by any positive elements’.

A high number of the hubs believe that the provisions on the non-admissibility of ‘relocation’ are sufficiently defined and allow for an effective and smooth application in particular in connection to the EU’s cohesion policy. One fourth of the respondents has the opposite view though.

The **Brandenburg** hub claims that the provisions, in particular those relating to EU cohesion policy, are not sufficiently defined and are unclear.

The **North Rhine-Westphalia** hub notes that it would be useful to have clarification of how many jobs need to be lost for it to be considered a relocation.

The **Umbria** hub argues that provisions on non-admissibility of relocation are sufficiently well defined and can be applied effectively in terms of controls to ensure that the investment for which aid is provided is maintained in the region concerned for a minimum period of time.

However, it is difficult to guarantee more than this because clearly businesses will relocate to areas where they can obtain more contributions, especially when it comes to neighbouring areas. The RAG themselves state that regional aid is intended to influence the choice of investors as regards the place where they will implement their investment projects. There are also cases of businesses which relocate and agree to pay the related penalties.

It is clear that it would be right and appropriate to avoid relocation, at least within the European Union, but, to achieve this, the case needs to be avoided where, for the same investment, aid in one area is equivalent e.g. to 100 and in another area to 1 000. It is therefore the very differentiation between 'a' and 'c' areas, especially if these are near or neighbouring areas, which makes relocation unavoidable. In order to combat the effects of relocation more effectively, the time limit laid down in Article 14(16) of Regulation (EU) No 651/2014 should be increased from 2 years to 5 years, at least with regard to the completion of the investment.

The **Dutch provinces** hub stresses that in practice, it is difficult to demonstrate the existence of a causal link between relocation and State aid. This may potentially be detrimental to The Netherlands as with State aid in other Member States new branches of companies are opened while in the Netherlands other branches of the same company are closed.

The **Friuli Venezia Giulia** hub argues that the effects of relocation not only to other 'a' areas of the EU but also to non-EU countries should be tackled more effectively by increasing the time period laid down in Article 14(16) of Regulation (EU) No 651/2014 from two to five years at least in relation to the completion of the investment.

The **Community of Valencia** hub argues that in the health field, it is stressed that these provisions should be examined again following the experience of COVID-19. At the same time, it is not clear who determines the causal link between the two operations and how.

The **Emilia-Romagna** hub argues that the real problem is how the granting authority can check that the principle is respected.

The **Dubrovnik-Neretva County** hub regards this as a grey area: there is considerable scope for transferring the use of aid and a causal link is required.

#### 4.10 Simplified Cost Options

Use of the [Simplified Cost Options](#) (SCO) as basis for calculation of eligible costs is laid down in Article 7, second subparagraph of the [GBER](#): *“The amounts of eligible costs may be calculated in accordance with the Simplified Cost Options set out in Regulation (EU) No 1303/2013 of the European Parliament and of the Council (1), provided that the operation is at least partly financed through a Union fund that allows the use of those Simplified Cost Options and that the category of costs is eligible according to the relevant exemption provision.”*

A very large majority of the respondents believe that the use of provisions on ‘Simplified Cost Options’ in the GBER is effective and should be adjusted and transposed into the RAG.

The **Brandenburg** hub notes that the provisions on 'Simplified Cost Options' are relevant and should be included in the RAG. However, they should apply not just to operations co-financed by the Structural Funds, but also to all State resources. It is also argued that the use of flat rates for administrative costs and similar should be applied much more often, and that there can only be a real advantage under EU law if these simplification possibilities are also used in the national funding guidelines.

The **Hauts-de-France** notes that this provision offers an interesting compromise between the necessary monitoring of public money and a reasonable and accessible administrative burden for businesses. It is also argued that simplification is necessary and should continue for instruction and supporting documents for payment but also for monitoring.

The **Umbria** hub supports that Simplified Cost Options results in: a significant reduction in red tape for enterprises; fewer errors made by public administrations; shorter validation times for reporting and disbursement of resources, leading to shorter timescales for paying contributions to enterprises; savings in public resources and faster timescales for reporting expenditure to the European Commission; and, in conclusion, streamlined administrative procedures. In particular, in the case of small or very small amounts of aid, the administrative burden of verifying the actual costs is disproportionate.

It is also specified that the **Umbria** region currently uses the standard cost report system both to support research and experimental development projects, which normally receive significant amounts of aid, and for contributions for participation in fairs, where small amounts of aid are frequent (in the former case the standard costs defined by the Ministry of Universities and Research and the Ministry of Economic Development are used). In both cases, the use of Simplified Cost Options is less burdensome and more effective. Indeed, the region is considering extending the standard cost report system, currently used for research and experimental development projects only for staff expenditure, also to expenditure on equipment in line with the regulations governing the forthcoming 2021-2027 programming period.

The **Community of Valencia** hub argues that at least when the aid is financed by an EU fund, this method is already applicable and that these provisions should be examined again following the experience of COVID-19.

The **Mazovia Voivodeship** hub stresses that it should be taken into account the fact that the increasingly common use of Simplified Cost Options may lead to abuse and attempts to cover real costs or, in extreme cases, misuse of funds.

#### 4.11 Other challenges reported by the hubs

The **Brandenburg** hub argues that in future, State aid exemptions should be granted more quickly, and immediately in connection with the approval of operational programmes.

It is also noted that in recent years, clarification of State aid law issues for the *Land's* ESF, ERDF (or also EAFRD) funding guidelines has regularly taken a very long time. In some areas, after an already delayed start in the funding period, the application of new lines of support has been delayed so long that the expected effects were no longer able to be achieved. In future, State aid exemptions should be granted more quickly, and immediately in connection with the approval of operational programmes.

The **North Rhine-Westphalia** hub raises the following issues:

- Article 14 of the GBER, in conjunction with the associated definitions in Article 2 of the GBER, is extraordinarily convoluted and thus not easy to interpret. This is also demonstrated by the fact that the Commission has already issued a lot of interpretative guidance in response to questions from all Member States. It is therefore suggested that, on the basis of this experience, the text should be redrafted.
- In addition, it is suggested that the Commission's interpretative guidance should also be published in German (or in all EU languages).
- In order to avoid uncertainty on the part of the regional authorities, the Commission should identify a specific field of regional economic support which is clearly free of any State aid. This would include, for example, areas such as the provision of information, consultancy, networking, location marketing, coordination between businesses and the public authorities, and network management.
- The cost-benefit ratio for granting regional aid is perceived as relatively unfavourable compared to other forms of aid (high justification and documentation burden, complex eligibility conditions).
- It is suggested that the calculation of the indicators "GDP per capita" and "unemployment rate" (point 5.3.2.1 and Annex II point 2 of the regional aid guidelines) should be based solely on the national values, rather than using the EU averages with equal weighting. From the point of view of an individual Member State, it is internal disparities that are the deciding factor in determining the need for national regional policy action, not the region in question's position in relation to the EU average. When recalculating the population coverage after the United Kingdom's withdrawal from the EU, care must be taken to avoid excluding a number of regions that are actually lagging behind, solely on the basis of a statistical adjustment.
- The rules on operating aid are very restrictive. Consideration should be given to the possibility of providing a limited amount of operating aid independent of regional aid law for regions undergoing acute structural change. This could be used to compensate for the marketing disadvantages of locations undergoing structural change, e.g. to attract skilled labour, or to compensate for additional transport costs and other disadvantages resulting from as yet inadequate infrastructure for the new economic regions embarking on.

The **Catalonia** hub stresses that the selection of the municipalities that form part of a non-predetermined 'c' area must at all times and in all cases comply with the area continuity criterion. It is stressed that in some cases, applying this criterion does not enable the objective of this type of aid to be met effectively.

The **Mazovia Voivodeship** hub stresses that rules for recognising eligible costs related to the energy sector are a problem as they often have significant doubts as to whether certain fixed assets can be eligible, e.g. renewable energy sources. The provisions of Regulation (EC) 651/2014 do not adequately address this issue.

It is also argued that situations independent of traders need to be highlighted more (natural disasters, poor environmental conditions, cessation of work as a result of the health situation of workers or an epidemiological situation) and certain general provisions could perhaps be introduced.

The **Helsinki-Uusimaa** hub stresses that while they are financing the regional development on large scale, State aid rules hinder their operation and activities unnecessarily. Much more simplified rules are

needed, e.g. *de minimis*. It is also noted that the use of GBER is too rigid and not applicable at the regional level.



## 5. Assessing the flexibility in State aid allowed in light of COVID-19

Keeping in mind the small size of the EU budget in relation to public expenditure as a whole, a key element of the early measures implemented at EU level to respond to the crisis was in fact designed to enable national responses. This was done through flexibility in competition and in particular State aid rules.

The Commission acted quickly to help Member States to ease both the immediate and the long-run socio-economic impact of the pandemic by adopting a [Temporary Framework](#) to support the economy in the context of the coronavirus outbreak adding further flexibilities in State control on top of the existing ones. This allowed Member States to guarantee a rapid response to the economic downturn and to the immediate needs of their companies, workers and human capital<sup>31</sup>.

In light of this, flexibility in State aid rules proves to be a key part of the initiatives taken by the Commission in the pursuit of EU solidarity in the fight against the crisis.

However, with some Member States having greater fiscal space than others and thus being better positioned to support their companies, the authorization of States' interventions in the economic sector, although unquestionable and necessary to address the immediate socio-economic impact of covid-19 and prevent an even worse and long-lasting impact on the economy, also raise concerns with regard to their side-effects on the Single Market due to the uneven state aid support across MS and the ensuing distortions effects.

In light of the key role of the Temporary State aid Framework in helping public authorities address some of the socio-economic effects of the pandemic, the CoR has also conducted an exceptional consultation of the members of the RegHub network in an effort to gather relevant user experience from regional and local stakeholders with the Temporary State aid Framework.

The RegHub consultation on State aid in the context of Covid-19 shows that a vast majority of the respondents were aware of the Temporary Framework (85%) and that 75% had themselves implemented measures, which were part of a scheme under the Temporary Framework. The most common measures were aid in the form of direct grants (55%), aid in the form of guarantees and loans channelled through credit institutions (35%), aid in the form of guarantees and loans (30%) and aid in the form of subsidised loans and targeted support in the form of wage subsidies for employees (both 25%).

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<sup>31</sup> The European Commission announced on Tuesday 13 October that, after a consultation with Member States, it is extending at current thresholds the provisions of the Temporary Framework for an additional 6 months until 30 June 2021, except the recapitalisation measures which are prolonged for 3 months until 30 September 2021. The objective is to enable Member States to support businesses in the context of the coronavirus crisis, especially where the need or ability to use the Temporary Framework has not fully materialised so far, while protecting the level playing field. Before 30 June 2021, the Commission will review and examine the need to further prolong or adapt the Temporary Framework.

The amendment introduced a new measure to enable Member States to support companies facing a decline in turnover during the eligible period of at least 30% compared to the same period of 2019 due to the coronavirus outbreak. The support will contribute to a part of the beneficiaries' fixed costs that are not covered by their revenues, up to a maximum amount of €3 million per undertaking.

The Commission has also adapted the conditions for recapitalisation measures under the Temporary Framework, in particular for the State's exit from the recapitalisation of enterprises where the State was an existing shareholder prior to the recapitalisation. The amendment allows the State to exit from the equity of such enterprises through an independent valuation, whilst restoring its previous shareholding and maintaining the safeguards to preserve effective competition in the Single Market. Finally, taking into account the continued general lack of sufficient private capacity to cover all economically justifiable risks for exports to countries from the list of marketable risk countries, the amendment provides for an extension until 30 June 2021 of the temporary removal of all countries from the list of "marketable risk" countries under the Short-term export-credit insurance Communication.

## **5.1 Role of the Temporary Framework in helping public authorities address the socioeconomic impact of the pandemic**

In general, the respondents have a favourable view of the Temporary Framework, with 75% agreeing, or strongly agreeing, that **the Temporary Framework facilitated an appropriate response to the challenges posed by Covid-19.**

The majority of the hubs have the view that the Temporary Framework enables the Member States to offer support measures at short notice and without complications to companies that have experienced liquidity bottlenecks and payment difficulties as a result of the pandemic. Thus it is in principle an appropriate measure to address the economic difficulties and risks arising from the pandemic at national, regional and local level without unduly disturbing or distorting the (balanced) competitive situation existing in the respective market segments.

