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**P6\_TA(2005)0033****State aid in the form of public service compensation****European Parliament resolution on State aid in the form of public service compensation (2004/2186 (INI))***The European Parliament,*

- having regard to the Commission draft decision on the application of Article 86 of the 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, of 18 February 2004, as transmitted to the European Parliament for opinion on 8 September 2004,
- having regard to the Commission draft directive amending Directive 80/723/EEC on the transparency of financial relations between Member States and public undertakings, of 18 February 2004, as transmitted to the European Parliament for opinion on 8 September 2004,
- having regard to the Commission working paper on a Community framework for State aid in the form of public service compensation (the 'Framework'), as transmitted to the European Parliament for opinion on 8 September 2004,
- having regard to Articles 2, 5, 16, 73, 86, 87 and 88 of the EC Treaty,
- having regard to its previous resolutions on services of general interest, in particular to its resolutions: of 17 December 1997 on the communication from the Commission on services of general interest in Europe <sup>(1)</sup>; of 18 May 2000 on the draft directive amending Commission Directive 80/723/EEC on the transparency of financial relations between Member States and public undertakings <sup>(2)</sup>; of 13 November 2001 on the Commission communication 'Services of General Interest in Europe' <sup>(3)</sup> and its resolution of 14 January 2004 on the Green Paper on services of general interest <sup>(4)</sup>,
- having regard to Commission Regulation (EC) No 69/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to de minimis aid <sup>(5)</sup>,
- having regard to the Commission Green paper on services of general interest (COM(2003)0270) and to the communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — White Paper on services of general interest (COM(2004)0374),
- having regard to the Presidency Conclusions of the Lisbon European Council of 23 and 24 March 2000, the Laeken European Council of 14 and 15 December 2001 and the Barcelona European Council of 15 and 16 March 2002, the latter two of which request the Commission to bring some clarity to the State aid regime in the framework of Article 86(2) of the Treaty,
- having regard to the November 2004 report from the High Level Group chaired by Wim Kok regarding the Lisbon Strategy entitled 'Facing the challenge — the Lisbon strategy for growth and employment' <sup>(6)</sup>,
- having regard to Articles I-3; I-5; II-96; III-122; III-166; III-167; III-238 of the Treaty establishing a Constitution for Europe, as signed by Member States in Rome on 29 October 2004,
- having regard to the case-law of the European Court of Justice relating to services of general interest, and in particular to the Altmark judgment of 24 July 2003 <sup>(7)</sup>,
- having regard to the opinion of the Committee of the Regions of 29 September 2004,

<sup>(1)</sup> OJ C 14, 19.1.1998, p. 74.

<sup>(2)</sup> OJ C 59, 23.2.2001, p. 238.

<sup>(3)</sup> OJ C 140 E, 13.6.2002, p. 153.

<sup>(4)</sup> OJ C 92 E, 16.4.2004, p. 294.

<sup>(5)</sup> OJ L 10, 13.1.2001, p. 30.

<sup>(6)</sup> [http://europa.eu.int/growthandjobs/group/index\\_en.htm](http://europa.eu.int/growthandjobs/group/index_en.htm)

<sup>(7)</sup> Case C-280/00 Altmark Trans GmbH and Regierungspräsidium Magdeburg v. Nahverkehrsgesellschaft Altmark GmbH, and Oberbundesanwalt beim Bundesverwaltungsgericht [2003] ECR I-7747.

