### Social economy entities and their access to finance, state aid, public procurement and taxation

**AWP 2023**

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**Opinion reference** 2023/7

**Policy cycle reference**

- Contribution to ongoing legislative process
  - *Commission work programme reference*

- Contribution to the (ongoing) evaluation process
  - *Title of the (ongoing) evaluation*

- Included in Annex VI of the Task force for subsidiarity and proportionality

- **Other**

**Commission follow up**

- **REFIT Scoreboard:** pending
- **Annual Burden Survey:** The EU’s efforts to simplify legislation (2023)

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**Have your say:** Simplify!

No relevant suggestions on this topic have been received from the public.


**SUGGESTIONS SUMMARY**

**Suggestion 1:** Further assessment of the SME definition in Commission Recommendation 2003/361/EC in relation to the social economy entities

**Suggestion 2:** Invites the Commission to provide clarity to national authorities on the right choice of the legal basis regarding State aid

**Suggestion 3:** Continue to assess the appropriateness of the current ceilings for de minimis and SGEI de minimis aid to social economy enterprises

**Suggestion 4:** Exploit the full potential of the General Block Exemption Regulation (GBER) to foster (social) innovation and SMEs

**Suggestion 5:** Investigate the possibility to better recognize the social economy entities’ limited profitability to fully support the social economy entities

**SHORT DESCRIPTION OF THE LEGISLATION ANALYSED**

In December 2021, the European Commission presented the [Social economy action plan](https://ec.europa.eu/info/social economy_en), which will be now followed up with the Council Recommendation on developing social economy framework conditions. The action plan will propose measures to improve:

- **business environment** - to ensure that policy and legal frameworks are right for the social economy to thrive, by addressing the diversity of its legal forms and looking at taxation policy, labels or certification systems, public procurement and State aid;

- **opportunities and building capacity** – to improve access to funding for the social economy, the action plan brings together in one place information on relevant EU funding, policies and initiatives, it supports scaling-up, and it maximises the social economy’s contribution to the green and digital transitions;

- **awareness and recognition** – to boost the visibility of the social economy and obtain new data about it in order to promote the positive impact of the social economy among new audiences, including young people.

**Sources:**

- [Building an economy that works for people: an action plan for the social economy + accompanying document](https://ec.europa.eu/info/social economy_en)
- [Cooperatives and social enterprises: Work and employment in selected countries (europa.eu)](https://ec.europa.eu/info/social economy_en)
- [A map of social enterprises and their eco-systems in Europe](https://ec.europa.eu/info/social economy_en)
- [Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union](https://ec.europa.eu/info/social economy_en)
- [Commission Recommendation 2003/361/EC](https://ec.europa.eu/info/social economy_en)
PROBLEM DESCRIPTION

Existing evidence suggest the following issues:

With its cross sectoral nature, social economy entities are active in almost all economic sectors. Only some of the most prominent encompass waste management, circular economy, care and social services, housing, etc. In different Member states, they operate in different legal forms (from the cooperatives, mutual benefit societies, associations, foundations, social enterprises and others). Given their transversal nature, social economy entities can be enablers of many different initiatives for common good, for instance circular economy, and they also interact with a variety of other policy areas (European Green Deal, A Europe fit for the digital age and Promoting our European way of life).^1

Social economy is an important part of the EU economy and labour market, accounting for 2.8 million entities across the EU and employs around 13.6 million workers. As an employer, social economy entities are perceived as providers of the quality jobs due to their management; governance and internal decision-making structures and processes; reinvesting surplus value; prioritising jobs over wages and profit; long-term focus; and shared values among members, workers and, in many cases, customers and clients.~3

While active on a competitive market, social economy enterprises are set up to satisfy a need from members and/or collective interest with specific governance. Therefore, they do not have the same capacity to compete on the market with the traditional for-profit sectors and thus do not benefit the same funding opportunities. Alongside the absence of the definition of social economy and its recognition and visibility, lacking access to funding and markets, as well as lack of recognition, is one of the most prevalent challenges.

While respecting the single market, enabling environment with innovative investments could feed into the financing gaps for such entities. Social economy entities derive their revenues from a combination of market sources such as the sale of goods and services to the public or private sector and non-market sources such as government subsidies and grants, private donations, non-monetary or in-kind contributions such as voluntary work etc. In order to create a level playing field, some interventions could be justified by the social and other objectives for common good.

