



ROYAL NORWEGIAN MINISTRY OF GOVERNMENT
ADMINISTRATION, REFORM AND CHURCH AFFAIRS

European Commission
Directorate-General for Competition
State aid Registry
1049 Brussels
Belgium

Your reference	Our reference	Date
Public hearing: State aid rules on services of general economic interests	2010002500 -	7 October 2010

Public consultation on the application of the 2005 package on Services of general economic interest – Additional information from Norway concerning the transport, postal, and civil aviation sectors

Reference is made to the letter from the Norwegian Ministry of Government Administration, Reform and Church Affairs (“the Ministry”) dated 10 September 2010 entitled “*Public consultation on the application of the 2005 package on Services of general economic interest – contribution from Norway*”. Please find additional comments from stakeholders in Norway to the public hearing on the State Aid rules on Services of general economic interest. These comments relate in particular to the transport sector and to the postal and civil aviation sectors. The answer to the questionnaire by the Norwegian Ministry of Transport and Communications is also enclosed this letter. The comments made in the answer to the questionnaire correspond in large terms with the opinions of stakeholders which are reflected in the overview provided in the above-mentioned letter dated 10 September.

Additional information

With regard to the postal and civil aviation sectors, the SGEI package seems to provide the guidance needed. In the experience of stakeholders so far the package is well structured and sufficiently clear to be applied to individual cases without major difficulties. This includes the application of the thresholds set for i.e. airports. The rules have been applied in two different cases, unprofitable postal services (USO) and compensation of a deficit for rural airport operation.

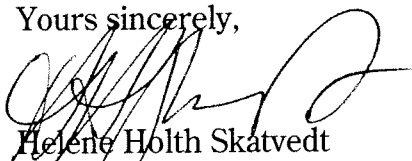
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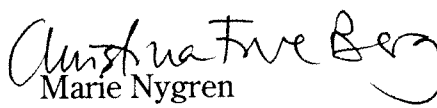
Public passenger transport services are subject to sector specific regulation. It is the understanding of stakeholders that the conditions in the Altmark judgement should only be applied if *Regulation (EEC) No 1191/69 on action by Member States concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterway* is not applicable to the case (cf. paragraphs 103 and 104 of the Altmark judgement). *Regulation (EC) No 1370/2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70* was incorporated into the EEA Agreement¹. In accordance with Regulation (EC) No 1370/2007, competent authorities are allowed to award public service contracts directly for railway travel. For your information, the Norwegian Government has awarded a public service contract to NSB AS to ensure public passenger railway transport in Norway. Even though Regulation (EC) No 1370/2007 applies in this case, the Ministry of Transport and Communications chose to take the Altmark conditions into consideration before awarding this public service contract to NSB AS.

Both the second Altmark condition concerning the parameters for calculation of the compensation as well as the rules under the *Commission Decision of 28 November 2005 on the application of Article 86(2) of the EF Treaty to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest* and the *Community framework for State aid in the form of public service compensation* regarding overcompensation may raise problems for authorities and service providers. Shift in demand is one of the factors which is said to make it difficult to establish the right amount of compensation.

Please do not hesitate to contact the Ministry of Government Administration, Reform and Church Affairs if you have questions to this letter or to the previous comments in the letter from Norway dated 10 September.

Yours sincerely,


Helene Holth Skatvedt
Acting Deputy Director General


Marie Nygren
for Senior Adviser

Encl.: Answer to the DG COMP questionnaire by the Norwegian Ministry of Transport and Communications

Copy: EFTA Surveillance Authority

¹ EEA Joint Committee Decision 85/2008 of 4 July 2008

ABOUT YOU

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1. Please provide your contact details below.

Name	
Organisation Represented	Ministry for Transport and Communications
Location (country)	Norway
E-mail address:	postmottak@sd.dep.no

2. Do you represent an SGEI provider?

Yes No

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

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3. Do you represent a local authority?

Yes No

If yes, what kind(s) of SGEI(s) have you entrusted, if any?

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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:

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?

Delivery of universal postal services according to the postal directive, 97/67/EC

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:

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:

The compensation of providing universal postal services in Norway fulfils the Altmark conditions.

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:

Norway Post is obliged by concession to provide a specific set of universal postal services. The nature of the services is specified by law.

The method of calculating net costs is made public.

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

I) 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?

The difficulties occur when there has been a shift in demand due to financial crisis. Then the up front calculation has to be adjusted afterwards and the surplus or deficit in compensation has to be returned or paid.

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 report Econ 105/2005 and guidance in relation to the law, concession and state budget.

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:

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?

Used a WACC calculation based on a beta for similar sectors.

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:

This is the first time of overcompensation. The practical details are yet to be decided upon.

25. Have you faced difficulties with the rules on reimbursement of overcompensation?

Yes No Partially N/A

If yes, in which cases and why?

The understanding of the rules raises some problems concerning how to arrange the pay back. Due to the size of the overcompensation, there will have to be changes in the procedure to fit the SGEI framework.

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?

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:

These rules do not apply in the postal sector

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:

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

Yes No N/A

If no, could you explain why?

Partly due to special rights (monopoly up to 50 grams) and partly due to lack of alternative providers of addressed mail.

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?

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 II: 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:

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.