



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

STUDY



European Economic and Social Committee



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Study



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Foreword

In line with its programme, the EESC has initiated the conduct of a Study entitled "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" (Ref. N° CES/CSS/6/2016).

ESTAT Ltd., an independent research-based consultancy company in Bulgaria, has been commissioned the service contract to carry out the Study. The content of the present Study is thus in conformity with the requirements defined in the Call for Tenders and all annexes following the receipt of an Invitation Letter by the EESC to submit a tender. The Union acquires ownership of the results of the Final Study in accordance with Article II.13.1., whereas the modes of exploitation of these results are defined in Article I.10 of Service Contract N° EESC/CSS/6/2016/23157 between the European Union, represented by the EESC, and ESTAT Ltd.

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1. Introduction

The concept of Services of general economic interest (SGEI) appears in Articles 14 and 106(2) TFEU and in Protocol No 26 to the TEU and TFEU, but it is not defined in the TFEU or in secondary legislation. The Commission has clarified in the White Paper on Services of General Interest (COM(2004) 374) that “there is broad agreement that the term refers to services of an economic nature which the Member States or the Community subject to specific public service obligations by virtue of a general interest criterion. The concept of services of general economic interest thus covers in particular certain services provided by the big network industries such as transport, postal services, energy and communications. However, the term also extends to any other economic activity subject to public service obligations. Like the Green Paper, the White Paper focuses mainly, but not exclusively, on issues related to “services of general economic interest”, as the Treaty itself focuses mainly on economic activities.

In its Quality Framework for Services of General Interest in Europe (COM(2011) 900) the Commission modifies this definition, maintaining that SGEIs are economic activities which deliver outcomes in the overall public good that would not be supplied (or would be supplied under different conditions in terms of objective quality, safety, affordability, equal treatment or universal access) by the market without public intervention. SGEIs therefore play a vital role in the European social model by securing the provision for all citizens of key services in their day-to-day life. Public authorities ensure an adequate offer by enforcing obligations to providers in terms of “high level of quality, safety and affordability, equal treatment and the promotion of universal access and of user rights” (Protocol 26). This policy involves the reward of compensations to make up for the extra cost incurred whose state aid nature was subject to discussion in case law until the *Altmark Trans GmbH and Regierungspräsidium Magdeburg v Nahverkehrsgesellschaft Altmark GmbH (Altmark)* ruling in 2003.

In its judgment in *Altmark*, the Court of Justice held that public service compensation does not constitute State aid within the meaning of Article 107 of the Treaty provided that four cumulative criteria are met. First, the recipient undertaking must actually have public service obligations to discharge, and the obligations must be clearly defined. Second, the parameters on the basis of which the compensation is calculated must be established in advance in an objective and transparent manner. Third, the compensation must not exceed what is necessary to cover all or part of the costs incurred in the discharge of the public service obligations, taking into account the relevant receipts and a reasonable profit. Forth, where the undertaking that is to discharge public service obligations, in a specific case, is not chosen in a public procurement procedure, the level of compensation needed must be determined on the basis of an analysis of the costs that a typical undertaking, well-run and adequately provided with the relevant means, would have incurred in discharging those obligations, taking into account the relevant receipts and a reasonable profit for discharging the obligations.

The European Commission (EC) adopted on the basis of Article 106(3) TFEU the first SGEI framework, known as the *Monti-Kroes package*, in 2005, for assessing compatibility of these compensations grounded on part of *Altmark* criteria and previous case law and practice on Article 106(2) of the TFEU. In 2011 Commission decided upon the so called *Almunia package* updating its

SGEI framework and adopted Decision 2012/21/EU, providing a notification waiver for compensatory schemes meeting certain criteria.

Table 1: Main Changes in the SGEI Package

2005 Package	2011 Package
	Communication on the application of Art. 107
general <i>de minimis</i> rule applied: € 200.000 over 3 years	specific <i>de minimis</i> regulation: €500.000 of compensation over 3 years
Block exemption decision •Hospitals and social housing •Aid below €30M per year for providers with turnover below €100M per year •Annual approach	Block exemption decision •Hospitals and social services: "health and long term care, childcare, access to and reintegration in the labour market, social housing and the care and social inclusion of vulnerable groups" •Aid below €15M per year •Multi-annual approach •Entrustment act less than 10 years except if a significant investment is required
Framework •Compensation of all the net costs incurred by the provider •Annual approach	Framework •Compensation of the net avoided costs •Multi-annual approach •Efficiency incentives •Equal treatment •Control of serious competition distortions •Compliance with public procurement rules when applicable •Strengthened transparency
Action No retroactive action	Action Retroactive action

Thus, in practice the State Aid SGEI package consists of four instruments applicable, in case of possible state aid (non-relevance of the Altmark case law four criteria), to all authorities (national, regional, local) that grant compensation for the provision of SGEIs:

- The *Communication* clarifies basic concepts of State Aid which are relevant to SGEIs, such as the notions of aid, SGEI, economic activity, the relation between public procurement and State Aid.
- The *SGEI de minimis Regulation* provides that SGEI compensation not exceeding EUR 500 000 over any period of three fiscal years does not fall under State Aid scrutiny.
- The revised *Decision* exempts Member States from the obligation to notify public service compensation to the Commission, if the compatibility conditions of the Decision are fulfilled.
- The revised *Framework* sets out the rules for assessing SGEI compensation that constitutes State Aid and is not exempted from notification by the Decision. Those cases have to be notified to the Commission and may be declared compatible if they meet the criteria of the Framework.

In addition, in 2013 the Commission published *Guide to the application of the European Union rules on state aid, public procurement and the internal market to services of general economic interest, and in particular to social services of general interest*.

Both the Decision and SGEI Framework impose on Member States reporting obligations covering experience over the last two-year period. The EC published on September, the 8th, 2015, the reports covering the 2012-2014 period. These are obliged to contain data relating to the compensation exempted from prior notification to the Commission (Article 2 of Decision 2012/21/EU) and the compensation subject to prior notification requirement (under Section 7 of the Communication).

As the review of State aid policy is one of the EESC's priorities, the EESC has initiated the conduct of a study entitled "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". ESTAT Ltd., an independent research-based consultancy company in Bulgaria, has been commissioned the service contract to carry out the study.

2. Objectives and Grounds for the Study

The main objective of the study is to provide an in-depth appraisal on experience in implementing the Services of General Economic Interest (SGEI) rules and procedures, with a view to assessing the existing framework and putting forward initiatives on enhancing its effectiveness in the incoming process review of this policy. In line with this objective, the Study examines the main aspects of the state aid provision of services of general economic interest in the MS of the European Union, on the basis of the 2012-2014¹ and 2015-2016² Country Reports as well as other relevant background information on the application of *Almunia package*. Desk research is used as a leading research method within the framework of the current study, as confirmed by the EESC's needs. Nonetheless, desk research exercise is complemented by a case study on the Universal Postal Service (UPS) in France, Italy and Bulgaria. The relevance of all the collected information is assessed vis-à-vis the issues of legal certainty and clear guidance, correspondence with SGEI needs, compensation and public procurement challenges, as well as other MS difficulties in granting aid.

Effective implementation of the SGEI rules and procedures is EESC's policy priority area. The concrete grounds for the study are the following: (1) Commission consultation procedure during the first half of 2014 on the notion of state aid under Article 107(1) TFEU³; (2) the consultation procedure on drawing up a proposal to extend the General Block Exemption Regulation (GBER)⁴, under which certain investment aid for ports and airports is to be exempted from prior state aid assessment by the Commission; (3) the Commission's intended review of the *Almunia package* and revision of the regulation on de minimis aid for SGEIs, which is due to expire.

¹ http://ec.europa.eu/competition/state_aid/public_services/reports_2012_2014_en.html

² http://ec.europa.eu/competition/state_aid/public_services/reports_2015_2016_en.html

³ http://ec.europa.eu/competition/consultations/2014_state_aid_notion/index_en.html

⁴ http://europa.eu/rapid/press-release_IP-16-622_en.htm

3. Methodology

The methodology of the Study combines qualitative and quantitative analysis of the available data, information and literature. The most important data is based on 27 Member States reports for the 2012-2014 period published by the EC on 8 September 2015, as they represent first structured fulfilment of obligations in the sphere of SGEI with the Almunia package. The review also includes the Member States reports for the 2015-2016. Where relevant, the additional contextual and other information is included. The case study allows a more detailed examination of the legal framework and its key implementation issues. Based on the 6 targeted interviews with approved questionnaires presented to appropriate stakeholders, and specific country expertise (for three Member States), key implementation issues are extracted, which would not have been possible only reviewing MS reports.

Table 2: Main Methodological Issues

Phase	Methodology	Output Item
Phase 1: Systematic review and synthesis of Member States' reports		
Review methodology and synthesis	<ul style="list-style-type: none"> ○ Formal check as to the completeness of information provided in the report and its compliance with the requirements of Article 9 of the SGEI Decision and paragraph 62 of the SGEI Framework ○ Identification of the different categories of services applied during the period ○ Number of individual SGEIs for which State aid was provided in the Member State by type of SGEI and total number of SGEIs supported through State aid ○ Forms of entrustment applied by the Member States – total number of forms applied, types of forms and most frequently applied forms ○ Compensation mechanisms, including the exact aid mechanisms applied (direct subsidy, guarantee, etc.) by the Member States – total number of compensation mechanisms, types of mechanisms and most frequently applied mechanisms ○ Identification of the type of methodology applied for calculation of the compensation – methodology based on the cost allocation or based on net avoided cost ○ Identification of information on arrangements applied by the Member State for avoiding and repaying any overcompensation ○ Calculation of the amount of State aid provided by type of SGEI ○ Calculation of the total amount of State aid 	Excel Spreadsheet Annex 4 (summary table)

	<p>provided for all reported SGEIs</p> <ul style="list-style-type: none"> ○ Qualitative information on difficulties with the application of State aid rules for the provision of SGEIs ○ Number of complaints by third parties reported and, if relevant, nature of the issues giving rise to the complaint. 	
Analysis	Study Questions (as per technical specifications)	Study
Phase 2: Review and synthesis of additional secondary sources of information		
Review and Synthesis Methodology	<p>The layout of the spreadsheet includes the source and the essence of the contribution, with items such as institution, author's name, date of publication, publishing body included where possible.</p> <p>The sources used are divided into policy and academic, due to the different methodology, identified interest or critical standpoints with regard to the above-mentioned key areas of analysis that are covered by the Study.</p>	Excel Spreadsheet
Analysis	Study Questions (as per technical specifications)	Study
Phase 3: Case Study		
Questionnaires	Interview guides for in-depth (structured) interviews	Annex 3
Interviews	NRAs and USPs in France, Italy and Bulgaria	Voice Recordings ⁵
Analysis	Study Questions (as per technical specifications)	Case Study

In this context, it has to be noted that ESTAT Ltd. has no authority to determine actual compliance with the requirements of Article 9 of the SGEI Decision and paragraph 62 of the SGEI Framework. The review only discusses overall compatibility of the information provided with the reporting obligations. Additionally, aspects of the information in the reports rely upon assumptions that are not stated explicitly, and therefore it might be possible that the reporting effort is underestimated. Annex 4 contains a summary table with key figures per country and per service reported for both sets of country reports, 2012-2014 and 2015-2016.

⁵ available at ESTAT Project database

4. Main Findings

4.1. Main Findings on the basis of the review of the MS reports

The formal check demonstrates that both the Member States and the Commission may be facing issues with the current system of reporting, perhaps indicative of implementation difficulties. Reports differ in terms of level of detail, method of presentation and coverage. Data sheets, extracts from legal documents and financial reports have been used directly or annexed (in national languages and currency⁶). Streamlining the process of reporting may require, for example, a simple electronic template with fixed compulsory elements in line with the corresponding legal texts and an open-ended section (with recommended size).

Aggregation of collected quantitative information has been performed (Annex 4), although the identified gaps and the compilation of compulsory and non-compulsory elements in the member states reports have not allowed gathering the quantitative information preserving a high-level of reliability and comprehensiveness. Similar shortcomings appear in the 2015-2016 reports, although an overall improvement in reporting is visible.

- **Reporting obligations**

The Member States' Reports 2012-2014 broadly follow the obligations under Article 9 of the SGEI Decision and paragraph 62 of the SGEI Framework. Yet, five of them fail to produce the information in the corresponding template and many others do not include tables or financial data. Many MS split their report according to the responsible authority.

- **SGEIs covered**

Only some Member States cover all main Social SGEIs: 12 MS report hospitals and health care; 16 report social housing and related facilities and 12 social services (childcare, elderly care, etc.). Only 3 report employment-related SGEIs and only 1 reports an education-related SGEI.

14 Member States report SGEIs for air and maritime links to remote areas (islands). 3 Member States report Universal Postal Services and 2 MS report Broadcasting even if there is no obligation to include this SGEI in the report. Water, sewage and waste disposal are reported by 2 Member States.

Amounts granted are directly linked to the provision of hospital and social housing services, the main areas that escape a ceiling in state aid provisioning. They are also closely related to the financial capacity of the Member States, Germany and France leading the rank of overall funding.

The limited number of SGEIs reported shows that, as a general rule, only those defined by national authorities are taken into account. The most common compensation mechanism reported is direct aid (grant), followed by compensations. The exact methodologies are rarely cited, but it can be inferred from the information included that still cost allocation methods are predominant. Most regional and local SGEIs fail to appear as a public remit.

⁶ The reports contain figures in national currencies, apart from euro, and official exchanges rates have been applied in cases of fixed rates (e.g. Bulgaria 1 EUR = 1.95583 BGN, Denmark 1 EUR = 7.46038 DKK). In cases of floating rates, 2012-2013 period averages have been used (e.g. CZK, HRK, PLN, HUF, etc.), rounded to the second decimals.

- **Entrustment**

In most cases, SGEI entrustment comes under a governmental act, notwithstanding the fact that they may adopt a contractual arrangement as regards the public service obligation to be fulfilled. This pattern may explain why so few local SGEIs are reported, as the corresponding authorities lack the ability to enact binding acts.

Uncertainties in setting-up any SGEI (including in cases of in-house) plus possible obstacles in running them explain why so few local authorities resort to them in delivering public remits. Even if the reports show few complaints or difficulties, it seems obvious that SGEIs possibilities fail from being exploited in full in the local sphere. The issue of local capacity building could be a reinforcing factor too.

4.2. Main Findings on the basis of the additional literature review

The initial review of Member State reports done by ESTAT Ltd. for the preparation of the study methodology shows that there seems to be a partial basis for producing adequate findings with respect to the overall implementation of the Almunia package. To supplement the information and achieve the specific objectives of the study, ESTAT Ltd. proposed to review, synthesise and analyse the list of additional documents included as secondary sources of information in Annex II of the Contract. During the desk research exercise, the ESTAT Ltd. research team has further expanded this list with relevant additional sources, especially research papers and policy positions of relevant stakeholders engaged with SGEI. They provide valuable insight on the challenges of applying state aid rules for the provision of SGEI and whether there is a necessity to revise the current set of rules provided by the Almunia package. The period predominantly corresponds to the member states reports period, to compare similar general economic and financial conditions in the EU and the Member States and preempt the legal changes in the GBER⁷ and public procurement framework⁸.

- **'Europeanisation'**

The term 'general interest' is often equated with the public interest and its equivalents in the member states. On a certain level of generality common features can be identified, such as that the provision of SGIs is subject to the decision and control of public authorities, which may themselves choose the specific tools for intervention. The goal of the single market, defined by the Single European Act of 1986, led to a gradual process of 'europeanisation' with regard to 'services of general economic interest' (SGEI)⁹, first mentioned in the Treaty of Rome, and at the time, limited in practice to the sectors of communication, transport and energy, that is the infrastructure networks considered as the elements facilitating the free movement of persons, goods, services and capital. This process has relied upon the shared competences between, on the one hand, European institutions and, on the other hand, Member States, including their regional and local authorities. Neither the sharing of competences nor the aims of services of general interest was clearly set up in the beginning, though.

⁷ The new General Block Exemption Regulation (GBER) sets out in 2014 the conditions under which R&D&I-aid (among other types of state aid) is exempt from the obligation of prior notification to the Commission ('block-exempted'). The new Framework for State aid for research, development and innovation (R&D&I Framework) contains rules for the assessment of R&D&I aid that is not eligible for block-exemption.

⁸ particularly Directive 2014/24/EU and Directive 2014/25/EU

⁹ Pierre Bauby, *L'europeanisation des services publics*, Presses de SciencesPo, Paris, 2011.

The European Union thus developed gradual liberalisation strategies for the sectors of services of general economic interest, based on the introduction of competition and market logic, but without defining in parallel the Community objectives and standards, which could have led to a common conception of the issue.

To restore the balance between liberalisation and objectives of general interest and to clarify the share of competences between the European Union and the national, regional and local authorities, starting in 1996, the European Commission began a process of cross-cutting reflection on all services of general interest, with two communications (1996 and 2000), a report (2001), a green paper (2003), a white paper (2004) and new communications (2007 and 2011), putting forward principles founding a Community of SGI . The latter crystallised in the Treaty of Lisbon:

1. The Member States (national, regional and local authorities) have the general competence to define, 'provide, commission and organise' SGI, as well as financing SGEIs.
2. The European institutions have the same competence for European services which prove necessary in order to achieve the EU's objectives.
3. As concerns non-economic services of general interest (NESGI), the rules of competition and internal market do not apply; NESGI are only subject to fundamental principles of the EU (transparency, non-discrimination, equal treatment, proportionality) in so far as they are considered as services by the Court of Justice, namely services provided in exchange of remuneration and where a market does exist.
4. As for services of general economic interest, public authorities must clearly define their "missions" and "particular task" (principle of transparency).
5. On that basis, they may define appropriate means for the proper accomplishment of the "particular task" (principle of proportionality), including, if it is necessary and proportionate, aids and subsidies, exclusive or special rights.
6. The Member States have free choice on the management mode: internal, in-house, delegated, etc.
7. These definitions should clearly establish the objectives of "a high level of quality, safety and affordability, equal treatment and the promotion of universal access and of user rights".
8. The rules of competition and the rules of the internal market apply only if they do not obstruct the performance, in law or in fact, of their particular tasks.
9. The Member States have free choice on the ownership of enterprises (principle of "neutrality").
10. In all cases, misuse can occur due to "manifest error", which the Commission can raise, under the control of the CJEU¹⁰.

The positive side of this approach is that it emphasizes the independence of EU law. The negative side refers to implementation difficulties, i.e. to need to formulate objective conditions for concrete member states' SGIs. On the definition of SGEIs the Court of First Instance in the BUPA case (Case T-289/03) held that "there is no clear and precise regulatory definition of the concept of an SGEI mission and no established legal concept definitively fixing the conditions that must be satisfied before a Member State can properly invoke the existence and protection of an SGEI mission, either

¹⁰ Pierre Bauby & Mihaela M. Similie, *Providing high-quality public services in Europe based on the values of Protocol n° 26 of the Lisbon Treaty on Services of General Interest*, 2012

within the meaning of the first Altmark condition or within the meaning of Article [106(2) TFEU].” Thus, the Member States can be considered neither encouraged nor discouraged to provide SGIs, whilst they are inclined to focus on the adaptation of national practices to fit the (ideal) concept or at least not to be in serious breach of the rules.

- **Complex regulatory and budgetary landscape**

Furthermore, SGI provision needs to be compliant with an increasingly complicated regulatory landscape. Secondary EU legislation and ‘soft law’ increases in number and importance, along with accumulating case law. The combination of state aid and public procurement requirements make it particularly challenging for Member States to ‘rethink and redesign’ the strategies for the provision and financing of social services. The adoption of ‘competition-based’ solutions or ‘market-oriented’ formulae for the provision of social services tends to imply the need to overcome a set of EU regulatory controls at different stages of the process. Such controls make it difficult for Member States to seek efficiency gains without resorting to the (private) market and, consequently, limit their strategies as soon as there is any type of private participation (generally, by means of financial transfers, acquisition of ownership or conclusion of contracts). Unless Member States rearrange their schemes for the provision of SGIs without any private participation whatsoever, EU economic law generates a complex system of EU rules and principles that may impose significant challenges for central governments, and even regional and local authorities.

