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**COMMUNICATION FROM THE COMMISSION**

**European Union framework for State aid in the form of public service compensation  
(2011)**

(Text with EEA relevance)

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## COMMUNICATION FROM THE COMMISSION

### European Union framework for State aid in the form of public service compensation (2011)

(Text with EEA relevance)

#### 1. PURPOSE AND SCOPE

1. For certain services of general economic interest (SGEIs) to operate on the basis of principles and under conditions that enable them to fulfil their missions, financial support from the public authorities may prove necessary where revenues accruing from the provision of the service do not allow the costs resulting from the public service obligation to be covered.
2. It follows from the case-law of the Court of Justice of the European Union<sup>1</sup> that public service compensation does not constitute State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union if it fulfils a certain number of conditions<sup>2</sup>. Where those conditions are met, Article 108 of the Treaty does not apply.
3. Where public service compensation does not meet those conditions, and to the extent the general criteria for the applicability of Article 107(1) of the Treaty are satisfied, such compensation constitutes State aid and is subject to Articles 106, 107 and 108 of the Treaty.
4. In its Communication on the application of the European Union State aid rules to compensation granted for the provision of services of general economic interest<sup>3</sup>, the Commission has clarified the conditions under which public service compensation is to be regarded as State aid. Furthermore, in its Commission Regulation on the application of Articles 107 and 108 of the Treaty on the Functioning of the European

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<sup>1</sup> Judgments in Case C-280/00 *Altmark Trans GmbH and Regierungspräsidium Magdeburg v Nahverkehrsgesellschaft Altmark GmbH* ('Altmark') [2003] ECR I-7747 and Joined Cases C-34/01 to C-38/01 *Enirisorse SpA v Ministero delle Finanze* [2003] ECR I-14243.

<sup>2</sup> In its judgment in *Altmark*, the Court of Justice held that public service compensation does not constitute State aid if four cumulative criteria are met. First, the recipient undertaking must actually have public service obligations to discharge, and the obligations must be clearly defined. Second, the parameters on the basis of which the compensation is calculated must be established in advance in an objective and transparent manner. Third, the compensation cannot exceed what is necessary to cover all or part of the costs incurred in the discharge of the public service obligations, taking into account the relevant receipts and a reasonable profit. Finally, where the undertaking which is to discharge public service obligations, in a specific case, is not chosen pursuant to a public procurement procedure which would allow for the selection of the tenderer capable of providing those services at the least cost to the community, the level of compensation needed must be determined on the basis of an analysis of the costs which a typical undertaking, well run and adequately provided with the relevant means, would have incurred.

<sup>3</sup> OJ xxxx.

Union to *de minimis* aid granted to undertakings providing services of general economic interest<sup>4</sup>, the Commission will set out the conditions under which small amounts of public service compensation should be deemed not to affect trade between Member States and/or not to distort or threaten to distort competition. In those circumstances, compensation is not caught by Article 107(1) of the Treaty and consequently does not fall under the notification procedure provided for in Article 108(3) of the Treaty.

5. Article 106(2) of the Treaty provides the legal basis for assessing the compatibility of State aid for SGEIs. It states that undertakings entrusted with the operation of SGEIs or having the character of a revenue-producing monopoly are subject to the rules contained in the Treaty, in particular to the rules on competition. However, Article 106(2) of the Treaty provides for an exception from the rules contained in the Treaty insofar as the application of the competition rules would obstruct, in law or in fact, the performance of the tasks assigned. This exception only applies where the development of trade is not affected to such an extent as would be contrary to the interests of the Union.
6. Commission Decision xxxx of xxx on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest<sup>5</sup> lays down the conditions under which certain types of public service compensation are to be regarded as compatible with the internal market pursuant to Article 106(2) of the Treaty and exempt from the requirement of prior notification under Article 108(3) of the Treaty.
7. The principles set out in this Communication apply to public service compensation only in so far as it constitutes State aid not covered by Decision xxxx of xxx [*on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest*]. Such compensation is subject to the prior notification requirement under Article 108(3) of the Treaty. This Communication spells out the conditions under which such State aid can be found compatible with the internal market pursuant to Article 106(2) of the Treaty. It replaces the Community framework for State aid in the form of public service compensation<sup>6</sup>.
8. The principles set out in this Communication apply to public service compensation in the field of air and maritime transport, without prejudice to stricter specific provisions contained in sectoral Union legislation. They apply neither to the land transport sector, nor to the public service broadcasting sector, which is covered by the Communication from the Commission on the application of State aid rules to public service broadcasting<sup>7</sup>.

