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EBU response to the EC questionnaire on the implementation of the SGEI Package

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1. Please provide your contact details below.

Name	
Organisation Represented	European Broadcasting Union - Union Européenne de Radio-Télévision Brussels AISBL ID number 93288301615-56.
Location (country)	Belgium
E-mail address:	daj@ebu.ch

2. Do you represent an SGEI provider?

Yes No

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

The EBU is an association of broadcasters comprising 86 national media organizations in and around Europe. In representing its Members it promotes the values and distinctiveness of public service media.

This response is presented on behalf of EBU Members receiving public funding.

Publicly-funded broadcasters play an essential role in society and are a key component of the European broadcasting landscape. Their importance and specificity are recognized in the Amsterdam Protocol, which states that public service broadcasting is directly related to the democratic, social and cultural needs of each society and to the need to preserve media pluralism. In other words, the public service programming offered by publicly-funded broadcasters serves the public interest and the interests of all society.

The way in which each public service broadcaster is established and operated closely reflects the relevant Member State's cultural diversity and national identity. Each broadcaster's mission is thus defined at Member State level, so that the needs of each society are fulfilled in the national context in accordance with national traditions. In Community law, the subsidiarity principle is a guarantee of European diversity, which is a cornerstone of the European construction.

In general, the fundamental objective of public service broadcasting is that it should aim

at all times to offer a broad range of content and a breadth of choice for citizens, in both the traditional broadcasting and the new media environments.

Public service broadcasting delivers reliable, unbiased news, information and documentaries, produces and transmits educational, cultural, sport and entertainment programmes, and supplies quality content for children, youth audiences and minorities. The quality of the public service broadcasters' content sets high standards on the market, and often constitutes a benchmark of quality and impartiality. This ability to offer a broad range of diverse, original content mainly of European origin is all the more relevant in the new media environment.

In recognition of its specific nature, public service broadcasting has been exempted from the Framework on SGEIs. The Broadcasting Communication, which the Commission revised in 2009, contains specific principles for the sector. However, the 2005 Decision on SGEIs applies to public service broadcasting organizations which fulfil its conditions.

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:

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:

The European Broadcasting Union - Union Européenne de Radio-Télévision Brussels AISBL is registered in the Commission's Register of interest representatives with the ID number 93288301615-56.

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:

The notion of SGEI refers to services offered to fulfil the general interest of society, whether at national or local level. It is a Community law concept, although Community law cannot provide a specific definition of SGEI owing to the lack of Community competence. In this regard, the Protocol No. 26 of the TFEU is of great relevance. The Protocol emphasizes the freedom of Member States and the need for wide discretion for national, regional and local authorities when providing, commissioning and organizing SGEI in a way that corresponds as closely as possible to the needs of their users. The EU Treaties, therefore, clearly indicate that in this respect national competence prevails over EU competence.

The distinction between Services of General *Economic* Interest and Services of General Interest could be clarified further, as could the impact of the economic or non-economic character of a service on the application of State aid rules. The non-economic dimension of some SGEIs should be better taken into account in the application of State aid rules to the providers of these services. Given that SGIs of a non-economic nature are not covered by the rules of the TFEU, a balanced solution should be found for services which have a strong non-economic dimension, and in particular with regard to the freedom of Member States to entrust the providers of those services with a broad mandate irrespective of the impact which such services might have on the market.

For instance, public service broadcasting has a specific status amongst other services of general interest because of its predominantly non-economic dimension. Public service

broadcasting is one of the fundamental pillars of democracy and of social integration and cohesion in the European Union.

With regard to public service broadcasting the General Court (ex CFI) held that "although the public service of broadcasting is considered to be an SGEI and not a service of general non-economic interest, it must none the less be pointed out that that classification as an SGEI is explained more by the de facto impact of public service broadcasting on the otherwise competitive and commercial broadcasting sector, than by an alleged commercial dimension to broadcasting". This is confirmed by the Amsterdam Protocol and the Resolution of the Council and of the Member States of 25 January 1999 (judgment of 26 June 2008, SIC, case T-442/03, paragraph 153).