In 2011 the Stability and Growth Pact introduced a more comprehensive and predictable framework with a major enhancement of the EU’s economic governance rules through a collection of new rules, known as the Six Pack¹¹. The monitoring of both budgetary and economic policies is organised under the European Semester and further details on the implementation of the SGP’s rules are laid down in a ‘Code of Conduct’ (last revised in September 2012). Thus, the boundary between economic and non-economic activity has become even more significant in periods of budgetary restrictions, liberalization pressures and ensuing state expenditure cutbacks. New public management (NPM) concept has also gained popularity. Member states have had to re-think public services, either provided by the state, in-house, or by non-state actors and new hybrid bodies. It is acknowledged that a body may be exercising public powers and not be engaged in economic activity, but it may also offer goods and services on a market (Pavlov, C-180/98 to C-184/98) and engage in economic activity, triggering the application of EU economic law. Non-economic activities are regulatory tasks, supervisory tasks, but also activities based on all-encompassing solidarity and other basic functions of the State (e.g. state education, customs, air safety and detainment). Nevertheless, markets already exist for formally core state activities (e.g. postal services), or co-exist with state functions in the forms of public-private cooperation.

At stake for the purposes of EU law is the question of whether the non-economic and economic activities can be separated (severability). The ‘marketization’ may have blurred the boundaries of EU law, but, at the same time the Treaty of Lisbon 2009 has constitutionally entrenched a boundary between economic and non-economic activities in Article [14 TFEU], where a distinction is made between SGEI and non-economic services of general interest (NESGI). EC guidance and litigation on the determination of the boundary of economic and non-economic activity reveals that Member States

¹¹ <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1412158671390&uri=URISERV:ec0021>

must obey the functional approach towards the identification of activities and may not simply use the 'public interest' as a justification to intervene in competitive markets, where such exist. To what extent Member States are or should be incentivized to promote competitive markets in areas such as healthcare and social service provision is a separate topic.

Questioning economic activity directly affects the concept of undertaking as 'every entity engaged in an economic activity, regardless of the legal status of the entity and the way in which it is financed' (Höfner, C-41/90). The ECJ reiterates its case law on the nature of economic activity and an undertaking, and, citing SELEX ruling (C-113/07 P), discusses the severability of economic activities from public duties: if an economic activity could not be separated from the exercise of its public powers, the activities exercised by that entity as a whole remained activities connected with the exercise of those public powers. The possible check for economic activity based on 'whether such activity may be carried out at least in principle by a private enterprise for profit' is also misleading. Arguably, depending on bundling for example, any activity may be carried out for profit. In addition, the state subsidy itself could be precluding competition (e.g. libraries, opera, theatres, etc.). Simultaneously, the mere fact that private operators are already offering a service does not mean that, if the State carries out the same or similar activity, this activity automatically has to be considered 'economic' in nature (Case C-138/11). This should be judged rather on the kind of activity concerned, considering also the context in which it takes place. The state does not forgo the right to carry out a task, which is 'public authority' in nature, by acting at a point in time when private operators - perhaps due to a lack of action by the state - have already taken the initiative to offer services to the same end. Vice versa, the requirement to pay for a service is not in itself a factor to re-define a public authority as an undertaking. It is the not-for-profit function and the legal obligation to provide most services without (full) payment by the consumer that determine that there is no economic activity to categorise the provider as an undertaking.

The Framework dwells in detail with the different requirements for ensuring compatibility following Article 106 (2) of the Treaty and case law interpreting it. While it provides ample reasoning on the criteria followed by the Commission, it often adopts an overcautious stance that raises unnecessary problems and feeds into some degree of uncertainty. Making specific references to the already existing pragmatic solutions would increase legal certainty and effectively reinforce equal treatment while preserving the principle that each case should be examined on its merits.

- **Difficulties related to SGEI rules**

The Study has identified the following issues within SGEI state aid rules as causing practical concerns, affecting implementation and even leading to unpredictability of results in certain cases:

- **Definitions**

- **well-functioning/typical enterprise**

In the Altmark case, the CJEU has practically created a possible alternative to procurement, based on what can be interpreted as the efficiency of the provider of the service and the least cost for the community. However, the Altmark judgment itself does not specify what constitutes a typical, well-run undertaking. As discussed above, the very nature of undertakings has been assessed dually. The very concept of typical, well-run undertaking has been criticised for being virtually impossible to accomplish in practice, because it is introduced exactly for cases of lack (insufficient functioning) of markets and competition, i.e. by default there is lack of comparable undertakings that could be used as

benchmarks. The Commission has examined the issue on a case-by-case basis. It is still generally considered that choosing the right undertaking for the benchmarking can, depending on the market concerned, be a very difficult exercise.

- **reasonable profit**

Compensations may include a reasonable profit, defined as "a rate of return on capital that is normal for the sector in a given Member State taking into account the risk, or absence of risk, incurred by the public service operator by virtue of public authority intervention".

It appears that some Member States have not used this possibility for fear of being in breach due to the complexity of calculating this reasonable profit, while the Commission has been inclined to accept balanced proposals brought forward. As a consequence, the few case-specific profit benchmarks visible from the case law do not necessarily reflect the maximum profit the Commission would have accepted had the Member State set the benchmark at a higher level. The Commission has applied both capital-based (such as ROCE) as well as sales-based (such as ROS) profitability indicators, even though the SGEI Decision and Framework show a preference for assessing the profit on the basis of internal rate of return (IRR) on capital employed in the provision of the SGEI in question. It is requested in country reports 2012-2014 that there should be additional guidance on reasonable profit, in particular to reflect the fact that such profit is often reinvested in the SGEIs themselves.

- **purely local impact**

The simplification efforts have brought about the dilemma of local services and local impact. The Commission has in a number of decisions considered, in view of the specific circumstances of the cases, that the measure had a purely local impact and consequently had no effect on trade between Member States. In those cases the Commission ascertained in particular that the beneficiary supplied goods or services to a limited area within a Member State and was unlikely to attract customers from other Member States, and that it could not be foreseen that purely local interventions would have more than a marginal effect on the conditions of cross-border investments or establishment. Nonetheless, the terminology 'it could not be foreseen' has received criticism as to whether it creates an implicit test of 'significant probability'. Yet, according to well-established case law even the mere possibility that a third party from other Member State might establish itself in the same market would imply that intra-Community trade is affected. The additional layer of thought concerns whether local impact in terms of SGEI rules conflicts with lack of cross-border interest in procurement, the example being the investment aid to Lauwersoog port vs. the slipway in Comune di Ancona directly awarded to local fishermen cooperative (C-388/12).

- **manifest error**

In line with this case law, the Commission already in the past underlined that SGEIs are economic activities, whereby the Member States are subject to specific public service obligations by virtue of a general interest criterion. These obligations may stem from market failure, under-provision of services or provisions not at conditions considered as satisfactory¹². Therefore, outside sectors where the definition of SGEI is affected or otherwise constrained by EU law (e.g. sector specific Directives), Member States' discretion to define SGEIs is subject to verification by the Commission to check for

¹² SGEI Communication

the absence of manifest error. The Commission itself exercises this competence under the control of the Union Courts¹³.

- **Scoping**

The analysis in the present Study shows that there is considerable uniformity in the definition of particular SGEIs and divergence in others. The differences in scope relate to: (1) the actual definition of the service (see above); (2) the institutional arrangements; and (3) the distribution of responsibilities among national, regional and local authorities. Taking hospitals as an example, since nearly all member states have reported SGEI in line with Article 2(1) b. Firstly, there are substantial differences in the way governments ensure access to hospital and auxiliary services. One of the major differences between countries is the purchaser of healthcare. In countries (e.g. Czech Republic, Netherlands), the health care financing is allocated to insurers, while in other countries (e.g. Spain, Bulgaria, Poland) it is the government or a health fund controlled by the government that practically purchases care. Secondly, even in countries with a major role for financing directly by the state, the ownership of the hospitals, the distribution of functions between level of government, the legal framework for access to healthcare differ. Funding of ancillary services to healthcare schemes has also given rise to questions. Finally, the Member States vary in the degree of competition in healthcare sector. Systems with higher level of development of private healthcare are more likely to prompt complaints (e.g. France, Germany, Italy and Belgium). Elsewhere (e.g. in Spain), there is an established charter for common National Health System services, which provides SGEI support for private hospitals that form part of the public service network, covering health services for National Health System users.

- **Financing mechanisms**

The analysis shows that governments use a number of instruments to support SGEIs. Besides public production and sector regulation, the State aid, especially through financial support stands as the basic intervention, “direct funding” or “direct subsidy” being the main support mechanism. This intervention may take various forms ranging from budget contributions to a long-term investment scheme. Other financing mechanisms, such as guarantees and soft loans are less common.

- **Competition**

The country report analysis shows that from the limited the number of (formal or informal) complaints reported the possible anti-competitive effects of public funding to hospitals is predominant, thus reflecting its share in overall funding. Thus, no general conclusions can be drawn.

- **Public Procurement**

The new 2014 procurement package only applies, according to Article 1 (2) of the Procurement Directive to acquisitions by the awarding authorities and cannot ground any binding discipline on SGEIs. Applying the principles of transparency and equal treatment of course remains relevant. The only relevant reference in this Directive targets the in-house provision, namely the tasks performed by an undertaking on behalf of its controlling awarding authority, subject to certain conditions. As Article 12 of the Directive excludes these in-house relations from its scope, SGEIs cannot fall under this procurement regime. When the SGEI stems from a legally binding act, imposing on the provider

¹³ Case T-17/02, *Fred Olsen v Commission*, [2005]; Case T-289/03, *BUPA v Commission*, [2008]; Case T-309/04, *TV2/Danemark v Commission* [2008]; C-290/07 P – *Commission v Scott*, [2010].

on a mandatory basis public service obligations, the lack of any autonomy of will on behalf of the provider implies that no contractual relation is entered.

Controversies over this issue rarely arise between the Member States and the Commission. But local and regional authorities contest in the Committee of the Regions the use of other disciplines outside the scope of Article 14 TFEU (“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”) considered as the legal basis for SGEIs thus providing a proper legislative procedure and consequently more legal certainty and democratic legitimacy.

○ **Concessions**

The 2014 package also introduces rules on concessions for the first time. But considering SGEIs could come under this discipline would be highly misleading. Concessions imply that undertakings take up all the risk once the award is performed in sharp contrast with SGEIs where the authorities cover the extra costs involved in running the service, thus minimising risk. Only in cases where the authority chooses to submit a particular SGEI to concessional treatment, this discipline would apply. As a general rule, as the designated provider would bear a risk, no state aid considerations would emerge. On legal grounds, the Framework can only call on the Member States to implement, where applicable, the principles of transparency and equal treatment for selecting providers, especially private ones. But no binding obligation could be attached to this invitation.

Potential difficulties related to SGEI rules

Guidance (from the Commission) is presumably welcome concerning compatibility with the internal market, simplification, interactions with public procurement, appropriateness and proportionality of aid. The following issues however have been mentioned also in the context as to whether at all they fall within the scope of Commission responsibilities:

• **Quality issues**

The level of compensation sought depends on the level of quality of the service required. It is in the responsibilities of the Member States to define the SGEI and the level of quality of the service, affordability, continuity and access. Member States also enjoy the power to decide accordingly whether ensuring those standards requires a public service in the first place. Quality standards and factors affecting the cost calculation however substantially differ among the Member States even for the same type of SGEI. Thus, the references under point 13 of the Framework (COM(2011) 900) to the conditions that public services should meet can be seen as useful guidance.

• **Targeting**

Protocol 26 focuses on the essential role and wide discretion of national, regional and local authorities in providing and organising services of general economic interest (SGEI) as closely as possible to the needs of the users; the diversity between various SGEI and the differences in the needs and preferences of users; and a high level of quality, safety and affordability, equal treatment and the

promotion of universal access. Housing Europe¹⁴ and CEEP¹⁵ contest the limitation to ‘disadvantaged citizens or socially less advantaged groups’ in the case of social housing on the basis of clash with the subsidiarity principles. The latter mentioning of target groups is criticized on the basis that it is: in conflict with Member States’ competencies, and arbitrary, as no other service addressed explicitly in the SGEI Decision is linked to a specific target group. It is considered safe to discuss solvency constraints or special needs, but not particular target groups for the provision of social services, and concretely housing.

- **Efficiency**

Following Business Europe's reply to the public consultation on the Almunia package¹⁶, an efficiency analysis (test) would have a positive impact on trade between Member States, as it might increase tendering and eliminate possible distortions of competition. Additionally, this option would encourage public authorities to give greater consideration to optimising cost effectiveness in the provision of SGEI and to focus on sustainability. This is in line with the BUPA case, whereby, along with the core issue, it also becomes clear that the Member State should not fund inefficiencies. However, there are two layers of analysis. One, efficiency and quality are often intertwined, particularly in the case of social services that contribute to a social policy objective, in which case the quality of the provision is placed on an equal (if not higher) rank of importance to value for money. Two, even if strict budget discipline is high priority for both the Commission and member states, the question remains as to whether this should be done through competition policy, along with economic and fiscal policies.

In the latter context, the Bundesrat (in Germany) raises the problem of limiting the discretion of Member States if greater emphasis is placed on quality and efficiency aspects. The institution argues that these aspects fundamentally do not fall within the Commission's competition and trade competence. The Bundesrat also argues that compliance with the first three Altmark criteria alone usually rules out any distortions on competition. On balance, this option may be considered to impact too much on Member States' discretionary power to define the scope of their mission of general interest, to determine whether non-measurable tasks give rise to additional costs, to choose the provider and to assess the quality of the service.

In any case, assessing efficiency directly requires in-depth economic analysis which would give rise to increased administrative burden and costs, for both the Commission and the Member States (central government, but often also regional and local governments). Requiring **efficiency incentives**, however, as Commission has confirmed, could be in line with the fourth Altmark criterion and at the same time offer a high degree of flexibility for Member States in designing the incentives.

The Decision national reports offer few clues on the real problems SGEI face. Therefore, ESTAT has undertaken a thorough examination of the Framework rules offering a comprehensive explanation of the compatibility requirements applicable to SGEIs and some of the most relevant cases in the Commission practice. This Case Study on postal services (see Chapter 4) has facilitated useful information on one of the main SGEI sector with more than 15 decisions and the unfolding of

¹⁴ March, 2016

¹⁵ December, 2016

¹⁶ Position Paper, 2011

complex issues involving the Net Avoided Costs methodology, as well as the notion of reasonable profit or that of efficiency.

The findings also cover the debate on the application of the Altmark ruling from a practical perspective. While there is a need for further clarification, the Commission enjoys limited powers in this field as it cannot interpret the Treaty, a realm exclusively reserved to the Court of Justice. Nor can it have the final word on declaring the non-existence of aid, as its conclusion in this area can be challenged before the European or any national Court.

Finally, these findings also dwell with more general topics such as the link between the EU rules and the drive for privatization as well the intrinsic problems in terms of financing and governance that SGEIs face on a national level.

4.3. Main Findings addressing the study questions (as defined in the technical specifications)

The Study attempts to formulate objective and relevant findings stemming from all activities performed within the framework of the present contract. The findings address the study questions as defined in the technical specifications.

1. Do the current SGEI rules foster the provision of public services? Do they provide clear guidance and legal certainty? List the main difficulties encountered.

The SGEI Decision seems to strike the right balance between the need to foster and support SGEIs and the objective of preventing potential distortions of competition. Exemption from notification reduces the administrative costs and complexities that otherwise would face the authorities, in particular at regional and local level. Moreover, the compatibility requirements are more flexible than the ones imposed by the Framework, although this is mostly recognized at central level only. If the entrustment does not necessarily entail implementing procurement rules, if calculating the compensation does not exclusively involve the NAC approach, and if efficiency does not stand as mandatory, but the focus is efficiency incentives, then the implementation appears to run smoothly. As treatment of SGEIs non-eligible for the Decision face stricter and highly demanding rules, only cases raising particular concerns for competition should fall outside its scope, meeting the goal of concentrating resources at EU level for the scrutiny of those aids. Efforts to improve the current rules could thus increase the threshold substantially and include all social SGEIs meeting social needs, as far as the Court of Justice considers them an economic activity, in order to foster provision. The Decision could also ensure full compatibility with higher ranking Community Law and avoid undue burden for regional and local authorities.

Paragraphs 5, 7 and 8 of Article 5 governing 'reasonable profit' should set a readily available method for calculating it. Currently, it follows the same pattern as the Framework including many methods that prove far too complex for a local SGEI. This complexity discourages the use of such profit when calculating the compensation and may explain the frequency of underfunding. Clarification on this issue could run in the direction of possible use of comparable samples using official or private data sources, widely recognised as fully representative and supported by solid methodology.

2. Are requirements on definition and entrustment adapted to SGEI needs? e.g. does the 10-year standard entrustment period give rise to particular problems and/or concerns?

One of the main issues raised in the application of the 2005 package was insufficient compliance with the rules¹⁷. SGEI needs could have been adequately reflected, but in many cases, public authorities or SGEI providers simply failed to recognize whether the compensation granted qualifies as aid, and if it does not, whether it complies with the 2005 Decision. By requiring in the Almunia package public authorities to include a reference to the Decision in the entrustment (similar to GBER) an important "grey" area is removed as authorities need to ask themselves whether the compensation involves State aid or not. This has improved transparency and compliance with the rules. There are difficulties however with adapting to SGEI needs. Knowing broad coverage and key compensation parameters, especially revenue, in advance is considered extremely difficult or even impossible by some Member States and the practices of cost reimbursement and other ex post compensatory mechanisms remain in place. The most striking examples concern ex post deficit coverage in the hospital sector. The 3-year principle has also raised concerns or has even been breached in specific cases.

The 10-year standard entrustment period has been mentioned as problematic in certain cases, especially where the sector or the specificities of the national situation require long-term commitment, infrastructure improvements or larger investment decisions with unpredictable risk calculations and thus some Member States have had concerns as to the availability of potentially interested private parties. The possibilities in cases of in-house, public-public cooperation or public-private partnerships appear as particularly interesting for Member States with developed administrative systems. The maximum of 10 years is interpreted as preventing entrustments exceeding the time limit (except in cases of investments justifying longer periods), the wording of the Decision might imply that undertakings running for a longer time span might fall outside the scope. This issue is particularly sensitive regarding publicly-owned providers, solely or predominantly concentrating on the particular service provision.

3. Do the public procurement rules and requirements, in particular the SGEI provision on the issue, create particular challenges for designing SGEI entrustments and designating the providers? To what extent can such a requirement be met by Member States without undue burden or restrictions?

The predominant view that emerges relates to the understanding that tendering or even concessions procedure conducted in line with the relevant EU law requirements should be regarded as a sufficient means for excluding the existence of state aid, given the requirements of transparency and equal treatment. As regards the choice of award criteria, some Member States and SGEI providers consider that the standard of 'provision of the service at the least cost to the community' should be interpreted as being fully in line with 'the most economically advantageous tender'. Tenders have to include the six criteria of Protocol 26: "high level of quality, safety and affordability, equal treatment and the promotion of universal access and of user rights". This approach seems fully in line with procurement rules as once the criteria are fixed on an objective basis, the authority is bound to award the tender to the best offer.

¹⁷ e.g. Commission Staff working paper on the application of EU State Aid rules on SGEI since 2005, published on 23 March 2011

Significant distinction in the SGI context refers to economic and non-economic, and whether there can be a market or competitive environment for the services concerned. Difficulties arise out of the fact that certain SGEIs are organised in a very different manner across the EU. Another issue is that the broad interpretation of SGEI is related to the broadly understood concept of state aid or rather with the practical issue of compatibility. Consequently, the framework of practices in one Member State does not necessarily mean that the same categorisation applies across the EU as a whole. Member States and other parties in the process thus would welcome further guidance, on the general principles and criteria for distinguishing between economic and non-economic activities, compatible and non-compatible activities, for the purposes of applying fairly and equally the state aid rules.

4. How do public authorities tackle the need to draw ex ante the parameters for compensation? List the difficulties encountered in meeting this requirement.