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<sup>4</sup> OJ Cxxx.

<sup>5</sup> OJ Lxxxxx.

<sup>6</sup> OJ C 297, 29.11.2005, p. 4.

<sup>7</sup> OJ C 257, 27.10.2009, p. 1.

9. Aid for providers of SGEIs in difficulty will be assessed under the Community guidelines on State aid for rescuing and restructuring firms in difficulty<sup>8</sup>.
10. The principles set out in this Communication apply without prejudice to :
  - (a) requirements imposed by Union law in the field of competition (in particular Articles 101 and 102 of the Treaty);
  - (b) requirements imposed by Union law in the field of public procurement;
  - (c) the provisions of the Commission Directive 2006/111/EC of 16 November 2006 on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings<sup>9</sup>;
  - (d) additional requirements flowing from the Treaty or from sectoral Union legislation

## **2. CONDITIONS GOVERNING THE COMPATIBILITY OF PUBLIC SERVICE COMPENSATION THAT CONSTITUTES STATE AID**

### **2.1. General provisions**

11. At the current stage of development of the internal market, State aid falling outside the scope of Decision xxx [*on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest*] may be declared compatible with Article 106(2) of the Treaty if it is necessary for the operation of the service of general economic interest concerned and does not affect the development of trade to such an extent as to be contrary to the interests of the Union. The conditions set out in sections 2.2 to 2.10 must be met in order to achieve that balance.

### **2.2. Genuine service of general economic interest as referred to in Article 106 of the Treaty**

12. The aid must be granted for a genuine and correctly defined service of general economic interest as referred to in Article 106(2) of the Treaty.
13. In its Communication on the application of the European Union State aid rules to compensation granted for the provision of services of general economic interest, the Commission has provided guidance on the requirements concerning the definition of a service of general economic interest. In particular, Member States cannot attach specific public service obligations to services that are already provided or can be provided satisfactorily and under conditions, such as price, objective quality characteristics, continuity and access to the service, consistent with the public interest, as defined by the State, by undertakings operating under normal market

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<sup>8</sup> OJ C 244, 1.10.2004, p. 2.

<sup>9</sup> OJ L 318, 17.11.2006, p. 17.

conditions. As for the question of whether a service can be provided by the market, the Commission's assessment is limited to checking whether the Member State's definition is vitiated by a manifest error, unless provisions of Union law provide a stricter standard.

14. For the scope of application of the principles set out in this Communication, Member States should show that they have given proper consideration to the public service needs supported by way of a public consultation or other appropriate instruments to take the interests of users and providers into account. This does not apply where it is clear that a new consultation will not bring any significant added value to a recent consultation.

### **2.3. Need for an entrustment act specifying the public service obligations and the methods of calculating compensation**

15. Responsibility for the operation of the SGEI must be entrusted to the undertaking concerned by way of one or more acts, the form of which may be determined by each Member State. The term 'Member State' covers the central, regional and local authorities.

16. The act or acts must include, in particular:

- (a) the content and duration of the public service obligations;
- (b) the undertaking and, where applicable, the territory concerned;
- (c) the nature of any exclusive or special rights assigned to the undertaking by the granting authority;
- (d) the description of the compensation mechanism and the parameters for calculating, monitoring and reviewing the compensation; and
- (e) the arrangements for avoiding and recovering any overcompensation.

### **2.4. Duration of the period of entrustment**

17. The duration of the period of entrustment should be justified by reference to objective criteria such as the need to amortise non-transferable fixed assets. In principle, the duration of the period of entrustment should not exceed the period required for the depreciation of the most significant assets required to provide the SGEI.

