

7. State Aid for Culture: best practices at regional and local level ⁽¹⁾*

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Abstract

From Italy to Hungary, The Netherlands, Greece and Germany, the article aims to represent different approaches to State aid for Culture at regional and local level, in five Member States of the European Union. The new General Block Exemption Regulation entered into force in 2014 is the reference framework within which the difficulties met in the past and solutions provided are described, with an eye set on actual and possible further developments.

Dall'Italia all'Ungheria, ai Paesi Bassi, alla Grecia fino alla Germania, l'articolo è finalizzato a descrivere diversi approcci, a livello regionale e locale, al tema degli aiuti di Stato alla cultura in cinque Stati membri dell'Unione europea. Il quadro di riferimento è dato dal nuovo Regolamento generale di esenzione, entrato in vigore nel 2014. Tenendo conto di quest'ultimo, vengono descritte le difficoltà incontrate nel passato e le soluzioni trovate, con attenzione agli eventuali, o già avvenuti, sviluppi successivi.

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1. Introduction. State Aid for Culture: best practices at regional and local level.

With the General block exemption Regulation n. 651/2014/EU (General Block Exemption Regulation - GBER)², for the first time ever, the public support in the field of culture and cultural heritage have been block exempted from prior notification, on the basis of article 53 of the GBER. Until then, member States used to apply directly the Treaty, namely article 107(3)(d), introduced by the Treaty of Maastricht as additional “cultural” derogation from the general ban on State aid.

¹ *The Seminar took place in Brussels on 30th November within the “Terzo ciclo di seminari specialistici sulle politiche europee” organized by CINSEDO – Centro interregionale studi e documentazione, from May to December 2015.

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² OJ L 187, 26.6.2014.

The wording of article 53 includes an extremely wide range of activities in the field of culture and heritage that are by wide and large far from the “market”, and whose public support has never been considered as “State aid” under the strict competition rules.

Indeed, recital (72) of the GBER stresses that not all the public incentives to culture are “State aid”, depending on the presence of all the criteria that article 107 of the Treaty on the Functioning of the European Union – TFEU - sets as the juridical definition of “State aid”: activities of non-economic nature, like those ones forming part of the public remit, as well as activities which are carried out at local level, should be out of the scope of State aid. The problem is, however, where to draw the line.

The new GBER, by creating a dedicated “box” for all cultural aids, has considerably stressed the legal uncertainty in the field of culture on “what is deemed to be State aid and what is not”, making public authorities prefer qualifying everything as “State aid” in spite of bearing the responsibility of detecting the potential “State aid”. By doing so, implications in terms of bureaucracy linked to State aid procedures can be more than expected, in particular for regional and local authorities whose know-how in the field of State aid law is not as high as the management of the GBER would require, but also for cultural stakeholders in terms of delays and complicated application forms.

More recently, the Communication on the Notion of State aid has been adopted by the European Commission³, thus finally simplifying the legal environment for the administrations of the member States and overcoming many of the difficulties met by the same administration in implementing the State aid rules in this field.

The aim of the article is to put together the first experiences in implementing the new rules on State aid for culture so far - in particular article 53 of the GBER – at regional and local level, with an overview of their impact on different administrative contexts, in order to get further guidance for a shared approach to be part of a true simplification for both administrations and final beneficiaries, being them undertakings or not.

The case studies which follow take also into consideration the most recent developments, which should now be of help to overcome the main difficulties met by the administrations.

2. The Italian case

2.1. Forward

The paragraph tells about the main steps that the Italian Regions have made in contributing to the discussion over the application of State aid rules in the field of culture and analyses the two main documents issued by the Conference of the Regions and Autonomous Provinces, which represent a summary of the work jointly carried out by the Italian Regions in the last four years in trying to understand how to manage competition rules and where to draw the line between State and market in the field of culture. Such a distinction is not an easy task, especially for those countries, like Italy and Greece for example, whose Constitutions clearly trace the preservation of the cultural heritage

³ 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 262, 19.7.2016.

and the promotion of culture back to the public remit, what is tantamount to deny their economic nature. In this respect it is worth reminding that at the very beginning the Treaty of Rome did not contain the cultural derogation for State aid for culture as we read it today in article 107(3)(d). As a matter of fact, the cultural derogation was introduced only in 1992 by the Maastricht Treaty under Article 92(3)(d) in conjunction with article 151 (today article 167), providing that the Commission may consider compatible with the common market “*aid to promote culture and heritage conservation, where such aid does not affect trading conditions and competition in the Community to an extent that is contrary to the common interest*”. However, the 107(3)(d) derogation was not included in the EEA Agreement, without compromising the approval of State aid for culture implemented by the EFTA countries. As a matter of fact, the EFTA Surveillance Authority continues assessing cultural aid on the basis of Article 61(3)(c) of the EEA Agreement (corresponding to article 107(3)(c)), that is to say under the general derogation provided for State aid to promote certain economic activities. It follows that according to the EEA Treaty, the application of State aid rules to culture is more straightforward, since it is triggered only in case the cultural activities concerned are deemed to be economic, as well as all other possible activities that may be financed by the State.

2.2. The position papers of the Italian Regions

Since the launch of the State aid modernization in 2012, the Italian Regions decided to participate actively to the wide consultation process kicked off by the Commission, and issued two main position papers on State aid for culture representing the main stances collected in several working groups, which tried to gather evidence to the concrete implications of the new rules.

2.2.i. The first position paper of the Italian Regions

The first position paper was approved in July 2013. It is focused on the applicability of the definition of State Aid to the field of culture, and in particular to the public support for cultural heritage. The European Commission had just launched the first consultation on the notion of aid, and the Italian Regions wanted to contribute to the discussion of what is State aid and what is not in the field of public support for culture. The reasoning moved from the four criteria underpinning the notion of state aid according to article 107(1) TFEU: in order to be qualified as "state aid", the measure must grant a selective economic advantage to certain undertakings by using public resources and the subsequent distortion of competition must be liable to affect trade between member States.

When providing public support to culture, some of the criteria defining State aid are not questionable: the attribution of an economic advantage and the subsequent distortion of competition, the use of public resources, and the selectivity of the intervention. However, what is questionable is primarily whether the beneficiary of the advantage is an "undertaking" according to the definition provided by competition law, and secondarily whether the measure is liable to affect trade between Member States.

The position paper of the Italian Regions tries to analyze in depth if the public measures supporting culture fulfill these two "questionable" criteria.

According to competition law, undertaking is defined as any entity, regardless its legal form or its source of funding, which is engaged in an economic activity, that is to say in supplying services or goods on the market. Accordingly, the analysis referred to the field of culture concentrated on the following questions: 1) if there is a market, 2) if the activities carried out for promoting the cultural heritage are economic in nature.