The Amsterdam Protocol pays particular attention to the wide-ranging discretion of the Member States in defining, organizing and funding public service broadcasting while leaving the European Commission with very limited competence for supervising Member States' action against manifest error. With its recently-revised Broadcasting Communication the Commission has reiterated this understanding. The text states, in particular, that public service broadcasting has to deliver public value to society on the basis of a broadly-defined public service mission.

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?

Economic activity: as stated above, it is accepted that public service broadcasting is a service of general economic interest. However, this is due not to any commercial dimension of public service broadcasting but to its potential impact on the market. Public service broadcasting is not like other services of general economic interest, since it is directly related to the democratic, social and cultural needs of each society (judgment of 26 June 2008, SIC, case T-442/03, paragraph 153). The Amsterdam Protocol emphasizes the specificity of public service broadcasting in the Member States by stating that it is directly related to the democratic, social and cultural needs of each society and to the need to preserve media pluralism. The existence of services with a strong non-economic dimension raises the issue of the differentiation between SGEI and SGI, and the need to take into account non-economic considerations in the application of State aid rules.

Effect on trade: it is difficult to assess the effect on trade which a service might have under the current criteria laid down in Article 107 (1) EC. For instance, if a public service broadcaster broadcasts only in regional or local languages, its impact on cross-border trade is questionable. Mention may be made here of languages such as Gaelic and Icelandic. Clarification of the criteria applicable to the effect on trade would contribute considerably to lowering the costs of State aid control. In addition, more effort is needed to distinguish between the effect on trade and the distortion of competition. To declare aid incompatible, the disproportionate distortion of competition must be established and quantified by the European Commission; a mere effect on trade is not sufficient.

Economic advantage: if the conditions of the Altmark judgment are fulfilled, this means that the compensation for the provision of an SGEI grants no advantage to SGEI providers. The difficulty with this is that the Altmark conditions are not sufficiently clear and are applied rather strictly by the Commission, with the result that the notion of "economic advantage" lacks legal certainty. A more detailed assessment of these criteria (see question C.5) would also help in clarifying whether a provider of an SGEI benefits from an economic advantage when receiving public funding.

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:

In cases where the remit is clearly defined and the compensation is proportionate to the amount necessary to cover the costs of discharging public service obligations, the Commission should examine carefully whether the other conditions of the Altmark judgment are also fulfilled. In several decisions on public service broadcasting, the Commission considered that the second and fourth Altmark conditions were not fulfilled, without carrying out a thorough analysis of the facts of the case. Too narrow an interpretation of the Altmark criteria by the Commission limits the effectiveness of the judgment, increases the burden on SGEIs and creates much legal uncertainty with regard to public funding of SGEIs.

The Altmark criteria should be adapted to the specificity of each SGEI. For example, in the BUPA case the Court of First Instance made an adjusted application of the *Altmark* judgment. It recognized that the nature of the SGEI mission submitted for examination requires the application of the *Altmark* criteria "in a manner adapted to the particular facts of the present case" (Court of First Instance judgment of 12 February 2008, [case T-289/03, BUPA](#), point 237). The Court clearly stated that, while the *Altmark* judgment sets out framework conditions for SGEIs, the application of these conditions in a concrete case must take into consideration the specific details and features inherent in the sector in question.

Recent case-law indicates that the Altmark criteria need to be adapted to the specificity of public service broadcasting. Consequently, the Commission should review its practice and carry out a careful analysis to assess the actual fulfilment of Altmark criteria, and not automatically rule out their fulfilment in the public service broadcasting sector.