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- having regard to the opinion of the European Economic and Social Committee of 12 October 2004,
  - having regard to Rules 45 and 112(2) of its Rules of Procedure,
  - having regard to the report of the Economic and Monetary Affairs (A6-0034/2005),
- A. whereas high-quality services of general interest (SGI), accessible to all, are not only an important element of social and economic cohesion, but may also contribute considerably to the competitiveness of the European economy,
- B. whereas the Treaty establishing a Constitution for Europe recognises the right of local authorities to self-government (Article I-5) and makes territorial cohesion a general overall objective of the Union (Article I-3),
- C. whereas the interest of the citizen in his dual role of consumer (of services) and taxpayer must be the guiding principle; whereas compensation to undertakings providing SGIs must be granted with the sole purpose of securing the provision of high-quality, accessible and affordable services; other objectives must be attained with other forms of support,
- D. whereas, without prejudice to the existing internal market rules, local public services are run on the basis of decisions taken by democratically legitimised bodies close to the citizens and able to respond adequately and innovatively to citizens' needs,
- E. whereas the internal market, liberalisation and compliance with the rules on competition have on the whole led to improved access to SGIs, new services with more choice, better quality and lower costs for consumers,
- F. whereas, with a view to evidence-based policy making, the Commission should present a sound and exhaustive evaluation of the liberalisation process, taking into account the point of view of all stakeholders involved (users, local authorities, undertakings, etc.),
- G. whereas the total amount of state aid granted each year in the European Union is equivalent to more than 50% of the annual budget of the European Union even by the most conservative estimates; whereas state aid has consequences for public finances, for competition and for the ability of private undertakings to invest in a globalised economic environment; whereas state aid compensation is raised from European taxpayers and must therefore be spent responsibly, providing value for money,
- H. whereas it is not always possible to clearly distinguish two separate categories, namely SGI and Services of General Economic Interest (SGEI), as the qualification 'non-economic' has two dimensions: the objective and purpose of the service and the legal form of the provider (public, private or other) and the economic context in which it operates (free market, regulated market, state monopoly, etc.); whereas there are great differences across the Member States on both aspects, making a single European definition both impossible and contrary to the principles of subsidiarity and self-government; whereas for practical and operational purposes, however, it is necessary to draw up criteria for establishing under what circumstances exemptions to the competition rules may be granted; whereas the qualification 'non-economic' must rest on criteria concerning both the purpose of the service on the one hand, and the service provider and economic context on the other,
- I. whereas public authorities retain sole responsibility at all times for setting the framework of criteria and conditions for service provision, irrespective of the legal status of the provider and of whether the service is provided on the basis of free competition,
- J. whereas the setting of framework criteria and conditions for SGIs and the expected level of service are very much a question of national, regional or local traditions, and should therefore be left to the competent national, regional and local authorities, in the context of their right of self-government, and without prejudice to the current internal market rules,

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- K. whereas such a service should be assigned by way of an official act outlining the details of the service obligation, so as to ensure that only recognised SGIs will benefit from the proposed arrangements,
- L. whereas the assignment by such an official act must satisfy transparency criteria and be based on equal conditions for all competitors,
- M. whereas the concept of compensation encompasses any type of aid, whether in the form of cash or physical or human resources, or based on a legal provision or on the legal nature of the beneficiary's status with respect to the financing of the contract,
- N. whereas the Commission proposal applies only to cases which do not satisfy the four criteria defined by the Court of Justice in its *Altmark* judgment; whereas compensation is not deemed to be state aid if those four criteria are satisfied,
- O. whereas the amount of compensation may not exceed what is necessary for the operation of the service and must not be used to finance activities outside the scope of the service in question (so-called cross-subsidies),
- P. whereas compensation must be available to all operators, irrespective of their legal status, which are entrusted with providing SGIs,
- Q. whereas the granting of state aid to a monopoly usually constitutes an obstacle to a properly functioning market, and must therefore be thoroughly investigated and justified,
- R. whereas the service for which compensation or state aid is permissible under the proposed arrangements should be assigned either by way of a fair and transparent tendering procedure or by way of an official act that, depending on the law in the Member States, may take the form of one or more legislative or regulatory instruments or a contract,
- S. whereas it is difficult to judge the scope and impact of the proposals without data on the number of undertakings, the total amount of state aid and the total administrative burden involved,
- T. whereas the justification for granting state aid to undertakings responsible for an SGI or state compensation should be reviewed at regular and appropriate intervals as new services emerge or, conversely, as existing services become obsolete or are provided by means of new instruments owing to technological progress and changes in society,
- U. whereas effective, stringent controls over the granting of state aid or compensation are required in order to ensure fair competition and transparency and to avoid discrimination,
- V. whereas, when applying the principles of subsidiarity and proportionality, the Commission should focus on controlling infringements that have a significant impact on the internal market; whereas local public services do not normally affect cross-border trade,

