

**Communication from the Federal
Government of Germany to the
European Commission**

Subject: HT.2807 – Services of general economic interest:
Report required by the SGEI Decision and the SGEI Framework.
Ref: Letter from the European Commission of 25.2.2013

The Federal Government reports as follows on the basis of information provided to it by the German authorities.

1. Description of the application of the SGEI Decision and the SGEI Framework and amount granted

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

Explanation of what kind of services in the respective sector have been defined as SGEI in your Member State. Please list the contents of the services entrusted as SGEI as clearly as possible.

We refer to the 2011 report for details of the system of hospital financing in Germany and the special features of financing university hospitals.

The following SGEIs in particular have been entrusted:

- Medical care services (e.g. medical care of in-patients in the hospital in question including all associated services; medical examination and treatment of out-patients in the relevant hospital including all associated services.)
- Accident and emergency services (e.g. maintaining continuous admission and on-call services, supply of emergency doctors to the emergency services).
- Ancillary services directly connected to these primary activities where these are themselves classified as SGEIs (e.g. training and continuing education in hospital

occupations, training of medical students, operation of laboratories, hospital pharmacies and blood banks, catering services for patients).

Explanation of the (typical) forms of entrustment. If standardized templates for entrustments are used for a certain sector, please attach them.

There is no typical form of entrustment. Entrustments may be based on administrative acts, statutes, by-laws or resolutions by the relevant municipal decision-making body or – in the area of out-patient care – by an admissions committee.

Explanation of the (typical) duration of the entrustments and the range of durations of the entrustment. Please also specify the proportion of entrustments which are longer than 10 years.

The typical duration of an entrustment is 10 years. For university hospitals entrustment is typically for an indefinite period.

Explanation whether (typically) exclusive or special rights are assigned to the undertakings.

Generally the undertakings are not given exclusive or special rights.

Explanation of the (typical) compensation mechanism as regards the respective services, including the aid instrument (direct subsidy, guarantee etc.) used and whether a methodology based on cost allocation or the net avoided cost methodology is used.

Compensation is typically by way of grant and sometimes also by means of loans and guarantees. A method of cost allocation is generally used.

Explanation of the (typical) arrangements for avoiding and repaying any overcompensation.

The position is typically checked on the basis of statements of expenditure in the context of audited annual accounts.

Total amount of aid granted. This includes all aid paid in your territory, including aid paid by regional and local authorities.

Based on information provided to the Federal Government by the German authorities the total aid awarded was approx. EUR 755.91 million in 2012 and EUR 873.86 million in 2013. During the reporting period guarantees and assumptions of liability of approx. EUR 617.46 million in total were also taken on and profit participation rights of approx. EUR 3 million in total were acquired – no information is available about the value of this aid.

2) Social services (Article 2(1)(c))

a) Health and long-term care

Explanation of what kind of services in the respective sector have been defined as SGEI in your Member State. Please list the contents of the services entrusted as SGEI as clearly as possible.

Services are entrusted in the following areas:

- Provision and operation of facilities for assistance and care of old people and those in need of care, particularly old people's homes, and care and nursing homes for old people.
- Further services in the area of assistance to old people (incl. care in the community, welfare centres, residential care for those with dementia, social centres, activities for old people, sheltered accommodation and multi-generational living schemes).
- Measures to improve telemedicine and palliative care.

Explanation of the (typical) forms of entrustment. If standardized templates for entrustments are used for a certain sector, please attach them.

Entrustment is typically by means of administrative act, also for instance through the decision of the competent committees of a local authority, by contract or by-laws.

Explanation of the (typical) duration of the entrustment and the range of durations of the entrustment. Please also specify the proportion of entrustments which are longer than 10 years.

The typical duration of an entrustment is 10 years; the minimum is one year. Some entrustments are also open-ended.

Explanation whether (typically) exclusive or special rights are assigned to the undertakings.

Generally the undertakings are not given exclusive or special rights.

Explanation of the (typical) compensation mechanism as regards the respective services, including the aid instrument (direct subsidy, guarantee etc.) used and whether a methodology based on cost allocation or the net avoided cost methodology is used.

