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DRAFT REPORT

on reform of the EU state aid rules on Services of General Economic Interest
(2011/2146(INI))

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on reform of the EU state aid rules on Services of General Economic Interest (2011/2146(INI))

The European Parliament,

- having regard to Articles 14 and 106 of the Treaty on the Functioning of the European Union and to Protocol No 26 thereto,
- having regard to the Communication from the Commission of 23 March 2011 on reform of the EU state aid rules on Services of General Economic Interest (COM(2011)0146),
- having regard to the Commission staff working document of 23 March 2011 on the application of EU state aid rules on Services of General Economic Interest since 2005 and the outcome of the public consultation (SEC(2011)0397),
- having regard to the public consultation organised by the Commission in 2010 on ‘State aid rules on services of general economic interest’,
- having regard to the ‘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’ of 7 December 2010 (SEC(2010)1545),
- having regard to Commission Directive 2006/111/EC of 16 November 2006 on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings¹,
- having regard to Commission Decision 2005/842/EC of 28 November 2005 on the application of Article 86(2) of the EC Treaty to state aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest²,
- having regard to the Community framework for state aid in the form of public service compensation³,
- having regard to the Communication from the Commission of 19 January 2001 on European services of general interest⁴,
- having regard to the Communication from the Commission of 26 September 1996 on European services of general interest⁵,
- having regard to the opinion of the Committee of the Regions of 1 July 2011 on reform of the EU state aid rules on Services of General Economic Interest (ECOS-V-016),

¹ OJ L 318, 17.11.2006, p. 17.

² OJ L 312, 29.11.2005, p. 67.

³ OJ C 297, 29.11.2005, p. 4.

⁴ OJ C 17, 19.01.2001, p. 4.

⁵ OJ C 281, 26.9.1996, p. 3.

- having regard to the judgment of the European Court of Justice of 24 July 2003 in the case of *Altmark Trans GmbH and Regierungspräsidium Magdeburg v Nahverkehrsgesellschaft Altmark GmbH*¹,
 - having regard to its resolutions of 5 July 2011 on the future of social services of general interest²; of 14 March 2007 on social services of general interest in the European Union³; of 27 September 2006 on the Commission white paper on services of general interest⁴; of 14 January 2004 on the green paper on services of general interest⁵; of 17 October 2001 on the Commission communication entitled ‘Services of general interest in Europe’⁶; and of 7 November 1997 on the Commission communication entitled ‘Services of general interest in Europe’⁷,
 - having regard to Rule 48 of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs (A7-0000/2011),
- A. whereas services of general economic interest (SGEI) have an important place in the shared values of the Union, and promote social, economic and territorial cohesion,
 - B. whereas SGEI make a significant contribution to the Member States’ economic performance and competitiveness and thus not only help to prevent and overcome economic crises but also serve the cause of general economic well-being,
 - C. whereas SGEI are services that cannot be provided, or cannot be provided adequately, without state intervention,
 - D. whereas, with Article 14 TFEU, a new legal basis has been created whereby the principles and conditions for the operation of SGEI, particularly economic and financial conditions, are established by the European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure,
 - E. whereas Protocol No 26 TFEU establishes that SGEI should be characterised by a high level of quality, safety and affordability, equal treatment and the promotion of universal access and of user rights, and explicitly recognises the right of regional and local authorities to manage them,
1. Welcomes the aims of the reform proposed by the Commission in seeking to clarify application of the rules on aid for SGEI and to ensure specific and proportionate treatment for the different types of SGEI in accordance with their diversity;
 2. Stresses that any reform of the EU state aid rules must take into account the special

¹ Case C-280/00, [2004] ECR I-07747.

² Texts adopted, P7_TA(2011)0319.

³ OJ C 301 E, 13.12.2007, p. 140.

⁴ OJ C 306 E, 15.12.2006, p. 277.

⁵ OJ C 92 E, 16.4.2004, p. 126.

