

REPORT
ON STATE AID GRANTED IN COMPENSATION FOR
SERVICES OF GENERAL ECONOMIC INTEREST (SGEI) IN ROMANIA
during the period 2012–2013

1. CONDITIONS OF THE FUNCTIONING OF SGEIs AND THEIR LEGAL BASIS

1.1. The legal bases for establishing SGEIs in Romania

The unitary legal framework for establishing, organising, monitoring and checking the functioning of communal services in counties, towns and villages is provided for by **Law No 51 on communal public services, adopted on 8 March 2006¹**.

Law No 51/2006, as amended subsequently, defines communal public services as the entire set of regulated actions and activities through which the need for utilities and the general public interests of local communities are catered for, regarding the following:

- drinking water supply;
- sewage removal and waste water treatment;
- collection and removal of rainwater;
- production, transportation, distribution and supply of thermal energy in centralised systems;
- sanitation of settlements (removal and treatment of solid waste);
- public street lighting;
- the management of private and public property belonging to local administrative divisions;
- urban public transport.

1.2. The competencies of public authorities

Local public authorities or, alternatively, micro-regional development associations established by several municipalities in order to render public services and entrusted with the provision of such services by the decision-making bodies of the local administrative divisions forming the association are in charge of public services. Public services are established, organised and managed according to law and to the decisions adopted by the decision-making bodies of local administrative divisions, depending on the level of urban development and the socio-economic importance of the respective settlements as well as on the level of their economic development and the extant technical and urban infrastructure.

The details on the establishment, organisation, development, financing, functioning and management of each public service are laid down in special laws and other regulations

¹ Published in the *Official Journal of Romania* No 254 issued on 21 March 2006. The Law was subsequently amended by Government Emergency Decision No 13/2008 published in the *Official Journal of Romania* No 145 issued on 26 February 2008 and Law No 204/2012 published in the *Official Journal of Romania* No 791 issued on 26 November 2012.

concerning the respective sectors, adopted either by Government Decisions or decisions issued by the competent regulatory authorities.

Public services are provided/rendered by operators or regional operators. These operators may enjoy one of the legal statuses listed below:

- a) functional departments that are no juridical persons and are organised within the structure of the specialised system of the mayor or the county council;
- b) local or, alternatively, county-level public services, which are no juridical persons and are established and organised in accordance with decisions adopted by the decision-making bodies of the respective local administrative divisions;
- c) local or, alternatively, county level public services, which are juridical persons and are established and organised in accordance with decisions adopted by the decision-making bodies of the respective local administrative divisions;
- d) companies regulated by Law No 31/1990² on commercial companies, as amended and republished later, if their share capital is owned entirely by the respective local administrative divisions;
- e) privately owned companies regulated by Law No 31/1990 on commercial companies, as amended and republished subsequently;
- f) companies regulated by Law No 31/1990 on commercial companies, as amended and republished subsequently, if they are mixed capital entities – i.e., their capital is in part privately owned and in part owned by the state or a certain public body.

These services must fulfil the following **essential requirements**:

- they must be of a universal nature;
- they must ensure a constant level of provision both with respect to quantity and quality, under regulated contractual terms;
- they must be adaptable to users' needs and manageable in the long term;
- they must be offered on a non-discriminatory basis and provide equal access to all potential users, under regulated contractual terms;
- they must ensure transparent decision-making and the protection of users.

Local (governmental) public authorities decide, among other things, **on**:

- associating with other communities in order to **establish, organise, manage and operate** various public services in the common interest, as well as in order to finance and realise various facilities that are required as investments by these services;
- **choosing the method of managing these public services as well as entrusting various entities with the management of publicly or privately owned goods** pertaining to public utility systems and **belonging to local administrative divisions, by means of public service contracts or concession contracts**;
- **following-up, monitoring and reporting on the performance indicators as well as applying the methodology of comparing these indicators** by contrasting them with the performances of the best operator rendering the specific public service in question;
- **participating in subscribing the share capital** of certain commercial companies providing/rendering public services on a local, micro-regional or county level;
- **contracting loans or offering financial guarantees** for the purpose of financing investment programmes;
- **setting, adjusting, modifying and approving the prices**, fees and special taxes, in accordance with the methodological norms which have been elaborated and approved by regulatory authorities.