Article 4 of the SGEI Decision requires that the SGEI be entrusted to the undertaking concerned by way of one or more official acts, setting out, inter alia, the nature and duration of the SGEI obligations, the parameters for calculating, controlling and reviewing the compensation, and the arrangements for avoiding and repaying any overcompensation. The public authority thus needs to define the nature of the public service obligations and the agreed reward well in advance. Along with overall predictability of the results in specific cases, this element of the SGEI provision (the ex ante parameters for the compensation) could be identified as the core difficulty in the legal framework, and possibly the root of implementation divergence and potential insufficient compliance with the rules. The revenue and 'reasonable profit' calculation constitutes one layer of difficulty. The other layer stems from incentives and assessment of legal breach risk. Basically, the relations between public authorities and service providers, fall within a larger, medium to long-term framework fostering flexibility, except of course in cases of annual provision and under strict public procurement procedures. Simultaneously, there exists in practice a lack of procedure for immediate reimbursement. The principle provisions only allow 'a limited amount of overcompensation' to be carried forward to 'the following year'. Even if the provisions as to carrying forward overcompensation from one year to the next differ slightly, the principles of regular checks to prevent overcompensation and limited possibilities of carry-over apply in both the SGEI Decision and the SGEI Framework. The existence of the requirement for regular checks to avoid overcompensation leads to what can be called 'negligible' attitude of some public authorities to the ex ante the parameters for compensation. In other words, as the latter are both difficult to establish objectively in advance and regularly checked under any circumstances throughout the period of service provision (and corrected based on actual parameters), the exact methodology hardly risks being incompliant eventually and deserves only formal treatment. Good practices nonetheless exist in Member States with detailed ex ante methodologies in line with requirements and applied in practice not based on the possibility to apply corrections and perhaps their approach should be publicised, spread more widely and encouraged. Alternatively, the incentive structure could be altered together with clear sectoral methodological guidance, specifically related to the parameters for compensation and ex ante avoidance of overcompensation.

5. How do public authorities meet the requirement to avoid and replay any overcompensation? List the problems.

As already discussed, most Member States have reported the existence of mechanisms of avoiding overcompensation, which are applied throughout the whole period of the service provision and even after the expiration of the contracts or the obligations. The information from reports demonstrates a wide variety of practices which do not differ substantially from normal state budgetary controls. Public expenditures are monitored regularly, often evaluated externally. There is a high number of reporting obligations, accompanied by detailed accounting standards, verification mechanisms, procedures for audit and control, administrative and on-the-spot checks. Separate accounting and cost reporting has been practiced consistently in most Member States. Apart from these general practices, other main methods of avoiding overcompensation are pre-established ceilings or fixed shares of cost covered and detailed repayment, reimbursement procedures, sometimes directly inserted in the contractual terms or in the entrustment decision. 'Reasonable profit' has been excluded per se in some member states in order to avoid possible issues in calculating it.

Article 6.2 of the Decision provides that overcompensations should trigger an update of the parameters for the future. Nonetheless, those not exceeding 10% of the yearly average amount can be carried forward to the next period. Full consistency would justify no updating of the parameters in the latter case, avoiding a reappraisal that involves legal uncertainty for designated providers in cases failing to affect competition. The Commission could ensure a more flexible approach for these minor overruns not exceeding 10% of the yearly average compensation.

6. Do public authorities face particular difficulties in granting aid through guarantees or soft loans? To what extent do SGEI rules discourage such compensatory schemes?

Owing to the varying experience, practices and situations caution is needed in gathering and interpreting data concerning guarantees and soft loans. In cases of grants and tax exemptions the aid element is equal to the amount of aid granted or its equivalent. However, for soft loans and tax deferrals the aid element is lower than the capital values of the aid and although this is justified, the calculation and overall administrative difficulties seem to discourage such compensatory schemes in the framework of the SGEI rules. Where a Member State fails to provide the aid element, a proxy of 15% of the total amount lent by the government is estimated (compared with 33% before 1995). This downward adjustment is explained by the lower level of the aid element that results from generally lower rates of interest in Member States when compared with previous periods. Where a Member State does not indicate the reimbursement ratio in case of a reimbursable advance, the aid element is estimated to be 90% of all advances as the repayment ratios are shown to be very low on average.

Guarantees are reported in a number of occasions, although it cannot be confirmed that the relevant Member State authorities have connected all guarantee cases with the SGEI reporting process. The aid element is nonetheless expected to be lower than the capital value guaranteed. Where the exact amount of the aid element is not available, the losses to the government are estimated. Where only the capital value guaranteed is available, the aid element is estimated to be 10% of that value.

Equity participation possibilities have also been largely ignored for both providing and reporting. In line with established Commission policy, such interventions constitute aid when a private investor operating under normal market conditions would not have undertaken such an investment. This method is based on calculating the benefit of the intervention to the recipient. Equally, difficulties

have been identified regarding the determination of the gross equivalent compensation in kind in performing a SGEI referred to in Article 2(1)(b-c) of the SGEI Decision. In certain cases only depreciation is considered, while others also take the costs of major maintenance and in exceptions also current maintenance. Practices vary both among individual providers and among specific fixed assets, which are often procured through a combination of public funds and the provider's own funds, including donations. For this reason practically no Member State has included gathered data on this compensation in kind for the purposes of the 2012-2014 reports.

7. Do Member States face difficulties in applying compatibility method based on net avoided cost? Does coping with the need to set up a counterfactual scenario involving the absence of public services obligations implies any special difficulty? Do Community rules provide enough guidance on this critical issue?

It cannot be concluded on the basis of the reported information that the net avoided cost (NAC) methodology is applied either widely or consistently. Coping with the need to set up a counterfactual scenario involving the absence of public services obligations implies a serious difficulty, often as the cases concern not typical market/competitive environments. Some Member States have directly requested guidance or other form assistance on this critical issue. The Case Study elaborated within the current contract aims to establish in detail the difficulties in applying compatibility method based on net avoided cost, which is the main reason for selecting the postal services in three EU Member States. The case study on a broadly homogeneous service provides further findings on the way Member States cope with meeting the rules and the ways for the European Commission to enforce SGEI discipline. The case study is based the targeted interviews with selected stakeholders from both NRAs and postal service providers.

4.4. Main Findings addressing controversial issues arising from EU rules

The Treaty calls on the EU Institutions and the Member States to foster SGEIs. Yet, a full-ranging debate puts into question whether the current Community rules contribute to such goal. Furthermore, some critics even point they might force authorities to privatise the provision of SGEIs thus undermining the neutrality principle enshrined in the Treaty. This part of the Chapter on Main Findings examines to what extent such claims seem warranted.

There are still major differences in the forms of organisation of SGEIs between member states. The common term SGEIs is not interpreted with reference to existing national preconceptions or situations, but as independent EU concept that a Member State may try to invoke with reference to the existence and protection of an SGEI mission, either within the meaning of the first Altmark condition or within the meaning of Articles 14 and 106(2) [TFEU]. Thus, the Member States are neither encouraged nor discouraged to provide public services, whilst they are inclined to focus on the adaptation of national practices to fit the (ideal) concept or at least not to be in serious breach of the rules.

The combination of increasing secondary EU legislation and 'soft law' instrument in the sphere of state aid with tightening public procurement requirements make it particularly challenging for Member States to 'rethink and redesign' the strategies for the provision and financing of SGIs. Guidance and legal certainty seem to function separately, as the clarification and simplification efforts introduce novel terms and categories, which if given the possibility for interpretation, in turn produce

dilemmas, lack of clarity and eventually legal uncertainty. Some sectors are additionally characterised by detailed sector-specific State aid rules or general EU regulation governing the degree of market opening and competition. This is, for example, the case in the transport, telecoms, postal and energy sectors. These sector-specific rules often either replace the general SGEI rules entirely or at least have an impact on their interpretation and application.

The reference between state aid law and the provision of SGEI often causes difficulty among public authorities as they undergo conflicting pressures. On the one hand, public bodies are obligated to guarantee the (continuous) supply of SGIs. On the other hand competition may not be distorted (either at the stage of entrustment or throughout), while the providers of SGEI may not be overcompensated. Furthermore, each Member State has the discretion to define which services fall under the SGEI, so the same service can be qualified in different way. The Member States also experience difficulties defining all relevant PSO parameters in advance even of the procedure itself, not knowing the provider (in competitive cases) for up to 10 year period duration of activities (and their actual costs) in dynamic political and economic environments.

Despite the difficulties outlined, there are hardly incentives for MS to oppose the current functioning of the overall system. MS seem to prefer minimal formal reporting and extended opportunities for bilateral case-by-case dialogue with the Commission. Uncertainties provide Member States with both an excuse and the liberty to attempt different strategies, while the Commission receives powers to work case-specifically and/or further improving the existing 'soft' legal set-up. More importantly, the MS receive an exit strategy from the tightening public procurement legal environment, leading to an area with larger scope for national discretion. The state aid process thus continues to take place only between the Member State and the Commission. The lower level of government and beneficiaries are not directly involved, although they have an interest in the outcome and they are the most valuable sources of information. The main sufferers of the lack of legal certainty remain the regional and local authorities and the public service providers.

Solving these shortcomings prove a difficult task, as according to the Treaty the dialogue should only engage the Member States, that is national authorities, and the Commission. Nonetheless, as implementation of most SGEIs take place at regional or local level the need arises to channel their concerns and doubts. Furthermore, the Commission should further clarify its rules through soft law aiming at dispelling many uncertainties and grey areas that prove a demanding hurdle for authorities other than national ones. This need appears all the most pressing as under the Decision authorities lack the opportunity of engaging into ex-ante dialogue with the Commission. Waiver from notification does not mean that SGEIs escape from the standard compatibility discipline.

5. Case Study

5.1. Context

The third postal Directive abolishes the letter monopoly, with effect from between 2011 and 2013 depending on the Member State, and creates a regulatory framework which guarantees citizens a universal service, while also limiting the extent to which Member States may choose to restrict access for economic operators. Annex I of the third postal Directive is particularly important in the context of State aid, as it sets out a new calculation method for the costs which may be compensated. Unlike the SGEI Framework, which is based on full cost allocation, the Annex I methodology only allows compensation for the **net costs that would have been avoided in the absence of the universal service obligations** insofar as these net costs constitute an unfair burden for the postal operator. The Directive requires an assessment of what service would be provided, and what costs a provider would incur, **in the absence of an SGEI entrustment** (the counterfactual scenario). It also foresees a range of different ways for these net costs to be compensated when they constitute an unfair burden, not all of which would constitute state aid. In this connection it has to be noted, that the Postal Directive is not based on article 107-109 TFEU and therefore cannot derogate to state aid rules but just create additional requirements. However, for the purpose of state aid assessment the application of Annex I of the Postal Directive (regarding the methodology to calculate the net cost of the universal postal service) can be relevant.

Commission has taken 15 decisions concerning postal operators in a period of five years. As regards SGEI in the postal sector, the Commission's decision-making practice has been guided by one principal theme. USO providers (incumbents) should not be put at an advantage in competitive markets by overcompensating them for the costs of the USO or through other measures. Commercially viable postal services should not benefit from cross-subsidies¹⁸. Targeted public financing can, however, be accepted to cover the (net) costs of universal service provision. The calculation of these costs has so far followed the methodology of the SGEI Framework, but this has changed with the entry into force of the third postal Directive in 2011. The Commission has **approved substantial aid** to postal incumbents for the provision of universal services in, for example, in France and Italy¹⁹. In addition, a significant number of cases involve services provided by the postal incumbent falling outside the postal sector or the network of post offices (as distinct from the collection and delivery operation covered by the monopoly). This is the case of Italy²⁰ among other cases. It is notable that the cases which have been assessed so far involve only nine Member States. Many Member States have relied on the traditional postal (letters) monopoly to finance their postal operators. Indeed, many postal operators have been historically profitable and, rather than requiring subsidy, some have even been sources of financing for their host governments, or have been able to use profits generated from high stamp prices to expand in other areas (e.g. Bulgaria). The

¹⁸ The Commission has taken action to bring to an end unlimited guarantees in favour of postal incumbents since such measures improve financing conditions for all their activities, including competitive/commercial ones. It has also considered the rather specific issue of the conditions under which logistical support by a postal operator to its subsidiary operating in commercial markets may constitute aid if not adequately remunerated.

¹⁹ Case C 43/2006, *Pension reform with La Poste* (OJ L 63, 07.03.2008, pp. 16-43); Case NN 24/2008 and C 47/1998, *Poste Italiane* (OJ C 145, 11.06.2008, p. 3).

²⁰ *Poste Italiane* (OJ C 145, 11.06.2008, p. 3).

summary includes only three negative state aid decisions, but in several cases, the Commission required amendment of the proposed measures, during the notification phase, before authorising them. The example that can be used is the French pension measure in favour of La Poste²¹.

5.2. Discussion and Findings

The structures of a segment of SGEIs, which are typically organized on the basis of national monopolies, constitute a challenge for functioning of the common market. This has included postal monopolies, even as these are justified traditionally. The Commission considers that because they are an essential vehicle of communication and trade, **postal services are vital for all economic and social activities**. New postal services are emerging and market certainty is needed to favour investment and the creation of employment in the sector, as well as the completion of a well-functioning single market for postal services. The EU postal sector currently accounts for €91 billion or 0.72% of EU GDP (letter post alone accounts for €44 billion or 0.3% of the GDP, and the number of letters was 82 billion annually).

As recognized by the CJEU, Community law, and in particular the competition rules of the EC Treaty, apply to the postal sector. The Court of Justice explained that "in the case of public undertakings to which Member States grant special or exclusive rights, they are neither to enact nor to maintain in force any measure contrary to the rules contained in the Treaty with regard to competition" and that these rules "must be read in conjunction with Article 86(2) which provides that undertakings entrusted with the operation of services of general economic interest are to be subject 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 postal directive adopted in 1997, amended by Directive 2002/39/EC and Directive 2008/6/EC, aims at **safeguarding the postal service as a universal service in the long term**, has laid down common rules regarding the "provision of a universal postal service (UPS)". A precise set of universal service obligations is set out in article 3 of the postal directive to give effect to the principles of universality, equality and continuity. National postal incumbents have been entrusted by their government to perform these USOs and may benefit from exclusive rights for certain services to the extent necessary to ensure the maintenance of universal service. Moreover, the postal Directive requires the establishment in all Member States of national regulatory authorities independent of the postal operators. Operators providing the universal service will have to establish separate accounts for services open to competition on the one hand and non-reserved services on the other hand in order to avoid undue cross-subsidies. In addition, postal prices must be geared to costs allocated according to principles laid down in the postal directive.

Besides the provision of the universal postal service and other SGEI, the universal postal providers also compete in competitive markets with private operators, including both postal markets (express mail and parcels) and non-postal markets (financial services). It is for the MS to define which **SGEI missions** should be delivered by the postal operator and by which means. When financial support is granted to the entrusted postal operator to perform these SGEI, the first question is whether this compensation constitutes State aid or not. In its Altmark judgement, the Court of Justice has defined a

²¹ Case C 43/2006, *Réforme du mode de financement des retraites des fonctionnaires de l'Etat rattachés à La Poste* (OJ L 63, 07.03.2008, pp. 16-42).

set of criteria which, if fulfilled, allows the Commission to exclude the presence of an economic advantage and, hence, the nature of State aid of the measure.

The efficiency test set out in the Altmark case law, in particular the **fourth criterion, is difficult to apply** in the postal sector. Indeed, at present, neither a tendering procedure, nor a cost structure comparison can be realized in order to exclude the presence of an economic advantage when looking at compensation for universal service requiring an extensive network. The universal service obligations, which require an extensive postal infrastructure, have hardly been tendered in EU member states. Furthermore, MS face difficulties to provide the Commission with the cost structure of a similar undertaking in their home country nor could they provide robust cross-country studies establishing efficiency of its USP. Given data availability and low cost transparency, even a comparison between national postal incumbents is hardly possible. USOs being similar, the economic burden of the public service costs in the postal sector is significantly different amongst MS.

This conclusion does not preclude however that the fourth criterion of Altmark can become a **sensible element** of the Commission assessment when cost transparency increases with further liberalization and MS following a more market oriented approach, e.g. by applying tendering procedure for some infrastructure related services. This practically means that, at present, practically all compensations for SGEI in the postal sector, whose provision is closely linked to the existence of the postal infrastructure, constitute state aid within the meaning of Article 87(1) EC, subject to the requirements of prior notification and to the standstill provision pursuant to article 88(3) EC Treaty.

In line with the SGEI framework and the case law, the Commission has to check whether the measure in question is dedicated only to compensate the postal operator for the provision of public service obligations, its compatibility will be dealt with by the Commission under Article 86(2) of EC Treaty. The latter provides that SGEI are not subject to the application of the Treaty rules to the extent that this is necessary to fulfil their general interest mission. Before the granting of the compensation, the Commission has to **verify** whether:

- (1) the public service mission entrusted to the postal operator is clearly defined;
- (2) the financing of the SGEI is transparent and is directly related to the public service role;
- (3) there is no over-compensation or not, the Commission performs an in-depth analysis about the cost of the SGEI in order to verify whether the subsidy granted to the postal operator will not exceed what is necessary to cover the costs incurred in discharging the public service obligations, taking into account the relevant receipts and a reasonable profit.

It follows from the Commission approach that the analytical accounting of the national postal providers must be sufficiently powerful in order to allow the Commission to **analyse the cost structure of the postal operator at the level of the product or the activity** for which it receives a state compensation. Indeed, the postal operator must be able to keep separate financial accounts and identify separately costs and revenues associated with the provision of the services supplied under their exclusive rights and those supplied under competitive conditions. Internal accounting systems should operate on the basis of consistently applied and objectively justified cost accounting principles. The analytical accounting of the postal operator must be checked by an independent body. Where a state aid granted for the provision of SGEI fulfils the conditions set out in the Commission Framework, state aid is considered to be compatible under Article 86(2) and can be implemented

following its approval. As long as a potential aid measure is granted for competitive activities of the universal postal provider, it is subject to the application of normal competition rules.

France

In France the postal services are subjected to the **Regulatory Authority for Electronic Communication and Posts (ARCEP)**²². The French law creates the conditions for a plural and decentralised network organisation and ARCEP is a key institution together with Ministry of Economy. It guarantees the market is open to new players and to all forms of innovation, and works to ensure the sector's competitiveness through pro-investment competition. ARCEP provides the framework for the networks' interoperability so that users perceive them as one, despite their diversity: easy to access and seamless. It coordinates effective interaction between public and private sector stakeholders when local authorities are involved as market players. ARCEP also enforces the principles that are essential to guaranteeing users' ability to communicate. It oversees the provision of universal services, including the UPS, and assists public authorities in expanding digital coverage nationwide. It ensures users' freedom of choice and access to clear and accurate information, and protects against possible net neutrality violations. The annual postal services reports are public²³.

The postal service itself in France is still mainly dominated by the historical operator, **La Poste**, which is one of the biggest employers in the French economy (above 250 000 employees); and has an extremely well-developed network with approx.17,000 contact points with the public, including over 13,000 post offices and local contact points. It is in practice state-owned company, whereby the French State is the majority shareholder and Caisse des depots owning around a quarter of shares.

The La Poste group is composed of four types of activity, called 'occupations' (métiers), namely mail, postal bank, parcel post and La Poste Grand Public. On the one hand, post offices offer the services and products of the other three, and, on the other, they sell their own services to the general public – the nature of these services is gradually being defined and can include being the relay for other public service companies (such as the sale of train tickets) and also market services proposed by the big private distribution companies. It should be emphasised that although the La Poste group is still officially a public service company, which is closely linked to the State, predominant percentage of its turnover is already made in competitive conditions.

The French approach to dealing with state aid issues tries to **overcome the burden of proving the compensation** matches with the net avoided costs by channelling most of the funds for a special SGEI based on rural areas (much in the same line as the UK model). Thus, on top of the standard universal service (covering the main postal network) a high number of auxiliary postal offices are meant to cover this SGEI fostering a territorial coherence in rural and low populated areas. Running this non-USO network involves much higher unit costs thus enabling the State to provide substantial funding to La Poste outside the stricter rules of the Third Postal Directive.

²² <http://www.arcep.fr>

²³ e.g. http://www.arcep.fr/uploads/tx_gspublication/rapport-activite-2013-postal.pdf

Italy

Formerly, the government in Italy, through the Ministry for Communications (merged with the Ministry for Economic Development), was responsible for regulating the sector, however, the Ministry of Economy and Finance simultaneously controlled Poste Italiane, the designated manager of the universal postal service and a key player in the liberalized services. This anomaly has prompted the EU to open **infringement proceedings** against Italy.

Presently, the **Italian Communications Regulatory Authority** (AGCOM, 'Autorità per le Garanzie nelle Comunicazioni') is the independent regulatory agencies in line with common market provisions to develop a free, competitive market in the public utilities sector. The European law has, therefore, decisively contributed to affirm the importance of competitiveness, in view of the previous model of governmental control over national and local public services. AGCOM's organisation and functions are primarily specified in the 1997 Law. AGCOM is the only Italian Independent Authority providing a decentralized complex system of regulation based on Regional Communications Committees ('Comitati Regionali per le Comunicazioni' – Corecom) established in each of the twenty Italian Regions. These local Committees have an autonomous administrative structure and a budget allocated by Regional Governments, with a field contribution per annum provided by AGCOM. Corecoms have a dual nature: (1) they were created in each Region with Regional Acts between 2001 and 2009 and endowed with advisory and other functions by Regional Councils. For this reason their organisation and performance tend to vary across the different Regions; (2) they also constitute delocalised branches of AGCOM and therefore perform some regulatory functions on behalf of the national Authority, according to the subsidiarity principle.

