

Translation of report

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Report in accordance with Article 9 of the Commission Decision on services of general economic interest ("the SGEI Decision")¹

With reference to the Commission's letters of 25 February 2013 and 10 April 2014, we hereby submit a report concerning the implementation of the Commission Decision for the period 31 January 2012–31 December 2013. Please note that during this period, Sweden did not grant any aid with reference to the SGEI Framework².

Introductory remarks

During the review of compensation for Services of General Economic Interest carried out ahead of this report, a large number of different services of general interest were identified. A large proportion of the services is not of an economic nature, however, so the state aid rules are not assessed as being applicable. These are services which constitute the exercise of public authority and services which are not normally provided on a market, such as compulsory education, public hospitals and some cultural policy activities, etc. There are also services which are compensated in a way that fulfils the Altmark criteria. According to current case-law, such compensation does not constitute State aid. In some cases, public services are financed in a way that complies with the MEOP principle³. In such cases, the beneficiary does not receive an advantage and the payment does not constitute state aid.

Services in the general interest which have received compensation pursuant to the SGEI Decision

Sweden has recently defined and regulated a number of services pursuant to the SGEI Decision. In most cases, no compensation has yet been granted pursuant to the new scheme, so there are no statistics to report.

Sweden's airports

Sweden is a large, sparsely-populated country which, in many ways, lacks high quality transport infrastructure such as motorways and high-speed railways. The regional airports, therefore, are necessary to provide the general public with access to efficient long-distance transport, both for the sake of regional development and for the mobility of Union citizens to and from Sweden.

The overwhelming majority of Swedish regional airports are relatively small, and are located a long way from each other. Over the past 15 years, most of the airports have had fewer than 200 000 passengers during most operational years. In its Guidelines of 4 April 2014⁴, the Commission notes that airports with up to 200 000 passengers per annum may not be able to cover their capital costs to a large extent. The Swedish regional airports are at a further disadvantage because the tough winter conditions in Sweden put further demands on them and

¹ Commission Decision 2012/21/EU on the application of Article 106(2) of the Treaty on the Functioning of the European Union 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 7, 11.1.2012, p.3).

² Communication from the Commission – European Union framework for State aid in the form of public service compensation (OJ C 8, 11.1.2012, p.15).

³ Market Economy Operator Principle (MEOP)

⁴ Communication from the Commission - Guidelines on State aid to airports and airlines (2014/C 99/03)

give rise to further costs which the airports must bear. It has been utterly necessary for the public sector to cover the losses incurred by the airports in order to ensure their survival.

With the objective of achieving transport policy goals, the state provides financial compensation to regional airports to provide airport services in the general interest. Aid is provided on the basis of the Ordinance on operating grants to non-state-owned airports (2006:1577) and the Swedish Transport Agency's regulations on operating grants to non-state-owned airports (TSFS 2010:30). In this context, it should be pointed out that some of the operating grant received by the regional airports can be regarded as covering the cost of non-economic services such as air traffic control, customs and rescue services.

Work is currently under way in the Government Offices to analyse if and how the Ordinance and the regulations may need to be amended as a result of the Commission's new guidelines on aid to airports and airlines.

Besides this, municipalities are able to contribute funds to cover any losses which the airport may have by making reference to the general service provided by the regional airports. Work is currently under way in a number of municipalities to produce a basis on which enable a SGEI assessment. Two of the Swedish regional airports which receive aid have more than 200 000 passengers. Sweden has notified this aid to the Commission (SANI 9977 and SANI 10073, respectively) and is currently awaiting a reply from the Commission.

With respect to earlier aid to regional airports, a separate process is under way within the framework of SA.18857 to be able to declare previous aid compatible pursuant to point 137 of the new Guidelines for aid to airports and airlines.