In order to answer the first question, the position paper turns to the Commission notice on the definition of relevant markets for the purposes of competition law (97/C 372/03), where the exercise of market definition consists in identifying the effective alternative sources of supply for the customers of the undertakings involved, in terms of both products/services and of geographic location of suppliers. In the case of public support to a museum, the question is whether its customers, i.e. its visitors, actually consider other museums as substitutable products (or services) before making their choice to go and visit that specific museum. Normally, a museum and its art works are unique by definition, there are no alternative sources of supply on the side of the demand (i.e. the customers); similarly, on the side of the supply (i.e. the museum providing goods or services to its customers), museums are obviously not capable of switching their "production", that is to say their art works and collections, by changing their products or their geographical location. Accordingly, it is possible to draw the conclusion that there is no market in the context of the promotion of cultural heritage: museums frequently exchange art works and collections between each other also across different countries, without feeling in competition between each other.

Coming to the second question, whether the activities carried out for promoting the cultural heritage are economic in nature, namely if they consist in providing services, the position paper centers around three main arguments.

First, it turns to the definition of services provided by the Treaty in article 57, which links the notion of remuneration as "consideration" for the service, and draws the conclusion that there is in fact no remuneration within the "services" provided in the context of the promotion of the cultural heritage, like in a museum, for example. The "Service" directive (Directive 2006/123/EC) provides useful inputs in this respect, whereby recital (34) reminds that the case-law of the Court of Justice established that *the characteristic of remuneration is absent in the case of activities performed, for no consideration, by the State or on behalf of the State in the context of its duties in the social, cultural, educational and judicial fields, such as courses provided under the national education system, or the management of social security schemes which do not engage in economic activity*. The Directive also provides a fitting example, stating that a payment of a fee by recipients like tuition or enrolment fees paid by students in order to make a certain contribution to the operating expenses of a system, *does not in itself constitute remuneration because the service is still essentially financed by public funds*. Mutatis mutandis, the same principle is easily applicable to cultural entities and in particular to museums and entrance tickets.

The second argument refers to the lack of business methodology in the management of the activities related to the promotion of the cultural heritage: normally, cultural entities do not bear any business risk, but they rather rely on permanent compensatory mechanisms by the public authorities, due to the objective impossibility to cover all the operating costs incurring in the maintenance of the cultural heritage as well as to guarantee the widest regular accessibility to all citizens, as it is clearly demonstrated by the figures provided in the position paper. Furthermore, the positive externalities

of the preservation of the cultural heritage could never be priced up in the tickets: the overall economic and social benefits of these actions are notably much higher than the "private" benefits accruing to the museum, resulting in an inefficient market outcome.

The third argument stating that museums and similar entities do not perform economic activities relies on constitutional principles, tracing back the protection of culture and cultural heritage to the public remit, as we can read in article 9 of the Italian Constitution, declaring that *the Republic promotes the development of culture and protects the landscape and the historical and artistic heritage of the nation*. Based upon the discretionary power of Member States to decide on the organization of the public administrations, and therefore on what to outsource and what to provide in-house, if a member State detects an activity as part of its institutional tasks to the benefit of all citizens, then such activity shall not be classified as economic.

The second questionable criterion defining a State aid is the possible affectation of trade between member States, which is the trickiest element to invalidate, since it is not based on the proved evidence of a detected negative effect, but rather on the envisaged possibility of a negative effect on trade to occur. It goes without saying that such an assessment is mainly based on economic considerations, what leads to the possibility to argue anything and its opposite for confirming or denying the presence of State aid. However, if we look at the case practice of the Commission in the field of State aid for culture, amounting to about three hundred decisions (most of which positive or even "no aid" decisions), they concern mostly smaller cases of local relevance and none of them contains an economic analysis of the alleged possible affectation trade between Member States, regardless if the final conclusion declares the absence or the presence of State aid. The lack of such economic analysis leaves room for questioning whether what the Commission deems to be negative affect on competition, should be rather considered a positive externality, that is to say part of the positive effects of the public policy in the field of culture.

The position paper draws the conclusion that there is no sufficient evidence of the nature of "undertakings on a market" of many beneficiaries of public measures supporting cultural activities and cultural heritage, as well as there is no sufficient evidence of these measures being really liable to affect trade between Member states.

2.2.ii. The second position paper of the Italian Regions

The second position paper was approved in March 2015. The interpretative communication clarifying the notion aid was still a draft and the main stances put forward in the first position paper had not been either finally confirmed or denied by the Commission yet. However, in the meanwhile the general block exemption regulation (Regulation nr 651/2014/EC, hereinafter "the GBER") had been approved and entered into force on 1 July 2014, introducing a new block exempted category related to culture and a dedicated article entitled "*Aid for culture and heritage conservation*". In principle, on one side there was still room for trying and bring the message into the notice on the notion aid, and on the other side there were new rules on State aid for culture to be managed and translated into the administrative procedures. The Italian Regions therefore decided to structure the position paper in two parts.

The first part moves from the arguments put forward in the 2013 position paper and provides practical guidance on how to assess the "local" character of an activity in terms of potential

affectation of trade. The analysis of a reasonable relevant threshold for a culture activity or a cultural infrastructure to be “local” is based on a quantitative approach, relying on official data referred to the Italian experience, but also on an alternative qualitative approach providing some practical guidance on how to carry out a case by case assessment in the lack of figures.

The second part provides guidance on how to deal with article 53 of the GBER and in particular on how to draft a compliant legal basis for State aid for cultural activities and cultural heritage, taking into account the national legal framework. The exercise was not easy for many reasons, like for example the blurred distinction between investment aid and operating aid. As a matter of fact, the two categories of aid are not clearly defined, but they are rather described through a list of eligible costs, which seem to hint at the investment aid as being related to infrastructures and the operating aid as being related to activities. Unfortunately, among the eligible costs of aid for investment, we read also the explicit reference to the same word “activities” used for the eligible costs of operating aid⁴. Moreover, the lack of a definition of what is meant by “activity” or what is meant by “project” makes it difficult to classify an aid as *operating* or *investment* aid, like in the case of a theatre seasonal programme, that could be classified all the same as an innovative project, i.e. investment, as well as an ordinary yearly activity being part of the normal business of the theatre.

The exercise of drafting practical guidelines for the implementation of article 53 proved more difficult than expected also in relation to some cases from the common experience of many regional and local authorities, where even the assessment of the nature of undertaking of the beneficiaries was doubtful. This is the case, for example, of associations or foundations owned by regional and/or local authorities, the former being the owners of a theatre or a museum bound to carry out several cultural activities entrusted by the participating local and regional authorities.

Difficulties arose also in nailing down the methodology for the calculation of the funding gap, when it came to define the relevant period in case of monuments/work arts, whose life duration is expected to be as long as humanity’s, like the Colosseum, for example. The guidelines of the Regions make reference to a national law ruling the mandatory period of time for public authorities to carry out the maintenance of work arts, and also provide some practical suggestions on how to calculate the funding gap in case of interventions to parts of the monuments / buildings, especially when deducting the revenues after the works, clearly depending on many factors and not only imputable to the works done.