### **2.5. Compliance with the Directive 2006/111/EC**

18. Aid will be considered compatible with the internal market on the basis of Article 106(2) of the Treaty only where the undertaking complies, where applicable, with Directive 2006/111/EC<sup>10</sup>. Aid that does not comply with that Directive is considered

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<sup>10</sup> Directive 2006/111/EC on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings.

to affect the development of trade to an extent that would be contrary to the interest of the Union within the meaning of Article 106(2) of the Treaty.

## **2.6. Compliance with Union public procurement rules**

19. Aid will be considered compatible with the internal market on the basis of Article 106(2) of the Treaty only where the responsible authority, when entrusting the provision of the service to the undertaking in question, has complied or commits to comply with the applicable Union rules in the area of public procurement. This includes any requirements of transparency, equal treatment and non-discrimination resulting directly from the Treaty and, where applicable, secondary Union law. Aid that does not comply with such rules and requirements is considered to affect the development of trade to an extent that would be contrary to the interests of the Union within the meaning of Article 106(2) of the Treaty.

## **2.7. Absence of discrimination**

20. Where an authority assigns the provision of the same SGEI to several undertakings, the compensation should be calculated on the basis of the same method in respect of each undertaking.

## **2.8. Amount of compensation**

21. The amount of compensation must not exceed what is necessary to cover the net cost<sup>11</sup> of discharging the public service obligations, including a reasonable profit.
22. The amount of compensation can be established on the basis of either the expected costs and revenues, or the costs and revenues actually incurred, or a combination of the two, depending on the efficiency incentives that the Member State wishes to provide from the outset, in accordance with paragraphs 40 and 41.
23. Where the compensation is based, in whole or in part, on expected costs and revenues, they must be specified in the entrustment act. They must be based on plausible and observable parameters concerning the economic environment in which the SGEI is being provided. They must rely, where appropriate, on the expertise of sector regulators or of other entities independent from the undertaking. Member States must indicate the sources on which these expectations are based<sup>12</sup>. The cost estimation must reflect the expectations of efficiency gains achieved by the SGEI provider over the lifetime of the entrustment.

### Net cost necessary to discharge the public service obligations

24. The net cost necessary, or expected to be necessary, to discharge the public service obligations should be calculated using the net avoided cost methodology where this is required by Union or national legislation and in other cases where this is possible.

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<sup>11</sup> In this context, net cost means net cost as determined in paragraph 25 or costs minus revenues where the net avoided cost methodology cannot be applied.

<sup>12</sup> Public sources of information, cost levels incurred by the SGEI provider in the past, cost levels of competitors, business plans, industry reports, etc.

### *Net avoided cost methodology*

25. Under the net avoided cost methodology, the net cost necessary, or expected to be necessary, to discharge the public service obligations is calculated as the difference between the net cost for the provider of operating with the public service obligation and the net cost or profit for the same provider of operating without that obligation. Due attention must be given to correctly assessing the costs that the service provider is expected to avoid and the revenues it is expected not to receive, in the absence of the public service obligation. The net cost calculation should assess the benefits, including intangible benefits as far as possible, to the SGEI provider.
26. Annex IV to Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services<sup>13</sup>, and Annex I to Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service<sup>14</sup>, contain more detailed guidance on how to apply the net avoided cost methodology.
27. Although the Commission regards the net avoided cost methodology as the most accurate method for determining the cost of a public service obligation, there may be cases where the use of that methodology is not feasible or appropriate. In such cases, where duly justified, the Commission can accept alternative methods for calculating the net cost necessary to discharge the public service obligations, such as the methodology based on cost allocation.