It is also stressed that the Temporary Framework gives the possibility to public authorities to choose between a wide range of interventions and allows for more rapid intervention to support the economy and businesses. It has therefore made it possible to speed up the procedures for notifying the European Commission and speeding up the implementation of the relevant measures by the granting institutions by simplifying the notification requirements and harmonising public interventions throughout the country.

There are however some hubs that have the opposite view and they think that the Temporary Framework did not facilitate an appropriate response of public authorities to the socioeconomic challenges posed by the pandemic. They mainly focus on the link with the Structural Funds and the lengthy process for amending projects under those funds. Others argue that a provision allowing no prior notification of aid would have enabled individual administrations to be immediately operational, ensuring the legality of aid through easy communications, such as those provided for in the exempt regulations.

## **5.2 Extending the Temporary Framework beyond December 2020**

A vast majority (80%) would be **in favour of an extension of the Temporary Framework** beyond December 2020 (date until which it is currently in force).

The majority of the hubs express the fear that the effects of the pandemic will last much longer than initially foreseen and in any case beyond December 2020. It is noted that if a new outbreak or revival of restrictive lockdown measures were to take place after the summer, the economic damage will be much higher and the temporary exceptional support will be even more and longer necessary to prevent intrinsically sound companies from going bust. They are therefore in favour of an extension of the Temporary Framework until the end of the corona pandemic while others point to the risk of distortions of competition within the EU which must be avoided by limiting the Temporary Framework in time. **The role of the Commission in preventing large disparities between Member States** in the amount or sums of aid covered by the temporary framework is also stressed since, **otherwise, the internal market may suffer as a result of differences between Member States** from the point of view of financial capacity to help their respective eligible sectors. Some hubs also stress the need to assess the actual effect of the pandemic to allow Member States more time to design effective measures to support companies, particularly SMEs.

## **5.3 Adapting other State aid rules to make them compatible with the flexibilities allowed under the Temporary Framework**

The hubs were also asked whether, based on their experience with the Temporary Framework, they would see a need for adapting other State aid rules to make them compatible with the flexibilities allowed under the Temporary Framework. The majority of them see a need for adaptation of various rules. It is noted for instance that on top of the recent amendment of the GBER in relation to companies in difficulty, a more flexible criterion on companies in difficulty is needed, especially for the start-ups and

scale-ups sector, which often have regular funding rounds and thus become technically companies in difficulty, even when they are intrinsically sound and fast growing companies.

Many hubs also suggest more flexibility in relation to the *de minimis* regime while others stress that it would be desirable, for example, to complement the scope of Regulation (EU) No 651/2014 by providing, in addition to aid to compensate the damage caused by natural disasters (Article 50), also aid to make good the damage caused by pandemic events. It is also argued that an ‘adaptation’ of the rules on cumulating would be useful as in circumstances such as the existing ones, accumulation between aid under *de minimis* or under GBER with aid granted under the TF must be allowed, taking into account the intensity thereof, also on those eligible costs.

There are however some hubs that consider that the existing aid schemes (other aid rules) do not need to be adapted and that the Temporary Framework is in the majority of cases sufficient and therefore does not require any other adaptation of the State aid rules.

## 6. Conclusions

The CoR consultation of the regional hubs shows that **EU State aid law plays a pivotal role** in defining public authorities' leeway and ability to provide public services in line with EU values as defined in Protocol 26 to the TFEU<sup>32</sup>; address regional disparities; and, crucially, respond to the immediate and long-term socio-economic challenges posed by the coronavirus pandemic.

Excessive and very strict rules and conditions framing the control on the side of the Commission may hinder the ability of public authorities to effectively fulfil their role in all these missions while, on the other hand, a very broad flexibility in State aid comes with the risk of resulting in further increasing regional inequalities within the EU. It seems that the new reality after the coronavirus pandemic obliges all parties concerned to redefine the right balance between the two limits.

**In the area of SGEIs**, the RegHub consultation shows that overall the Hubs have a positive view of all key notions (e.g. economic activity, undertaking, manifest error, reasonable profit, etc) used by public authorities and the Commission when assessing whether a given public service can qualify as SGEI or not. But even some of those Hubs who find those notions straightforward in theory, they seem to face difficulties when it comes to their actual implementation.

It seems that this is particularly triggered by the legal nature of public authorities, especially regions, cities and municipalities, and the obligations imposed on them by the legislation in relation to the provision of key public services since some hubs argue that this makes it difficult to define when a public authority provides a service in order to fulfil its legal obligations aimed at ensuring the provision of public services in line with the key EU values defined in Protocol 26 to the TFEU and when it performs an economic activity in the pursuit of profit.

Another source of difficulty that regularly comes up under various questions is the issue of administrative capacity since it is reported that the complexity of the legal framework and the rules often require difficult investigations and specialist knowledge that cannot be assumed, especially for small regions, cities and municipalities.

Taking into account the fact that key representatives of the housing sector in the EU have unfailingly claimed that the target group and the definition of social housing provided in the [2012 SGEI Decision](#) (recital 11 of the preamble) are too restrictive and thus do not reflect the nature of needs, a particular emphasis was placed on this aspect and the hubs were asked whether according to their experience the definition of social housing as laid down in the Decision is still appropriate. A vast majority of the respondents argued that the definition is not appropriate with one third of them expressing the opposite view.

The Hubs also claim that, especially in light of the socio-economic challenges posed by the COVID-19 pandemic, there is a need to review the conditions for the *de minimis* aid. They are particularly in favour of increasing the amount of *de minimis* aid that can be granted under the [SGEI \*de minimis\* Regulation](#), i.e. up to EUR 500 000 over any period of three fiscal years, as they consider that is not appropriate anymore with only one third of them expressing the opposite view.

The majority of the hubs is in favor of shifting the burden of proof that a local service poses a threat to intra-Community trade to the complainant and/or the European Commission with only one fifth of them supporting the opposite. It is argued that the burden of proof lying with the Commission would increase legal certainty and willingness to act on the part of local decision-makers and reduce the number of complaints. It is claimed that here is an urgent need to change the current situation, as a sword of Damocles regarding the recovery of funds hangs over a large number of measures, since individual aid

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<sup>32</sup> The essential role and the wide discretion of national, regional and local authorities in providing, commissioning and organizing SGEIs as closely as possible to the needs of the users; the diversity between various services of SGEIs and the differences in the needs and preferences of users that may result from different geographical, social and cultural situations; a high level of quality, safety and affordability, equal treatment and the promotion of universal access and of user rights.

beneficiaries are unable to provide extensive evidence. In this context, it could also be useful to expand the criterion of harm to trade or to specify the term 'local' in greater detail.

A very large majority of the hubs shares the view that the current framework makes it possible for Member States/LRAs to provide SGEIs in line with the EU values defined in Protocol 26 to the TFEU although with some caveats. Some hubs argue for instance that the current legal framework for SGEIs undermines these objectives due to high demands that can only be met with high legal expertise. For example, massive legal uncertainty is often created for the players involved, which presumably in some cases encourages risk-averse behaviour. While the possibility of exercising discretion as to the design of SGEIs is technically available, exercise of this discretion is very difficult as it is linked to considerable financial risks and far-reaching negative legal consequences in the event of errors.

Asked about whether the effort and administrative burden required for complying with the SGEI package is proportionate to the benefits of the rules, the majority of the hubs argues that they are not proportionate with only almost 15% having the opposite view. It is also claimed that the burden is disproportionate, or the ratio between the burden and the benefits of the rules is proportionate only if the players have in-depth knowledge and/or experience of State aid law and in particular of SGEI law, which is not so in most cases.

Turning to the assessment of the **Regional State aid framework**, although, in general, a large majority of Hubs have assessed the existing rules on Regional aid as sufficient, a number of issues can be identified. It clearly transpires that regions and cities are facing a new reality framed by the socio-economic challenges triggered by the coronavirus pandemic. This new reality requires more flexible policy approaches and instruments that would help public authorities effectively address the impact felt at regional and local level. In light of this, some hubs argue that the current regional aid maps (programming period 2014-2020) do not adequately capture the true situation in the EU regions due to the new challenges emerging from the COVID-19 pandemic and its short- and medium-term economic effects. In a similar vein, some hubs claim that the overall population coverage, the maximum permissible levels of aid and the type of investments provided for in the Regional State aid framework should be increased/broadened in order to cater for the new socio-economic challenges in the EU regions as a result of the pandemic.

This new reality is also recognized by the European Commission who, in the context of the recently presented draft regional aid guidelines, stresses that the shock caused by the pandemic might have more long-lasting effects on certain regions and therefore, at this point in time, it is too early to predict the impact of the COVID-19 crisis in the mid- and long- term and which regions will be particularly affected. To address the difficulties of Member States that have been most affected by the crisis, the Commission plans a mid-term review of the regional aid maps in 2024, which will take into account statistics of the years 2020 to 2022.

When assessing the replies received from the Hubs, it has become evident that the recently presented draft regional aid guidelines are not fully addressing all the concerns raised. For instance, although the Commission acknowledges significant regional disparities which risk being exacerbated by the economic risk of the current COVID-19 outbreak, the indicators and the methods of defining the 'a' and 'c' areas as well as aid intensities, are not appropriate. Indeed, some regions argue that mapping out the eligible areas based on obsolete statistics (even though to be reassessed in 2024) will not adequately capture the real situation as a result of COVID-19 pandemic. Among other issues related to the areas' definition, the difference in economic and social patterns at NUTS 2 and 3 levels as well as the concrete indicators to be used for 'a' and 'c' calculation were mentioned at several occasions.

In addition, the permissible aid to large undertakings has been identified as a clear case for concern for some regions: although the Commission states that "aid to large undertakings was found to be unlikely to have an incentive effect for investment", some Hubs advocate for a positive impact of investments into large companies: "the job constraints associated with investment by large enterprises and the wider spill-over effects of such investment have a positive impact on the economic development of

disadvantaged regions and on the functioning of the internal market" and a possible damage to large enterprises (as a result of the pandemic), has a major impact in terms of employment. Some even argue that support for large enterprises in general does not hold back or adversely affect SMEs.

Several replies concerned, directly or not, the over-complexity of existing rules on State aid. These include (1) the rules on definition of the SMEs, where the parameters change in time and companies are in a continuous transformation, (2) the rules on "incentive effect" which are difficult to assess and prove and would need a counterfactual assessment several years after the completion of a project or (3) the definition of "new activities" to be supported under regional aid.

It has also to be noted that the application of State aid rules is intrinsically intertwined with the use of Cohesion policy instruments. The use of Simplified Cost Options referred to in the GBER has been recommended to be transposed into the Regional Aid Guidelines as well and should not be limited to operations co-financed from ESIF only. These provisions offer an interesting compromise between the necessary monitoring of public money and a reasonable and accessible administrative burden. In addition, the relocation provisions, in particular those relating to Cohesion policy, have been identified as not sufficiently defined and unclear. A suggestion that State aid exemptions be granted immediately in connection with the approval of operational programmes confirms the close links between the Competition and Cohesion policy rules.

The hubs also stressed that the current review of key State aid legislative texts and guidelines is an opportunity to reflect the new challenges and help public authorities through targeted reviews of the relevant rules to effectively and timely address the needs of their citizens, companies and human capital.

In relation to the **State aid Temporary Framework**, the consultation showed that a vast majority of the respondents were aware of the Temporary Framework and that they had themselves implemented measures, which were part of a scheme under the Temporary Framework. The respondents have a favourable view of the Temporary Framework, with the vast majority agreeing that it facilitated an appropriate response to the challenges posed by Covid-19. A vast majority would also be in favour of an extension of the Temporary Framework beyond December 2020 (date until which it is currently in force) as the majority of the hubs express the fear that the effects of the pandemic will last much longer than initially foreseen and in any case beyond December 2020.

At the same time, greater flexibility in State aid rules, especially as allowed under the current State aid Temporary Framework, comes with the risk of resulting in further increasing regional inequalities and economic divergences within the EU. This is particularly due to the fact that some Member States are making more use of the State aid flexibilities than others, possibly because they have more fiscal space. Some hubs point to the risk of distortions of competition within the EU which must be avoided by limiting the Temporary Framework in time. In a similar vein, some academics point out that the size of the economic shock and the ability to cushion its impact through State aid do not go hand in hand since most countries hit severely by the coronavirus pandemic are not in a strong fiscal position<sup>33</sup>. Although the flexibility recognised by the Temporary Framework applies in theory to all Member States, the benefits are in practice uneven, and could lead to distortions of competition in favour of "deeper-pocketed Member States"<sup>34</sup>. This would go directly against the objectives of State aid rules.