Concerning airports, we would also mention the state-owned company Swedavia, whose assignment is to own and secure the operation of the national basic system of airports, which in Sweden consists of ten airports. Swedavia is run on a commercial basis, and balances profits between the different airports by reallocating funds within its own operations. Swedavia's assessment is that it is justified, from a business perspective, to operate all of the airports in one network, since they contribute to the overall operation through their geographical locations. Swedavia pays for its own operations, infrastructure and investments, and all revenues come directly or indirectly from air traffic.

Pharmacies in sparsely populated areas

From 2014, it is possible for pharmacies in sparsely populated areas to apply for retrospective financial aid. The purpose of this aid is to enable good pharmacy coverage in sparsely populated areas in which the market would be unable, on its own, to provide sufficient access to pharmacy services for the general public living in these areas.

The grant is calculated on the basis of sales of prescription drugs at the pharmacy. The pharmacies with the greatest needs will receive grants. There is a ceiling which is based on the pharmacy's profitability for its whole operation. This is to ensure that no pharmacy will be over-compensated.

The Government has established a number of criteria which a pharmacy has to meet to be able to receive a grant for the period to which the application refers. Among other things, the pharmacy must:

- be located more than 20 km from another pharmacy;
- have had sales revenues of prescription medicines amounting to between SEK one million and SEK ten million for the operating year; and
- have had opening times enabling consumers to access pharmaceutical products during all calendar months of the year.

The granting authority recently processed the applications for support for 2013. On the basis of the above criteria, the authority has approved applications from 31 pharmacies and rejected applications from seven. A total of **SEK 8 795 360** has been paid to pharmacies in sparsely populated areas for costs associated with the provision of services in the general interest in 2013.

The aid is governed by the Ordinance on grants to outpatient pharmacy services in the general economic interest (2013:80).

Basic payment services

All members of the public must have access to basic payment services (such as withdrawal of cash and payment of bills) at reasonable prices. Provision of such services is primarily the task of the market. In rural areas in which the market does not meet the need of basic payment services, the state may intervene and provide support or financial aid. Assessment of the need of measures is the responsibility of the county administrative boards.

The Swedish Post and Telecom Authority (PTS) has the task of supporting the counties' work concerning basic payment services. This might involve the procurement of secure transports, or support to providers of payment services. This support is governed by the Ordinance on state aid to providers of basic payment services (2014:139) (enters into force on 1 July 2014).

Publication of talking newspapers

Talking newspapers are for those whose disabilities prevent them from reading an ordinary daily newspaper and whose needs the market would be unable to meet in a satisfactory fashion without state aid. Support may be provided to talking newspapers and for reception equipment and special subscription services which enable talking newspapers to be received via the internet.

Talking newspaper publishers apply in advance for preliminary talking newspaper support. The support is subsequently adjusted on the basis of accounts submitted by the publisher, to ensure that no over-compensation takes place. The authority recently carried out a calculation of such support. The aid disbursed in 2013 amounts to **SEK 1 491 504**.

This aid is governed by the Ordinance on talking newspapers and receiving equipment (2013:9).

Workplace support

Aid may be provided to employers to cover some of the cost of services delivered by a provider of occupational health services or another provider with equivalent competence in the form of workplace support.

"Workplace support" refers to a review concerning an employee who has, or risks having, reduced work capacity due to a work-related or non work-related illness or injury, or the launch of measures for an employee's return to work. Workplace support does not include medical or other treatment.

The objective of the support is to prevent illness, or, in the event of already existing illness, to increase the employee's chances of returning to work by helping the employer to take early and appropriate steps.

The support is paid to an employer to cover some of the cost of services delivered by a provider approved by the National Social Insurance Agency.

The support is equivalent to half of the amount paid by the employer to the provider of support measures in the workplace, up to a reimbursement ceiling of SEK 7 000 for each such measure.

The awarding of support is governed by the Ordinance on grants to employers for the purchase of workplace support for return to work (2014:67).

Purchase of medical services

This aid is directed at providers of occupational health services and their costs for the purchase of medical service from public or private providers. "Medical service" refers to investigation and analysis within laboratory medicine, radiology and clinical physiology, and is an element in the assessment of an employee's ability to work.