Compensation is granted through subsidies, loans, short-term loans, guarantees and capital contributions, generally using a method of cost allocation.

Explanation of the (typical) arrangements for avoiding and repaying any overcompensation.

The position is typically checked on the basis of statements of expenditure in the context of audited annual accounts.

Total amount of aid granted. This includes all aid paid in your territory, including aid paid by regional and local authorities.

Based on information provided to the Federal Government by the German authorities the total aid awarded was approx. EUR 8.6 million in 2012 and EUR 18.01 million in 2013.

b) Childcare

Explanation of what kind of services in the respective sector have been defined as SGEI in your Member State. Please list the contents of the services entrusted as SGEI as clearly as possible.

Entrustments are made in the fields of parenting, education, development and care of children and support for their families, and also for operating facilities for children, young people, parenting and the disabled.

Explanation of the (typical) forms of entrustment. If standardized templates for entrustments are used for a certain sector, please attach them.

Entrustment is by administrative acts, contracts and council decisions.

Explanation of the (typical) duration of the entrustment and the range of durations of the entrustment. Please also specify the proportion of entrustments which are longer than 10 years.

The duration of the entrustment is often 10 years. Sometimes entrustments are for up to 25 years or for an indefinite period.

Explanation whether (typically) exclusive or special rights are assigned to the undertakings.

Generally the undertakings are not given exclusive or special rights.

Explanation of the (typical) compensation mechanism as regards the respective services, including the aid instrument (direct subsidy, guarantee etc.) used and whether a methodology based on cost allocation or the net avoided cost methodology is used.

Compensation is given through grants, guarantees and the grant of the use of land on preferential terms, generally based on a method of cost allocation.

Explanation of the (typical) arrangements for avoiding and repaying any overcompensation.

The position is typically checked on the basis of statements of expenditure in the context of audited annual accounts.

Total amount of aid granted. This includes all aid paid in your territory, including aid paid by regional and local authorities.

Based on information provided to the Federal Government by the German authorities the total aid awarded was approx. EUR 194.64 million in 2012 and EUR 339.57 million in 2013; some supporting evidence is still outstanding for 2013. In addition, guarantees of approx. EUR 3.31 million (2012) and EUR 3.15 million (2013) were taken on – no information is available about the value of aid.

c) Access to and reintegration into the labour market

Explanation of what kind of services in the respective sector have been defined as SGEI in your Member State. Please list the contents of the services entrusted as SGEI as clearly as possible.

Services are entrusted in the following areas:

- Assistance for those with particular social difficulties, the long-term unemployed, unemployed young people with poor prospects for entry into the job market and the older unemployed (incl. training and continuing development, obtaining qualifications, advice, care, employment promotion and the integrated provision of work, psycho-social care and training in the workplace).
- Promotion of vocational training and occupational guidance and qualifications for employees who are unemployed or at risk of unemployment as a result of structural changes (incl. opportunities for further training and qualification).
- Proportional payment of wages for long-term unemployed people who are particularly difficult to place and are unlikely to have any prospect of participation in the general employment market during the funding period (by means of projects in the public interest outside the primary employment market).

Explanation of the (typical) forms of entrustment. If standardized templates for entrustments are used for a certain sector, please attach them.

Entrustments are by administrative act; in one case the entrustment is contractual.

Explanation of the (typical) duration of the entrustment and the range of durations of the entrustment. Please also specify the proportion of entrustments which are longer than 10 years.

There is no typical duration for entrustment. They are between 1 and 10 years. There are no entrustments for more than 10 years.

Explanation whether (typically) exclusive or special rights are assigned to the undertakings.

The undertakings are not given exclusive or special rights.

Explanation of the (typical) compensation mechanism as regards the respective services, including the aid instrument (direct subsidy, guarantee etc.) used and whether a methodology based on cost allocation or the net avoided cost methodology is used.

Compensation is typically by way of grant, generally based on a method of cost allocation.

Explanation of the (typical) arrangements for avoiding and repaying any overcompensation.

The position is typically checked on the basis of statements of expenditure in the context of annual accounts.

Total amount of aid granted. This includes all aid paid in your territory, including aid paid by regional and local authorities.

