

**Report on the implementation of the Commission Decision of 28 November 2005<sup>1</sup>, comprising a detailed description of the conditions of application in all sectors, including the social housing and the hospital sectors, to be submitted to the Commission by each Member State every three years.**

The position relating to Ireland's compliance with the Commission Decision of 28 November 2005 is outlined below. The guidance given by the Commission on content has been left in the report for reference.

## **1. IMPLEMENTATION OF COMMISSION'S DECISION**

The report could usefully cover the following fields corresponding to the various articles of the Decision:

### **1.1. ENTRUSTMENT**

**Question:** Explain under which contractual and/or other legal form/forms the services of general economic interest have been entrusted beforehand to the various undertakings involved, including non-incorporated public entities, as described in Article 4 of the Decision;

**Answer:** The methods of entrustment are either by Act of Oireachtas (Parliament) or by a Contract with a Minister.

**Question:** If the above-mentioned contractual or legal forms differ for a specific sector, or up to / from a certain threshold, explain for which one and why; in particular, have specific rules been applied to social housing and hospitals? Are they any other specificities linked to the provision of other SSGIs?

**Answer:** Please see overall Hospital Entrustment answer on page 3 and Appendix A attached.

**Question:** The report should contain information whether the different entrustment acts contain all the elements required by Article 4, in particular:

- the nature and duration of the public service obligations;
- the undertaking and territory concerned;
- the nature of any exclusive or special rights assigned to the undertakings;
- the parameters for calculating, controlling and reviewing the compensation;
- the arrangements for avoiding and repaying any overcompensation.

**Question:** Explain with reference to each of the above-mentioned elements, what efforts were made in order to fulfil the entrustment requirements and how successful they were.

---

<sup>1</sup> Commission Decision 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, OJ L 312, 29.11.2005, p. 67.

## **Answer: Aviation**

The Public Service Obligation (PSO) for Regional Airports relates to the provision by each airport company of core airport services in its respective catchment area so as to facilitate regional air transport accessibility, which constitutes a service of general economic interest.

Each contract entered into effect on 1 July 2006 and expires on 31 December 2010.

The PSOs refer to the catchment area of each airport.

Territory - Ireland.

The PSOs do not confer any exclusive or special rights.

The subvention scheme is circulated to the airports sets out fully the basis for calculation of subvention, including such aspects as identification of eligible and ineligible costs.

The airports are invited on an annual basis to submit an estimate of the amount of subvention that may be required for the year in question, having regard to the expected shortfall between (1) proposed expenditure on eligible activities and (2) revenue from eligible activities and any contribution earned from non-core activities.

Each airport is required to submit, inter alia, a tabular analysis of:

- actual financial performance based on the most recent audited financial statements, together with a further a breakdown of the administrative expenses for the same period; and
- projected performance for the coming year, together with a further breakdown of projected administrative expenses for the same period.

The airports are required to separate the costs and revenues relating to their core activities (i.e. eligible costs) from those relating to their non-core activities and to keep separate bank accounts for capital and current expenditure.

The financial and other information provided by the airports is closely analysed by an appraisal panel within the Department of Transport in the course of its annual assessment of applications before recommendations are made to the Minister for Transport on the allocation of available funds to the airports.

Applications are appraised in terms of

- Assessment of financial case made by Airport Company, including a review of Business Plan, maximisation of non-core airport revenues and assessment of financial risk to the company in event of reduction or deferral of subvention
- Insofar as practical, particularly in the light of the relatively small scale of the Irelands regional airport operations, analysis of the costs – based on a typical airport of its size and location that is well run and adequately equipped with infrastructure and necessary equipment/facilities to meet necessary public service obligations - taking

into account the relevant revenues and reasonable profit for discharging such obligations

- Prevention and, as may be appropriate, correction of any over-payment or under-payment of the airport subvention that may emerge through examination of the audited financial statements
- Projected outcome, by reference to key performance indicators identified in the PSO contract with the regional airport, e.g.
  - implementation of the recommendations made by the Irish Aviation Authority and the Aviation Security Division of the Department of Transport
  - Passenger throughput, particularly inbound tourists.

