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52. Recalls that measures to promote biodiversity are also vital in the non-farm sector; notes that green spaces along roads, verges of railway lines, forest cuttings for energy transmission networks and public and private gardens cover substantial areas where rational management methods can considerably increase pollen and nectar resources for bees and pollinating insects; considers that this development should be pursued in the context of harmonious land management, which in particular maintains road safety;

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53. Instructs its President to forward this resolution to the Council and the Commission.

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## State aid rules on services of general economic interest

P7\_TA(2011)0494

### European Parliament resolution of 15 November 2011 on reform of the EU state aid rules on Services of General Economic Interest (2011/2146(INI))

(2013/C 153 E/07)

*The European Parliament,*

- having regard to Articles 14 and 106 of the Treaty on the Functioning of the European Union and to Protocol No 26 thereto,
- having regard to the Communication from the Commission of 23 March 2011 on reform of the EU state aid rules on Services of General Economic Interest (COM(2011)0146),
- having regard to the Commission staff working document of 23 March 2011 on the application of EU state aid rules on Services of General Economic Interest since 2005 and the outcome of the public consultation (SEC(2011)0397),
- having regard to the public consultation organised by the Commission in 2010 on ‘state aid rules on services of general economic interest’,
- having regard to the ‘Guide to the application of the European Union rules on state aid, public procurement and the internal market to services of general economic interest, and in particular to social services of general interest’ of 7 December 2010 (SEC(2010)1545),
- having regard to 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>(1)</sup>,
- having regard to Commission Decision 2005/842/EC of 28 November 2005 on the application of Article 86(2) of the EC Treaty 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>(2)</sup>,
- having regard to the Community framework for state aid in the form of public service compensation <sup>(3)</sup>,

<sup>(1)</sup> OJ L 318, 17.11.2006, p. 17.

<sup>(2)</sup> OJ L 312, 29.11.2005, p. 67.

<sup>(3)</sup> OJ C 297, 29.11.2005, p. 4.

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- having regard to the Communication from the Commission of 19 January 2001 on European services of general interest <sup>(1)</sup>,
  - having regard to the Communication from the Commission of 26 September 1996 on European services of general interest <sup>(2)</sup>,
  - having regard to the opinion of the Committee of the Regions of 1 July 2011 on reform of the EU state aid rules on Services of General Economic Interest <sup>(3)</sup>,
  - having regard to the opinion of the European Economic and Social Committee of 15 June 2011 on the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on reform of the EU state aid rules on Services of General Economic Interest <sup>(4)</sup>,
  - having regard to the judgment of the European Court of Justice of 24 July 2003 in the case of Altmark Trans GmbH and Regierungspräsidium Magdeburg v Nahverkehrsgesellschaft Altmark GmbH <sup>(5)</sup>,
  - having regard to its resolutions of 5 July 2011 on the future of social services of general interest <sup>(6)</sup>, of 14 March 2007 on social services of general interest in the European Union <sup>(7)</sup>, of 27 September 2006 on the Commission white paper on services of general interest <sup>(8)</sup>, of 14 January 2004 on the green paper on services of general interest <sup>(9)</sup>, of 13 November 2001 on the Commission communication entitled 'Services of general interest in Europe' <sup>(10)</sup> and of 17 December 1997 on the Commission communication entitled 'Services of general interest in Europe' <sup>(11)</sup>,
  - having regard to Rule 48 of its Rules of Procedure,
  - having regard to the report of the Committee on Economic and Monetary Affairs and the opinions of the Committee on Industry, Research and Energy and the Committee on the Internal Market and Consumer Protection (A7-0371/2011),
- A. whereas services of general economic interest (SGEI) have an important place in the shared values of the Union, and promote fundamental rights and social, economic and territorial cohesion, and are thus crucial to the fight against societal inequalities and, increasingly, also to sustainable development;
- B. whereas SGEI make a significant contribution to the Member States' economic performance and competitiveness and thus not only help to prevent and overcome economic crises but also serve the cause of general economic well-being;
- C. whereas the successful implementation of the Europe 2020 strategy is bolstered by the provision of SGEI, and whereas these services can help with reaching growth targets in the areas of employment, education and social integration in particular, so that in the end the high level of productivity, employment and social cohesion that has been set can be achieved;
- D. whereas cost-effective solutions by competing private undertakings are necessary in the interest of the citizen and essential against the background of the budgetary situation;