Based on information provided to the Federal Government by the German authorities the total aid awarded was approx. EUR 1.4 million in 2012 and EUR 12.52 million in 2013.

d) Social housing

Explanation of what kind of services in the respective sector have been defined as SGEI in your Member State. Please list the contents of the services entrusted as SGEI as clearly as possible.

Entrustments are made for measures to maintain and improve the provision of housing for population groups which are unable to secure suitable housing on the free housing market for themselves (especially households with low incomes, households with children, single parents, pregnant women, older and disabled people). The target groups are defined predominantly by income thresholds, compliance with which must be demonstrated in each case. The service is aimed primarily at providing housing by building new homes or by acquisition and by modernising existing rented premises for social housing use. The last involves increasing the long-term worth of rented accommodation and buildings, the continuous improvement of general living conditions and sustainable savings of energy or water, including for the purpose of reducing ancillary housing costs. In an ageing population the promotion of social housing also includes supporting barrier-free building methods and types of housing and facilities which are suitable for older people, e.g. accommodation for those in particular need of assistance and care or sheltered accommodation. Further measures relating to housing, construction and social issues may be agreed for the benefit of the groups targeted by housing support, especially improving the housing environment, removing social disadvantages and developing the local area. The service provider (housing

management undertaking/landlord) provides accommodation, which is rented out to the defined target group at a favourable price.

Explanation of the (typical) forms of entrustment. If standardized templates for entrustments are used for a certain sector, please attach them.

Entrustments are generally by administrative act.

Explanation of the (typical) duration of the entrustment and the range of durations of the entrustment. Please also specify the proportion of entrustments which are longer than 10 years.

As a result of the substantial sums invested the duration of the entrustment is usually 10 to 30 years. As loans for constructing rental buildings are not generally for less than 10 years, the proportion of entrustments of more than 10 years is very high.

Explanation whether (typically) exclusive or special rights are assigned to the undertakings.

Generally the undertakings are not given exclusive or special rights.

Explanation of the (typical) compensation mechanism as regards the respective services, including the aid instrument (direct subsidy, guarantee etc.) used and whether a methodology based on cost allocation or the net avoided cost methodology is used.

Support for social housing depends on the property. Support is given by means of loans at favourable interest rates, grants to part-finance construction, the giving of guarantees and other assurances, through the provision of building land at a reduced price or through a combination of such measures. The most frequent measures are long-term loans at favourable interest rates or grants. A net avoided cost method is generally used. The amount of the compensation payment is based on an objective and transparent ex-ante process. On setting up the support programmes the terms of the support, on the basis of which the net amount of the compensation in the individual case is measured, are set in such a way that, over the term committed to by way of rent and occupancy, they compensate for the economic disadvantages of the public service obligation for which support is being given. Compensation is given in respect of the income losses arising out of the restriction on the rent compared with the market rental, the increased expenses of tenant assistance associated with the occupancy commitment, maintenance and management, and any extra building costs connected with special features of the building (e.g. barrier-free accommodation). In setting the level of support the particular conditions of the residential market in question are taken into account

(based on available data and empirical studies of the price of land, building costs and market rents).

Explanation of the (typical) arrangements for avoiding and repaying any overcompensation.

In the support programmes generally applicable specifications are applied both to the public service obligations and to measuring the compensation payments. The awarding body then calculates the specific compensation payment with reference to the property in question taking the circumstances of the particular case into account in such a way that there is no overcompensation in relation to the specific public service obligation. In addition to the imposition of specific public service obligations on the undertaking, the arrangements typically include the creation at the outset – by statute or in the notice of funding – of the legal basis for ensuring and effectively monitoring strict compliance with these obligations by the undertaking and the social housing tenants (including obligations to provide information, for inspection of documents and for access to land, buildings and homes). It is also possible to enforce provisions in the notice of funding by administrative measures and, if any breaches have occurred, to set money payments on the basis that the purpose of the subsidy has been partly frustrated. In addition there may be the possibility of a (partial) cancellation of the grant together with a demand to repay funds granted. Statutory time limits are set at the outset for the term of rent and occupancy committed to in the case of early repayment of a loan or the insolvency of an undertaking

Total amount of aid granted. This includes all aid paid in your territory, including aid paid by regional and local authorities.