**Answer re Harbours :** While there are obligations imposed on the harbours by the Minister for Transport e.g. maintaining moorings, maintain safety of harbours, there is no ongoing public service compensation paid for these obligations. Any payments made are merely refunds for maintenance and capital works etc that arise.

**Answer re Hospitals :** In terms of the arrangements for public hospitals between the HSE and voluntary hospitals, the Health Service Executive<sup>2</sup> agrees each year in the context of the preparation of its National Service Plan (required to be prepared under section 31 of the Health Act 2004 and subject to the approval of the Minister for Health and Children) the precise volume of service to be provided by each voluntary hospital in terms of such elements of services (as appropriate to the particular hospital) as:

- In-patient discharges
- Day cases
- Outpatient attendances
- Emergency Department attendances and admissions
- Births

As part of a service plan process, performance targets and quality and efficiency indicators are agreed between the Minister for Health and the Health Service Executive in relation to the services provided in hospitals, for example

- The ratio of new to return attendances in outpatient departments;
- The proportion of public to private patients treated (consultants' private activity is capped in order to ensure that the principal focus is on treating public patients)
- Reduction of the average length of stay for patients

---

<sup>2</sup> The Health Service Executive (HSE) is responsible for providing Health and Personal Social Services for everyone living in the Republic of Ireland. The HSE was set up as part of the provisions of the [Health Act, 2004](#), which states the objective of the HSE is to provide services that improve, promote and protect the health and welfare of the public.

- Increasing the proportion of care delivered on a day rather than an in-patient (overnight) basis
- The time taken to assess and admit or discharge patients attending
- Emergency Departments

These apply to voluntary hospitals in the same way as to the HSE's own hospitals. The HSE determines the amount of funding to be provided to each voluntary hospital in order to deliver the required quantum and standard of service. It holds the voluntary hospitals to account during the year in relation to their achievement of the agreed service volumes and measures their performance against the national targets.

## 1.2. AMOUNT OF COMPENSATION

**Question:** With regard to article 5 of the Decision, please explain which guidance or rules including accounting ones, have been provided to undertakings in order to avoid any cross subsidisation, to allow for a proper allocation of costs and the absence of overcompensation.

**Answer:** The amount of compensation is tightly monitored in all cases:

In the case of harbours, the appraisal of annual applications for subvention being conducted strictly on the basis of actual costs incurred to a Local Government Auditor independently verifying that maintenance and repair costs are legitimate and have gone through a tendering process.

In the case of Regional Airports, it is an absolutely fundamental condition of the regional airports opex scheme that only costs associated with the provision of core airport services are subventible and this is stressed in the terms and conditions of the scheme as circulated to the airports. The appraisal of annual applications is conducted strictly on that basis, facilitated by mandatory templates for the provision of financial information by applicants which clearly distinguish between the presentation of core (subventible) and non-core costs. Subvention awards are limited, at the maximum, to net deficits arising from the provision of core airport services and there is no question of using the scheme to cross-subsidise the airports' other activities. It should be noted in fact that the subvention amount (if any) due to each airport is determined after subtracting any surpluses available to the airport arising from non-core activities.

In the case of hospitals, they are required to submit annual Service Plans and reports to the Department, and management reports were required monthly to monitor expenditure against plans.

### 1.3 OVERCOMPENSATION

**Question:** With regard to article 6 of the Decision, please explain how the relevant control mechanisms have been implemented in the Member State; by its own officials or with the use of other auditors; how many controls have been performed in the various sectors; which major findings (qualitative, in amount and in percentage) have been made; in case of over-compensation how many reimbursement requests have been issued, for which amounts and indicate for which percentage (in terms of both requests and amount) has reimbursement been successfully obtained.

**Answer:** Ex post reviews or audits are carried out by State Auditors. For example, the annual assessment of applications for subvention to regional airports includes an ex-post review of the financial and other performance of each individual airport, and there is provision to deal with overpayments in respect of the previous year. The overall amounts paid in any one year are relatively small and no significant instances of overcompensation have been identified to date.

