



Comité européen des associations d'intérêt général
European Council for non-profit organisations

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Public consultation on state aid rules on services of general economic interest

CEDAG, through its national member organisations, represents hundreds of national and local providers of social services of general interest in the non-profit sector. EU state aid legislation fundamentally affects the way many of our members work, and the extent and quality of the services they can provide in their communities. For this reason it is essential that the voices of these stakeholders be heard during the current consultation.

The questionnaire deals with service provision within the context of different Member States, and while it is not within CEDAG's remit to monitor this in such detail at national level¹, our members have nevertheless put forward a number of points which are relevant to the effectiveness of the current rules. Since this response gathers the viewpoints of disparate actors in different Member States, it cannot be effectively expressed by answering the questionnaire, and we have instead prepared this short paper to facilitate the task of analysis for the services of the European Commission.

Some points concern difficulties in the application of the current rules which will be shared with other stakeholders such as commercial service providers. Other points concern issues which relate to the particular situation of non-profit service providers, and are not touched on in the questionnaire. Given the important share of services which are provided by non-profit organisations these should be taken seriously, and the terms of the debate should be opened so that the views of all stakeholders can be considered on an equal footing.

Clear terminology

Some CEDAG members said that certain terms in the state aids rules require clearer definition. The concept of **service of general economic interest** is itself a source of confusion. The distinction between economic and non-economic services has been variously interpreted as meaning whether or not the service provision brings a financial profit, or whether or not the service provider is competing in a market situation. SGEI is often seen as a new concept which is not part of Member States' traditional systems and which the EU is introducing, whereas of course they do already exist in all Member States. The problem is one of lexicon, and in order to help stakeholders who find this vagueness a barrier to problem-free implementation of the rules, the EU should provide clear definitions with examples of what constitutes 'economic' and 'non-economic' interest².

¹ Several of our members have also replied to the consultation on an individual basis

² The EU should also bear in mind that when it makes changes to the way which national actors work, there will be a corresponding burden on those actors to familiarise themselves with the new

Some CEDAG members have noticed that, a degree of uncertainty derives from the conflation of the word “**undertaking**”, used to denote the entity which provides the SGEI, with “enterprise” in the sense of (commercially oriented) business, because in this sense it could be seen to entirely exclude non-profit providers from the state aid rules.

The idea of a “**typical undertaking**” poses problems for some CEDAG members regarding the application of the fourth Altmark condition, because it is not clear how a typical undertaking is to be defined in the context of a market where public intervention is needed. It is believed that in many cases this lack of clarity may induce public authorities to opt for public tendering, which can put non-profit organisations at a disadvantage if they lack the resources to make a competitive bid faced with commercial competitors, and may even lack the human resources needed to invest the man-hours required to fill in a tender proposal.

A related point pertains to the **interactive information service** – there is concern that since the answers of this service carry no legal weight they may sometimes simply be an additional voice increasing confusion. Additionally, since there is no openness or transparency on the questions asked and answers provided, it the service lacks not only usefulness but also.

Impact in terms of costs and bureaucracy

Many CEDAG members mentioned that the state aid rules result in an increased **administrative burden**, and in costly and time-consuming processes for both public authorities and for service providers. This includes the **ex-ante cost calculations**, as well as the work required to demonstrate that rules have either been followed or are not applicable in a given case.

This can be particularly disadvantageous for non-profit organisations because on one hand they frequently do not have the familiarity with EU processes and the general competences required to complete such bureaucratic requirements, and may need to consult externally, thereby incurring extra costs. On the other hand even in a case where the service provision by a non-profit provider was compatible with the state aid rules, the prospect of the administrative burden attached to demonstrating this may cause a public authority to open the offer instead to public tendering.

Some also been suggested that this could be avoided either by increasing the exemption thresholds, or by making a block exemption for social services of general economic interest.

Competition

Some CEDAG members questioned whether it is always appropriate to submit social service provision to market forces. When services contribute to a social policy objective, **quality** of provision should be placed on an equal rank of importance to value for money. Indeed it may be constructive to run social services which are unique and locally-targeted outside of a market logic, because while the market will tend to increase the number of users of a service, and to merge smaller service providers to benefit from economies of scale, social services often benefit precisely from addressing a smaller audience, and identifying and responding to its precise needs.