Last but not least, among the difficulties encountered in providing practical guidance for the implementation of article 53 there is the non-eligibility of the “firms in difficulty” as laid down in the general conditions of the GBER. Article 53 allows covering the losses of cultural entities through operating aid, what may easily be an indicator of a possible situation of difficulty of the beneficiary. The exclusion of “loss making” cultural entities from the GBER would therefore be in contrast with the very aim of article 53: that’s the reason why the guidelines give priority to the aim of the sectorial rule instead of to its formal consistency with the general conditions, that would have made the GBER inapplicable to quite a number of cultural activities.

⁴ “For investment aid, the eligible costs shall be the investment costs in tangible and intangible assets, including [...] costs for cultural projects and activities, cooperation and exchange programmes and grants including costs for selection procedures, costs for promotion and costs incurred directly as a result of the project”.

These are only some examples showing how it can be difficult to transpose an apparently simple article like article 53 into the reality made up of beneficiaries, administrative and accountancy practices, without triggering bureaucratic burdens not justified by the very doubtful presence of State aid as explained by the first position paper.

2.3 Conclusion

It is well known that the exclusive competence over the protection of the competition belongs to the European Commission, and the Member States have to coordinate their economic policy defining common objectives for the smooth functioning of the internal market, in accordance with the principle of an open market economy with free competition.

However, the line between the interests of the Union and the principle of free administration by national, regional and local authorities recognized by the European law is not always easy to draw, especially when it comes to areas where the existence of a market very much depends on the cultural tradition of a member State defining what is the public remit and on the choice of the most appropriate means to perform it. In line with article 167 of the Treaty, the Union is actually bound to respect the national and regional diversity of all member States.

The process of the State aid modernization has been probably carried out too fast, overlooking some concrete implications of the rules, whose main intention was to adopt a softer approach towards the public support for culture, however without defining in advance the scope of the rules through a clear *ex-ante* definition of the notion of State aid.

The interpretative notice of the Commission on the notion of State aid unfortunately came as the last part of the modernization process: it should have been the first step, clarifying first what is aid and what is not, before setting the rules on how to grant it.

However, what is worth mentioning about the notice approved last 19 May 2016 is that the section on the notion of undertaking and economic activity and the section on affectation of trade finally clarify the key principles underlying the “non-aid” character of many public measures supporting culture. The notice finally recognizes that due to their particular nature, certain activities related to culture, heritage and nature conservation might be organized in a non-commercial way, thus be non-economic in nature and not constitute State aid. The evidence provided by the Commission relies on the accessibility of culture activities and monuments to the general public either free of charge or upon payment of a monetary contribution that only covers a fraction of the true costs and therefore cannot be considered genuine remuneration for the service provided. It is thus explained that this is the evidence for the public funding of a cultural or heritage conservation activity to fulfill a purely social and cultural purpose, which is non-economic in nature.

Similarly, the notice points out that many cultural or heritage conservation activities are objectively non-substitutable because of their unique character (the example refers to public archives holding unique documents) and thus exclude the existence of a genuine market.

The notice also simplifies the assessment the public support for cultural infrastructures by extending the “ancillarity clause” initially ring-fenced for research and development, stating that customary

amenities like shops or restaurants do not change the non-economic nature of an infrastructure if it is almost exclusively used for a non-economic activity.

By way of conclusion, the guidance and principles we read today in the final version of the notice on the notion of State aid can be seen as a proof of the effectiveness of a long assiduous work carried out jointly by the Italian regions in the active participation to the European law making process, by delivering key messages to the central Government for its further direct negotiations in Brussels but also directly addressing the Commission in the public consultations.

The experience told by the present paragraph can be surely recorded among the best practices of loyal cooperation between different levels of government within a Member State and between the Member State and the European Commission.

3. Experience from Hungary

3.1. Forward

In order to better understand the selected cultural aid examples from Hungary, first the Hungarian State aid control system has to be presented briefly. Before the accession to the European Union Hungary, as the other candidate countries, had to set up a centralized State aid control body and also had to show that this body is capable to ensure State aid compliance. The State Aid Monitoring Office (SAMO) was established for this reason in 1999, and is located currently in the Prime Minister's Office. This body has significant State aid knowledge and is in contact with the aid grantor bodies, authorities and the European Commission. After receiving the notifications of the aid grantor the SAMO decides about State aid qualification of these cases;⁵ whether they have to go to Brussels or they can be dealt with at national level. The SAMO has therefore a good overview about all active State aid measures and could give valuable advice to other bodies within the administration.

3.2. Cultural aid in Hungary

Before the new general block exemption regulation⁶ (hereinafter: GBER) entered into force, as all member States Hungary had to individually notify all cultural aid measures falling under the exemption provided by Article 107 (3) d)⁷ of the Treaty on the Functioning of the European Union (hereinafter: TFEU). This was a cumbersome and sometimes not really meaningful procedure as in case of cultural aid the potential distortive effect of the aid on competition and trade between member States is negligible in the vast majority of cases. Therefore Hungary had a high number of cultural notifications because there are a lot of institutions which were granting State aid for culture objectives above the *de minimis*⁸ threshold. Some of these were individual measures. For instance

⁵ The status and procedures of the SAMO are defined in Government Decree No 37/2011.

⁶ Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 187, 26.6.2014, p. 1–78).

⁷ The following may be considered to be compatible with the internal market: [...] (d) aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Union to an extent that is contrary to the common interest; [...].

⁸ Under Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid (OJ L 352, 24.12.2013, p. 1–8) every

the State property company who owns a lot of castles or other buildings of national cultural heritage and also local governments are making cultural exhibitions, events all were subject to notification and the standstill obligation.⁹ The SAMO had a high number of cultural aid notifications towards the European Commission (hereinafter: Commission) and after several years the SAMO with the explicit approval of the Commission extended the scope previously notified cultural aid schemes to all aid granting bodies as it was clear that it makes no sense to create more and more notifications just because there is an additional local authority which wants to grant cultural State aid in Hungary.

The Commission clearly understood the lesser relevance of *ex ante* control in case of the majority of cultural aid measures, and within the State Aid Modernization initiative it tried to block exempt almost all cultural aid measures.¹⁰

So, from Hungarian point of view, besides all the issues with interpretative uncertainties and the probably not perfect definitions, the GBER is in the field of culture a good solution and workable compromise. Of course the new GBER means a bigger responsibility at national level, and a bigger work because every decision has to be taken at national level and no one can blame anybody in Brussels for the content or for the delays. But the GBER can be applied both for general schemes and also for local schemes or individual aid measures. Hungary has all of them and specific schemes for audiovisual works (films) as well.