As already indicated, in the broadcasting field the Commission denied the fulfilment of the second and fourth Altmark criteria. The **second criterion** requires that "the parameters on the basis of which the compensation is calculated have been established beforehand in an objective and transparent manner". However, in general the compensation is clearly calculated by taking into account the cost estimates for

discharging the public service obligations, and the national regulations foresee that the public funding, or the licence fee paid by users, should correspond to and not exceed the financial needs of the public service broadcaster. When the national regulation includes such provisions, the second Altmark criterion should be regarded as fulfilled. With respect to the second Altmark condition, the Court of First Instance held that the determination of the licence fee income payable to TV2 Danmark in the media agreements may be viewed as evidence of objectivity and transparency (judgment of 22 October 2008, TV2/Danmark, joined cases T-309/04, T-317/04, T 329/04 and T-336/04 paragraph 225).

The **fourth Altmark criterion** foresees two possibilities for Member States:

Option 1: The operator may be chosen in a public procurement procedure.

However, public procurement cannot be applied in all sectors, and particularly if the discharging of public service obligations implies a stable public service organization. Such is the case with public service broadcasting. Regarding the requirement for a tender procedure, the Court of First Instance stressed that "that specific status for public service broadcasting is, moreover, the basis for the freedom accorded by the Amsterdam Protocol to Member States in the award of broadcasting SGEIs", which justified the fact that Member States cannot be required to have recourse to competitive tendering (judgment of 26 June 2008, SIC, case T-442/03, paragraph 154).

Option 2: The level of compensation needed should be determined on the basis of an analysis of the costs which a typical undertaking, well run and adequately equipped, would have incurred in discharging those obligations.

The Commission denied the fulfilment of this condition in the case of public service broadcasting without making any further analysis. However, when the compensation is determined on the basis of the costs which a well-run undertaking would have incurred, the fourth Altmark criterion should be regarded as fulfilled. The Court of First Instance held that careful examination of the setting of the amount of the licence fee could lead to the conclusion of compliance with the fourth Altmark condition (judgment of 22 October 2008, TV2/Danmark, joined cases T-309/04, T-317/04, T 329/04 and T-336/04, paragraph 232). Consequently, the Commission's approach with regard to the fourth criterion should be reviewed.

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:

As already indicated, the Framework on SGEI does not apply to public service broadcasting. However, the Broadcasting Communication includes similar principles regarding entrustment. The EBU will therefore respond to questions of common interest.

In general, the act of entrustment does not raise particular problems in our sector. Our answer to question D.7 gives a general view with regard to the entrustment of public service broadcasting organizations in Europe.

In the field of public service broadcasting, attribution of the public service remit generally takes place on two or three levels. All Member States define the public service remit in a law, in the formal sense of the term, or in an equivalent act. In most Member States the text is accompanied by such other instruments as a list of tasks (*cahier des charges*), guidelines or management contracts, which can more easily be adapted and which allow a more detailed definition of the remit. Finally, in some States other complementary acts set out in detail how the remit should be implemented. There is thus a great variety in the systems whereby the public service remit is attributed.

The table below sets out the various solutions adopted in Member States, our aim being to present an overview of the systems chosen.

Public service remit
National procedures for definition and entrustment

	INSTRUMENT	OBJECTIVE	EXISTENCE
FIRST LEVEL	Law or equivalent	General definition of the remit	In all Member States
SECOND LEVEL	Agreement with public authority or equivalent (wide variety of instruments* which are often co-regulatory)	More operational definition of the remit	In many Member States
THIRD LEVEL	Self-commitments or equivalent	Specifications on how the remit is fulfilled	In some Member States

*For example, operating or management contract, *cahier des charges*, concession, guidelines.

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):

In general, the act of entrustment of public service broadcasters gives a description of the objectives and a clear view of the activities which a public service broadcaster is required to provide.

A particularly important feature of public service broadcasting is the requirement to safeguard the editorial independence of public service broadcasting organizations. Such a requirement often derives from the constitution (e.g. in Germany). For that reason, in the field of public service broadcasting the requirement of a clear definition cannot be understood as a requirement to enumerate precisely the services to be provided.

