

14 November 2019

EAPB comments on consultation on State subsidy rules for health and social services of general economic interest (evaluation)

Register ID: 8754829960-32

Background and general comments

The European Association of Public Banks, EAPB, welcomes the possibility to provide feedback on the consultation on State subsidy rules for health and social services of general economic interest (evaluation).

As National and Regional Promotional Banks and institutions (NPBIs) EAPB members perform a public mission of fostering economic development and social cohesion. They act based on a public mandate -defined by law- and support their competent authorities' socio-political objectives. They thus often also play a key role in granting State aid.

Against this background, we would like to comment on some aspects of the evaluation of SGEI regulations in the field of health and social services below.

Distortions of competition in the health and social services sectors

1 The risk of distortion of competition is comparatively low in the area of standard services in the health sector. These services are usually only offered locally and are also tailored to a local clientele. There are no obstacles to the establishment of foreign service providers.

We take a very positive view of the latest decisions and resolutions of the Commission on investment measures in the health sector, in which it was stated that trade between the Member States was not affected. This includes the following State aid decisions: SA.37432 Czech Republic - Financing of public hospitals in the Hradec Králové region, SA.37904 Germany - Alleged State aid to a medical centre in Durmersheim, SA.38035 Germany - Alleged aid to a rehabilitation clinic specialising in orthopaedics and trauma surgery.

Against this background, we would welcome it if the Commission could update its SGEI communication from 2011 and highlight recent decision-making practice. It should be pointed out here that in the health sector the promotion of investments and educational measures that are invested in the national health system are to be assessed as free of aid as they do not meet the criteria of affecting trade between the Member States.

In our opinion, the risk of distortion of competition is also comparatively low in social housing construction. The description of social housing contained in the SGEI decision of the EU Commission of 20 December 2011 should be expanded. The right to adequate and affordable housing should be given greater prominence, because the inability of the housing market to meet the overall housing demand not only affects people who have no access to housing at all, but also those living in dwellings that are hazardous to their health, inadequate or overcrowded, as well as those who spend the majority of their income paying their rent or the monthly instalment for their living expenses.

Health and social services

Digital health and social services are becoming increasingly important. They are increasingly in demand by citizens and are also moving into the focus of technology developers. The increased provision of these services is in the public interest. This opens up numerous cost-cutting potentials, such as avoiding duplication of work, increasing transparency, improving the coordination of processes based on the division of labour, reducing medical complications, increasing average quality by complying with guidelines, etc. At the same time, digitalization also leads to quality improvements in terms of increasing the coordinated quality of treatment and improving the quality of life. However, the offer of digital health services is associated with very high and hardly foreseeable, organisational and technical pre-production investments and with high entrepreneurial risks. The Commission should support all national efforts to promote the provision of digital health services across the board with high quality standards in the general interest. The promotion of exclusively locally offered and locally consumed as well as digital health services without cross-border reference should be completely excluded from the scope of application of State aid law.

Definition of reasonable profit

We suggest reviewing the definition of reasonable profit for a SGEIs, taking into account that these profits are often reinvested in SGEIs (e.g. through incentives or by increasing the percentage of recognisable reasonable profit). The limitation to an upper limit of 100 basis points above the relevant swap rate as a reasonable profit for services which do not involve any significant commercial risk (SGEI Decision, recital 19 and Article 5(5)) should be removed. This is because the Commission only considers commercial risks and disregards other risks or cost factors possibly associated with the exercise of the activity, such as liability or environmental risks. With the current low swap rates, the provision of SGEIs only leads to low profits, so that the provision of SGEIs associated with other than purely commercial risks may not be particularly attractive to companies. This limits the number of potential service providers and thus the choice of the authorities and consequently leads to a loss of quality for the SGEIs concerned. Therefore, risks other than purely commercial risks should also be taken into account when calculating a reasonable profit and the calculation modalities should be made more flexible. The fact that the Commission focuses unilaterally on the return on capital when calculating the appropriate profit is also problematic. It would be desirable to allow for greater consideration of individual situations and benchmarks.