3.3. The tax donation for performing arts

Just to show the variety of cultural aid measures first the Hungarian tax donation system¹¹ is presented, whose major aim is to involve and incentivize the private sector to finance public policy measures, and with that to save public resources. In this system companies, which are subject to corporate profit tax can donate for public policy reasons, and then they can deduct more money from the tax liabilities as they have donated. This is clearly an incentive for these undertakings to donate, and they can donate for sports,¹² performing arts and for the making of films.¹³ From these three schemes the one related to performing art is relevant for the purposes of this paper. By creating the scheme the key points and the objectives are set by the government but the main financing is coming from the private undertakings and they can decide to whom they would like to donate. There is an additional requirement, if a company donates for instance for a theatre or to a ballet group it cannot make any secondary merchandising, appearing as a person who is sponsoring the event or the entity, that is strictly forbidden. They can enter into agreements like this but just

undertaking can receive up to 200.000 € in three years without having effect on competition or trade between member states.

⁹ Under Article 108 (3) of the TFEU “The Commission shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid. If it considers that any such plan is not compatible with the internal market having regard to Article 107, it shall without delay initiate the procedure provided for in paragraph 2. The Member State concerned shall not put its proposed measures into effect until this procedure has resulted in a final decision.”

¹⁰ See Articles 53-54 of the GBER. Block exemption means that the measure constitutes State aid within the meaning of Article 107 (1) of the TFEU, but the member State still can grant it without the formal *ex ante* consent of the Commission. Member States only need to inform the Commission about the block exempted measures *ex post*.

¹¹ Case SA.29143 Indirect State aid for the performing arts organizations.

¹² Case SA.31722 Sport infrastructure development scheme.

¹³ Case N 202/2008 Hungarian Film support scheme, last amendment under SA.38425.

with certain other entities outside this scheme. In this way the question of hidden advertising is excluded.

When Hungary first notified the draft scheme on the financing of the film promotion scheme in 2008 and performing arts in 2009 the Commission had no case previous practice for such a system. In its State aid assessment the Commission finally concluded that there was no selective advantage at the level of the undertakings who would donate. Of course, there is an advantage at the level of the donor companies, because they are donating a certain amount, and they can deduct this amount both from their tax base and tax to be paid,¹⁴ but this is a general measure because every tax payer can make this without distinction, so there is no selectivity in the sense of Article 107 (1) of the TFEU. Consequently the Commission accepted the arguments of the SAMO and concluded that this is not State aid at the level of donors. Although the Commission stated that because of the loss of tax revenues in general (at the level of the donors) there is a selective advantage at the level of the entities who are receiving the donations because the government specified who can receive these donations, and in case of performing arts and films and also in the case of sports there is a pre-registration system and not all entities can receive this kind of donations. The future beneficiaries have to apply first and be on the list, then they can receive donation from companies (there also are additional requirements). This means that on the level of the final beneficiaries the system is selective and constitutes State aid. In order to avoid misuse of the system there are some other conditions to restrict the use and the amount of the donation to be used. For instance in case of performing art entities the maximum amount of the donation in a calendar year is linked to their previous year's ticket sale revenue. Thus, a small theatre cannot receive from one year to another millions of euros and use it for whatever reason, just up to 80% of its previous year's ticket sales revenues. On the other hand the beneficiaries should be listed, there is a previous registration fee, procedure with some preconditions to meet, and they have to show what they are using the money for. Besides, they have to make an annual report about the funds used. In case of the performing arts the national legal base allows a very wide possible list of entities but also restricts the use of the funds to clearly cultural objectives. This allowed the Commission to establish compatibility with Article 107 (3) point d of the TFEU as cultural aid.

As regards the current operation of the scheme one has to highlight that the original duration expired at the end of 2015. So, the aid grantor has considered how to ensure the continuous operation from 2016. The SAMO explained that the new GBER could be used, but the aid grantor wanted full legal certainty, which could have been achieved only by a Commission decision.

To prepare the notification the Hungarian authorities made the pre-notification to the Commission and had taken preliminary informal contacts explaining that Hungary intends to maintain the measure with some minor changes, increased budget and requiring the donors to donate the tax advantage for cultural objectives as well. In this way the new scheme will have even more additional leverage effect on the cultural spending of the private sector. The Commission said that this can be in line with the GBER, so there is no need to notify the measure formally. The Commission sent to the SAMO a so called "conform letter" which specified how to follow the rules of the GBER, like you excluding companies in difficulties, sectors, cumulation etc. to achieve compliance with the GBER and this way notification can be saved. During the pre-notification

¹⁴ Up to 80% of their yearly tax obligation.

phase the most interesting question was whether the Commission could consider the system as transparent form of aid in the sense of the GBER,¹⁵ but the Commission arrived to the conclusion the advantages are at the level of the cultural institutions is considered as grant because they received the donation directly, which is a transparent form of aid and the complex system behind does not impede the application of the GBER on the scheme. The Commission wanted to avoid the notification because this is especially why they broadened the scope of the GBER, to speed up the decision-making in the “easy cases”. The final decision not to notify was however on the aid grantor.

Thus, the GBER requires more responsibility from the decision-making bodies at home and there is a little bigger work but in the end it is quicker. This is how the new GBER works, broadly as the Commission planned. A large part of previously notified measures are now block exempted and member States can avoid lengthy State aid procedures with some additional responsibility taken.

3.4. *Ex post* monitoring of cultural aid

As a different type of Hungarian experience the case of Zsolnay was selected to show how *ex post* monitoring in the field of State aid works. The *ex post* monitoring is a standard exercise of the Commission. Even under the previous regime member States had to notify the aid schemes, but the control system has not stopped there. The Commission in every year selected a number of schemes for every member State and they checked *ex post* whether the member States were in line with all the requirements which were set in the Commission’s decision.¹⁶ The number of *ex post* monitoring cases is expected to grow after the new GBER entered into force due to the lower number of notifications and lower use of workforce at the Commission for *ex ante* control.

In the given case the Commission has selected a cultural aid scheme financed from Structural funds.¹⁷ After having analyzed the answers to their general questions the Commission selected for individual *ex post* scrutiny a number of individual grants, among those a large project financed from the scheme.

The project was about to use cultural funds to highlight the cultural heritage of Pécs a city from South of Hungary, which was the European Cultural Capital in 2010. In Pécs there was an industrial site linked to Zsolnay a china ware manufacturer. The idea was to integrate the industrial site into the cultural activities within the city by showing the activity and cultural heritage of the company. Thus the project consisted of renovation of an older industrial site and changing some parts to an open space and to different other showrooms for visitors. The project also presented from a historical point of view how the family Zsolnay and the activity of the company had an effect on the life of the city of Pécs. The works and the whole project including site remediation, renovation of building, making installations, lighting etc. of European Cultural Capital required a high amount of State aid, this is why the Commission selected the project for *ex post* monitoring. In the *ex post* monitoring the Commission asked for the individual aid contracts, invoices and other kind of proof. The monitoring concentrated on three specific points: whether Hungary has restricted the spending to cultural activities or cultural objectives; whether there is a separation of eligible costs for each

¹⁵ Article 5 of the GBER restricts its application to certain forms of aid, where it is possible to calculate precisely the gross grant equivalent of the aid *ex ante* without any need to undertake a risk assessment.

