

ABOUT YOU

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1. Please provide your contact details below.

Name	TEOFILO LEITE
Organisation Represented	PORTUGUESE ASSOCIATION OF PRIVATE HOSPITALS (APHP)
Location (country)	PORTUGAL
E-mail address:	mail@aphp-pt.org

2. Do you represent an SGEI provider?

Yes No

If yes, what kind(s) of SGEI(s) do you provide and in which sector?

Private healthcare provider

3. Do you represent a local authority?

Yes No

If yes, what kind(s) of SGEI(s) have you entrusted, if any?

4. Are you working for an organisation representing SGEI users?

Yes No

5. Do you belong to the academic community?

Yes No

6. Are you representing another kind of stakeholder?

Yes No

If yes, please give details:

PORTUGUESE PRIVATE HEALTHCARE PROVIDERS

In the interests of transparency, organisations (including, for example, NGOs, trade associations and commercial enterprises) are invited to provide the public with relevant information about themselves by registering in the Interest Representative Register and subscribing to its [Code of Conduct](#).

If you are a **registered organisation**, please indicate the name and address of your organisation and your register ID number on the first page of your contribution:

Your contribution will then be considered as representing the views of your organisation.

If your organisation is not registered, you have the opportunity to [register now](#). Then turn to this page to submit your contribution as a registered organisation.

Responses from organisations not registered will be published separately.

SECTION A: QUESTIONS CONCERNING THE NOTION OF SGEI

1. Is it clear to you which activities may be considered as an SGEI?

Yes No Partially

If not, please explain why, possibly by giving concrete examples:

2. Do you know any services which have been qualified as SGEIs by public authorities?

Yes No

If yes, can you please describe them and indicate the public service obligations related to this SGEI?

SECTION B: QUESTIONS CONCERNING THE NOTION OF STATE AID

The Treaty rules, as they have been interpreted by EU case law, define the notion of State aid, as well as the conditions under which State aid rules apply to SGEI.

3. Have you encountered difficulties in applying the conditions of Article 107(1) of the [Treaty on the Functioning of the European Union](#) (TFEU)?

Yes No Partially N/A

If yes or partially, on which specific condition(s)?

- Economic activity: Yes No
- Effect on trade: Yes No
- Economic advantage: Yes No
- Selectivity: Yes No
- Transfer of State resources: Yes No

4. Could you give some concrete examples?

The private sector has been seen as a complement, to be called to fill-in the NHS failures. Only after the Constitution Revision in 1989 and the Fundamental Law of Health in 1990, was formally recognised the role of private companies in the healthcare sector.

In fact, NHS has not been so efficient and accessible, as it should, with the system presenting major failures like surgery waiting lists, with thousands of citizens waiting much more than the clinically admitted time. Since 1996 there were already three special programs aimed to eliminate waiting lists and they all failed due to their own misconception and the way public hospitals are managed. All these programs called for the private and social sectors to intervene through public tenders. At present, a new mechanism is at work, which envisages to end surgery waiting lists, which basically **puts (after an initial period) public and private hospitals at the same level, of general and economical interest**

In Portugal there is a lack of State Aids and State Subsidies for the private healthcare providers. There are no compensations and benefits with economic value, incentives in recruitment, tax exemptions or reductions in the rate of the taxes for private healthcare providers.

State Aid and State Subsidies in Portugal continue being conceived and available only for public healthcare providers, compromising the fair competition and establishing a clear discrimination of the private healthcare operators.

It is however difficult to understand the duality of criteria in the support given in Portugal. It is a support given only to public healthcare firms, contributing in this way to the already existing inequities between the public and private healthcare operators.

SECTION C: APPLICATION OF THE ALTMARK RULING

In its judgment in the case of Altmark Trans GmbH, the European Court of Justice held that public service compensation does not constitute State aid within the meaning of Article 107(1) of the TFEU provided that four cumulative conditions are met.

- Firstly, the recipient undertaking must actually have clearly defined public service obligations to discharge.
- Secondly, the parameters for the calculation of the compensation at stake must be established in advance in an objective and transparent manner.
- Thirdly, the compensation cannot exceed what is necessary to cover all or part of the costs incurred in the discharge of public service obligations, taking into account the relevant receipts and a reasonable profit.
- Fourthly, where the undertaking which is to discharge public service obligations is not chosen pursuant to a public procurement procedure which would allow for the selection of the bidder capable of providing those services at the least cost to the community, the level of compensation needed must be established on the basis of an analysis of the costs which a typical undertaking, well run and adequately equipped, would have incurred.

5. Have you encountered difficulties in the application of the Altmark conditions, especially in respect of the 4th one?

Yes No Partially N/A

If yes, please explain these difficulties. If possible, please give concrete examples:

Over the last years, the level of financial resources allocated to healthcare did not stop growing, and represents 10% of GDP (6% public and 4% private): Total per capita expenditure: 1.500€ 900€public and 600€private.

