

Reform of the EU state aid rules on services of general economic interest

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PURPOSE: to launch a political debate on the revision of the state aid package on services of general economic interest (SGEI).

BACKGROUND: public services (generally identified in the Treaties as SGEI) occupy a vital role in the shared values of the Union. The Lisbon Treaty recognises the essential role of public services and, at the same time, their diversity in the European model of society.

The purpose of this Communication is to launch a debate on the forthcoming revision of the state aid package on SGEI (also known as post-Altmark Package, in reference to the Court of Justice ruling in 25003 on the Altmark case.). The package includes a series of measures adopted in 2005, in particular Commission Decision (EC) No 842/2005 and the SGEI Framework, in which the Commission has clarified the application of the Treaty articles on State aid, i.e. Articles 106 and 107 TFEU, to compensation for SGEI. The SGEI Framework expires in November 2011.

In accordance with the Decision and the SGEI Framework, the Commission conducted an evaluation of the rules based on a wide consultation. Overall, the consultation process has confirmed that the existing legal instruments were a necessary and appropriate response in the light of the Altmark ruling. Since their entry into force, they have been applied to a large number of State aid cases. The consultation has also shown that, in certain areas, e.g. in the social services sector, the Package has not always been implemented as foreseen.

Many stakeholders feel that the existing legal instruments have made a positive contribution to the overall objective of legal certainty. However, the consultation also showed that there is scope for improvement. In particular, there is a need for clearer, simpler, more proportionate and more effective instruments to ensure an easier application of the rules and hence to promote a more efficient delivery of high quality SGEIs to the benefit of people living in the EU.

The review of the Package must be seen in the context of the Commission's wider policy objectives in the area of public services. In its Communication [“Towards a Single Market Act”](#), the Commission undertook to produce, by 2011, a Communication and a series of measures on services of general interest.

CONTENT: the purpose of this Communication is to deal only with the reform of the State aid rules in relation to SGEI that the Commission has adopted pursuant to Articles 106 and 107. The overall objective of the reform is to boost the contribution that SGEI can make to the wider EU economic recovery. Member States need, in fact, to guarantee certain services at affordable conditions to the general population (e.g. hospitals, education, social services, but also communications, energy or transport).

In order to have clearer, simpler, more proportionate and more effective legal framework so as to make compliance easier for national, regional and local authorities ensure an easier application of the rules the Commission is considering **basing the reform on two key principles:**

(1)Clarification: the Commission wishes to provide additional **clarity on a number of key concepts** relevant for the application of the State aid rules for SGEI, including the scope of those rules, the

conditions for the approval of SGEI aid by the Commission and the relationship between State aid and public procurement rules. Issues on which stakeholders have asked for more clarity and on which the Commission is considering providing further guidance include:

- the distinction between economic and non-economic activities under State aid rules and the qualification of certain entities as undertakings;
- the limits Member States have under State aid rules when defining an economic activity as an SGEI;
- the conditions under which compensation for certain SGEI provided at local level affects trade between Member States, thereby falling within the scope of State aid rules;
- the requirements which public authorities have to follow under State aid rules when they entrust an undertaking with the performance of an SGEI;
- the conditions under which compensation for SGEI does not involve State aid because the tender selects the provider at the least cost for the community or because the price charged is in line with that of an efficient and "well-run" undertaking;
- how to increase convergence between the application of State aid and public procurement rules; and
- the interplay between the rules of the Package and other sector specific SGEI rules.

(2)A diversified and proportionate approach: the current Package applies in a more or less uniform way to a very wide range of economic sectors and actors. The Commission intends to **distinguish more clearly between different types of services** depending on the extent to which State aid in these economic sectors poses a serious risk of creating distortions of competition in the internal market. It aims to make the degree of State aid scrutiny dependent on the nature and scope of the services provided. One element of this strategy could be 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 and for certain types of social services. At the same time, the Commission could take greater account of efficiency and competition considerations in the treatment of large scale commercial services with a clear EU-wide dimension.

Consultation of the European Parliament, the Council, the European Economic and Social Committee, the Committee of the Regions and Member States as well as stakeholders on drafts of the new SGEI Decision and SGEI Framework is currently envisaged for July 2011.