¹⁶ E. g. whether they have checked the aid intensity, the eligible costs, the qualification of the beneficiaries, etc.

¹⁷ N 276/2007. Aid measures with a cultural objective under the Regional Development Operational Programmes.

activity of the project, and whether there is a clear linkage between the eligible costs and the aid. As beside cultural aid there were different other aid types (other activities) included in the project, the Commission has checked the aid intensities what we have agreed in the grant contract. Hungary has also to shown the separation of economic and non-economic activities within the funding of the project. As non-economic activities do not fall under Article 107 (1) of the TFEU, financing of these activities is not subject to State aid control. By that time the definition of ancillarity¹⁸ was not used by the Commission, so there was no possibility for Hungary to show that there is just a smaller amount of ancillary economic activities within the project and that everything can be covered by the cultural aid exemption. Consequently in the aid contract the aid grantor and the beneficiary had to separate everything that was qualified as economic like museum shops, coffees and conference center which can be used for this purposes and not as strictly culture. For the economic activities regional aid was granted as the region was eligible for regional aid. Here the dividing line was that cultural aid could cover the costs of the basic infrastructure, like the building of walls, the connections, but everything else should be made under regional aid rules because this is linked to the economic activity (machines and furniture for the restaurant on the site). The general infrastructure could be made with the cultural aid, because this is part of a bigger cultural project, but the financing of something that is not culture has to fall under regional aid rules (coffee or the museum shop). At the end of the monitoring procedure the Commission informed Hungary that it has not found infringements of the State aid rules.

4. Experience from The Netherlands

For any case of public support to any cultural activity in society, the first State aid question to ask yourself is if there is any State aid at all. Especially in the area of cultural activities, this is often the first and most relevant question. Practical experience in The Netherlands shows that approximately 95% of public support in the cultural area, is generally considered not to constitute State aid. Why? First of all because people involved are simply not aware of the EU State aid rules and procedures. Most people involved in cultural policy, i.e. local public authorities, beneficiaries, civil servants, politicians, artists, managers, auditors and for instance journalists, have simply never encountered any State aid rules. And in case they have, they just simply do not seem to be bothered.

For most cultural activities, like museums, theatres, arts, monuments, music and dance, public support by municipalities, by provinces and or by the national authorities is very common. Subsidies are business as usual, there is a long tradition in public cultivation of cultural activities. One of the first issues in any State aid assessment is whether the aid recipient actually is an undertaking. Many people in daily practice in The Netherlands tend to argue: “cultural partners are no undertakings because they are so close to the common interest or government, we consider them as a kind of civil servants”. But at the same time, the Dutch authorities tend to push these very same cultural organizations towards the market, urging them to get more income on their own by selling

¹⁸ Based on the experiences and practice elaborated for aid for research and development the Commission treats cases as non-economic where the economic activity within the project remains below 20% and which is directly related to and necessary for the operation of the infrastructure, or intrinsically linked to its main non-economic use. State aid rules do not apply to these cases. See point 207 of the Commission Notice on the notion of State aid as referred to in Article 107(1) TFEU. The communication can be accessed at: http://ec.europa.eu/competition/state_aid/modernisation/notice_of_aid_en.pdf

tickets at higher prices, selling coffee or starting a bookshop. Many museums and art houses are quite active to sell art and buy other art and act as an art trader. And all such activities are in fact economic activities.

From a rather stringent State aid perspective, the cultural world in The Netherlands is quite simply organized. According to the regular State aid approach, all Dutch cultural organizations should in fact be considered as an undertaking. There is hardly any cultural organization that is not involved in any economic activity at all. And it does not matter whether these organizations tend to act non-profit or not, if their activities are considered economic activities, they are considered as undertakings under EU law.

Usually, state resources are at stake and aid is usually aimed at a specific benefit for the cultural beneficiaries. So from a stringent State aid perspective there are only two options left to consider the aid as no State aid. The aid should either not have any effect on trade, or it should be an “Altmark-proof” service of general economic interest. To start with the latter: some authorities try to circumvent the State aid rules by considering their cultural measures a service of general economic interest under the “Altmark” ruling. The Court of Justice, in its Altmark judgment¹⁹, provided clarification regarding the conditions under which public service compensation does not constitute State aid owing to the absence of any advantage. The Court introduced four criteria and especially the fourth criterion aims for a tender or procurement procedure of the aid, unless the aid is determined on the basis of an analysis of the costs which a typical undertaking, well run and adequately provided with means to be able to meet the necessary public service requirements, taking into account the relevant receipts and a reasonable profit for discharging the obligations. This fourth Altmark criterion is too hot to handle in daily practice: tendering or procurement is too complicated and making such a comparison with a well-organized competitor too risky. Therefore Altmark in general does not apply to cultural activities.

On the effect on trade criterion of the general State aid rules, the European Commission recently published a Notice on the notion of State aid.²⁰ On 19 May 2016, the Commission published further guidance on when public spending falls within, and outside, the scope of EU State aid control. The Notice on the notion of Aid was the last part of the Commission’s State Aid Modernisation initiative, launched in 2012. In this Notice, the Commission explains that EU state aid control should focus on public investments that have a cross-border effect. Funding provided to local infrastructures or local services which are unlikely to attract customers from other Member States, and which only has a marginal effect on cross-border investment, should not fall under EU State aid rules. In April 2015 the Commission concluded in relation to seven measures granting public support to purely local operations that they do not involve State aid, because they are unlikely to have a significant effect on trade between Member States. However, these cases were not aimed at cultural activities and in practice it is quite hard to prove that aid has a purely local effect. Museums for instance love to emphasize that they attract foreign visitors, from a State aid perspective such marketing is complicated in combination with a no effect on trade argument.

¹⁹ Case C-280/00 Altmark Trans GmbH and Regierungspräsidium Magdeburg v Nahverkehrsgesellschaft Altmark GmbH.

²⁰ OJ C 262, 19.7.2016, p. 1–50.

Another option is *de-minimis*, the State aid rules for small aid, which has no effect on trade. As long as the aid is limited to € 200.000 in 3 years, the effect on trade is too little to affect trade. So *de-minimis* aid is no State aid. But we have to bear in mind that many companies, organizations and other entities have to share their *de minimis* level. It is best to compare the *de minimis* maximum with a bucket: per company you can put € 200.000 in the bucket over a period of 3 fiscal years. But when entities cooperate or they have shared ownership, they also have to share their *de minimis* bucket. And easily the bucket is fully loaded. Many recipients have in fact already got a full bucket, although they have not received any *de minimis* aid themselves. This leads to a lot of legal uncertainty, which is not good for the recipient of the aid (financial risk) and not good for the provider of the aid either (ill public practice and political risk). It is best to use the *de minimis* rules only as a way out in difficult individual situations.