In fact, in the last years, the “**public overspending**” did not stop increasing and the costs systematically raised above the planned GDP. The Ministry of Health needed huge **supplementary budgets** to face the deficits, once the negative gap between estimated revenues and costs became persistent.

This Robin Hood syndrome, to give to who needs it the most (who has the highest deficit) spoils the efficient management. This **Deficit financing**, from the state budget, mainly form the citizens taxes, to public hospitals distorts the Competition law and transparency. It has to be terminated.

In 2003, the legal nature of Public Hospitals was changed to Hospitals SA, with new management models, being equivalent to commercial societies, the capital of which belongs to the State and other public entities.

In 2005 the government decided to transform more than 30 Hospitals SA into Entrepreneurial Public Entities (EPE) aiming to improve management and efficiency. They cannot be considered enterprises since their deficit will constantly be financed by the governmental budget, the taxpayer money, which distorts competition.

6. Are you aware of examples where the Altmark ruling has been applied by national courts or national public authorities?

Yes No

If yes, you are welcome to provide information:

SECTION D: CONDITIONS OF THE DECISION AND THE FRAMEWORK

In order to provide legal certainty in the financing of SGEI, while ensuring a level playing field between all undertakings in the single market, the Commission adopted in 2005 the "SGEI Package", to define under which conditions public service compensation that constitute State aid can still be granted for the fulfilment of public service missions. In particular, the Decision defines the conditions under which public service compensation is compatible and is exempted from notification to the Commission, while the Framework explains how the Commission will assess all remaining public service compensation that has to be notified to the Commission.

These conditions consist in the existence of an act of entrustment containing a precise and correct definition of the service of general economic interest, the definition of the parameters to establish the appropriate amount of the compensation, the absence of overcompensation and the safeguards to avoid any overcompensation.

D.1: ENTRUSTMENT

QUESTIONS REGARDING THE ACT OF ENTRUSTMENT:

7. Are you aware of the legal instruments (contracts, laws, concessions, etc.) that have been used to entrust SGEI to SGEI providers in your sector/region?

Yes No

If yes, you are welcome to provide information on these forms of legal acts:

8. Do you know if the act of entrustment, or any other relevant legal basis relevant for your sector/region, gives a precise and correct definition of the service of general economic interest to be provided?

Yes No Partially N/A

If no or partially, please explain and provide example(s):

9. Do the legal instruments, of which you may be aware, contain all the elements required by Article 4 of the Decision, such as:

- the nature and duration of the public service obligations: Yes No

- the undertaking(s) and territory concerned: Yes No

- the nature of any exclusive or special rights assigned to the undertakings:

Yes No

- the parameters for calculating, controlling and reviewing the compensation:

Yes No

- the arrangements for avoiding and repaying any overcompensation:

Yes No

10. Have some of these elements raised difficulties in your opinion?

Yes No

If yes, please explain why and provide concrete examples:

In Portugal the support given only to public healthcare providers contributes in this way to the already existing inequalities between the public and private healthcare operators. Nonetheless the nature of the activity of the private healthcare providers is of general and economical interest for society.

11. Have you encountered difficulties concerning the notion of act of entrustment in the sense of State aid and internal market rules?

Yes No N/A

If yes, please explain why, possibly by giving concrete examples:

12. Do you consider that the entrustment of local SGEI, in particular those of a social character, has raised specific difficulties?

Yes No Partially N/A

If yes, please explain why, possibly by giving concrete examples:

In Portugal, the social healthcare sector is constantly helped financially while competing with the private sector which distorts the competition between operators.

D.2: COMPENSATION

I) QUESTIONS REGARDING THE CALCULATION OF COSTS AND REVENUES RELATED TO AN SGEI

13. Have you faced difficulties with the calculation of costs and revenues related to an SGEI?

Yes No Partially N/A

If yes, could you describe these difficulties?

14. In particular, in case you represent an undertaking which carries out activities falling both inside and outside the scope of SGEI, do you have separate accounts?

Yes No Partially N/A

15. Have you faced difficulties in separating the accounts?

Yes No Partially N/A

If yes, you are welcome to give details:

16. Has guidance been provided to public service providers in order to allow for a proper allocation of costs and revenues and to avoid cross-subsidisation between SGEI and non-SGEI activities/funds?

Yes No Partially N/A

If yes, you are welcome to give details about the guidance provided:

17. Do you think that the variable and fixed costs referred to by the Decision and the Framework, are the appropriate categories to allocate costs between the different services?

Yes No Partially N/A

If no, could you explain why?