² Republished in the *Official Journal of Romania* No 1066/2004.

1.3. The regulatory authorities

Pursuant to the provisions of Law No 51/2006, as amended subsequently, the competent regulatory authorities are: the *National Regulatory Authority of Local Public Services* (hereinafter: ANRSC), the *National Energy Regulating Authority* (hereinafter: ANRE) and the *Romanian Road Transport Authority* (hereinafter: ARR).

The ANRSC is the competent regulatory authority in what concerns the following services:

- a) drinking water supply;
- b) sewage removal and waste water treatment;
- c) collection and removal of rainwater;
- d) sanitation of settlements (removal and treatment of solid waste);
- e) public street lighting;
- f) the management of private and public property belonging to local administrative divisions;
- g) urban public transport, in accordance with the competencies established by the applicable special law.

The ANRSC issues licences, elaborates methodologies and framework regulations for the public services covered by its regulatory scope and for the market of similar services, and monitors the manner of observing and implementing legislation applicable to the respective services.

The production, transportation, distribution and supply of thermal energy are licensed, regulated and monitored by the ANRE.

The ARR is the competent regulatory authority for urban public transport. It elaborates methodologies as well as framework regulations regarding the public transport of passengers, issues transport licences and monitors the manner in which operators observe applicable legislation regarding road transport and the requirements laid down in transport licences.

1.4. The method of managing public services and entrusting various entities with their performance

There are two methods of organising and providing public services:

- a) through direct management,
- b) through delegated management.

The method of managing public services must be established by decisions of local (governmental) public authorities depending on the nature and state of the service, the need to ensure the best price-quality ratio, the current interests and prospects of local government authorities as well as the size and complexity of the public utility systems.

The activities, which are specific to each particular public service, irrespective of the chosen method of management, are performed on the basis of specific regulations and a technical description regarding the service. These are elaborated and approved by local (governmental) public authorities in accordance with the framework regulation and the framework technical requirements concerning the service. In the case of micro-regional development associations established in order to render public services, the association elaborates the specific regulations and the technical description. Next, the association asks for the opinions formulated by the

decision-making bodies of the local administrative divisions forming the association. Finally, the association's general assembly approves these documents.

The public utility systems used for providing/rendering public services can be:

- a) in the case of direct management, **entrusted to operators by means of public service contracts** on the basis of contract(ing-out) decisions;
- b) in the case of delegated management, **entrusted to operators/regional operators by means of concession contracts** according to law and on the basis of concession decisions and services management delegation contracts.

Direct management is the method by which local (governmental) public authorities assume and perform directly all the tasks and competencies in what concerns the provision/rendering of public services, that is, the management, operation and use of the pertaining public utility systems.

Operators governed by public law and established as part of local government authorities (i.e., as structures of local government), through which direct management is being carried out, may be:

- functional departments that are no juridical persons and are organised within the structure of the specialised system of the local government authorities;
- local or county-level public services, which are no juridical persons, and are established and organised in accordance with decisions adopted by local government authorities;
- local or county-level public services, which are juridical persons and are established and organised in accordance with decisions adopted by local government authorities.

These operators perform their activities on the basis of entrusting decisions (adopted by local government authorities) regarding the service itself and the pertaining public utility systems, as well as licences issued by the competent regulatory authority.

Delegated management is the method by which local (governmental) public authorities (or, alternatively, micro-regional development associations) transfer to one or more operators all their tasks and competencies in what concerns the provision/rendering of public services, or just a certain part thereof, while they also concede to this/these operator(s) the pertaining public utility systems as well as the rights and obligations to manage and operate the latter, on the basis of a contract called management delegation contract. These contracts must be approved by **entrusting decisions adopted by local government authorities**.

In the case of delegated management, local government authorities keep their competencies of adopting development strategies and policies concerning public services, while still having to discharge their duties of supervising, following-up and monitoring the manner of service performance, including:

- the fulfilment of contractual obligations,
- the quality of the services provided/rendered,
- the performance indicators of services,
- the manner of managing and operating public utility systems as well as the preservation and maintenance of their functionality, level of development and technical modernity,
- the manner of computing, setting, modifying and adjusting prices and fees.