So on the basis of the general State aid approach, most cultural activities should actually constitute State aid. And this is not such a big problem, as the General Block Exemption Regulation (GBER) from 2014 has introduced a legal way out. On the basis of article 53 GBER, legitimate State aid for culture and heritage conservation is allowed for a wide variety of activities, both for investment aid and operating aid. However, for investment aid, the aid amount cannot exceed the difference between the eligible costs and the operating profit of the investment. Therefore, all operating profits have to be deducted from the eligible costs *ex ante*, on the basis of reasonable projections, or through a claw-back mechanism. The operator of the infrastructure is allowed to keep a reasonable profit over the relevant period. Many cultural organizations will experience this kind of claw back procedure as a punishment for success. Because in case an investment does attract a lot of visitors, the extra income is to be handed back to the government. Although from a State aid perspective a claw back mechanism is easy to justify, in daily practice it can lead to a negative stimulus. Also for operating aid, the aid amount cannot exceed what is necessary to cover the operating losses and a reasonable profit over the relevant period. This shall be ensured *ex ante*, on the basis of reasonable projections, or through a claw-back mechanism. The Dutch authorities have actually never used article 53 GBER so far. The administrative burden to understand and implement the State aid rules seem to be far too high.

Fortunately, the all-new 2016 Notice on the notion of State aid, have introduced specific rules on public financing of certain cultural activities which are not commercial but provided for free or against a minimal fee. This kind of aid will no longer be covered by State aid rules. According to the Notion, culture is a vehicle of identities, values and meanings that mirror and shape the Union's societies. The area of culture and heritage conservation covers a vast array of purposes and activities, inter alia, museums, archives, libraries, artistic and cultural centres or spaces, theatres, opera houses, concert halls, archaeological sites, monuments, historical sites and buildings, traditional customs and crafts, festivals and exhibitions, as well as cultural and artistic education activities. Europe's rich natural heritage, including conservation of biodiversity, habitats and species further provides valuable benefits for societies in the Union. Taking into account their particular nature, certain activities related to culture, heritage and nature conservation may be organised in a non-commercial way and thus be non-economic in nature. Public funding thereof may therefore not constitute State aid. The Commission considers that public funding of a cultural or heritage conservation activity accessible to the general public free of charge fulfils a purely social and cultural purpose which is non-economic in nature. In the same vein, the fact that visitors of a

cultural institution or participants in a cultural or heritage conservation activity, including nature conservation, open to the general public are required to pay a monetary contribution that only covers a fraction of the true costs does not alter the non-economic nature of that activity, as it cannot be considered genuine remuneration for the service provided. In contrast, cultural or heritage conservation activities (including nature conservation) predominantly financed by visitor or user fees or by other commercial means (for example, commercial exhibitions, cinemas, commercial music performances and festivals and arts schools predominantly financed from tuition fees) should be qualified as economic in nature. Similarly, heritage conservation or cultural activities benefitting exclusively certain undertakings rather than the general public (for example, the restoration of a historical building used by a private company) should normally be qualified as economic in nature. Moreover, many cultural or heritage conservation activities are objectively non-substitutable (for example, keeping public archives holding unique documents) and thus exclude the existence of a genuine market. In the Commission's view, such activities would also qualify as non-economic in nature. Finally, in cases where one entity carries out cultural or heritage conservation activities, some of which are non-economic activities and some of which are economic activities, public funding it receives will fall under the State aid rules only insofar as it covers the costs linked to the economic activities.

Thus, on the basis of the brand new Notice on the notion of State aid, Member States now have much more legal certainty to consider cultural activities to fall outside the scope of State aid rules and procedures. Not because this support is Altmark-proof (service of general economic interest) and not because it has no effect on trade! The legal basis to exempt cultural activities from State aid law is specifically exempted by the 2016 Notice on the notion of State aid. One could say: law is following practice. Or even: the State aid law adapts to reality.

In practice in The Netherlands so far most people interested simply were not interested in any State aid aspects. There were hardly any complaints and the Commission was not making a problem either on such cases either. So the basic approach in practice was: "State aid, who cares!". And now with the introduction of the new Notice on the notion of State aid, this approach has turned into a legitimate approach. In fact we see a bit of a reality check: the legal approach of State aid law seems to suggest that the world is simply divided into black and white, i.e. in State aid measures and no State aid measures. But also in good State aid and bad State aid, in legitimate procedures and unlawful procedures. The State aid rules and procedures seem to suggest that there are clear borders between right and wrong aid. But in reality this was not the case at all. Most of the world on cultural aid was very grey from a State aid perspective. Daily practice on cultural aid was very blurred and as most cultural aid is generally considered as good for society, why bother? We see the same approach with aid to medical services, employment services, education, services for disabled people, etc. A lot of good public reasons to support state subsidies, but from a State aid perspective very blurred.

The cultural world in The Netherlands should welcome the new Notice on the notion of State aid. For The Netherlands these new rules are a codification of daily practice. Probably not a lot will change, most cultural people will probably not even have noticed the Commission's notice.

5. Experience from Greece

The position of the Greek authorities is quite similar to the Italian one. The Greek authorities are of the opinion that in most cases there is no substitutability in the cultural sector and the cultural activity, more often than not, does not constitute economic activity; that is especially the case when it comes to archaeological monuments, which the State has the exclusive right and the obligation to preserve and exhibit to the public. That can be the case even if an entrance ticket is imposed, which is often symbolic and does not cover the costs of the museum/monument. Although the Commission has been reluctant to agree to this approach in the past, the recent Commission Notice on the Notion of Aid (hereafter «Notice») has to a great extent incorporated some of the above principles (not the public remit argument however)²¹. It can be acknowledged though, as shown by the case practice, that the Commission has always been flexible one way or the other on the cultural cases notified.

The case presented here is the construction of the Archeological Museum of Messara in Crete²². The project concerned the construction of a museum building, which included rooms for permanent exhibitions, education and program areas, conservation laboratories and of course canteen, shop, etc. This project, that had started in 2012, and had been planned to be operational in 2016, was treated by the Greek authorities as a non-aid project, which was therefore not notified in the Commission beforehand. Subsequently, in April 2013, it was notified for legal certainty, following a consultation of the Greek authorities with DG REGIO and DG COMP, given that it was priority project of the Operational Program «Crete and the Aegean islands 2007-2013». The project budget was six million Euros, financed 100% by State resources (co-financed by 85% the European Regional Development Fund), the owner and the operator of the Museum being the Greek State. It was evident from the financial analysis that there was a 100% funding gap, as the only revenues would be coming from the low admission ticket, the canteen and the sale of the souvenirs, and were not predicted to be substantial. The museum was to be located near the archeological site of Phaistos in Gortyna, a rural area 45km outside the city of Heraklion, difficult to access from the city, through a regional road.

