

## ABOUT YOU

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1. Please provide your contact details below.

Name	Kirsi Väättämoinen
Organisation Represented	The Finnish Federation for Social Welfare and Health
Location (country)	Finland
E-mail address:	kirsi.vaatamoinen@stkl.fi

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:

## NGOs PROVIDING SERVICES THAT MAY OR MAY NOT QUALIFY AS SGEI

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 Finnish Federation for Social Welfare and Health, Kotkankatu 9, 00510 Helsinki, Finland  
Interest Representative ID No 65967893012-89

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:

We know the content of the concept. However, since it has several discretionary elements – starting from what can be considered to be of general interest – , and as all cases are to be assessed individually, we have not yet come across anybody boasting total clarity on what activities may be considered as SGEI.

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?

We refer to the report of 18.12.2008 submitted by the Finnish authorities, as required by the Commission Decision of 28 November 2005 (842/2005).

## **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?

Sometimes it is difficult to draw the line between economic and non-economic activities, when it comes to non-profit NGOs. As regards the effect on trade, it is problematic that it is interpreted so widely as to cover any potential effect – regardless how theoretical it may be, ie. no evidence is required on the probability that the effect will ever materialize. The same applies to the (potential) distortion of competition.

## **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 4<sup>th</sup> one?

Yes  No  Partially  N/A

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

We do not have any information on how the 4<sup>th</sup> condition has actually been applied. We have the impression that it is found very difficult also by many authorities. How do you define “a typical undertaking” in a market situation that requires public intervention?

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:

We refer to the report of 18.12.2008 submitted by the Finnish authorities, as required by the Commission Decision of 28 November 2005 (842/2005).

The examples, however, are mentioned only by one line each and do not contain any details on how the conditions have been applied.

## 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:

We refer to the report of 18.12.2008 submitted by the Finnish authorities, as required by the Commission Decision of 28 November 2005 (842/2005).

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):

No act of entrustment is directly applicable to us. We have not been in a position to carry out a research to assess the contents of the existing acts of entrustment. Thus, we are not able to respond to questions on the same.

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:

At the local level the notion of SGEI is not yet well known and, based on our national legislation, it has not been entirely clear who, how and at what level can make a decision and sign an act of entrustment on SGEI.

## **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:

The basic requirements have been proclaimed in a national law.

We are neither a SGEI-provider nor an authority and we cannot provide details on any possible additional guidance. Neither do we have the information to respond to most of the following questions on compensation, profit, over-compensation and ceilings of specific categories of aid.

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:

Perceptions of what is "reasonable" vary a lot.

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:

#### **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?

We refer to the report of 18.12.2008 submitted by the Finnish authorities, as required by the Commission Decision of 28 November 2005 (842/2005).

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:

The State – or municipalities - have traditionally been providing a whole variety of social and health services either directly or by simply purchasing them from other actors. They have also been giving financial support to non-profit actors (NGOs) that are providing such services. The services in question – that might well qualify as SGEI - have not been classified as SGEI, as the concept is only now being introduced in our system. A relative

novelty in our system is also a service voucher, given directly by the State to the user.

## 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:

These principles are appropriate in terms of securing the freedom of competition and trade. The problem is, however, that this does not address the question of actual availability and accessibility of adequate services to their users.

The excessive emphasis that is currently put on the freedom of competition is favouring large multinational commercial providers to such extent that they are eradicating small local actors from the market. As a consequence, the range of services is narrowing down. Ultimately, also, the costs are increasing, since the large actors, having conquered the market, can dictate their prices. Also this type of distortion of the market should be avoided.

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:

Geographically, Finland is a relatively large and sparsely populated country. Distances are big and logistical conditions demanding. In the field of social and health services

there is a strong local element and often a need for highly specialized services to relatively few individuals. Many of these services are targeting clientele who personally have no purchasing power. This all means that they are not commercially profitable or lucrative. It limits to some extent the potential of intra-Community trade.

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 excessive emphasis that is currently put on the freedom of competition is favouring large multinational commercial providers to such extent that they are eradicating small local actors from the market. As a consequence, the range of services is narrowing down. Ultimately, also, the costs are increasing, since the large actors, having conquered the market, can dictate their prices. Also this type of distortion of the market should be avoided.

## 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?

One question asked was, to our satisfaction, quickly and clearly responded to. The

second one is still pending response after three and half months, which is not very quick.

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?

A lot of information is available, but the issues are new and complicated. A lot of actors – including NGOs and local authorities – are yet to learn what they mean in practice.

## 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:

The key problem with them, as with the legislation concerned as a whole, is that it has been drafted only commercial marked in mind. Thus, it recognizes only two types of actors: the State and private profit-seeking actors. It does not take into account a whole segment of society, namely NGOs (or other actors seeking no profit to the persons involved and acting only the general interest in mind).

NGOs can sometimes operate in the same manner as businesses, but they do not usually do so. Most importantly, any financial gains obtained from their services are re-invested in their work; no profits are distributed to the persons involved. Many of the services NGOs provide (e.g. rehabilitation of the disabled, certain specialised medical care, some household support to the elderly, treatment of substance abusers etc.) enable people to exercise their fundamental rights. Stemming from their members, NGOs have a special interest in developing their services even without any financial gain in sight – an interest that no profit-seeking actors have.

NGOs also put a lot of emphasis on preventive work and, especially in social and health services, actually aim at the reduction of the need for their services. This is against the logic of businesses, but certainly in the general interest of societies and States. In addition, NGOs provide opportunities for citizens to participate and influence the policies, strengthen the social cohesion and create the social capital, thereby also enhancing political stability. Therefore, besides the actual services they deliver, NGOs

bring a lot of added value.

Currently, there seems to be no way that this added value could be taken into account in a competitive tendering or other selection of a service provider. Since the NGOs are not competing in terms of businesses, they cannot win, if measured by the terms of businesses.

The situation is further aggravated by the fact that the current application of the rules is favouring large multinational commercial actors (please see our response to question 35 above). Consequently, a lot of NGOs risk having to withdraw from service production. As the services concerned are often not commercially profitable or lucrative, this means that a lot of people risk being left without them. This, too, is a distortion of the market that should be avoided.

Presumably it would be possible to apply the Treaty by utilising a balancing test, in which the socio-political concerns would be better taken into account than now. Instructions by the Commission towards that end would be desirable.

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 major flaw in the regulation – at least in the way it is currently interpreted - is precisely that it pursues too rigidly “a level playing field between all undertakings in the single market”.

Why should actors that are merely seeking profit to themselves be put on the same line as actors, who are not seeking any profit, but aiming at goals of general interest? Does this really need to be done even in cases where favouring a non-profit actor would cause no actual or even probable – but only “potential” - distortion of competition or impact on trade?

A just and fair society should put more weight on general interest than on interests of private actors competing of profits.

*Thank you for answering all/part of this questionnaire.*