Report on state aid under the SGEI Decision

Sector: hospitals

- **DESCRIPTION OF THE APPLICATION OF THE SGEI DECISION AND THE SGEI FRAMEWORK AND AMOUNT GRANTED**

1) Hospitals (Article 2(1)(b))

- List of the contents of the services entrusted as SGEI

I) FEDERAL GOVERNMENT

All Belgian hospitals, regardless of the type, size or legal form, essentially fulfil the same service of general economic interest (hereinafter 'SGEI'), namely the provision of hospital care. This SGEI is described by the Coordinated Act of 10 July 2008 on hospitals and other care institutions (hereinafter 'the Hospitals Act') and the decrees implementing it. Some hospitals, however, may also be entrusted with other SGEIs, which may have a separate funding mechanism.

The mission devolved upon the hospitals is set out in essence in Article 2 of the Hospitals Act, which states:

> *'For the purposes of applying this Coordinated Act, hospitals shall mean health care establishments where specific, specialist medical examinations and/or treatments in the fields of medicine, surgery and, where appropriate, obstetrics, can be carried out or administered at any time within a multidisciplinary context, under the requisite and appropriate care conditions and within the requisite and appropriate medical, medico-technical, paramedical and logistical framework, for or to patients who are admitted and may stay there because their state of health requires that combination of care to treat or relieve the illness, to restore or improve their state of health or to stabilise the injuries within the shortest possible time.*
>
> *These hospitals fulfil a general interest mission.'*

Article 2 of the Hospitals Act contains the basic features which a care institution must fulfil in order to be able to call itself a 'hospital'. At the same time it lays down in general terms the public services for which a hospital receives funding. It states that the services must be provided in a multidisciplinary context and within an appropriate framework. In addition, the patient must always be able to stay overnight in the institution.

This necessary framework is defined further in the 'accreditation standards'. These standards guarantee a minimum quality level which the public services of a hospital must meet. If the care

institution meets the accreditation standards, it can then receive 'accreditation' from the competent regional authority.

The accreditation standards stipulate the necessary medical, medico-technical and logistical framework and essentially comprise functional, architectural and staffing standards. The accreditation granted relates both to the hospital as a whole, pursuant to the Royal Decree of 23 October 1964 establishing the standards which hospitals and their services must meet, and to each of the hospital care services, functions and programmes operated by the hospital.

In other words, the standards ensure that the hospitals correctly fulfil their general interest mission. For this purpose, the federated entities carry out the necessary inspections and issue individual accreditation orders if the hospital services meet the standards.

There are specific standards for each hospital function, service or programme.

However, not every care institution can obtain funding. Supply planning is used in order to maintain the financial balance of the Belgian hospital system. In principle, only institutions which are included in 'programming' are eligible for funding for the services they provide.

To recap, the services provided by a hospital are governed by three main principles of the legislation on hospitals: programming, accreditation and funding. In the first instance, the care institution has to meet the definition of Article 2 of the Hospitals Act. Then, it is decided whether the services provided by a hospital fit into a programme, after which the services, functions, care programmes, … of the hospital can be accredited by the competent authority if the accreditation standards are met. Only if these three conditions are fulfilled can the funding authority, which in the case of hospital funding is basically the federal government, actually proceed to allocate the funding.

For hospitals which have a 'Mobile Emergency Group' and/or 'emergency care' function, a supplementary SGEI can be added to this single mission: emergency medical care within the meaning of the Act of 8 July 1964 on emergency medical care.

II) SPECIFIC TO THE FLEMISH COMMUNITY

The Flemish Community subsidises certain investments which are not covered by federal funding via the Flemish Infrastructure Fund for Personal Matters (hereinafter 'VIPA'). In addition, the Flemish Community may provide security for loans for subsidised investments. Further details of the aforementioned are laid down in the Flemish Government Decree of 16 July 2010 establishing the investment subsidy and the construction technology and building physics standards for care facilities (hereinafter 'sector decree'), the Flemish Government Decree of 18 March 2011 laying down rules for the alternative investment subsidies granted by the VIPA and the Flemish Government Decree of 8 November 2013 facilitating infrastructure financing via the alternative investment guarantee granted by the VIPA.

- What are the typical forms of entrustment?

I) FEDERAL GOVERNMENT

As has already been explained above, the entrustments to the hospitals consist of various decisions taken at various levels of authority: programming, accreditation and funding.

