



State aid – Services of General Economic Interest (SGEIs)

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These slides accompany the explanation of the acquis to Albania and North Macedonia and can only be used for that purpose. Their content is subject to further development of the acquis and interpretation by the Court of Justice of the European Union.

SGEIs - Overview

1. SGEIs in the Treaties and SGEI definition
2. Altmark judgement C-280/00
3. 2012 SGEI Package
4. SGEI Communication
5. SGEI Decision
6. SGEI *de minimis* Regulation

1. SGEIs in the Treaties

- **Article 14 TFEU:**

"Without prejudice to Article 4 of the Treaty on European Union or to Articles 93, 106 and 107 of this Treaty, and given the place occupied by services of general economic interest in the shared values of the Union as well as their role in promoting social and territorial cohesion, the Union and the Member States, each within their respective powers and within the scope of application of the Treaties, shall take care that such services operate on the basis of principles and conditions, particularly economic and financial conditions, which enable them to fulfil their missions. The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall establish these principles and set these conditions without prejudice to the competence of Member States, in compliance with the Treaties, to provide, to commission and to fund such services.

2. SGEI in the Treaties

- Article 106(2) TFEU

Undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in the Treaties, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Union.

2. SGEI Definition

- No specific Union rules defining the notion of SGEI
- MS wide discretion
- Commission: only checks for manifest error
- Services cannot be satisfactorily provided by the market” under conditions such as price, objective quality characteristics, continuity and access to the service, consistent with the public interest, as defined by the state
- Special characteristics: addressed to citizens or in the interest of society as a whole (in the general (i.e.public) interest)
- Economic services

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2. Altmark judgement (C-280/00)

- Compensation to SGEI provider constitutes **NO ADVANTAGE** (and therefore, no State Aid) if (cumulative):
 1. **Entrustment** with clearly defined public service obligation
 2. **Parameters** for calculating the compensation are established **in advance** in a transparent and objective manner
 3. **No overcompensation** (Compensation limited to net cost, taking into account receipts and a reasonable profit)
 4. **Tender** or compensation based on costs of a typical and well-run undertaking.

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3. The 2012 SGEI Package

1. Communication

- Guidance on whether support constitutes aid

2. Decision

- Exemption for small amounts and social services

3. Framework

- Compatibility rules for large, non-social services

4. De minimis regulation

- Very small amounts deemed not be state aid

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4. SGEI Communication

- Clarifies key concept underlying the application of the state aid rules to public service compensation.
- Key elements:

1. General state aid concepts

- Undertaking and economic activity
- State resources
- Effect on trade between MS

2. SGEI-specific concepts

- Altmark criteria

Undertaking

“Entities engaged in an economic activity”

- Offering goods and services on a market
- Whether market exists depends on organisation by authority
 - Differences between MS
 - Concept develops over time
- Irrelevant whether entity set up to generate profit

Undertaking - Examples

- 1. Non economic: exercise of public powers**
 - Activity is part of the essential functions of the State (e.g. policy, army)
- 2. Social security schemes: solidarity-based schemes vs economic schemes**
 - Affiliation compulsory?
 - Non-profit scheme
 - Benefits independent of contributions?
- 3. Healthcare**
 - Universal free coverage vs provision of services against remuneration
- 4. Education**
 - Service financed primarily by public funds or commercial revenues?



Altmark criteria (SGEI Communication)

- Definition of SGEI
- Compensation **NO ADVANTAGE** if (cumulative):
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Altmark 1: Entrustment Act

- Is there an **entrustment Act**?
- Flexibility in the form
- **Requirements** as to content:
 1. Duration
 2. Beneficiary and territory concerned
 3. Content of the entrustment
 4. Special or exclusive rights
 5. Calculation parameters of compensation
 6. Control and review of compensation
 7. Avoid overcompensation



Altmark 2: Parameters of compensation

- Established ex-ante
- Must be clear how the compensation will be calculated

Altmark 3: No overcompensation

- Compensation must not exceed what is necessary to cover the **costs**, taking into account the **revenues** and a **reasonable profit**
- **Reasonable profit:** rate of return on capital by typical company of the sector taking into account the risk level

Altmark 4: public procurement

- Selection of provider through a **public procurement procedure**
- or
- **Benchmarking:** compensation based on costs of a typical and well-run undertaking.

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5. SGEI Decision

- Compensation that complies with Decision is **compatible** and **exempt from notification**

SCOPE

- 1. Aid for hospitals and social services, regardless of amount**
 - Meeting social needs as regards health, long term care, childcare, access to and reintegration to labour market, social housing and the care and social inclusion of vulnerable groups
- 2. Aid below 15 million annually, except in transport**
- 3. Aid for air and maritime transport**
 - Links to islands (below 300 000 passengers p.a.)
 - Ports (below 300 000 passengers p.a.)
 - Airports (below 200 000 passengers p.a.)



5. SGEI Decision

COMPATIBILITY RULES

1. Must be a SGEI
2. Maximum duration: 10 years
3. Entrustment act with reference to Decision
4. No overcompensation
5. Overcompensation checks every 3 years and at the end of entrustment
6. Transparency for compensation above EUR 15 million to undertakings beyond SGEI

5. SGEI Decision

AMOUNT OF COMPENSATION

- **Methodology to calculate the net cost:** cost allocation or net avoided cost
- **Reasonable profit:**
 - Return on Capital (ROC)
 - Other indicators if ROC not feasible (return on equity/sales)
 - Safe harbour: swap rate + 100 base points
- **Efficiency incentives** possible, but not mandatory
- **Separate accounting** for undertakings carrying out activities outside SGEI

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6. SGEI Framework

Sets out compatibility criteria for aid (SGEIs) which has to be notified

SCOPE

- All notified aid (after 31.01.2012)
- Unlawful aid (even granted before 31.01.2012)

Exclusions:

- Land transport
- Public service broadcasting
- Undertakings in difficulty

6. SGEI Framework – Compatibility criteria

1. Genuine **SGEI**
2. **Entrustment act**
3. **Duration** of the entrustment: based on objective criteria
4. **No overcompensation**: net avoided cost method + efficiency incentives
5. Compliance with **public procurement rules**
6. **Control** of overcompensation: every 2/3 years and at the end
7. **Absence of discrimination** in calculation method
8. **Transparency**: certain publication requirements (content and duration of the obligation, beneficiary, amount of aid) + compliance with Transparency Directive

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7. De minimis Regulation (SGEI)

- SGEI Compensation not exceeding **EUR 500 000** over a period of **three fiscal years**.
- Condition: **Entrustment Act** (but not all information required under SGEI Decision)
- Compensation that meets the conditions: **not** deemed to be **aid**, exempt from notification
- Respect **cumulation rules**

7. De minimis regulation: cumulation rules

- **Can be cumulated:** with subsidies under general *de minimis* Regulation up to an aggregate amount of EUR 500 000 per undertaking over 3 fiscal years
- **Cannot be cumulated:** with other compensation for the same SGEI and over the same period
 - Full amount of compensation either meets the ceiling of the SGEI *de minimis* or is assessed in full under the SGEI Decision or SGEI Framework

References

SGEI Communication:

- OJ C 8, 11.1.2012, p.4

SGEI de minimis Regulation

- OJ L 114 26.4.2012, p.8

SGEI Decision:

- OJ L 7, 11.1.2012, p.3

SGEI Framework:

- OJ C 8, 11.1.2012, p.15



Thank you!