To justify interventions and to attract funding from public authorities and social investors, measuring social impact plays a crucial role. Therefore, further strengthening of sharing of know-how, tools and good practice in designing, planning, implementing, measuring, monitoring, and reporting on social impact will be needed.~5

A diversity of definitions of social economy entities and methods of data collection makes measuring the activity of social economy enterprises in Europe challenging.~6 However, as there

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^1 Building an economy that works for people: an action plan for the social economy, SWD(2021) 373 final, p.
^2 Building an economy that works for people: an action plan for the social economy
^3 Cooperatives and social enterprises: Work and employment in selected countries (europa.eu), Eurofound, 2018
^4 Building an economy that works for people: an action plan for the social economy, (accompanying document) p.10;
^5 Building an economy that works for people: an action plan for the social economy, (accompanying document), p.11;
^6 European Commission, A map of social enterprises and their eco-systems in Europe, 215, p.9;
is not an unified legal definition of the social economy across the EU, this opinion takes the indicators/features for definition of the social economy entity as outlined in the Social economy action plan: (1) the primacy of people as well as social and/or environmental purpose over profit, (2) the reinvestment of most of the profits and surpluses to carry out activities in the interest of members/users (“collective interest”) or society at large (“general interest”) and (3) democratic and/or participatory governance.

The opinion will in particular focus on the aspect of the social economy entities and their access to finance and State aid/taxation and public procurement.

In the context of the Platform, the areas of exploring of reducing administrative burden for social economy entities would be in the following legal texts, amongst others:

1. State aid (De minimis Regulation, SGEI de minimis Regulation, SGEI Decision);

**SUGGESTIONS**

Suggestion 1: Further assessment of the SME definition in Commission Recommendation 2003/361/EC in relation to the social economy entities

**Description:** The current SME definition is enshrined in the Commission Recommendation 2003/361/EC and was recently concluded in an evaluation to be still relevant, fit for its purpose, and having been effective in its aim of identifying the enterprises most confronted with disadvantages due to their size. The evaluation did not find evidence that points to a need for a revision of the definition. However, the definition unintentionally hinders not only access to funds but also administrative burden reductions for different social economy entities. The Platform invites the Commission to reassess the suitability of the SME definition as included in Commission Recommendation 2003/361/EU when applying it to the social economy enterprises. Commission Recommendation 2003/361/EU excludes some social economy enterprises from the SME status due to the headcount criterion and their public ownership of over 25%, as per Annex Article 3 (4) of the recommendation. As a consequence, social economy enterprises that are below the SME thresholds in terms of turnover and balance sheet total regularly fail on the headcount and ownership criteria, are excluded from benefits foreseen for SMEs despite their crucial role in benefitting the society as a whole.

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7 Please note that the Commission evaluated the SME definition (Commission SWD, September 2021) following assessment from the supporting external study, which also covered the suitability of the rule on the public ownership;
This reassessment work can be conducted in the framework of the SME Relief package published by the Commission on 12 September 2023. In the Communication, the Commission says about the relevance of the 2021 evaluation:

In 2021, the Commission evaluated the SME definition and concluded that it remained relevant (with the average turnover of EU SME remaining well below the threshold). This evaluation was carried out on the basis of 2018 data and could not reflect the impacts of the pandemic, war in Ukraine and the energy crisis, which have shaken the EU’s economy since then, and in particular have driven a significant surge in inflation that is only gradually coming down. Moreover, in light of current and future economic challenges – from digitalisation to demographic change – it may be appropriate to give greater recognition to the productivity gains over the past two decades, by taking them into account in defining the upper bounds of the SME status.

Although the Communication speaks about the need to adjust the thresholds (to the inflation), it also says that data from 2018 cannot be applied to today’s situation anymore, hence the opportunity of a reassessment as described above.

**Expected benefits:** The further assessment of the SME definition would allow the social economy entities that due to their number of people working for them or their ownership status fall outside of the SME definition to clarify possible avenues to better take into account.

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**Suggestion 2:** Invites the Commission to provide clarity to national authorities on the right choice of the legal basis regarding State aid

**Description:** Given the heterogeneity of State aid rules, the national authorities might, in order not to take risks and find the most favourable legal basis, overuse possibilities that appear to be legally safer, such as de minimis aid. Therefore, the Platform invites the Commission to provide clarity to national authorities on the right choice of the legal basis regarding State aid to support the social economy organisations. The adequate support is dependent on the right choice of the legal base and therefore limiting grants as a consequence of legal uncertainty or lacking knowledge should be avoided. In order to take investment decisions fit for social economy organisations, the Commission should provide guidance to national authorities on how to choose the right legal basis, for example, between the SGEI de minimis Regulation, de minimis Regulation, SGEI Decision or to assess whether a measure does not constitute aid since it fails to meet objective criteria set out in Article 107 (1) of the TFEU; the concept of ‘State aid’ on the basis of these criteria is explained in the Commission Notice on the notion of State aid as referred to in Article 107(1) of the TFEU.