### *Methodology based on cost allocation*

28. Under the cost allocation methodology, the net cost necessary to discharge the public service obligations can be calculated as the difference between the costs and the revenues for a designated provider of fulfilling the public service obligations, as specified and estimated in the entrustment act.
29. The costs to be taken into consideration include all the costs necessary to operate the SGEI.
30. Where the activities of the undertaking in question are confined to the SGEI, all its costs may be taken into consideration.
31. Where the undertaking also carries out activities falling outside the scope of the SGEI, the costs to be taken into consideration may cover all the direct costs necessary to discharge the public service obligations and an appropriate contribution to the indirect costs common to both the SGEI and other activities. The costs linked to any activities outside the scope of the SGEI must include all the direct costs and an appropriate contribution to the common costs. To determine the appropriate contribution to the common costs, market prices for the use of the resources, where

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<sup>13</sup> OJ L 108, 24.4.2002, p. 51.

<sup>14</sup> OJ L 15, 21.1.1998, p. 14.



available, can be taken as a benchmark<sup>15</sup>. In the absence of such market prices, the appropriate contribution to the common costs can be determined by reference to the level of reasonable profit<sup>16</sup> the undertaking is expected to make on the activities falling outside the scope of the SGEI or by other methodologies where more appropriate.

#### *Revenue*

32. The revenue to be taken into account must include at least the entire revenue earned from the SGEI, as specified in the entrustment act, and the excessive profits generated from special or exclusive rights even if linked to other activities as provided in paragraph 45, regardless of whether those excessive profits are classified as State aid within the meaning of Article 107(1) of the Treaty.

#### Reasonable profit

33. Reasonable profit should be taken to mean the rate of return on capital<sup>17</sup> that would be required by a typical company considering whether or not to provide the service of general economic interest for the whole duration of the entrustment act, taking into account the level of risk. The level of risk depends on the sector concerned, the type of service and the characteristics of the compensation mechanism.
34. Where duly justified, profit level indicators other than the rate of return on capital can be used to determine what the reasonable profit should be, such as the average return on equity<sup>18</sup> over the entrustment period, the return on capital employed, the return on assets or the return on sales.
35. Whatever indicator is chosen, the Member State must provide the Commission with evidence that the projected profit does not exceed what would be required by a typical company considering whether or not to provide the service, for instance by providing references to returns achieved on similar types of contracts awarded under competitive conditions.

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<sup>15</sup> In *Chronopost* (Joined Cases C-83/01 P, C-93/01 P and C-94/01 P *Chronopost SA* [2003] ECR I-6993), the European Court of Justice referred to "normal market conditions": "*In the absence of any possibility of comparing the situation of La Poste with that of a private group of undertakings not operating in a reserved sector, "normal market conditions", which are necessarily hypothetical, must be assessed by reference to the objective and verifiable elements which are available*".

<sup>16</sup> The reasonable profit will be assessed from an *ex ante* perspective (based on expected profits rather than on realised profits) in order not to remove the incentives for the undertaking to make efficiency gains when operating activities outside the SGEI.

<sup>17</sup> The rate of return on capital is defined here as the Internal Rate of Return (IRR) that the company makes on its invested capital over the lifetime of the project, that is to say the IRR on the cash flows of the contract.

<sup>18</sup> In any given year the accounting measure return on equity (ROE) is defined as the ratio between earnings before interests and taxes (EBIT) and equity capital in that year. The average annual return should be computed over the lifetime of the entrustment by applying as discount factor either the company's cost of capital or the rate set by the Commission Reference rate Communication, whatever more appropriate.

36. A rate of return on capital that does not exceed the relevant swap rate<sup>19</sup> plus a premium of 100 basis points<sup>20</sup> is regarded as reasonable in any event. The relevant swap rate is the swap rate whose maturity and currency correspond to the duration and currency of the entrustment act.
37. Where the provision of the SGEI is connected with a substantial commercial or contractual risk, for instance because the compensation takes the form of a fixed lump sum payment covering expected net costs and a reasonable profit and the undertaking operates in a competitive environment, the reasonable profit may not exceed the level that corresponds to a rate of return on capital that is commensurate with the level of risk. That rate should be determined where possible by reference to the rate of return on capital that is achieved on similar types of public service contracts awarded under competitive conditions (for example, contracts awarded under a tender). Where it is not possible to apply that method, other methods for establishing a return on capital may also be used, upon justification<sup>21</sup>.
38. Where the provision of the SGEI is not connected with a substantial commercial or contractual risk, for instance because the net cost incurred in providing the service of general economic interest is essentially compensated *ex post* in full, the reasonable profit may not exceed the level that corresponds to the level specified in paragraph 36. Such a compensation mechanism provides no efficiency incentives for the public service provider. Hence its use is strictly limited to cases where the Member State is able to justify that it is not feasible or appropriate to take into account productive efficiency and to have a contract design which gives incentives to achieve efficiency gains.