A hospital service, a hospital function or a care programme is included in programming, if necessary. The federal government stipulates any programming and therefore decides **how many services, functions, care programmes, … may receive funding.**

Not every medical service, function, medico-technical service or care programme is funded like that. The competent regional authorities inspect the hospitals and, in the event of a positive assessment, issue accreditations to the programmed services, functions and care programmes. In other words, the competent regional authorities determine **which hospitals are eligible for funding**. The competent regional authority takes individual accreditation decisions to this end.

However, the keystone is formed by the decision to award funding. The '**financial resources budget**' is **fixed and granted by the Federal Minister for Public Health for each hospital separately**, within an annual (corresponding to a calendar year) overall budget, which is adopted in a royal decree submitted to the Council of Ministers. [1]

The minister informs the hospital manager of the individual decision together with the reasons for it. The decision is also reported to the financing unit of the Nationale Raad voor Ziekenhuisvoorzieningen (National Council for Hospital Facilities). [2] This Council is made up of experts, representatives of hospital managers, representatives of doctors and nurses and representatives of the health insurance institutions. [3]

II) SPECIFIC TO THE FLEMISH COMMUNITY

The procedures for granting the subsidies are governed by the Flemish Government Decree of 18 March 2011 laying down rules for the alternative investment subsidies granted by the VIPA. The procedure consists of three steps:

- care strategy plan
- technical-financial plan and substantive agreement
- utilisation grant

In the care strategy plan, the hospital formulates its vision for the next 10 years regarding the planned care provision in the region and its planned role in this. After approval of the care strategy plan, the hospital can apply to the VIPA for approval of the technical-financial plan and to obtain substantive agreement. Three recommendations (financial, functional and construction technology) are made, after which the file is submitted to the coordinating committee. Subject to a favourable recommendation by this committee, the minister can give substantive agreement according to the available financial resources. The institution must issue a commencement order within two years of that substantive agreement. An application can be made for a utilisation grant for the first time in the calendar year following that commencement order at the earliest. The award of such utilisation grants depends on compliance with the occupancy levels.

[1] Article 95(1) Hospitals Act
[2] Article 108 Hospitals Act
[3] Article 33 Hospitals Act

Rules on the provision of a guarantee are laid down in the Flemish Government Decree of 8 November 2013 facilitating infrastructure financing via the alternative investment guarantee granted by the VIPA. Subject to a favourable financial recommendation, the VIPA can guarantee loans up to an upper limit. The institution pays a guarantee premium for this and must give consent to the VIPA to establish securities.

- What is the typical duration of the entrustment?

I) FEDERAL GOVERNMENT

There is no time limit as far as the 'programming decision' is concerned. The programming is determined according to the requirements of the population, and so these requirements dictate whether something fits into programming.

Accreditation is granted by the competent regional authority, which specifies the period for which the accreditation is given:

- Flemish Community: indefinite period
- Walloon Region: Initial provisional accreditation for 6 months + renewal of the provisional accreditation + final accreditation (often for 5 years) + renewal of the final accreditation.

The funding is provided via the allocation of the financial resources budget to each hospital, which in each case runs from 1 July up to and including 30 June of the following year.

Thus, in the context of hospital funding, no entrustments are assigned to hospitals for a period longer than 10 years. This is also laid down in law in the Hospitals Act. [4]

II) SPECIFIC TO THE FLEMISH COMMUNITY

The utilisation grant is allocated for 20 consecutive years (Article 12 of the Flemish Government Decree of 18 March 2011 laying down rules for the alternative investment subsidies granted by the VIPA). This can be justified by the special investments required by the hospitals, which have to be written off over a period longer than 10 years.

- Are exclusive or special rights assigned to hospitals?

Article 81 of the Hospitals Act provides for the possibility of specifying certain medical treatments which have to take place within a hospital framework. [5] This provision has never been implemented to date. Therefore, no medical treatments are specified which have to be carried out exclusively by a hospital within the meaning of the Hospitals Act.

[4] Article 105(1)(2)(a) Hospitals Act

[5] However, the article also allows for medical treatments to be specified which must take place outside a hospital framework.

In addition, the list of heavy medical equipment must also be reported. [6] This list includes appliances or equipment for investigations and treatment, which are expensive either because of their purchase price or because they are operated by highly specialist staff. [7] Equipment on this list can be installed or run only after prior approval from the competent regional authority. This requirement also applies to equipment which is set up outside a hospital environment and equipment for which no contribution is made to the investment costs.

This restriction is imposed because of the objective of monitoring the quality of care, controlling the radiation load on the population, centralising expertise and maintaining the financial balance of the health care system.