The specificity of public service broadcasting was highlighted in the TV2/Danmark case, where the Court of First Instance confirmed the freedom of Member States to define the public service remit broadly and essentially in qualitative terms, which leaves the broadcaster free to establish its own range of programmes. The Court stated that such a broad definition cannot be called imprecise. On the contrary, the Court held that a mandate to offer the entire population of a country varied television programming which aims to provide quality, versatility and diversity is perfectly clear and precise (judgment of 22 October 2008, TV2/Danmark, joined cases T-309/04, T-317/04, T-329/04 and

T-336/04, paragraphs 117 and 118). The freedom to establish its own range of programmes is closely linked to the principle of the editorial independence of public service organizations.

The Court of First Instance also confirmed the broad mandate of public service broadcasters in the new media environment (judgment of 22 October 2008, TV2/Danmark, joined cases T-309/04, T-317/04, T-329/04 and T-336/04, paragraph 115).

Another unique feature is that the Broadcasting Communication introduces an *ex ante* mechanism for new significant services. If new services have not previously been covered by the public service mission as defined in the entrustment act, the *ex ante* assessment procedure is equivalent to an entrustment act for specific services. However, such a requirement should not be misunderstood as an additional requirement to that of a clear definition at the level of the entrustment act. If the entrustment act clearly defines the scope and nature of public service obligations, there should be no extra requirement for an additional *ex ante* test.

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:

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:

D.2: COMPENSATION

D) 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

The case-law of Community jurisdictions expressly establishes that undertakings responsible for providing a service of general interest have the possibility of making a reasonable profit (judgment of the Court of Justice of 24 July 2003, Altmark, Case C 280/00, point 95), which is understood as being an *economic profit*. The Community Framework, for its part, recognizes the possibility for undertakings with a public service remit to have a reasonable profit margin, corresponding to a rate of remuneration of own capital.

The sectoral Broadcasting Communication makes an exception to these widely-accepted principles by stating that when the public service mission is carried out by broadcasters which are not profit-oriented, the amount of compensation for the fulfilment of the public service does not include a profit element.

However, the recognition of a reasonable profit as part of the compensation for providing SGEIs is important to maintain the right incentive for providers of those services. The inclusion of a reasonable profit in the amount of the compensation gives providers of services of general economic interest the incentive to achieve productivity and efficiency gains, since they can benefit from the result of such gains.

"Profits" are a resource making it possible to cover the risks of the activity and contribute to the financial stability of public service organizations. Taking account of the risk is made possible by the option of having a "profit margin" at least equivalent to the rate of the remuneration of own capital. The foregoing is stated notwithstanding the fact that, in most cases, organizations with a public service remit do not have as a financial objective the realization of *economic* profits (profits which go beyond a normal return on own funds).

- 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?

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:

As already indicated, the Decision on SGEIs applies to public service broadcasters which fulfil its criteria, which means that in practice the Decision can be applied in the broadcasting sector only in the (rare) cases where broadcasters remain within the thresholds defined in the Decision.

Moreover, as regards over-compensation and reserves, the Broadcasting Communication contains some more specific rules (paragraphs 73-74).

In general, the limitation of reserves may have a negative impact on the ability of providers of SGEIs to ensure continuity in their activities, and maintain the same quality over time. In common with any other private undertaking, providers of SGEIs have to deal with fluctuations in revenue and costs, and they do so by building up reserves. However, contrary to other commercial providers, providers of SGEIs have to ensure a predetermined level of services (public service obligations).

The level of reserves should be determined by taking into account the actual needs of the provider and the special characteristics of the sector. For some of these providers fluctuations in terms of charges and revenue can be well above 10% of the total compensation. Consequently, an arbitrary limit of 10% of the compensation would be both inappropriate and dangerous for providers of SGEIs, and is liable to have an impact on the level of public service obligations which such providers are able to fulfill.