<sup>(1)</sup> OJ C 17, 19.1.2001, p. 4.

<sup>(2)</sup> OJ C 281, 26.9.1996, p. 3.

<sup>(3)</sup> OJ C 259, 2.9.2011, p. 40.

<sup>(4)</sup> OJ C 248, 25.8.2011, p. 149.

<sup>(5)</sup> Case C-280/00, [2004] ECR I-07747.

<sup>(6)</sup> Texts adopted, P7\_TA(2011)0319.

<sup>(7)</sup> OJ C 301 E, 13.12.2007, p. 140.

<sup>(8)</sup> OJ C 306 E, 15.12.2006, p. 277.

<sup>(9)</sup> OJ C 92 E, 16.4.2004, p. 294.

<sup>(10)</sup> OJ C 140 E, 13.6.2002, p. 153.

<sup>(11)</sup> OJ C 14, 19.1.1998, p. 74.

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- E. whereas SGEI are services that cannot always be provided, or cannot be provided adequately, without public intervention;
- F. whereas social services of general interest (SSGI) play an important role in underpinning basic rights and make a major contribution to equality of opportunity;
- G. whereas the current EU legislation provides for exemption from notification for hospitals and social housing, i.e. SGEI meeting basic social needs;
- H. whereas Articles 106 and 107 TFEU provide the legal basis for the reform of state aid rules for SGEI, and Article 14 TFEU allows the European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, to establish the principles and conditions for the operation of SGEI, particularly economic and financial conditions, without prejudice to the competences of the Member States;
- I. whereas Protocol No 26 TFEU establishes that SGEI should be characterised by a high level of quality, safety and affordability, equal treatment and the promotion of universal access and user rights, and explicitly recognises their essential role;
- J. whereas the Member States and their public authorities are in the best position to properly serve their citizens and thus are responsible for determining the precise extent and the way in which SGEI are provided, and whereas Article 1 of Protocol No 26 to the Lisbon Treaty explicitly recognises the wide discretionary powers of national, regional and local authorities to manage, commission and organise them;
- K. whereas compensatory payments encompass all advantages granted by the state or through state resources in any form whatsoever;
1. Notes the aims of the reform proposed by the Commission in seeking to clarify the application of the rules on aid for SGEI, taking into account their diversity;
  2. Demands that the Commission provide clarification of the relationship between the rules of the internal market, and the provision of public services and that it ensure that the principle of subsidiarity is applied in the definition, organisation and financing of public services;
  3. Highlights the improvements in terms of application and comprehensibility that have been possible thanks to the measures taken in 2005, known as the Altmark package; points out that the public consultations have nevertheless shown that the legal instruments need to be even clearer and more straightforward, proportionate and effective;
  4. Stresses that the outcome of the public consultation also indicates that, apart from the administrative burden, other factors possibly militating against the application of the rules on state aid to SGEI have been uncertainties and misinterpretations, especially of key concepts in the rules such as 'act of entrustment', 'reasonable profit', 'undertaking', 'economic and non-economic services' and 'internal market relevance';
  5. Welcomes the Commission's move to provide further clarifications on the distinction between non-economic and economic activities in the context of SGEI, in order to create greater overall legal certainty, and to avoid cases being brought before the European Court of Justice and infringement proceedings opened by the Commission; calls on the Commission to provide further clarification regarding the fourth criterion which the European Court of Justice stated in the Altmark judgment and to ensure that the method of calculation of reasonable profit is clear enough and appropriate to the diversity of SGEI; calls on the Commission, therefore, to avoid a closed list; suggests that, in doing so, the Commission should not confine itself to reiterating the case law of the European Court of Justice but should provide determining criteria to help understand and apply the concepts used; asks the Commission to elaborate its understanding of a genuine SGEI;

