



EUROPEAN COMMISSION

Brussels, 20.12.2011  
C/2011/ 9481 final

*Dear President,*

*Thank you very much for transmitting the opinion of the German Bundesrat on the Commission Communication on Reform of the EU State Aid Rules on Services of General Economic Interest (COM(2011)146), which sets out the key principles on which the Commission intends to base the revision of the State aid rules applicable to services of general economic interest. Apologies for the undue delay in responding to your opinion.*

*The Commission is pleased that the Bundesrat's experience with the rules currently in force has been positive and that the Bundesrat welcomes the objectives of the review exercise, i.e. to provide further clarification and to introduce a more diversified and proportionate approach.*

*As announced in the Communication, the proposed approach should lead to a simplification of the rules in particular for small-scale services organised by local authorities that only have a minor impact on trade between Member States, as well as for certain social services. Such a simplification should respond to the Bundesrat's concern regarding the administrative burden for local communities. At the same time it should take better account of the particularities of social services, as the Bundesrat has also requested.*

*Concerning the need for more clarification and legal certainty, the Commission can assure the Bundesrat that it will seek to provide a maximum of clarity and guidance, of course within the limits set by the jurisprudence of the Courts. The envisaged clarification could, in principle, refer to some of the issues mentioned in the opinion: the effect on intra-community trade; the distinction between economic and non-economic activities, the concept of Services of General Economic Interest (SGEI) and the relation between State aid and public procurement rules.*

*With respect to the possible inclusion of efficiency considerations in the assessment of the compatibility of aid, the Bundesrat expressed concerns that this might be inconsistent with the jurisprudence, which requires efficiency (the fourth Altmark-criterion) only to exclude the presence of State aid. By contrast, efficiency is currently not a condition for the compatibility of State aid under the Framework. On this point, the Commission would*

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*like to point out that it is not envisaged to require full compliance with the fourth Altmark criterion under the Framework, since this would indeed exclude the presence of State aid. However, this does not mean that one could not strengthen the compatibility conditions in the Framework by incentivising efficiency in various ways. As set out in the Communication, this appears to be justified by the fact that for large scale commercial services there is a particularly high risk of competition distortion which needs to be better addressed by the revised rules. How this can best be done, is currently being examined and will certainly also be discussed with Member States once the proposals for the review are announced.*

*The draft proposals for the review are expected to be adopted later in the year and the Commission will welcome all comments thereon.*

*Thank you once again for the detailed comments of the Bundesrat which are a very useful contribution to the debate on the review of the State aid rules for SGEI and will be examined in detail by the Commission services.*

*Yours faithfully,*

*Maroš Šefčovič  
Vice-President*