Consequently, as a general rule:

- Reserves exceeding 10% of the annual compensation should not be regarded as "overcompensation";
- Pursuant to the principle of subsidiarity, Member States should remain free to determine the level of annual reserves and, if necessary, the minimum and maximum levels and duration which would indicate the amount of reserves that would be necessary to ensure the fulfilment of public service obligations;
- Any introduction of uniform ceilings by Community or Member States' regulations should be accompanied by flexible exceptions which take into account the variety of situations under which providers of SGEIs operate;
- It should be made clear that revenue from purely commercial activities should not be subject to any rule on reserves.
- If necessary, any ceiling on reserves should be calculated by reference to the total budget, and not the total compensation. This is the solution foreseen in the

Broadcasting Communication, where the 10% ceiling is calculated on the basis of annual budgeted expenses of the public service mission (paragraph 73).

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

Despite the limited direct relevance of the Decision for the broadcasting sector, as indicated under Question D.26, the EBU would like to make some general comments on this issue.

In principle, the adoption of the Decision exempting small providers of SGEIs from the duty to notify is to be considered valuable. The main advantage of such an instrument is to lower the administrative burden for governments and providers of SGEIs, by exempting them from the duty to notify new aid. Since the simplification of State aid rules is greatly needed, the Commission should give close consideration to this matter.

In this respect, the EBU wishes to raise two issues in relation to the Decision.

The conditions of the Decision correspond to a large extent to the conditions of the Altmark ruling. The requirements set out in Article 4 (entrustment), Article 5 (compensation) and Article 6 (control of over-compensation) go far beyond what is required under the three first criteria of the Altmark ruling. In addition, the full application of Article 5 by and large fulfils the fourth condition of the Altmark ruling. It is therefore not altogether clear why the Decision does not state that if these conditions are fulfilled the compensation would not be considered State aid.

Given the rather modest difference between the Altmark requirements and the extended requirements of the Decision, it might be more efficient to state clearly which other conditions should be fulfilled by such organizations in order to benefit from the Altmark ruling. These conditions could relate to the fourth Altmark criterion, i.e. the one related to the "costs which a typical undertaking, well run and adequately equipped, would have incurred".

The other issue relates to the Member States' duty to keep all information available (Article 7) and the duty to report periodically to the Commission (Article 8). It is not clear whether such information should be kept only in cases of new aid, in which cases the Decision would grant an exemption from the duty to notify, or whether the information should be kept for all aid, including existing aid. Notification is required only with regard to new aid, and the exemption would therefore apply only to such cases. In any event, the reporting obligation and the duty to store information increase the administrative burden for Member States, instead of reducing it. This burden would be out of proportion to the impact which such public funding might have on the market.

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?

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/A

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:

The principles on which the Framework and the Decision are based ensure that public service compensation remains proportionate to the actual costs of public service obligations, taking into account the commercial revenue directly related to the provision of public service obligations. The public compensation thus puts public service providers on an equal footing with other commercial undertakings which do not incur any costs related to the provision of continuous public service obligations. Consequently, respect of the principle of proportionality is sufficient to ensure that public funding does not distort competition and intra-Community trade.

The provision of SGEIs may have an impact on the market. However, this does not mean that such an inherent impact necessarily causes restrictions of competition.

A clear definition of the public service obligations helps to define the scope of activities for public service providers and determine through a political decision-making process the inherent impact on the market related to the provision of these activities which is acceptable to society. In this context, the competence of Member States to define the public service remit should be stressed. In line with Article 14 TFEU and its Protocol 26 on SGEIs, it is for Member States to define the scope of public service obligations and, if necessary, to maintain a balance between public service and commercial services for the benefit of their society.

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

Yes No N/A

If no, could you explain why?

In the broadcasting sector, the majority of Member States entrust one public service organization with a public service remit. The entrustment of a dedicated organization ensures a high level of quality with respect to the services consistently provided over a long period. These organizations are able to be active in both content production and distribution, with editorial experience, responsibility and autonomy, which helps in developing a close relationship with the public and in conveying public service values to society.