Delegated management is carried out involving operators or regional operators³ governed by private law. These may be:

³ A regional operator is a commercial company, with its share capital owned entirely by the local administrative divisions forming a micro-regional development association established in order to render public services pursuant to a decision adopted by the decision-making bodies of the respective divisions.

- commercial companies with their share capital owned entirely by local (governmental) public authorities;
- commercial companies established as a consequence of reorganising certain local or county level autonomous operators (*regie autonomă*) or public services, in case of which the local (governmental) public authority is the sole member or shareholder;
- privately owned commercial companies;
- commercial companies functioning as mixed capital entities.

The above operators provide/render public services by operating and managing the pertaining technical and urban infrastructure, on the basis of management delegation contracts and licences issued by the competent regulatory authority.

The delegation contract may be awarded by the following procedures: **the direct award procedure, the open procedure and the competitive dialogue procedure**.

The direct award procedure may be used in the case of:

- regional operators established by local (governmental) public authorities forming a micro-regional development association⁴ established in order to render public services;
- operators functioning as commercial companies established by reorganising local/county level autonomous operators (*regie autonomă*) or local/county level public services.

The management delegation contract is a written agreement by which the local administrative divisions, either individually or jointly – as grantor(s) – transfer(s) for a specified period of time, to a licensed operator – as grantee, who acts at its own risk and on its own responsibility – its/their rights and obligations to provide/render a public service or, alternatively, only certain specific activities pertaining to such a service, including its/their rights and obligations to operate and manage the technical and urban infrastructure pertaining to the service or activity that is being provided/rendered or performed. In certain cases, the grantor may be entitled to a royalty fee. The management delegation contract has the same legal status as administrative acts generally and, thus, is governed by Law No 554/2004⁵, as amended later.

The management delegation contract on the provision of public services may be:

- a) a concession contract;
- b) a contract establishing a public private partnership.

The management delegation contract comprises the following mandatory elements:

- a) the names of the contracting parties;
- b) the object of the contract;
- c) the duration of the contract;
- d) the rights and obligations of the parties;
- e) the schedule of investment works targeting either the refurbishment, modernisation and development or the maintenance, current/planned repairs and refurbishment of extant capacities as well as the creation of new facilities both in terms of their physical shape and their financial value;
- f) the tasks and responsibilities of the parties regarding refurbishment or investment programmes as well as repair and refurbishment programmes, including the conditions regarding the financing of such programmes;

⁴ Micro-regional development associations are cooperation structures, which are juridical persons governed by private law and are established according to law by certain local administrative divisions in order to either complete jointly various development projects that are of micro-regional or regional interest or provide jointly certain public services.

⁵ The Law on administrative courts, published in the *Official Journal of Romania* No 1154/2004.

- g) the performance indicators concerning the quantity and the quality of the rendered service, as laid down in the technical specifications and the specific regulations of the respective service as well as the manner of evaluating and quantifying the indicators in questions together with various requirements and guarantees;
- h) the fees for service, including the procedure of setting, modifying and adjusting thereof;
- i) the manner of setting the fees and receiving the ensuing payments for the provided/rendered services;
- j) the value of the royalty fee or, alternatively, of other payments to be made to the grantor;
- k) the contractual liability;
- l) the *force majeure*;
- m) the conditions under which the terms of the contract may be redefined;
- n) the conditions under which the goods, including the investments that have been completed, shall be returned to the grantor or shared between the grantor and the grantee, in case of termination of the management delegation contract for any possible reason;
- o) the (manner of keeping the) contractual balance;
- p) the conditions under which the management delegation contract shall/may be terminated;
- q) the conditions regarding the management of the entrusted public or private property;
- r) the structure of the employed workforce and the pertaining measures of social protection;
- s) other terms, which the parties (if necessary) have mutually agreed.

Government Decision No 717 issued on 2 July 2008⁶ (Annex No 1) approved the Framework procedure of organising, awarding and performing management delegation contracts on public services, the Framework regarding the selection criteria concerning offers of public services provision and the Framework agreement on management delegation of local public services.

The Framework agreement on management delegation of local public services is presented in Annex No 2. Local public authorities shall elaborate the documentation on the procedure of awarding management delegation contracts on local public services, using the annexed template.

