



**European Committee
of the Regions**

**Implementation of the
Decision and the Framework
on SGEIs: involvement of
LRAs in the reporting exercise
and state of play as regards
the assessment of social
services as economic activities**

Executive Summary

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Executive summary

Services of General Economic Interest (SGEI) are economic activities that deliver outcomes serving the overall public that would not or not sufficiently be supplied by the market without public intervention. Social services, such as health care and social housing are examples of such activities. The public contribution of SGEI is linked to the overarching EU policy objectives of social and territorial cohesion. In line with subsidiarity principles, local and regional authorities (LRAs) are typically responsible for providing SGEI.

To ensure compliance with the internal market, the European Commission (EC) has outlined the rules within which SGEI may be supported financially by Member States and LRAs to ensure their sufficient provision. For more clarity and flexibility on the notion of State aid in relation to SGEI, in 2012 the EC has adopted the so-called Almunia package. This package encompasses several legal and guidance documents, such as the SGEI Decision, the SGEI Framework and the SGEI Communication. In the following years these documents have been complemented, for instance by the Commission Staff Working Document on the application of the EU rules related to SGEI and the most recent Commission's Notice on the Notion of State aid.

Any SGEI that is subject to the SGEI Decision or Framework needs to be reported by Member States every two years. This requires assessing whether the provision of a SGEI is subject to this legislative package. Decisive elements for this assessment are whether it is a market activity and who the provider is. Under certain conditions the compensation for the provision of such services does not constitute State aid.

This report focuses on the involvement of LRAs in the implementation of the SGEI legislative package and in the biennial reporting exercise. Given the complexity of the tasks to implement the legislative package and to report accordingly, this report furthermore illustrates typical problems and challenges encountered and approaches to overcome them.

An overall comparison of the Member State reports submitted in 2016, covering the provision of SGEI in 2014 and 2015, shows considerable differences in the reporting. They differ in terms of details of the information provided, degree of aggregation across regions and involving LRAs in the reporting. The involvement of LRAs varies in terms of extent of involvement. Some reports contain contributions written by LRAs, whereas in other reports their information has been collected and is visible only indirectly in the report. In some cases it is not possible to assess the involvement of LRAs at all.

The involvement of LRAs differs also between different SGEI reported. For instance, the provision of medical care by hospitals is mostly reported by national authorities, whereas LRAs mostly report on social housing and other social services. In these cases LRAs appear either as entrusting authorities or as undertakings receiving financial compensation for the service provision.

There is quite a variety of difficulties encountered by Member States and LRAs in relation to implementing the Almunia package. These include the following partially overlapping challenges:

- applying the Altmark criteria;
- differentiating economic from non-economic activities;
- calculating the compensation;
- determining reasonable profit;
- defining relevant SGEI;
- regarding the entrustment procedure;
- regarding the choice of the most suitable aid instrument;
- regarding monitoring to avoid overcompensation;
- reporting SGEI in line with the requirements.

For example, the differentiation between economic and non-economic activities is often not straightforward for LRAs. Clear definitions for such differentiations are missing in the package. Partially, there is no sufficient reference to certain social services and partially the documents are lacking specific characteristics that may help to distinguish economic and non-economic activities. Regarding the calculation of the compensation including a reasonable profit, LRAs are often challenged by lacking data for comparable services. These difficulties are complemented by open questions regarding the position of the Almunia package in relation to other (national) legislation or EU regulatory frameworks considering State aid.

The approaches to meet the requirements of the Almunia package are as varied as the involvement of LRAs and the challenges encountered. This is strongly linked to the different governance and framework conditions for providing SGEI in the Member States. Not least for social services, these differences are historically rooted. These conditions as well as cultural and institutional traditions directly affect when and how Member States and LRAs define social housing or health care as SGEI and how they calculate compensation payments. This challenges also the finding of clear-cut definitions for different social services as SGEI.

Consequently, Member States and LRAs use different rationales on how to clarify whether a certain social service is subject to the Almunia package. These

rationales range from descriptions of Member State's national legislation and outlines of typical characteristics used for the definition of a relevant SGEI to explanations why a service may not be subject to the Almunia package. Given all these differences, it is not surprising that the calculation of compensation does not always follow the methodologies as proposed by the Almunia package. The principally proposed methodologies, i.e. the net cost allocation and the net avoided cost allocation are sometimes also combined with each other or combined with other methodologies more appropriate in the respective institutional framework.

Member States and LRAs repeatedly mention the complexity of both, the appropriate implementation of the Almunia package and its reporting. This complexity requires sufficient capacities especially of the LRAs and service providers. It also creates additional costs, for instance, if LRAs have to pay for external expertise to ensure compliance with all rules. Simplification with fewer requirements regarding the rules to be considered and a lower number of relevant regulations would certainly be useful. This does not only refer to the provision of SGEI but also to the reporting requirements.

Taking all observations made into account, the purpose of the reporting exercise remains blurry for most Member States and hence the LRAs. This may also be the reason why some Member State reports are apparently less precise and specific than others. For obtaining more harmonious reports, not only should additional assistance be given to LRAs, but an explanation of the original purpose of the reporting should be clarified and communicated. Even the fundamental revision of the reporting may be required by asking what information is needed for which purpose.