Poste Italiane is the largest infrastructure services organisation in Italy. It is responsible nationwide for more than 140 000 employees. It provides postal logistics, savings and investments, payment, insurance and digital communication services. Poste Vita has undergone especially rapid growth to become the second largest player in the Italian insurance industry. Poste Italiane itself is a public company and its shares are listed on the Italian Stock Exchange managed by Borsa Italiana S.p.A. Poste Italiane has a branch network of over 13 000 offices traditional governance model in which powers are divided between the Board of Directors and the Board of Statutory Auditors. The accounts are reviewed by an external auditing firm and the financial management is checked by the Court of Auditors. This is done by a **Member of the Court of Auditors**, who attends the meetings of the Board of Directors and of the Board of Auditors.

The Board of Statutory Auditors is made up of 3 acting members and 3 alternate members appointed by the Shareholders' Meeting. It oversees **compliance with the EU and national law**, corporate by-laws and efficiency, in particular the adequacy and effective functioning of the organisational, administrative and accounting system. The share "Poste Italiane" is listed on the Mercato Telematico Azionario organized and managed by Borsa Italiana S.p.A. as from October 27, 2015. Therefore, its annual reports are open to the public, the up-to-date available published report covering activities in 2015²⁴.

Thanks to a consumer-signalling system, the surveillance of the regulated services provided by AGCOM seems to be effective. To ensure even greater protection for consumers, the authority is also

²⁴ <http://www.posteitaliane.post/resources/editoriale/pdf/En/Relazione-corporate-governance2015-ENG.pdf>

responsible for relations between consumer associations and litigates disputes between users and operators. The authority is particularly wary of the protection of consumers, so there is an AGCOM General Directive which followed the outcome of a public consultation (Resolution no. 48/14/CONS), whereby the postal service providers are required to adopt a Service Charter (Resolution no. 413/14/CONS). However, the Italian system seems to face challenges implementing the NAC methodology. Based on the interview data, although the compensation is defined ex ante (the method of compensation is an ex ante determination of a maximum amount compensation), the state **practically relies upon ex post assessment based on actual data** for determining the cost of the universal service of the Poste Italiane. NAC method with the current level of definition is considered to bear the risk of being discretionary, as the counterfactual scenario is partially based on assumptions and pre-suppositions that may be discretionary. Detailed **guidelines for definition for counterfactual scenario** from the Commission are welcome.

Bulgaria

The **Communications Regulation Commission (CRC)** implements the state sector policy in the field of telecommunications and postal services. CRC is a specialized independent state authority, entrusted with the functions of regulation and control over the carrying out of the electronic communications. In the context of equity and transparency and in compliance with the Bulgarian legislation, CRC strives to promote the competition of the telecommunications markets in the country. The national regulator proceeds, aiming at the increase of the sector investments, the new communications technologies' development and the protection of the end-users in Bulgaria. Along with its Annual Report (the last covering 2015, available at: www.crc.bg), the Commission publishes annual analysis of the market for postal services²⁵. However, the state aid methodology, oversight and reporting is performed by the **Ministry of Finance**, specialized state aid directorate.

The **Bulgarian Posts** are a joint-stock company since 31 March 1997 with 50% state ownership of capital under the responsibility of the Ministry of Transport, Information Technologies and Communication. With Council of Ministers Decree in 2008 rules for mutual access to the networks of postal operators of UPS are approved. The guidance on the provision of compensation for the financial burden for UPS provision is given in 2010 with amendments to the national Postal Services Act. In 2011 state monopoly on the reserved sector is ended and conditions are set up for liberalization of the market. EMS/Bulpost is separately established specialized enterprise. Towards 2016 the network of Bulgarian Posts functions with 2 981 postal offices, including in remote and difficult to access settlements in the country.

In Bulgaria ex ante determination of a maximum amount compensation is performed by the Ministry of Finance based on the NAC methodology. Subsequently, Bulgarian Posts submit an application to the CRC for compensation of the net costs and the unfair financial burden from UPS provision. CRC holds a public procurement procedure of the type "Check for implementing the system of allocation of costs of Bulgarian Posts EAD and audit of the submitted documents related to the calculation of the net costs of carrying out the universal postal service for 2014". Based on the factual findings from the performed audit, CRC adopts a decision on the presence of unfair financial burden from the provision

²⁵ http://www.crc.bg/files/en/POST_annual_report_2015.pdf

of the universal postal service and determination of the amount of compensation due to Bulgarian Posts for the provision of the universal postal service (annually). Based on the assessment for the presence and amount of unfair financial burden from the provision of UPS, CRC extends a proposal to the Minister of Finance to include the additional amount of compensation in the draft Law on the State Budget of the Republic of Bulgaria for the next calendar year. CRC also tenders externally measurements of efficiency of the service. The resulting system may appear to be complex, but it aims to ensure both separation of duties and especially **competence of the administrative unit**, engaged with the methodology for the net avoided costs and the calculations stemming from the counterfactual scenario.

5.3. Conclusive remarks

There are possibly four issues that remain unclear and hence, potentially problematic in the new SGEI Package, as stemming from the postal service case study. First, a most fundamental issue which remains open is whether **tendering** is necessary at all for the new framework to apply. In fact, the Postal Regulation compels in no such direction and there could be legitimate doubts expressed whether tendering is the appropriate means to entrust public services, especially in network industries, like the postal sector. The winner's curse problem also raises concerns.

Second, another open-ended issue is the addition of "**serious distortions of competition**". Such distortions can be generated because of several entrustments in the same geographic and product market; or because the compensation is used to finance infrastructure. Both these situations are too broad and can cover almost any entrustment of public service that relies on a network. This should not include postal services.

Third, the new SGEI Framework also refers to **reasonable profit**. In this respect, the clarifications and the launching of a safe harbour are very welcome. But the fact of capping profits, especially at a low level, could have a double impact. On the one hand, it could demotivate efficient postal operators, which would not be entitled to keep the profits they achieve through efficiency enhancement. On the other hand, it could hurt the ability of efficient postal operators to attract investors. Strategic partners will not invest in operators which see the fruit of their efforts confiscated through profit regulation.

The last and possibly most important issue is the "**offsetting**" of costs and profits between SGEIs and USOs, which seems to be implied in the 2011 SGEI Framework. While for USO excess profits in the reserved area "offsetting" would be acceptable, excess profits in the non-reserved area cannot be confiscated. What is more, such an "offsetting" approach essentially discriminates against efficient postal operators. The following example highlights the unfairness of the "offsetting" approach. Taking two operators, A is more efficient and has lower costs than B, despite providing services of better quality. Even if both have equal revenues, in the end, A will receive lower compensation than B, because it has lower costs. Even worse, in order to comply with the new SGEI Framework, A is not even entitled to compensation to cover its actual SGEI costs, because it is obliged to use its USO profits to subsidize these costs. In the end, B, making less efforts for efficiency, is better off, with higher compensation and no compliance problems. It is difficult to reconcile this outcome with the focus on efficiency described above. Further clarification on the above open-ended issues seems necessary. Yet, efficiency has been contested as an area for Commission competences, which nonetheless leaves room for improvements of efficiency incentives.

6. Conclusions and Recommendations

Scope of the public interest realm and SGEIs

The term 'general interest' should be regarded as equivalent to public interest as stated by the Member States, in so far that SGEIs pursue objectives set out by authorities for covering their citizens' needs. As this notion anchors itself on the authorities' appraisal, there are significant differences in the forms of organisation of public services between the Member States and even inside their boundaries. The *acquis communautaire* term Services of General Economic Interest (SGEI) should, therefore, being interpreted as neutral as regards the way each Member States chooses to define and implement it, as long as it does not incur in "manifest error" or encroaches on the competition.

On the definition of SGEIs, the Court of First Instance in the BUPA case (Case T-289/03) held that "there is no clear and precise regulatory definition of the concept of an SGEI mission and no established legal concept definitively fixing the conditions that must be satisfied before a Member State can properly invoke the existence and protection of an SGEI mission, either within the meaning of the first Altmark condition or within the meaning of Article [106(2) TFEU]". Thus, challenging the setting up of an SGEI on the basis of manifest error, usually fails before the Union Courts²⁶, as the Treaty recognises ample room to the Member States for considering that public interest should be better preserved through a public remit. Any attempt by the EU institutions to set common rules on how to define an SGEI would run contrary to the Treaty as it would curtail the appraisal of public interest a matter that ultimately rests on each authority's competence, according to national Law. The idea of setting common standards regarding higher quality, affordability, continuity or universal coverage seems an impossible task due to the marked differences between the authorities' financial capacity and objectives. Such an approach can only become feasible, to a limited extent, when a particular SGEI is subject to EU common rules, such as the electricity, the telecommunications or the postal services. It should be noted that even in these EU regulated sectors the Member States enjoy wide discretion in implementing the broad principles of universal coverage.

Notwithstanding such a clear-cut Treaty provisions, the Commission has tried to curb the Member States full powers in defining SGEIs. In point 13 of the Framework it includes some so-called sound principles to be preserved, such as the obvious fact that should a service being provided in reasonable conditions by the market, the room for introducing a public remit should be carefully examined. It goes without saying that nutrition is, as a general rule, adequately covered by the market. Yet, people in need often lack the means of securing a decent meal, thus fully justifying their public provision. Most social services share this pattern as they cover basic needs that otherwise would become unavailable for the less well-off. Even if the market apparently offers a particular service, there is always scope to complement it with a public remit should the price or quality conditions warrant it.

²⁶ Case T-17/02, Fred Olsen v Commission, [2005]; Case T-289/03, BUPA v Commission, [2008]; Case T-309/04, TV2/Danemark v Commission [2008]; C-290/07 P – Commission v Scott, [2010].

The Commission also introduces the requirement under point 14 of the Framework of conducting public consultations with users and providers before setting a remit. Such an interference with the powers enjoyed by the Member States in this field hardly fits with treaty provisions and may even encroach with national law-making procedures. As a general rule, all authorities pay due attention to stakeholders' views when enacting a public remit. Yet, compelling them to justify a remit and conduct public consultations seems wholly misplaced. In most cases, such a provision is utterly ignored as the Commission recognises its impractical nature. For instance, in many national law-making procedures, the legislative branch cannot be bound by the views of interested parties, as the prevailing principle remains the preservation of the public interest. Therefore, such attempts for watering down the national powers prove futile. Nevertheless, they can amount to considerable hurdles for local authorities.

The National Law already offers an adequate precautionary measure to avoid abuses. In most Member States excluding from normal market provision, any particular service involves a legislative or a formal governmental act securing transparency and justifying such exclusion. This precautionary measure often results in a certain degree of discrimination against local authorities as they lack such enforcing powers. All too often, they need a national or regional act empowering them to set their own remit. This fails to fully recognise the local authorities' full powers in defining and managing a public service.

Sometimes, the Member States seem unaware that Treaty discipline only applies to services in so far as the Court of Justice considers them as falling under Article 57 of the TFEU. This basic provision defines this notion linking it to its delivery for remuneration. Thus, free services or those where the remuneration covers a minimal share of the cost would be deemed as not falling under Treaty discipline, in so far as they are usually delivered in this way. Even services with a higher rate of remuneration but where beneficiaries cannot expect a delivery matching their contributions, such as social security schemes where people pool their resources irrespective of their expected returns, have been ruled out as economic services. It is up to the Court to statute on each particular case, basing their judgement on a restrictive stance as waiving from Treaty rules stands as a fundamental exception. Otherwise, circumvention of the Treaty discipline would undermine the internal market. Nonetheless, such an approach needs to couple itself with the obvious difference in the provision of the same service for the general public and for those that experience special needs. In particular, in the field of social services, such a differentiation would be highly welcome to avoid cumbersome procedures.

The analysis in the present Study shows that in practice even in rather **uniform SGEIs there are wide divergences in the way they are implemented**. The differences relate to: (1) the actual definition of the service; (2) the institutional arrangements; and (3) the distribution of responsibilities among national, regional and local authorities.

Entrusting the public remit

Entrustment must be undertaken in favour of the designated provider(s) through a public act. Yet, this act can take the form of a legally binding measure or a contract. All too often, the Member States fail to acknowledge this fact, preventing local authorities from discharging their public remit through a

contract. Obviously, the contract must include binding obligations for the provider for servicing the remit according to the standards set up by the authority.

Entrustments according to the Commission should comply with public procurement rules, according to point 19 of the Framework. It should be noted that the Decision fails to embody a similar condition, thus discriminating between SGEI schemes and adding extra uncertainty. The Framework advocates for enforcing the Treaty principles of transparency, equal treatment and non-discrimination when selecting the provider and, when applicable, the public procurement Law. This latter reference seems wholly misplaced as the public procurement directive only applies to the acquisition of goods, services and public works by an awarding authority. As providing a service to users does not involve such a purchasing act, only in exceptional cases where the authority would “buy” for a lump sum the provision of an SGEI, a most unlikely prospect, this rule may apply.

Up to the new public procurement package, the Treaty principles applied to concessions. The package introduced positive Law governing these contracts whose main defining feature is the transferral of the operational risk to the concessionaire. Thus, such rules cannot apply to SGEIs where the entrusting authorities take up through compensations the excess costs in running a remit, thus virtually covering the provider from any substantial or unexpected risk.

The reference to public procurement rests on a literal reading of the fourth Altmark criterion whereby the selection must follow a procedure leading to the “least cost for the community”. It does make sense that mirroring an open bidding in selecting the provider offers enough comfort that this procedure leads to the less costly way to the public budget. In so doing, the selection would meet this fourth criterion and, should the other criteria also concur, the SGEI would involve no aid. Yet, the Commission rarely recognises this conclusion while stressing the need to apply in full the Altmark ruling. The entrustment could also be undertaken by a publicly controlled enterprise, set up for the sole purpose of providing the remit and subject to liquidation possibly without it.

Thus, the current requirements on public procurement either lack enough legal backing or lead to unwarranted situations. Often, the Commission practice tends to overlook them especially when they encroach on national Law. Often, the entrustment is laid down in a legal act which involves by nature a direct designation (see, for instance, the “Agence France-Presse” case) raising no objection on behalf of the Commission.

Once again, such direct entrustments prove a harder hurdle for local authorities, as they fall under the discipline in this field in a sharper way than national authorities. This embedded discrimination should prompt the Commission to make a proportionate use of the requirements taking into account the steep difficulties encountered by bodies less able to overcome these obstacles.

A further problem lies in the entrustment period. As a general rule, both the Decision and the Framework request a maximum of ten years save for cases where recovery of the investments required to perform the SGEI warrants a longer time span. The issue at stake is whether the provider can continue its task under a new SGEI period or a prorogation of the current one. From the Decision drafting, there is a margin of uncertainty over this key issue that proves vital for publicly owned companies set up for performing the remit. Further clarity would be welcome through soft law or a revision of the current Decision as its legal nature offers less room for interpretation.

Compatibility criteria and methods

The Decision applies an aggregated net cost method, offering a simple approach. Compensation should not overcome the difference between all remit costs and revenues, plus a reasonable profit. Yet, it imposes on beneficiaries the obligation to keep available all the information necessary to determine the compatibility of compensations granted during the entrustment period and at least ten years from the end of that period. Such a requirement runs contrary to Article 17 of the Council Regulation (EU) 2015/1589 on State aid procedure which provides that upon the 10-year expiration limit any measure shall be deemed as existing aid and as such, compatible. The obligation to keep information that serves no purpose for competition control represents a disproportionate burden for the authorities and encroaches on the principle of proper administration.

Compatibility raises more problems under the Framework, as it imposes the Net Avoided Costs methodology as the prevailing one, save for cases duly justified, without sufficient guidance. It anchors on the hypothesis the extra costs borne by the provider derive from the difference between its results when performing the remit and those it would have in the absence of the public service obligations.

The simplest way of constructing a counterfactual involves gauging that any rational economic agent would discontinue all loss-making activities. Such was the approach initially advocated. Yet, the Commission practice shows that in every sector the counterfactual follows a different pattern. For instance, in the official news agency SGEI, it is constructed on the basis that in the absence of the remit, the provider would confine itself to its national boundaries, becoming a national agency. Even so, in the case of Agence France-Presse, the counterfactual includes bordering French-speaking countries and regions.

The most elaborate counterfactual to date come from the postal services. There, a so-called Profitability Cost approach is followed. This method grounds itself on the assumption that the provider would maximise profits closing down not only loss-making traffics but also those performing markedly worse than average. Thus, the compensation covers not only loss-making traffics but also some that actually may prove profitable. In exchange, the compensatory amounts become adjusted to take account of the market and non-material advantages enjoyed by the incumbent, such as its bargaining power or its trademark. Such a method, regardless of its merits, involves complex and highly extricate calculations that require expensive reports made by external consultants. It seems obvious that local authorities and medium size SGEI hardly justify embarking on such expenses. Therefore, the Commission should ensure that except for specific sectors facing more complex issues, it will accept using the standard aggregated net cost method.

Calculating the reasonable profit, both under the Decision and the Framework can become a demanding task often involving external consultancy. In the BPost case, the Commission mentions four different reports undertaken by forefront consultancy firms. It is no wonder that most SGEIs refrain from using the reasonable profit due to the huge uncertainties as to their calculation. The Commission package refers to the IRR as the best benchmark while recognising it is in practice quite impossible to use it due to its intrinsic complexity. The Commission offers the possibility of setting up a comparable sample of enterprises of the same or a close sector, deriving from it standard profitability benchmarks such as ROS or ROA. However, setting up this sample requires an expertise far beyond the usual means of a local authority. Therefore, it would stand as highly welcome should

the Commission clarify through a soft law that existing data source, both official and from sectoral associations, can be used as long as they are fairly comparable to the beneficiary.

Setting “ex-ante” parameters for calculating the compensations

As it happens in many other fields, the Commission has transferred the Altmark ruling into the Framework paying little attention to the core issue dealt with by the Court. Thus, it not only imposes on a mandatory basis the setting of “ex-ante” parameters for calculating the compensations. Sometimes it goes beyond and requires fixing yearly amounts in advance. While it makes sense to draw the main methodological standards before providing the aid, it runs contrary to common-sense enforcing a rigid pattern for future compensations. Determining the extra-costs can only take place once the yearly results of running the SGEI are available. It is only then that revenues and costs are known.

Thus, the emphasis on “ex-ante” parameters should couple itself with the “ex-post” results. Only in this way, gauging the existence of over-compensation or under-funding can safely materialise. As shown when addressing over-compensation little attention is paid to under-funding, a real hurdle for SGEI providers.

To make matters worse, the Commission often requires the method for future years grounded on past results, thus inducing potentially severe distortions. Let's take for instance the example of postal services. One usual parameter under the counterfactual is the closing-up of loss-making post offices, a move that on face value seems wholly justified. However, if fixing the offices closed derives from past performance, there could emerge huge deviations in the coming years should some of them become profitable or others enter into negative territory. As such a loose perspective set up well in advance never matches with reality, significant differences may occur leading to systematic over or under compensation. In the first case, the provider would receive an undue advantage benefitting from excessive funding until overcompensation is paid back. In the other, it would receive an unfair treatment being systematically under-funded.

It is understandable that the Commission should aim at sticking to the letter of the Altmark ruling as it enjoys very limited powers in interpreting Court sentences. However, paying due attention to concrete problems facing enterprises should stand as a paramount goal, as its decisions may severely affect corporate life. A thorough review seems essential to dispel hurdles encroaching on businesses running SGEIs.

Overcompensation and under-funding

On this issue, once again, the Commission follows the line of the Altmark ruling, focusing exclusively on overcompensation. The notion requires avoidance by means of a simple provision for the provider to pay back any excessive funding determined when final results become known or reducing future compensations. The focus on avoiding overcompensation has led to the negligence of another equally important and possibly even more frequent issue, i.e. of under-compensation. It remains a problem that needs to be addressed both regulatory and practically. As the state aid rules currently prohibit the correction of under-compensation, the provision of the respective services of general interest can be endangered. It is therefore necessary to allow greater flexibility in order to adjust to the needs of the

respective state aid case in order to allow the compensation of the real costs that occur during the contract duration, while fully taking into account the justified interest for transparency by competitors.

The Commission possibly takes for granted that once ex-post results become available, the authority can provide a complementary amount for filling the gap. Yet, problems may arise should compensations appear as fixed figures in the authorising decision. In that case, any extra payment could be deemed as illegal aid unless modifying the decision previously. Undoubtedly following such a cumbersome procedure would make little sense.