Moreover, another aspect of this is the fact that massive State support for some Member States equates to increasing government deficits and their public-debt levels at a time of shrinking tax revenues and higher unemployment benefits payments, something that might prove particularly risky especially for

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<sup>33</sup> Motta, M. and Peitz, M., [State Aid Policies in Response to the COVID-19 Shock: Observations and Guiding Principles](#), *Intereconomics* 2020, ZBW – Leibniz Information Centre for Economics, Volume 55, 2020 Number 4, pp. 219–222.

<sup>34</sup> Rosano, A. Adapting to Change: Covid-19 as a Factor Shaping EU State Aid Law, *European Papers*, Vol. 5, 2020, No 1, pp. 621-631 and Lamadrid de Pablo, A., Luis Buendía, J., [A Moment of Truth for the EU: A Proposal for a State Aid Solidarity Fund](#), [Chillin' Competition](#).

those Member States particularly hit by the pandemic that happen to be also the largest Eurozone economies. On the other hand, the fear of rising debt levels may lead some Member States to postpone investments or spending in crucial sectors for the recovery something that will most likely also result in widening the economic divergences within the Single Market.

The Commission already recognised the need to assess the impact of the pandemic at regional level with a view to reflecting this in the regional aid maps through a mid-term review in 2024. In a similar vein, increased economic inequalities and unfair distribution of the benefits of the Single Market triggered from asymmetrical State intervention across the EU have to be also assessed in light of the risk that some citizens/MS may not continue to favour a Single Market whose benefits are distributed unfairly.

Thus, it would be useful that the Commission, who has the oversight of those measures and of the amounts, conducts an analysis of their impact on the single market and on regional inequalities. This will inform policy making and ensure a better targeting of all relevant EU policies on the specific needs of EU territories.



## 7. Annexes

## **Annex 1: Map of the regional hubs**

Find an **interactive map** of the network on  
<http://portal.cor.europa.eu/RegHub/Pages/default.aspx#map>.

## **Annex 2: List of regional hubs and consulted stakeholders (SGEIs and Regional State aid Framework)**

Number of participating hubs: 21

Number of Stakeholders: 137

### **1. Alentejo**

- Intermunicipal Community of Alentejo Central
- Politechnic institute of Beja
- Alentejo Tourism office
- Municipality of Ponte de Sor
- PACT - Alentejos's Park of Science and technology
- CCDR Alentejo
- EDIA – Empresa Desenvolvimento E Infra-estruturas Do Alqueva, S.A
- CIMBAL
- DECSIS – Sistemas De Informação SA
- ESDIME
- FENACAM – Federação Nacional Das Caixas De Crédito Agrícola
- Fundação Alentejo
- Marble Project, SA
- MONTE – Desenvolvimento Alentejo Central
- NERE – Associação Empresarial Do Alentejo Central
- SOMEFE – Sociedade De Metais E Fundação, LDA
- SOMINCOR
- TERRAS DENTRO – Associação Para O Desenvolvimento Integrado
- Universidade De Évora
- ACOS – Associação De Agricultores Do Sul
- Adega Cooperativa De Rebondo, CRL
- Amândio José Lobo, LDA
- ASSIMAGRA – Recursos Minerais De Portugal
- Municipio De Aljustrel
- AREANATEJO – Agência Regional De Energia E Ambiente Do Norte Alentejano E Tejo
- Município De Évora

### **2. Autonomous Province of Bolzano**

- Europe Department — European Integration Office
- Housing Department
- Department of Italian Culture
- Department of German Culture — Film and Media Office
- Struture trasporto Alto Adige S.p.A (South Tyrol Transport Infrastructure S.p.A)

### **3. Brandenburg**

- Brandenburg Ministry of Finance and for European Affairs, Office for Internationalisation and Communications, (ESIF administration/audit)
- Brandenburg Ministry for Economic Affairs, Labour and Energy, (ESIF administration)
- Brandenburg Ministry of Agriculture, Environment and Climate Protection, Unit 13 – Budget-BDH, EAFRD Brandenburg/Berlin Managing Authority, GAK, EU State aid law
- Ministry of Infrastructure and Federal State Planning
- Funding department of the Brandenburg Land
- Brandenburg Land investment Bank
- Chamber of Commerce and Industry (IHK) Cottbus
- Local Action Group Fläming-Havel e.V.
- Oberhavel District
- Elbe-Elster District

- City of Wildau
- Municipality of Glienicke-Nordbahn

#### **4. Catalonia**

- Department of the Vice-Presidency, Economy and Finance, area of competition and regulation

#### **5. Community of Madrid**

- General Directorate of Agriculture
- General Directorate of Land
- General Directorate of Environment
- General Directorate of Cooperation with the State and EU Affairs
- Regional Transportation Committee
- METRO
- General Directorate Cultural Promotion

#### **6. Community of Valencia**

- Director-General of Town Planning, Ministry of Territorial Policy, Public Works, and Mobility of the Generalitat Valenciana
- Directorate-General for European Funds
- Head of Service, Management and Planning, IVAJ
- Head of Service, Planning, Control and Oversight of Pharmaceutical Products
- Head of Tourism, Turisme Comunitat Valenciana
- Ministry of Sustainable Economy, Productive Sectors, Trade and Labour,
- Deputy Director-General of Planning and Coordination
- "Labora", Valencia Employment and Training Service

#### **7. Dubrovnik Neretva Region**

- Durbrovnik-Neretva County
- City of Dubrovnik
- Croatian Employment Office - Dubronik Branch Office
- Municipality of Konavle
- Dubrovnik Centre for Entrepreneurship
- BRENUM D.O.O, Hotel

#### **8. Emilia-Romagna**

- No information on stakeholders

#### **9. Flanders**

- VLAIO - State aid coordinator for the Flemish Region
- Wonen Vlaanderen (Flemish housing agency)
- Welfare, Public health and Family department

#### **10. Autonomous Region of Friuli Venezia Giulia**

- Department of EU law implementation: upstream phase and regulatory coordination, State aid and infringement procedures, Central Directorate for Finance, Central accounting office of the FVG region.
- Coordinator of stable framework for social housing, housing department, Central Directorate for infrastructure and the region TRIESTE
- Director of the Department for Local Economic Development, Central Directorate for Business
- Coordinator of regional remit regarding local public transport, rail, automotive, maritime, Central Directorate for infrastructure and the region, local and regional public transport department
- Emanuele Prospero Presidency - Organisational unit for legal affairs, European affairs and legal support, Oversight of European legal affairs for the region and inter-regional technical coordination

### **11. Harghita**

- Chamber of Commerce
- Entrepreneurs
- Development Agency of Harghita County
- Mayors
- Project management companies
- Business Center

### **12. Hauts-de-France**

- Hauts-de-France Region policy director, Business support department
- Métropole Européenne de Lille
- Hauts-de-France Region, assistant department manager – implementation of European projects
- Hauts-de-France Region policy director, professional training department
- Hauts-de-France Region, head of department – spatial planning
- Hauts-de-France Region, head of sector – ERDF-EAFRD
- Hauts-de-France Region, policy officer – housing service
- Region Hauts de France, Policy Officer, legal affairs department
- Norfolk county council, Interreg programme officer France-Manche-England
- Hauts-de-France Region, policy officer, legal affairs department
- Hauts-de-France Region, policy officer – ESF
- Hauts-de-France Region, Interreg 2 Seas programme
- Hauts-de-France Region, policy officer - Europe department
- Hauts-de-France Innovation development, project officer – business service

### **13. Helsinki Uusimaa**

- Managing authority of the Southern Finland ERDF and ESF funding programmes
- Head of unit at Centre for Economic Development, Transport and the Environment for Hämeen, ELY
- Director for ERDF Southwest Finland
- Development Manager, Helsinki-Uusimaa Regional Council
- Lawyer, Helsinki-Uusimaa Regional Council
- City of Helsinki

### **14. Mazovia**

- The Mazowieckie Unit for the Implementation of EU Programmes
- The Regional Labour Office in Warsaw

### **15. North-Rhine Westphalia**

- Business associations, e.g. chambers of commerce and industry
- Trade unions
- Representatives for European affairs of the North Rhine-Westphalia municipalities
- North Rhine-Westphalia Ministry of Economic Affairs

### **16. Primorje Gorski Kotar**

- Administrative Department for Tourism, Entrepreneurship and Rural Development

### **17. The Dutch Provinces**

- Europa Decentraal
- Province of Limburg

### **18. Thessaly**

- Special Service for Managing the Operational Programme, Attica Region
- Skiathos Municipality
- Trikala Municipality
- Larissa Municipality

- Meteora Municipality
- Tempon Municipality
- Special Service for Managing the Operational Programme, East Macedonia and Thrace
- Association of Industries in Thessaly and in Central Greece
- Special Service for Managing the Operational Programme, Peloponnese Region
- Zagora-Mouresi Municipality
- Solid Waste Management Association of Magnesia Prefecture
- Regional Union of Municipalities of Thessaly
- Special Service for Managing the Operational Programme, Thessaly Region
- Special Service for Managing the Operational Programme, Central Macedonia Region
- West Thessaly Environmental Solutions PLC (Π.Α.ΔΥ.Θ.Α.Ε.)
- Association of Enterprises and Industry in Thessaly
- Special Service for Managing the Operational Programme, North Aegean Region

#### **19. Umbria**

- Department of Urban planning, urban regeneration, housing policy and nature conservation
- Department of European affairs, ERDF programming, direction, monitoring and scrutiny

#### **20. Veneto**

- Veneto Region – Directorate for Single Programming
- Veneto Region – Directorate for Social Services
- Veneto Region – Directorate for Public Works, Construction and Logistics
- Veneto Region – Directorate for Industry, Craft Trades, Trade and Services
- Veneto Region – Directorate for Research, Innovation and Energy

#### **21. West Pomerania**

- Economic Initiatives Centre (West Pomeranian Marshal Office)
- Northern Chamber of Commerce

West Pomeranian Agricultural Chamber

### **Annex 3: List of regional hubs and consulted stakeholders (Temporary Framework for State aid)**

Number of participating hubs: 20

Number of consulted stakeholders: 98

#### **1. Autonomous Province of Bolzano/Bozen – South Tyrol**

- Ufficio per l'integrazione europea
- Agenzia per i procedimenti e la vigilanza in materia di contratti pubblici di lavori, servizi e furniture (ACP)

#### **2. Autonomous Region of Friuli Venezia Giulia**

- Direzione centrale finanze - servizio centrale di ragioneria - posizione organizzativa attuazione del diritto europeo: fase ascendente e coordinamento normativo, aiuti di stato e procedure di infrazione
- Direzione centrale difesa dell'ambiente, energia e sviluppo sostenibile - servizio giuridico amministrativo e gestione procedimenti sanzionatori - posizione organizzativa appalti e contratti
- Direzione centrale patrimonio, demanio, servizi generali e sistemi informativi
- Servizio centrale unica di committenza e provveditorato - posizione organizzativa consulenza giuridica in materia di appalti e adempimenti trasversali
- GECT Euregio senza confini r.l.
- GECT GO

#### **3. Brandenburg**

- Zentraldienst der Polizei, Wünsdorf (ZD POL)
- Ministerium für Wirtschaft, Arbeit und Energie des Landes Brandenburg, Referat 42 – Wettbewerbspolitik, - recht, Landeskartellbehörde (MWAE)
- Investitionsbank des Landes Brandenburg (ILB)

#### **4. Catalonia**

- Government of Catalonia Department of Economy and Financial Affairs
- Community of Madrid
- Technical Secretariat-General of the Regional Department of Social Policy, Families, Equality and Birth
- Technical Secretariat-General of the Regional Department of Health
- Technical Secretariat-General of the Regional Department of the Presidency
- Directorate-General for Heritage and Procurement of the Regional Department of Finance
- Directorate-General for Public Employment of the Regional Department of the Economy, Employment and Competitiveness

#### **5. Community of Madrid**

- Technical Secretariat-General of the Regional Department of Culture and Tourism, Madrid City Council
- Technical Secretariat-General of the Regional Department of Social Policy, Families, Equality and Birth
- Technical Secretariat-General of the Regional Department of Health
- Technical Secretariat-General of the Regional Department of the Presidency
- Directorate-General for Heritage and Procurement of the Regional Department of Finance
- Directorate-General for Public Employment of the Regional Department of the Economy, Employment and Competitiveness
- Technical Secretariat-General of the Regional Department of Culture and Tourism, Madrid City Council

#### **6. Community of Valencia**

- Director-General for European Funds

- Secretary to the Advisory Committee on Procurement
- Director-General for Town Planning
- Deputy Director of IVACOR [Valencia Institute for Preserving and Restoring Cultural Heritage]
- Manager of IVAM [Valencia Institute of Modern Art]
- Director of the IVC [Valencia Institute of Culture]
- Director-General of the performing arts foundation Les Arts

#### **7. Flanders**

- VLAIO — State aid coordinator
- Support Policy and Procurement Policy and Purchase Facility

#### **8. Harghita**

- Mayors Offices of local public administrations from Harghita County
- Companies and entrepreneurs, as well as associations of SMEs
- Public institutions (hospital, cultural institutions, institutions coordinated by Harghita County Council)
- Parliamentary representatives

#### **9. Ialomița**

- Ialomița competition agency (Oficiul Concurenței Ialomița)
- Ialomița Directorate-General for Social Assistance and Child Protection (Direcția Generală de Asistență Socială și Protecția Copilului Ialomița)
- Ialomița county museum
- Ialomița national museum of agriculture
- Ionel Perlea cultural centre
- Fierbinți centre for medical and social assistance
- Slobozia county hospital for emergencies
- 66 mayors from Ialomița county

#### **10. Hauts-de-France**

- Conseil régional Hauts-de-France, Direction Europe
- Conseil régional Hauts-de-France, Direction Europe, secteur FEDER –FSE (Nord)
- Conseil régional Hauts-de-France, Direction Europe, chef de secteur FEDER –FSE (Sud)
- Conseil régional Hauts-de-France, Direction Europe, service adjoint Animation et montage de projets européens
- Conseil régional Hauts-de-France, Direction de l'achat public

#### **11. Košice Self-governing Region**

- Public Procurement Officer in the Košice Self-governing Region.