Based on information provided to the Federal Government by the German authorities the total aid awarded was approx. EUR 477.48 million in 2012 and EUR 516.30 million in 2013.

e) Care and social inclusion of vulnerable groups

Explanation of what kind of services in the respective sector have been defined as SGEI in your Member State. Please list the contents of the services entrusted as SGEI as clearly as possible.

The following SGEIs have been entrusted:

- Cultural and social services through support for cultural life and participation and inclusion by running a theatre on the premises of a psychiatric clinic and building and operation of a transitional care facility for the mental ill and disabled.
- Residential services for integration and measures to structure the day.

Maintenance and operation of a district youth centre.

Other SGEIs are defined by individual projects.

Explanation of the (typical) forms of entrustment. If standardized templates for entrustments are used for a certain sector, please attach them.

Entrustments are by administrative act, contracts and by-laws.

Explanation of the (typical) duration of the entrustment and the range of durations of the entrustment. Please also specify the proportion of entrustments which are longer than 10 years.

There is no typical duration. The longest duration of the entrustment does not exceed 10 years.

Explanation whether (typically) exclusive or special rights are assigned to the undertakings.

The undertakings are not given exclusive or special rights.

Explanation of the (typical) compensation mechanism as regards the respective services, including the aid instrument (direct subsidy, guarantee etc.) used and whether a methodology based on cost allocation or the net avoided cost methodology is used.

Compensation is through grants, in some cases use of a piece of land or building may be granted. Sometimes a method of cost allocation is used and sometimes only specific expenditure is funded.

Explanation of the (typical) arrangements for avoiding and repaying any overcompensation.

The position is checked on the basis of statements of expenditure (sometimes in the context of audited annual accounts) or rights of inspection.

Total amount of aid granted. This includes all aid paid in your territory, including aid paid by regional and local authorities.

Based on information provided to the Federal Government by the German authorities the total aid awarded was approx. EUR 4.1 million in 2012 and EUR 2.65 million in 2013.

f) Other social services

Explanation of what kind of services in the respective sector have been defined as SGEI in your Member State.. Please list the contents of the services entrusted as SGEI as clearly as possible.

Other entrustments were made during the reporting period that may be allocated to several categories of social service:

- i) Access to and reintegration into the employment market and care and social inclusion of vulnerable groups Projects for young people in need of support who have left school, do not have any vocational qualifications and are unemployed and beyond the reach of the support offered by the Federal Employment Agency or the providers of basic social benefits, and projects for pre-emptive employment market development (incl. the development and testing of newer, more effective ways of obtaining skilled staff and staff development, projects for promoting the transfer of knowledge between science and commerce, cross-border measures for training and continuing education, development and testing of new types of occupational initial education, practical training for particular target groups).
- ii) Health and long-term care services and childcare Establishing and providing day care places, care home places and old people's homes and operation of the necessary facilities.
- iii) Health services and long-term care, construction of social housing and other compensation payments under Article 2(1)(a) The obligation to preserve and modernise a hospital, which has stood empty for many years, is located in a central and exposed position in the middle of a town and which is of architectural and historical importance to the town, and to give it a new use (operation of a care home with dementia facilities, medical centre including dialysis and units of sheltered accommodation.)

Explanation of the (typical) forms of entrustment. If standardized templates for entrustments are used for a certain sector, please attach them.

Entrustment is by administrative act (i, ii) and by contract (iii).

Explanation of the (typical) duration of the entrustment and the range of durations of the entrustment. Please also specify the proportion of entrustments which are longer than 10 years.

The entrustment is for up to five years (i) and 20 years (ii, iii).

Explanation whether (typically) exclusive or special rights are assigned to the undertakings.

The undertakings are not given exclusive or special rights.

Explanation of the (typical) compensation mechanism as regards the respective services, including the aid instrument (direct subsidy, guarantee etc.) used and whether a methodology based on cost allocation or the net avoided cost methodology is used.

Compensation is granted through subsidies, sometimes using a method of cost allocation (i).

Explanation of the (typical) arrangements for avoiding and repaying any overcompensation.

