

European Commission has launched a public consultation on the application of State aid rules to Services of general economic interest

The European Commission has launched today a public consultation with a view to assessing the application of the 2005 SGEIs package. The package aims at clarifying under which conditions State funding of SGEIs can be considered compatible State aid.

Competition policy does not apply to all services of general interest, but only to those that are "economic" in nature, i.e. services of general economic interest. EU law defines an "economic" activity as any activity consisting in offering goods and/or services on a given market, for instance broadcasting, energy, transport and postal services.

In its judgment in the Altmark case¹, the European Court of Justice held that compensation of SGEIs constitutes State aid within the meaning of Article 107(1) of the Treaty, and is thus subject to control by the Commission, unless four cumulative conditions are met:

- The beneficiary must be entrusted with a clearly defined public service mission;
- The parameters for calculating the compensation payments must be established in advance and in an objective and transparent manner;
- Compensation must not exceed the costs incurred in fulfilling the public service less the revenues earned by providing the service (the compensation may, however, include a reasonable profit);
- The beneficiary is chosen in a public tender or compensation is calculated on the basis of the costs of a well-run undertaking that is adequately equipped with the means to provide the public service.

Following the Altmark ruling, the Commission adopted² the "SGEI Package" in July 2005 consisting of:

- a Commission Decision (based on Article 106(3) of the EU Treaty specifying the conditions under which compensation to companies for the provision of public services is compatible with State aid rules and does not have to be notified to the Commission in advance. The Decision applies to hospitals, and social housing irrespective of amount as well as other sectors where the compensation does not exceed €30 million euro per year and if the beneficiary's annual turnover does not exceed €100 million euro. Air and sea transport to islands within the EU as well as airports and ports below specific passenger volume thresholds³ are also covered by the Decision;
- a Framework specifying the conditions under which compensation not covered by the Decision can, nevertheless, be considered as compatible with State aid rules after having been notified to and examined by the Commission. Compensation that exceeds the costs of the public service, or is used by companies on other markets open to competition, is not justified, and is incompatible with the Treaty's State aid rules.

¹ Case C-280/00, Altmark, about a dispute over local transport services referred to the ECJ by a German court; 2003 ECR I- 7747.

²<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/05/937&format=HTML&aged=1&language=EN&guiLanguage=fr>

³ For air and maritime links to islands with an average annual traffic of less than 300 000 passengers, as well as airports and ports with an average annual traffic of less than 1 000 000 passengers for airports and 300 000 passengers for ports

Both the Decision and the Framework foresee that the Commission will undertake an evaluation report based on its knowledge of the operation of the Package, together with the results of wide consultations conducted by the Commission on the basis in particular of data provided by the Member States in their reports on the implementation of the Decision.

The Commission has published a questionnaire addressed to public service providers, public service users, stakeholders, citizens and all other interested parties. The results of this public consultation will serve as a basis for evaluating the 2005 Package and for eventually proposing improvements.

The period for this consultation is: 10.06.2010 – 10.08.2010.

The public consultation is available in: <http://ec.europa.eu/competition/consultations/open.html>