



# EESC Calls the European Commission to Fine-Tune the State Aid Framework for SGEI

Position paper – March 2018



## Related EESC opinions

### Application of State aid rules for compensating the provision of services of general economic interest (Decision 2012/21/UE and Community Framework)

Rapporteur: Milena Angelova

<https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/application-state-aid-rules-compensating-provision-services-general-economic-interest-decision-201221ue-and-community>

### Affordability of SGEIs: Definition, measurement, challenges, European initiatives

Rapporteur: Raymond Hencks

<https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/affordability-sgeis-definition-measurement-challenges-european-initiatives>

### Quality Framework for Services of General Interest in Europe

Rapporteur: Jan Simons

<https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/quality-framework-services-general-interest-europe>

## Related EESC events

10/05/2017

Public Hearing on **Application of State aid rules for compensating the provision of services of general economic interest (SGEI)**

<https://www.eesc.europa.eu/en/agenda/our-events/events/application-state-aid-rules-compensating-provision-services-general-economic-interest-sgei>

## Further information

At the EESC a **Working Group on Services of General Interest** promotes the expectations of civil society to ensure that every European citizen has the right to access essential, affordable and high-quality goods and services

<https://www.eesc.europa.eu/en/sections-other-bodies/other/permanent-study-group-services-general-interest>

### EESC Study "Review of Member States' reports on the implementation of the European Commission Decision on the provision of State aid to the provision of services of general economic interest"

<https://www.eesc.europa.eu/en/our-work/publications-other-work/publications/review-member-states-reports-implementation-european-commission-decision-provision-state-aid-provision-services-general>

### Intergroup "Common Goods and Public Services" at the European Parliament

<http://ep-publicservices.eu/en/>

## The Services of General Economic Interest package

In 2005 the Commission adopted the "Monti-Kroes package", updated in 2011 (the "Almunia package"), with key rules for services of general economic interest (SGEI) funding. The package includes a Commission Communication on *A Quality Framework for Services of General Interest in Europe* (the "Framework" hereafter) setting out the conditions of compatibility for SGEI and a Commission Decision exempting them from notification schemes that are less likely to distort competition due to their limited funding (Article 2(1)(a) of the Decision sets the annual threshold at EUR 15 million) or targeting of activities meeting social needs (i.e. hospitals; health and long-term care; childcare; access and reintegration into the labour market; social housing; care and social inclusion of vulnerable groups; and maritime links to islands, airports and ports with a low volume of passengers). The Commission declared its intention to carry out a review of this set of rules five years after their entry into force.

The European Economic and Social Committee (EESC) adopted an own-initiative opinion in order to contribute to the upcoming Commission review by taking a detailed look at experience with implementing the SGEI package. To this end, the EESC commissioned a study on the application of SGEI rules to public compensation ("Review of Member States' reports on the implementation of the European Commission Decision on the provision of State aid to the provision of services of general economic interest").

## EESC Study "Review of Member States' reports on the implementation of the European Commission Decision on the provision of State aid to the provision of services of general economic interest"

The study shows that the Almunia package has led to substantial improvements in clarity and legal certainty as regards the provision of SGEI and state aid. It has achieved the right balance between the need to foster and support SGEI and the objective of preventing potential distortions in competition. Exemption from notification reduces the administrative costs and complexities that the authorities would otherwise face, in particular those at regional and local level. The compatibility requirements are more flexible, although the benefits can currently be reaped at central level only. Implementation has run smoothly, with the following pre-conditions:

- the entrustment allows other than procurement/concessions logic;
- the calculation of compensation allows other than Net Avoided (NAC) approach; and
- the concerns with efficiency allow focus on efficiency incentives.

The goal is to gradually concentrate resources at EU level for the scrutiny of those cases of State aid which give rise to particular concerns in relation to competition. Efforts to improve the current rules could thus raise the threshold, include the relevant social SGEI and avoid placing excessive burden on regional and local authorities. Transparency could be further encouraged and good practice needs to be widely recognised.