#### Efficiency incentives

39. In devising the method of compensation, Member States must introduce incentives for the efficient provision of SGEI of a high standard, unless they can duly justify that it is not feasible or appropriate to do so.
40. Efficiency incentives can be designed in different ways to best suit the specificity of each case or sector. For instance, Member States can define upfront a fixed compensation level which anticipates and incorporates the efficiency gains that the undertaking can be expected to make over the lifetime of the entrustment act.
41. Alternatively, Member States can define productive efficiency targets in the entrustment act whereby the level of compensation is made dependent upon the extent to which the targets have been met. If the undertaking does not meet the objectives, the compensation should be reduced following a calculation method

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<sup>19</sup> The swap rate is the longer maturity equivalent to the Inter-Bank Offered Rate (IBOR rate). It is used in the financial markets as a benchmark rate for establishing the funding rate.

<sup>20</sup> The premium of 100 basis points serves, inter alia, to compensate for liquidity risk related to the fact that an SGEI provider that invests capital in an SGEI contract commits that capital for the duration of the entrustment act and will be unable to sell its stake as rapidly and at as low a cost as is the case with a widely held and liquid risk-free asset.

<sup>21</sup> For instance, by comparing the return with the weighted average cost of capital (WACC) of the company in relation to the activity in question, or with the average return on capital for the sector in recent years, taking into account whether historical data can be appropriate for forward-looking purposes.

specified in the entrustment act. In contrast, if the undertaking exceeds the objectives, the compensation should be increased following a method specified in the entrustment act. Rewards linked to productive efficiency gains are to be set at a level such as to allow balanced sharing of those gains between the undertaking and the Member State and/or the users.

42. Any such mechanism for incentivising efficiency improvements must be based on objective and measurable criteria set out in the entrustment act and subject to transparent *ex post* assessment carried out by an entity independent from the SGEI provider.
43. Efficiency gains should be achieved without prejudice to the quality of the service provided and should meet the standards laid down in Union legislation.

Provisions applicable to undertakings also carrying out activities outside the scope of the SGEI or providing several SGEIs

44. Where an undertaking carries out activities falling both inside and outside the scope of the SGEI, the internal accounts must show separately the costs and revenues associated with the SGEI and those of the other services in line with the principles set out in paragraph 31. Where an undertaking is entrusted with the operation of several SGEIs because the granting authority or the nature of the SGEI is different, the undertaking's internal accounts must make it possible to verify whether there has been any overcompensation at the level of each SGEI.
45. If the undertaking in question holds special or exclusive rights linked to activities, other than the SGEI for which aid is granted, that generate profits in excess of the reasonable profit, or benefits from other advantages granted by the State, these must be taken into consideration, irrespective of their classification for the purposes of Article 107(1) of the Treaty, and added to the undertaking's revenue. The reasonable profit on the activities for which the undertaking holds special or exclusive rights has to be assessed from an *ex ante* perspective, in the light of the risk, or the absence of risk, incurred by the undertaking in question. That assessment also has to take into account the efficiency incentives that the Member State has introduced in relation to the provision of the services in question.
46. The Member State may decide that the profits accruing from other activities outside the scope of the SGEI, in particular those activities which rely on the infrastructure necessary to provide the SGEI, must be allocated in whole or in part to the financing of the SGEI.

Overcompensation

47. Overcompensation should be understood as compensation that the undertaking receives in excess of the amount of aid as defined in paragraph 21 for the whole duration of the contract. As stated in paragraphs 39 to 42, a surplus that results from

higher than expected efficiency gains may be retained by the undertaking as additional reasonable profit as specified in the entrustment act<sup>22</sup>.

