



European Association of Public Banks

– European Association of Public Banks and Funding Agencies AISBL –

DG Competition

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EAPB comments on the application of the SGEI package

Dear Madam, Dear Sir,

The European Association of Public Banks welcomes the opportunity to respond to the public consultation on the Services of General Interest (SGEI) package. The EAPB member promotional banks play an essential role in the granting of state aid, especially to promote regional development and social cohesion. Therefore we would like to make a number of general comments concerning services of general interest in the EU.

Generally the competition rules for SGEIs should not lead to the weakening of the social cohesion objective in Member States. Member States must have enough discretion to meet this objective.

Further our members generally would welcome a simplification of the SGEI package. For the sake of clarity it would be useful to have an updated compendium of the main state aid rules concerning SGEIs, including the last rulings of the European Court of Justice. We would mostly welcome if following main principles would be taken into account in such a document:

First, the definition of what is considered a public mission or SGEI should widely be left to Member States' discretion. Regional and local self-administrations should be able to decide which public missions can be performed. Moreover, it would be desirable to have a positive list of possible services which are generally accepted as SGEIs (without the exclusion of any further SGEIs).

Secondly, thanks to the ECJ jurisprudence criteria have been defined for the identification of social services of general interest which are not considered to be economically advantageous. These services should explicitly be excluded from state aid rules' application.

The inclusion in the compendium of a number of clarifications made by the European Court of Justice would help in practical situations. These include:

- When a company is entrusted with a SGEI in the sense of Art 106.2 TFEU this company performs public service obligations. The terms "public service obligation" and "service of general interest" should therefore be considered as identical.
- For the classification as a public service activity it is not defining whether the service is free of charge or with no consideration of economic constraints.



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- What is defining is that a certain public service or service of general interest meets a certain previously identified public interest purpose. This does not need to be defined in detail ex ante.

With regard to the concept of state aid it should be clarified under what conditions an effect on trade can be negated. This should be true for locally concentrated SGEIs, where the zone of influence does not include the territory of another Member State. Criteria for the definition of purely local activities with no impact on the Single Market would be helpful.

It should also be part of Member States' discretion under which legal forms (legal act, private contract etc.) , a company can be entrusted with a SGEI.

In the case that the parameters for the calculation, supervision and potential change of the compensation payment cannot be precisely defined ex ante, ex post redress mechanisms should be possible (see Commission Staff Working Paper from 20 November 2007). For unexpected losses that occur in the course of the business year an ex post flat rate compensation mechanism should be in place that provides legal certainty.

A Commission compendium document should clearly formulate the fourth criteria of the Altmark judgement, i.e. the open, unconditional and transparent public procurement procedure.

Finally, based on the rules laid out in the Temporary State aid Framework to help companies overcome financial problems certain smaller amounts of compatible aid schemes have been authorised by the Commission. Our member banks would welcome the introduction of a similar rules in the area of services of general interest.

Please do not hesitate to contact us should you have any further questions.

Kind regards,

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The European Association of Public Banks (EAPB) represents the interests of 34 public banks, funding agencies and associations of public banks throughout Europe, which together represent some 100 public financial institutions. The latter have a combined balance sheet total of about EUR 3,500 billion and represent about 190,000 employees, i.e. covering a European market share of approximately 15%.