The objective of the aid is to prevent illness or, in the event of already existing illness, boost the employee's chances of returning to work by granting aid for the occupational health services' costs for the purchase of such medical service as makes up part of the assessment of the work capacity of an employee. Aid is paid retroactively for each calendar year.

The aid is governed by the Ordinance on grants to occupational health services for the purchase of medical service (2014:68).

Development of a European standard for social alarms

The Government has decided to grant the Swedish Standards Institute (SIS) **SEK 2 500 000** in 2014 to lead the work of developing European standards for the entire value chain for social alarms and pursue Nordic cooperation in the same area. The work includes both Swedish and European standardisation work. The "entire value chain" refers to all new requirements and services which will result from a switch of telecommunications and technical solutions in the hands of the alarm recipients. One aim in the development of these standards is to make it easier for suppliers to develop and supply new products and services for social alarms, reduce barriers to trade and create more opportunities for municipalities to choose suppliers.

The work which SIS will carry out is necessary to secure access to reliable and efficient social alarms and well-functioning associated services in future care.

Coordinator for social enterprises and private providers

In recent years, there has been a great increase in the diversity of providers of social services. Many individual providers within social services are small businesses or social enterprises which share many municipalities' need of cooperation and support if they are to develop "eHealth" services. In order to create more equal conditions for private and public providers in this respect, the Government has also granted funds for 2014 to Famna (the Swedish Association of Non-Profit Health and Social Service Providers) and Vårdföretagarna (the Association of Private Care Providers). These coordinators are to help individual providers to actively participate in and contribute to the development of eHealth.

The introduction of e-services for citizens, secure authorisation for personnel, the national patient database and the National Board of Health and Welfare's model for focusing on the needs of the elderly (ÄBIC) are some of the currently ongoing processes. Famna and Vårdföretagarna are to submit an implementation plan to SKL (the Swedish Association of Local Authorities and Regions, SALAR) which, following approval, will allocate funds to these organisations. SALAR is also responsible for ensuring that the funds are used in accordance with this plan. **SEK 0.5 million** is being allocated to each organisation for an eHealth coordinator.

Ongoing cases at the Commission

The Commission has sent a number of questions to Sweden over a period of time concerning a complaint about the District Veterinary Organisation (SA.33887). This activity is defined in law as a SGEI via the Ordinance on veterinary services in the general economic interest (2009:1397). A dialogue is currently ongoing with the Commission concerning whether the remuneration can be regarded as compatible with reference to the SGEI Decision or in some other way.

The Commission has recently opened two cases following complaints received concerning the compensation for extra costs paid to the state-owned company Samhall AB (SA.38469) and concerning state funding of the support to parents provided by municipalities and county councils (SA.38474). In both these cases, Sweden's view is that there is no state aid within the meaning of Article 107(1) TFEU. It should be noted, however, that the funds involved are provided to operations which are to be regarded as being in the general interest.

General rules for managing state aid and public enterprises in Sweden

In Sweden, the public sector acts through central government authorities and at local/regional level via municipalities and county councils. Control of state aid is centralised to the Government, where a special unit is responsible for the control of State aid (with a right of veto) and communication with the Commission. Section 12 of the Act on the application of the European Union's State aid rules (2013:388) sets out that anyone who intends to undertake or amend aid measures of which the European Commission must be notified pursuant to Article 108(3) TFEU must provide information to the Government or an authority designated by the Government. This applies irrespective of which type of public actor is providing the aid.

The same Act makes clear that anyone who has provided unlawful aid must recover the aid, unless recovery may be waived pursuant to EU law. It is also made clear that anyone who has received unlawful aid must, pursuant to EU law, repay the aid, unless repayment may be waived pursuant to EU law.