48. Since overcompensation is not necessary for the operation of the SGEI, it constitutes incompatible State aid.
49. Member States must ensure that the compensation granted for operating the SGEI meets the requirements set out in this Communication and in particular that undertakings are not receiving compensation in excess of the amount determined in accordance with this the requirements set out in this section. They must provide evidence upon request from the Commission. They must carry out regular checks, or ensure that such checks are carried out, at the end of the period of entrustment and, in any event, at intervals of not more than three years. For aid granted by means other than a public procurement procedure with publication<sup>23</sup>, checks should normally be made at least every two years.
50. Where the Member State has defined upfront a fixed compensation level which adequately anticipates and incorporates the efficiency gains that the public service provider can be expected to make over the period of entrustment, on the basis of a correct allocation of costs and revenues and of reasonable expectations as described in this section, the overcompensation check is in principle confined to verifying that the level of profit to which the provider is entitled in accordance with the entrustment act is indeed reasonable from an *ex ante* perspective.

**2.9. Additional requirements which may be necessary to ensure that the development of trade is not affected to an extent contrary to the interests of the Union**

51. The requirements set out in sections 2.1 to 2.8 are usually sufficient to ensure that aid does not distort competition in a way that is contrary to the interests of the Union.
52. It is conceivable, however, that in some exceptional circumstances, serious competition distortions in the internal market could remain unaddressed and the aid could affect trade to such an extent as would be contrary to the interest of the Union.
53. In such a case, the Commission will examine whether such distortions can be mitigated by requiring conditions or requesting commitments from the Member State.
54. Serious competition distortions such as to be contrary to the interests of the Union are only expected to occur in exceptional circumstances. The Commission will restrict its attention to those distortions where the aid has significant adverse effects on other Member States and the functioning of the internal market, for example, because they deny undertakings in important sectors of the economy the possibility to achieve the scale of operations necessary to operate efficiently.

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<sup>22</sup> Similarly, a deficit which results from efficiency gains lower than expected should be partially borne by the undertaking when stipulated in the entrustment act.

<sup>23</sup> Such as aid granted in relation to in-house contracts, concessions with no competitive allocation, public procurement procedures with no prior publication

55. Such distortions may arise, for instance, where the entrustment either has a duration which cannot be justified by reference to objective criteria (such as the need to amortise non-transferable fixed assets) or bundles a series of tasks (typically subject to separate entrustments with no loss of social benefit and no additional costs in terms of efficiency and effectiveness in the provision of the services). In such a case, the Commission would examine whether the same public service could equally well be provided in a less distortive manner, for instance by way of a more limited entrustment in terms of duration or scope or through separate entrustments.
56. Another situation in which a more detailed assessment may be necessary is where the Member State entrusts a public service provider, without a competitive selection procedure, with the task of providing an SGEI in a non-reserved market where very similar services are already being provided or can be expected to be provided in the near future in the absence of the SGEI. Those adverse effects on the development of trade may be more pronounced where the SGEI is to be offered at a tariff below the costs of any actual or potential provider, so as to cause market foreclosure. The Commission, while fully respecting the Member State's wide margin of discretion to define the SGEI, may therefore require amendments, for instance in the allocation of the aid, where it can reasonably show that it would be possible to provide the same SGEI at equivalent conditions for the users, in a less distortive manner and at lower cost for the State.
57. Closer scrutiny is also warranted where the entrustment of the service obligation is connected with special or exclusive rights that seriously restrict competition in the internal market to an extent contrary to the interest of the Union. While the primary route for apprehending such a case remains Article 106(1) of the Treaty, the State aid may not be deemed compatible where the exclusive right provides for advantages that could not be properly assessed, quantified or apprehended according to the methodologies to calculate the net costs of the SGEI described in section 2.8.
58. The Commission will also pay attention to situations where the aid allows the undertaking to finance the creation or use of an infrastructure that is not replicable and enables it to foreclose the market where the SGEI is provided or related relevant markets. Where this is the case, it may be appropriate to require that competitors are given fair and non-discriminatory access to the infrastructure under appropriate conditions.
59. If distortions of competition are a consequence of the entrustment hindering effective implementation or enforcement of Union legislation aimed at safeguarding the proper functioning of the internal market, the Commission will examine whether the public service could equally well be provided in a less distortive manner, for instance by fully implementing the sectoral Union legislation.