The list of heavy medical equipment includes the following appliances or equipment:

- computed tomography (CT) scanner;
- single-photon emission computed tomography scanner in combination with computed tomography scanner (SPECT-CT);
- positron emission tomography (PET) scanner;
- positron emission tomography scanner in combination with computed tomography scanner (PET-CT);
- positron emission tomography scanner in combination with magnetic resonance tomography scanner (PET – NMR);
- magnetic resonance tomography scanner (NMR), including the 'extremity-only' magnetic resonance tomography scanner;
- radiotherapy equipment with photon, proton, electron or hadron ion emission, including carbon ion therapy.

In addition, the PET scanner and the NMR have programming criteria. Accordingly, the federal government has laid down the maximum number of appliances which may be installed and run. However, it is the competent regional authorities that decide which hospitals receive accreditation to run a service with a PET or NMR scanner. Furthermore, only hospitals are eligible to run such a service.

- What is the compensation mechanism for the respective services?

I) FEDERAL GOVERNMENT

As has already been explained, Article 95 of the Hospitals Act provides that the financial resources budget for each hospital is fixed separately by the Minister for Public Health within an overall budget for the whole country. In other words, a budget is released annually for Belgian hospitals in the national budget. This amount is then shared out among the hospitals according to the conditions and calculation methods, as laid down by the Hospitals Act and the decrees implementing it. The amount allocated will depend, inter alia, on the size of the hospital and the level of activity there,

[6] Article 52 Hospitals Act
[7] Article 51 Hospitals Act

any particular missions entrusted to the hospital (e.g. university hospitals with a teaching and research role), the number of accredited services within the hospital, …

The basis for allocation is set out in Article 105 of the Hospitals Act. This article states that the conditions and detailed rules for calculating the compensation must be stipulated by royal decree. The following points, inter alia, must be stipulated in the royal decree:

> *'(…)*
> *a) the period for which the budget is granted, which may not exceed 10 years, except for the elements of the financial resources budget covering investment costs, which, in accordance with generally accepted accounting principles, have to be written off over a longer period;*
> *b) the division of the budget into a fixed part and a variable part;*
> *c) the criteria and the detailed rules for calculation, including laying down the justified activities and the indexation rules;*
> *d) as regards the variable part, compensation for activities which, in relation to a reference number, are carried out in addition or which have not been carried out;*
> *e) fixing of the reference number referred to in (d), regarding the activity parameters taken into account;*
> *f) the conditions and detailed rules for reviewing certain elements;*
> *g) the breakdown of the account based on previous years, as referred to in Article 116 of the Hospitals Act (…)'* [8]

The particulars of these detailed rules are set out in the Royal Decree of 25 April 2002 on fixing the financial resources budget of hospitals.

The calculation parameters and detailed rules for the financial resources budget Under Article 100 of the Hospitals Act [9] are intended to cover the costs resulting from hospitalisation and, under Article 101 of the Hospitals Act, the costs relating to services following emergencies or disasters (and, under Article 102 of the Hospitals Act, are not intended to cover a range of legally defined costs). Article 95 of the aforementioned Act states that the financial resources budget covers the funding of operating costs. Furthermore, in accordance with the general interest mission entrusted by the Act, these costs 'take into account hospital care only', as stated in Article 95.

To sum up, all hospitals are funded on the basis of identical rules. The funding relates only to the 'hospitalisation' part.

The compensation mechanism consists of the allocation of a financial measure (the financial resources budget) in hospital costs, which is calculated a priori on the basis of the last known data at that time (accounting and financial data from previous years, data relating to charging for the activity in question). The compensation is revised subsequently on the basis of the actual figures, but this is examined in more detail in the next part.

[8] Article 105 Hospitals Act
[9] Article 100 of the Hospitals Act states: 'Without prejudice to Article 97, the financial resources budget covers, on a flat rate basis, the costs resulting from a stay in a shared room and the provision care for patients in the hospital, including day-care patients, as defined by the King.'

The compensation is a flat rate and relates only to hospitalisation, including hospitalisation for day surgery, in respect of:

- the investment costs (building, medical and non-medical equipment) and relevant financial charges
  [A1 and A2]
- the investment and operating costs of the heavy medical equipment (Articles 37, 38 and 39 of the Act)
  [A3 and B3]
- the operating costs for the hospital services and 'joint' services and cover for the costs of relevant legal obligations
  [B1, B4, B6, B9]
- the costs of nursing and care staff
  [B2]
- the operating costs of the hospital pharmacy
  [B5]

The 'compensation' given by the State is therefore State intervention in these various items, which are directly linked to carrying out the missions entrusted to it.

II) SPECIFIC TO THE FLEMISH COMMUNITY

The basic amount of the subsidies for the investments covered by the VIPA is determined on the basis of a flat-rate amount per m² of the eligible area, which corresponds to a maximum 60 % of the actual cost (exception: 10 % of priority investments). This amount is paid in 20 annual utilisation grants, which also cover the cost of the pre-financing.