1.5. The legal status of the goods pertaining to public utility systems

The publicly and/or privately owned goods (pertaining to public utility systems and) belonging to local administrative divisions may be:

- in the case of direct management, entrusted to operators for management and operation purposes on the basis of entrusting decisions;
- in the case of delegated management, conceded to operators on the basis of entrusting decisions and management delegation contracts.

The publicly owned goods pertaining to public utility systems shall be specified separately, apart from the usual bookkeeping, irrespective of the method of management or organisation, type of property, character of share capital and nationality of operators.

The publicly owned goods (pertaining to public utility systems and) belonging to local administrative divisions shall be used neither as contribution in kind to the share capital of commercial companies established by these units, nor as collaterals for contracting bank loans, because the property rights thereof cannot be transferred to other persons; moreover, these can be acquired neither as a result of long-term possession in good faith nor by creditors as compensation for unpaid debts.

⁶ Published in the *Official Journal of Romania* No 546/2008

The privately owned goods belonging to local administrative divisions, which are being used for the provision of public services **may be entrusted or conceded to other persons as well as transferred to the operators, if applicable statutory regulations are being observed.**

In the case of delegated management, **the goods created by the operators in accordance with the investment programmes provided for in the management delegation contracts are goods that should be returned by right – at the termination of the contract –, free of charge and not subject to mortgage to local public authorities. These will be regarded later as their publicly owned goods.**

1.6. Obligations regarding separate bookkeeping

If a certain operator provides/renderers several types of public services on the territory of the same municipality or the same service on the territory of several municipalities, **it must keep separate books on each and every activity, meaning a separate bookkeeping for each and every type of service or, alternatively, each and every settlement of operation allowing in this manner the easy evaluation, monitoring and checking of its activities in various sectors and municipalities pursuant to article 35 of Law No 51/2006 on local public services.**

1.7. Obligations regarding data storage

Pursuant to the provisions of the Regulation concerning monitoring procedures of State aid⁷, *‘the data, information and documents on granting/obtaining State aid shall be kept for 10 (ten) years from the date when the aid has been granted/obtained’.*

In what regards the period 2012-2013, State aid granted in compensation for the performance of services of general economic interest (SGEI) in Romania **constituted State aid exempted from notification, awarded through State aid schemes initiated – before the commencement of the period subjected to the reporting exercise – in accordance with the provisions of Commission Decision 2005/842/EC of 28 November 2005.**

The awarded compensation for **the services** listed below was governed by the provisions of Commission Decision 2005/842/EC of 28 November 2005, by the date when these schemes or measures have been initiated. Thus, these services were exempted from notification. The services themselves are:

- the provision of thermal energy,
- services linked to the main activities of regional airports
- and
- naval transport services on inland waterways.

In what concerns the period subjected to the reporting exercise – i.e., 2012-2013 –, **no compensations for SGEIs covered by the scope of application of the SGEI Framework have been identified.**

⁷ Approved by Order No 175/2007 of the Competition Council’s President.

2. SGEI IN THE FIELD OF THERMAL ENERGY

2.1. The legal basis

Thermal energy supply services are being offered in Romania in centralised systems using heating plants and combined heat and power (CHP) plants providing thermal energy for a town, a town area or a city district.

The specific activity of thermal energy supply services used for heating and hot water supply; that is, the production, transportation, distribution and supply of thermal energy in centralised systems is regulated by the provisions of **Law No 325/2006 on the public service of supplying thermal energy**⁸, as amended later, and of **Government Decision No 36/2006 on introducing local reference prices for the thermal energy provided to the population through centralised systems**⁹.

The thermal energy supply service in centralised systems is provided by using the technical and urban infrastructure extant as publicly or privately owned goods belonging to local public authorities or to micro-regional development associations and making up the centralised system of thermal energy supply pertaining either to the settlement or to the micro-regional development association.

The Ministry of Administration and Internal Affairs in cooperation with the Ministry of Public Finances elaborates **the policy regarding the field of thermal energy supply services**. This policy is an integral part of the country's energy policy.

The Ministry of Labour, Family, Social Protection and the Elderly in cooperation with the Ministry of Administration and Internal Affairs elaborates **the social protection policy** regarding the field of thermal energy supply services.

