



**NCVO Response to the Review of UK and EU balance of  
competences: call for evidence on competition and consumer policy  
(State Aid)**

## 1. Introduction

NCVO is the largest general membership body for voluntary and community organisations (VCOs) in England. Established in 1919, NCVO represents over 10,000 organisations, from large 'household name' charities to small groups involved in all areas of voluntary and community action at a local level. Our members include national and local infrastructure organisations, thereby extending our reach still further.

NCVO champions volunteering and civil society. Our vision is of a society in which people are inspired to make a positive difference within their communities. A vibrant civil society deserves a strong voice and the best support, which we work to provide.

### 1.1. Voluntary, Community and Social Enterprises (VCSEs) and social investment in the UK

In 2010, the UK voluntary sector included 163,000 charities, employing 765,000 people in the UK, with a combined income of £36.7bn and expenditure of £36.3bn<sup>1</sup>. Social enterprises are less clearly measured, as they can take a range of legal forms. However, it is estimated that there are 68,000 social enterprises in the UK, employing 800,000 people. Also, there are 5,950 co-operatives in the UK employing 230,000 people. There will be some overlap between these figures.

UK-based social investment activity estimated at £190m in 2010<sup>2</sup>. Experts estimate that the UK social investment market could be worth £1bn or more within the next five years.

Some UK voluntary organisations and social enterprises need access to repayable finance: loans, mortgages, growth and working capital. Because they can find it hard to access finance from commercial markets, the social investment market has developed to meet this need.

### 1.2. NCVO activities

Through our Chief Executive's role on the European Economic and Social Committee, we contribute regularly to EU policy reviews, including key opinions on the review of State Aid rules, and exploring social entrepreneurship; evaluating the role of procurement in better service delivery outcomes; and facilitating the growth of the social investment and enterprise markets.

NCVO has been involved in many opportunities to influence the State Aid Modernisation (SAM) process launched by the European Commission in January 2013. We submitted policy recommendations on the revision of General Block Exemption Regulation and 'De minimis' Regulation<sup>3</sup>. Additionally, we have been producing evidence-based reports outlining recommendations for UK Government's initiatives. For instance, we expressed our concerns on State

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<sup>1</sup> <http://data.ncvo-vol.org.uk/>

<sup>2</sup> <http://www.ncscesurvey.com/download/2010/Overall.pdf>

<sup>3</sup> [http://ec.europa.eu/competition/state\\_aid/modernisation/index\\_en.html](http://ec.europa.eu/competition/state_aid/modernisation/index_en.html)

Aid 'de minimis' rules that hinder the effective implementation of the new Social Investment Tax Relief<sup>4</sup>.

In December 2013, NCVO hosted a **Balance of Competences Roundtable** on State Aid, public procurement and cohesion policy which meeting was aimed at gathering intelligence and views for this paper.

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<sup>4</sup> 'NCVO response to the social investment tax relief consultation', September 2013

**Q1) What evidence is there that EU action in the area of Competition, including State Aid, advantages the UK?**

The core principles of EU action in this area enable transparency and fairness in the allocation of contracts within the single market. These principles are useful for UK voluntary organisations that operate across the EU, as they ensure access to social service contracts in a fair, open and competitive process.

Furthermore, the definitions of EU State Aid rules on Services of General Economic Interest **SGEI**<sup>5</sup> (aimed at offering certain exemptions for **public service contracts**) have the potential to benefit voluntary organisations.

The concept of Services of General Interest (SGI) covers the core delivery of services that public authorities at all levels classify as being of general interest, eg. transport, electricity, social services. Within SGI there are two categories, those considered to be economic activities (Services of General Economic Interest SGEI) and non-economic services.

There is a further overlapping category, Social Services of General Interest (SSGI) which includes health services and two main additional groups: social security schemes and other essential services provided directly to the person, such as rehabilitation, youth services, elderly care, disability support, occupational training and reintegration. However social services are not considered to be automatically 'non-economic' in nature so may sometimes be subject to state aid.

These SGEI rules were updated in 2011<sup>6</sup> and include a range of exemptions including:

- **Higher threshold for 'de minimis' to 500,000Euros**
- **A new block exemption for hospitals and social services.**
- **Non-economic services are not subject to state aid or competition rules of the EU.**

There is now a real need to implement this European legislation in a coherent way at the domestic level to ensure use of the existing exemptions for non-economic services of general interest.

The recent EU guide on new procurement and state aid rules highlights that public authorities are able to define SGIs within reasonable parameters. National governments already have significant discretion in defining these services and therefore have discretion on application of state aid.

Definitions set by the EU are not subject to direct transfer but enable national governments to 'tailor' them based on national interests. These rules should be better used to facilitate public service delivery by VCSE organisations.

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<sup>5</sup> Page 22-23 [http://ec.europa.eu/competition/state\\_aid/overview/new\\_guide\\_eu\\_rules\\_procurement\\_en.pdf](http://ec.europa.eu/competition/state_aid/overview/new_guide_eu_rules_procurement_en.pdf)

<sup>6</sup> State Aid Overview New SGEI Package 2011

[http://ec.europa.eu/competition/state\\_aid/overview/table\\_of\\_changes\\_en.pdf](http://ec.europa.eu/competition/state_aid/overview/table_of_changes_en.pdf)

**Q2) What evidence is there that EU action in these areas disadvantages the UK? Q11) How could action in these areas be undertaken differently?**

EU action in this area is generally aimed at major issues of cross-border competition and is therefore beyond the scope of action of smaller voluntary and community organisations. However the application of these rules is sometimes used in a way that limits the opportunity for voluntary and community organisations to operate in social service delivery.