#### **12. Mazovia**

- Department of Regional Development and European Funds

#### **13. North Rhine-Westphalia**

- Chambers of Industry and Commerce (IHK)

#### **14. Primorje-Gorski Kotar County**

- Primorje-Gorski Kotar County departments

#### **15. Emilia-Romagna**

- AANCI, INTERCENT-ER — Regional Agency for the development of telematic markets
- Regional Agency for Territorial Security and Civil Protection
- Union of Municipalities of Lower Reggiana



## **16. Thessaly**

- 5<sup>th</sup> Regional Health Authority of Thessaly and Sterea Greece
- Decentralised administration of Thessaly and Sterea Greece
- General Hospital of Larissa
- Municipality of Larissa, Directorate for Operational Planning
- Municipality of Southern Pilion, Regional Department of Magnesia
- Municipality of Tempi, Regional Department of Larissa
- Municipality of Trikala
- Directorate of Public Health and Social Care – Regional Department of Magnesia and Sporades – Thessaly Region
- Chamber of Commerce of Magnesia
- Federation of Industries of Thessaly and Sterea Greece

## **17. Umbria**

- Umbria Region Department for Industrial Policy, Relations with Multinational Enterprises, Business development, start-up and business creation, trade and crafts
- Umbria Region Department for International Relations, Business Finance and Internationalisation of the Production System,
- Umbria Region Department for Rural Development and programming of agricultural activities, production guarantees and controls”
- Umbria Region Department for “Forests, Mountains, Natural Systems and fauna and hunting”
- Umbria Region Department for Knowledge system and innovation system, services to the population and rural territory
- Umbria Region Department for European affairs, ERDF programming, direction, monitoring and scrutiny
- Umbria Region Department for Civil Protection and Emergency

## **18. Veneto**

- Region of Veneto – Directorate for Industry, Crafts, Trade and Services
- Region of Veneto – Directorate for Unitary Programming
- Region of Veneto – Directorate for Defence of the Soil
- Region of Veneto – Directorate for Procurement
- Region of Veneto – Project Valorisation of Heritage
- Infrastructure Venete S.R.L.
- Province of Vicenza ANCI Veneto

## **19. The International Lake Constance Conference (IBK)**

### **Baden-Württemberg:**

- Ministry of Transport
- Ministry of the Interior, Digitisation and Migration
- State Ministry
- Ministry of Justice and European Affairs
- Ministry of Economy, Labour and Housing
- Ministry of the Environment, Climate Protection and Energy
- Ministry of Science, Research and the Arts
- Ministry of Finance
- Ministry of Social Affairs and Integration
- Ministry of Culture, Youth and Sport
- Stuttgart Clinic (Klinikum Stuttgart)
- Heidelberg University Hospital
- District Assembly of Baden-Württemberg (Landkreistag Baden-Württemberg)

### **Vorarlberg:**

- Office of the Vorarlberg State Government (IIIb), Department IIIb-Asset Management

- Office of the Vorarlberg State Government (Vla), Department Vla-General Economic Affairs
- Environmental Association Vorarlberg (Umweltverband Vorarlberg, UV)
- Chamber of Economy Vorarlberg (Wirtschaftskammer Vorarlberg, WKV)
- Hospital operating company Vorarlberg (Vorarlberger Krankenhaus-Betriebsgesellschaft mbH, KHBG)

## **20. West Pomerania**

- West Pomeranian Chamber of Commerce in Szczecin
- West Pomeranian Chamber of Agriculture in Szczecin
- Szczecin City Hall
- Social Insurance Fund
- West Pomeranian Marshall Office (Economic Initiatives Center)

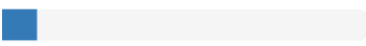

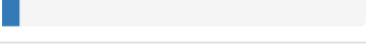
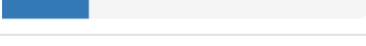
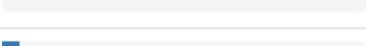
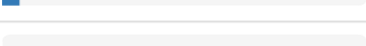

**Annex 4: Statistics of RegHub survey on State aid**

Statistics:

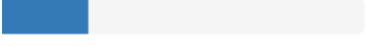


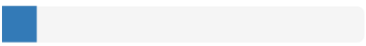
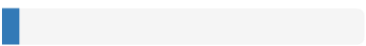
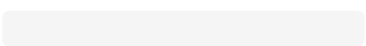
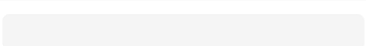
**CoR RegHub Consultation on**

Regional and local authorities implementing State aid rules:  
Services of General Economic Interest and Regional State Aid  
Framework

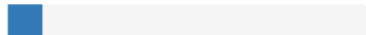

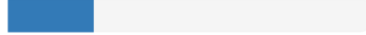
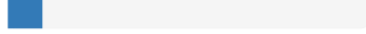
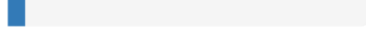
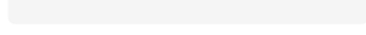
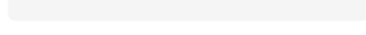
**1/ The notion of *economic activity* is straightforward and easy to use, in order to assess whether the public services provided qualify as SGEIs.**

		Answers	Ratio
Strongly agree		2	9.52 %
Agree		12	57.14 %
Neutral		1	4.76 %
Disagree		5	23.81 %
Strongly disagree		0	0 %
Not applicable		1	4.76 %
No Answer		0	0 %

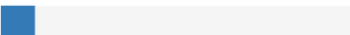

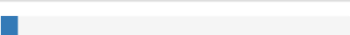

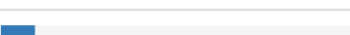


**2/ The notion of *undertaking* is straightforward and easy to use in order to assess whether the provided public services qualify as SGEIs.**

		Answers	Ratio
Strongly agree		5	23.81 %
Agree		11	52.38 %
Neutral		2	9.52 %
Disagree		2	9.52 %
Strongly disagree		1	4.76 %
Not applicable		0	0 %
No Answer		0	0 %

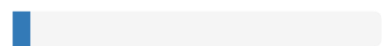

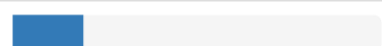
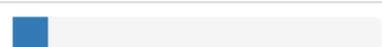
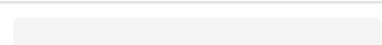

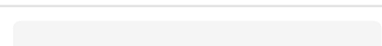
**3/ The notion of *manifest error* is straightforward and easy to use in order to assess whether the provided public services qualify as SGEIs.**

		Answers	Ratio
Strongly agree		2	9.52 %
Agree		11	52.38 %
Neutral		5	23.81 %
Disagree		2	9.52 %
Strongly disagree		1	4.76 %
Not applicable		0	0 %
No Answer		0	0 %



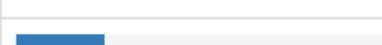


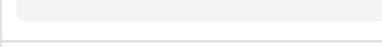
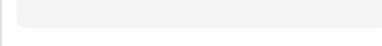
**4/ The notion of *reasonable profit* requirement as explained in Article 5 of the 2012 SGEI Decision is straightforward.**

		Answers	Ratio
Strongly agree		2	9.52 %
Agree		12	57.14 %
Neutral		1	4.76 %
Disagree		3	14.29 %
Strongly disagree		2	9.52 %
Not applicable		0	0 %
No Answer		1	4.76 %

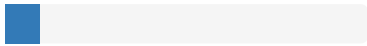
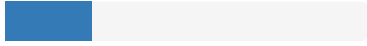

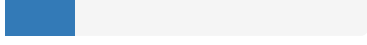
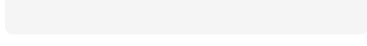
**5/ The notion of *normal market conditions* is straightforward and easy to use in order to assess whether the provided public services qualify as SGEIs.**

		Answers	Ratio
Strongly agree		1	4.76 %
Agree		14	66.67 %
Neutral		4	19.05 %
Disagree		2	9.52 %
Strongly disagree		0	0 %
Not applicable		0	0 %
No Answer		0	0 %

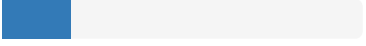
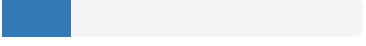
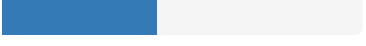
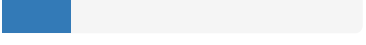
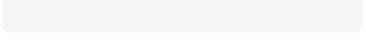
**6/ The relation between the use of State aid rules and the use of public procurement rules is straightforward.**

		Answers	Ratio
Strongly agree		0	0 %
Agree		8	38.1 %
Neutral		5	23.81 %
Disagree		8	38.1 %
Strongly disagree		0	0 %
Not applicable		0	0 %
No Answer		0	0 %

**7/ Have you ever used public procurement procedure as a way to prove compliance of the provided services with State aid rules?**

		Answers	Ratio
Yes, very often		2	9.52 %
Yes, but rarely		5	23.81 %
No		10	47.62 %
Not applicable		4	19.05 %
No Answer		0	0 %

**8/ Have you ever used State aid rules instead of using public procurement for the provided services?**

		Answers	Ratio
Yes, very often		4	19.05 %
Yes, but rarely		4	19.05 %
No		9	42.86 %
Not applicable		4	19.05 %
No Answer		0	0 %





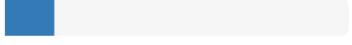
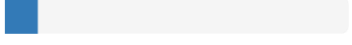
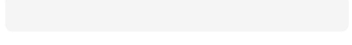
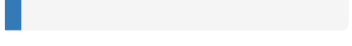
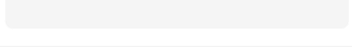
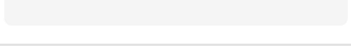
**9/ Is the amount of de minimis aid that can be granted under the SGEI de minimis Regulation i.e. up to EUR 500 000 over any period of three fiscal years, still appropriate?**

		Answers	Ratio
Yes		6	28.57%
No, it is too high		1	4.76%
Neutral		4	19.05%
No, it is too low		10	47.62%
I do not know		0	0%
No Answer		0	0%

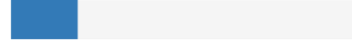

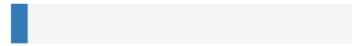

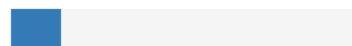
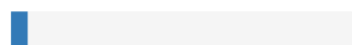
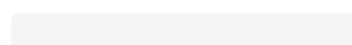
**10/ Is the period over which the de minimis aid that can be granted under the SGEI de minimis Regulation, i.e. over any period of three fiscal years, still appropriate?**

		Answers	Ratio
Yes		9	42.86%
No, it is too long		3	14.29%
Neutral		7	33.33%
No, it is too short		2	9.52%
I do not know		0	0%
No Answer		0	0%


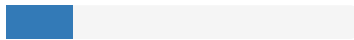
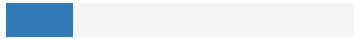