2.2. The competencies of public authorities

In order to ensure the continuous operation of thermal energy supply services, local (governmental) public authorities shall perform the following tasks:

- a) ensure the continuous operation of thermal energy supply services on the level of local administrative divisions;
- b) elaborate their own annual thermal energy programmes;
- c) establish an energy department as part of their own apparatus;
- d) approve the proposals submitted by service providers regarding the local price of thermal energy;
- e) approve the local price charged to the population;
- f) approve the development, modernisation and metering programme regarding the centralised system of thermal energy supply;
- g) elaborate various studies on the local potential of renewable energy sources and the feasibility studies on the exploitation of this potential;
- h) monitor the thermal energy supply services;

⁸ Published in the *Official Journal of Romania* No 651, issued on 27 July 2006.

⁹ Published in the *Official Journal of Romania* No 692 issued on 14 August 2006 (and ratified by Law No 483/2006) as well as amended later by the provisions of Government Emergency Decisions No 69/2011 and No 56/2012.

- i) define the unitary areas of heating;
- j) monitor the manner how protection and safety areas are defined within the centralised system of thermal energy supply;
- k) elaborate and approve the metering programme.

Local (governmental) public authorities, as owners, entrusting the service provider, for a specified period of time, with the right and obligation to operate the centralised system of thermal energy supply and the service itself, **are entitled to check the goods and the manner of services provision, the stage and the degree of completion of investments as well as the degree of correspondence of performance standards to the objectives set forth in the licences and permits that are specific to this activity.**

The involved local government authorities issue administrative acts by which they stipulate for each and every economic operator producing, transporting, distributing and supplying thermal energy the following:

- a) the nature and the scope of obligations linked to the provision of the public service;
- b) the name of the economic operator and the territory covered by it;
- c) the nature of the special or exclusive rights/privileges bestowed on the respective economic operator;
- d) the parameters used for computing the amount of compensations awarded to and the reasonable profit obtained by economic operators providing this public service;
- e) the arrangements for repaying overcompensations and the intervention measures to be adopted by the authority in case of undercompensations.

The parameters used for computing the amount of compensations shall be defined by an administrative act, in an objective and transparent manner. The parameters shall be identical for all undertakings fulfilling identical services provision obligations.

2.3. The duties of economic operators

The operators providing the services shall discharge, in principle, the following obligations:

- observe the provisions of the licence, the technical description and the management delegation contract;
- ensure the continuity of the service;
- attain the approved performance indicators;
- ensure total transparency in what regards the invoicing of the rendered services;
- to elaborate annually and follow the balance of thermal energy pertaining to all activities listed in the licence;
- to ensure the safety of the thermal energy supply service;
- to provide non-discriminatory access to the thermal energy network for all users who request to be connected;
- to keep separate books for each and every specific, regulated activity pertaining to the thermal energy supply service;
- to make sure that the necessary amount of fuel and spare parts required by the continuous operation of the service are available.

2.4. Prices and fees for thermal energy provision

The involved local governments shall approve **the local prices of selling thermal energy to the population**. Local public authorities may approve lower local prices as compared to the **costs of the thermal energy produced, transported, distributed and supplied to the population**.

If local public authorities approved lower local prices for the thermal energy sold to the population as compared to the costs of the thermal energy produced, transported, distributed and supplied to them, they shall cover from the local budget the difference between the costs of the thermal energy produced, transported, distributed and supplied to the population and the local price of the thermal energy sold to the population.

The local price of the thermal energy sold to the population is the price of the thermal energy supplied and invoiced to the population via the centralised supply systems and approved by a decision adopted by local government authorities or the micro-regional development association.

The sums awarded to economic operators rendering the services of production, transportation, distribution and supply of thermal energy to the population, which are subordinated to local (governmental) public authorities, shall be used exclusively for compensating the difference in costs occurring as a result of providing these services. The amount of compensation shall not exceed the amount needed to totally or partially compensate the costs of discharging the obligations of rendering the service of general economic interest, taking into account the relevant taxes that are due and a reasonable profit.

The local reference prices for the thermal energy provided to the population via centralised systems for heating and hot water supply have been established by Government Decision No 36 issued on 2 August 2006¹⁰ *on certain measures concerning the functioning of centralised systems providing thermal energy for the population*.