Monitoring is by statements of expenditure (i, iii) and fixing the minimum duration of the entrustment at 20 years thereby ensuring that the grants given are used.

Total amount of aid granted. This includes all aid paid in your territory, including aid paid by regional and local authorities.

Based on information provided to the Federal Government by the German authorities the aid awarded was approx. EUR 8.29 million (i) and EUR 450 000 (ii) in 2012 and approx. EUR 14.27 (i) and EUR 50 000 (ii) in 2013. Payments are limited to EUR 5.5 million for the measure at (iii); payment will be made in 2012-2014 depending on the progress of the construction.

3) Air or maritime links to islands (Article 2(1)(d))

Based on information provided to the Federal Government by the German authorities, no aid is given under the SGEI Decision in this sector.

4) Airports and ports (Article 2(1)(e))

Explanation of what kind of services in the respective sector have been defined as SGEI in your Member State. Please list the contents of the services entrusted as SGEI as clearly as possible.

Services were entrusted in the following areas:

- Operation of a regional airport (an obligation was imposed on the airport operating company to make the airport operationally available for handling commercial aircraft –scheduled and charter flights – outside the published opening times).
- Operation of a public airport for general air traffic including the ancillary businesses associated with it, installation and operation of the appropriate buildings and outdoor areas including all associated installations.

- Planning, construction, maintenance and operation of a port with all associated services, such as loading equipment, provision of moorings, provision of infrastructure for ships at the moorings, management of the site, moving port superstructure, maintenance of coastal installations, handling port fees.

Explanation of the (typical) forms of entrustment. If standardized templates for entrustments are used for a certain sector, please attach them.

Entrustments were by administrative act (regional airport; public airport) and by council decision and administrative act (ports).

Explanation of the (typical) duration of the entrustment and the range of durations of the entrustment. Please also specify the proportion of entrustments which are longer than 10 years.

The duration of the entrustments is 6 years (regional airport), 1 year (public airport) and 10 and 20 years (ports).

Explanation whether (typically) exclusive or special rights are assigned to the undertakings.

The undertakings were granted exclusive rights in relation to the planning, construction, maintenance and operation of the ports and all associated services. Otherwise the undertakings were not granted exclusive or special rights.

Explanation of the (typical) compensation mechanism as regards the respective services, including the aid instrument (direct subsidy, guarantee etc.) used and whether a methodology based on cost allocation or the net avoided cost methodology is used.

Compensation is given by means of grants generally based on a method of cost allocation.

Explanation of the (typical) arrangements for avoiding and repaying any overcompensation.

- Regional airport: The authorisation notice provided, in accordance with budgetary rules, that the support should be reduced by the full amount concerned if after authorisation the expenditure diminished or new funds became available to cover it. These provisions ensure that no overcompensation arises and any overcompensation is repaid.
- Public airport: Grants are made on the condition that there is no overcompensation. Overcompensation is defined as anything above the amount needed to cover the expenses of the recipient of the SGEI grant taking account of the earnings obtained. If overcompensation is found it must generally be paid back. The sums should be shown as liabilities. If the overcompensation is not more than 10 % of the average

compensation it can be carried forward to the subsequent funding period and be deducted from the compensation payable for this period. Overcompensation in any given year may be allocated to the capital reserves up to the level of the capital requirement needed for compliance with the SGEI.

- Ports: There should be separate invoices for the public service obligations underlying the entrustment and the areas not covered by it; if the overcompensation does not exceed 10 % of the compensation payment it may be carried forward to the subsequent year; otherwise it must be repaid. The parameters may be adjusted where necessary.

Total amount of aid granted. This includes all aid paid in your territory, including aid paid by regional and local authorities.

Based on information provided to the Federal Government by the German authorities the aid awarded in 2012 was EUR 500 000 (regional airport), EUR 146 250 (public airport) and EUR 1 418 032 (ports), and in 2013 it was EUR 500 000 (regional airport), EUR 249 808 (public airport) and EUR 1 936 922 (ports).

5) Other SGEI compensation not exceeding EUR 15 million per year (Art. 2(1)(a))

Explanation of what kind of services in the respective sector have been defined as SGEI in your Member State. Please list the contents of the services entrusted as SGEI as clearly as possible.

