



REPUBLIC OF BULGARIA
ADMINISTRATION OF THE
COUNCIL OF MINISTERS

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TO
MRS. MONIQUE NEGENMAN
HEAD OF UNIT COMP-F3
DG COMPETITION
EUROPEAN COMMISSION
MADO 9/90
1049 BRUSSELS, BELGIUM

MRS. CENDRINE DE BUGGENOMS
HEAD OF UNIT B5 „ROMANIA,
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DG EMPLOYMENT, SOCIAL
AFFAIRS AND INCLUSION
EUROPEAN COMMISSION
RUE JOSEPH II 27
1000 BRUSSEL, BELGIUM

SUBJECT: Guidance on applicability of state aid rules for a grant scheme under Specific Objective 3, Priority Axis 2 of Operational programme “Good governance”

DEAR MRS. NEGENMAN,

DEAR MRS. DE BUGGENOMS,

The Managing authority (MA) of OP “Good governance” (OPGG) in Bulgaria plans to launch a grant scheme under Specific Objective 3, Priority Axis 2 “Increasing the civil participation in the processes of formulating, implementing and monitoring of policies and legislation”. The eligible beneficiaries under the grant scheme are local NGOs in public benefit and economic partners (employers’ associations and labour unions).

Objectives of the grant scheme are:

- Governance in partnership with the citizens and business;
- Open and responsible governance;
- Recommendations for improving public services, better regulatory environment, fight against corruption, prevention of conflict of interest and abuse of office, observance of ethical standards by civil servants.

Eligible activities include:

- Improving the participation in the process of formulation, implementation and monitoring of policies by analyses, studies, evaluations, trainings, and other activities by NGOs or networks/ coalitions/ platforms of NGOs, as well as by economic partners;
- Civil monitoring and control over the actions of the public administration;
- Developing of mechanisms and proposals for improving the environment for civic participation in the governance;
- Organizing large-scale information campaigns and other activities to raise public awareness and civic participation in the process of formulation, implementation and monitoring of policies and legislation;
- Monitoring the court cases against the public administration;
- Advocacy actions and campaigns to protect publicly important causes;
- Joint actions between administrations and NGOs to implement public policies;
- Participation of NGOs in networks.

It should be emphasized that the results of all these activities will be publicly accessible, as their publishing on the website of OPGG MA will be mandatory. Thus they will be available free of charge to all interested parties.

The MA of OPGG has conducted a research about how similar grant schemes (with same beneficiaries and similar objectives and activities) are treated in other EU member states in regard to the state aid rules. As a result it was established that there are diverging practices in the different member states on whether the grant under such schemes is considered state aid. In many member states grant schemes supporting the non-profit/ non-economic activities of such organizations are clearly outside of the scope of state aid regulation and for sure are excluded from the scope and framework of article 107-108 of the European Treaty.

On several occasions, representatives of DG "Employment, social affairs and inclusion" of the European Commission have expressed in front of OPGG Monitoring Committee the opinion, that de minimis aid is overused and practically misused by managing authorities in Bulgaria.

In view of Regulation (EU) No 1407/2013, paragraph (4) and Items 9, 10 and of Commission Notice of the notion of State aid as referred to in Art. 107 (1) of the Treaty on the Functioning of the European Union (herein after the Notice), the activities under the grant scheme, in view of their objectives, can be considered non-economic activities, as neither on national level, nor on EU level there is market for advocacy, empowerment and protection of rights. Having in mind, that "the application of the state aid rules does not depend on whether the entity is set up to generate profits", since "non-profit entities can also offer goods and services on a market", OPGG MA is conscious that the eligible candidates are not exempt from state aid rules just because they are non-profit entities. Taking into consideration, that "any activity consisting of offering goods and services on a market is an economic activity", and that neither on national level, nor on EU level there is market for advocacy, empowerment and protection of rights, OPGG MA considers that the eligible candidates under the grant scheme fulfil the requirements of Items 9 & 12 of the Notice, thus "non-profit entities remain outside the scope of State aid control". If there is no market on which the grant scheme beneficiaries can offer any services or goods resulting from the eligible activities, beneficiaries should not be considered undertakings, as per paragraph (4) or Regulation (EU) 1407/2013, and the grants should not be considered de minimis aid.