The involved local governments shall approve the local prices of selling thermal energy to the population. Local public authorities may approve lower local prices as compared to the costs of the thermal energy produced, transported, distributed and supplied to the population. If local public authorities approved lower local prices for the thermal energy sold to the population as compared to the costs of the thermal energy produced, transported, distributed and supplied to them, they shall cover from the local budget the difference between the costs of the thermal energy produced, transported, distributed and supplied to the population and the local price of the thermal energy sold to the population.

The State aid scheme offered to economic operators rendering the service of general economic interest consisting of the production, transportation, distribution and supply of thermal energy in a centralised system to the population, initiated by Joint Decision No 252/2917/2009 issued by the Ministry of Administration and Internal Affairs and the Ministry of Public Finances¹¹ was elaborated on the basis of Government Decision No 36/2006, as amended later, and Government Emergency Decision No 110/2009 on granting State aid to economic operators providing the service of general economic interest consisting of the production, transportation, distribution and supply of thermal energy to the population through a centralised system¹². The scheme has also been elaborated in accordance with the provisions of Commission Decision 2005/842/EC of 28 November 2005.

The State aid scheme ensures the compensation of the costs incurred by operators, which render at least one of the components of the service of general economic interest; that is, the production, transportation, distribution or supply of thermal energy in a centralised system.

¹⁰ As amended by the provisions of Government Decisions No 13/2009 and 69/2011.

¹¹ Published in the *Official Journal of Romania* No 715 issued on 23 October 2009 and amended by Decisions No 200/2010 and 261/2010 of the Ministry of Administration and Internal Affairs.

¹² Published in the *Official Journal of Romania* No 685, issued on 12 October 2009.

The scheme grants State aid using one of the measures delineated below:

- allocation from the state budget, through the budget of the Ministry of Administration and Internal Affairs (hereinafter: MAIA), to local budgets and then to undertakings actually rendering the SGEI of sums amounting to maximum 45 % of the costs of the own fuel used for producing thermal energy supplied to the population;
- allocation from the local budgets of certain sums covering the entire difference between the costs of the thermal energy produced, transported, distributed and supplied to the population and the local price of the thermal energy sold to the population;
- allocation from the local budgets of certain sums covering the losses that were not accepted as component parts of the price/fee, but were incurred with the production, transportation, distribution and supply of thermal energy to the population through a centralised system;
- allocation from the Budgetary Reserve Fund of the Government, through local budgets of certain sums for partly covering the payments to be made by economic operators to providers of natural gas and coal, including the transportation costs thereof;
- allocation from the state budget, through the budget of the MAIA of certain sums for covering the arrears to the National Lignite Company 'Oltenia' PLC – Târgu Jiu and the National Rail Freight Company 'CFR Marfă'.

The State aid awarded using the first two measures intends to cover the difference between the costs of the thermal energy produced, transported, distributed and supplied to the population – set by the regulatory authority – and the local price of the thermal energy sold to the population – approved by the decision of the local council; whereas the State aid awarded using the last three measures intends to cover all the costs incurred with the provision of the service of general economic interest.

The State aid scheme shall be applied during the period between 2009 and 2015. The estimated total sum of the State aid awarded through this scheme amounts to 11 221 556 35 (eleven billion two hundred twenty-one million five hundred fifty-six thousand and seven hundred thirty-five) Romanian Lei.

The estimated number of beneficiaries to this scheme is maximum **85 (eighty-five) economic operators**.

During October 2011, the provisions of Emergency Government Decision No 69 issued on 31 August 2011, amending Government Decision No 36/2006 – and **eliminating the subsidy paid from the (central) state budget** for compensating unforeseen price increases of fuels used for producing thermal energy supplied to the population via centralised systems – entered into force. Practically, the compensation of costs incurred with the production, transportation, distribution and supply of thermal energy to the population via a centralised system is being covered, after this date, solely from local budgets administered by local government authorities.

The amount of compensation granted, during the period 2012-2013, to each and every beneficiary (economic operator) for rendering the public service consisting of the production, transportation, distribution and supply of thermal energy to the population via a centralised system is shown in the table annexed to the present report.