⁶ OJ C 140 E, 13.6.2002, p. 27.

⁷ OJ C 371 E, 8.12.1997, p. 4.

function of SGEI and must adhere strictly to the principle of subsidiarity, as the primary responsibility for commissioning, providing, financing and organising SGEI, in accordance with Protocol No 26 TFEU, rests with the Member States, which have wide discretion in that regard;

3. Supports the concept of thresholds for exemption from the requirement to give notification of state compensatory payments for SGEI, with the associated lessening of the administrative burden; suggests, on the basis of the consultations carried out, that the thresholds which determine the application of the SGEI Decision should be raised;
4. Stresses that reform of the EU rules on state aid for SGEI is only part of an urgently required horizontal legislative framework for SGEI, and that such a framework offers the only means of affording the requisite legal certainty and clarity in relation to EU law on SGEI; emphasises that a new legal basis for such a horizontal legislative framework has been created with Article 14 TFEU; points out that the Commission undertook, in the Single Market Act, to bring forward by the end of 2011, in addition to its communication, a series of measures on SGEI; calls on the Commission, therefore, to submit a proposal for the horizontal legislative framework;
5. Emphasises that, under Article 106(2) TFEU, undertakings entrusted with the operation of services of general interest are subject to the rules prohibiting and controlling state aid only 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 by national, regional or local authorities; highlights, in this regard, the clear stipulation in Article 14 TFEU that the Union and the Member States, each within their respective powers and within the scope of application of the Treaty, shall take care that such services operate on the basis of principles and conditions to enable them to fulfil their mission; calls therefore for the reform of the EU state aid rules to take account of both these articles and to ensure that the rules do not prevent undertakings entrusted with the operation of SGEI from being appropriately compensated;
6. Asserts emphatically that public services must be of a high quality and accessible to all sections of the population; views with concern, in this regard, the restrictive stance taken by certain Member States which, in relation to state aid for social housing associations, classify the services provided by such associations as social services of general interest (SSGI) only if they are reserved for socially disadvantaged persons or groups, this restrictive interpretation being at odds with the higher goal of fostering an appropriate social mix;
7. Calls on the Commission to include investment costs for infrastructure necessary to the functioning of SGEI within the costs that compensatory payments may cover;

Simplification/proportionality

8. Welcomes the Commission's concern to ensure, through a more diverse approach to the application of state aid rules, that the administrative burden placed on the public authorities is proportionate to the potential impact of the measure concerned on competition in the internal market; calls therefore, with reference to Article 106(2) TFEU, for the provisions to be framed in such a way as to ensure, on the one hand, that they are

applied correctly and, on the other, that the undertakings entrusted with the operation of services of general interest can perform in full the specific tasks assigned to them;

9. Calls on the Commission, as part of the promised simplification of state aid rules, to introduce greater flexibility in the monitoring of over-compensation, as this would result in significant time and cost savings for both service providers and the public authorities; suggests, to this end, that, in the case of multiannual contracts, checks for over-compensation should be carried out only at the end of the contractual period;

Local services

10. Welcomes the Commission's intention to introduce a 'de minimis' arrangement in respect of state aid to undertakings entrusted with the operation of SGEI where the locally limited scale of the activity means that only a negligible impact on trade between Member States is likely and where it is ensured that the compensation is used exclusively for the operation of the SGEI in question; asks the Commission to ascertain whether SGEI in the field of culture and education should also be the subject of a special arrangement;
11. Calls on the Commission to propose appropriate thresholds for the 'de minimis' arrangement; suggests as a possible reference in this respect the combined indices of size of municipality, amount of compensation payment and level of turnover of the undertaking entrusted with the operation of the service;

