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Opinion

Title **DG COMP - Impact Assessment on a reform of the EU rules applicable to State aid in the form of public service compensation**

(draft version of 13 October 2011)

(A) Context

Compensation to providers of services of general economic interest (SGEI) that does not fulfil the four criteria set out by the European Court of Justice in its 2003 "Altmark" judgement constitutes state aid and is therefore subject to the relevant articles of the Treaty. The 2005 "SGEI package" clarified how these articles are applied to SGEIs. The package comprised: a Commission Decision providing that public service compensation payments below certain thresholds and fulfilling certain conditions are considered compatible and are exempted from the notification obligation and, for those cases falling outside the scope of the Decision, a Community Framework establishing the conditions for compatibility with the Treaty provisions. Drawing upon the experience of implementation and an extensive consultation process, the Commission is now considering changes to the package.

(B) Overall assessment

The report provides adequate analysis to support action in this area but should be further improved in various respects. The analysis of the problems should be improved, notably with regard to its supporting quantitative evidence, while still acknowledging the limited data availability. Options' design and choice should also be improved including through a much better justification of the proposed changes in thresholds and sectoral scope. Subsidiarity concerns around the proposed efficiency requirement should be addressed in a more transparent and convincing manner. The report should also improve the analysis of the impacts, explicitly comparing alternative policy packages in terms of their effectiveness, efficiency and coherence. Finally, stakeholders' views should be discussed much more extensively throughout the report.

During the meeting, DG COMP agreed to revise the report in line with the recommendations of the Board.

(C) Main recommendations for improvements

(1) Strengthen the presentation of the problems. The analysis of the problems should be complemented by a brief presentation of the key determinants of state aid compatibility, the ways in which these are assessed and the role of the Commission vis-à-vis national competition authorities. Against this background, the report should provide additional quantitative evidence about the problems analysed or should explain the reasons why comprehensive data is not available. To this end, the report should provide broad estimates of administrative burdens for different sizes of hypothetical undertakings, clarifying the contribution of specific legislative drivers such as notification and entrustment requirements. The report should also draw upon the experience of state aid enforcement for commercial (non-SGEI) services to better substantiate the concerns about competition distortions and inefficient SGEI delivery. In addition, the report should improve the discussion of issues related to social services, clarifying whether these are related to the size of social SGEI providers, the nature of such services or to a specific difficulty in applying key concepts/procedures, such as account separation, to such sectors. Finally, the report should discuss upfront any problems due to the fact that state aid compatibility is currently determined independently from compliance with EU public procurement rules.

(2) Better justify the choice of options. The report should strengthen the presentation of the options in several respects. First, while the limits posed by scant data availability must be acknowledged, the report should nevertheless much better justify the choice and level of the new thresholds under consideration including the proposed elimination of the turnover threshold. With regard to the latter, the report should also discuss how such a measure would be coherent with the overall policy objective of increasing competition for large SGEI providers. Second, the report should clarify which social services would be excluded and why. Third, it should discuss the relationship between the proposed options, the existing EU regulatory framework for public procurement and concessions, including its on-going reform, and the "Altmark criteria". Fourth, in the light of stakeholders' subsidiarity concerns and existing Treaty provisions, the report should significantly strengthen the arguments supporting the introduction of efficiency considerations, on the one hand, and their limitation to large commercial SGEI providers only, on the other.

(3) Strengthen the analysis of options. The report should provide a more quantitative assessment of the impacts of the options under analysis, including with respect to changes in administrative burdens. It should also highlight any sector-specific impact of particular relevance. On this basis, the report should explicitly assess and compare the aggregate impact of the proposed package of preferred options in terms of its effectiveness, efficiency and coherence and compare it to alternative packages.

(4) Better present stakeholders' views. The main text of the report should illustrate more extensively stakeholders' views both in favour of and against the report's analysis of problems and assessment of the preferred options. This is particularly important with regard to the level of the proposed thresholds and the introduction of efficiency incentives in compensation schemes. Stakeholder views should also inform the design of the alternative policy packages mentioned in the recommendation above.

Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated in the final version of the impact assessment report.

(D) Procedure and presentation.

The main body of the report should be shortened, while additional annexes should be provided to summarize stakeholder responses, to present data on handled state aid cases and to illustrate the interactions with EU regulations on public procurement and concessions and their reform. The report should also clarify whether relevant social sector dialogue committees were consulted.

(E) IAB scrutiny process	
Reference number	2010/COMP/017
External expertise used	No
Date of Board Meeting	9 November 2011