### **General**

1. Welcomes the proposals of the Commission and endorses the aims of reducing unnecessary red tape and providing legal clarification; notes that, as announced by the Commission in its abovementioned White Paper on services of general interest, legal clarification must include a definition of when compensation does not constitute state aid; calls on the Commission, however, to clarify what does not constitute state aid;

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2. Recommends that the arrangements be put in place without delay, so as to limit to a minimum the legal gap that exists between the pronouncement of the Altmark ruling and the date on which the proposed arrangements are to enter into force; considers that, pending their entry into force, these arrangements should apply to all state aid granted after the Altmark ruling and fulfilling the conditions laid down in Articles 1 and 2 of the Decision; considers that state aid not fulfilling those conditions should be dealt with in accordance with the relevant framework directives, guidelines and opinions;
3. Calls on the Commission to clarify adequately all the legal consequences of the proposed instruments and how they interact and their compatibility with existing EU rules concerning public procurement and with sector-specific EU legislative provisions;
4. Asks the Commission to clarify the legal status of the Framework, also with a view to enabling the European Parliament to play its full role in this highly political debate;
5. Points out that the criteria from the Altmark ruling need to be developed and clarified further, in particular the fourth criterion, with its reference to a typical well-run undertaking; calls on the Commission, therefore, to complete the work on the communication interpreting the Altmark ruling that has been announced; suggests that a benchmarking exercise be carried out, coupled with adequate consultation with stakeholders, to clarify these criteria further, with a view to achieving legal certainty;

***With regard to the Framework***

6. Endorses the general approach of the Commission in the Framework;
7. Welcomes the planned exemption for public service broadcasters (point 4), since this recognises the specific characteristics of public service broadcasting as compared to other SGEIs and the powers of the Member States as acknowledged by the Amsterdam Protocol;
8. Welcomes the fact that the Commission has decided to consult the European Parliament on the proposed framework;
9. Stresses that the institutions with the relevant democratic legitimacy, namely national, regional and local authorities, should be responsible for defining SGEIs and for imposing obligations on and assessing the service providers entrusted therewith;
10. Stresses the need to consult widely, with a particular emphasis on users, both when defining service obligations and in assessing whether service obligations are met by the provider; considers that, since state aid is allowed for the provision of a particular service, user satisfaction is the main justification for the granting thereof;
11. Calls for the rules for undertakings using any over-compensation to finance another SGEI operated by the same undertaking to be applied strictly; such a transfer must be shown in the undertaking's accounts and must be carried out in accordance with the principles set out in the Framework; the Member States must ensure that such transfers are subject to proper control; the transparency rules laid down in Commission Directive 80/723/EEC<sup>(1)</sup> should apply;
12. Points out that point 22 (any over-compensation to a public undertaking may be used by the State in its capacity as shareholder to inject finance into that undertaking) seems not to be in line with the principle of neutrality; proposes that it be redrafted so as to cover all providers, regardless of their legal form;
13. Considers that 'undertaking' should be understood as meaning every entity engaged in an economic activity, regardless of the legal status of the entity and the way in which it is financed; 'public undertaking' should be understood as meaning any undertaking over which the public authorities may exercise directly or indirectly a dominant influence by virtue of their ownership of it, their financial participation therein, or the rules which govern it, as defined in Article 2(1)(b) of Directive 80/723/EEC;

<sup>(1)</sup> OJ L 195, 29.7.1980, p. 35.

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14. Considers that the Framework should remain valid for four years following its entry into force; advocates evidence-based policy-making and therefore proposes making the renewal of the Framework subject to a review, including an extensive impact assessment, based on factual information and wide consultation, with particular emphasis on users; the relevant information should be made available to the European Parliament;

15. Welcomes, in particular, point 11 of the Framework relating to social charges;

***With regard to the Draft Decision on the application of Article 86 of the Treaty***

16. Requests the Commission to clearly define the scope of the Draft Decision;

17. Proposes that 'small' SGEIs should be defined as undertakings which do not substantially affect the development of trade and competition, as their turnover is limited or because their activities are of a highly local nature;