Increasing the mandatory notification thresholds

According to the SGEI decision, compensation payments exceeding the threshold of EUR 15 million must be notified to the Commission. This severely restricts the scope for action of local and regional decision-makers. Against this background, we advocate raising the threshold to the level of EUR 30 million already in force before 2011.

SGEI de minimis Regulation

The threshold for the SGEI de minimis Regulation should be raised from EUR 500,000 to EUR 1 million in individual cases per three tax years. In any case, measures below this threshold are often classified as non-aid according to the current decision-making practice of the Commission due to their local character, which is not suitable to affect trade between Member States.

Selection of service provider/amount of compensation (SGEI Decision, recitals 4 and 5)

The determination of appropriate compensation payments through a public tender procedure to determine the cheapest bidder is generally viewed positively, as this allows a real market price to be determined. It should be noted that the Commission regards the lowest price as the sole criterion for assessment and the consideration of quality aspects by the awarding authority as purely optional. This means that potential providers of SGEIs are not offered incentives for high-quality services and innovations, which ultimately does not correspond to the interests of the users. In addition, this approach contradicts the preference of public procurement law, as a rule, to focus on the most economical bid as the award criterion instead of the lowest price.

Application of additional quality and efficiency considerations in the assessment of the amount of aid (SGEI Decision, Art. 5 No. 6)

The inclusion of additional quality and efficiency considerations of the Commission in the compatibility assessment for the financing of SGEIs should, in our view, be rejected in principle. Quality and efficiency aspects, which further restrict the discretion of local and regional aid donors, do not generally fall within the competence of the EU Commission established by the competition chapter of the TFEU. Decisions on quality and efficiency must be left to the local authorities.

Extension of the mandatory reporting period to five years (SGEI decision, Art. 9)

A two-year obligation to report on the implementation of the decision does not lead to a reduction in the administrative burden as intended by the Commission, but has the opposite effect. Against this background, we advocate extending the reporting period to five years.

Introduction of a compliance presumption for projects co-financed by ESI funds

It is suggested that in the case of a SGEI co-financed by the ESI funds, the application of the State aid rules should be simplified by introducing a presumption of conformity. The presumption would apply on condition that the eligibility conditions in the approved operational programmes are met.

This is because the unequal treatment of directly managed EU funds, such as EFSI and HORIZON 2020, and the ESIF in the area of State aid law is not justified. It increases the administrative burden and hinders synergies between the funds, as the Commission itself is striving for.

Inclusion of climate protection in the SGEI rules

The current consultation on the SGEI rules in the field of health and social services should be used to integrate general climate protection objectives into the SGEI rules. In view of climate change, we believe that climate protection, as an ecological component of services of general interest, must play a greater role at national and European level in the future. Instead of just conserving existing resources, enormous efforts will be needed over the next ten years to preserve and, at best, even improve existing habitats so that life and economic activity in the sense of services of general interest remain possible (e.g. coastal protection, urban climate or the diversity of rural areas). In our view, this is a task for society as a whole of Europe-wide and global significance. New incentives must be created to enable rapid adaptation to current challenges.

To this end, the Commission should provide a framework for:

- Define uniform funding opportunities at European level, including for the conversion of energy supply to renewable energies in rented residential buildings (replacement of obsolete CO₂-intensive technologies, expansion of solar systems, charging infrastructures),
- Smart City/quarter solutions (combination of centralised and decentralised energy generation, innovative and resource-saving construction methods and building management),
- Energy efficiency measures in the (rented) building sector (thermal insulation, renewal of window and external doors),
- Improvement of the urban climate (roof, facade and street greening).
- In view of the particular challenges, we consider a new exemption to be necessary in the sense of ecological services of general interest. Analogous to the current differentiation in the SGEI decision, which does not provide for a general upper limit for hospitals, social housing and other social services, a corresponding regulation for ecological measures could also be introduced.

** The European Association of Public Banks (EAPB) gathers over 30 member organisations which include promotional banks such as national or regional public development banks and local funding agencies, public financial institutions, associations of public banks and banks with similar interests from 17 European Member States and countries, representing directly and indirectly the interests of over 90 financial institutions towards the EU and other European stakeholders.*