Problems may also arise should the methodological parameters, set up well in advance, fail to match reality. In this case, systematic underfunding may prove a real headache both for the entrusting body and the provider. Unless the authority commits itself to adjust the compensation ex-post, paying the difference in future years, the SGEI provider may face financial difficulties jeopardising its ability to perform the remit. A serious problem that may even lead to a structural unbalances that unless duly checked would unfold into utter insolvency. Cases in the French and Danish public broadcasters show that the public shareholder was forced to recapitalise these companies due to severe underfunding. The Commission took the view these capital injections were akin to compensations as they covered past underfunding. Enhanced legal certainty would warrant a more business-friendly approach by the Commission through soft law or similar instruments.

The adequate recognition of underfunding would play a vital role in corporate life. It would prevent insolvencies as these credits would feed into own resources, thus avoiding unwarranted consequences for businesses regardless of the time span before actual payment of due sums materialised itself.

Efficiency incentives

Efficiency incentives aim at fostering providers' enhanced performance. They play the role of offering a bonus to providers that increase their productivity thus, in principle, running the service at a cheaper rate. This in turn would reduce the compensation, as costs would diminish. The productivity gains would indeed feed into higher profits but the overall result remains unclear. By contrast, should the provider fail to meet the efficiency target it would face a penalty largely compensated by the higher compensation stemming from increased costs. Thus, the providers feel reluctant at using a method whose potential benefits become blurred by so many uncertainties. The authorities also feel reluctant at providing incentives that partly offset the benefits derived from increased productivity and lower compensations.

All too often, this mechanism applies in an asymmetric way, including only penalties for failing to meet the efficiency target. In this way, the authorities ensure a win-win result as increases in productivity results in lower compensations, while poor performance by the provider involves an effective reduction in compensatory amounts.

Gauging the efficiency gains can become a demanding task. Calculating the productivity usually grounds itself on output per workers directly involved in the SGEI. Yet, when the company engages in several activities outside the SGEI boundary, such a calculation can become extremely hard to achieve and to control. Moreover, this method exerts a discrimination against providers offering

services in mature or declining markets, such as universal postal services. They also discriminate against labour-intensive activities.

The Decision introduces efficiency gains on a voluntary basis and such a scheme is seldom used. On top of its intrinsic complexities, the Decision imposes splitting such gains between the users, the provider, and the authority. This provision raises so many uncertainties that refrains stakeholders from introducing any efficiency mechanism. As it stands now, this scheme under the Decision plays no role.

The Framework imposes on a mandatory basis the use of efficiency incentives. As referred above, in most cases the authorities only envisage penalties for lower than expected performance. Even so, the complex task of producing a sound methodology represents a serious hurdle. All too often, the Commission practice endorses flat percentages of reduction in the compensatory amounts, as a proxy to efficiency, especially in labour-intensive and declining markets. In the Italian UPS, for instance, the corresponding reduction amounts to 2% each year, calculated as the expected loss in productivity of the providers taking as a basis the foreseen national average performance. Such a result shows the loose method endorsed by the Commission to overcome the hurdles it imposes on stakeholders.

Establishing a high-quality method involves commissioning an expensive report to external consultants, a step no small or medium SGEI would warrant. Thus, this requirement needs a thorough clarification to avoid excessive burden for so little overall benefit regarding State aid control.

The non-aid debate

Many stakeholders press the Commission to provide enhanced certainty on how to interpret and apply the Altmark ruling, aiming at escaping State aid control. Yet, even if the Commission can provide detailed advice on this issue, it can never confer full legal certainty. This Institution, while acting as the guardian of the Treaties, lacks any power to interpret them, a remit that falls entirely upon the hands of the Court of Justice. Thus, competitors can challenge before a national Court any decision on its behalf declaring the non-existence of aid. The scope of legal certainty it can provide therefore seems rather limited. This explains why in grey areas any seasoned practitioner would advise to obtain a Commission decision declaring the measure as non-aid but fully compatible in the case it was an aid. In this way, the Commission ensures by a compatibility check that the measure would be compatible with the internal market, exercising a power that the Treaty endows it on an exclusive basis. The case law has repeatedly held that the Commission enjoys the widest discretion in examining the compatibility of any measure, thus systematically endorsing its appraisal.

There is not a single clear-cut case should a claimant raise a complaint or introduce a challenge before a Court. Thus, common sense invites to press for compatibility rather than using the false way-out of driving for non-aid. The fourth Altmark criterion, for instance, has raised expectations that an adequate tendering might suffice for escaping State aid control. Yet, even an open bidding procedure might not prove enough for ensuring the award represents the lower budgetary cost, especially taking into account that other criteria might fail to be met in full. The alternative method of taking as a benchmark a well-equipped average firm, offers much more uncertainty, taking into account the somehow erratic appraisal provided by the Commission practice. Even the local delivery of services does not warrant that it does not affect intra-community trade. For, the mere possibility a provider

from other Member State might establish itself in the same market suffices according to case law for breaking such presumption.

Afterword

The practical issue of availability of **transparent information** from the country reports and other sources that can be aggregated and compared raises the more general concern with transparency. Information regarding the financing of public services and obligations towards entities that receive public funding (such as accounting obligations) is in general difficult to find as this information is either not collected in a systematic way across Member States or considered confidential (for the purposes of ongoing MS-Commission cases, but also in terms of commercial interests). The problem is not only that these practices render cross-country/cross-sector studies more difficult. Information needs to be collected in a more structured way also in order to facilitate future assessments of competition as well as compliance with the state aid rules, as well as ensure the proper functioning of the Transparency Directive. Making specific references to the already existing pragmatic solutions would increase legal certainty and effectively reinforce equal treatment while preserving the principle that each case should be examined on its merits.

In the common market **differences between sectors** and types of services gradually become more important than differences between countries. The Altmark judgment is applied in order to determine whether a given public service compensation constitutes state aid, irrespective of the economic sector concerned. The same is not true of the Commission's compatibility assessment, which depends in a number of instances on the specificities of given sectors and their own regulation. Similarly, **competence distribution among levels of government** appears to impact seriously on the provision of SGEI as well as on compliance. Many stakeholders have argued that the requirements of the current SGEI rules are not fully proportionate for compensation measures by regional and local communities which only have a very limited effect on trade between Member States. This concern is also raised by a series of municipalities, which argue that compliance with the Package represents an excessive administrative burden for them. They ask for the requirements, in particular the ones provided for in the SGEI Decision, to be more proportionate as regards the treatment of their services.

Nonetheless, European citizens enjoy access to goods and services which are predominantly delivered via the market itself. The EU has set solid market rules to ensure the well-functioning of those markets in the interest of the users. However, there are goods and services which by nature are so essential for the well-being, health and fundamental rights of European citizens, European economic, social and territorial cohesion and sustainable development that they deserve a special and adapted treatment, in order to ensure their proper functioning. Therefore, **SGEI need to be granted a solid foundation** within a renewed concept of the single market, because they are a basic pillar for the success of this market. Legal clarity and implementation guarantees are the bottlenecks in the system.

National systems interplay with the overall market environment and the evolving legal framework – both at community and national level. Generalizations and comparisons remain extremely difficult and the case-by-case logic naturally predominates. Even when the market environment is comparable and similar instruments are applied, there may be differences in the way these instruments are applied, and thus their effects on decisions of appropriateness, proportionality and competition issues. Definitional issues therefore persist and require **inter-institutional cooperation and dialogue** in order to ensure both competent decision-making and adequate provision of SGEI and full compliance with the state aid and public procurement framework.

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Annex 2. Useful Links

Affordability

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- Telecommunications Directive 2002/22/EC (“Universal Service” Directive): <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32002L0022>
- Directive 2009/136/EC (Electronic Communications): <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32009L0136>
- White Paper on SGIs (COM(2004) 374): <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52004DC0374>
- Communication on SGIs (COM(1996) 443): <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:C1996/281/03>

Cohesion

- Cohesion Data: <https://cohesiondata.ec.europa.eu/>
- Directive 2008/6/EC (Postal Sector): <http://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:32008L0006>
- Communication Towards a Single Market Act (COM(2010) 608): <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0608:FIN:en:PDF>
- Communication on SGIs (COM(2007) 725): <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:52007DC0725>
- White Paper on SGIs (COM(2004) 374): <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52004DC0374>
- Communication on SGIs (COM(1996) 443): <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:C1996/281/03>

Competition

- Article 106 TFEU: <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:12012E/TXT>
- Article 107 TFEU: <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:12012E/TXT>
- Communication Towards a Single Market Act (COM(2010) 608): <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0608:FIN:en:PDF>
- Communication on Institutionalised Public-Private Partnerships (C(2007)6661): *upon request*
- White Paper on SGIs (COM(2004) 374): <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52004DC0374>
- Communication on SGIs (2001/C 17/04): http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_2001.017.01.0004.01.ENG&toc=OJ:C:2001:017:TOC

Concession Contracts

- Concessions Directive 2014/23/EU: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_2014.094.01.0001.01.ENG
- Telaustria (C-324/98): <http://curia.europa.eu/>
- Contse (C-234/03): <http://curia.europa.eu/>
- Parking Brixen (C-458/03): <http://curia.europa.eu/>
- Commission v. Italy (C-382/05): <http://curia.europa.eu/>
- Eurawasser (C-206/08): <http://curia.europa.eu/>
- Helmut Müller (C-451/08): <http://curia.europa.eu/>
- Communication Towards a Single Market Act (COM(2010) 608): <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0608:FIN:en:PDF>
- Communication on PPPs, Public Procurement and Concessions (COM(2005) 569): <http://eur-lex.europa.eu/legal-content/ro/TXT/?uri=CELEX:52005DC0569>

Continuity

- Directive 2008/6/EC (Postal Sector): <http://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:32008L0006>
- Regulation 1008/2008 (Air Services): <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32008R1008>
- White Paper on SGIs (COM(2004) 374): <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52004DC0374>
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Derogation/Exception

- Article 106 TFEU: <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:12012E/TXT>
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Economic Activity

- Höfner and Elsner (C-41/90): <http://curia.europa.eu/>
- Ambulanz Glöckner (C-475/99): <http://curia.europa.eu/>
- Fenin (C-205/03): <http://curia.europa.eu/>
- Poucet and Pistre (Joined Cases C-159/91 and C-190/91): <http://curia.europa.eu/>
- Albany (C-67/96): <http://curia.europa.eu/>

Equal Treatment/Non-discrimination

- Protocol 26 on Services of General Interest: <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:12008M/PRO/26>
- Regulation 1370/2007 (Passenger Land Transport): <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32007R1370>
- Directive 2006/123/EC (Services Directive): <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32006L0123>
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Financing

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- Chronopost (C-83/01): <http://curia.europa.eu/>
- Enirisorse (C-34/01): <http://curia.europa.eu/>
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General Interest

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In-House

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NESGIs

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Proportionality

- Article 5 TEU: <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A12012M%2FTXT>
- Protocol 2 on the Application of the Principles of Subsidiarity and Proportionality: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12008E%2FPRO%2F02>

- Directive 2008/6/EC (Postal Sector): <http://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:32008L0006>
- Schmidberger (C-112/00): <http://curia.europa.eu/>
- Corbeau (C-320/91): <http://curia.europa.eu/>
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Public Procurement

- Directive 2014/24/EU: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32014L0024>
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- Telaustria (C-324/98): <http://curia.europa.eu/>
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- Communication on PPPs, Public Procurement and Concessions (COM(2005) 569): <http://eur-lex.europa.eu/legal-content/ro/TXT/?uri=CELEX:52005DC0569>
- Guide to the application of the European Union rules on State aid, public procurement and the internal market to services of general economic interest, and in particular to social services of general interest
SWD(2013) 53 final/2:
http://ec.europa.eu/competition/state_aid/overview/new_guide_eu_rules_procurement_en.pdf

Public-Public Cooperation

- Commission v. Germany (C-480/06): <http://curia.europa.eu/>
- Coditel Brabant (C-324/07): <http://curia.europa.eu/>
- Azienda Sanitaria Locale di Lecce (C-159/11): <http://curia.europa.eu/>
- Econord (C-182/11): <http://curia.europa.eu/>
- Communication Towards a Single Market Act (COM(2010) 608): <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0608:FIN:en:PDF>
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Public Service Obligations

- Regulation 1008/2008 (Air Services): <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32008R1008>
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- White Paper on SGIs (COM(2004) 374): <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52004DC0374>

Quality

- Protocol 26 on Services of General Interest: <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:12008M/PRO/26>

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Safety

- Protocol 26 on Services of General Interest: <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:12008M/PRO/26>
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- White Paper on SGIs (COM(2004) 374): <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52004DC0374>

SGIs – Services of General Interest

- Article 6 TEU: <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A12012M%2FTXT>
- Article 14 TEU: <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A12012M%2FTXT>
- Protocol 26 on Services of General Interest: <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:12008M/PRO/26>
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Shared Competence

- Article 5 TEU: <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A12012M%2FTXT>
- Article 14 TEU: <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A12012M%2FTXT>
- Communication on SGIs (COM(2007) 725): <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:52007DC0725>

- Communication on A Quality Framework for SGIs (COM(2011)900): http://ec.europa.eu/archives/commission_2010-2014/president/news/speeches-statements/pdf/20111220_1_en.pdf
- Green Paper on SGIs (COM(2003) 270): <http://eur-lex.europa.eu/legal-content/BG/TXT/?uri=celex%3A52003DC0270>
- Communication on SGIs (COM(1996) 443): <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:C1996/281/03>

SSGIs – Social Services of General Interest

- Directive 2014/24/EU: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32014L0024>
- Directive 2014/25/EU (by entities operating in the water, energy, transport and postal services sectors): <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32014L0025>
- Communication on SSGIs (COM(2006) 177): <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52006DC0177>
- Guide to the application of the European Union rules on State aid, public procurement and the internal market to services of general economic interest, and in particular to social services of general interest SWD(2013) 53 final/2: http://ec.europa.eu/competition/state_aid/overview/new_guide_eu_rules_procurement_en.pdf
- Biennial Reports on SSGIs: <http://ec.europa.eu/social/main.jsp?langId=en&catId=22>

State Aid

- Article 107 TFEU: <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:12012E/TXT>
- Monti-Kroes Package: http://europa.eu/rapid/press-release_IP-05-937_en.htm
- Almunia Package: http://ec.europa.eu/competition/state_aid/legislation/sgei.html
- Communication on State Aid and SGEIs (2012/C 8/02): [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52012XC0111\(02\)](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52012XC0111(02))
- Communication on State Aid (2012/C 8/03): [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52012XC0111\(03\)](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52012XC0111(03))
- Commission Decision C(2011) 9380: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32012D0021>
- Regulation 360/2012 (de minimis aid): <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:114:0008:0013:EN:PDF>
- Communication on SGI (COM(2007) 725): <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:52007DC0725>
- Communication on Institutionalised Public-Private Partnerships (C(2007)6661): *upon request*
- White Paper on SGEIs COM (2004) 374: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52004DC0374>
- Green Paper on SGEIs (COM (2003) 270): <http://eur-lex.europa.eu/legal-content/BG/TXT/?uri=celex%3A52003DC0270>
- Communication on SGIs (2001/C 17/04): http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_2001.017.01.0004.01.ENG&toc=OJ:C:2001:017:TOC
- Guide to the application of the European Union rules on State aid, public procurement and the internal market to services of general economic interest, and in particular to social services of general interest SWD(2013) 53 final/2: http://ec.europa.eu/competition/state_aid/overview/new_guide_eu_rules_procurement_en.pdf
- Altmark Trans (C-280/00): <http://curia.europa.eu/>
- Chronopost (C-83/01): <http://curia.europa.eu/>
- Enirisorse (C-34/01): <http://curia.europa.eu/>
- BUPA (T-289/03): <http://curia.europa.eu/>

Subsidiarity

- Article 4,5 TEU: <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A12012M%2FTXT>
- Article 14 TEU: <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A12012M%2FTXT>
- Protocol 2 on the Application of the Principles of Subsidiarity and Proportionality: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12008E%2FPRO%2F02>
- Protocol 26 on Services of General Interest: <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:12008M/PRO/26>
- Regulation 1370/2007 (Passenger Land Transport): <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32007R1370>
- Communication on SGIs (COM(2007) 725): <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:52007DC0725>
- Communication on A Quality Framework for SGIs (COM(2011)900): http://ec.europa.eu/archives/commission_2010-2014/president/news/speeches-statements/pdf/20111220_1_en.pdf
- White Paper on SGIs (COM(2004) 374): <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52004DC0374>
- Green Paper on SGIs (COM(2003) 270): <http://eur-lex.europa.eu/legal-content/BG/TXT/?uri=celex%3A52003DC0270>
- Communication on SGIs (COM(1996) 443): <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:C1996/281/03>

Transparency

- Directive 2008/6/EC (Postal Sector): <http://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:32008L0006>
- Telaustria (C-324/98): <http://curia.europa.eu/>
- White Paper on SGIs (COM(2004) 374): <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52004DC0374>
- Communication on SGIs (2001/C 17/04): http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_2001.017.01.0004.01.ENG&toc=OJ:C:2001:017:TOC
- Communication on SGIs (COM(1996) 443): <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:C1996/281/03>

Universal Service

- Protocol 26 on Services of General Interest: <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:12008M/PRO/26>
- Communication European Broadband: investing in digitally driven growth (COM(2010)472): <http://eur-lex.europa.eu/procedure/EN/199656>
- Telecommunications Directive 2002/22/EC (“Universal Service” Directive): <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32002L0022>
- Directive 2009/136/EC (Electronic Communications): <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32009L0136>
- White Paper on Services of General Interest (COM(2004) 374): <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52004DC0374>
- Communication Towards a Single Market Act (COM(2010) 608): <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0608:FIN:en:PDF>
- Communication on A Quality Framework for SGIs (COM(2011)900): http://ec.europa.eu/archives/commission_2010-2014/president/news/speeches-statements/pdf/20111220_1_en.pdf
- White Paper on SGIs (COM(2004) 374): <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52004DC0374>

Users' rights

- Protocol 26 on Services of General Interest: <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:12008M/PRO/26>
- Regulation 261/2004 (Air Transport): <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32004R0261>
- Regulation 1107/2006 (Air Transport - Disabled Persons): <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32006R1107>
- Regulation 1371/2007 (Rail Passengers' Rights and Obligations): <http://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32007R1371>
- Regulation 181/2011 (Bus and Coach Passengers' Rights): <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3Atr0050>
- Regulation 1177/2010 (Waterway Transport): <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32010R1177>
- Directive 2006/123/EC (Services Directive): <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32006L0123>
- Communication on A Quality Framework for SGIs (COM(2011)900): http://ec.europa.eu/archives/commission_2010-2014/president/news/speeches-statements/pdf/20111220_1_en.pdf
- White Paper on SGIs (COM(2004) 374): <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52004DC0374>

Annex 3. In-depth Interview Questionnaires

Interview guide for NRAs

Short presentation of the Study and ESTAT Ltd.

NRA profile

- (1) Can you describe in brief the regulatory authority that you represent – name, year of founding, regulatory responsibilities?
- (2) Can you make a brief overview of the latest developments in the SGEI in your country? How has policy evolved on national level in view of the EU legal requirements and guidance? Are there any regional or local specifics?

General assessment of the state aid rules and its applicability

- (3) How do you assess in general the impact of the 2012 SGEI Framework in your country and at EU level? Predominantly positive or negative? Why?
- (4) Do the current SGEI rules foster the provision of universal postal services? If no, why? Do they impede market developments in any way? If yes, how?
- (5) How do you assess the clarity and legal certainty created by the new set of rules of the 2012 SGEI Framework? Have the rules established a clear and legally certain environment for all stakeholders involved in the process or not? If yes/no, why? How do you assess the quality of the guidance on the application of the new set of rules provided by the Commission to all NRAs? Do you have any particular needs that are still unaddressed? What major challenges do you face in the application of the new rules?
- (6) To what extent are the new requirements on the duration of the entrustment period adapted to the specific nature of the country? E.g. does the requirement that the duration should not exceed the period required for the depreciation of the most significant assets required to provide the SGEI give rise to any particular problems and/or concerns among NRAs?
- (7) What is your country's approach to the designation of service providers? How are transparency, equal treatment and non-discrimination ensured during the designation procedure? Are public procurement rules applicable? How do you assess the role of public procurement rules, are they fit to ensure the transparency, equal treatment and non-discrimination in the designation of a service provider or do they cause undue burden to national authorities?