18. Except in the case of 'small' SGEIs, as referred to in paragraph 17, insists that, where state aid for SGIs is permissible, such services should be assigned either by way of a fair and transparent tendering process, whereby the amount of state aid is objectively established, or by way of an official act that, depending on the law in the Member States, may take the form of one or more legislative or regulatory instruments or a contract;

19. Is of the opinion that the threshold for exempting public service compensation from notification requirements should be high enough to ensure sufficient flexibility and minimum administrative burden, without unnecessarily distorting competition; agrees in principle to the references suggested by the Commission, i.e. the standard definition of an SME and the threshold for compensation;

20. Considers that the Decision should remain valid for four years following its entry into force; advocates evidence-based policy-making and therefore proposes making renewal of the Decision subject to a review, including an extensive impact assessment based on factual information and wide consultation, with particular emphasis on users; the relevant information should be made available to the European Parliament;

21. Asks the Commission to clarify whether the turnover threshold relates to the undertaking as a whole or to the individual activities of the undertaking;

22. Calls for additional provisions to avoid the risk of larger undertakings being divided into smaller entities, in order to circumvent the threshold; considers that the same applies to sectors which are made up of many small providers which essentially operate as a single operator;

23. Notes that the scope of the draft Decision includes hospitals and social housing undertakings, although high volumes of aid may lead to distortions of competition in these areas too; points out that these sectors are also of interest to private operators; points out, furthermore, that the granting of subsidies may have a detrimental effect on competition; in view of this, considers that agreed rules on transparency and the obligation of each Member State to submit a detailed description of the way in which hospitals and social housing undertakings are organised and financed should be strictly applied;

24. Asks the Commission to clarify what principles it will apply when assessing individual cases;

25. Considers that, in the field of transport, this decision should only apply to public service compensation for maritime and air links to islands and to air and land links to remote and isolated settlements, granted in accordance with sectoral rules, on which annual traffic does not exceed 300 000 passengers;

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**With regard to the Draft Directive on transparency**

26. Agrees with the Commission that the criteria from the Altmark ruling need to be clarified further; makes it clear, however, that since the transparency directive is part of the legislative package on state aid, which is intended solely to ensure the policing thereof, its scope must not extend beyond the issue of state aid itself; agrees also with the Commission that undertakings to which compensation is granted in line with the criteria from the Altmark ruling must not be exempted from the requirement to maintain separate accounts;

27. Notes that there seems to be a time gap between the pronouncement of the Altmark ruling (July 2003), the proposed Framework and Decision (first half of 2005) and the deadline for Member States to comply with the transparency directive (more than 12 months after its publication in the Official Journal); seeks clarification from the Commission as to the provisions in force during this period and possible gaps;

**Modifications**

28. Calls on the Commission to take account of the following modifications to its draft decision on the application of Article 86 of the 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:

DRAFT DECISION

MODIFICATIONS BY PARLIAMENT

Modification 1

*Recital 2a (new)*

**(2a) ‘Undertaking’ should be defined as every entity engaged in an economic activity, regardless of the legal status of the entity and the way in which it is financed. ‘Public undertaking’ should be as defined in Article 2(1)(b) of Commission Directive 80/723/EEC of 25 June 1980 on the transparency of financial relations between Member States and public undertakings <sup>(1)</sup>.**

<sup>(1)</sup> OJ L 195, 29.7.1980, p. 35. Directive as last amended by Directive 2000/52/EC (OJ L 193, 29.7.2000, p. 75).

Modification 2

*Article 1, point (i)*

(i) public service compensation granted to undertakings with an annual turnover before tax, all activities included, of less than (...) [<sup>\*</sup>] during the two financial years preceding that in which the SGEI was assigned and with annual compensation for the service in question of less than (...) [<sup>\*\*</sup>]. The latter threshold may be determined by taking an annual average representing the present value of compensation granted during the contract period or over a period of five years. For credit institutions, the threshold of (...) is replaced by a threshold of (...) [<sup>\*\*\*</sup>] in terms of balance-sheet total;