Social services

12. Calls on the Commission to devise special arrangements for social services of general interest (SSGI) that can be assumed to entail no detriment to trade between Member States; suggests, to this end, that appropriate higher thresholds be proposed for the amount of compensatory payments for local social services of this type;
13. Welcomes the Commission's assertion that it wishes to exempt in principle further categories of SSGI from the requirement that aid to them be the subject of notification; calls for an assessment as to whether such an exemption should extend to care facilities for elderly people or people with disabilities, or to healthcare facilities;
14. Considers that the special remit and character of SSGI should not only be protected but should also be clearly defined under sector-specific rules;

Quality and efficiency aspects

15. Emphasises how important it is for SGEI to be of high quality and the need for them to be universally accessible; points out in this regard that the Commission's responsibility, under the TFEU competition rules, is confined to monitoring state aid for the provision of SGEI, and that the only basis for setting European-level quality and efficiency criteria is Article 14 TFEU, with observance of the subsidiarity principle;
16. Points out that if the undertakings entrusted with the operation of SGEI are selected on the basis of efficiency criteria then the fourth condition set by the Court of Justice ruling in the Altmark case is fulfilled, and that, subject to observance of the three remaining

conditions, the compensatory payments do not, according to the case law of the Court, constitute state aid within the meaning of Article 107(1) TFEU;

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17. Instructs its President to forward this resolution to the Council and Commission.

EXPLANATORY STATEMENT

1. Importance of services of general interest

Services of general interest are not only crucial to individuals but are also tremendously important to the well-being of society as a whole. Such services are highly diverse, and national, regional and local authorities within the EU have discretion in determining what constitutes a service of general interest, i.e. which services ought to be offered in the interests of the general public. However, all such services have this much in common: they are services regarded by the state or state authorities as particularly important to all members of the public but they cannot be provided, or cannot be provided adequately, without state intervention. The state intervenes to ensure that all members of the public have access to these services and/or that they are provided for all members of the public at an affordable price and a high level of quality.

The services provided make an important contribution to economic performance and competitiveness and promote social, economic and territorial cohesion in the EU. Successful implementation of the Europe 2020 growth strategy, particularly in the areas of employment, education and training and social integration, is furthered by the provision of services of general interest. Of particular significance are social services of general interest (SSGI), which have an important role in underpinning basic rights and make a major contribution to equality of opportunity.

2. Reform of the state aid rules on services of general economic interest

Under Article 106(2) TFEU, compensatory payments made by the state or state authorities to undertakings entrusted with the operation of *economic* services of general interest are subject to the rules contained in the EU treaties, and specifically 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. Article 14 TFEU also stipulates that the Union and the Member States, each within their respective powers and within the scope of application of the Treaty, shall take care that such services operate on the basis of principles and conditions – particularly of an economic and financial nature – to enable them to fulfil their mission. Reform of the EU state aid rules must therefore take account of both these articles, and it must be ensured that the rules do not prevent undertakings entrusted with the operation of SGEI from being appropriately compensated.

In 2005, the Commission explained the practical application of the provisions on the prohibition and control of state aid in the SGEI Framework and the SGEI Decision, which expire at the end of the current year and are therefore being revised. The SGEI Framework, the Decision and the ‘Guide to the application of the EU rules on state aid [...] to services of general economic interest’ effected significant improvements with regard to applying the rules and making them comprehensible. However, the public consultation undertaken by the Commission in 2010 on the package of measures currently in force showed that the legal instruments need to be even clearer and more straightforward, proportionate and effective. The administrative burden entailed in applying the rules is too heavy, particularly for small local authorities, and is often quite out of proportion to the measure at which the rules are

directed. It also emerged from the consultation that, apart from the administrative burden, other factors possibly militating against application of the rules on state aid to SGEI have been uncertainties and misinterpretations, especially of key concepts in the rules, such as ‘act of entrustment’, ‘reasonable return’, ‘undertaking’, ‘economic and non-economic services’ and ‘internal market relevance’.