Thousands of local non-profit service organisations in the EU provide services tailored to a specific and often very small group of users. In the case of services such as after school care, or services to better integrate disabled people, the elderly or the homeless, for example, cheaper does not mean better. To balance the emphasis on value for money, there would need to be a

system, which will be harder to bear for smaller actors disposing of more limited resources. The Commission should do all in its power to make this burden as light as possible.

way to gauge the social added value of the respective offers. Such a qualitative gauge is, of course, very difficult to achieve. The Monti Report has argued that the state aid rules permit a certain level of flexibility, but that more is needed. CEDAG members agree with this diagnosis.

Some CEDAG members raised a point about the need for a **level playing field** between potential service providers which is not covered by the questionnaire: the playing field will not be level so long as the principle selection criteria relate to costs and efficiency, because smaller service providers, including many non-profit ones, are less able to compete in this dimension. They are, however, often able to make a very competitive offer in terms of quality. Encouraging or obliging public authorities to submit provision of SGEI – particularly social services – to the market, may pose a risk to both choice and quality for the user. Choice, because if funding is removed from small, local service providers they may be unable to compete with larger, commercially oriented competitors, who may however be less able to provide services adapted to the specificities of the particular local market. Quality, because while cost-cutting and profit remain the driving forces of commercial businesses, concern for factors such as specialised knowledge, participation and tailored service provision ensuring that users are treated with dignity, will always be secondary.

Beyond this, some CEDAG members argue that, in view of the minimal impact of social services of general interest, which are a form of SGEI, on intracommunity trade, a specific *de minimis* threshold of € 500 000 over three years should be created for these social services, thereby exempting them *a priori* from all community supervision and requirement to comply with rules on granting public aid. This is because, given the low relevance of social services of general interest for intra-EU commerce, the current regulations are not well adapted to deal with them, and require excessive formalities from public authorities, thereby putting them in a situation of legal insecurity.

Methodology of the consultation

Some CEDAG members expressed the view that the methodology chosen by the European Commission for this exercise could do more to ensure that all stakeholders are able to contribute.

- In the first place, the questionnaire was widely found to be too technical and EU-oriented in its terminology. It requires in-depth knowledge of EU jurisprudence and jargon to understand it, which is still lacking in many national stakeholder organisations. This has discouraged some involved stakeholders from taking part. Vice president of the Commission Almunia has accepted that the debate on state aids is stunted by the fact that it is hopelessly wrapped up in jargon which is incomprehensible to many key stakeholders at national level³, and many CEDAG members regret that this consultation shows the Commission is doing little to address this.
- Secondly, the questionnaire format is, by definition, closed and constraining. While CEDAG recognises that the Commission needs to gather certain precise information, some of its members are disappointed that the Commission has chosen to frame the debate in such narrow terms. In particular, the Commission continues to conceive of services of general economic interest (SGEI) as essentially concerning public or commercial actors. In spite of the fact that many essential SGEI – especially social services – are assured by the thousands of non-profit service providers across the EU, these organisations struggle to participate in a debate which does not take account of their particular character and needs.
- Finally, some CEDAG members regret the fact that the Commission launched its consultation during the summer with a deadline of 10 September. Many national organisations find it difficult to effectively consult their members during this period. The

³ Speaking at the European Parliament's Public Services Intergroup hearing: Evaluation of the Monti-Kroes package on state aids, 21 June 2010 European Parliament, Brussels.

result is a negative impact on the possibility of all stakeholders to participate in this debate, which is contrary to the principles of European governance.

Conclusions and recommendations

In order to avoid increased work-load and costs to stakeholders such as public authorities and service providers, the Commission should provide clear definitions of terms which it introduces into the debate.

There is a need for more flexibility for national actors to fit their existing systems into the EU state aids requirements.

Regarding in particular social SGEI, there is an important issue of quality which should be on the agenda. In a market which requires State intervention, it is not clear that market forces will be beneficial in terms of ensuring that these services are provided with the knowledge, concern for participation, and respect for human dignity which social policy objectives require. Several solutions to this can be considered:

- Introducing an obligation to consider social added value of offers of service on an equal footing to cost cutting and efficiency
- Raising the *de minimis* thresholds, or creating a separate and higher threshold for social SGEI
- Bearing in mind their local scope and negligible impact on community trade, consider a block exemption for social SGEI from the current rules, or introduce a separate regulation for social services of general interest.

In the interests of stimulating debate and making it accessible to all stakeholders, the Commission should do its utmost to eliminate jargon and frame the issue of state aids in terms which are familiar and understandable to non-EU specialists. It should also open up its binary conception of services provision involving public authorities on one hand and private commercial providers on the other, to include non-profit providers which have work according to a different logic.