

Brussels Office

**COSLA response**

**State Aid De minimis consultation**

1. The **Convention of Scottish Local Authorities (COSLA)** is the representative voice of all Scottish Local Authorities both nationally and internationally and it has long being advocating that the European Union legislation to fully respect the local competences and autonomy of Councils to organise and provide local services.
2. We welcome the opportunity to contribute to this consultation on de minimis aid guidelines. This builds up on earlier contributions that COSLA has made in previous stages of development of these guidelines and draws on recent politically agreed lines at the COSLA Resource and Capacity Executive Group.

**General**

1. COSLA calls on the European Commission to fully *respect*.
   * “*The essential role and the wide discretion of national, regional and local authorities in providing, commissioning and organising services of general economic interest as closely as possible to the needs of the users”;*
   * “*The diversity between various services of general economic interest and the differences in the needs and preferences of users that may result from different geographical, social or cultural situations”;*
   * “*A high level of quality, safety and affordability, equal treatment and the promotion of universal access and of user rights”*
2. The above provisions have been as such enshrined by the new EU Lisbon Treaty Services of General Interest protocol, and we call on them to be respected by any European Commission review of the EU procurement rules, State Aid, inter-municipal cooperation, concessions or similar arrangements with private undertakers.
3. Therefore, although we might differ in significant issues from the Commission we very much welcome the fact that the proposals currently in discussion on EU minimum rules on public services means progress towards a better understanding of local circumstances and local decision making.
4. Still we regard as the Commission proposals as excessively interfering on local government decision making.
5. COSLA does respect the fact that the Commission has a statutory obligation as guardian of the EU Single Market to prevent distortion to trade with protectionist measures such as undue compensation or overcompensation to private operators for the provision of a local service. We also acknowledge that there are large private operators providing such services across the whole of the EU.
6. However, we believe that this is not sufficient grounds for the current blanket rules over how to organise locally for the provision public services. Indeed we welcome the recognition by the Commission admission that that there are still gaps on the legal certainty of local public service compensation.
7. We note that the Commission has tried to clarify further when local services are concerned by EU rules and the thresholds under which local services are exempted but it basically remains an ad hoc approach, with the burden of proof sitting on the Councils themselves.
8. However we remain convinced that it should be the other way around; local services should be in general exempt from EU rules unless the Commission is able to prove that a local service has an impact in intra EU trade. In fact the existing distinction between Services of General Interest and Services of General Economic interest is too restrictive and excessively skewed towards considering most services as being concerned by EU rules.
9. COSLA believes that the current EU Treaties do not confer into the European Commission powers to set quality standards in the delivery of local public services.

**Detail**

1. We would like to note de minimis level for exemption from notification – designed to simplify the application of the rules for certain types of small-scale public services of a local nature with a limited impact on trade between Member States – was initially expected to be in the region of €800,000. In further discussions it was suggested the introduction of a threshold €150,000 per annum, in place of €200,000 over three years, and a threshold of 10,000 inhabitants for local authorities. This was clearly not workable in a Scottish context hence it is a comparatively positive development that at least we come back to the €200,000 over three years threshold.
2. However while we do appreciate the fact that not all Member States are keen to keep the temporary **threshold of 500,000** for fear of weakening a level playing field across Member States and regions of different prosperity levels and state of public finances we would argue that this is a more appropriate level. However in a UK or Scottish domestic context this would be indeed a welcome move as it would certainly be the case in similar countries.
3. It is worth having in mind that this quantitative level, if crucial for the small undertaking that might benefitted it would remain **small enough** as to make it unlikely to create distortions of the EU internal market. On that regard we do recognise that defining what is “intrinsically local” could be difficult and if this not properly done, it could result in unfair or non-transparent situations. How-ever rather than applying a broad criteria from the centre (population, fixed amount), the definition of what would be “intrinsically local” could be defined bottom up as to reflect the different economic circumstances and institutional settings.
4. Concerning the introduction of a **single register** we would be wary of creating new structures or reporting obligations. We do recognise that it is useful for the public interest to have a proper record keeping of all aid given and the beneficiaries however we are keen that this is done by better optimising existing arrangements in place in Scotland and the UK rather than creating a database for instance based on the already existing Estonian model as it seems to be the thinking behind this proposal. Even if such new registry could be basically fed by grant applicants it is very likely that the granting public authority would be required to police that input hence resulting in additional reporting and capacity burden upon public authorities.

**Conclusion**

1. COSLA is keen to work with the Scottish and UK Government our European counterparts in CEMR and the European Institutions to make sure that the new EU rules do enhance the ability of local communities to take their own decisions in a fair, open inclusive yet autonomous way.

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