**11/ The current framework makes it possible for Member States/LRAs to provide SGEIs in line with the EU values defined in Protocol 26 to the TFEU.**

		Answers	Ratio
Strongly agree		3	14.29 %
Agree		12	57.14 %
Neutral		3	14.29 %
Disagree		2	9.52 %
Strongly disagree		0	0 %
Not applicable		1	4.76 %
Other		0	0 %
No Answer		0	0 %

**12/ The definition of social housing as laid down in the 2012 SGEI Decision (recital 11 of the preamble) is still appropriate.**


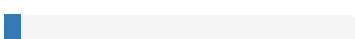

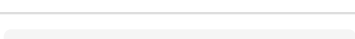
		Answers	Ratio
Strongly agree		4	19.05 %
Agree		3	14.29 %
Neutral		1	4.76 %
Disagree		9	42.86 %
Strongly disagree		3	14.29 %
Not applicable		1	4.76 %
No Answer		0	0 %

**13/ Would you be in favour of shifting the burden of proof that a local service poses a threat to intraCommunity trade to the complainant and/or the European Commission?**




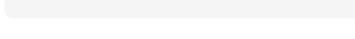
		Answers	Ratio
Yes		13	61.9%
No		4	19.05%
Not applicable		4	19.05%
No Answer		0	0%

**14/ Are you aware of the following**


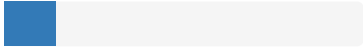
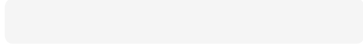
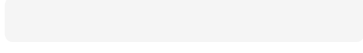
**a) Notice on the Notion of State aid**

		Answers	Ratio
Yes		20	95.24%
No		1	4.76%
Not applicable		0	0%
No Answer		0	0%


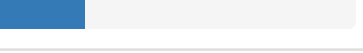
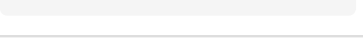
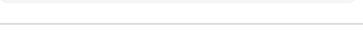
**b) Guidance in the 2012 SGEI Communication (on the concept of 'market failure'.**

		Answers	Ratio
Yes		14	66.67%
No		6	28.57%
Not applicable		0	0%
No Answer		1	4.76%


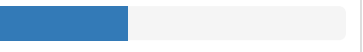

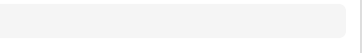
**c) Guidance in the 2012 SGEI Communication on when the SGEI rules apply**

		Answers	Ratio
Yes		18	85.71%
No		3	14.29%
Not applicable		0	0 %
No Answer		0	0 %



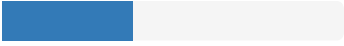
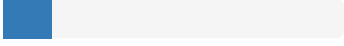
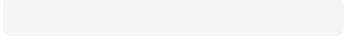
**d) Guidance in the 2012 SGEI on the definition of a genuine SGEI**

		Answers	Ratio
Yes		16	76.19%
No		5	23.81%
Not applicable		0	0 %
No Answer		0	0 %



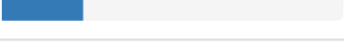

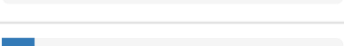
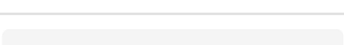

**15/ According to Article 9 of the SGEI Decision and point 62 of SGEI Framework MSs have to submit a report on the implementation of the Decision and the Framework to the Commission every 2 years. Are you involved in this reporting?**

		Answers	Ratio
Yes		13	61.9%
No		8	38.1%
Not applicable		0	0 %
No Answer		0	0 %

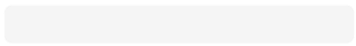





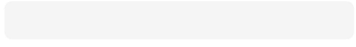
**16/ Have you experienced administrative burdens in relation to the SGEI reporting procedure?**

		Answers	Ratio
Yes, to a large extent		4	19.05%
Yes, but rarely		6	28.57%
No		8	38.1%
Not applicable		3	14.29%
No Answer		0	0 %


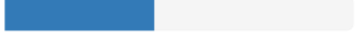
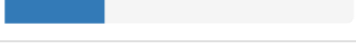
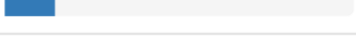
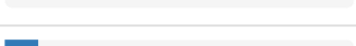


**17/ The SGEI Decision), the SGEI Framework, the SGEI Communication and the SGEI de minimis Regulation are coherent without any inconsistencies between them.**

		Answers	Ratio
Strongly agree		2	9.52 %
Agree		11	52.38 %
Neutral		5	23.81 %
Disagree		1	4.76 %
Strongly disagree		0	0 %
Not applicable		2	9.52 %
No Answer		0	0 %

**18/ The effort and administrative burden required for complying with the SGEI package is proportionate to the benefits of the rules.**

		Answers	Ratio
Strongly agree		0	0 %
Agree		3	14.29 %
Neutral		5	23.81 %
Disagree		9	42.86 %
Strongly disagree		2	9.52 %
Not applicable		2	9.52 %
No Answer		0	0 %

**19/ In case of co-financing SGEI with European funds and regional aid, it is clear which framework has to be applied.**

		Answers	Ratio
Strongly agree		1	4.76 %
Agree		9	42.86 %
Neutral		6	28.57 %
Disagree		3	14.29 %
Strongly disagree		0	0 %
Not applicable		2	9.52 %
No Answer		0	0 %


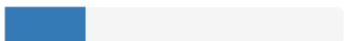
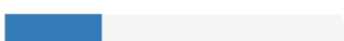
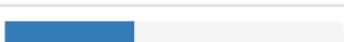
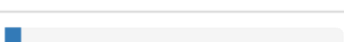
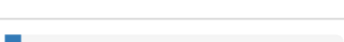

**20/ Is there any other challenge(s) that you faced/are facing with the application of State aid rules in the field of SGEIs, not covered by the above questions?**

		Answers	Ratio
Yes		8	38.1%
No		10	47.62%
Not applicable		3	14.29%
No Answer		0	0 %

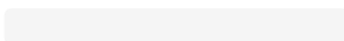
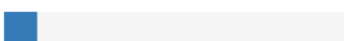
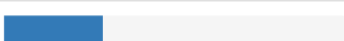

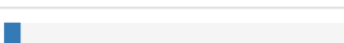


**21/ The indicators and method for the definition of the maps related to the regional aid framework 2014-2020 allow an effective coverage of the areas eligible for regional State aid in the EU.**

		Answers	Ratio
Strongly agree		0	0 %
Agree		12	57.14 %
Neutral		3	14.29 %
Disagree		4	19.05 %
Strongly disagree		1	4.76 %
Not applicable		1	4.76 %
No Answer		0	0 %

**22/ The regional aid maps adequately reflect the actual economic situation in your region/area.**


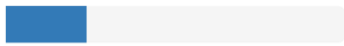
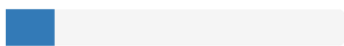
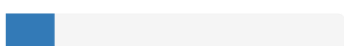
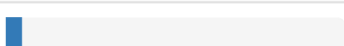
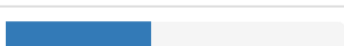
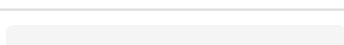
		Answers	Ratio
Strongly agree		0	0 %
Agree		5	23.81 %
Neutral		6	28.57 %
Disagree		8	38.1 %
Strongly disagree		1	4.76 %
Not applicable		1	4.76 %
No Answer		0	0 %

**23/ The overall population coverage, which serves to identify which regions are eligible for regional State aid, currently defined by the Regional State aid Guidelines, is still appropriate.**


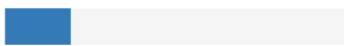
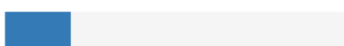
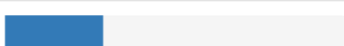
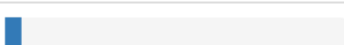
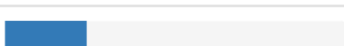
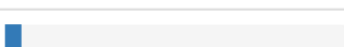
		Answers	Ratio
Strongly agree		0	0 %
Agree		2	9.52 %
Neutral		6	28.57 %
Disagree		10	47.62 %
Strongly disagree		1	4.76 %
Not applicable		1	4.76 %
No Answer		1	4.76 %




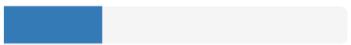
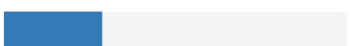
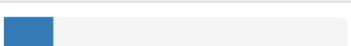
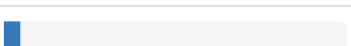
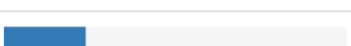
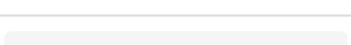
**24/ The eligibility conditions to grant aid in 'a' areas to large enterprises (LEs), as specified under article 14 (3) of the General Block Exemption Regulation , are appropriate to allow for the development of disadvantaged areas in the EU, while maintaining a competitive internal market (if applicable in your area).**

		Answers	Ratio
Strongly agree		0	0 %
Agree		5	23.81 %
Neutral		3	14.29 %
Disagree		3	14.29 %
Strongly disagree		1	4.76 %
Not applicable		9	42.86 %
No Answer		0	0 %


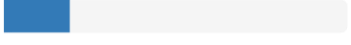
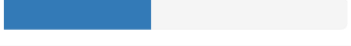
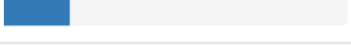
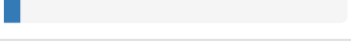

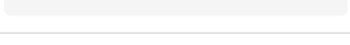
**25/ The eligibility conditions to grant aid in 'c' areas to large enterprises (LEs), as specified under article 14 (3) of the GBER, are appropriate to allow for the development of disadvantaged areas in the EU, while maintaining a competitive internal market.**

		Answers	Ratio
Strongly agree		0	0 %
Agree		4	19.05 %
Neutral		4	19.05 %
Disagree		6	28.57 %
Strongly disagree		1	4.76 %
Not applicable		5	23.81 %
No Answer		1	4.76 %


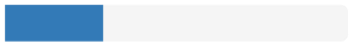
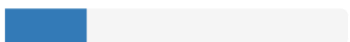
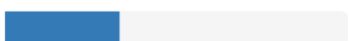
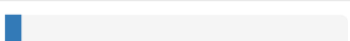
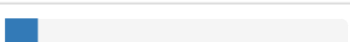
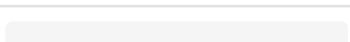
**26/ The eligibility conditions to grant aid in ‘a’ and ‘c’ areas to small and medium-sized enterprises (SMEs), as specified under article 14 (3) of the [GBER](#), are appropriate to allow for the development of disadvantaged areas in the EU, while maintaining a competitive internal market.**

		Answers	Ratio
Strongly agree		0	0 %
Agree		6	28.57 %
Neutral		6	28.57 %
Disagree		3	14.29 %
Strongly disagree		1	4.76 %
Not applicable		5	23.81 %
No Answer		0	0 %

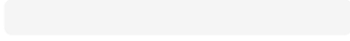
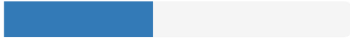

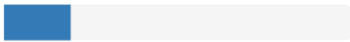
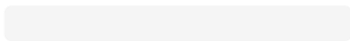
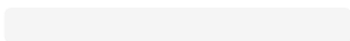
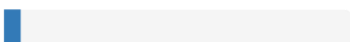
**27/ The conditions on eligibility and compatibility that have to be met to benefit from the provisions of the [GBER](#) are still appropriate and easy to implement.**

		Answers	Ratio
Strongly agree		1	4.76 %
Agree		4	19.05 %
Neutral		9	42.86 %
Disagree		4	19.05 %
Strongly disagree		1	4.76 %
Not applicable		2	9.52 %
No Answer		0	0 %





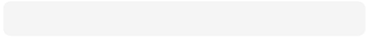
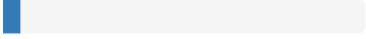
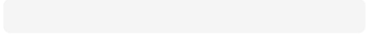
**28/ The maximum permissible levels of aid (aid intensity ceilings), as set in the Regional State aid framework, are still appropriate.**

		Answers	Ratio
Strongly agree		0	0 %
Agree		6	28.57 %
Neutral		5	23.81 %
Disagree		7	33.33 %
Strongly disagree		1	4.76 %
Not applicable		2	9.52 %
No Answer		0	0 %



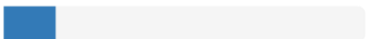
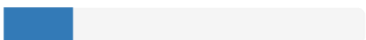
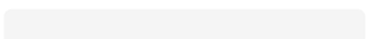
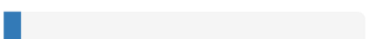
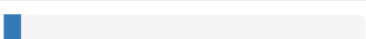
**29/ The type of investments that qualify as regional aid according to the Regional State aid framework are still appropriate.**