18. Are any quality aspects taken into account for the calculation of the amount of compensation granted?

Yes No N/A

II) QUESTIONS REGARDING REASONABLE PROFIT

If you are aware of an example where an SGEI provider has received public service compensation,

19. Could you:

- please indicate whether this compensation included a reasonable profit?

Yes No

- indicate whether the reasonable profit was calculated on the basis of the rate of return on own capital as provided for by the Decision and the Framework?

Yes No

- If the reasonable profit was not calculated on the basis of the rate of return on own capital, please explain why a different type of rate was applied and give information about the chosen rate:

20. Have you faced difficulties with identifying what a "reasonable" profit is?

Yes No Partially N/A

If yes, please specify:

21. Do you know what the average rate of return on own capital in the relevant sector is?

Yes No N/A

If no, how have you identified the reasonable profit?

22. Has the calculation of the reasonable profit in your specific case taken account of the productivity gains achieved by the provider?

Yes No N/A

If yes, please explain and, where appropriate, provide examples where the calculation of the compensation has taken into account the efficiency of the provider

D.3: CONTROL OF THE OVER-COMPENSATION

23. Are you aware of the mechanisms controlling overcompensation implemented in your country?

Yes No N/A

If yes, has the absence of overcompensation been controlled by external auditors?

Yes No

24. Have you encountered cases of overcompensation?

Yes No N/A

If yes, you are welcome to provide us with information about the reimbursement:

25. Have you faced difficulties with the rules on reimbursement of overcompensation?

Yes No Partially N/A

If yes, in which cases and why?

in the last years, the “**public overspending**” did not stop increasing and the costs systematically raised above the planned GDP. The Ministry of Health needed huge

supplementary budgets to face the deficits, once the negative gap between estimated revenues and costs became persistent.

This Robin Hood syndrome, to give to who needs it the most (who has the highest deficit) spoils the efficient management

26. Article 6 of the Decision provides that an overcompensation not exceeding 10% of the amount of the annual compensation (20% for social housing), may be carried forward to the next annual period and deducted from the amount of compensation payable in respect of that period. Have you faced difficulties with the application of this provision?

Yes No Partially N/A

If yes or partially, please explain why:

D.4. MONITORING AND ANNUAL REPORTS

Article 7 of the Decision provides that underlying elements must be kept for at least 10 years to allow the Commission to check their conformity with the Decision.

27. Is such a reporting system in place in your Member State regarding the services with which you may be concerned, and if so, does it ensure that these obligations are fulfilled?

Yes No Partially N/A

SECTION E: SPECIFIC CATEGORIES OF SGEI

The Decision exempts from notification public service compensations below certain thresholds.

28. Please explain if you have faced difficulties with the classification of the compensations in the following categories :

- Compensation of less than EUR 30 million per year granted to undertakings with less than EUR 100 million turnover:

Yes No Partially N/A

- Compensation granted to hospitals:

Yes No Partially N/A

- Compensation to social housing undertakings:

Yes No Partially N/A

- Compensation for air links to islands with less than 300 000 passengers per year:

Yes No Partially N/A

- Compensation for maritime links to islands with less than 300 000 passengers per year:

Yes No Partially N/A

- Compensation for airports with less than 1 000 000 passengers per year:

Yes No Partially N/A

- Compensation for ports with less than 300 000 passengers per year:

Yes No Partially N/A

29. What kinds of services have been financed through public service compensations in the hospital sector?

See answers above

30. What kinds of services have been financed through public service compensations in the social housing sector?

31. Do you consider that the ceilings provided for by the Decision allow simplification while ensuring correct application?

Yes No Partially N/AX

If no, please explain why possibly by giving concrete examples:

32. On the basis of your experience, have the ceilings met the needs of the specific categories?

Yes No Partially

Yes No Partially

Yes No Partially

If no or partially, please explain which ceilings have not met the needs of the respective category and why:

33. Do you consider that the combined ceilings of EUR 30 million of compensation amount and the EUR 100 million turnover have raised difficulties?

Yes No Partially

If yes, please explain if the difficulties relate to the combination of these ceilings, to one, or to both of them, by providing concrete examples:

34. Are you aware of other instruments than public service compensations (for instance direct aid to users, direct provision of SGEI by the State, etc.), used by public authorities to foster public service activities?

Yes No N/A

If yes, please feel free to provide any information on these instruments and the areas in which they are used:

SECTION F: COMPETITION AND INTRA-COMMUNITY TRADE

35. According to your experience, the principles on which the Decision and Framework are based (in particular the act of entrustment and the absence of overcompensation) have been appropriate to preserve an equal footing between SGEI providers and commercial providers and to avoid distortions of competition and intra-Community trade?

Yes No Partially N/A

If no, please explain why:

36. In your sector/region, are public services provided by various public service providers?

Yes No N/A

If no, could you explain why?

37. Do you consider that in your sector/region, the provision of public services does not affect at all, or in any significant way, intra-Community trade?

