

ITALY'S CHAMBER OF DEPUTIES - 16th PARLIAMENT

Report of the Joint Meeting of the Committee on Constitutional, Presidency of the Council of Ministers and Interior Affairs and the Committee on Economic Activities, Trade and Tourism

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Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the Reform of the EU State Aid Rules on Services of General Economic Interest (COM(2011)146 final).

FINAL DOCUMENT APPROVED

The Committee on Constitutional, Presidency of the Council of Ministers and Interior Affairs and the Committee on Economic Activities, Trade and Tourism of Italy's Chamber of Deputies,

having examined the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the Reform of the EU State Aid Rules on Services of General Economic Interest (COM(2011)146 final), pursuant to article 127 of the Rules of Procedure;

taking note of the favourable opinion expressed by the European Union Policies Committee,

Whereas:

the purpose of the Communication of the European Commission is to launch a political debate with the interested stakeholders and other institutions on the forthcoming revision of the State Aid Package on Services of General Economic Interest (SGEI), also known as the "Altmark Package", adopted in 2005 comprising three instruments known as the "SGEI Decision", the "SGEI Framework" which expires in November 2011, and the "Directive on transparency", laying down the conditions under which State aids granted to finance SGEI are compatible with the Treaty;

the public consultation, which should be completed by July 2011, is the follow-up to a revision process which European Commission embarked on in 2008; State aids are economic policy instruments used by States to attain specific economic and social objectives; they take the form of public funding for the benefit of certain undertakings or products, but not all State funding for economic public services are to be classified as State aid;

state aid can distort competition and hamper the free movement of goods and services. The principles of competition and the unfettered movement of goods are key principles of the common market and the Community system, which has therefore set about regulating State aid in order to reconcile these instruments with the fundamental objectives of the EU;

Services of General Economic Interest (SGEIs) as generally defined in the treaties, play an essential part in underpinning the common values of the European Union, not only by fostering

social and territorial cohesion and the well-being of people throughout the EU, but also by making a fundamental contribution to its economic development. Services range from large-scale commercial services with an evident European dimension, such as transport, telecommunications, energy supplies and postal services, to a wide range of social and health care services, such as providing assistance to the elderly and the disabled,

considering that:

following the entry into force of the Lisbon Treaty (1 December, 2009) the primary source of Community State aid rules are articles 107-109 of the Treaty on the Functioning of the European Union (TFEU); article 107 (1) declares aid granted by a Member State in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods to be incompatible with the internal market. But this is not absolute, for in addition to the derogations provided by article 107 (2), indicating the forms of aid that are compatible with the internal market, and paragraph (3) which leaves it to the discretion of the Commission or the Council to assess compatibility, there is also article 106 (2) TFEU which provides for a specific derogation applying only to services of general economic interest (SGIE);

article 14 TFEU provides that in view of the importance of services of general economic interest and their role for the purposes of promoting social and territorial cohesion, the Union and the Member States, each within their respective powers and competences, “shall take care to ensure that such services operate on the basis of principles and conditions, particularly economic and financial conditions, which enable them to fulfil their missions”;

the Lisbon Treaty acknowledges the essential role of public services and at the same time their diversity within the European societal model. This twin approach is taken up in the new Protocol 26 to the Treaties according to which the shared values of the Union include, in particular, “a high level of quality, safety and affordability, equal treatment and the promotion of universal access and of user rights”, “the wide discretion of national, regional and local authorities in providing, commissioning and organising services of general economic interest” and “the diversity between various services of general economic interest and the differences in the needs and preferences of users that may result from different geographical, social or cultural situations”;

considering that

in the Altmark judgement of July 2003, the Court of Justice ruled that when the State intervention is a compensation for services provided by the recipient undertakings to meet specific public service obligations, in reality these undertakings do not effectively benefit financially, and therefore the funding does not have the effect of giving these undertakings a competitive edge over the others, and does not fall within the scope of the application of State aid legislation;

the Court has also identified the conditions for excluding the existence of State aid if all the following criteria are met: the public service obligations must be clearly defined; the parameters used to calculate the compensation must be established in an objective and transparent manner; compensation for the public service shall not exceed the costs incurred in discharging the public service obligations, less the revenues from the provision of the service (but may also include a reasonable profit); and the undertaking is chosen by a public procurement procedure, or the compensation does not exceed the costs of a “well-run” undertaking, equipped with adequate means to deliver a public service;

in the past, the Commission had already emphasised the fact that SGEIs are economic activities for which the Member States impose specific public service obligations by virtue of a general interest criterion. These obligations must be imposed whenever the authorities consider that market forces are not sufficient by themselves to provide these services or to provide them in a satisfactory manner. It follows that outside the sectors in which the definition of SGEI depends on, or is in some way restricted by EU law, the discretionary powers of the Member States to decide the status of an SGIE are subject to verification by the Commission to rule out the existence of any manifest errors;

the general purpose of reforming the State aids rules for SGIEs is to enhance the contribution that SGIEs can make to driving a broader economic recovery of the EU. Member states must guarantee certain services on conditions that are accessible to the population. National, regional and local authorities have the responsibility of providing, commissioning and organising SGIEs and in so doing they have a wide range of discretion. Meanwhile it is essential to ensure that public resources are allocated to SGIEs effectively, in order to guarantee the competitiveness of the EU and economic cohesion between the Member States,

considering that:

the Commission is examining the possibility of basing the reform of State aids upon two fundamental principles: clarifying a series of key concepts of relevance to the application of State aid legislation to SGIEs; defining a diversified and proportionate approach to offer diversified and proportionate responses to different types of SGIEs, particularly by simplifying the enforcement of rules for specific types of public services, such as those organised by local communities which are relatively limited in scope and therefore have only a minor effect on trade between the Member States, and certain types of social services, with a series of specific features referring to their financing structure and their purposes;

the present package applies more or less uniformly to an extremely wide range of economic sectors and stakeholders. The European Commission intends to ensure that in the forthcoming reform a clearer distinction is drawn between different types of services, based on the seriousness of the risk that State aids in those economic sectors might distort competition within the internal market;

the European Commission is also ascertaining the degree to which it is necessary to take greater account both of the efficiency and the quality of the service when a decision is taken to approve State aid for SGEIs,

noting that:

in the policy report on Italy's participation in the European Union relating to the year 2011 (Doc. LXXXVII-*bis*, no. 1) priority is given to negotiations for the reform of the rules governing aid for services of general economic interest (SGEIs), and stress is placed, in particular, on simplifying the present rules with particular reference to the smaller-scale SGEIs commissioned by local authorities;

the Commission intends to facilitate the implementation of the package while at the same time guaranteeing high quality public services and an efficient allocation of State resources, while preventing distortions to competition on the internal market;

in 2010 European Commission embarked upon a public consultation regarding the application of the “Altmark Package”. The Government noted that it was necessary to conduct a comprehensive review of the overall approach to the SGEIs, their role and their relation with the rules governing State aid, in order to remedy the present rigidities and encourage more flexible enforcement while emphasising the need to ensure that, without prejudice to the role of the Member States in identifying, organising, regulating and providing the service, the rules established to guarantee competition are structured and organised consistently with the need to ensure the highest level of legal certainty, according to the principles of immediacy, transparency and simplicity, and consistently with the need to reduce and simplify bureaucratic burdens and costs which are ultimately passed on to public service users (in the form of service charges) or on to the whole of society (from general taxation);

the public consultation showed that the uncertainties and misunderstandings, particularly with regard to the key concepts underlying State aids legislation on SGEIs, can partly explain why the rules are sometimes misapplied, while also demonstrating that in some areas, particularly in relation to social services, the Altmark Package is not always applied as it should be, perhaps because of the complexity of that package. The consultation also indicated the need for more clear, simple, proportionate and effective instruments to guarantee easier application and enforcement of the rules and to encourage more efficient and high quality SGEIs for the benefit of the citizens of the European Union;

the lack of legal certainty is the main local problem where the legal indeterminacy has emerged more evidently, making it difficult to fully enforce a regulatory framework which is difficult to assimilate and apply;

recalling the need to reflect on the revision of the rules governing public tenders with particular reference to simplifying the rules for awarding tenders for small-scale Services of General Economic Interest, and access to tendering by the SMEs;

mindful, with reference to the latter matters, of the final document approved by the Environment Committee following the examination of the Green Paper on the modernisation of EU policy to improve the efficiency of the European Procurement (COM(2011)15 final);

noting, lastly, the need for this final document, together with the opinion of the European Union Policies Committee, to be forwarded promptly to the European Commission as part of the political dialogue, and to the European Parliament and to the Council,

have issued a positive assessment, with the following remarks:

a) consideration should be given to inviting the European Commission to specify which methods it intends to adopt to achieve its aim of developing a more diversified approach to simplifying the application of State aid rules for certain types of services, and therefore to more clearly indicate the conditions under which State aid may be considered *de minimis*, which types of services will require individual notice that State aid is being provided, and whether it might be appropriate to modify the thresholds which establish the enforcement of the decision regarding SGEIs;

b) furthermore, consideration should also be given to the possibility of continuing to explore possible alternative criteria to those set out in the Altmark Package for identifying SGEIs having a limited impact, making it possible to conclude that no State aid is involved without the administrative charges currently envisaged by the criteria stipulated in the Package; against this

background, thought should be given to the case in which the purely local character of the SGEIs can be used to set a kind of threshold, thereby ruling out the relevance of the SGEI in terms of EU law;

c) with regard to small-scale Services of General Economic Interest, consideration should be given to the possibility of pursuing not only a streamlining of procedures for applying the rules on State aid, but also of combining this streamlining process with a review of the rules governing public procurement in order to provide simpler and more flexible means of selecting service-providers; more specifically, with regard to tenders for the procurement of public services organised by small local authorities falling below the value thresholds laid down by European directives, consideration should also be given to the possibility of inviting the Commission to provide more appropriate means of selecting the most suitable service-providers, in addition to the public tender selection procedure, while guaranteeing the principles of competitiveness, transparency and equal treatment, as well as ensuring the necessary degree of flexibility to choose the service -provider in terms of the limits on the values and the types of services to be supplied;

d) this being so, consideration should also be given to the possibility of inviting the European Commission to finally clarify the exclusion of social services from the legislation governing public procurement tendering procedures when these are intended for disadvantaged parties, or where they mainly employ personnel coming from socially disadvantaged categories;

e) lastly, the question of the rules governing State aid applicable to small and medium enterprises should also be addressed, coordinating this communication with the provisions governing SME access to public procurement tenders provided in the *Small Business Act for Europe* (COM(2008) 394) and the communication regarding its revision (COM(2011)78);

f) consideration should also be given to inviting the European Commission to take greater account of the efficiency and quality of the service in question, when deciding upon approving State aid for the benefit of the SGEIs.