



The Law Society
of England and Wales

**European Commission consultation on the State aid rules on
services of general economic interest**

Response of the Law Society of England and Wales
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SUPPORTING
solicitors

Response of the Law Society of England and Wales to the European Commission consultation on the State aid rules on services of general economic interest

The Law Society of England and Wales is the representative body of over 120,000 solicitors in England and Wales. The Society negotiates on behalf of the profession and makes representations to regulators and Government in both the domestic and European arena. This response has been prepared on behalf of the Society by members of its EU Committee.

Section A: Questions concerning the notion of SGEI

Question 1: Is it clear to you which activities may be considered as an SGEI?

Response: Yes

Question 2: Do you know any services which have been qualified as SGEIs by public authorities?

Response: Yes

Comments: Members of the Society frequently deal with services that have been qualified as SGEIs by public authorities. In most instances, the types of services in question reflect those described as examples in the Commission's Frequently Asked Questions on SGEIs. However, given the breadth of topics covered by members of the Society, it is not possible to set out a comprehensive list of services that have been qualified as SGEIs by public authorities.

Section B: Questions concerning the notion of State aid

Question 3: Have you encountered difficulties in applying the conditions of Article 107(1) of the TFEU?

Response: Partially

If yes or partially, on which specific condition(s)?

Economic activity: No

Effect on trade: Yes

Economic advantage: Yes

Selectivity: No

Transfer of State resources: No

Question 4: Could you give some concrete examples?

Response: Members of the Society sometimes find that the threshold applied for the effect on trade is rather low. Clients sometimes have difficulty in comprehending how a project of a genuinely local nature in practice may have an effect on trade for the purposes of the State aid rules as a result of, often theoretical, possibilities that there

may be a spillover effect on trade within the European Union. As regards the condition concerning the grant of an economic advantage to aid recipients, members of the Society are frequently asked to advise in relation to the application of this condition and the impact of the market economy investor principle. The absence of clear guidance in relation to this condition means that advisors are sometimes required to take a more conservative approach than is perhaps necessary to ensure that clients do not infringe the State aid rules. Furthermore transparency is of particular importance in relation to this condition so that competitors of the recipient undertaking can be confident that the rules have been complied with.

Section C: Application of the Altmark Ruling

Question 5: Have you encountered difficulties in the application of the Altmark conditions, especially in respect of the 4th one?

Response: Yes

Comments: Where it has not been possible, necessary or appropriate to hold an open procurement process in order to select the supplier of the SGEI, it is extremely difficult for advisors to be able to advise clients that the Altmark conditions apply. This is primarily a result of the fact that there is no clear guidance concerning the application of the 4th Altmark condition, in particular the benchmarking of costs against other suppliers. The absence of guidance means that, in practice, benchmarking of costs is rarely carried out.

Question 6: Are you aware of examples where the Altmark ruling has been applied by national courts or national public authorities?

Response: Yes

Comments: Members of the Society are aware of the Altmark ruling being applied, typically in circumstances where there are clear public service obligations and where a tender process has been held in accordance with the procedures set out in Directive 2004/18/EC.

Section D: Conditions of the Decision and the Framework

Question 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?

Response: Yes

Comments: Members of the Society are aware of each of the legal instruments cited by the Commission (i.e. contracts, laws, concessions) being used to entrust SGEI.

Question 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?

Response: N/A

Questions 9 - 11: N/A

Question 12: N/A

Question 13: Have you faced difficulties with the calculation of costs and revenues related to an SGEI?

Response: Yes

Comments: Members of the Society do encounter in some fields difficulties with the calculation of costs and revenues, in particular when acting for competitors of undertakings providing the service of general economic interest. Difficulties can be particularly acute when dealing with provision of the service using existing infrastructure, i.e. infrastructure developed when the service provider was the incumbent operator for that service in the Member State. Directive 2006/11 helps but the spirit of the transparency obligations in the directive needs to be adhered to as well as the letter. It is frequently difficult for third parties to have any degree of confidence that the remuneration is limited to remuneration for the service of general economic interest and does not involve a degree of cross-subsidy for fully competitive activities.

Questions 14 - 27: N/A

Section E: Specific categories of SGEI

Question 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

COMPENSATION GRANTED TO HOSPITALS: N/A

COMPENSATION GRANTED TO SOCIAL HOUSING UNDERTAKINGS: N/A

COMPENSATION FOR AIR LINKS TO ISLANDS WITH LESS THAN 300,000 PASSENGERS PER YEAR: N/A

COMPENSATION FOR MARITIME LINKS TO ISLANDS WITH LESS THAN 300,000 PASSENGERS PER YEAR: N/A

COMPENSATION FOR AIRPORTS WITH LESS THAN 1,000,000 PASSENGERS PER YEAR: N/A

COMPENSATION FOR PORTS WITH LESS THAN 300,000 PASSENGERS PER YEAR: N/A

Question 29: N/A

Question 30: N/A

Question 31: Do you consider that the ceilings provided for by the Decision allow simplification while ensuring correct application?

Response: Partially

Comments: The ceilings are, in principle, a good mechanism for simplifying the process. However, members of the Society frequently encounter cases where the ceilings are exceeded even though the matter is straightforward.

Question 32: N/A

Question 33: Do you consider that the combined ceilings of EUR 30 million of compensation amount and EUR 100 million turnover have raised difficulties?

Response: Yes

Comments: Many SGEIs are provided by large multi-national service providers who are able to use their size and experience to provide the best value services to authorities. However, these providers have turnover significantly in excess of the thresholds. As a result, authorities using such companies are penalised and unable to benefit from the Decision, even though the substantive conditions of the Decision are met. The Society considers that, in such cases, where the ceilings in the Decision are exceeded, it would be appropriate for the Commission to consider such cases under the new simplified procedure (which does not currently apply to such cases).

Question 34: N/A

Section F: Competition and intra-Community trade

Question 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 compensation and intra-Community trade?

Response: Yes, but subject to strict compliance with the principles of transparency as referred to in Comments to Q. 13 above.

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

Response: Yes

Question 37: N/A

Question 38: N/A

Section G: Actions for the correct implementation of the Decision and Framework

Question 39: N/A

Question 40: Do you find useful the Commission staff working document on the frequently asked questions on the application of the State aid rules to SGEI?

Response: Yes

Are you aware of the existence of the Interactive Information Service through which questions regarding the application of the Community rules to SGEI/SSGI can be answered?

Response: No

Question 42: N/A

Question 43: Do you consider that the Decision and Framework are sufficiently known and correctly implemented?

Response: Yes

Section H: Miscellaneous

Question 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?

Response: In general yes, but subject to the comments on Question 13 above.

Question 45: N/A

Contact information

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