In the case of hospital funding, the process of agreeing the annual quantum of service involves negotiation between the Health Service Executive and each hospital. The Department of Health is satisfied that there is no overcompensation for the service required. Challenging targets have been set in 2009 in terms of required service volume and quality, in a context of a reduction in real terms in the funding available for the health services. In the course of the year hospitals' budgets have had to be reduced and hence they have been required to make significant efficiency savings while still delivering the agreed quantum of service.

### 1.4. MONITORING AND ANNUAL REPORTS

**Question:** Article 7 of the Decision provides that underlying elements must be kept during 10 years at least to allow the Commission to check their conformity with the Decision. Does the reporting system your services implemented ensure that these obligations are fulfilled?

**Answer:** All State records are kept and archived under national law.

## 2. SCOPE OF USE AND STATISTICAL INFORMATION ON SGEI

The Commission would welcome generic statistical information on the amount of aid granted for SGEI in the years 2006-2007 and possibly 2008 as well as other quantitative information. Such information should be usefully provided in reference to each specific sector or subcategory.

In this respect, neither individual information nor a detailed list of aid in the form of public service compensation having benefited from the exemption provided for in the Commission Decision is being requested.

The report could usefully indicate the sub-category for which public authorities in your country have granted public service compensation, as detailed in article 2.1.a

to 2.1.d of the Decision, i.e.:

o In 2.1.d: public service compensation for airports for which the average annual traffic during the two financial years preceding that in which the service of general economic interest was assigned, does not exceed 1 000 000 passengers;

o In 2.1.d public service compensation for ports for which the average annual traffic during the two financial years preceding that in which the service of general economic interest was assigned, does not exceed 300 000 passengers;

**Question:** In addition, the report could usefully include, for each sector or sub-category defined in Article 2.1:

- o the number of beneficiaries,
- o the average amount compensated,
- o the maximum yearly amount compensated for an SGEI;
- o the total amount of compensations granted each year in that sub-category;
- o the potential existence of unlimited or individual guarantees;
- o for transport compensation where passengers ceilings are mentioned, the total, average and maximum volume for each sub-category (air, maritime, ports, airports);

**Answer re Ports :** See Appendix B below for details of payments made to Regional Ports. As stated above there is no ongoing public service compensation paid for these obligations. Any payments made are merely refunds for maintenance and capital works etc that arise.

**Answer re Airports:** A total of €1661 million was paid to the regional airports in respect of 2006 and €2.264 million in respect of 2007. Four airports qualified for subvention in those years. Total payments in 2008 amounted to € 2.74 million (2 airports). There are no unlimited or individual guarantees involved.

**The beneficiaries were:**

- Connaught Airport Development Company Ltd. (Ireland West Airport Knock, Co. Mayo)
- Aerphort Idirnáisiúnta Dhún na nGall Teo. (Carrickfin, Co. Donegal)
- Corrib Airport Ltd. (Carnmore, Co. Galway)
- Sligo North West Airport Co. Ltd (Strandhill, Co Sligo)
- Kerry Airport plc (Farranfore, Co. Kerry)
- South East Regional Airport Waterford (Killowen, Co. Waterford)

*The total passenger numbers for these airports in 2006, 2007 and 2008 are set out in the following table:*

	2006	2007	2008
<b>DONEGAL</b>	56,656	60,388	64,532
<b>GALWAY</b>	248,972	309,302	266,897
<b>KERRY</b>	392,400	389,434	423,291
<b>KNOCK</b>	633,329	556,357	499,271
<b>SLIGO</b>	34,310	44,533	42,493
<b>WATERFORD</b>	82,826	118,771	143,465
<b>Total</b>	1,448,493	1,478,785	1,439,949

**Question:** In relation to the management of the airport (article 2.1.d), please explain what are the activities of the airport constituting a service of general economic interest. In case the overall management of the airport is being considered as a service of general economic interest, please provide details in particular on why your authorities consider it is the case.