Key challenges from state aid that affect the VCSE in the UK fall in three main areas: 1. social service delivery exemptions; 2 Lack of awareness of the existing rules by commissioners and service delivery bodies and; 3. Access to capital in the emerging social investment market.

**1. Social service delivery exemptions**

In terms of social service delivery, state aid rules are often applied in areas that have no impact on cross-border competition. In the application of the new SGEI rules, it would be desirable to define how **social service delivery** and competition policy should be balanced in relation to public benefit.

An important issue here is the distinction between **social services of general interest** (public benefit activity) by charities and social enterprises and a true competitive market. In relation to public benefit arrangements, there is a core question around how far this activity affects the internal market as a whole. The key issues to clarify are: - i) are (public benefit) organisations/charities delivering services necessarily economic undertakings within the commercial market; or ii) that their activities distort competition; or iii) that such distortion affects trade between member states.

In our view the legal definition of SGEI in the UK needs to be clarified.

NCVO recommends that there should be a **simple, workable definition of SGEI in the UK to enable clarification on the test for what does and does not constitute State Aid; and the exemptions.**

Furthermore NCVO recommends the use of the **exemption for non-economic activity under social services of general interest.**

This would explicitly recognise that social and health care services operating at the very local level have no effect on trade and therefore they cannot distort competition across Europe.

**2. Limited awareness**

The second major challenge highlighted in the previous question is an apparent lack of awareness of the changing rules by VCS delivery bodies, commissioners and relevant public authorities.

In order to tackle the issue of lack of awareness, **clearer guidance** that helps public authorities understand exemptions and other enabling regulations would be crucial. **Awareness-raising** of existing rules and information is also essential in order to make use of existing opportunities.

The complexity in judging State Aid means that the extent of legal support organisations need to seek when applying for statutory funding is overwhelming. This is a time-consuming and expensive process. **Clear guidance and simple tools for understanding State Aid are vital.**

The case study below demonstrates the complexity faced by organisations.

#### Case study 1 – Complex use of ‘de minimis’ and GBER Article 31 (research)

In December 2011, Organisation x applied for £1m to pilot a project to gather evidence from 450 families where parental drug and alcohol misuse occurred resulting in children being placed on At Risk registers due to parental substance misuse problems, family health and well-being issues arising; and offending behaviour by parents or children. Organisation x sought to demonstrate to investors and commissioners that social investment models are viable for complex services that deliver multiple outcomes across multiple budgets.

Because of the risk of competitive advantage arising from a full blown pilot project and the limits of their non-state GBER resources, Organisation 3 had to scale down and remodel their proposals significantly.

They eventually focused on a pure evaluation proposal (rather than a pilot). This seeks to evidence whether social investment models are viable for interventions delivering multiple outcomes, across multiple locations supporting interventions for families affected by parental substance misuse.

Their grant from BIG was limited to £223,357 including £53,827 ‘de minimis’ and the balance as GBER Article 31 (research related costs). Additional budget breakdown work had to be completed to ensure that ‘de minimis’ and GBER funding were kept completely separate and to ensure they had sufficient non-state partnership funding for the research costs.

### 3. Social Investment

In the context of this changing environment for social services and investment, there is a need to re-think the basis of state aid in relation to social investment into social services, in order to ensure appropriate access to capital. There should be a recognition that this is an emerging area and there is currently no explicit market, so in principle state aid market distortion is unlikely to apply.

A key disadvantage for the voluntary sector is the limit to the Social Investment Tax Relief (SITR). There has been a recommendation that SITR should only apply up to the ‘de minimis’ threshold of 200,000 Euro. However there has been no explicit link to **the higher SGEI thresholds for ‘de minimis’ exemptions to 500,000 Euros** so NCVO would recommend greater flexibility to use the higher threshold at the national level.

**Q8) To what extent is the UK more or less rigorous in enforcing its competition, including State Aid? What are the effects of this?**

As highlighted in the previous section, SGEI definitions set by the EU enable national governments to 'tailor' them based on national interests. These actions should facilitate public service reform; however, the reality is that current perception State Aid rules contemplate large-scale commercial activity, rather than small-scale public benefit activity in the UK. Legal experts of the NCVO Roundtable reported that it appears public authorities do not always make full use of the SGEI definition.

The common practice has taken 'de minimis' exemption as the only State Aid question and has replaced appropriate interpretation as to the specific interpretation of State Aid. NCVO members have reported that many commissioners require organisations - when applying for grants - to confirm that they meet 'de minimis' requirements in all cases regardless of appropriateness.

The most widely applied enabling regulation in the UK is the 'de minimis' exemption of a very low amount of aid of EUR 200,000 over three fiscal years. **However, as stated previously for SGEI the threshold is now 500,000 and the higher threshold should be applied.**

**Case study 2 – Focus on 'de minimis'**

Organisation y's original bid of £273,000 planned to provide skills, training and full-time employment for 200 ex-offenders, ex-homeless and other long-term unemployed people, intended to replicate a model in three English localities, creating 800 jobs over 5 years, with self-sufficient, sustainable businesses created to make a real difference in each community.

Their original budget included some £180,000 costs that could have impacted on State Aid due to the potentially cross-European competitive nature of investment in the property refurbishment market. Their BIG funded costs were negotiated down to below £93,000 'de minimis' exempted funding in part by restricting the project to Bristol only, when offered support in June 2012.

The social impact in the short term has been limited to 30 short term job placements for ex-offenders working on their property refurbishment. However, the project has been so successful that they are now progressing their original replication model into the Midlands, using non-state resources. This should eventually scale up to a project that is akin to if not larger than their original proposal generating £6m investment as opposed to their original £5m target.

It would be preferable if organisations were able to make use of the other exemptions highlighted above in the delivery of Social Services of General Interest.