The applicant can call on the financial resources budget for the additional part (40 % or 90 % in the case of priority investments) which is not subsidised by the VIPA and for certain types of investments which are subsidised at 100 % only by the federal government (major maintenance, non-priority reconditioning works, investments in sustainable development…).

The amount of the guarantee is limited to (10/6) x basic amount of the VIPA subsidies x75 %. The guarantee ensures lower funding costs, without the VIPA intervening expressly in the funding costs (in that respect, the guarantee cannot involve overcompensation of the funding costs either).

III) SPECIFIC TO THE WALLOON REGION

Subsidy for investment + the Walloon Government may provide a guarantee for borrowings contracted for funding of these operations.

- Arrangements for avoiding and repaying any overcompensation

I) FEDERAL GOVERNMENT

As stated above, the budgets are calculated on the basis of known data. These are accounting data from the hospitals concerned, which have been collected over the preceding years. Thanks to these data, it is already possible to form a good idea of the amount to which the hospital will be entitled.

Then, the public intervention in the financial resources budget is paid in the form of 'twelfths', i.e. which each hospital receives each month, from 1 July of each year until 30 June of the following, one sum per month which corresponds to the public intervention in its individual budget spread over 12 months. After the amounts allocated have been reviewed a posteriori using the accounting data collected, any overpayment is charged against the budget of the hospital in question.

Monitoring of the hospitals receiving compensation from the financial resources budget is carried out at different levels. The Act provides first of all for a compulsory external control by the statutory auditor. [10] Finally, the Hospitals Act provides for control by the inspectors appointed for this purpose, subject to the powers of the criminal investigation police in the case of fraud or an offence. [11]

The control carried out by officials occurs at two levels. In this way, a financial inspection is organised. First, this checks and validates a specific number of data before the subsidy is granted and, second, it checks the hospitals on site in order to verify the accuracy of the financial data communicated subsequently.

Furthermore, the medical data [12], which are used in part as a basis for determining the level of activity at the hospital and thus also for calculating the compensation, are also checked.

The financial resources budget is fixed 'a priori' on the basis of known data. When the actual data from the financial year in question are looked at, certain elements of the budget are reviewed to take account of the actual data.

Article 92 of the 'funding' decree of 25 April 2002 determines in a transparent way the elements which are subject to review.

The Hospitals Act also provides for a mechanism allowing for financial transparency within the hospital, pursuant to Article 93 of the Hospitals Act as regards the Works Council, and pursuant to Article 143 of the Hospitals Act as regards transparency with respect to the Medical Council.

II) SPECIFIC TO THE FLEMISH COMMUNITY

There is no overcompensation for hospital (services). It can be said that, even with the VIPA subsidies included in the calculation, there is still undercompensation for hospital services.

The controls to ensure proper use of utilisation grants awarded are carried out by VIPA officials (building technology consultants and financial analysts) and by officials from the Agency for Care and Health (doctors/paramedics who are responsible for providing functional advice). In each case,

[10] Article 86 to 91 Hospitals Act
[11] Article 127 Hospitals Act
[12] This refers to the clinical abstract recorded per patient and per admission to the hospital. In that way, the authority can verify *inter alia* how many admissions and interventions are made by a hospital each year.

following the application for payment of a utilisation grant, an on-site check is organised (on-site) during construction of an infrastructure subsidised by the VIPA. The report on and conclusions from these checks form the basis for the final calculation of the amount of the utilisation grant, since the amount previously calculated and assumed for the annual utilisation grant to be received may still change as a result of infringements or deficiencies which come to light during these checks.

Even after the infrastructure built with VIPA funds has begun operation, checks are carried out each time an application is made for payment of the utilisation grant to see whether the hospital still meets the standards for use.

The VIPA Sector Decree provides that, in principle, for a period of 20 years after a subsidised project has come into operation, no investment subsidies can be obtained for the same project.

The VIPA rules lay down minimum periods during which the hospital should have a right in rem or a right of enjoyment over the subsidised project. During this minimum period, consent must be obtained from the VIPA or the Minister for any transfer, encumbrance with right in rem or right of enjoyment or change of use (Article 87(1) of the Flemish Government Decree of 18 March 2011 laying down rules for the alternative investment subsidies granted by the VIPA). The minimum period for works is 25 years (Article 12(1)(3) of the Decree of 23 February 1994 on the infrastructure for personal matters).

