



EUROPEAN COMMISSION
Competition DG

Markets and Cases V: Transport, Post and other services
State aids Post and Other services

Brussels, 19.7.2017
COMP/F3/AP/sg-D*2017/069319

Permanent Representation of the
Republic of Bulgaria to the EU
Square Marie-Louise 49
1000 Brussels

Cc. Ms. Irena Parvanova
Director of "Good Governance Directorate"

BULGARIAN TRANSLATION WILL FOLLOW

Subject: HT.5213 Guidance on the applicability of State aid rules for a grant scheme under Specific Objective 3, Priority Axis 2 of Operational Programme "Good governance"

Dear Madam/Sir,

Thank you for your letter of 29 June 2017 by which you are asking our views on a grant scheme the Bulgarian authorities (BG-A) are planning to launch under *Specific Objective 3, Priority Axis 2 "Increasing the civil participation in the process of formulating, implementing and monitoring of policies and legislation"*. The eligible beneficiaries of the planned scheme appear to be local NGOs in the public benefit and economic partners (employers' associations and labour unions).

In your letter, you explain that – in your view – the scheme does not raise State aid issues because:

- 1) eligible candidates would not be undertakings, since there would not be any market for advocacy, empowerment and protection of rights,
- 2) the possibility that undertakings from other Member States provide such services would be merely hypothetical, as the services in question entail social commitment, social capital and a sense of solidarity which can only be found in local civil society organizations ; and
- 3) the maximum grant scheme is planned to be 35,000 EUR [per beneficiary], most of the Bulgarian NGOs being very small entities.

(I) Non-economic activities

While some of the activities you are listing in your letter appear indeed to be non-economic (e.g., 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, joint action between administration and NGOs to implement public policies, participation of NGOs

in networks), other activities do not seem to have the same nature, and may be of an economic nature instead.

These activities include:

- "Improving the participation in the process of formulation, implantation and monitoring of policies by *analyses, studies, evaluations, trainings and other activities by NGOs or networks/coalitions/platforms of NGOs, as well as economic partners*";
- "Organization of *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 of court cases against the public administration;
- Advocacy actions and campaigns to protect publicly important causes.

As you are indicating in your letter, these types of activities can also be carried out by commercial companies. The fact that the objective of the scheme is to promote "good governance" and the scheme ultimately targets "citizen participation" does not mean that the nature of these activities would change. The objective of a public financing measure (e.g., good governance) is not to be taken into account when assessing whether such measure constitutes State aid. As explained in paragraph 67 of the Commission's Notice on the Notion of State Aid¹, and constantly recognized by the Court² only the effect of the measure on the undertaking is relevant, and not the cause or the objective of the State intervention.

(II) No effect on trade

In your letter you have also argued that a scheme funding typical non-profit activities such as advocacy, empowerment, and protection of rights could not potentially affect trade between the Member States, because entities from other Member States will have no interest in implementing the activities under the programme, since they would not possess the necessary social commitment social capital and solidarity as the civil society in Bulgaria.

Paragraph 196 of the Commission's Notice on the Notion of State Aid is providing guidance on the situations where public financing measures may not have an effect on trade between Member States. From the information you have submitted, it remains unclear if the activities identified above that appear to have an economic nature could not have an effect on trade between Member States. For instance, it is unclear why consulting companies from other Member States would not find it potentially attractive to provide certain services (e.g., organization of large-scale information campaigns etc.) for remuneration in Bulgaria. An effect on trade cannot therefore be totally discarded only on the basis of the information that you have provided, and without concrete justifications/evidence.

(III) De minimis aid

¹ 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, OJ C/2016/2946.

² Judgment of the Court of Justice of 2 July 1974, Italy v Commission, 173/73, ECLI:EU:C:1974:71, paragraph 13

We understand nevertheless that you are planning to limit the amount of support to the beneficiaries to *de minimis* aid under Regulation 1407/2013³, i.e., each beneficiary will receive a maximum grant of up to 35,000 EUR.

In such circumstances, if the scheme in question is fulfilling all the other conditions of Regulation 1407/2013, in particular the transparency and cumulation rules in Articles 4 and 5, the financing in question would not entail a distortion of competition and trade and would not, as a result constitute a State aid.

We hope that the above reply has been helpful in the context of the preparation of the scheme in question.

Yours faithfully,



e-signed
Monique NEGENMAN
Head of Unit

³ Commission Regulation (EC) N.1407/2013 (18.12.2013), OJ L 352/2013.