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6. Is concerned about the additional requirements that the Commission wants to introduce in order to ensure that the development of trade is not affected to an extent contrary to the interests of the Union, and believes that these will result in legal uncertainty;
7. Stresses that the 'act of entrustment' is a guarantee of transparency which must be retained in order to give more visibility for citizens but that the scope for mandating (act of entrustment) should be enhanced, in particular by means of the more flexible application of the rules; calls for a project accompanied by a 'contract of objectives' to be considered as an eligible act of entrustment;
8. Stresses that any reform of the EU state aid rules must take into account the special function of SGEI and must adhere strictly to the principle of subsidiarity, as the primary responsibility for commissioning, providing, financing and organising SGEI, in accordance with Protocol No 26 TFEU, rests with the Member States and their national, regional and local authorities, which have wide discretion in that regard and freedom of choice;
9. Stresses that particular attention must be paid, when reviewing the rules, to ensuring that the Community concepts and terms used are clearly tailored to the nature of public services and the diversity of forms of organisation and stakeholders involved, and that they take proper account of the actual risk of an impact on trade between Member States;
10. Highlights the specific nature of SGEI at regional and local level, which does not affect competition in the internal market and where a simplified and transparent procedure should be possible that encourages innovation and the participation of small and medium-sized enterprises (SMEs);
11. Supports the concept of thresholds for exemption from the requirement of notification of state compensatory payments for SGEI, with the associated lessening of the administrative burden; suggests, on the basis of the consultations carried out, that the thresholds which determine the application of the SGEI Decision should be raised;
12. Stresses that the specific nature of SGEIs is recognised in Article 14 TFEU and Protocol 26 annexed to the Treaty of Lisbon, and recognises the special role of national, regional and local authorities in this connection; stresses that reform of the EU rules on state aid for SGEI is only part of the necessary clarification of the legal provisions which apply to SGEI through a European consistent legal framework; notes that any legal instrument will have to ensure satisfactory legal certainty; calls on the Commission to bring forward by the end of 2011 a communication with measures designed to ensure that SGEI and SSGI have a framework enabling them to perform their tasks, as it undertook to do in the Single Market Act;
13. Emphasises that, under Article 106(2) TFEU, undertakings entrusted with the operation of services of general interest are subject to the rules prohibiting and controlling state aid only in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them by national, regional or local authorities; highlights, in this regard, the clear stipulation in Article 14 TFEU that the Union and the Member States, each within their respective powers and within the scope of application of the Treaty, shall take care that such services operate on the basis of principles and conditions to enable them to fulfil their mission; calls therefore for the reform of the EU state aid rules to take account of both these articles and to ensure that compensation granted to SGEI does not come with an excessive burden for public finances or low quality of the services provided;
14. Deems that the forthcoming Commission proposal on EU 2020 Project Bonds could and should be a major vector for the development of services of general interest in the Member States as well as at EU level; underlines that procedures established with that purpose should be explicitly laid down in a project eligibility framework to be defined following the ordinary legislative procedure;