In the event of infringement of the VIPA standards and conditions, the rules on public procurement or the standards for use, the VIPA subsidies granted are recovered in full (Article 88 of the Flemish Government Decree of 18 March 2011 laying down rules for the alternative investment subsidies granted by the VIPA) as stipulated in Article 13 of the Act of 16 May 2003 laying down the general conditions applicable to budgets, control of subsidies and to the accounting of communities and regions.

III) SPECIFIC TO THE WALLOON REGION

For public works contracts, the subsidy is made available in tranches:

- a first tranche of 30 % of the amount of the subsidy as soon as an order has been placed for the work and that work has actually been started, as confirmed by the first progress report accompanied by the corresponding invoice;
- the second 30 % tranche is made available as soon as the total of the progress reports and invoices submitted reaches the total of the first tranche;
- the third tranche of 30 % is made available as soon as the total of the progress reports and invoices submitted reaches the total of the first two tranches;
- the balance of the subsidy is made available to the applicant on approval of the final account.

For procurement of equipment and furniture, the subsidy is paid on presentation of the invoices. Legal reference: Walloon Government Decree of 15 May 2008 establishing the procedure for the award of subsidies intended for hospital infrastructure and equipment, implementing the Hospitals Act, coordinated 10 July 2008.

- Total amount of the aid granted per calendar year

I) FEDERAL GOVERNMENT

Financial resources budget granted for the calendar years:

2012: EUR 7 509 443 529

2013: EUR 7 686 840 796

II) SPECIFIC TO THE FLEMISH COMMUNITY

2012: EUR 45 779 446.40

2013: EUR 79 467 990.63

III) SPECIFIC TO THE WALLOON REGION

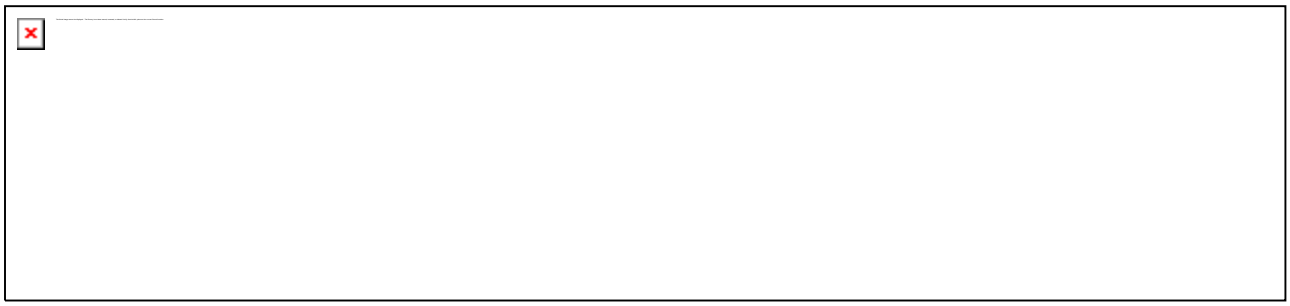
Total amount of compensation payments granted per year:

2012: EUR 15 882 020

2013: EUR 23 675 825

- Other quantitative information

I) FEDERAL GOVERNMENT



Account 700 = turnover

Sources:

http://www.health.belgium.be/internet2Prd/groups/public/@public/@dg1/@datamanagement/documents/ie2divers/19089806.pdf
http://www.health.belgium.be/internet2Prd/groups/public/@public/@dg1/@datamanagement/documents/ie2divers/19089806_fr.pdf

II) SPECIFIC TO THE FLEMISH COMMUNITY

Sources: VIPA annual reports, 2009-2013
(http://www4wvg.vlaanderen.be/wvg/vipa/paginas/Jaarverslagen.aspx).

III) SPECIFIC TO THE WALLOON REGION

A) Number of beneficiaries:

48 hospitals

B) Intervention rates:

As almost all of the subsidised investments meet the priority criteria, the subsidies granted are, for the most part, calculated on the basis of a maximum of 10 % of the cost of the work, including VAT and overheads.

• DIFFICULTIES WITH THE APPLICATION OF THE SGEI DECISION OR SGEI FRAMEWORK

• COMPLAINTS BY THIRD PARTIES

The only complaint connected with State aid within the hospital sector is the complaint under file number SA.19864 relating to aid measure NN54/2009. This file is currently being examined by the services of the European Commission and relates to a complaint about aid received by the public hospitals in the Brussels Capital Region. However, this complaint is not connected with the SGEI as described in the Hospitals Act but with a specific SGEI under the legislation on public centres for social welfare. Consequently, the complaint is only indirectly concerned with the financial resources budget of Belgian hospitals, which is the subject of this part of the report.

• MISCELLANEOUS