Specific section on Compensation

- (8) Is there any USO in your country? Why? If yes, what amount last years?
- (9) In the 2012 SGEI Framework the Commission has made a shift from an ex post annual approach to an ex ante multiannual approach in dealing with compensations provided and in guaranteeing proper monitoring to avoid overcompensation. How do you tackle the need to draw "ex ante" the parameters for compensation? Do you experience any particular

difficulties for example related to need to assess the profit from an ex-ante perspective? How do you assess the overall impact of this new approach? Positive/negative?

- (10) How do you meet the requirement to introduce efficiency incentives to service providers when devising the method of compensation? What type of compensation mechanism do you apply and how are efficiency incentives included in the entrustment act? How has this new obligation to Member States affected the quality of services in your country? Do you consider this as a valid approach to improve the quality and efficiency of services?
- (11) The 2012 SGEI Framework envisages the use of the net avoided cost (NAC) method as the preferred one save for duly justifies cases. Do you think this method serves better the purpose of setting a fair compensation than the aggregated cost approach used by the 2005 SGEI Framework? What are, in your view, the main merits and drawbacks of the NAC method?
- (12) Setting up a fairly representative counterfactual scenario stands as a vital issue in the NAC method. Do you believe the Commission practice provides a balanced approach in this respect? Have you encountered special difficulties in performing such exercise? Do you think the need arises for more detailed guidelines on drawing the counterfactual?
- (13) The Commission practice has anchored the reasonable profit examination on a rather standard approach, based on the return on sales. Do you believe this benchmark stands as fairly representative of profitability? Do you think that others such as the return on assets should also be used? What is your general appraisal on the Commission general approach to this issue?
- (14) Member States have a wide discretion in relation to the exact type of compensatory scheme that they apply for the provision of SGEI? In your opinion do NRAs face particular difficulties in granting aid through guarantees or soft loans? To what extent do SGEI rules discourage the application of such compensatory schemes?
- (15) Adjustments for intangible and other benefits play an important role in compensations. Do issues, such as market dominance or trademark's value, raise special difficulties for a fair and balanced treatment?
- (16) Adjustments for efficiency can lead to difficult choices in a mature market. Up to now, the Commission has provided few clues on how to tackle this issue. What do you believe should be the basic requirements for a fair approach?
- (17) What recommendations can you make to the 2012 SGEI Framework so as to improve the current rules and make them fit for their purpose to ensure fair competition among SGEI providers and guarantee that public compensations granted to them do not distort the competition on the single market?
- (18) Please let us know any other remark on this issue.

Interview guide for USPs in the Postal Sector

Short presentation of the Study and ESTAT Ltd.

USP profile

- (1) Can you describe in brief the profile of the universal postal service provider that you represent– name, year of founding, year of last designation as a USP of postal services, any major changes in the company's operations as a result of the gradual liberalization of the postal service in the EU since 2008?
- (2) What are precisely in your country the real universal service obligations (USO)? The same as in the EU directive, more or less?
- (3) Please provide details on the conditions under which your company is currently operating as a universal postal service provider in your country – date and duration of entrustment act, applied designation procedure, applied compensation mechanism and amount of granted compensation for the duration of the entrustment act, etc.

General assessment of the SGEI Framework 2012 and its applicability to Universal Postal Services

- (4) Can you outline the major changes in the EU state aid rules applicable to the provision of the universal postal service and what was their effect on your position as a service provider on the postal market? What were the implications of the new rules on the competition on the postal market? What were the evolutions of USO during last period? What are consequences of USO for users? Is there a high level of quality, safety and affordability, equal treatment and the promotion of universal access and of user rights as requested by Protocol 26?
- (5) In your opinion do the current SGEI rules foster the provision of universal postal services? Do they impede the development of the postal services service in any way? If yes, how?
- (6) How do you assess the clarity and legal certainty created by the new set of rules of the 2012 SGEI Framework? Have the rules established a clear and legally certain environment for all stakeholders involved in the process of postal service provision or not? If yes/no, why? How do you assess the quality of the guidance on the application of the new set of rules provided by the Commission? Do you have any particular needs that are still unaddressed?
- (7) To what extent are the new requirements on the duration of the entrustment period adapted to the specific nature of the universal postal service? E.g. does the requirement that the duration should not exceed the period required for the depreciation of the most significant assets required to provide the SGEI give rise to any particular problems and/or concerns among USPs?
- (8) What is your country's approach to the designation of universal postal service provider? How are transparency, equal treatment and non-discrimination ensured during the designation procedure? Are public procurement rules applicable? How do you assess the role of public procurement rules when they apply to the provision of postal services, are they fit to ensure the transparency, equal treatment and non-discrimination in the designation of a service provider or do they cause undue burden to national authorities?

- (9) As a universal postal service provider do you undertake any specific actions to improve the efficiency of the postal service you provide? If yes, what are they? Are there any efficiency incentives included as part of the compensation mechanism described in your entrustment act? If yes, what are they? How do you evaluate the 2012 SGEI Framework requirements that oblige Member States to provide efficiency incentives to service providers? How have these requirements affected the quality of the universal postal service? What has changed in terms of quality during the last several years? Can these changes be attributed to the new rules? Do you consider this as a valid approach to improve the quality of the postal service and to stimulate the provider to strive to raise the service efficiency and realize efficiency gains?
- (10) How do you assess in general the impact of the 2012 SGEI Framework on the provision of postal services in your country and at EU level? Predominantly positive or negative? Why?

Specific section on Compensation of the Universal Postal Service

- (11) Did you receive any USO compensation last years? What amounts have you received, if any? Please, provide the reasons. If not, could you explain?

The next set of questions requires expertise that may be too detailed. More general answers, in case of higher levels of management, are also highly appreciated with respect to the key questionnaire items (*highlighted*):

- (12) As you are acquainted, there has been a shift from previous set of rules to the 2012 SGEI Framework, which changes the approach **from ex-post to ex-ante definition of the compensation** amount. How has this change affected your work as a service provider? What difficulties do you experience, if any?
- (13) Do you think that the use of the **net avoided cost (NAC)** serves better the purpose of setting a fair compensation than the aggregated cost approach used by the 2005 SGEI Framework? Could you elaborate on advantages and disadvantages of the NAC method?
- (14) Do you think the need arises for more detailed guidelines to NRAs on how to draw the **counterfactual scenario** in the NAC method so as to safeguard both the fair competition and the right of the service providers? Can you suggest any other approach that seems to you more suitable?
- (15) The Commission practice has anchored the reasonable profit examination on a rather standard approach, based on the **return on sales**. Do you believe this benchmark stands as fairly representative of profitability? Do you think that others such as the return on assets should also be used?
- (16) How do you assess the impact of the 2012 SGEI Framework rules on the types of compensation mechanisms public authorities apply to **grant aid** to universal postal service providers? To what extent do these rules discourage the application of compensatory schemes such as guarantees and soft loans?

- (17) Adjustments for **intangible and other benefits** play an important role in the postal service compensations. Do issues, such as market dominance or trademark's value, raise special difficulties for a fair and balanced treatment?
- (18) **Adjustments for efficiency** can lead to difficult choices in a mature market such as postal service. What would be a fair approach to the basic requirements?
- (19) What **recommendations** can you make to the 2012 SGEI Framework so as to improve the current rules and make them fit for their purpose to ensure OSU compensations of SGEI providers and guarantee that public compensations are not over-compensations and do not distort the competition on the single market?
- (20) Please free to share with us any **other remarks** on this issue.

Annex 4. Review of the Member States Reports

Country	Review Methodology	Results 2012-2013	Results 2014-2015
Austria	<ul style="list-style-type: none"> ○ Formal check ○ Calculation of the total amount ○ Calculation of the amount of State aid provided by type ○ Identification of the different categories of services ○ Number of individual SGEIs and total number of SGEIs ○ Forms of entrustment ○ Compensation mechanisms ○ Identification of the type of methodology applied for calculation of the compensation –cost allocation or NAC ○ Information on avoiding overcompensation ○ Information on difficulties (solutions) ○ Information on complaints 	<ul style="list-style-type: none"> ○ Report is overall in line with reporting obligations. Two different parts are presented depending on the responsible authority. Template followed. ○ Estimated total amount (on the basis of maximum): approx. 1137 mln. euro for 2012 and 2013. ○ Combatting disasters (558.2 mln. euro + 68 mln. euro); Training and skills for health and long-term care workers (4.8 mln. euro); Employment projects (506 mln. euro) ○ 3 SGEIs ○ Contract, funding agreements ○ Contribution to actual costs (+ lump-sum for disasters) ○ Methodology based on net costs (with ceilings) ○ Overcompensation considered not possible ○ No difficulties reported. ○ No complaints reported. 	<ul style="list-style-type: none"> ○ Report is overall in line with reporting obligations. Template followed. ○ Estimated total amount (on the basis of maximum): approx. 2823.5 mln. euro ○ Combatting disasters (185 mln. euro + 68 mln. euro + an additional one-off grant of 200 mln.); rescue and emergency medical assistance (7322.4 mln. + an additional one-off grant of 200 mln.); Funding of skills training for employees in health and social care, and since 2015 nursery education, by the Employment Service (2.1 mln); Employment projects (339.5 mln.) ○ 3 SGEIs ○ The entrustment in relation to disaster prevention and emergency medical assistance is primarily by law and where appropriate also by concluding a contract; as for employment projects the entrustment is based on funding agreements

			<ul style="list-style-type: none"> ○ Contribution to actual costs for clearly defined eligible costs. Duplication of funding is not permitted. Since 2015 a maximum of 60 % of eligible costs can be funded ○ Compensation through submission of an invoice (with ceilings) or a lump-sum is made twice a year for an amount that corresponds to the resources actually required in the previous year. ○ Overcompensation considered not possible. ○ No difficulties reported. ○ No complaints reported.
Belgium	<ul style="list-style-type: none"> ○ Formal check ○ Calculation of the total amount ○ Calculation of the amount of State aid provided by type ○ Identification of the different categories of services ○ Number of individual SGEIs and total number of SGEIs ○ Forms of entrustment ○ Compensation mechanisms ○ Identification of the type of methodology applied for calculation of the compensation –cost allocation 	<ul style="list-style-type: none"> ○ Report is overall in line with reporting obligations. Three different parts are presented as annexes depending on the SGEI and the responsible authority. Template not followed. ○ Estimated total amount: approx. 16137 mln. euro for 2012 and 2013. ○ Hospitals (15360.4 mln. euro); Social housing (212 mln. euro); Access to broadcasting (5 mln. euro); Tourism (12.4 mln. euro); Childcare and service flats (696.2 mln. euro) ○ 5 SGEIs 	<ul style="list-style-type: none"> ○ Report is overall in line with reporting obligations. Two separate reports are presented - for Flanders and Wallonia. Template is followed. ○ Estimated total amount: approx. 18 492 mln. euro of which Flanders (17233.6 mln. euro) and Wallonia (1258.4 mln. euro) ○ Hospitals - Government total (approx. 16122 mln. euro); Flanders: Access to broadcasting (approx. 3.9 mln. euro); Accessibility for broadcasting organisations; Childcare and service

	<p>or NAC</p> <ul style="list-style-type: none"> ○ Information on avoiding overcompensation ○ Information on difficulties (solutions) ○ Information on complaints 	<ul style="list-style-type: none"> ○ Government decree, cooperation agreement ○ Annual budget, operating and investment grant, three-tier system subsidy (basic subsidy, subsidy for income-related charges and enhanced subsidy) ○ Predominant methodology based on the cost allocation (annual statement of account) ○ Undercompensation mentioned for the hospital sector ○ No difficulties reported. ○ One complaint reported as not connected (with SGEI as described in the Hospitals Act but with specific SGEI under the legislation on public centers for social welfare) 	<p>flats (1029.9 mln. euro); Environment, nature and energy policy area (5.32 mln. euro); Nature-related activities (approx. 1.27 mln.); Work and Social Economy Policy Area (approx. 70.24 mln.). Wallonia: Housing + Housing fund (405.3 mln. euro); Social mortgage (48.3 mln. euro), Transport and waterways (5.6 mln. euro), Social services (436.5 mln. euro); Rural development (0.3 mln, euro), Aid to undertakings (62.2 mln. euro), Medical services, container depots and circular economy (7 mln. euro), Financing of Brussels social housing fund (355.4 mln. euro)</p> <ul style="list-style-type: none"> ○ 6 SGEIs (Flanders), 6 SGEIs (Wallonia). ○ Government decree, ministerial order, cooperation agreement ○ Predominantly cost allocation ○ Cost-incurred subsidy/ grant in case of performed tasks, supervision and monitoring, audit and deduction or refund if necessary ○ Reported difficulty that working with concepts such as reasonable profit, rate of return on capital or other profit
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			<p>level indicators and swap rates are suited to a business context, but cannot easily be applied to subsidising training courses, reintegration measures for job seekers or services of a predominately social nature, where making a profit is not always an objective</p> <ul style="list-style-type: none"> ○ One complaint is only indirectly concerned with the financial resources budget of Belgian hospitals
Bulgaria	<ul style="list-style-type: none"> ○ Formal check ○ Calculation of the total amount ○ Calculation of the amount of State aid provided by type ○ Identification of the different categories of services ○ Number of individual SGEIs and total number of SGEIs ○ Forms of entrustment ○ Compensation mechanisms ○ Identification of the type of methodology applied for calculation of the compensation –cost allocation or NAC ○ Information on avoiding overcompensation ○ Information on difficulties (solutions) 	<ul style="list-style-type: none"> ○ Report is overall in line with reporting obligations. Template is followed. ○ Estimated total amount: approx. 29.4 mln. euro ○ Hospitals (7.6 mln. euro); Childcare (1.9 mln. euro); Social services to vulnerable groups (6.4 mln. euro); Social housing (2.5 mln. euro); UPS (11 mln. euro) ○ 5 SGEIs ○ Government decree, contract, agreement ○ Annual budget, contribution to actual cost, subsidy (reasonable profit not included) ○ Predominant methodology based on the cost allocation (+ NAC for UPS) 	<ul style="list-style-type: none"> ○ Report is overall in line with reporting obligations. Template is followed. ○ Estimated total amount: approx. 40.4 mln. euro ○ Medical services (12.5 mln. euro), Social services of which Childcare (0.2 mln. euro) and Care and social inclusion of vulnerable groups (0.17 mln. euro), Postal services (12.5 mln. euro), Waste management (4.1 mln. euro), Financial support for state cultural institutes (0.19 mln. euro), Protection against the harmful effects of water (14.7 mln. euro) ○ 6 SGEIs ○ Contract, tender procedure, government decree

	<ul style="list-style-type: none"> ○ Information on complaints 	<ul style="list-style-type: none"> ○ Competitive procedures for municipal budget, methodology for calculating the net costs in the case of UPS ○ No difficulties reported. ○ No complaints reported. 	<ul style="list-style-type: none"> ○ Direct subsidy ○ Predominant methodology based on the cost allocation (+ NAC for Medical services) ○ Binding proposals ○ No difficulties reported. ○ No complaints reported.
Croatia	<ul style="list-style-type: none"> ○ Formal check ○ Calculation of the total amount ○ Calculation of the amount of State aid provided by type ○ Identification of the different categories of services ○ Number of individual SGEIs and total number of SGEIs ○ Forms of entrustment ○ Compensation mechanisms ○ Identification of the type of methodology applied for calculation of the compensation –cost allocation or NAC ○ Information on avoiding overcompensation ○ Information on difficulties (solutions) ○ Information on complaints 	<ul style="list-style-type: none"> ○ Report is overall in line with reporting obligations. Template is followed. ○ Estimated total amount: approx. 0.2 mln. euro ○ Public air transport (0.2 mln. euro) ○ 1 SGEI ○ Government decision ○ Subsidy (reasonable profit not included) ○ No specific methodology identified (accounts) ○ Overcompensation considered not possible ○ No difficulties reported. ○ No complaints reported. 	<ul style="list-style-type: none"> ○ Report is overall in line with reporting obligations. Template is followed. ○ Estimated total amount: 24.6 mln euro. ○ Public transportation (0.5 mln. euro), Postal services (24.1 mln. euro) ○ 2 SGEIs ○ Government decision, tender ○ Subsidy (reasonable profit not included) ○ No specific methodology identified (separated accounts) ○ Government inspections ○ No difficulties reported. ○ No complaints reported.
Cyprus	<ul style="list-style-type: none"> ○ Formal check ○ Calculation of the total amount ○ Calculation of the amount of State aid 	<ul style="list-style-type: none"> ○ Report is overall in line with reporting obligations. Template is followed. ○ Estimated total amount: approx. 3.96 	<ul style="list-style-type: none"> ○ Report is overall in line with reporting obligations. Template is followed. ○ Estimated total amount: approx. 4.72

	<p>provided by type</p> <ul style="list-style-type: none"> ○ Identification of the different categories of services ○ Number of individual SGEIs and total number of SGEIs ○ Forms of entrustment ○ Compensation mechanisms ○ Identification of the type of methodology applied for calculation of the compensation –cost allocation or NAC ○ Information on avoiding overcompensation ○ Information on difficulties (solutions) ○ Information on complaints 	<p>mln. euro</p> <ul style="list-style-type: none"> ○ News agency sponsorship (3.89 mln. euro); Conference centre sponsorship (0.07 mln. euro) ○ 2 SGEIs ○ Government decision ○ Sponsorship, free concession ○ No specific methodology identified (accounts) ○ Overcompensation considered not possible ○ No difficulties reported. ○ No complaints reported. 	<p>mln euro</p> <ul style="list-style-type: none"> ○ Social care services (approx. 3.73 mln euro); Conference Centre Sponsorship (0.99 mln euro) ○ 2 SGEs ○ Government decision ○ In the event of any overcompensation by government subsidy granted the previous year, the approved subsidy will either be offset against the overcompensation and the beneficiary will be paid what is left, or it will be returned. Where the amount of overcompensation does not exceed 10 % of the amount of the average annual compensation, such overcompensation may be carried forward to the next period and deducted from the amount of compensation payable in respect of that period. ○ presentation of the audited accounts for the previous year ○ Overcompensation considered not possible ○ No difficulties reported. ○ No complaints reported.
Czech Republic	<ul style="list-style-type: none"> ○ Formal check ○ Calculation of the total amount 	<ul style="list-style-type: none"> ○ Report is overall in line with reporting obligations with detailed calculations. 	<ul style="list-style-type: none"> ○ Report is overall in line with reporting obligations with detailed calculations.

	<ul style="list-style-type: none"> ○ Calculation of the amount of State aid provided by type ○ Identification of the different categories of services ○ Number of individual SGEIs and total number of SGEIs ○ Forms of entrustment ○ Compensation mechanisms ○ Identification of the type of methodology applied for calculation of the compensation –cost allocation or NAC ○ Information on avoiding overcompensation ○ Information on difficulties (solutions) ○ Information on complaints 	<p>Template is not followed.</p> <ul style="list-style-type: none"> ○ Estimated total amount: approx. 152 mln. euro ○ Hospitals (69 mln. euro); Social Services (29 mln. euro); airports and ports (2 mln. euro); other sectors (52 mln. euro) ○ 4 SGEIs ○ Contract, resolution ○ Grant, contribution, simple payment of net costs ○ Methodology based on the cost allocation ○ Payment is restricted to specific percentage of the total eligible costs ○ Minor difficulties reported related in particular to the calculation of reasonable profit whereby risk is partially transferred to the provider. ○ No complaints reported. 	<p>Template is followed.</p> <ul style="list-style-type: none"> ○ Estimated total amount: approx. 381.4 mln. euro ○ Hospitals (96.1 mln. euro), Childcare (3.43 mln. euro), Access to and reintegration into the labour market (1.5 mln. euro), Social housing (0.5 mln. euro), Care and social inclusion of vulnerable groups (86.5 mln. euro), Other social services (116.3 mln euro), Airports and ports (1.9 mln. euro), Energy (0.2 mln, euro), Waste collection (0.4 mln. euro), Culture (23.6 mln. euro), Other sectors (52.1 mln. euro) ○ 11 SGEIs ○ Contract Resolution, foundation charter, written instrument of delegation approved and issued by City Council, agreement contract, official regional act, deed of gift ○ “grant payment – settlement – repayment” procedure, documenting actual costs, interim and annual reports, documentation of the financial settlement of the grant by the beneficiary; ○ Cost allocation methodology
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			<ul style="list-style-type: none"> ○ No difficulties reported. ○ Only one complaint which was assessed by the European Commission in proceedings for alleged illegal public aid. The proceedings were closed with a ruling that no public aid had been provided.
Denmark	<ul style="list-style-type: none"> ○ Formal check ○ Calculation of the total amount ○ Calculation of the amount of State aid provided by type ○ Identification of the different categories of services ○ Number of individual SGEIs and total number of SGEIs ○ Forms of entrustment ○ Compensation mechanisms ○ Identification of the type of methodology applied for calculation of the compensation –cost allocation or NAC ○ Information on avoiding overcompensation ○ Information on difficulties (solutions) ○ Information on complaints 	<ul style="list-style-type: none"> ○ Report is overall in line with reporting obligations. The five institutions concerned report in separate parts. Template is not followed. ○ Estimated total amount: approx. 650 mln. euro ○ Housing (593.4 mln. euro); pilotage in ports (pending); hospitals (outside scope); airports (7.6 mln. euro); maritime transport (59 mln. euro) ○ 3 SGEIs ○ Government decree, agreement, contract ○ Loans and payments, subsidy ○ Predominant methodology based on the cost allocation (+ NAC for UPS) ○ Competitive procedure to avoid overcompensation ○ No difficulties reported. ○ No complaints reported. 	<ul style="list-style-type: none"> ○ Report is overall in line with reporting obligations. Template is followed. ○ Estimated total amount: approx. 1009 mln. euro ○ Aid for new construction (approx. 238.9 mln euro); Aid for social housing (696.5 mln euro); Airports (6.9 mln euro); Maritime transport (67 mln euro) ○ 4 SGEIs ○ Government decree, agreement, contract ○ Loans (government guarantee when changing type of loan) and payments, subsidy ○ Predominant methodology based on the cost allocation (+ NAC for UPS) ○ Competitive procedure to avoid overcompensation ○ No difficulties reported. ○ No complaints reported.