(i) public service compensation granted to undertakings with an annual turnover before tax, all activities included, of less than **EUR 50 million** during the two financial years preceding that in which the SGEI was assigned and with annual compensation for the service in question of less than **EUR 15 million**. The latter threshold may be determined by taking an annual average representing the present value of compensation granted during the contract period or over a period of five years. For credit institutions, the threshold of **EUR 50 million** is replaced by a threshold of **EUR 800 million** in terms of balance-sheet total;

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DRAFT DECISION

MODIFICATIONS BY PARLIAMENT

## Modification 3

## Article 1, point (ii)

(ii) Public service compensation granted to hospitals that carry out activities involving services of general economic interest;

(ii) Public service compensation granted to hospitals that carry out activities involving services of general economic interest, **provided that the Member State concerned submits to the Commission a detailed description of the way in which the hospital sector is organised and financed in that Member State, to enable the Commission to assess whether such compensation is compatible with the Treaty. The Member State concerned shall notify the Commission of any changes in the organisation or financing of that sector.**

## Modification 4

## Article 1, point (iii)

(iii) Public service compensation granted to social housing undertakings that carry out activities involving services of general economic interest.

(iii) Public service compensation granted to social housing undertakings that carry out activities involving services of general economic interest, **provided that the Member State submits to the Commission a detailed description of the way in which social housing undertakings are organised and financed in that Member State, to enable the Commission to assess whether such compensation is compatible with the Treaty. The Member State concerned shall notify the Commission of any changes in the organisation or financing of those undertakings.**

## Modification 5

## Article 1, point (iv)

(iv) in the field of transport, this decision only applies to public service compensation for maritime links to islands, granted in accordance with sectoral rules, on which annual traffic does not exceed **100 000 passengers**.

(iv) in the field of transport, this decision only applies to public service compensation for maritime **and air** links to islands **and to maritime, air and land links to remote and isolated settlements**, granted in accordance with sectoral rules, on which annual traffic does not exceed **300 000 passengers**.

## Modification 6

## Article 1, paragraph 1a (new)

**1a. This Decision shall apply without prejudice to the rules laid down in Articles 81 and 82 of the Treaty.**

## Modification 7

## Article 2

In so far as it constitutes State aid, public service compensation that meets the conditions laid down by this Decision is compatible with the common market and shall be exempt from the

In so far as it constitutes State aid, public service compensation that meets the conditions laid down by this Decision is compatible with the common market and shall be exempt from the

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## DRAFT DECISION

## MODIFICATIONS BY PARLIAMENT

obligation of prior notification provided for in Article 88(3) of the Treaty, without prejudice to the existence of **stricter** provisions relating to public service obligations contained in sectoral Community legislation.

obligation of prior notification provided for in Article 88(3) of the Treaty, without prejudice to the existence of provisions relating to public service obligations contained in sectoral Community legislation.

## Modification 8

*Article 4, introduction*

In order to benefit from this Decision, the public service task shall be assigned by way of an official act that, depending on the law in the Member States, may take the form of one or more legislative or regulatory instruments or a contract. The act shall specify, in particular:

In order to benefit from this Decision, the public service task shall be assigned **either by way of a fair and transparent tendering procedure or** by way of an official act that, depending on the law in the Member States, may take the form of one or more legislative or regulatory instruments or a contract. The act shall specify, in particular:

## Modification 9

*Article 4, point (ba) (new)*

**(ba) the public need, which is otherwise inadequately met, satisfied by the act.**

## Modification 10

*Article 4, paragraph 1a (new)*

**When defining public service obligations and in assessing whether those obligations are met by the undertaking concerned, the Member States shall consult widely, with particular emphasis on users.**

## Modification 11

*Article 4, paragraph 1b (new)*

**In order to benefit from this Decision, the public service task shall be assigned either by way of a fair and transparent tendering procedure or by way of an official act that, depending on the law in the Member States, may take the form of one or more legislative or regulatory instruments or a contract.**

## Modification 12

*Article 7a (new)***Article 7a**

**This Decision shall remain valid for four years following its entry into force. The renewal of the Decision shall be subject to a review, including an extensive impact assessment based**

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DRAFT DECISION

MODIFICATIONS BY PARLIAMENT

***on factual information and wide consultation, with particular emphasis on users. The relevant information shall be made available to the European Parliament.***