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15. Considers it extremely important that compensation payments to SGEI do not distort competition or harm other non-compensated companies operating in the same sectors or markets;
16. Points out that access to compensation for the net cost of delivering public services is among the economic and financial conditions necessary for undertakings entrusted with the operation of public services to perform properly the particular tasks assigned to them by public authorities, especially in these times of crisis, in which public services are playing a vital role as an automatic stabiliser, protecting the most vulnerable sections of the public and thus helping to mitigate the social impact of the crisis;
17. Would emphasise here that the development of public-public cooperation, by pooling resources, offers great potential for increasing efficiency in the use of public resources and modernising public services to meet the new needs of people in their local areas; also emphasises the importance of cross-border cooperation;
18. Asserts emphatically that public services must be of high quality and accessible to all sections of the population; views with concern, in this regard, the restrictive stance taken by the Commission, which, in relation to state aid for social housing associations, classifies the services provided by such associations as SSGI only if they are reserved for socially disadvantaged persons or groups, this restrictive interpretation being at odds with the higher goal of fostering an appropriate social mix and universal access;
19. Is of the opinion that good-quality services are based on the human rights of European citizens; and that this rights-based approach should be strengthened;
20. Recalls the substantial investment needed to upgrade infrastructure, especially in the regions where it is most lacking and in particular in the areas of energy, telecommunications and public transport, in order to enable the provision of future smart energy or broadband services;
21. Calls on the Commission to include investment costs for infrastructure necessary to the functioning of SGEI within the costs that compensatory payments may cover; reminds the Commission that the provision of SGEI is sometimes based on long-term public investment aid rather than on annual compensation payments;
22. Calls on the Commission, when negotiating bilateral trade agreements, to accept the public-sector provisions of SGEI and SSGI in partner countries;

#### ***Simplification/proportionality***

23. Welcomes the Commission's intention to ensure, through a more diverse approach to the application of state aid rules, that the administrative burden placed on the public authorities and on service providers is proportionate to the potential impact of the measure concerned on competition in the internal market;
24. Calls therefore for the provisions to be framed in such a way as to ensure that they can be applied correctly and that they place no unnecessary burden on the public authorities and the undertakings entrusted with the operation of services of general interest, enabling them to perform in full the specific tasks assigned to them; asks the Commission in that context to make it easier to understand the rules and foresee the obligations regarding public compensation payments for SGEI and thus attain greater legal certainty for public authorities and service providers;

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25. Calls on the Commission, as part of the intended simplification of the state aid rules, to introduce greater flexibility and transparency in the monitoring of over-compensation and in particular to improve measures to prevent over-compensation; suggests, to this end, that, in the case of multiannual contracts, checks for over-compensation should be carried out only at the end of the contractual period and in any event at intervals of no more than three years and that transparent criteria should be set for the calculation of compensation payments for SGEI, as this would result in significant time and cost savings for both service providers and the public authorities;

26. Calls on the Commission to ascertain from the public authorities and operators whether the 'Guide to the application of the European Union rules on state aid, public procurement and the internal market to services of general economic interest, and in particular to social services of general interest' of 7 December 2010 effectively fulfils its purpose; asks the Commission, should it prove necessary, to provide the public authorities and operators with a learning tool to guide them towards the proper application of these rules;

27. Calls on the Commission to simplify the rules for mandating; asks that a call for proposals accompanied by a target-based contract be deemed to constitute a mandate;

#### **Social services**

28. Calls on the Commission to come up with special de minimis arrangements for SSGI that can be assumed to entail no substantial detriment to trade between Member States; suggests, to this end, that appropriate higher thresholds be proposed for social services of this type;

29. Supports the retention of the existing exemption without thresholds for hospitals and social housing; welcomes the Commission's assertion that it wishes to exempt further categories of SSGI from the requirement that aid to them be the subject of notification; calls on the Commission to ensure that compensation payments for all SGEI meeting essential social needs as defined by Member States, such as care of the elderly and of people with disabilities, the care and social inclusion of vulnerable groups, child and youth welfare, healthcare and access to the labour market are exempted from the requirement of notification;

30. Considers that the special remit and character of SSGI should be protected and clearly defined; calls on the Commission, therefore, to assess what would be the most effective way of attaining this objective, taking into account the possibility of sector-specific rules;