		Answers	Ratio
Strongly agree		0	0 %
Agree		9	42.86 %
Neutral		7	33.33 %
Disagree		4	19.05 %
Strongly disagree		0	0 %
Not applicable		0	0 %
No Answer		1	4.76 %

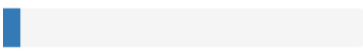

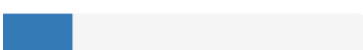
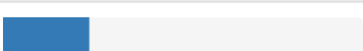
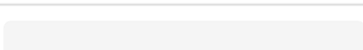
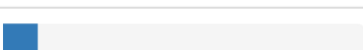
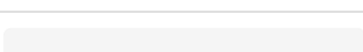
**30/ The types of companies that can receive regional aid according to the Regional State aid framework are still appropriate.**

		Answers	Ratio
Strongly agree		1	4.76 %
Agree		12	57.14 %
Neutral		5	23.81 %
Disagree		2	9.52 %
Strongly disagree		0	0 %
Not applicable		1	4.76 %
No Answer		0	0 %

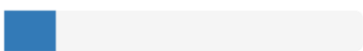

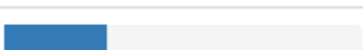



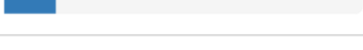
**31/ The provisions on the "incentive effect" of aid are sufficiently defined in both the RAG and the GBER and allow for an effective and smooth application.**

		Answers	Ratio
Strongly agree		0	0 %
Agree		12	57.14 %
Neutral		3	14.29 %
Disagree		4	19.05 %
Strongly disagree		0	0 %
Not applicable		1	4.76 %
No Answer		1	4.76 %

**32/ The provisions on the non-admissibility of "relocation" are sufficiently defined and allow for an effective and smooth application, in particular in connection to the EU's Cohesion policy.**

		Answers	Ratio
Strongly agree		1	4.76 %
Agree		9	42.86 %
Neutral		4	19.05 %
Disagree		5	23.81 %
Strongly disagree		0	0 %
Not applicable		2	9.52 %
No Answer		0	0 %

**33/ The use of provisions on "simplified cost options" in the GBER is effective and should be adjusted and transposed into the RAG.**

		Answers	Ratio
Strongly agree		3	14.29 %
Agree		9	42.86 %
Neutral		6	28.57 %
Disagree		0	0 %
Strongly disagree		0	0 %
Not applicable		3	14.29 %
No Answer		0	0 %

**34/ Is there any other challenge(s) that you faced/are facing with the Regional State aid framework not covered by the above questions?**

		Answers	Ratio
Yes		6	28.57%
No		11	52.38%
Not applicable		3	14.29%
No Answer		1	4.76%

**Annex 5: Regional hubs survey**

## CoR RegHub Consultation on

# Regional and local authorities implementing State aid rules: Services of General Economic Interest and Regional State Aid Framework

Fields marked with \* are mandatory.



### European Committee of the Regions

#### What is this survey for?

With this survey, the European Committee of the Regions (CoR) hopes to collect evidence and to identify the main challenges that the regional hubs and their stakeholders face when implementing the State aid framework, notably in the area of the Services of General Economic Interest (SGEIs) and regional aid.

This questionnaire also aims to put together the views of the hubs on the types of policy support and/or changes needed to overcome the difficulties encountered at regional and local level, with regard to the implementation of the State aid rules in these two policy areas.

The results of this consultation will be compiled in a RegHub implementation report.

#### Who should respond to this survey?

It should be **answered and sent back to the RegHub secretariat by the contact points of the RegHub members**. They can consult representatives of local/regional authorities (officials, politicians or other), business sector/SMEs or other stakeholders at local/regional level, whom they deem fit and whom they consider to be affected by the State aid rules applicable to SGEIs and/or to regional aid.

**Important!** *Whenever answers are based on consultations of stakeholders, this should be indicated and the consulted stakeholders should always be identified.*

#### Practical information

The survey will be open until **Friday 15 May 2020 at 17:00**.

For more information, please contact [RegHub@cor.europa.eu](mailto:RegHub@cor.europa.eu)



## Some background on State Aid

In the framework of better regulation, the European Commission has launched a fitness check[1] of a series of State aid legislative texts and guidelines reformed under the State aid Modernisation (SAM) package, including the General Block Exemption Regulation (GBER) and the guidelines on regional State aid. Likewise, the European Commission conducted another evaluation to check if the rules on health and social services of general economic interest (SGEIs) meet their objectives under the 2012 services package. Those objectives were to support EU Member States in funding the services that are vital to people and society as a whole while preserving the key concepts of state subsidy control and therefore avoiding distortions of competition[2].

SGEIs are economic activities which deliver outcomes in the overall public good that would not be supplied (or would be supplied under different conditions in terms of objective quality, safety, affordability, equal treatment or universal access) by the market without public intervention. The SGEI package consists of four instruments: The **interpretative Communication**[3] which clarifies key concepts related to State aid for SGEIs and to the Commission's approach to how the Altmark criteria[4] should be fulfilled, the **Decision**[5] and the **Framework**[6] which specify the conditions under which State aid in the form of public service compensation is compatible with the TFEU. The **de minimis Regulation**[7] establishes a threshold below which compensation is deemed not to be State aid. The Decision and Framework have been in force since 31 January 2012.

The consultation will also gather, through the Hubs, relevant stakeholders' views on the application of the current regional aid framework 2014-2020 to see whether the Hubs face any difficulties in this regard. The regional aid framework 2014-2020 consists of (i) the regional aid guidelines (RAG) for 2014-2020 (RAG)[8], (ii) the regional aid maps as part of the RAG, and (iii) the provisions applicable to regional aid in Commission Regulation (EU) No 651/2014 of 17 June 2014, declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (General Block Exemption Regulation, GBER)[9]. Considering the key role of subnational governments as providers of SGEIs along with the decisive role of the regional state aid framework in the way Member States and regions address regional disparities, the CoR has started a specific process of analysing the challenges and the opportunities that regions and cities see in implementing the State aid legal framework in the area of SGEI and of regional aid.

[1] The roadmap for the consultation can be found on [https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2018-6623981\\_en](https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2018-6623981_en)

[2] [https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2019-3777435\\_en](https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2019-3777435_en)

[3] Communication from the Commission on the application of the European Union State aid rules to compensation granted for the provision of SGEI.

[4] The CJEU in the Altmark case (24/07/2003) laid down four specific criteria in order for the public service compensation to be considered as free of State aid elements and thus not be caught by Article 107(1) TFEU: 1) The recipient undertaking must actually have public service obligations to discharge, and the obligations must be clearly defined. 2) The parameters on the basis of which the compensation is calculated must be established in advance in an objective and transparent manner. 3) The compensation cannot exceed what is necessary to cover all or part of the costs incurred in the discharge of public service obligations, taking into account the relevant receipts and a reasonable profit for discharging those obligations. 4) Where the undertaking which is to discharge public service obligations, in a specific case, is not chosen pursuant to a public procurement procedure which would allow for the selection of the tenderer capable of providing those services at the least cost to the community, the level of compensation needed must be determined on the basis of an analysis of the costs of a typical, well run and adequately equipped undertaking.

[5] Commission Decision of 20 December 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 SGEI.

[6] Communication from the Commission, European Union framework for State aid in the form of public service compensation (2011). [7] Commission 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 SGEI.

[8] Guidelines on regional State aid for 2014-2020: 2013/C 209/01

[9] Consolidated text available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1581411705414&uri=CELEX:02014R0651-20170710>

## Details of the Contact Point

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\* First name

\* Last name

\* Email

\* Contact point of (name of your hub):

\* Function/Position

## Details of the Stakeholders

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\* Please mention here:

1/ the **name and contact information** of all of the stakeholders that you have consulted, and 2/ **the question(s)** on which they were consulted

## PART I. STATE AID AND SGEIs

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1/ The notion of **economic activity**<sup>[10]</sup> is straightforward and easy to use, in order to assess whether the public services provided qualify as SGEI

*[10] To clarify the distinction between economic and non-economic activities, the Court of Justice has consistently held that any activity consisting in offering goods and services on a market is an economic activity. The question whether a market exists for certain services may depend on the way those services are organised in the Member State concerned. The State aid rules only apply where a certain activity is provided in a market environment. The economic nature of certain services can therefore differ from one Member State to another. Moreover, due to political choice or economic developments, the classification of a given service can change over time. What is not a market activity today may turn into one in the future,*

and vice versa. The Notice on the Notion of State aid also states that the in-house provision of a service does not rule out the existence of economic activity.

- Strongly agree
- Agree
- Neutral
- Disagree
- Strongly disagree
- Not applicable

Please specify and, if necessary, differentiate per area (e.g. housing, broadcasting, waste management, social services) - *To be filled out by stakeholders.*

**Synthesis of question 1** - *To be filled out by the contact point.*

***Please write here the combined feedback of both your hub and your consulted stakeholders***

2/ The notion of **undertaking[11]** is straightforward and easy to use in order to assess whether the provided public services qualify as SGEIs.

*[11] The status of the entity under national law is not decisive. For example, an entity that is classified as an association or a sports club under national law may nevertheless have to be regarded as an undertaking within the meaning of Article 107(1) of the Treaty. The only relevant criterion in this respect is whether it carries out an economic activity. The same applies to an entity that is formally part of the public administration. The only relevant criterion is whether it carries out an economic activity (EUROPEAN COMMISSION, Commission Notice on the Notion of State aid as referred to in Article 107(1) TFEU, op. cit., paragraph 8).*

- Strongly agree
- Agree
- Neutral
- Disagree
- Strongly disagree
- Not applicable

Please specify - *To be filled out by the stakeholders.*

**Synthesis of question 2** - *To be filled out by the contact point.*

***Please write here the combined feedback of both your hub and your consulted stakeholders***

3/ The notion of **manifest error**[12] is straightforward and easy to use in order to assess whether the provided public services qualify as SGEIs.

[12] *The concept of manifest error with respect to SGEIs has not been defined in the case law. According to the Commission SGEIs reflect national and local specificities as long as they are set up in the general interest and thus the interest of society. It can be inferred that Member States commit a manifest error when they do not justify why a service is in the general interest or when they do not ensure that such a service is provided to all the citizens. Pursuant to the EU Treaties and the case law of the Courts of the EU, Member States have a wide discretion as to the definition of what they consider to be an SGEI and, therefore, the definition of such services by a Member State may not be questioned by the Commission unless there is a manifest error. The Commission is not empowered to rule on the policy choices of Member States, the scope of the public service tasks, the level of costs of the SGEI or the economic efficiency of the operator.*

- Strongly agree
- Agree
- Neutral
- Disagree
- Strongly disagree
- Not applicable

Please specify - *To be filled out by the stakeholders.*

**Synthesis of question 3** - *To be filled out by the contact point.*

***Please write here the combined feedback of both your hub and your consulted stakeholders***

4/ The notion of **reasonable profit**[13] requirement as explained in Article 5 of the 2012 SGEI Decision is straightforward.

[13] *'Reasonable profit' means the rate of return on capital that would be required by a typical undertaking considering whether or not to provide the service of general economic interest for the whole period of entrustment, taking into account the level of risk.*

- Strongly agree
- Agree
- Neutral

- Disagree
- Strongly disagree
- Not applicable

Please specify - *To be filled out by the stakeholders.*

**Synthesis of question 4** - *To be filled out by the contact point.*

***Please write here the combined feedback of both your hub and your consulted stakeholders***

5/ The notion of ***normal market conditions***<sup>[14]</sup> is straightforward and easy to use in order to assess whether the provided public services qualify as SGEIs.

*[14] Point 48 of the SGEI Communication provides that the Commission considers that it would not be appropriate to attach specific public service obligations to an activity which is already provided or can be provided satisfactorily and under conditions, such as price, objective quality characteristics, continuity and access to the service, consistent with the public interest, as defined by the State, by undertakings operating under normal market conditions. As for the question of whether a service can be provided by the market, the Commission's assessment is limited to checking whether the Member State has made a manifest error.*

- Strongly agree
- Agree
- Neutral
- Disagree
- Strongly disagree
- Not applicable

Please specify - *To be filled out by the stakeholders.*

**Synthesis of question 5** - *To be filled out by the contact point.*

***Please write here the combined feedback of both your hub and your consulted stakeholders***

6/ The relation between the use of State aid rules and the use of public procurement rules is straightforward.