Based on information provided to the Federal Government by the German authorities, entrustments were made in the following areas:

- Support for economic development (incl. marketing the location, advice and assistance to the local economy and planning and measures to improve the business location, business parks and industrial estates, activities beneficial to business start-ups, support for linking the academic and business worlds, holding exhibitions, meetings and fairs and setting up and operation of appropriate buildings and outdoor spaces).
- Support for technology (incl. advice and assistance to technology start-ups and spin-offs, support for networking activities in the technology area, support for the dissemination of technological knowledge, especially horizontal technologies, meetings and fairs, operation of appropriate buildings and outside spaces such as clean rooms, laboratories and technology parks).

- Support for tourism (incl. marketing, operation of tourist facilities, placement of tourist services, construction and operation of spa facilities, putting on exhibitions, meetings and conferences).
- Cultural facilities (incl. construction, restoration and modernisation and operation of various facilities, e.g. museums, theatres, concert halls and orchestras).
- Swimming pools (e.g. operation of indoor and outdoor pools, provision of space for sports swimming for schools and clubs).
- Promoting grassroots and competitive sport.
- Education (incl. cultural education at affordable prices, running music schools and adult evening classes).
- Zoos (incl. operation, educational activities, scientific research, communication of scientific findings, protection of species, displaying animals at reasonable prices [from a socio political point of view]).
- Nature conservation and care of the countryside (incl. measures for conservation, protection, care and restoration of natural living conditions for wild animals and plants, informing the public about the importance of and how nature and agriculture work and promoting an understanding of our responsibility for the environment).
- Social centres (various individual projects).
- Management of parking places (incl. provision and operation of parking facilities that do not cover their costs such as car parks, multi-storey car parks and underground car parks).
- Energy advice and energy management (regional support for rational energy use and provision and use of renewable energies, exploitation and utilisation of demand-side management potentials).
- Supply of land for public and agricultural structure purposes.
- Employment promotion (incl. creation of additional jobs in the public interest for older, long-term unemployed people who are able to work to restore or maintain their ability to work or for the purposes of social integration).
- Emergency services (operation of the control centre).

- Broadband roll-out (incl. establishment of a next generation access network).
- Measures in the area of energy and water supply, sewage disposal, waste management and urban development.

Explanation of the (typical) forms of entrustment. If standardized templates for entrustments are used for a certain sector, please attach them.

Entrustment is typically by means of administrative act and by council decision, by contract or by-laws and supervisory board or shareholders' resolution.

Explanation of the (typical) duration of the entrustment and the range of durations of the entrustment. Please also specify the proportion of entrustments which are longer than 10 years.

There is no typical duration. It is exceptional for an entrustment to last more than 10 years.

Explanation whether (typically) exclusive or special rights are assigned to the undertakings.

Generally the undertakings are not given exclusive or special rights.

Explanation of the (typical) compensation mechanism as regards the respective services, including the aid instrument (direct subsidy, guarantee etc.) used and whether a methodology based on cost allocation or the net avoided cost methodology is used.

Compensation is typically through subsidies, less usually through loans and guarantees; generally a method of cost allocation is used.

Explanation of the (typical) arrangements for avoiding and repaying any overcompensation.

The position is typically checked on the basis of statements of expenditure, often in the context of audited annual accounts.

Total amount of aid granted. This includes all aid paid in your territory, including aid paid by regional and local authorities.

Based on information provided to the Federal Government by the German authorities the total aid awarded was approx. EUR 139.87 million in 2012 and EUR 220.18 million in 2013; some supporting evidence is still outstanding for 2013.

6) SGEI compensation under the Framework

We refer to the attached points in relation to Commission Decision NN 8/2009 of 2.7.2009.

2. Complaints by third parties

There was a representative action by private hospital operators against the District of Calw (Regional Court of Tübingen, File no: 5 O 72/13). The Regional Court of Tübingen expressed no concern about the subsidies for the municipal hospitals on the basis of the Entrustment Act [Betrauungsakte] and the proceedings will now be heard at the higher instance by the Higher Regional Court of Stuttgart.