Some Member States have chosen to have a number of public service broadcasting organizations. This is particularly the case in federal States, such as Germany, where public service broadcasting organizations serve the public at the regional level too. The United Kingdom has entrusted several organizations with a public service remit or with public service obligations.

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:

As stated in the response to question B.4, it is questionable whether public service broadcasting services in a small market would be able to have an effect on trade between Member States, and particularly if such services are limited to a national or regional language spoken only in that country. Moreover, State aid representing only a small proportion of the turn-over of the organization cannot have an effect on trade between Member States.

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:

As already explained in the response to question F.35, once all necessary steps are taken to limit the amount of compensation to the actual cost of a well-defined public service mission, and to ensure that no over-compensation occurs, there can be no disproportionate distortion of competition on the market. Market foreclosure might occur only when the public service provider goes well beyond the entrustment act and funds services not covered by the remit with public money.

Moreover, the prohibition of cross-subsidization ensures that commercial activities, if any, do not benefit from public funding, and that, consequently, the latter does not distort the market.

With regard to the reflection on the potential effect of public service activities on the market, it should be stressed that once a Member State entrusts a provider with the provision of SGEIs which are compatible with the Community law (i.e. there is no manifest error), the mere impact that such services might have on other commercial providers cannot serve as the basis of the Commission's intervention under EU State aid law. Such intervention would encroach on Member States' competence to define the

scope of SGEIs.

There is an increased tendency in the European Commission's intervention to protect commercial competitors. However, limiting the services to be provided as SGEIs should not be the purpose of the EU State aid law. The European Commission should also accept that some services cannot be provided by the market in sufficient quantity and quality, and that, consequently, State intervention through public funding will always be necessary. It is for the Member States to decide which services they need to fund and provide to their own citizens.

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?

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:

As mentioned in our response to question F.35, the principles on which the Framework and the Decision are based ensure that public service compensation remains proportionate to the actual cost of public service obligations, and this is sufficient to ensure a level playing-field between commercial and public service organizations in Europe.

An appropriate balance between ensuring a level playing-field for commercial players and accomplishing public service obligations would be struck only if the application of such instruments is not biased against public funding as such. Such bias may occur when the non-economic dimension of SGEIs is ignored and, instead, economic considerations related to the protection of commercial operators prevail.

To ensure an appropriate balance between Member States' needs to serve society by offering SGEIs and the requirement of ensuring an undistorted internal European market, the following principles should be respected:

- SGEIs are extremely important for the society of each Member State, and particularly in promoting social cohesion and social progress. In this respect public service broadcasting plays a crucial role for democracy and culture in each society.
- Better account should be taken of the non-economic dimension of certain SGEIs, such as public service broadcasting, when State aid rules are applied, and particularly with regard to the definition and the scope of the public service mission. (See the response to question A.1.)
- Member States should remain free to define the scope of public service obligations and, if necessary, to maintain a balance between public service and commercial services, for the benefit of their society.
- The administrative burden incurred by Member States and providers of SGEIs

through the application of EU State aid rules should remain reasonable and proportionate. To make EU intervention more efficient and less burdensome, the Commission should ensure full effectiveness for the Altmark criteria by applying them in the most appropriate way for each particular SGEI sector (see the response to question C.5).

- More effective and less burdensome State aid intervention would benefit, in particular, small providers of SGEIs. A revised Decision on SGEIs should therefore try to diminish the burden on Member States by simplifying the rules (see the response to section D.4).
- Any rules applicable to providers of SGEIs should give them the proper incentives to deliver quality services and achieve efficiency gains. This applies, in particular, to the rules on the inclusion of a reasonable profit in the calculation of the compensation and on reserves (see the response to questions D.19 and D.26).

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?

Thank you for answering all/part of this questionnaire.