

Services of General Economic

Services of General Economic Interest (SGEI) are not defined in the EC Treaty. As there is no overarching EU definition, it is for individual Member States to define them. The Commission and Court will usually only have a role in determining manifest error.

In general, they are services that the market does not provide or does not provide to the extent or at the quality that the State desires and are in the general (i.e. of all citizens) interest and not the interest of a particular sector.

SGEI's tend to include areas such as healthcare provision, social housing, provision of gas, electricity and telecoms, public service broadcasting and public transport, but this is not an exhaustive list.

For certain SGEI's to operate, financial support from the public authorities may prove necessary where revenues accruing from the provision of the service do not allow the costs resulting from the public service obligation to be covered. If so, State Aid issues may arise.

If your Department is responsible for an SGEI it must either be exempt under the below Altmark Criteria (which are very exacting), or else must be in line with one of the parts of the Package. See further details below.

SGEI Background:

Altmark judgment

In its *Altmark* judgment of 24 July 2003¹, the Court of Justice provided clarification as to when public service compensation **does not constitute State aid** owing to the absence of any advantage.

According to the judgment, for a State measure to be considered aid-free, **four cumulative conditions** have to be satisfied:

- There must be an entrustment act clearly defining the public service obligation;
- The parameters for calculating the compensation must be established in advance in an objective and transparent manner;
- The compensation cannot exceed the relevant costs and a reasonable profit (i.e. there is no overcompensation); and
- The provider is either chosen through a public procurement procedure or the level of compensation is determined based on an analysis of the costs of an average "well-run" undertaking in the sector concerned.

¹ Case C-280/00 *Altmark Trans GmbH and Regierungspräsidium Magdeburg v Nahverkehrsgesellschaft Altmark GmbH* [2003] ECR I-7747.

These criteria **are very exacting** and a great deal of compensation is likely **not** to meet them and **will therefore be considered aid**. As a result, and in order to ensure legal certainty, the Commission published a Decision, a Framework, and an associated Transparency Directive in 2005. This was updated by a new SGEI package in 2011, which added a Communication and De Minimis exemption to the above package.

The new State Aid SGEI package consists of four instruments applicable 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 rules, etc.

The **SGEI de minimis Regulation** (adopted in 2012) 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 decision extends the scope of the exemption from the notification obligation to social services, i.e. those "meeting social needs as regards health and long term care, childcare, access to and reintegration into the labour market, social housing and the care and social inclusion of vulnerable groups".

This means that a **large set of social services are exempted from state aid scrutiny regardless of the amount of the compensation**, while aid directed towards other public service providers will **need to be notified only if it exceeds a threshold of €15 million**.

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.

Framework Scope:

Applicable from 31.01.2012 to:

- All notified projects (even if the notified before 31.01.2012)
- Unlawful aid (even if the aid was granted before 31.01.2012)

However, certain provisions do not apply where the aid was granted before 31.01.2012.

Sectoral scope

Does not apply to:

- Land transport

- Public service broadcasting

Further details are available at the SGEI section of the DG Comp website:

- http://ec.europa.eu/competition/state_aid/legislation/sgei.html