

COSLA Response

Public Consultation on state aid rules on services of general economic interest

- The **Convention of Scottish Local Authorities (COSLA)** is the representative voice of all Scottish Local Authorities both nationally and internationally and it has long been advocating that the European Union legislation to fully respect the local competences and autonomy of Councils to organise and provide local services.
- COSLA calls on the European Commission to fully *respect “the essential role and the wide discretion of national, regional and local authorities in providing, commissioning and organising services of general economic interest as closely as possible to the needs of the users”*, as enshrined by the new EU Lisbon Treaty protocol, in any European Commission review of the EU State Aid Rules.
- COSLA does respect the fact that the Commission has a statutory obligation as guardian of the EU Single Market to prevent distortions to trade created by protectionist measures, such as undue compensation or overcompensation to private operators for the provision of a local service. We also acknowledge that there are large private operators providing such services to municipalities across the whole of the EU.
- However, we believe that these are not sufficient grounds for the current blanket rules over how to compensate locally for the provision of public services. Indeed we welcome the recognition by the Monti Report that there are still gaps on the legal certainty for local public service compensation.
- COSLA advocates the principle of proportionality as enshrined in the Treaties. We repeat our long-standing view that, on the issue of private operators providing local services on behalf of Councils, there is an important distinction to be made on whether services can be qualified as “*economic*” and those that are “*operating in a market*”. This distinction depends on how big the “market” part is within the whole service operation.
- In Scotland, for the local services subject to State Aid, there is rarely a “market” as very often the publicly-supported private provider is the only one available to deliver the service effectively, and often the provider itself would not exist without the aid being provided. This is a very different situation compared to a substantially commercial activity. There are occasions when public service obligations need to be imposed to preserve the public interest. The EU legal regime needs to recognise and respect these profound differences in role and content.
- Consistent with the above and responding to the new EU Treaty rules, we believe that **there is no case for EU action to regulate SGIs provided within a defined local area, and aimed wholly or mainly at serving the local population.** Local public services provided by local or regional authorities in the general public interest, and mainly for social or environmental rather than commercial purposes, should not be considered to be Services of General Economic Interest. This is irrespective of whether there are commercial operators at a local level providing such services as a whole or in part.

- We would also like to repeat that, by contrast to other parts of the EU, most services are now liberalised in the UK, therefore we are already in a “barebones” situation where we believe that further EU involvement would be disproportionate.
- We understand the willingness of the Commission to revisit the current rules based on the reported evidence of problems faced by Local Authorities, and for this reason the proposed questionnaire is structured in such a way. However, we believe that irrespective of previous practice the new EU Treaty provisions will fundamentally change the overall situation on how public services should be understood from the EU level, and the Commission should revisit its existing rules (the 2006 Decision, the 2005 Framework) and agree additional guidance in how the SGI Protocol will be now interpreted.
- Having acknowledged above that, given the diversity and reach of the EU Internal Market, there are areas where EU Commission involvement is appropriate and even necessary, we would nonetheless support a reasoned and proportionate approach. We would therefore welcome that the Commission providing an assessment of the feasibility of the menu of options proposed below and for under which situations it would consider them applicable:
 - a. Raising the existing thresholds above which the existing rules apply
 - b. Extension of the sectors¹ that are exempted from the current rules
 - c. Further clarification of the criteria already laid down in the Altmark package, notably the a more detailed definition of *mandate (act of entrustment)* given to the private operator and further clarification on what constitutes a “*typical undertaking, well run and adequately provided*” (the fourth Altmark criteria).
 - d. To lay out the criteria for a Block Exemption on State Aid granted to private operators as compensation for providing *intrinsically local* Services of General Interest.

Serafin Pazos-Vidal
Head of Brussels Office
Convention of Scottish Local Authorities (COSLA)
 House of Municipalities
 1 Square de Meeus
 1000 Brussels
 +32 22 138 121
serafin@cosla.gov.uk

September 2010

¹ This includes, Ferry and Air transport to islands amounting to less than 300,000 passengers per year, certain social housing undertakings and those hospital deemed providing a SGEI.