<p>Estonia</p>	<ul style="list-style-type: none"> ○ Formal check ○ Calculation of the total amount ○ Calculation of the amount of State aid provided by type ○ Identification of the different categories of services ○ Number of individual SGEIs and total number of SGEIs ○ Forms of entrustment ○ Compensation mechanisms ○ Identification of the type of methodology applied for calculation of the compensation –cost allocation or NAC ○ Information on avoiding overcompensation ○ Information on difficulties (solutions) ○ Information on complaints 	<ul style="list-style-type: none"> ○ Report is overall in line with reporting obligations. Template is followed. ○ Estimated total amount: approx. 5.4 mln. euro ○ Airports and ports (2.8 mln. euro); postal service (2.6 mln. euro); district heating (no figures for 2012-2013) ○ 3 SGEIs ○ Contract, decision ○ Direct subsidy ○ Predominant methodology based on the cost allocation (+ payment schedule for the postal service) ○ Municipal decision criteria in the case of district heating ○ No difficulties reported. ○ No complaints reported. 	<ul style="list-style-type: none"> ○ Report is overall in line with reporting obligations. Template is followed. ○ Estimated total amount: approx. 20 mln. euro ○ Aviation (2.55 mln. euro); UPS (3.23 mln. euro); Energy (0.7 mln. euro); Water supply (0.75 mln. euro); Communication services (12.76 mln. euro) ○ 5 SGEIs ○ Contract, decision ○ Direct subsidy ○ Predominant methodology based on the cost allocation (+ payment schedule for the postal service) ○ Payment is based on reports of work carried out and received in accordance with the contracts and invoices corresponding to those reports ○ No difficulties reported. ○ No complaints reported.
<p>Finland</p>	<ul style="list-style-type: none"> ○ Formal check ○ Calculation of the total amount ○ Calculation of the amount of State aid provided by type ○ Identification of the different categories of services ○ Number of individual SGEIs and total 	<ul style="list-style-type: none"> ○ Report is overall in line with reporting obligations, consisting of 7 parts provided by different institutions. Template is followed in parts. ○ Estimated total amount: approx. 406 mln. euro ○ Waterways and ferry services (23 mln. 	<ul style="list-style-type: none"> ○ Report is overall in line with reporting obligations. Template is followed. ○ Estimated total amount: approx. 511.23 mln. euro ○ Social Housing (247.62 mln. euro); Air and Ferry Services (2.79 mln. euro); Grants aimed at improving

	<p>number of SGEIs</p> <ul style="list-style-type: none"> ○ Forms of entrustment ○ Compensation mechanisms ○ Identification of the type of methodology applied for calculation of the compensation –cost allocation or NAC ○ Information on avoiding overcompensation ○ Information on difficulties (solutions) ○ Information on complaints 	<p>euro); export support service (40 mln. euro); housing (340 mln. euro); air services (3 mln. euro)</p> <ul style="list-style-type: none"> ○ 5 SGEIs ○ Entrustment decision, agreement, contract ○ Grant, subsidy loans ○ Predominant methodology based on the cost allocation ○ Aid managed by a single authority, which is reported to mean that excess aid or overcompensation cannot occur in practice. ○ No difficulties reported. ○ Complaint reported. It suggests that Finpro, being in receipt of state funding, was distorting the market in chargeable consultation services. 	<p>Housing Conditions (240 mln. euro); Electricity Supply (1.6 mln. euro); Pilotage services (12.6 mln. euro)</p> <ul style="list-style-type: none"> ○ 5 SGEIs ○ The granting of support and its amount are regulated in law and subsidiary rules and handled by a single authority ○ No difficulties reported. ○ In spring 2015, the Supreme Administrative Court issued three decisions relating to social housing in response to complaints made by ARAVA loan recipients against the Housing Finance and Development Centre of Finland (ARA). As a result, ARA's supervisory powers will be extended to cover all corporations with non-profit obligations and provisions on supervision will otherwise be improved.
France	<ul style="list-style-type: none"> ○ Formal check ○ Calculation of the total amount ○ Calculation of the amount of State aid provided by type ○ Identification of the different categories of services ○ Number of individual SGEIs and total 	<ul style="list-style-type: none"> ○ Report is overall in line with reporting obligations. Template is followed. ○ Estimated total amount: approx. 166.2 bln. euro ○ Hospitals (151.4 bln. euro); childcare (1.38 bln. euro); labour market reintegration (61.8 mln. euro); social 	<ul style="list-style-type: none"> ○ Report is overall in line with reporting obligations. Template is followed. ○ Estimated total amount: 166.8 bln. Euro ○ Hospitals (151.8 bln. euro); Access to and reintegration into the labour market (10.6 bln, euro); Social

	<p>number of SGEIs</p> <ul style="list-style-type: none"> ○ Forms of entrustment ○ Compensation mechanisms ○ Identification of the type of methodology applied for calculation of the compensation –cost allocation or NAC ○ Information on avoiding overcompensation ○ Information on difficulties (solutions) ○ Information on complaints 	<p>housing (12.6 bln. euro); youth centres (20 mln. euro)</p> <ul style="list-style-type: none"> ○ 5 SGEIs ○ Contract, agreement, administrative order ○ Grant, subsidy in the form of government appropriations ○ Predominant methodology based on the cost allocation ○ National costs study, invoicing review mechanism, penalties for non-compliance ○ No particular difficulties reported, yet the benefit mentioned of a more refined methodological framework, both for distinguishing between SGEI and non-SGEI activities and for defining unreasonable profit on the basis of the origin of capital (need for a higher return on private capital). ○ Two complaints reported concerning discrimination in the distribution of resources between the public and private health sectors 	<p>Housing (12.7 bln. euro); UPS (1.1 bln. euro); Youth and voluntary sectors (112.7 mln. euro), Culture (105 mln. euro), Metrology (23 mln. euro), Vocational training (1.1 bln. euro of which Territorial Management 341.2 mln.; Press transport 280 mln. euro; Banking accessibility 477 mln.)</p> <ul style="list-style-type: none"> ○ 7 SGEIs ○ Contract, agreement, administrative order ○ Grant, subsidy in the form of government appropriations ○ Methodology based on cost allocation and methodology on the net avoided cost methodology is used ○ The AFP objectives and resources contract provides that, in the event of overcompensation identified by the Financial Commission (consisting of members of the Court of Auditors) after the accounts for year n have been closed and audited, the AFP will repay to the State, in year n+1, any overcompensation of the net cost of the general interest task that it may have received. ○ Hospitals experience difficulties with
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			<p>publication of all the multiannual objectives and resources contracts (+3 000 contracts) and find it to be a burdensome and unnecessary requirement given that the financing allocated to health establishments is mainly covered by the application of laws and regulations; also reported difficulties with the definition of reasonable profit as it is considered not appropriate for hospital care, given that this activity is mainly carried out by public establishments and non-profit private establishments. There is also a difficulty due to the absence of comparative data; Postal services reported difficulties with calculation of NAC</p> <ul style="list-style-type: none"> ○ Complaint by the French Federation of Private Hospitals submitted two complaints to the European Commission generally alleging discrimination in the allocation of resources between public and private establishments.
Germany	<ul style="list-style-type: none"> ○ Formal check ○ Calculation of the total amount ○ Calculation of the amount of State aid 	<ul style="list-style-type: none"> ○ Report is overall in line with reporting obligations. Template is followed (without tables). 	-

	<p>provided by type</p> <ul style="list-style-type: none"> ○ Identification of the different categories of services ○ Number of individual SGEIs and total number of SGEIs ○ Forms of entrustment ○ Compensation mechanisms ○ Identification of the type of methodology applied for calculation of the compensation –cost allocation or NAC ○ Information on avoiding overcompensation ○ Information on difficulties (solutions) ○ Information on complaints 	<ul style="list-style-type: none"> ○ Estimated total amount: approx. 4.213 bln. euro ○ Hospitals (2.25 bln. euro); social service (26.6 mln. euro); childcare (534.2 mln. euro); labour market (13.9 mln. euro); social housing (993.8 mln. euro); inclusion (6.8 mln. euro); other social (23 mln. euro); airports and ports (4.7 mln. euro); other (360 mln. euro) ○ 9 SGEIs (17 in ‘other’) ○ Administrative act and by council decision, by contract or by-laws and supervisory board or shareholders’ resolution ○ Subsidies, less usually through loans and guarantees ○ Generally a method of cost allocation is used ○ Possibility of overcompensation checked mainly in the context of audited annual accounts ○ No difficulties reported. ○ One private hospital complaint case reported. 	
Greece	<ul style="list-style-type: none"> ○ Formal check ○ Calculation of the total amount ○ Calculation of the amount of State aid provided by type 	<ul style="list-style-type: none"> ○ Report is overall in line with reporting obligations. Template is followed. ○ Estimated total amount: approx. 229.4 mln. euro 	<ul style="list-style-type: none"> ○ Report is overall in line with reporting obligations. Template is followed. ○ Estimated total amount: approx. 268.8 mln. euro

	<ul style="list-style-type: none"> ○ Identification of the different categories of services ○ Number of individual SGEIs and total number of SGEIs ○ Forms of entrustment ○ Compensation mechanisms ○ Identification of the type of methodology applied for calculation of the compensation –cost allocation or NAC ○ Information on avoiding overcompensation ○ Information on difficulties (solutions) ○ Information on complaints 	<ul style="list-style-type: none"> ○ Postal and non-postal (132 mln. euro); air transport (97.4 mln. euro) ○ 3 SGEIs ○ Contract, Memorandum of Understanding ○ Grant, compensation ○ Predominantly method of cost allocation ○ Operators/tenderers are required to submit financial tender, contractual obligations (cost, revenue, profit rate) ○ No difficulties reported. ○ No specific complaints reported. 	<ul style="list-style-type: none"> ○ Social services (6.9 mln. euro divided into 2 categories – 1) Provision and operation of structures to tackle poverty in various Municipalities in the country; 2) Provision of services to support vulnerable/susceptible groups); Air and Maritime transport (92.8 mln. euro for air transport paid in full by the national central authorities as non-state aid + 169.1 mln. euro for Maritime links), Postal services (exact amount granted not available) ○ 4 SGEIs ○ Contract, Memorandum of Understanding ○ Compensation ○ Method of Cost allocation (Calculation of the net cost) ○ If only one tender is submitted, which is deemed to be seeking financial compensation that it too high, the tender committee negotiates with the tenderer in order to achieve a reduction in the amount of financial compensation. ○ No difficulties reported. ○ No complaints reported.
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<p>Hungary</p>	<ul style="list-style-type: none"> ○ Formal check ○ Calculation of the total amount ○ Calculation of the amount of State aid provided by type ○ Identification of the different categories of services ○ Number of individual SGEIs and total number of SGEIs ○ Forms of entrustment ○ Compensation mechanisms ○ Identification of the type of methodology applied for calculation of the compensation –cost allocation or NAC ○ Information on avoiding overcompensation ○ Information on difficulties (solutions) ○ Information on complaints 	<ul style="list-style-type: none"> ○ Report is overall in line with reporting obligations. Template is followed (without table format, distinctions by type). ○ Estimated total amount: approx. 233 mln. euro ○ Aid not reported by type ○ 22 public service functions/sectors involved ○ Contracts (grant agreements, public-benefit contracts, grant contracts, public service contracts), legislation (acts, government decrees, ministerial decrees, local-government decrees) or activity authorizations ○ Non-refundable aid ○ Application of 'cost-compensation' method ○ Four cases of overcompensation remedied (10 % carry-forward rule) ○ No difficulties reported, but remark on the need for methodologies for calculating reasonable profit ○ No specific complaints reported. 	<ul style="list-style-type: none"> ○ Report is overall in line with reporting obligations. Template is followed (without table format, distinctions by type). ○ Estimated total amount: approx. 218.3 mln. euro ○ Aid not reported by type ○ 19 public service functions/sectors involved ○ Contracts (grant agreements, public-benefit contracts, grant contracts, public service contracts), legislation (acts, government decrees, ministerial decrees, local-government decrees) or activity permits ○ predominantly non-refundable aid ○ 'cost-compensation' method ○ 10 cases of overcompensation – it was either repaid by the beneficiary or deducted from the following year's compensation under the 10 % rule ○ Reported difficulties concerning mainly the starting date of the eligibility of costs ○ No complaints reported.
<p>Ireland</p>	<ul style="list-style-type: none"> ○ Formal check ○ Calculation of the total amount ○ Calculation of the amount of State aid 	<ul style="list-style-type: none"> ○ Report is overall in line with reporting obligations. Included is Risk Equalization Scheme report. 	<ul style="list-style-type: none"> ○ Report is overall in line with reporting obligations. Included is Risk Equalization Scheme report.

	<p>provided by type</p> <ul style="list-style-type: none"> ○ Identification of the different categories of services ○ Number of individual SGEIs and total number of SGEIs ○ Forms of entrustment ○ Compensation mechanisms ○ Identification of the type of methodology applied for calculation of the compensation –cost allocation or NAC ○ Information on avoiding overcompensation ○ Information on difficulties (solutions) ○ Information on complaints 	<ul style="list-style-type: none"> ○ Estimated total amount: approx. 189.9 mln. euro ○ Electricity stations (112 mln. euro); housing (12.2 mln. euro); health insurance (65.7 mln. euro) ○ 3 SGEIs ○ Statutory entrustment, legal provisions ○ Compensation ○ Cost allocation methodology ○ To avoid overcompensation, distinction introduced between uncontrollable costs, which are fully compensated, and controllable costs, which may only be partly compensated. ○ No difficulties reported. ○ No specific complaints reported. 	<ul style="list-style-type: none"> ○ Estimated total amount: approx. 1320.1 mln. euro ○ Electricity stations (104.7 mln. euro); Health Insurance (1108.6 mln. euro); Housing (106.7 mln. euro) ○ 2 SGEIs ○ Statutory entrustment, legal provisions ○ Compensation ○ Cost allocation methodology ○ Overcompensation when the net beneficiary's revenue gross of reinsurance and excluding investment activities exceeds 4.4% per annum, calculated on a rolling three-year basis ○ No difficulties reported. ○ No complaints reported.
Italy	<ul style="list-style-type: none"> ○ Formal check ○ Calculation of the total amount ○ Calculation of the amount of State aid provided by type ○ Identification of the different categories of services ○ Number of individual SGEIs and total number of SGEIs ○ Forms of entrustment ○ Compensation mechanisms ○ Identification of the type of methodology applied for calculation 	<ul style="list-style-type: none"> ○ Report is overall in line with reporting obligations. Template is followed in annex. ○ Estimated total amount: approx. 827.2 mln. euro (pending 66 mln. euro) ○ Social building (598.6 mln. euro); maritime links (128.4 mln. euro); air links and airports (34.2 mln. euro); field post (66 mln. euro pending) ○ 4 SGEIs ○ Regional laws, contracts, allocation decree 	<ul style="list-style-type: none"> ○ No new report published.

	<p>of the compensation –cost allocation or NAC</p> <ul style="list-style-type: none"> ○ Information on avoiding overcompensation ○ Information on difficulties (solutions) ○ Information on complaints 	<ul style="list-style-type: none"> ○ Subsidy, direct subsidy ○ Predominantly cost allocation methodology, also subsidy cap method ○ Setting of a ceiling for compensation, together with the criteria for granting compensation ○ Difficulty reported with respect to possible service interruption due to need to harmonize timetable of applicable legal framework ○ No specific complaints reported, but private and cross-border health issues explained 	
Latvia	<ul style="list-style-type: none"> ○ Formal check ○ Calculation of the total amount ○ Calculation of the amount of State aid provided by type ○ Identification of the different categories of services ○ Number of individual SGEIs and total number of SGEIs ○ Forms of entrustment ○ Compensation mechanisms ○ Identification of the type of methodology applied for calculation of the compensation –cost allocation or NAC ○ Information on avoiding 	<ul style="list-style-type: none"> ○ Report is overall in line with reporting obligations. Template is followed. ○ Estimated total amount: approx. 1 471.4 mln. euro ○ Hospitals (673.6 mln. euro); health (426.2 mln. euro), childcare (9.2 mln. euro); social services (0.9 mln. euro); housing (40.1 mln. euro); inclusion (145.8 mln. euro); airports (2.5 mln. euro); heating (21.5 mln. euro); water and sewage (141.3 mln. euro); waste (10.3 mln. euro) ○ 11 SGEIs ○ Agreement, local authority decision, contract 	<ul style="list-style-type: none"> ○ Report is overall in line with reporting obligations. Template is followed. ○ Estimated total amount: approx. 1382.1 mln. euro ○ Hospitals (716.9 mln. euro); Social services (463 mln. euro); Water supply (258.9 mln. euro); Heating supply (22.8 mln. euro); Waste management (8.7 mln. euro); Airports (6 mln. euro) ○ 6 SGEIs ○ Agreements, local authority decision ○ Grants ○ Cost allocation method ○ Same overcompensation method as

	<ul style="list-style-type: none"> ○ overcompensation ○ Information on difficulties (solutions) ○ Information on complaints 	<ul style="list-style-type: none"> ○ Subsidy ○ Cost allocation method ○ Accounting, monitoring and control mechanisms, independent appraisal of in-kind contributions, repayment of overcompensated amount (e.g. hospitals), profit to be invested (e.g. waste) ○ No difficulties reported. ○ No specific complaints reported. 	<p>previous reporting period -</p> <ul style="list-style-type: none"> ○ Accounting, monitoring and control mechanisms, independent appraisal of in-kind contributions, repayment of overcompensated amount (e.g. hospitals), profit to be invested (e.g. waste) ○ No difficulties reported. ○ No complaints reported.
Lithuania	<ul style="list-style-type: none"> ○ Formal check ○ Calculation of the total amount ○ Calculation of the amount of State aid provided by type ○ Identification of the different categories of services ○ Number of individual SGEIs and total number of SGEIs ○ Forms of entrustment ○ Compensation mechanisms ○ Identification of the type of methodology applied for calculation of the compensation –cost allocation or NAC ○ Information on avoiding overcompensation ○ Information on difficulties (solutions) ○ Information on complaints 	<ul style="list-style-type: none"> ○ Report is overall in line with reporting obligations. Template is followed. ○ Estimated total amount: 10 mln. euro ○ Refugee assistance (1.8 mln. euro); services for disabled (0.2 mln. euro); technical assistance (2 mln. euro); childcare (1.5 mln. euro); elderly support (2 mln. euros); family rent and mortgage support (3 mln. euro) ○ 7 SGEIs ○ Ministerial order, procedure ○ Grant aid, allowance, assistance ○ No specific methodology reported ○ No specific mechanism for avoiding overcompensation ○ No difficulties reported. ○ No complaints reported. 	<ul style="list-style-type: none"> ○ Report is overall in line with reporting obligations. Template is followed. ○ Estimated total amount: 20.3 mln. euro ○ Postal services (12.6 mln. euro), Social Services (Childcare services, Non-state pre-school education establishments, Social day care, Burial of unidentified bodies; 7.7 mln. euro) ○ 5 SGEIs ○ Ministerial order, procedure ○ Grant aid, allowance, assistance ○ No specific methodology reported ○ No specific mechanism for avoiding overcompensation ○ No difficulties reported. ○ No complaints reported.