## Position of the European Economic and Social Committee

The EESC appreciates the implementation of the services of general economic interest package, which brings legal certainty for public service providers. The package strikes the right balance between the need to foster and support SGEI and the objective of preventing potential distortions of competition. However, stakeholders at regional and local level, in particular publicly owned SGEI providers (revealed by the EESC study "Review of Member States' reports on the implementation of the European Commission Decision on the provision of State aid to the provision of services of general economic interest"), are voicing their concerns about key issues in the current rules that create unnecessary obstacles or a lack of legal certainty and therefore the EESC calls upon the Commission to take the measures needed to improve the current rules and their practical application, to provide guidelines, to create a best practices compendium and where necessary – to examine the need to update and amend the package. The EESC expresses its concern about the reduction of the field of activities of SGEI.

Reviewing the first two waves of Member States' reports on the implementation of the SGEI package, the EESC notes with concern that they do not tackle the essential issue of compatibility requirements, a matter dealt with in depth by the Framework.

The EESC notes that in most cases, the lack of certainty or the substantial costs involved in fulfilling the requirements raise barriers that unduly prevent authorities from fully implementing SGEI policy. Such hindrances acutely affect regional and local authorities, as the dialogue between the Member States and the Commission on State aid cases is undertaken by central government, while other administrative levels do not enjoy direct access to this process.

The fact that only a handful of SGEI at regional or local level are reported (according to the above study) shows that the lack of

direct channels with the Commission hinders proper financing of public services, which makes the appropriate authorities more reluctant to make full use of the Decision and to clear up doubts regarding its implementation.

### EESC recommendations

The EESC calls on the European Commission to examine the possibilities of upgrading the Decision and of extending its scope, in order to address the following elements:

- The EESC suggests that the Commission remove the exemption threshold and include all SGEI in the Decision, regardless of the yearly compensatory amount. Careful study of its current implementation proves that this will reduce the administrative costs and complexities that authorities would otherwise face, in particular at local level, without distorting the competition in any way.
- In the light of the labour market and ever challenging skills mismatches, the EESC calls on the Commission to examine the possibility of broadening the scope of the Decision, by considering eligible services provided in order to enhance people's knowledge and qualifications and thus help them improve their job prospects.
- The EESC calls on the Commission to examine carefully and perhaps to amend the particular texts of the Decision, mainly related to: the time-limit for keeping records of all the information necessary to determine the compatibility of the compensation granted; clarifying that entrustments' time limit should not have any material effect on their renewal or extension or on the eligibility of service providers running the remit; setting a readily available method for calculating reasonable profit; providing further clarification when addressing the requirement of sharing productive efficiency gains between the undertaking; ensuring a more flexible

approach to minor overruns not exceeding 10% of the yearly average compensation exempting them from updating the parameters.

• clarifying further the alternative ways of calculating these incentives, whose use should not be binding, given the complexity involved.

The EESC finds that further clarification is needed of the conditions of compatibility under the Framework, related to:

- further specifying the alternative ways of meeting the requirement for ensuring compatibility in accordance with Article 106(2) of the Treaty on the Functioning of the European Union (TFEU) that are already widely used in its practice;
- avoiding mandatory requirements that might encroach on national law-making procedures, creating unwarranted problems;
- taking due account of the new legal requirements as regards procurement and concessions in order to avoid inconsistencies between different elements of the EU's legislative framework;
- coupling ex-ante methodology with full use of the ex-post net cost calculation, unless the authority prefers to set the compensation as a lump sum at the time of entrustment;
- endorsing both approaches for calculating the compensation – Net Aggregated Costs and Net Avoided Cost – and provide further guidance on them in the Framework as it currently contains hardly any indication of how to establish the relevant counterfactuals;
- drawing a distinction between special or exclusive rights involving an advantage whose profit should be taken into consideration in financing public service obligations and universal coverage that involves a disadvantage for the designated provider;
- providing further clarification on profitability calculations and to allow the use of different standards rather than imposing a particular one on the Member States;