Yes No Partially N/A

If yes, please explain why. You are welcome to provide concrete examples to substantiate your views:

38. Do you consider that the State aid rules on public service compensations may in certain cases have the effect of foreclosing the market or led to other distortions of competition?

Yes No Partially

If yes, please explain why and in which cases:

The support given only to public healthcare providers contributes in this way to the already existing inequalities between the public and private healthcare operators. Nonetheless the nature of the activity of the private healthcare providers is of general and economical interest for society.

SECTION G: ACTIONS FOR THE CORRECT IMPLEMENTATION OF THE DECISION AND FRAMEWORK

39. Are you aware of any guidance paper on the implementation of the Decision and Framework prepared by the authorities in your country?

Yes No N/A

40. Do you find useful the Commission staff working document on the [frequently asked questions on the application of State aid rules to SGEI](#)?

Yes No Partially N/A

41. Are you aware of the existence of the [Interactive Information Service](#) through which questions regarding the application of Community rules to SGEI/SSGI can be answered?

Yes No N/A

42. In instances where you submitted a question to the [Interactive Information Service](#), were you satisfied with the service provided?

Yes No Partially N/A

If no, could you explain why?

43. Do you consider that the Decision and Framework are sufficiently known and correctly implemented?

Yes No Partially N/A

If no, please indicate which stakeholders are not sufficiently informed. In your opinion, why is that?

Portuguese Private Healthcare providers

SECTION H: MISCELLANEOUS

44. According to your experience, have the Decision and the Framework succeeded in striking the appropriate balance between the accomplishment of the public service mission and a level playing field between businesses and across Member States in the single market?

Yes No Partially N/A

If no, please explain why, by providing concrete examples:

In Portugal there is a lack of State Aids and State Subsidies for the private healthcare providers. There are no compensations and benefits with economic value, incentives in recruitment, tax exemptions or reductions in the rate of the taxes for private healthcare providers.

State Aid and State Subsidies in Portugal continue being conceived and available only for public healthcare providers, compromising the fair competition and establishing a clear discrimination of the private healthcare operators.

It is however difficult to understand the duality of criteria in the support given in

Portugal. It is a support given only to public healthcare firms, contributing in this way to the already existing inequities between the public and private healthcare operators.

The private healthcare providers are compared and have the statute like any other private company or enterprise, not being considered the general interest for the society of their activity.

According to the Portuguese Constitution (as in general according to the other constitutions) a law must be used to give a tax benefit, an exemption or a reduction of a rate. However for the private healthcare sector no law or case is known.

The discrimination mentioned above is also reflected in the already implemented Portuguese Strategic Reference Framework 2007-2013. As far as healthcare is concerned, this framework maintains like in the previous program (2000-2006) the exclusion of access of the private operators to the funds available to the investment and value creation in healthcare units.

The main strategic goal of the NSFR is the qualification of the Portuguese people through an emphasis on knowledge, science, technology and innovation, as well as the promotion of high and sustained levels of economic and socio-cultural development and territorial qualification within a framework of expanding equal opportunities and increasing the efficiency and quality of public institutions.

The political option to provide aid only for public healthcare providers is mentioned in the document that establishes the rules for candidates in the health sector (*Regulamento Específico – Saúde*). The 3rd article of this regulation says that only hospitals and other institutions from the National Health Service can propose their candidatures and benefit from the financial support.

The NSFR is said to be a call for a high degree of concentration and articulation of effort on the part of the state, economic, social and institutional partners and civil society. But how is it possible to achieve this concentration and articulation without having a program for Community structuring intervention that is accessible for everybody, public and private?

45. Do you consider that there are cases where the application of Community rules to SGEI has raised difficulties which were not covered by the previous questions?

Yes No Partially N/A

If yes or partially, could you explain which rules have raised these difficulties and why, by providing concrete examples?

46. Do you have any other comments?

The private sector has been seen as a complement, to be called to fill-in the NHS failures. Only after the Constitution Revision in 1989 and the Fundamental Law of Health in 1990, was formally recognised the role of private companies in the healthcare sector. In fact, NHS has not been so efficient and accessible, as it should, with the system presenting major failures like surgery waiting lists, with thousands of citizens waiting much more than the clinically admitted time. Since 1996 there were already three special programs aimed to eliminate waiting lists and they all failed due to their own misconception and the way public hospitals are managed. All these programs called for the private and social sectors to intervene through public tenders. At present, a new mechanism is at work, which envisages to end surgery waiting lists, which basically **puts (after an initial period) public and private hospitals at the same level, of general and economical interest**. State Aid and State Subsidies in Portugal continue being conceived and available only for public healthcare providers, compromising the fair competition and establishing a clear discrimination of the private healthcare operators.

Thank you for answering all/part of this questionnaire.