Public actors which pursue business activities are restricted by Chapter 3, Section 27 of the Competition Act (2008:579). This provision sets out that the State, a municipality or a county council, in a sales activity which is regarded as an undertaking, may be prohibited from applying a certain conduct if such conduct distorts or threatens to distort the conditions for efficient competition in the market, or restricts, or threatens to restrict, the presence or development of such competition. A ban may not be issued for conduct which is justifiable in the public interest. A municipality or county council may also be prohibited from operating a specific sales activity in cases referred to in the first paragraph. Such operations may not be prohibited, however, if they are lawful. The rule also covers legal persons in which the public sector has a dominant influence. Prohibitions are subject to decision by the Stockholm City Court following actions brought by the Competition Authority.

Besides this, there are special rules which further restrict municipalities' possibilities of operating commercial activities which compete with private actors and of providing state aid. Pursuant to Chapter 2 Section 7 of the Local Government Act (1991:900), a municipality or county council may engage in business activity if it is conducted without a view to profit and is essentially concerned with providing communal amenities or services for the members of the municipality or county council. Pursuant to Chapter 2, Section 8 of the Local Government Act, municipalities and county councils may take steps for the general promotion of enterprise in the municipality or county council. Individualised support may be given to individual enterprises only if there are very strong grounds for doing so.

A review of the Local Government Act is currently being carried out under the auspices of an

official inquiry⁵. The inquiry has been tasked, *inter alia*, with considering how Union legislation concerning Services in the General Economic Interest relate to the legislation governing municipal undertakings, and analyse the obligations which Union law entails. The inquiry is to report its proposals no later than 31 March 2015.

Provisions of importance in the purchase of services in the general interest

When procuring goods and services, Swedish municipalities must follow the Public Procurement Act (2007:1091), the Act concerning procurements in the areas of water, energy, transport and postal services (2007:1092) for procurements in the utilities sectors and the Act on procurement in the area of defence and security (2011:1029).

"Public procurement" in the Swedish procurement legislation refers to measures undertaken by a procuring authority to award a contract or enter into a framework contract for goods, services or building works. The procuring authorities must, therefore, comply with the Public Procurement Act for more or less all purchasing, renting and leasing of goods and services. The principles for the Swedish procurement rules are also applied below the threshold values of the EU Public Procurement Directive. Application of the procurement rules takes into account *inter alia* the EU law principles of free movement, transparency and non-discrimination. The procurement rules, therefore, are a tool for ensuring that the payment does not contain any type of over-compensation.

In this context, we would mention the Act on Free Choice Systems (LOV) (2008:962) which came into force on 1 January 2009. A free choice system pursuant to LOV is an alternative to procurement pursuant to the Public Procurement Act, and may be applied to B services, category 25, listed in Annex 3 to that Act. The procuring authority which wishes to apply LOV must advertise on an ongoing basis on a national website for free choice systems. Private companies and not-for-profit organisations may apply to be approved as providers. All providers who have applied to be part of a free choice system and who meet the established requirements are approved, after which a contract is signed. LOV is based on the absence of price competition between the suppliers. The end user instead chooses the provider that he or she considers to provide the best quality.

The Act on transparency in certain financial relations, etc. (the Transparency Act; 2005:590), put simply, requires companies covered by that Act to divide their operations into three different parts in their accounts, and that the company should report transfers of funds, irrespective of the form they take, between these three parts. A public activity which does not constitute an economic activity must first be able to be separated from any activity which is covered, *inter alia*, by the state aid rules. Following this, the economic activity must be able to be divided into operations which are exposed to competition and those which are not.

The Transparency Act ensures that information on compensation for services in the general interest is saved and that it is possible to identify which costs and revenue arise from subsidised services, including services in the general economic interest, and which arise from activities which are exposed to competition. Articles 5–7 of the Commission Decision are thereby fulfilled.

Compliance with the procurement laws, LOV and the Transparency Act is monitored by the Competition Authority.

⁵ Fi 2012:07 *Utredningen om en kommunallag för framtiden* [Inquiry concerning a Local Government Act for the future]