The no-aid case presented to the Commission was based first of all on the public remit argument, as there is no other operator that can undertake the safe-guarding and the exhibition of the archeological monuments. According to the Greek constitution, the State is solely responsible for the protection and exhibition of cultural heritage of Greece, from early antiquity until present. Furthermore, the project was not related to touristic promotion or to other commercial activity (apart from the ancillary ones – canteen/souvenir shop). The second argument was that the project would not have an effect on trade, given that Crete was a touristic destination anyway. Moreover, the main pole of cultural attraction in Crete was Knossos, counting six hundred thousand visitors annually, whereas only around 55 thousand tourists per year visited Messara. In fact, this area was not to become a final tourist destination or a new pole of attraction and also it was a low populated rural area without touristic infrastructure within the surrounding area of 20-30km. The construction of the museum was practically a complementary measure for the preservation of the monuments and does not entail any substantial commercial activity. It was also noted that most of the exhibits

²¹ See in particular paragraphs 33 to 37 of the Notice.

²² Case SA.36581(2013/NN).

would be transferred there from the overloaded and older archaeological museum of the city of Heraklion.

The Commission Decision adopted in November 2013²³ stated that the financing of the Messara Museum would not have effect on the EU trade and therefore the measure did not constitute state aid. Although the non-economic activity/public remit argument was not accepted²⁴, the Commission did acknowledge that the construction of the Museum was unlikely to attract additional tourist flows, as it was a museum of local character in principle, not included in the UNESCO cultural heritage monuments and not widely promoted outside the region. The Commission in its decision also noted the commitment of the authorities to channel any potential profits generated to cultural purposes only and also to select the -external- operator of the canteen as well as the contractor for the construction works, in compliance with EU public procurement rules.

Given the more recent no-aid decisions of the Commission based on the local character/no-effect on trade argument, and more importantly the relevant paragraphs of the Notice (see in particular paragraph 197.b) this should be the first point to check when it comes to cultural projects.

When the financing of a cultural activity is considered as State aid, a quite critical issue is usually that if the funding gap is less than 100%, there has to be a private (own) contribution that in most cases is quite difficult to find. State museums, for example, have no access to private financing or loans, especially in times of financial crisis. This problem can jeopardize the construction of cultural infrastructure. Moreover, it can result in the projection of lower revenues, in order to achieve a funding gap of 100%. This of course is neither desirable nor efficient, for budgetary purposes.

The principle of ancillarity, as presented in the Notice²⁵, provides a useful workable solution for the financing of cultural infrastructure, including some minor economic ones that are supportive of the main activity (this is particularly helpful in cases of museums and concert halls where there are canteens, parking places, souvenir shops, etc). If all fails, in the cases where purely cultural non-economic activity is combined with a more commercial utilization of cultural projects, the separation of activities to economic and non-economic and of the respective accounts, is necessary in order to ensure that the economic activities are self-financed and there is no cross-subsidization.

6. The Thuringian case

The state cultural funding is allocated in the Cultural Department of the State Chancellery of the German state Thuringia. Mission of this department is to adopt the funding decisions for the various cultural sectors - ranging from institutional funding of major cultural foundations (with the Foundation of Weimar Classics Thuringia is the home of second largest German cultural foundation) and the theaters and orchestras, as well as various museums on the one hand and

²³ C(2013)7038 final, 06.11.2013.

²⁴ As stated in the Commission Decision, the activity is economic because there is a provision of service against remuneration.

²⁵ See paragraph 207 of the Notice.

promoting smaller sector-specific cultural projects, eg from the range of latitude and Sociocultural or the digitization of cultural heritage on the other hand.

Currently there are very little practical experiences of implementation. The first promotions after the modified model of funding will have begun in 2016 - therefore Thuringia will not be able to show reliable results from practice until the end of 2016 or (after examination of the “use of funds”) in 2017. The aim of this paragraph is therefore primarily to represent the previous process, how Thuringia has responded to the revised European regulatory framework.

Thuringia has participated in the discussions to extend the EU State aid rules to the field of culture from their beginning. These discussions were first initiated in Germany by the Federal Commissioner for Cultural and Media Affairs and the State of Lower Saxony. In fact, Thuringia first realized in the context of these discussions, that the promotion of cultural infrastructure and cultural projects was relevant even under applicable law in recent years from a state aid perspective. Even cultural institutions can be - and in most cases are - undertakings which state subsidies are granted – at least it is the content of the discussions between the German states and the national government. As certainly in most other European countries, too, the promotion of culture has always been regarded as a state task that is perceived in Germany due to the federal structure primarily by the federal states and the local communities. Most states were not aware about the fact that the grantor may grant de facto so market-falsifying subsidies in the past. That's why there was no concern about the fact that the actual acting might have been against current European law. Rather, the funding represented the - quite legitimate - view that the cultural landscape would no longer exist in most cases without government subsidies.

The most significant exchange of experiences of the German states and the national level took place on 17 June 2014. Representatives of all German states – mostly from the departments of culture – have been invited from the national government (the BKM) and the Interior Ministry as well as the state of Lower Saxony. At this time, the entry into force of the new General Block Exemption Regulation (GBER) was imminent. This took place on 1 July 2014. It includes an exemption clause for culture for the first time.

During this meeting, concrete steps were first taken into consideration about how the states are planning to deal with the changed legal situation. Also, some initial handouts have been presented that were provided to the participants. The representative of the federal level made especially clear that cultural promotion has to be notified no later than the entry into force of the new General Block Exemption Regulation with a "grace period" granted by the Commission until the end of 2014. The so-called *de minimis* subsidies or SGEI *de minimis* subsidies are the only exceptions. These subsidies only can be considered if there was within a period of 3 years no more funding than 200,000- EUR or 500,000 - EUR in case of SGEI *de minimis* subsidies. Referring to that all subsidies are to be added regardless of where they originate or who the Grantor was. So it became clear that this will indeed affect some – but even only some – cases of cultural promotion. Many cases, especially with large cultural institutions, might not be handled with these regulations.

It was also made clear that not only individual grants might be notified, but also support schemes. In Thuringia, for example, this is “the Directive on the promotion of culture and art” or “the

memorial funding guidelines". It is very helpful that this possibility exists, because this offers the opportunity for not notifying every single promotion.

The application must be made through a centralized database "State Aid Notification Interactive", the so-called SANI system. Here a revision took place, now there is the SANI-2 system. How and especially by whom the application has to be made, the states should resolve by themselves. Typically the economic ministries of the states have the responsibility for the EU state aid rules. Because of this there is a single contact for all applications. The access to these databases that has been existing for a long time yet should now be extended to the cultural sector.