3. REGIONAL AIRPORTS

3.1. The legal basis

During the year 1997, the majority of the autonomous airport operations of national importance, having particular purposes were transferred from the Ministry of Transport **to county councils and relabelled autonomous airport operations of local importance, having particular purposes** (*Government Decision No 398/1997 on transferring certain autonomous airport operations from the Ministry of Transport to county councils*¹³).

Transferring the competencies of regional importance airports exercised by the Ministry of Transport to county level public authorities facilitated the correlation of the requirements of territorial development with the degree of modernisation and development of air transport activities.

Later, by adopting **Emergency Government Decision No 61/2011**¹⁴ (hereinafter: **EGD No 61/2011**) *on adopting certain measures for the financing of autonomous airport operations of local importance, having particular purposes*, the legal framework necessary for county councils to designate undertakings performing services of general economic interest has been created. The actual designation was done later pursuant to Commission Decision 2005/842/EC, as one can deduce from articles 3 and 4 of the said Emergency Government Decision.

EGD No 61/2011 represents the manner in which the Romanian state construed the form of the official acts referred to in the Commission Decision, which finally took shape as **decisions made by County Councils**. This piece of statutory regulation, enhanced the possibilities of financing various expenses made by regional airports – namely, investment expenses linked to surfaces for moving airplanes and ancillary equipment – allowing, hence, these airports the access to non-reimbursable external funding available for this sector. Similarly, various provisions have been adopted in order to make sure that local authorities, to which the managements of these regional airports are subordinated, observe European regulations on State aid when funding from local budgets are allocated for financing these airports.

Thus, the requirements, which must be met, when the management of an airport is entrusted with the provision of a SGEI are observed. These requirements can also be found in Commission Decision 2005/842/EC *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*.

EGD No 61/2011 was amended by the provisions of Emergency Government Decision No 107/2013 (hereinafter: EGD No 107/2013) in order to allow the financing of airports of local importance from the state budget, too; through the budget of the Ministry of Transport, taking into account the need for creating the legal framework that would allow the supplementing of financing sources for investments to be made concerning the public property administered by autonomous airport operations of local importance, bearing in mind also their role in what concerns regional development.

¹³ Published in the *Official Journal of Romania* No 186/1997.

¹⁴ Published in the *Official Journal of Romania* No 460/2011.

In the meantime, the amendments that have been adopted, also stipulated that it is mandatory to observe Commission Decision No 2012/21/EU of 20 December 2011 on granting State aid to regional airports.

3.2. Performing the specific activities of regional airports

The provisions of EGD No 61/2011 amended by EGD No 107/2013 allowed county councils to entrust autonomous airport operations of local importance, having particular purposes to provide services of general economic interest, while meeting the specific requirements laid down in Commission Decision No 2012/21/EU of 20 December 2011.

The responsibility to make sure that a service of general economic interest, which will be entrusted to an autonomous airport operation of local importance, having particular purposes complies with the specific, applicable European regulation falls upon the county council to which the respective autonomous operation is subordinated.

The decision of the county council by which the operation of the service of general economic interest is entrusted to another entity shall comprise the following mandatory elements:

- a) the data used for identifying the respective autonomous airport operation of local importance, having particular purposes – including the territory served by it;
- b) the content and duration of public service obligations;
- c) the nature of the special or exclusive rights/privileges bestowed on the respective operation by the competent authority;
- d) a description of the compensation mechanism and the parameters used for computing, monitoring and re-evaluating the amount of compensations;
- e) the arrangements for avoiding and repaying any overcompensations;
- f) a reference to Commission Decision No 2012/21/EU of 20 December 2011.

Taking into account the fact that the said Commission Decision comprises apart from explicit provisions on the activities, which can be regarded as SGEIs, also the methods of computing the compensations for discharging the obligations of public service, the Romanian statutory regulation mentioned above states that the methods of computing the compensations for discharging the obligations of public service by the respective autonomous operators are specified in Commission Decision No 2012/21/EU.

Article 8 of the same Romanian statutory regulation stipulates that the functions pertaining to services of general economic interest should not cover, as a rule, commercial activities which are not directly linked to the basic activities of the airport; that is, the construction, financing as well as use and/or renting of land and buildings, not only for offices and storage but also for hotels and industrial enterprises located within the airport perimeter, as well as for shops, restaurants and car parks.