29. Calls on the Commission to take account of the following modifications to its working paper on a Community Framework for State Aid in the form of public service compensation:

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ON A COMMUNITY FRAMEWORK

MODIFICATIONS BY PARLIAMENT

Modification 13

*Point 3a (new)*

***3a. Pending its entry into force, this framework also applies to all state aid granted after the Altmark ruling and fulfilling the conditions laid down in Articles 1 and 2 of the Decision. State aid not fulfilling those conditions is to be dealt with in accordance with the relevant framework directives, guidelines and opinions.***

Modification 14

*Point 4*

4. The provisions of this framework apply without prejudice to the ***stricter*** specific provisions relating to public service obligations contained in sectoral Community legislation and measures. They are not applicable to public service broadcasting covered by the Commission communication on the application of state aid rules to public service broadcasting.

4. The provisions of this framework apply without prejudice to the specific provisions relating to public service obligations contained in sectoral Community legislation and measures. They are not applicable to public service broadcasting covered by the Commission communication on the application of state aid rules to public service broadcasting.

Modification 15

*Point 7a (new)*

***7a. The concept of compensation encompasses any type of aid, whether in the form of cash or physical or human resources. Advantages which result from a legal provision or the legal status of the beneficiary should be taken into account when assessing the need for compensation.***

Modification 16

*Point 8*

8. It results from the case law that, in the absence of Community rules governing the matter, Member States have a wide margin of discretion regarding the nature of services that could be classified as being SGEIs. Under these circumstances, the

8. It results from the case law that, in the absence of Community rules governing the matter, Member States have a wide margin of discretion regarding the nature of services that could be classified as being SGEIs. ***When defining public service obli-***

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ON A COMMUNITY FRAMEWORK

## MODIFICATIONS BY PARLIAMENT

Commissions task is therefore to ensure that these provisions are applied with no manifest error. It transpires from Article 86(2) that undertakings entrusted with the operation of SGEIs are undertakings entrusted with 'a special task'.

***gations and in assessing whether those obligations are met by the undertaking concerned, the Member States shall consult widely, with a particular emphasis on users.*** Under these circumstances, the Commissions task is therefore to ensure that these provisions are applied with no manifest error. It transpires from Article 86(2) that undertakings entrusted with the operation of SGEIs are undertakings entrusted with 'a special task'.

## Modification 17

## Point 8a (new)

***8a. 'Undertaking' shall be understood as every entity engaged in an economic activity, regardless of the legal status of the entity and the way in which it is financed. 'Public undertaking' shall be understood as any undertaking over which the public authorities may exercise directly or indirectly a dominant influence by virtue of their ownership of it, their financial participation therein, or the rules which govern it, as defined in Article 2(1)(b) of Commission Directive 80/723/EEC on the transparency of financial relations between Member States and public undertakings<sup>(1)</sup>.***

<sup>(1)</sup> OJ L 195, 29.7.1980, p. 35. Directive as last amended by Directive 2000/52/EC (OJ L 193, 29.7.2000, p. 75).

## Modification 18

## Point 10, introduction

10. The public service task must be assigned by way of an official act that, depending on the legislation in Member States, may take the form of a legislative or regulatory act or a contract. It may also be laid down in several acts. The act or series of acts should specify among other things:

10. The public service task must be assigned ***either by way of a fair and transparent tendering procedure*** or by way of an official act that, depending on the legislation in Member States, may take the form of a legislative or regulatory act or a contract. It may also be laid down in several acts. The act or series of acts should specify among other things:

## Modification 19

## Point 11a (new)

***11a. Where state aid may be granted for an SGEI, undertakings providing such services should still be chosen pursuant to a fair and transparent tendering procedure, whereby the amount of state aid is objectively established, or by way of an official act that, depending on the law in the Member States, may take the form of one or more legislative or regulatory instruments or a contract.***

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## MODIFICATIONS BY PARLIAMENT

## Modification 20

*Point 11b (new)*

**11b. Public authorities remain solely and primarily responsible at all times for setting the framework of criteria and conditions for the provision of services, regardless of the legal status of the provider and of whether the service is provided on the basis of free competition.**

## Modification 21

*Point 11c (new)*

**11c. When defining public service obligations and in assessing whether those obligations are met by the undertaking concerned, the Member States should consult widely, with particular emphasis on users.**

## Modification 22

*Point 21*

21. Any over-compensation may be used to finance another SGEI operated by the same undertaking, but such a transfer must be shown in the undertaking's accounts.