One basic problem is the fact that the financing and organisation of public services in the EU hinges on rulings in individual cases and on legal interpretations. In the absence of a clear legislative framework it is impossible to eliminate the uncertainties and misinterpretations. Now that a new legal basis has been created, in the form of Article 14 TFEU, for a horizontal legislative framework determining the principles and conditions, particularly economic and financial conditions, on which public services operate, the necessary legal certainty and clarity can at last be provided. The Commission should therefore bring forward a proposal for such a horizontal legislative framework, as a matter of urgency, by the end of 2011. At the same time, it should be borne in mind that reform of the EU rules on state aid for SGEI is only part of this urgently necessary framework. Account must also be taken of the need for special sector-specific legislation for certain services.

3. Core considerations

3.1 Simplification, clarity and proportionality

The aims of the reform proposed by the Commission – seeking to clarify application of the rules on aid for SGEI and to ensure specific and proportionate treatment for the different types of SGEI in accordance with their diversity – are to be welcomed. The concern to simplify application of the state aid rules, so that the administrative burden on the public authorities concerned is proportionate to the impact of a given measure on competition in the internal market, could also improve the way that the rules are implemented. In this regard, the rules on the prohibition and control of state aid to undertakings entrusted with the operation of public services should be framed in a manner appropriate to the capacities of the level of administration responsible, in order to ensure that they are applied correctly and, in particular, that the undertakings entrusted with operating public services can perform in full the tasks assigned to them.

The existence of thresholds for exemption from the requirement to give notification of state compensatory payments for SGEI serves to lessen the administrative burden. To lessen it further, an overall raising of the current thresholds determining application of the SGEI Decision should therefore be considered. Another potential means of promoting simplification would be through the introduction of a ‘de minimis’ arrangement in respect of state aid to undertakings entrusted with the operation of SGEI where the locally limited scale of the activity makes the likely impact on trade between Member States negligible. It must, however, be ensured here that the compensation is used solely for the operation of the SGEI in question. An approach based on the combined indices of size of municipality, amount of compensation payment and level of turnover of the undertaking entrusted with operating the service might be an appropriate choice.

3.2 Social services

In the case of social services of general economic interest which, by their nature, are restricted

to a given locality, special higher compensation thresholds should be considered, on the assumption that compensation not exceeding such levels will not adversely affect trade between Member States. Consideration should be given to extending the general exemption from the requirement for notification of aid so as to cover other types of social service of general economic interest, such as care facilities for elderly people or people with disabilities, or healthcare provision.

Public services must be of a high quality and accessible to all sections of the population. At the same time, the special remit and character of SSGI should not only be protected but should also be clearly defined under sector-specific rules. The restrictive stance taken by certain Member States which, in relation to state aid for social housing associations, classify the services provided by such associations as SSGI only if they are reserved for socially disadvantaged persons or groups is a matter of concern, as such a limited interpretation is at odds with the higher goal of fostering an appropriate social mix. In order for social services of general economic interest to perform their special function they must be open to all members of the public irrespective of income or resources.

3.3 The broad discretion enjoyed by national, regional and local authorities

SGEI must be of a high quality and universal access to them must be promoted. Primary responsibility for commissioning, providing, financing and organising SGEI rests with the Member States – a principle enshrined in Protocol No 26 TFEU. The EU treaties thus place particular emphasis on the broad discretion enjoyed by national, regional and local authorities within the Union in relation to SGEI. The EU state aid rules can therefore be reformed only in strict adherence to the principle of subsidiarity. Furthermore, the Commission's responsibility, under the TFEU competition rules, is confined to monitoring state aid for the provision of SGEI, and the only basis for setting European-level quality and efficiency criteria is Article 14 TFEU, with observance of the subsidiarity principle. It is also the case that if undertakings entrusted with the operation of SGEI are selected on the basis of efficiency criteria then the fourth condition set by the Court of Justice ruling in the Altmark case is fulfilled and, subject to observance of the three remaining conditions, the compensatory payments made to such undertakings do not, according to the case law of the Court, constitute state aid within the meaning of Article 107(1) TFEU.