In Thuringia the "grace period" until the end of 2014 was used to inform the staff of the Cultural Department about the changed legal framework. A handout was made which shows in the simplest possible form, which rules will be applied in the future. This document also included the revision of the application form for the funding guideline. It contains information on, for example, total funding amounts in terms of Service of general economic interest (SGEI) promotions. Additionally, the certificate with the necessary content for *de-minimis* or SGEI-*de-minimis*-subsidies were created.

In the practical experience that means that the incoming funding applications are checked for eligibility for public funding. Often the Thuringian State Chancellery bases its decisions on the recommendations of expert-advisory boards. The chosen applicants receive a decision (notification) - at the same time they receive a DE-MINIMIS or the SGEI-DE-MINIMIS certificate - if applicable. In cases where the *de minimis* or the SGEI *de minimis* regulation does not intervene, the projects are included in the registration and settlement arrangements with the Commission.

In addition an overview of the subsidies that were paid in the past three years to the beneficiaries by the state was developed. It became clear that - as expected - only a small part of the funding complies with the *de minimis* conditions. In a further step, the institutional culture subsidies were noted and recorded, which are granted outside funding regulations. These grants must be notified individually.

Also in that time, there was made a summary of all existing regulations and (promotional) guidelines. As a result it became prominent which funding regulations have to be notified in the future.

Various problems became already clear at this stage. It is still unclear how the application of the provisions of the GBER should take place in the municipalities. As already stated, the communities are important promoters of culture in Germany. Even for these, the provisions of the GBER will apply. There is no solution yet how a joint overview of funding from state and municipalities can be developed. With regard to the *de minimis* funding this is of great importance! First reflections have pointed out that this data should be centrally merged at the Thuringian Ministry of Economics.

As mentioned above the notification of the fundings and funding regulations requires a data input into the SANI-2 database. Until the end of 2014 the Thuringian government used the time to receive an active account for the culture department given by the Thuringian Ministry of Economic Affairs. There are two active users now. However, in practice it turned out that the use of SANI-2 database was not working.

1. From 1 January 2015, there was a provisional financial management in Thuringia. This also meant that a binding notification of promotions could not take place. So the time was used to provide clarity on the future method of application. The following process route was chosen: All institutional funding has to be notified individually.
2. Project funding should not be notified individually. Instead, all relevant regulations and guidelines should be communicated and. This will avoid that more than 500 individual funding - annually! - must be recorded. There are not enough resources to manage that task with the existing staff. The cultural department of Thuringia consists of about 30 people.

The applications of support schemes need to be confirmed by the EU. Requirement for confirmation in all cases was that the rules had to be revised. If the rules contain discrepancies, no confirmation has been issued. In these cases, the input had to be corrected.

The way to confirm is quite complicated. This has to do with the federal structure of Germany. For example, the registration of institutional funding for the Foundation of Weimar Classics in SANI 2 was passed through the State Chancellery to the national Ministry of Economic Affairs of the Federation. From there - again after confirmation - the notification is passed on to the European Commission. There, the confirmation is carried out finally. The feedback on the confirmation is sent directly to the State Chancellery. The first process was completed within one week. If corrections are required, the application will be rejected and the procedure starts from the beginning.

The Cultural department of the State Chancellery of Thuringia adhered to the leaflet of the National Ministry of Economic Affairs in Berlin for the review of the support schemes. The leaflet contains specific content requirements that must be included in the guidelines. If these are not included, a successful notification is not possible. Compelling formulations have to be used. This concerns, for example, the "Deggendorf clause", which prohibits the funding at floating recoveries and other recommended formulations.

The Thuringian policy will be confirmed by the Commission soon. It meets the specifications of the GBER now.

All funding was adapted and changed to the new requirements. Only in a few cases the publication of the guidelines is missing. These guidelines are only valid with a publication. In Thuringia, this concerns specifically seven directions. The most important schemes are the:

- Directive on the promotion of culture and art and the Monument funding regulations.

The other directives are the:

- Directive on the granting of benefits from the state of Thuringia for voluntary work in museums
- Directive on the granting of benefits from the state of Thuringia on the employment of line forces in carriers important cultural and political measures
- Directive on the granting of benefits from the state of Thuringia for the employment of specialists in the field of youth culture

- Directive on the granting of subsidies for offers for counseling, care and processing of SED injustice
- Directive on the award of the Cultural Prize and the cultural nobility of the Thuringian Ministry of Education, Science and Culture.

The Thuringian government gives also individual grants - institutional households to five foundations, twenty museums, twelve theaters and orchestras, as well as for insurance benefits.

The foundations are:

- The Foundation of Weimar Classics,
- Foundation Castle Friedenstein Gotha,
- The Thuringian Foundation of Palaces and Gardens,
- The foundation of Buchenwald and Mittelbau Dora
- and The Foundation Wartburg.

With regard to the monument promotions of the state there was the question whether it is indeed a state aid or not. Grant recipients are in most cases churches and municipalities. There are only a few foundations that are able to benefit from monument subsidies because of the fact that they are seen as enterprises referring to European aid law. After consultations with Lower Saxony it was decided to notify the directive. If necessary, a recording of individual cases would be possible here. The relevant considerations are not yet complete.

At the end of 2015 there was not enough time to apply the rules within this year. Thuringia will attempt to notify all regulations and the institutional culture subsidies in the year 2016. The responsibility lies with the department of culture. It is also responsible for the budget. Here two people deal with this matter. The coordination of the regulations takes place in close cooperation with the divisions, which are themselves professionally responsible for promoting.

Regardless of the cultural promotion of the state there is also the funding of the European Structural Funds ERDF (European Regional Development Fund). Although there is a permission on the legal basis of the mentioned directive, they are not covered by the application of the Directive. Funding from ERDF funds are always recognized and notified individually. Thuringia has not done this in practice yet, since such a new funding has not been carried out yet.

Further problems became visible in practice in promotions with various funding agencies. Thus, there are projects that are jointly funded by the federal government in Germany, the state and the community. For example, if the state and the community promote funding based on a funding guideline, but the federal government makes a single promotion, problems arise: Who records the promotion for SANI database? Each conveyor individually? A conveyor for all of them together? Which share of funding must be specified? The total? Or only the proportion of each conveyor, who notifies?

The following question is also still an open issue: A project is funded on the basis of the notified directive. It meets at the same time the *de minimis* conditions. Is it necessary to write a *de minimis* certificate in these cases? If so, the burden on small funding would be greater than on major funding because the great promotions would unquestionably not meet the *de minimis* criteria.

It becomes clear now, that Thuringia is still at the beginning of the funding according the new EU-compliant regulations. In practice, so far, there has been one notification of Thuringia, namely the Foundation of Weimar Classics. The funding regulations are adjusted and will apply starting 2016. The technical requirements for the application was created. Jurisdictional issues need to be clarified in some respects. The application of the guidelines has not been carried out yet. It is assumed that thus good conditions were created to perform the actions in the future without problems. After an evaluation new experiences about this process may be stated in two years.