

ABOUT YOU

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1. Please provide your contact details below.

Name	Laura Jones
Organisation Represented	Eurodiaconia
Location (country)	Belgium
E-mail address:	Laura.jones@eurodiaconia.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?

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:

Eurodiaconia is a federation of organisations, institutions and churches providing social and health services and education on a Christian value base throughout Europe.

As the leading network for diaconal work in Europe, we look to develop dialogue and partnership between members and influence and engage with the wider society. We do this to enable inclusion, care and empowerment of the most vulnerable and excluded and ensure dignity for all. We represent service providers in the health and social sector, who provide services such as elderly care, for people with mental and physical disabilities, for the homeless, for the unemployed, childcare, hospital care, and advocate on behalf of their users.

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:

Eurodiaconia

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Rue Joseph II 166, B-1000, Brussels, Belgium

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?

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:

Concerns were raised by a number of people in our membership we consulted as to the feasibility of such an analysis in the social service sector given that even for an identical service costs can vary from context to context, such as the cost of housing and salary costs due to varying experience of social workers. There may not be appropriate comparative providers, particularly if the service does not yet exist or if it is an integrated service comprising numerous activities. Our German member has found that the fourth Altmark Trans criterion is complicated to define, therefore time consuming and financially disproportionate to calculate. They report that because of this funding authorities decide to put services out to tender, which in turn has been seen to have negative impacts – see [here](#) for a report on this topic.

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:

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?

Many organisations (in Finland, France, Germany) consulted noted a complex process for calculating costs of SSGI, one person from a French organisation specifying that in the agreement there is a high level of detail of the activities of the service and the means to realise the service required, which in their experience is not necessary for ensuring the service reaches its goal nor to justify the level of financing. They also noted that services had to be sub divided by activity and sub activity, not allowing a global view of the

activities all together, making an integrated approach to service delivery difficult.

It is not possible to quantify the “social added value” of many SSGI, such as promotion of active citizenship through volunteering, their contribution to social cohesion (see COM 2006 (177) final), nor for specifically non-profit SSGI, such as their social aims being the goal rather than profit making, and therefore their reinvestment in the service and community.

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:

None of the SSGI providers we consulted said that they were allowed any profit from grants or subsidies for social services, yet profit enables investment for non-profit organisations, which is essential (as non-profit organisations must reinvest any profit) for sustainable, quality service delivery.

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:

When assessing overcompensation for SSGI there is a risk that benefits accorded to non-profit making organisations which work by definition in the general interest are taken into account whereas the disadvantages stemming from the non-profit status are not. The calculation of compensation does not take into account the disadvantages experienced through being a non-profit provider (such as limitations to create reserves, obligation to

reinvest profits), only the advantages (such as tax relief)

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?

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:

Some of our members inform us that voucher systems are being implemented whereby the user chooses a SSGI service/provider and pays for the service using a voucher. In Tuscany this system will be implemented in 2010 in the sector of elder care, local authorities creating a registry of accredited providers, guaranteeing quality, controlling prices and supporting the most vulnerable in their choice of the services. In Finland some local authorities use a voucher system – usually services related to labour market integration, for people with a disability, the elderly and child care.

Our members express concern with this type of system, in that users will become consumers, yet may not have the capacity to choose a service and that their need will be seen as being resolved through financial support. They feel that more research is necessary on the impact and success of such systems. In Finland there is an additional concern that inequality will increase as definitions for maximum user fees are not applied to service vouchers.

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:

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?

The answer could have been more informative, which would have been more helpful.

The question was: “When does the Commission plan to have the “Frequently Asked Questions” (FAQ) documents and the Interactive Information Service available in all official languages of the EU?”

And the answer was: “The Commission services are currently working on the revamp of the website devoted to services of general interest as well as on the revision and update of the FAQ documents. Translations can only be prepared once the revised texts are finalised”.

An estimated timeline could have been given.

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?

The majority of people consulted do not know the Decision and Framework. It could be that it is because Member States do not see the need to inform stakeholders of the EU law behind the national or regional regulations or practices or that the complexity makes it difficult for them to be explained – those consulted find the rules complex.

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:

We find that the complexity of the rules and what implementing them often entails are not proportionate to a balance between ensuring a level playing field in the single market and public service missions for SSGI – see for example answer to questions 5, 13, 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?

The definition of the term “undertaking” needs clarification. We believe that an undertaking should be defined by its right to keep its accounts independently. In the case of non-profit welfare organisations, for example, the undertaking would be the organisation providing the service and not any larger network of organisations that it is part of. An understanding that classifies an umbrella organisation as an undertaking and therefore combines aid granted to all providers within that structure as a single amount, for the purpose of deciding whether notification is necessary is inaccurate, as the member providers of that association are independently run, with their own budgets and accounts and provide different services.

The people consulted report that a reasonable profit is not included in any subsidies, nor is costs for investment, yet for sustainable, quality service delivery this money is essential. It could be that the complexity of EU rules that govern these possibilities is preventing funding authorities from including them in financing arrangements.

46. Do you have any other comments?

We think the de minimis threshold is too easily reached for SSGI.

This consultation is very technical which makes it hard for stakeholders to respond, particularly at the local level, and particularly if they do not know the Decision/Framework. Such consultations must take this into account and ensure that not only those who are aware of the EU context can evaluate how the EU level may impact their work.

Thank you for answering all/part of this questionnaire.