**Answer:** Each airport, in line with the Government's policy of encouraging balanced regional development, provides important air transport regional accessibility in its catchment area. In this regard, the carrying on, in accordance with this contract, of the core airport activities at each airport as specified in the subvention scheme is considered to constitute a service of general economic interest.

The scheme was drawn up by reference to the Altmark judgement and conforms to the conditions set out in the Commission Decision and in the Community guidelines on airport funding. It is therefore considered to be compatible with the Community's State aid rules.

**Question:** As regards maritime transport (article 2.1.c) please provide information on the public service obligations and contracts;

**Answer:** As stated above while there are obligations imposed on the harbours by the Minister for Transport e.g. maintaining moorings, maintain safety of harbours, there is no ongoing public service compensation paid for these obligations. Any payments made are merely refunds for maintenance and capital works etc that arise.

### **3. MISCELLANEA**

**Question:** Do you have any other comments and /or encountered difficulties on the application of the Decision and the Framework on issues other than the ones covered in the previous questions? Please feel free to provide them within your report.

#### **Broadcasting:**

The compensation for public service obligations in the field of Irish publicly compensated broadcasting does not fall within the scope of Article 2 of the Decision, because of the amounts of compensation, and that furthermore the State Aid aspects, including issues of entrustment, compensation etc were considered by the Commission in case E4/2005.

An investigation into the funding of public service broadcasting in Ireland arose in the context of a formal complaint by TV3, made originally in 1999, alleging infringements of Articles 92 – 94 of the EC Treaty relating to, among other things, the payment of license fee revenue and direct grants to RTÉ.

Following a period of investigation, the EU Commission forwarded an Article 17 letter to the Irish Authorities on 3 March 2005 setting out its preliminary views in relation to the compatibility of the funding arrangements for RTÉ with the requirements of the EU Treaty.

Negotiations with the European Commission and the Department of Communications, Energy and Natural Resources led to the resolution of these issues in early 2008 (inlc remit, entrustment, supervisory mechanism etc) culminating with a letter of commitment by the Irish Authorities to certain undertakings, to be formally undertaken in the context of, at that time, the Broadcasting Bill, and by the Commission announcement to close the investigation on 28 February 2008.

The Broadcasting Act was signed by the president on 12 July 2009.



## **Appendix 1. Department of Health and Children Position in relation to Services of General Economic Interest:**

### **Introduction**

#### **Legislative context**

The Health Acts 1947-2008 set out the basic legal framework for the provision of public health and social services in Ireland. The Health Service Executive (HSE), which was established in 2005 under the Health Act 2004, is responsible for the management and delivery of public health and personal social services. In addition to providing services itself, under the 2004 Act the HSE may enter into an arrangement with any person to provide a service on its behalf (section 38 of 2004 Act). The Act also provides that the Executive can assist any person providing a service similar to or ancillary to a service provided by the Executive (section 39 of 2004 Act). The Oireachtas (Parliament) votes public monies annually to fund the services provided by or on behalf of the HSE.

Public Health Services in Ireland are funded by the Government through three Votes, The Office of the Minister for Health and Children Vote, the Health Service Executive Vote and The Office of the Minister for Children and Youth Affairs Vote. The Health Service Executive Vote provides the funding for the Health Service Executive which is the main provider of public health and personal social services and this Vote accounts for the bulk of the expenditure.

## **Governance and Accountability Measures**

Section 7 of the Health Act 2004 requires the HSE to use the resources available to it in the most beneficial, effective and efficient manner to improve, promote and protect the health and welfare of the public. This object is pursued primarily through the adoption by the HSE of an approved Corporate Plan and Service Plan. The HSE funds from its Vote a number of service providers for the provision of health and personal social services on its behalf. Before entering into such an arrangement, the HSE determines the maximum amount of funding that it proposes to make available in the financial year under the arrangement and the level of service it expects to be provided for that funding.

All financial matters connected with public monies are required to be dealt with in accordance with *Public Financial Procedures*, published by the Department of Finance, which gives detailed guidance as to the appropriate financial management of public monies. In particular it sets out the financial procedures concerning Government receipts and expenditure and the main Government accounting procedures, including the treatment of individual types of receipts and expenditure in more detail. It also covers elements of financial management such as the Value-for-Money, Procurement and Capital Appraisal, as well as dealing with the accountability framework surrounding receipts and expenditure in relation to EU funds.