**Expected benefits:** Such guidance would give comfort to both the granting authorities and the social economy organisations and facilitate sufficient funding without the risk of being ordered to recover unlawful aid from the beneficiaries.
Suggestion 3: Continuing to assess the appropriateness of the current ceilings for de minimis and SGEI de minimis aid to social economy enterprises and more generally effectiveness of State aid measures targeting social economy enterprises

**Description:** De minimis aid are small amounts of state aid exempted from notification and state aid control. Applicable aid ceilings are set out in a general De-minimis Regulation and, for de minimis aid granted to undertakings providing services of general economic interest (SGEI), in the SGEI de minimis Regulation. De minimis aid is deemed to have no impact on competition and trade in the single market of the EU. These rules apply to undertakings in most sectors of the economy, including to social economy enterprises. However, given their unique ability to create social added value for society, social economy enterprises cannot be treated under the same conditions as undertakings who seek to maximise their profits. Moreover, the national legal framework applicable to social economy enterprises may require them to invest their profits in social objectives or themselves. Therefore, the Platform invites the Commission to regularly assess the ongoing relevance and appropriateness of the de minimis ceilings for social economy enterprises and review State aid measures targeting social economy enterprises.

Additionally, raising awareness of the specific state aid rules that better match the needs of the social economy enterprises can play an important role in reducing the administrative burden. National authorities are less aware of the special regulatory framework on services of general economic interest (SGEI) in state aid rules. Small amounts of state aid that fall under the SGEI de minimis rule are exempted from notification and state aid control, which significantly reduces administrative burden.

**Expected benefits:** Social economy entities have positive social and economic impacts. They have a unique ability of creating value for society in terms of quality jobs, social cohesion, and development at regional and local level. Social economy entities could develop and scale up their activities and create greater social and economic value for the whole of society if the state aid rules developed to cater for them were considered to a greater extent.

Suggestion 4: Exploit the full potential of the General Block Exemption Regulation (GBER) to foster (social) innovation and SMEs

**Description:** The General Block Exemption Regulation (GBER) allows financial support that fosters investments in small and medium enterprises but has certain pitfalls that prevent its full use by public authorities. Social Economy organisations are driving forces of social innovation and could benefit from public funding when developing or scaling their innovation.

Furthermore, the GBER exemptions exclude aid granted to undertakings in difficulty (Art. 2 (18)). Many social economy actors, in particular those ones driving social innovation, easily fall into the category “undertakings in difficulty”, as social innovation need a longer time to break even. Additionally, social economy organisations often prefer mezzanine capital in form of subordinated loans instead of private equity, because of their governance. Although subordinated loans are quasi-equity in finance they are counted as debt in administrative
practice. The Commission should look at the possibilities to revise its definition of “undertakings in difficulty”. However, it is important to keep in mind that one of the reasons for the definition is that aid is not granted to enterprises that cannot, due to their difficulties, be expected to carry out the aided activities. This remains appropriate also for social economy enterprises.

Moreover, in the context of the ongoing works on the revision of the GBER Regulation, the Commission should consider whether the available evidence justifies easing the rules in relation to aid for social enterprises’ access to finance and as regards aid for hiring disadvantaged or severely disadvantaged workers, as also stated in the Social Economy Action Plan.

**Expected benefits:** It is expected that public authorities will develop more specific financial instruments for social economy organisations. Social economy organisations will be able to benefit from higher amounts of financial support.

**Suggestion 5:** Investigate the possibility to better recognize the social economy entities’ limited profitability to fully support the social economy entities

**Description:** EU law currently does not take sufficient account of the intrinsic nature of the social economy, in particular its different approach to profits. Article 54 of the Treaty on the Functioning of the European Union (TFEU) is interpreted as drawing a distinction between not-for-profit entities and companies whose operations are rewarded by financial gain. The latter category thus comprises all companies, without distinction and regardless of their legal form, which make a profit, whether or not that profit is distributed. The case law of the Court of Justice of the EU (CJEU) and the European Commission's decision-making do not pay sufficient attention to businesses that are deemed "not-for-profit" under their national law or that, irrespective of that classification, are founded on ownership, governance and profit-use criteria that clearly distinguish them from for-profit firms, particularly in terms of their conditions for accessing sources of financing. For this reason, the Platform recommends drafting an interpretative communication on Article 54 of the TFEU and on the Treaty articles relating to competition law, to clarify the concept of "not-for-profit" in EU law.

**Expected benefits:** Social economy entities can benefit from a better recognition based on a new concept – limited profitability – which would apply to all enterprises that can make a profit but do not intend to distribute that profit to their owners, as their purpose is based on solidarity or the general interest. Social economy entities could thus benefit from a specific preferential tax treatment as it is the case for cooperatives, following the CJEU's position on cooperatives.

**Abstentions**

- 1 MS