- Strongly agree
- Agree
- Neutral
- Disagree
- Strongly disagree
- Not applicable

Please specify - *To be filled out by the stakeholders.*

**Synthesis of question 6** - *To be filled out by the contact point.*

***Please write here the combined feedback of both your hub and your consulted stakeholders***

7/ Have you ever used public procurement procedure as a way to prove compliance of the provided services with State aid rules?

- Yes, very often
- Yes, but rarely
- No
- Not applicable

Please specify - *To be filled out by the stakeholders.*

**Synthesis of question 7** - *To be filled out by the contact point.*

***Please write here the combined feedback of both your hub and your consulted stakeholders***

8/ Have you ever used State aid rules instead of using public procurement for the provided services?

- Yes, very often
- Yes, but rarely
- No
- Not applicable

Please specify your experience and possible challenges faced - *To be filled out by the stakeholders.*

**Synthesis of question 8** - *To be filled out by the contact point.*

***Please write here the combined feedback of both your hub and your consulted stakeholders***

9/ Is **the amount** of de minimis aid that can be granted under the SGEI de minimis Regulation, i.e. up to EUR 500 000 over any period of three fiscal years, still appropriate?

- Yes
- No, it is too high
- Neutral
- No, it is too low
- I do not know

Please specify - *To be filled out by the stakeholders.*

**Synthesis of question 9** - *To be filled out by the contact point.*

***Please write here the combined feedback of both your hub and your consulted stakeholders***

10/ Is **the period** over which the de minimis aid that can be granted under the SGEI de minimis Regulation, i.e. over any period of three fiscal years, still appropriate?

- Yes
- No, it is too long
- Neutral
- No, it is too short
- I do not know

Please specify - *To be filled out by the stakeholders.*

**Synthesis of question 10** - *To be filled out by the contact point.*

***Please write here the combined feedback of both your hub and your consulted stakeholders***

11/ The current framework makes it possible for Member States/LRAs to provide SGEIs in line with the EU values defined in Protocol 26 to the TFEU.

- Strongly agree
- Agree
- Neutral
- Disagree
- Strongly disagree
- Not applicable
- Other

Please specify - *To be filled out by the stakeholders.*

**Synthesis of question 11** - *To be filled out by the contact point.*

***Please write here the combined feedback of both your hub and your consulted stakeholders***

12/ The **definition of social housing** as laid down in the 2012 SGEI Decision (recital 11 of the preamble) [15] is still appropriate.

[15] *The CoR has repeatedly asked for a **widening of the definition of social housing by removing the restriction of social housing to "disadvantaged citizens or socially less advantaged groups"**.*

- Strongly agree
- Agree
- Neutral
- Disagree
- Strongly disagree
- Not applicable

Please specify - *To be filled out by the stakeholders.*

**Synthesis of question 12** - *To be filled out by the contact point.*

***Please write here the combined feedback of both your hub and your consulted stakeholders***

13/ Would you be in favour of shifting the burden of proof that a local service poses a threat to intraCommunity trade to the complainant and/or the European Commission?

- Yes
- No
- Not applicable

Please specify - *To be filled out by the stakeholders.*

**Synthesis of question 13** - *To be filled out by the contact point.*

***Please write here the combined feedback of both your hub and your consulted stakeholders***



14/ Are you aware of the following:

**a) Notice on the Notion of State aid[16]**

[16] In the framework of the SAM initiative the Commission wanted to clarify the different elements which, according to the case-law, constitute a State aid pursuant to Article 107(1) TFEU: the existence of an undertaking, the imputability of the measure to the State, its financing through State resources, the grant of an advantage, the selectivity of the measure and its potential effect on competition and trade within the Union. The Commission published a Communication (Draft Commission Notice on the notion of State aid [1]) on 17 January 2014 and carried out a public consultation (from 17.01.2014 to 14.03.2014, extended to 31.03.2014). **The Commission's Notice on the Notion of State aid was published on 19 May 2016.**

- Yes
- No
- Not applicable

Please specify - *To be filled out by the stakeholders.*

**Synthesis of question 14/a** - *To be filled out by the contact point.*

***Please write here the combined feedback of both your hub and your consulted stakeholders***

**b) Guidance in the 2012 SGEI Communication on the concept of 'market failure'**

- Yes
- No
- Not applicable

Please specify - *To be filled out by the stakeholders.*

**Synthesis of question 14/b** - *To be filled out by the contact point.*

***Please write here the combined feedback of both your hub and your consulted stakeholders***

**c) Guidance in the 2012 SGEI Communication on when the SGEI rules apply**

- Yes
- No
- Not applicable

Please specify - *To be filled out by the stakeholders.*

**Synthesis of question 14/c** - *To be filled out by the contact point.*

***Please write here the combined feedback of both your hub and your consulted stakeholders***

d) Guidance in the 2012 SGEI Communication **on the definition of a genuine SGEI**

- Yes
- No
- Not applicable

Please specify - *To be filled out by the stakeholders.*

**Synthesis of question 14/d** - *To be filled out by the contact point.*

***Please write here the combined feedback of both your hub and your consulted stakeholders***

15/ According to Article 9 of the SGEI Decision and point 62 of SGEI Framework MSs have to submit a report on the implementation of the Decision and the Framework to the Commission every 2 years. Are you involved in this reporting?

- Yes
- No
- Not applicable

Please specify - *To be filled out by the stakeholders.*

**Synthesis of question 15** - *To be filled out by the contact point.*

***Please write here the combined feedback of both your hub and your consulted stakeholders***

16/ Have you experienced administrative burdens in relation to the SGEI reporting procedure?

- Yes, to a large extent
- Yes, but rarely
- No
- Not applicable

If yes, please provide examples - *To be filled out by the stakeholders.*

**Synthesis of question 16** - *To be filled out by the contact point.*

***Please write here the combined feedback of both your hub and your consulted stakeholders***

17/ The SGEI Decision, the SGEI Framework, the SGEI Communication and the SGEI de minimis Regulation are coherent without any inconsistencies between them.

- Strongly agree
- Agree
- Neutral
- Disagree
- Strongly disagree
- Not applicable

Please specify - *To be filled out by the stakeholders.*

**Synthesis of question 17** - *To be filled out by the contact point.*

***Please write here the combined feedback of both your hub and your consulted stakeholders***

18/ The effort and administrative burden required for complying with the SGEI package is proportionate to the benefits of the rules.

- Strongly agree
- Agree
- Neutral
- Disagree
- Strongly disagree
- Not applicable

Please specify - *To be filled out by the stakeholders.*

**Synthesis of question 18** - *To be filled out by the contact point.*

***Please write here the combined feedback of both your hub and your consulted stakeholders***

19/ In case of co-financing SGEI with European funds and regional aid, it is clear which framework has to be applied.

- Strongly agree
- Agree
- Neutral
- Disagree
- Strongly disagree
- Not applicable

Please specify - *To be filled out by the stakeholders.*

**Synthesis of question 19** - *To be filled out by the contact point.*

***Please write here the combined feedback of both your hub and your consulted stakeholders***

20/ Is there any other challenge(s) that you faced/are facing with the application of State aid rules in the field of SGEIs not covered by the above questions?

- Yes
- No
- Not applicable

If yes, how are you dealing or have you dealt with these challenges? - *To be filled out by the stakeholders.*

**Synthesis of question 20** - *To be filled out by the contact point.*

***Please write here the combined feedback of both your hub and your consulted stakeholders***

## **PART II. REGIONAL STATE AID FRAMEWORK**

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21/ The indicators and method[17] for the definition of the maps related to the regional aid framework 2014-2020 allow an effective coverage of the areas eligible for regional State aid in the EU.

*[17] The regional aid framework 2014-2020 establishes the methodology and criteria for the determination of regions eligible for regional State aid in the Member States.*

- Strongly agree
- Agree
- Neutral
- Disagree
- Strongly disagree
- Not applicable

Please specify - *To be filled out by the stakeholders.*

**Synthesis of question 21** - *To be filled out by the contact point.*

***Please write here the combined feedback of both your hub and your consulted stakeholders***

22/ The **regional aid maps** adequately reflect the actual economic situation in your region/area.

- Strongly agree
- Agree
- Neutral
- Disagree
- Strongly disagree
- Not applicable

Please specify - *To be filled out by the stakeholders.*

**Synthesis of question 22** - *To be filled out by the contact point.*

***Please write here the combined feedback of both your hub and your consulted stakeholders***

23/ The **overall population coverage**, which serves to identify which regions are eligible for regional State aid, currently defined by the Regional State aid Guidelines is still appropriate.

- Strongly agree
- Agree
- Neutral
- Disagree
- Strongly disagree
- Not applicable

Please specify - *To be filled out by the stakeholders.*

**Synthesis of question 23** - *To be filled out by the contact point.*

***Please write here the combined feedback of both your hub and your consulted stakeholders***

24/ The eligibility conditions to grant aid in 'a' areas to large enterprises (LEs), as specified under article 14 (3) of the General Block Exemption Regulation (GBER), are appropriate to allow for the development of disadvantaged areas in the EU, while maintaining a competitive internal market (if applicable in your area).

- Strongly agree
- Agree
- Neutral
- Disagree
- Strongly disagree
- Not applicable

Please specify - *To be filled out by the stakeholders.*

**Synthesis of question 24** - *To be filled out by the contact point.*

***Please write here the combined feedback of both your hub and your consulted stakeholders***

25/ The eligibility conditions to grant aid in 'c' areas to large enterprises (LEs), as specified under article 14 (3) of the GBER, are appropriate to allow for the development of disadvantaged areas in the EU, while maintaining a competitive internal market.

- Strongly agree
- Agree
- Neutral
- Disagree
- Strongly disagree
- Not applicable

Please specify - *To be filled out by the stakeholders.*

**Synthesis of question 25** - *To be filled out by the contact point.*

***Please write here the combined feedback of both your hub and your consulted stakeholders***

26/ The eligibility conditions to grant aid in 'a' and 'c' areas to small and medium-sized enterprises (SMEs), as specified under article 14 (3) of the GBER, are appropriate to allow for the development of disadvantaged areas in the EU, while maintaining a competitive internal market.

- Strongly agree
- Agree
- Neutral
- Disagree
- Strongly disagree
- Not applicable

Please specify - *To be filled out by the stakeholders.*

**Synthesis of question 26** - *To be filled out by the contact point.*

***Please write here the combined feedback of both your hub and your consulted stakeholders***

27/ The conditions on eligibility and compatibility that have to be met to benefit from the provisions of the GBER are still appropriate and easy to implement.

- Strongly agree
- Agree
- Neutral
- Disagree
- Strongly disagree
- Not applicable

Please specify - *To be filled out by the stakeholders.*

**Synthesis of question 27** - *To be filled out by the contact point.*

***Please write here the combined feedback of both your hub and your consulted stakeholders***

28/ The **maximum permissible levels of aid** (aid intensity ceilings) as set in the Regional State aid framework[18] are still appropriate.

[18] The regional aid framework 2014-2020 consists of (i) the regional aid guidelines (RAG) for 2014-2020 (RAG), (ii) the regional aid maps as part of the RAG, and (iii) the provisions applicable to regional aid in Commission Regulation (EU) No 651/2014 of 17 June 2014, declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (General Block Exemption Regulation, GBER).

- Strongly agree
- Agree
- Neutral
- Disagree
- Strongly disagree
- Not applicable

Please specify - *To be filled out by the stakeholders.*

**Synthesis of question 28** - *To be filled out by the contact point.*

***Please write here the combined feedback of both your hub and your consulted stakeholders***

29/ The **type of investments** that qualify as regional aid according to the Regional State aid framework are still appropriate.

- Strongly agree
- Agree
- Neutral
- Disagree
- Strongly disagree
- Not applicable

Please specify - *To be filled out by the stakeholders.*

**Synthesis of question 29** - *To be filled out by the contact point.*

***Please write here the combined feedback of both your hub and your consulted stakeholders***

30/ The **types of companies** that can receive regional aid according to the Regional State aid framework are still appropriate.

- Strongly agree
- Agree
- Neutral
- Disagree
- Strongly disagree
- Not applicable



Please specify - *To be filled out by the stakeholders.*

**Synthesis of question 30** - *To be filled out by the contact point.*

***Please write here the combined feedback of both your hub and your consulted stakeholders***

31/ The provisions on the **"incentive effect[19]"** of the aid are sufficiently defined in both the RAG and the GBER and allow for an effective and smooth application.