After the end of the year, the HSE prepares an account of its expenditure and receipts, called the Appropriation Account, in accordance with the requirements of the Exchequer and Audit Departments Act 1866. The Appropriation Account is required to comply with the provisions of the *Public Financial Procedures* and other directions of the Minister for Finance and is audited by the Comptroller and Auditor General and considered each year by a select

Committee of the Dáil (Parliament), the Committee of Public Accounts (PAC). It is a non-cumulative account and, with the exception of the multi-annual capital programme, any amount of the Vote not spent at year end is surrendered to the Exchequer.

Section 36 of the Health Act, 2004 also requires the HSE to prepare Annual Financial Statements (AFS), on an income and expenditure basis. In preparing these accounts, the HSE has adopted Generally Accepted Accounting Principles (GAAP) in accordance with the accounting standards issued by the Accounting Standards Board subject to three exceptions specified by the Minister for Health and Children which concern the treatment of depreciation, capital grants and pensions and reflect the funding of these by the Exchequer on a cash basis. The AFS are audited by the Comptroller and Auditor General and they are, together with the audit report, laid before the Oireachtas and are examined by the Committee of Public Accounts (PAC) alongside the Appropriation Account. The accounts of hospitals established by statute are also audited by the Comptroller and Auditor General and laid before the Oireachtas. The accounts of other service providers are submitted to the HSE for its examination as part of the framework for accountability in respect of the delivery of services and the expenditure of public funds.

These procedures ensure that the public funding provided to hospitals is used for public health services obligations and does not exceed what is necessary to cover the costs incurred in providing their public health services obligations.

## **Mixed Public/Private System**

The Health Acts enable public hospitals to provide services for both public and private patients reflecting the mixed nature of Ireland's public health system. Persons attending public hospitals have to make an explicit choice between public and private care on admission to hospital. The rationale for the provision of private care within the public hospital system is that this helps to ensure that medical and other professional and technical staff of the highest calibre continue to be attracted into, and retained in, the public system; it promotes more efficient use of medical consultants' time by having public and private patients on the same site; and, as accident and emergency services are overwhelmingly provided by the public hospital system, it enables patients to avail of private healthcare when admitted to public hospitals on an emergency basis

Under the Health Acts bed designation was introduced as part of the mechanism to control the level of private activity in publicly funded hospitals and to help ensure equitable access for public patients to services in these facilities. On average, 80% of beds in public acute hospitals are designated for the use of public patients. The percentage of beds designated as public varies between individual hospitals; for example, there is a higher ratio of private beds in maternity and paediatric hospitals and a lower ratio in other hospitals. Of the over 13,600 average available beds in public acute hospitals based on 2007 data (source HSE) approximately 2,500 are designated as private (including semi private). The new hospital consultants' contract arrangements provide for the enhanced management and monitoring of hospital consultants' work in the context of ensuring that the level of private activity does not exceed the maximum permitted under each consultant's contract.

## Eligibility for Public Health and Social Services

Any person, regardless of nationality, who is accepted by the HSE as being ordinarily resident in Ireland will qualify for either **full eligibility** (*Category 1*) or **limited eligibility** (*Category 2*) for health services.

Persons in Category 1 are entitled to a full range of services including general practitioner services, prescribed drugs and medicines, all inpatient and outpatient public hospital services including consultants' services, and dental, ophthalmic and aural services and appliances. Determination of eligibility for medical cards is the responsibility of the Health Service Executive under means-testing arrangements.

Persons in Category 2 are entitled, subject to certain charges, to all inpatient public hospital services in public wards including consultant services and to outpatient public hospital services including consultant services. Such patients are subject to statutory charges, which represent a contribution towards the cost of inpatient treatment. There is no charge for outpatient services, other than in respect of attendance at accident and emergency departments, which is subject to a charge where the patient does not have a referral note from his/her family doctor, or if other exemptions do not apply. Persons in Category 2 also have access to subsidised drugs schemes such as the Drug Payment Scheme and the Long Term Illness Scheme.