#### **Local services**

31. Welcomes the Commission's intention to introduce a 'de minimis' rule in respect of state aid to undertakings entrusted with the operation of SGEI where the locally limited scale of the activity means that only a negligible impact on trade between Member States is likely and where it is ensured that the compensation is used exclusively for the operation of the SGEI in question; asks the Commission to assess whether SGEI in the field of culture and education should also be the subject of a special arrangement;

32. Calls on the Commission to propose appropriate thresholds for the 'de minimis' rule for compensation payments to undertakings entrusted with the operation of SGEI, so that these services can be dealt with by a simplified procedure and the considerable administrative burden on service providers be significantly reduced without negative effects on the Single Market; suggests as a possible reference in this respect the combined indices of amount of compensation payment and level of turnover of the undertaking entrusted with the operation of the service by the local authority; considers furthermore that a threshold for a period of three financial years might be more appropriate in order to ensure the necessary flexibility;

33. Recalls that SGEI providers have a variety of different statuses, such as associations, foundations, voluntary and community organisations, non-profit organisations and social enterprises; recalls that some of those operate exclusively at local level, do not engage in commercial activities and reinvest locally any profits from services of general interest;

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**Quality and efficiency aspects**

34. Emphasises how important it is for SGEI to be of high quality and the need for them to be universally accessible; points out in this regard that the Commission's responsibility, under the TFEU competition rules, is confined to monitoring state aid for the provision of SGEI, and that these do not provide a legal basis for setting quality and efficiency criteria at European level; considers that the definition of quality and efficiency for SGEI should be established with due regard for the subsidiarity principle;

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35. Instructs its President to forward this resolution to the Council and Commission.

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**European platform against poverty and social exclusion**

P7\_TA(2011)0495

**European Parliament resolution of 15 November 2011 on the European Platform against poverty and social exclusion (2011/2052(INI))**

(2013/C 153 E/08)

*The European Parliament,*

- having regard to the Treaty on European Union, in particular Article 3(3) thereof, and the Treaty on the Functioning of the European Union, in particular Articles 9, 148, 160 and 168 thereof,
- having regard to the Charter of Fundamental Rights of the European Union, in particular Articles 1, 16, 21, 23, 24, 25, 30, 31 and 34 thereof,
- having regard to the revised European Social Charter, in particular Articles 30 (on the right to protection against poverty and social exclusion), 31 (on the right to housing) and 16 (on the right of the family to social, legal and economic protection) thereof,
- having regard to Council Directive 2000/43/EC of 29 June 2000 on implementing the principle of equal treatment between persons irrespective of racial or ethnic origin <sup>(1)</sup>,
- having regard to the Directive 2000/78/EC of 27 November 2000, establishing a general framework for equal treatment in employment and occupation <sup>(2)</sup>,
- having regard to Decision No 1098/2008/EC of the European Parliament and of the Council of 22 October 2008 on the European Year for Combating Poverty and Social Exclusion (2010) <sup>(3)</sup>,
- having regard to the conclusions of the Employment, Social Policy, Health and Consumer Affairs Council meeting of 8 June 2010 on the theme 'Equity and Health in All Policies: Solidarity in Health' <sup>(4)</sup>,
- having regard to the Council declaration of 6 December 2010 on 'The European Year for Combating Poverty and Social Exclusion: Working together to fight poverty in 2010 and beyond' <sup>(5)</sup>,

<sup>(1)</sup> OJ L 180, 19.7.2000, p. 22.

<sup>(2)</sup> OJ L 303, 2.12.2000, p. 16.

<sup>(3)</sup> OJ L 298, 7.11.2008, p. 20.

<sup>(4)</sup> Council of the EU, Press Release 10560/10 (Press 156), 3019th Employment, Social Policy, Health and Consumer Affairs Council meeting, Luxembourg, 7 and 8 June 2010.

<sup>(5)</sup> Council of the EU, 3053rd Employment, Social Policy, Health and Consumer Affairs Council meeting, Brussels, 6 December 2010.