*[19] Definitions of the incentive effect are laid down in Paragraph 26(d) of the Regional Aid Guidelines ("the aid must change the behaviour of the undertaking(s) concerned in such a way that it engages in additional activity which it would not carry out without the aid or it would carry out in a restricted or different manner or location") and in Article 6 of the GBER ("Aid shall be considered to have an incentive effect if the beneficiary has submitted a written application for the aid to the Member State concerned before work on the project or activity starts").*

- Strongly agree
- Agree
- Neutral
- Disagree
- Strongly disagree
- Not applicable

Please specify - *To be filled out by the stakeholders.*

**Synthesis of question 31** - *To be filled out by the contact point.*

***Please write here the combined feedback of both your hub and your consulted stakeholders***

32/ The provisions on the **non-admissibility of "relocation[20]"** are sufficiently defined and allow for an effective and smooth application, in particular in connection to EU's Cohesion policy.

*[20] Relocation is defined in Paragraph 122 of the Regional Aid Guidelines ("Where the beneficiary closes down the same or a similar activity in another area in the EEA and relocates that activity to the target area, if there is a causal link between the aid and the relocation, this will constitute a negative effect that is unlikely to be compensated by any positive elements") and in Article 2(61a) of the GBER ("a transfer of the same or similar activity or part thereof from an establishment in one contracting party to the EEA Agreement (initial establishment) to the establishment in which the aided investment takes place in another contracting party to the EEA Agreement (aided establishment) ...")*

- Strongly agree
- Agree
- Neutral
- Disagree
- Strongly disagree
- Not applicable

Please specify - *To be filled out by the stakeholders.*

**Synthesis of question 32** - *To be filled out by the contact point.*

***Please write here the combined feedback of both your hub and your consulted stakeholders***

33/ The use of provisions on "**simplified cost options**[21]" in the GBER is effective and should be adjusted and transposed into the RAG.

[21] Use of the simplified costs options as basis for calculation of eligible costs is laid down in Article 7, second subparagraph of the GBER: "The amounts of eligible costs may be calculated in accordance with the simplified cost options set out in Regulation (EU) No 1303/2013 of the European Parliament and of the Council (1), provided that the operation is at least partly financed through a Union fund that allows the use of those simplified cost options and that the category of costs is eligible according to the relevant exemption provision."

- Strongly agree
- Agree
- Neutral
- Disagree
- Strongly disagree
- Not applicable

Please specify - *To be filled out by the stakeholders.*

**Synthesis of question 33** - *To be filled out by the contact point.*

***Please write here the combined feedback of both your hub and your consulted stakeholders***

34/ Is there any other challenge(s) that you faced/are facing with the Regional State aid framework not covered by the above questions?

- Yes
- No
- Not applicable

If yes, how are you dealing or have you dealt with these challenges? - *To be filled out by the stakeholders.*

**Synthesis of question 34** - *To be filled out by the contact point.*

***Please write here the combined feedback of both your hub and your consulted stakeholders***

Thank you for your participation!

## BACKGROUND INFORMATION

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### I. State aid and SGEIs [22]

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State aid is defined as an **advantage** in any form whatsoever conferred on a **selective basis to undertakings** by national public authorities. The Treaty generally prohibits State aid since a company which receives government support gains an advantage over its competitors.

Despite the general prohibition of State aid, in some circumstances government intervention is necessary for a well-functioning and equitable economy. Therefore, the Treaty leaves room for a number of **policy objectives for which State aid can be considered compatible**.

The concept of SGEI appears in Articles 14 and 106(2) of the Treaty on the Functioning of the European Union (TFEU) and in Protocol No 26 to the TFEU, but it is not defined in the TFEU or in secondary legislation. The Commission has clarified that SGEIs are economic activities which deliver outcomes in the overall public good that would not be supplied (or would be supplied under different conditions in terms of objective quality, safety, affordability, equal treatment or universal access) by the market without public intervention. A Public Service Obligation (PSO) is imposed on the provider by way of an entrustment and on the basis of a general interest criterion which ensures that the service is provided under conditions allowing it to fulfil its mission.

Public authorities in the Member States, whether at national, regional or local level, depending on the allocation of powers between them under national law, have considerable discretion when it comes to defining what they regard as SGEI. The only limits are those imposed by EU law and manifest error of assessment. The freedom of the Member States to define SGEIs is subject to review by the Commission and the Union's courts to check for manifest errors of assessment (paragraph 46 of the Communication).

With respect to State aid rules, they concern the precise conditions under which compensation for public service obligations constitutes State aid, the conditions under which they have to be notified to the Commission and the conditions under which State aid may be regarded as compatible with the TFEU.

The State aid SGEI package consists of four instruments applicable to all authorities (national, regional, local) that grant compensation for the provision of SGEIs:

- The Communication which gives a comprehensive and practical overview of the EU State aid concepts relevant to SGEIs and provides explanations of key issues in a single document. It summarises the most relevant case law of the EU Courts and the Commission's decision-making practice. It aims at facilitating the application of State aid rules for national, regional and local authorities as well as public service providers.
- The Commission has sought to provide as much clarity as possible on key concepts, such as the notion of economic activity, effect on trade or SGEI, as well as on the relation between State aid and public procurement rules.
- The SGEI de minimis Regulation provides that SGEI compensation not exceeding EUR 500 000 over any period of three fiscal years does not fall under State aid scrutiny. This is because the amount is so small that it can be

deemed not to have an impact on cross-border trade or competition. Since the measures are not considered as State Aid, **there is no obligation to notify them in advance to the Commission.**

- The Decision specifies the conditions under which compensation to companies for the provision of public services is compatible with the EU State aid rules and does not have to be notified to the Commission in advance.
- The Framework specifies the conditions under which public service compensation not covered by the Decision is compatible with the EU State aid rules. **Such compensation will have to be notified to the Commission** due to the higher risk of distortion of competition, so that the Commission can make an in-depth assessment and decide whether the measure in question is compatible with the internal market.

Both the Decision and the Framework specify the conditions under which public service compensation constituting State aid is compatible with the TFEU. The most important difference lies in the fact that public service compensation covered by the Decision does not need to be notified to the Commission. Once the criteria of the Decision are met, the Member State concerned may grant the compensation without delay. However, when the conditions set out in the Decision are not met, the compensation would fall under the Framework. This means that it must be notified in advance to the Commission so that it can check whether the State aid concerned is compatible with the TFEU. In addition, given that cases falling under the Framework are typically large cases that could potentially create more significant distortions of competition, the compatibility conditions are generally stricter than under the Decision. The State aid rules apply only to **'undertakings'**. This concept covers any entity engaged in an economic activity, regardless of the entity's legal status or the way in which it is financed. In particular, it is irrelevant whether the entity is set up to generate profits or not.

The TFEU rules on State aid apply also to non-profit service providers. The mere fact that an entity is non-profit-making does not mean that the activities which it carries on are not of an economic nature. **The legal status of an entity providing SGEIs does not affect the nature of the activity concerned. The relevant criterion is whether the entity pursues an economic activity.** For example, a non-profit association or a charitable organisation pursuing an economic activity will constitute an 'undertaking' only for that specific activity. The competition rules will not apply to their non-economic activities.

Any activity consisting in offering goods and/or services in a given market is an economic activity within the meaning of the competition rules. In this context, the fact that the activity in question is termed 'social' or is carried on by a non-profit operator is not in itself enough to avoid classification as an economic activity. The classification of an activity may depend on the way in which the activity is organised in a Member State and it can change over time due to policy decisions on the way in which the activity is organised or as a result of market developments.

In the field of State aid law, **the effect on trade does not depend on the local or regional character of the service supplied**, or on the scale of the activity concerned. The relatively small amount of aid provided or the relatively small size of the entity which receives it do not in themselves rule out the possibility that trade between Member States might be affected. Even a small amount of aid can boost the services supplied by one service provider, thereby making it more difficult for other European companies to supply the same services on the local market. However, on the basis of its own experience, the Commission has established ceilings up to which it believes that aid will not affect trade or competition. For instance, aid for the provision of an SGEI not exceeding a ceiling of EUR 500 000 over any period of three years is, under the SGEI de minimis Regulation, deemed not to affect trade between Member States and/or not to distort or threaten to distort competition and therefore does not fall under Article 107(1) of the TFEU.

[22] Source: EUROPEAN COMMISSION, Commission Staff Working Document, 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, 29 April 2013,

[https://ec.europa.eu/competition/state\\_aid/overview/new\\_guide\\_eu\\_rules\\_procurement\\_en.pdf](https://ec.europa.eu/competition/state_aid/overview/new_guide_eu_rules_procurement_en.pdf)

## II. Regional State aid Framework

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On the basis of Article 107(3) (a) and (c) of the Treaty on the Functioning of the European Union (TFEU), regional State aid may be considered compatible with the internal market in order to promote the economic development of certain disadvantaged areas within the European Union. The regional aid framework 2014/2020 establishes the methodology and criteria for the determination of regions eligible for regional State aid in the Member States. The GBER sets out conditions on eligibility and compatibility that have to be met to benefit from the provisions of the GBER and to be exempted from the obligation to notify the aid to the Commission. The regional aid guidelines (RAG) set out eligibility and compatibility conditions for regional aid that is not covered by the GBER.

Regional state aid aims at promoting the development of disadvantaged regions in Europe by supporting private productive investment or, in limited cases, by providing operating aid. The RAG set the rules under which Member States can grant state aid to support regional economic development.

They also set out the rules for drawing up regional aid maps that define in which areas (assisted areas) companies can receive regional state aid and at what intensity. The criterion for selection of an Area is based upon the Average Gross Domestic Product per Capita across all EU member states:

- Areas with less than 75% of the average EU GDP per capita are considered most disadvantaged, and are automatically designated as 107(3)a areas, or 'A areas', named after the EU Treaty article which permits enhanced aid.
- Areas with long-standing or permanent difficulties, such low population densities, transition from former 'A region' status, or island geography are also automatically selected for the sparsely populated 'C area' status.
- Member states are then allocated a population envelope which they can use to cover other 'C areas' which are disadvantaged compared to the national average – either lower GDP or higher unemployment.

The regional aid framework applies, in principle, to all sectors of economic activity. However, the following activities are currently excluded (with some exceptions for operating aid and outermost regions):

1. Regional aid to the steel and synthetic fibres sectors is considered incompatible with the internal market in the RAG due to the particularities of those sectors and is excluded from the scope of the regional aid section of the GBER;
2. The sectors of fisheries and aquaculture, agriculture (with some specific exceptions), transport, airports and energy are subject to sector-specific State aid rules and are therefore excluded from the scope of the RAG and the regional aid section of the GBER;
3. In addition, the GBER excludes the coal and shipbuilding sectors from regional aid.
4. Furthermore, regional operating aid is not allowed in favor of undertakings whose principal activities fall under Section K 'Financial and insurance activities' of the NACE Rev. 2, or to undertakings that perform intra-group activities whose principal activities fall under classes 70.10 'Activities of head offices' or 70.22 'Business and other management consultancy activities' of NACE Rev. 2.

## Privacy statement

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By filling out and submitting your answer(s) to this survey, you give your consent to the European Committee of the Regions for collecting and processing the answer(s) and personal data it contains, and for transferring the answer(s) and personal data to third parties involved in the analysis and dissemination of the survey results. The purpose thereof is to serve the aims of the RegHub network, including the drafting of a report that will be published and shared with relevant EU institutions as well as European, national, regional and local political representatives, administrations and stakeholders that are relevant for the topic covered by the survey.

The personal data is collected and processed according to Regulation (EU) 2018/1725. The follow-up of the survey requires that your personal data be processed in a file, which will be kept for a maximum period of 5 years. You have the right to access that file and the right to correct any inaccurate or incomplete personal data or to request the deletion of your personal data by sending an email to [econ-survey-cor@cor.europa.eu](mailto:econ-survey-cor@cor.europa.eu).

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I have read the privacy statement.



## European Committee of the Regions

Created in 1994 following the signing of the Maastricht Treaty, the European Committee of the Regions is the EU's assembly of 329 regional and local representatives from all 27 Member States, representing over 447 million Europeans. Its mission is to involve regional and local authorities and the communities they represent in the EU's decision-making process and to inform them about EU policies. The European Commission, the European Parliament and the Council are obliged to consult the Committee in policy areas affecting regions and cities. It can appeal to the Court of Justice of the European Union if its rights are infringed or it believes that EU law infringes the subsidiarity principle or fails to respect regional or local powers.