## **Provision of Public Hospital Services**

Public acute hospitals are services of general economic interest.

Public hospital services are provided in the main through (i) hospitals which are owned and funded by the HSE itself and (ii) non-profit Voluntary/Joint Board public hospitals. The latter receive annual funding from the HSE to provide public hospital services under section 38 of the Health Act 2004 and this accounts for the great majority of their income. Some of these hospitals are owned and operated by religious orders and others are incorporated by charter or statute and are governed by management boards.

The arrangements whereby a substantial proportion of public hospital provision, particularly in Dublin, is delivered through Voluntary/Joint Board public hospitals are of long standing. Prior to 2000 (when the Eastern Regional Health Authority was established (it was subsumed into the HSE at the beginning of 2005)) for reasons of administrative convenience these hospitals were directly funded by the Department of Health for the provision of these services on behalf of the statutory authorities (ie the then health boards). The great majority of their capital costs were also publicly funded. While in practice Voluntary/Joint Board public hospitals were delivering services on behalf of the statutory health authorities, historically such arrangements were not the subject of detailed contractual or other specification of the nature and quantum of the services to be provided, although they were required to submit annual Service Plans and reports to the Department, and management reports were required monthly to monitor expenditure against plans. Since the establishment of the HSE, significant work has been undertaken to formalise the relationships between the HSE and the Voluntary/Joint Board public hospitals to a greater degree and to specify the nature and

quantum of services to be provided. These are reflected as appropriate in the HSE'S annual National Service Plan.

Notwithstanding the separate legal status of Voluntary/Joint Board public hospitals, in many respects they operate within the same operational framework as HSE-owned hospitals. They are subject to the same requirements in relation to, for example:

- scope of public services to be provided
- numbers and categories of staff employed and salary scales applicable
- performance, patient care and hygiene standards
- control of revenue and capital expenditure
- rates of charges to be applied for particular categories of patient and service

In all relevant respects therefore, these hospitals are regarded as public rather than private facilities and they do not operate independently or in a commercial profit-driven environment.

## Appendix B

### ALLOCATIONS FOR REMEDIAL WORKS AT THE REGIONAL HARBOURS IN 2009

The allocations are as follows:

Harbour	Purpose of Funding	Proposed Funding 2009
1. Arklow	Fendering in the Dock €13,550. Fendering at North Quay Berths (€227,000)	€ 341,000
2. Baltimore & Skibbereen	Relocation of RoRo Slipway Berth North Pier –Extension over Foul Berth	€1, 335,000
3. Bantry Bay	Protection of approach road to the Abbey Point Slipway	€ 250,000
4. Kinsale	Completion of remedial work at Adams Quay €18,000 Town Slipway repairs €3,000	€ 271,000
5. Sligo	Dredging Scoping Report & related matters	€ 200,000
6. Tralee & Fenit	Completion of structural repairs to remaining 8 spans of the viaduct (€290,000) Western Car Park work (€60,000) Settlement of Coffey Account- Main Pier Fendering €30,000	€ 380,000
7. Youghal	Repairs to the inner & outer walls of the pier head Repairs to the Northern corner of Greens Quay	€ 400,000
<b>TOTAL</b>		<b>€3,177,000</b>

For reasons of good governance, and to enable these harbours to realise their amenity potential, a 2005 Policy Statement published in 2005 proposed that the regional harbours still operating under the Harbours Act 1946, will be transferred to local authority or port company control concluded that it was essential that the remaining harbour authorities be transferred to local control in cases where there is little or no commercial traffic. Local authorities already run a number of small harbours and so would have a certain expertise that would be valuable



to regional harbours. They would also recognise opportunities to develop local amenity value and bring improved corporate governance structures.

In cases where significant commercial traffic exists, the report consideration would be given to bringing the relevant harbours under the control of a port company established under the Harbours Acts 1996 and 2000. To facilitate these moves the Department provides funding as outlined above for remedial works at the harbour concerned.

Ends