## **2.10. Transparency**

60. For each SGEI compensation falling within the scope of this Communication, the Member State concerned must publish the following information on the internet or by other appropriate means:
- (a) the results of the public consultation or other appropriate instruments referred to in paragraph 14;

- (b) the content and duration of the public service obligations;
- (c) the undertaking and, where applicable, the territory concerned;
- (d) the amounts of aid granted to the undertaking on a yearly basis.

**2.11. Aid which meets the conditions laid down in Article 2(1) of Decision xxx [on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest]**

61. The principles set out in paragraphs 14, 19, 20, 24, 39, 51 to 59 and 60(a) do not apply to aid which meets the conditions laid down in Article 2(1) of Decision xxxxx [on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest].

### **3. REPORTING AND EVALUATION**

62. Member States shall report to the Commission on the compliance with this Communication every two years. The reports must provide an overview of the application of this Communication to the different sectors of service providers, including:
- (a) a description of the application of the principles set out in this Communication to the services falling within its scope, including in-house activities;
  - (b) the total amount of aid granted to undertakings falling within the scope of this Communication with a breakdown by the economic sector of the beneficiaries;
  - (c) an indication of whether, for a particular type of service, the application of the principles set out in this Communication has given rise to difficulties or complaints by third parties; and
  - (d) any other information concerning the application of the principles set out in this Communication required by the Commission and to be specified in due time before the report is to be submitted.

The first report shall be submitted by 30 June 2014.

63. In addition, in accordance with the requirements of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty<sup>24</sup> (now Article 108 of the Treaty) and Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC

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<sup>24</sup> OJ L 83, 27.3.1999, p. 1.

Treaty<sup>25</sup>, Member States must submit annual reports to the Commission on the aid granted following a decision of the Commission based on this Communication.

64. The reports will be published on the internet site of the Commission.
65. The Commission intends to carry out a review of this Communication by 31 January 2017.

#### **4. CONDITIONS AND OBLIGATIONS ATTACHED TO COMMISSION DECISIONS**

66. Pursuant to Article 7(4) of Regulation (EC) No 659/1999, the Commission may attach to a positive decision conditions subject to which aid may be considered compatible with the internal market, and lay down obligations to enable compliance with the decision to be monitored. In the field of SGEI, conditions and obligations may be necessary in particular to ensure that aid granted to the undertakings concerned does not lead to undue distortions of competition and trade in the internal market. In this context, periodic reports or other obligations may be necessary, in the light of the specific situation of each service of general economic interest.

#### **5. APPLICATION**

67. The Commission will apply the provisions of this Communication from 31 January 2012.
68. The Commission will apply the principles set out in this Communication to all aid projects notified to it and will take a decision on those projects in accordance with those principles, even if the projects were notified prior to 31 January 2012.
69. The Commission will apply the principles set out in this Communication to unlawful aid on which it takes a decision after 31 January 2012 even if the aid was granted before this date. However, where the aid was granted before 31 January 2012, the principles set out in paragraphs 14, 19, 20, 24, 39 and 60 do not apply.

#### **6. APPROPRIATE MEASURES**

70. The Commission proposes as appropriate measures for the purposes of Article 108(1) of the Treaty that Member States publish the list of existing aid schemes regarding public service compensation which have to be brought into line with this Communication by 31 January 2013, and that they bring those aid schemes into line with this Communication by 31 January 2014.
71. Member States should confirm to the Commission by 29 February 2012 that they agree to the appropriate measures proposed. In the absence of any reply, the Commission will take it that the Member State concerned does not agree.

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<sup>25</sup> OJ L 140, 30.4.2004, p.1.