21. Any over-compensation may be used to finance another SGEI operated by the same undertaking, but such a transfer must be shown in the undertaking's accounts **and be carried out in accordance with the rules and principles set out in this framework. The Member States shall ensure that such transfers are subjected to proper control. The transparency rules laid down in Directive 80/723/EEC shall apply.**

## Modification 23

*Point 22*

22. In cases where compensation benefits **a public** undertaking, any over-compensation may be used by the State in its capacity as shareholder to inject finance into that undertaking provided that the private investor criterion is met. However, such transfers must be carried out in accordance with normal commercial procedures, i.e. in the form of a capital increase or the granting of loans, and must comply with the relevant national rules, notably in the commercial and tax fields. This operation must be clearly identified in the balance sheet of the recipient undertaking and must be the result of a formal decision by the public authorities. This decision must identify the exact use to which the financial transfer is to be put. If, though, the financial injection by the State does not comply with the private investor criterion, it must be notified to the Commission in accordance with Article 88(3) of the Treaty.

22. In cases where compensation benefits **an** undertaking, **regardless of the legal form thereof**, any over-compensation may be used by the State in its capacity as shareholder to inject finance into that undertaking provided that the private investor criterion is met. However, such transfers must be carried out in accordance with normal commercial procedures, i.e. in the form of a capital increase or the granting of loans, and must comply with the relevant national rules, notably in the commercial and tax fields. This operation must be clearly identified in the balance sheet of the recipient undertaking and must be the result of a formal decision by the public authorities. This decision must identify the exact use to which the financial transfer is to be put. If, though, the financial injection by the State does not comply with the private investor criterion, it must be notified to the Commission in accordance with Article 88(3) of the Treaty.

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Modification 24

Point 24

24. This framework will apply as of its publication in the Official Journal of the European Union. Its validity will end **on 31 December 2007**. The Commission may, after consulting the Member States, amend this framework before **31 December 2007** for important reasons linked to the development of the common market.

24. This framework will apply as of its publication in the Official Journal of the European Union. Its **term of** validity will end **four years after its entry into force**. The Commission may, after consulting the Member States, amend this framework before **its date of expiry** for important reasons linked to the development of the common market. **The renewal of the framework shall be subject to a review including an extensive impact assessment based on factual information and the results of wide consultations conducted by the Commission on the basis of data provided by the Member States. The relevant information shall be made available to the European Parliament.**

30. Instructs its President to forward this resolution to the Council and Commission, and to the governments and parliaments of the Member States.

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## Broad economic guidelines

### European Parliament resolution on the European economic situation — preparatory report on the Broad Economic Policy Guidelines (2004/2269(INI))

*The European Parliament,*

- having regard to the Commission recommendation of 24 April 2003 on the Broad Guidelines of the Economic Policies of the Member States and the Community (for the 2003-2005 period) (COM(2003) 0170),
- having regard to the Commission recommendation of 7 April 2004 on the 2004 update of the Broad Guidelines of the Economic Policies of the Member States and the Community (for the 2003-2005 period) (COM(2004)0238),
- having regard to the Commission's autumn 2004 economic forecasts for the eurozone and the European Union (2004-2006),
- having regard to the Communication of 2 February 2005 from the Commission to the Spring European Council 'Working together for growth and jobs — a new start for the Lisbon strategy' (COM(2005)0024),
- having regard to the Presidency Conclusions of the Lisbon European Council of 23 and 24 March 2000, the Göteborg European Council of 15 and 16 June 2001 and the Barcelona European Council of 15 and 16 March 2002,
- having regard to the Presidency Conclusions of the Brussels European Councils of 20 and 21 March 2003, 16 and 17 October 2003, 25 and 26 March 2004 and 4 and 5 November 2004,
- having regard to the report entitled 'Facing the Challenge' by the High-Level Group chaired by Mr Wim Kok,