



EU State Aid, SGEI & Social Housing

Overview

**Application of SGEI Decision for
compensation of social housing**

- ✓ **1. Legal theory**
- ✓ **2. Apply to social housing**
- ✓ **3. Cost-efficient compliance**
- ✓ **4. Pitfalls and difficulties**

State Aid:

“**any aid** granted by a **Member State** [...] in any form whatsoever which **distorts** or threatens to distort competition by **favouring** certain undertakings [...], in so far as it **affects trade** between Member States”
Article 107(1) TFEU

General prohibition: save as otherwise provided in Treaties, incompatible with internal market.




Undertaking - every entity engaged in economic activity, regardless of legal status and way in which it is financed.
State can participate on market, but as private actors would (state aid vs commercial transaction)

Economic activity - offering goods & services in the market.
Not: regulatory/supervisory, basic function State, solidarity, education, customs, military & police...

Advantage – improvement of financial situation or prevent worsening. Economic benefits not obtained under normal market conditions. (Market Economy Investor Principle)



Typically, social housing is an economic activity done by “undertakings”



Art 107 TFEU requires
careful case-by-case
assessment

Derogations and exemptions

1. **No state aid** (including Altmark-criteria SGEI)
2. Undertakings entrusted with the operation of SGEI - Article 106(2)
3. Global Block Exemption Regulation, De minimis aid and specific schemes authorized by Commission, SGEI Decision (No notification)
4. **Art 107(3)** E.g. public housing for elderly Sweden, and specific frameworks (incl for SGEI) – **Notification required!**

Article 106(2) SGEI

“Undertakings entrusted with the operation of services of general economic interest [...] shall be subject to the rules contained in the Treaties, in particular to the rules on competition, 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. The development of trade must not be affected **to such an extent** as would be contrary to the interests of the Union.”

Principles of **necessity** (for SGEI) & **proportionality** (of compensation)

The notion of SGEI

Commission SGEI Communication 2012 :

Evolving notion. Depends, among other things, on needs of citizens, technological and market developments and social and political preferences. SGEIs exhibit special characteristics as compared with those of other economic activities.

Member States have a wide margin of discretion in defining a given service as an SGEI and in granting compensation to the service provider.

Commission's competence limited to checking whether the Member State has made a manifest error when defining the service as an SGEI

SGEI Package 2013

Communication

Conditions under which SGEI & Public Service Compensations (Altmark)

= No State Aid

SGEI Regulation

De Minimis:
≤ € 500.000/3 years

For guarantees:

- ✓ ≤ 80 % loan
 - ✓ ≤ € 3.75 mln loan
 - ✓ not in difficulty
- = No State Aid

SGEI Decision

No need for notification

Social housing
exempted from € 15 mln compensation ceiling



SGEI Framework

Have to be notified and must meet criteria Framework (public consultation, ex-ante calculations, efficiency incentives, duration, etc.

SGEI Decision most adequate to compensatie SH undertakings entrusted with mission of general interest (SGEI of social housing: FR, D, DK, ITA, AUT, UK and NL)

Main elements SGEI Decision

Genuine SGEI

Entrustment act & Public Service Obligations

Compensation mechanism

Avoid overcompensation

Separation of accounts, if other activities than SGEI

Genuine SGEI

Social housing as SGEI:

- Dwellings for disadvantaged citizens or socially less advantaged groups, who due to solvency constraints are unable to obtain housing at market conditions (Art.2.1.c)
- Well-defined target group(s), public purpose buildings, community services (Dutch case, 2009)
- European Commissioner Vestager: 'social cohesion acceptable as social housing objectives'



Tips

Assess (national or local) socio-economic situation and needs

Demonstrate lack of specific housing for certain groups

Define public interest for citizens or society

Regularly re-asses

Entrustment Act(s)

One or more official acts in force, which contain:

- the Public Service Obligation (PSO)
- a reference to the SGEI Decision 2011 (art 4),
- the content and duration of the PSO (art 4.a)
(max. 10 years, unless longer amortisation)
- the undertaking(s) and, where applicable, the territory (art 4.b)
- any exclusive or special rights assigned to the undertaking (art 4. c)



Tip

Multi-level coordination
for compensation &
PSO

Appoint adequate
undertakings
(procurement or
selection)

Compensation mechanism

The official act(s) shall include:

- the compensation mechanism
- the parameters for calculating, controlling and reviewing the compensation
- rules to avoid and recover any overcompensation (art 4.d, 4.e and 6).



Tip

Avoid overcompensation

Compensation shall not exceed:

- net cost needed to discharge PSO (art 5.1)
- including a “reasonable profit”
- reasonable profit = the rate of return on capital required by a “typical company” considering whether or not to provide the service, taking into account the risk level.
- Check at least every 3 years and end of entrustment.



Tip

Profit below relevant swap rate plus 100 bbp considered reasonable.

Where return on capital is not feasible, other profit indicators are allowed.

If overcompensation < 10% annual compensation, carry-forward to next period.

Separation of accounts

- If an undertaking carries other activities besides SGEI, its internal accounts shall show costs and receipts associated with SGEI separately, as well as the allocation parameters (art 5.9)
- SGEI costs incl. appropriate contribution to the indirect costs common to both the SGEI and other activities.
- 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



Tip

To determine appropriate contribution to common costs, market prices for the use of the resources, where available, can be taken as a benchmark



Member States must report to EC on the application of SGEI Decision, incl. description services, amount of aid, any difficulties or complaints.

Use of ERDF require strict compliance EU state aid rules.

Pitfalls and complications

Genuine SGEI:

- Definition of social housing services and target groups,
- Prevent risk of manifest error; no overlap with existing market supply;
- Assessment of needs

Entrustment act:

Compensation and acts (missions, PSO, projects) managed by several authorities at various levels

Parameters of compensation:

Prevent high administrative burden for providers and authorities

Efficiency-requirements?

Project-based (Net Present Value, NPV) or total organization accounts

Reasonable profit benchmark vs profit calculation

Regular control of Compensation:

Appoint and equip regulator

EU reporting obligation



Thank you

Sébastien Garnier

s.garnier@aedes.nl