The eligible activities within the grant scheme should be analysed together with the objectives to be achieved through them. The activities related to encouraging civic participation and countering corruption are not-for-profit and of non-economic nature. There is no market for civic participation services, neither do companies render paid services to counter corruption or make citizens more active

in their interaction with the administration. While the ways to achieve the grant scheme objectives (the specific activities taken out of the context) are types of activities that could also be carried out by commercial companies, these activities – when they target citizen participation – are not and cannot be of an economic nature. That is why the form of the activity in itself – training, analysis, conference – cannot serve as an indicator for defining the activity as economic or non-economic. What we have to examine is in case the state does not provide financial resources, whether the relevant activity could be performed on the basis of the market principle, i.e. demand and supply of goods and services (in order to define it as economic) or not.

The provision of financial resources for projects does not coincide with purchasing goods or services, as when goods or services are purchased (in this case the Public Procurement Act is applied), the state knows what it needs and the relevant procurement has a clear subject matter. When projects are funded, the state has a goal (in this case, enhancing civic participation in the process of developing and implementing policies), but it cannot and should not determine the way the goal will be achieved, since this would constitute an infringement on the independence of the third sector and on civic participation. The organizations participating in the relevant call propose various approaches to achieve the desired objective. This is why project selection is focused on assessing the consistency of the project with the national and/ or local needs and goals of OP, priority axis, specific objective and grant scheme. The MA evaluates the whole project, i.e. the activities included in the project have their meaning only as an aggregate.

When non-economic activities are financed, an important rule to be observed is the separation of the funds and ensuring they are not used to support other, economic activities of the organization. As long as this principle is followed, there is no threat that the funds may create unfair competition. OPGG MA obliges all beneficiaries to keep strict separation of economic and non-economic activities and clear audit trail showing whether the grant is spent on the economic or on the non-economic activities of the beneficiary. Moreover, no assets will be purchased under the planned scheme that could potentially be used for economic activities in the future).

The eligible activities are also of local nature and of limited impact, thus they could not potentially affect trade between Member States for a number of reasons. The activities would target and benefit only people living in Bulgaria.

In view of Item 192 of the Notice, a grant scheme funding typical non-profit activities such as advocacy, empowerment, protection of rights could not potentially effect trade between Member States, because entities from other Member States will have no interest in implementing the activities under the program, since they do not possess the necessary social commitment, social capital and solidarity which are inherent to civil society organizations local to the country. The maximum grant under this grant scheme is planned to be 35 000 EUR, most of the Bulgarian NGOs in public benefit are very small entities both in terms of number of employees and in terms of turnover from economic activities (if they engage in such).

OPGG MA is aware, that “the relatively small amount of aid or the relatively small size of the undertaking which receives it does not as such exclude the possibility that trade between Member States might be affected” and that “a public subsidy granted to an undertaking which provides only local or regional services and does not provide any services outside its State of origin may nonetheless have an effect on trade between Member States where undertakings from other Member States could provide such services (also through the right of establishment) and that possibility is not merely hypothetical.” However, as proven above, eligible candidates under the grant scheme cannot be classified as “undertakings” in regard to the eligible activities. Moreover, the possibility undertakings from other Member States to provide such services is merely hypothetical, since they do not possess the necessary social commitment, social capital and solidarity, which are inherent to civil society organizations local to the country. Thus, OPGG MA has concluded, that the grant scheme is of local nature and of limited impact and could not potentially affect trade between Member States.

Given the above grant scheme details and argumentation, we kindly ask the European Commission to confirm the reasoning of OPGG MA that this grant scheme falls outside the scope of Art. 107 (1) of the Treaty on the Functioning of the European Union, because eligible candidates are not undertakings, because there is no market for advocacy, empowerment and protection of rights and because the possibility undertakings from other Member States to provide such services is merely hypothetical, since they do not possess the necessary social commitment, social capital and solidarity, which are inherent to civil society organizations local to the country. Thus, the grant scheme should be exempted from de minimis aid as per Regulation (EU) 1407/2013.

Thank you in advance for your kind cooperation.

YOURS SINCERELY,



**IRENA PARVANOVA
DIRECTOR OF "GOOD
GOVERNANCE" DIRECTORATE**