During the period in which an autonomous airport operation of local importance, having particular purposes, receives compensation for discharging various obligations of public service, the airport fees charged by it shall be approved by the county council, to which the respective autonomous operation is subordinated. These fees shall be applied in a transparent and non-discriminatory manner to all users of airport infrastructure.

If autonomous airport operations of local importance, having particular purposes, entrusted with the provision of services of general economic interest and receiving compensation for

discharging various obligations of public service, also perform other economic activities, which are not related to the entrusted service; they shall **keep separate books** for the purposes of activities pertaining to the field of the service of general economic interest.

The compensations granted by county councils for providing services of general economic interest by airport operations, during the analysed period, together with information on the operation of the respective services are presented in the annexes to the present report, corresponding to the airports in question.

4. NAVAL TRANSPORT SERVICES

4.1. The legal basis

The legal framework on establishing, licensing, organising, operating, managing, financing and monitoring the operation of local public transport in communes, townships, cities, counties and areas controlled by micro-regional development associations has been laid down in Law No 92/2007 on local public transport services, as amended later.

4.2. Organising and operating local public transport services for passengers

Local public transport services for passengers shall be organised by local (governmental) public authorities in the area of their local administrative jurisdiction, taking account of the following principles:

- promoting the competition among transport operators;
- providing equal and non-discriminatory access for all transport operators to the market of local public transport;
- guaranteeing the rights and interests of the users of local public transport services;
- solving the economic, social and environmental problems of municipalities and counties;
- efficient administering of the goods belonging to the transport systems owned by authorities of territorial administration;
- efficient use of public funding for the purposes of managing and operating local public transport services;
- safe and comfortable transportation;
- charging of reasonable, bearable fees;
- the total recovery – from revenues and subsidies obtained from local budgets – of the costs incurred with the operation, refurbishment and development of the system, while also ensuring a reasonable profit for the operators;
- the autonomy or financial independence of transport operators;
- promoting the development of settlements through creating a modern infrastructure;
- prioritising the population's needs for transportation;
- the protection of underprivileged social categories.

If in the case of a certain local public transportation service, a given category or several categories of persons enjoy various facilitations, the respective local public transportation service shall be regarded as a subsidised local public transportation service.

Local public, naval transportation services using inland waterways shall also be regarded as a subsidised local public transportation services.

The local public, naval transportation service of passengers using inland waterways may be provided in the form trades along shipping lanes, regarded as subsidised local public transportation services, as well as occasional transport services.

4.3. Subsidising local public transport services

Pursuant to the provisions of the republished Government Decision No 97/1999¹⁵, on guaranteeing the provision of subsidised domestic road transport and naval transport services on inland waterways, subsidised domestic road transport or naval transport services on inland waterways may be provided in order to cater to various economic, social and environmental needs or offer various facilitations to people belonging to underprivileged categories or living in remote, underprivileged areas.

Subsidised local public transportation services require separate bookkeeping.

4.4. Local public transportation services of passengers on inland waterways (rivers and canals)

Local public transportation services of passengers on inland waterways (rivers and canals) is provided by 2 (two) companies and links various settlements in the Danube Delta with the larger township, Tulcea.

In the case of one of these companies (which is a mixed capital entity), the Ministry of Transport, according to the opinion formulated by the Ministry of Public Finance, sets the price. The sums allocated from the state budget for covering the differences stemming from the lower fees paid by passengers were:

- 7 971 000 (seven million nine hundred seventy-one thousand) Romanian Lei in 2012,
- 7 971 000 (seven million nine hundred seventy-one thousand) Romanian Lei in 2013.

The company provided subsidised naval transport services for:

- 101 037 passengers in 2012,
- 119 160 passengers in 2013.

In the case of the second company (where the majority shareholder is the local government), the compensation for providing this service – that is, transporting passengers with the barge on the lane linking Tulcea with the commune Tudor Vladimirescu – is granted by the local government from the local budget.

The sums allocated from the local budget were:

- 239 870 (two hundred thirty-nine thousand eight hundred seventy) Romanian Lei in 2012,
- 285 340 (two hundred eighty-five thousand three hundred forty) Romanian Lei in 2013.

The number of people transported annually was:

- 187 626 passengers in 2012,
- 195 512 passengers in 2013.

¹⁵ Republished in the *Official Journal of Romania* No 732/2002.