<p>Luxembourg</p>	<ul style="list-style-type: none"> ○ Formal check ○ Calculation of the total amount ○ Calculation of the amount of State aid provided by type ○ Identification of the different categories of services ○ Number of individual SGEIs and total number of SGEIs ○ Forms of entrustment ○ Compensation mechanisms ○ Identification of the type of methodology applied for calculation of the compensation –cost allocation or NAC ○ Information on avoiding overcompensation ○ Information on difficulties (solutions) ○ Information on complaints 	<ul style="list-style-type: none"> ○ Report is overall in line with reporting obligations. Template is followed. Conventions attached. ○ Estimated total amount: approx. 2 107.7 mln. euro ○ Press distribution (not paid); hospitals (1567.8 mln. euro); housing (18.7 mln. euro); services for disabled (98.4 mln. euro); reception (3.2 mln. euro); elderly services (95 mln. euro); family services (8.7 mln. euro); shelters (21.9 mln. euro); services for youth (22.1 mln. euro); childcare and day centres (271.9 mln. euro) ○ 11 SGEIs (sub-sets of services depending on group) ○ Agreements ○ Aid, deficit coverage ○ Cost allocation (fixed amount of compensation per unit of service provision). State contributions to expenditure on the measures of assistance in the form of monthly, daily or hourly fixed rates are entered in the national budget. ○ Repayment obligation ○ No difficulties reported. ○ No complaints reported. 	<ul style="list-style-type: none"> ○ Report is overall in line with reporting obligations. Template is followed. ○ Estimated total amount: approx. 2070 mln. euro ○ Postal services (no paid), hospitals (1676.1 mln. euro), Housing (93.3 mln. euro), Services for people with disabilities (107.5 mln. euro), Services for adults, alone with children (28.5 mln. euro), Services for elderly (9.3 mln. euro), Family services (59.7 mln. euro), Education and care services for children (72.6 ml. euro), Shelters (23.7 mln. euro) ○ 11 SGEIs (sub-sets of services depending on group) ○ Agreements ○ Aid, deficit coverage ○ Cost allocation (fixed amount of compensation per unit of service provision). State contributions to expenditure on the measures of assistance in the form of monthly, daily or hourly fixed rates are entered in the national budget. ○ Repayment obligation ○ No difficulties reported. ○ No complaints reported.
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Malta		-	-
Netherlands	<ul style="list-style-type: none"> ○ Formal check ○ Calculation of the total amount ○ Calculation of the amount of State aid provided by type ○ Identification of the different categories of services ○ Number of individual SGEIs and total number of SGEIs ○ Forms of entrustment ○ Compensation mechanisms ○ Identification of the type of methodology applied for calculation of the compensation –cost allocation or NAC ○ Information on avoiding overcompensation ○ Information on difficulties (solutions) ○ Information on complaints 	<ul style="list-style-type: none"> ○ Report is overall in line with reporting obligations. Template is followed. Detailed annexes. ○ Estimated total amount: approx. 2 219.4 mln. euro ○ Health (2.5 mln. euro); housing (6 mln. euro); labour market (3.3 mln. euro); integration (1.5 mln. euro); subsidized work (1.4 mln. euro); social housing (2125,4 mln. euro); welfare (18.4 mln. euro); recreation (2.8 mln. euro); waste (56.6 mln. euro); culture (1.5 mln. euro) ○ 10 SGEIs ○ Agreement, implementation decision, order, contract ○ Aid, subsidy, guarantee, cost apportionment ○ Predominantly cost allocation ○ Separation of costs to avoid overcompensation ○ No specific difficulties reported. ○ No complaints reported. 	<ul style="list-style-type: none"> ○ Report is overall in line with reporting obligations. Template is followed. SGEIs reported by municipality ○ Estimated total amount: approx. 466.9 mln. euro ○ Health (23.4 mln. euro), Social services (60.6 mln. euro), Social housing (278 mln. euro), Energy (3 mln. euro), Culture (20.9 mln. euro), Nature management (11.4 mln. euro), NGO, non-profit education and knowledge institutions and IOs (1 mln. euro), Broadcasting (2.5 mln. euro), Sports (12.6 mln. euro), City marketing (9.3 mln. euro), Amsterdam improvement of city centre (1.2 mln. euro), Amsterdam sheltered housing (45.5 mln. euro) ○ 11 SGEIs ○ Agreement, implementation decision, Regional Council decision, order, contract ○ Aid, subsidy, guarantee, cost apportionment ○ Predominantly cost allocation ○ Separation of costs to avoid

			<p>overcompensation; e subsidies are granted first and finally fixed afterwards, based on a financial statement, with the option of claiming repayment; monitoring by Municipal Executive; deduction</p> <ul style="list-style-type: none"> ○ No specific difficulties reported. ○ No complaints reported.
Poland	<ul style="list-style-type: none"> ○ Formal check ○ Calculation of the total amount ○ Calculation of the amount of State aid provided by type ○ Identification of the different categories of services ○ Number of individual SGEIs and total number of SGEIs ○ Forms of entrustment ○ Compensation mechanisms ○ Identification of the type of methodology applied for calculation of the compensation –cost allocation or NAC ○ Information on avoiding overcompensation ○ Information on difficulties (solutions) ○ Information on complaints 	<ul style="list-style-type: none"> ○ Report is overall in line with reporting obligations. Template is followed. Detailed annexes. ○ Estimated total amount: approx. 133.9 mln. euro ○ Housing; meal grants (9.7 mln. euro); waste management (124.2 mln. euro) ○ 3 SGEIs ○ Agreement, grant, resolution of town council ○ Grant aid ○ Predominantly methodology based on cost allocation ○ Correction and repayment procedures ○ No specific difficulties reported. ○ No complaints reported. 	<ul style="list-style-type: none"> ○ Report is overall in line with reporting obligations. Template is followed. ○ Estimated total amount: approx. 114.4 mln. euro ○ Social housing (5.8 mln. euro), Waste management (92.6 mln. euro), Milk bars (5.4 mln. euro), Management of municipal property (6.8 mln. euro), Rejuvenation (0.7 mln. euro), Management of parking lots (2.9 mln. euro) ○ 7 SGEIs ○ Statutory acts, municipal resolution, Ministerial order, agreement ○ subsidies, capital injections, preferential loans and guarantees ○ Predominantly methodology based on cost allocation ○ Correction and repayment procedures ○ No specific difficulties reported.

			<ul style="list-style-type: none"> ○ No complaints reported.
Portugal	<ul style="list-style-type: none"> ○ Formal check ○ Calculation of the total amount ○ Calculation of the amount of State aid provided by type ○ Identification of the different categories of services ○ Number of individual SGEIs and total number of SGEIs ○ Forms of entrustment ○ Compensation mechanisms ○ Identification of the type of methodology applied for calculation of the compensation –cost allocation or NAC ○ Information on avoiding overcompensation ○ Information on difficulties (solutions) ○ Information on complaints 	<ul style="list-style-type: none"> ○ Report is overall in line with reporting obligations. Template is followed. Detailed figures in annexes. ○ Estimated total amount: approx. 28.7 mln. euro ○ Air or sea links (23.8); airports and ports (3.6 mln. euro); theatre (1.3 mln. euro) ○ 6 SGEIs ○ Contract, concession ○ Grant aid ○ Methodology based on cost allocation is used, with financial compensation being calculated according to the operating deficit determined ‘ex-post’ annually based on duly justified and actually incurred costs and income ○ Refund mechanism ○ No specific difficulties reported. ○ No complaints reported. 	<ul style="list-style-type: none"> ○ Report is overall in line with reporting obligations. Template is followed. Detailed figures in annexes. ○ Estimated total amount: approx. 22.3 mln. euro ○ Air or maritime links to islands (16,7 mln. euro), Airports and ports (4.1 mln. euro), Theatre (1.4 mln. euro) ○ 5 SGEIs ○ Contract, tenders, concession ○ Grant aid ○ Methodology based on cost allocation is used, with financial compensation being calculated according to the operating deficit determined ‘ex-post’ annually based on duly justified and actually incurred costs and income ○ Refund mechanism ○ No specific difficulties reported. ○ No complaints reported.
Romania	<ul style="list-style-type: none"> ○ Formal check ○ Calculation of the total amount ○ Calculation of the amount of State aid provided by type ○ Identification of the different categories of services ○ Number of individual SGEIs and total 	<ul style="list-style-type: none"> ○ Report is overall in line with reporting obligations. Template is followed. ○ Estimated total amount: approx. 29.6 mln. euro ○ Thermal energy; regional airport (3.7 mln. euro); naval transport; service in air transportation (7.4 mln. euro); 	<ul style="list-style-type: none"> ○ Report is overall in line with reporting obligations. Template is followed. ○ Estimated total amount: approx. 279.8 mln. euro ○ Heating (186.4 mln. euro), Regional airports (57 mln. euro), Postal services (subject to review by the EC)

	<ul style="list-style-type: none"> number of SGEIs ○ Forms of entrustment ○ Compensation mechanisms ○ Identification of the type of methodology applied for calculation of the compensation –cost allocation or NAC ○ Information on avoiding overcompensation ○ Information on difficulties (solutions) ○ Information on complaints 	<ul style="list-style-type: none"> airports (18.5 mln. euro) ○ 5 SGEIs ○ Contract, council resolution, emergency government decision ○ Predominantly methodology based on cost allocation ○ Expenses checks and reimbursement procedure ○ No specific difficulties reported. ○ Complaint filed regarding a supposed State aid granted by the Târgu Mureş Airport 	<ul style="list-style-type: none"> ○ 3 SGEIs ○ Contract, council decision, emergency government decision ○ Predominantly methodology based on cost allocation ○ providers establish their own mechanisms for checking and repaying any potential overcompensation ○ Difficulty reported by Oradea airport: The SGEI entrustment decision has not been amended since the Commission Decision of 20 December 2011 came into force ○ No complaints reported.
Slovakia	<ul style="list-style-type: none"> ○ Formal check ○ Calculation of the total amount ○ Calculation of the amount of State aid provided by type ○ Identification of the different categories of services ○ Number of individual SGEIs and total number of SGEIs ○ Forms of entrustment ○ Compensation mechanisms ○ Identification of the type of methodology applied for calculation of the compensation –cost allocation 	<ul style="list-style-type: none"> ○ Report is overall in line with reporting obligations, apart from amounts. Template is followed. ○ Estimated total amount ○ Housing; Social Services; Energy sector ○ 3 SGEIs ○ Ministerial decision ○ Grant aid (co-financed by EU funds) ○ Reported methodology based on NAC ○ Monitoring, administrative and on-the-spot checks ○ No specific difficulties reported. ○ No complaints reported. 	<ul style="list-style-type: none"> ○ Report is overall in line with reporting obligations, apart from amounts. Template is followed. ○ Estimated total amount: approx. 47.9 mln. euro ○ Hospitals, consisting of Health care (36.1 mln. euro) and Polyclinics (11.8 mln. euro) ○ 2 SGEIs ○ Ministerial decision, agreement ○ Grant aid (co-financed by EU funds) ○ cost allocation or the NAC methodology is used

	<ul style="list-style-type: none"> ○ or NAC ○ Information on avoiding overcompensation ○ Information on difficulties (solutions) ○ Information on complaints 		<ul style="list-style-type: none"> ○ Monitoring, administrative and on-the-spot checks ○ No specific difficulties reported. ○ No complaints reported.
Slovenia	<ul style="list-style-type: none"> ○ Formal check ○ Calculation of the total amount ○ Calculation of the amount of State aid provided by type ○ Identification of the different categories of services ○ Number of individual SGEIs and total number of SGEIs ○ Forms of entrustment ○ Compensation mechanisms ○ Identification of the type of methodology applied for calculation of the compensation –cost allocation or NAC ○ Information on avoiding overcompensation ○ Information on difficulties (solutions) ○ Information on complaints 	<ul style="list-style-type: none"> ○ Report is overall in line with reporting obligations, apart from amounts. Template is followed (without table format). ○ Estimated total amount: 2.9 mln. euro ○ Hospitals; social services (0.1 mln. euro); pre-school education (1.1 mln. euro); airports and ports (1.7 mln. euro) ○ 5 SGEIs ○ Government decrees, (concession) contract ○ Direct subsidy, grant ○ Cost allocation methodology ○ Compensation reductions ○ Difficulties reported with definitions, duration of entrustment and combing economic with non-economic activity. ○ No complaints reported 	<ul style="list-style-type: none"> ○ Report is overall in line with reporting obligations. Template is followed (without table format) ○ Estimated compensation total amount: approx. 67.8 mln. euro, Awarded assistance of 496.6 mln. euro (including application of the SGEI in 2012) ○ Hospitals (total amount of compensation not collected); Social services of which Home assistance to families (26.6 mln. euro), Institutional security (70.9 mln. euro), Child security/pre-school education (338.3 mln. euro); Social apartments (16.3 mln. euro); Airports and ports (1.5 mln. euro); Waste collection and daily water supply (43 mln. euro) ○ 10 SGEIs ○ Government decrees, memoranda of association, (concession) contract ○ Direct subsidy, grant, public healthcare institutes are, for the

			<p>provision of public services, entitled to the free use of appertaining infrastructure</p> <ul style="list-style-type: none"> ○ Compensation reductions, payment of invoices of the providers of healthcare and hospital services for the realised scope or programmes of services ○ No difficulties reported. ○ No complaints reported.
Spain	<ul style="list-style-type: none"> ○ Formal check ○ Calculation of the total amount ○ Calculation of the amount of State aid provided by type ○ Identification of the different categories of services ○ Number of individual SGEIs and total number of SGEIs ○ Forms of entrustment ○ Compensation mechanisms ○ Identification of the type of methodology applied for calculation of the compensation –cost allocation or NAC ○ Information on avoiding overcompensation ○ Information on difficulties (solutions) ○ Information on complaints 	<ul style="list-style-type: none"> ○ Report is overall in line with reporting obligations, apart from amounts. Template is followed (without table format), division in 7 segments. ○ Estimated total amount: 75.8 mln. euro ○ Television; Hospitals (60.9 mln. euro); maritime links; employment (7.1 mln. euro); public works (3.6 mln. euro); domestic air routes; social housing (4.2 mln. euro) ○ 7 SGEIs ○ Convention, decision ○ Commission, grant aid ○ Estimated market rates ○ Compensation reductions ○ Difficulties mentioned in the interpretation of certain concepts, especially in the sphere of social services. 	<ul style="list-style-type: none"> ○ Report is overall in line with reporting obligations, apart from amounts. Template is followed ○ Estimated total amount: approx. 198 mln. euro ○ Integration of people with disabilities into the labour market (24 mln. euro), Broadcasts (2.4 mln. euro), Hospitals (125.3 mln. euro), Social housing (8.2 mln. euro), Access to work – 4 blocks, including training (15 mln. euro), Maritime links (9 mln. euro), Business and innovation (10.2 mln. euro), Promotion of entrepreneurship (3.9 mln. euro) ○ 8 SGEIs ○ Government decree, ministerial order, (administrative) contract, agreement, memorandum of association decision

		<ul style="list-style-type: none"> ○ No complaints reported. 	<ul style="list-style-type: none"> ○ Commission, grant aid, fixed-rate amount (integration of people with disabilities), tariffs (invoiced by hospitals), subsidies ○ Compensation reductions, overcompensation considered impossible (hospitals), independent audit, verification of eligible costs, payment against an invoice ○ No difficulties reported. ○ No complaints reported.
Sweden	<ul style="list-style-type: none"> ○ Formal check ○ Calculation of the total amount ○ Calculation of the amount of State aid provided by type ○ Identification of the different categories of services ○ Number of individual SGEIs and total number of SGEIs ○ Forms of entrustment ○ Compensation mechanisms ○ Identification of the type of methodology applied for calculation of the compensation –cost allocation or NAC ○ Information on avoiding overcompensation ○ Information on difficulties (solutions) 	<ul style="list-style-type: none"> ○ Report is overall in line with reporting obligations. ○ Estimated total amount: 1.3 mln. euro ○ Airports; pharmacies in sparsely populated areas (0.9 mln. euro); basic payment services; publication of talking newspapers (0.4 mln. euro); workplace support; medical services; social alarms; coordination of social enterprises and private providers ○ 8 SGEI ○ Ordinance, government decision ○ Grant aid, retrospective financial aid (e.g. pharmacies), operating grant (e.g. air traffic control) ○ Cost allocation ○ Accounting in three parts (non- 	<ul style="list-style-type: none"> ○ Report is overall in line with reporting obligations. ○ Estimated total amount: 89 mln. euro + approx. 88 mln. euro for application of SGEIs in 2012 ○ Hospitals (6.6 mln. euro), Access to and reintegration into the labour market (4.4 mln. euro), Airports and ports (48.6 mln. euro), Culture (1.5 mln. euro), Financial services (0.3 mln. euro), Pharmacies in sparsely populated areas (1.7 mln. euro), Veterinary care throughout the country (20.8 mln. euro), Social alarm standards (0.1 mln. euro), Airports and ports (4 mln. euro) ○ 9 SGEIs

	<ul style="list-style-type: none"> ○ Information on complaints 	<p>economic, economic exposed to competition and economic not exposed to competition)</p> <ul style="list-style-type: none"> ○ No specific difficulties reported ○ Two complaints reported concerning the compensation for extra costs paid to the SOC Samhall AB and concerning state funding of the support to parents provided by municipalities and county councils 	<ul style="list-style-type: none"> ○ Ordinance, government decision ○ Grant aid ○ Predominantly NAC method used ○ ceilings based on profit; compensation paid only in arrears once the actual costs have been identified; deduction in case of compensation paid in advance; regular checks that actual costs are not exceeded; Accounting in three parts ○ No difficulties reported. ○ Complaint against district veterinarians, the activity was defined as SGEI (case closed in April 2015)
U.K.	<ul style="list-style-type: none"> ○ Formal check ○ Calculation of the total amount ○ Calculation of the amount of State aid provided by type ○ Identification of the different categories of services ○ Number of individual SGEIs and total number of SGEIs ○ Forms of entrustment ○ Compensation mechanisms ○ Identification of the type of methodology applied for calculation of the compensation –cost allocation or NAC 	<ul style="list-style-type: none"> ○ Report is overall in line with reporting obligations, in six parts. Template followed. ○ Estimated total amount: 60.4 mln. euro ○ Support for credit unions (0.9 mln. euro); airport services in remote areas (55.5 mln. euro); credit unions (1.8 mln. euro); housing (2.2 mln. euro), Scottish housing schemes (154.8 mln. euro) ○ 4 SGEIs ○ Council decision, national government act (e.g. Welsh, Scottish) ○ Grant aid, capital grants ○ Cost allocation 	<ul style="list-style-type: none"> ○ Report is overall in line with reporting obligations. Template followed. ○ Estimated total amount: approx. 1.2 bln. euro ○ Air services (5.8 mln. euro), Housing (1.78 mln. euro), Financial services (28.4 mln. euro), Social services (1.4 mln. euro), Health and social care services (6 mln. euro), Airport services in remote areas (85.4 mln. euro), Social housing (743,7 mln), Support for credit unions (0.7 mln. euro), Childcare (0.7 mln. euro), Financial inclusion services (6.1 mln.

	<ul style="list-style-type: none"> ○ Information on avoiding overcompensation ○ Information on difficulties (solutions) ○ Information on complaints 	<ul style="list-style-type: none"> ○ Bidding process and due diligence checks, arrangements for repayment ○ Difficulty reported with requirement to report individually on airports above a certain size as they require separate ring fenced grant allocations which reduces overall operational flexibility. ○ No specific complaints reported. 	<ul style="list-style-type: none"> euro), Air and maritime services (332.3 mln. euro) ○ 13 SGEIs ○ Council decision, national government act (e.g. Welsh, Scottish), agreement, management statement, financial memoranda, annual grant letter (airport services) ○ Direct subsidy, Grant aid, capital grants, competitive bidding (housing) ○ Cost allocation and NAC method ○ Bidding process and due diligence checks, arrangements for repayment, providing evidence of need of subsidy, post completion reviews, monitoring, repayment ○ No difficulties reported. ○ No complaints reported.
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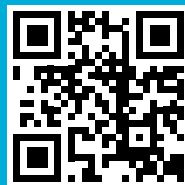
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