

State Aid SA.41702 (2016/NN) – Ireland Risk Equalisation Scheme - Health Insurance Risk Equalisation Scheme 2016 (replaced SA.34515 Health Insurance Risk Equalisation Scheme 2013-2015)

State Aid SA. 41702 (2016/NN)
<p>In its decision of the 29 January 2016, ref. State Aid SA. 41702 (2016/NN), the Commission noted that the compensation granted through the Risk Equalisation Scheme for the provision of private medical insurance in Ireland for the period 2016-2020 constitutes State aid that is compatible with the internal market under the 2012 SGEI Framework. The principles set out in the Framework and their application to the Risk Equalisation Scheme are outlined below.</p> <p>The previous Commission decisions on the 2003 RES, the Interim Scheme for 2008-2012 and the 2013 RES, as well as the BUPA case law, accepted that the provision of private health insurance cover under the conditions of community rating, open enrolment, lifetime cover and minimum benefits is an SGEI. The obligations imposed on health insurers operating in the market were also accepted as SGEI obligations. The 2016 RES does not alter the nature of either the service provided or the obligations on insurers.</p>
<p>Explanation of the (typical) forms of entrustment. If standardized templates for entrustments are used for a certain sector, please attach them.</p>
<p>The Risk Equalisation Scheme is provided for by the Health Insurance Act 1994 (as amended), and the Stamp Duties Consolidation Act 1999 (as amended), and specifies the public service obligations of all undertakings wishing to provide their services on the health insurance market in Ireland. The compensation mechanism and the parameters for calculating, monitoring and reviewing the compensation are described in the Health Insurance Act 1994 (as amended). The text of the 2012 SGEI Framework is included in an annex to the legislation.</p>
<p>Average duration of the entrustment (in years) and the proportion of entrustments that are longer than 10 years (in %) per sector. Specify in which sectors SGEI were entrusted with a duration exceeding 10 years and explain how this duration is justified?</p>
<p>The SGEI Framework requires that the duration of the period of entrustment is "justified by reference to objective criteria". However, the Commission is of the view that, given the peculiarities of the 2016 RES (as was the case under the 2013 RES), the unspecified duration does not raise particular concerns. The requirement that the entrustment is limited in time is meant to avoid long-term foreclosure of the market, but under the RES all insurers are entrusted with the SGEI and are therefore potential beneficiaries of the scheme. The Commission also notes that Ireland has in any event notified the 2016 RES for a period of five years. As Ireland may in time notify prolongations or modifications of the measure, the 2016 RES will be periodically reviewed, thereby ensuring a check on the correct functioning of the Irish PMI market and avoiding the risk of foreclosure of the market.</p>

Explanation whether (typically) exclusive or special rights are assigned to the undertakings.
Under the Risk Equalisation Scheme all health insurers are entrusted with the SGEI and all are potential beneficiaries of the scheme.
Which aid instruments have been used (direct subsidies, guarantees, etc.)?
The Irish Risk Equalisation Scheme operates by levying a charge against health insurers in the form of a stamp duty payment based on the numbers of insured lives, and issued a payment to insurers in the form of a credit on behalf of each insured person falling into a specific category. As under the previous Scheme, the credits are paid directly to insurers on behalf of individuals, from a Risk Equalisation Fund administered by the Health Insurance Authority (HIA); insurers then charge net premiums to the insured persons.
Typical compensation mechanism as regards the respective services and whether a methodology based on cost allocation or the net avoided cost methodology is used.
<p>All insurers are required to maintain separate accounts for their health insurance business and submit this financial data to the HIA. The annual HIA Report to the Minister for Health on the evaluation and analysis of returns including advice on risk equalisation credits sets out the profitability of insurers for the previous calendar year. A redacted version of this report is published on the Department of Health's website. The accounts submitted to the HIA differ from published accounts, which may have been finalised on a different date and may include business other than private health insurance business. As the insurers are in competition, the accounts submitted are not publicly disclosed. The data submitted by insurers to the HIA provides transparency to the HIA on the impact of the scheme on individual insurers and the market and is critical in informing the HIA's assessment of any overcompensation that may occur.</p> <p>The HIA's annual report, which is published on its website and laid before the Houses of the Oireachtas, also contains a report on the Risk Equalisation Fund and associated financial statements for the calendar year. The financial statements of the Risk Equalisation Fund are independently audited by the Comptroller and Auditor General and set out a true and fair view of the transactions of the Fund and of the state of its affairs.</p> <ul style="list-style-type: none"> • Compliance with Union public procurement rules (2.6) <p>Since any operator wishing to provide its services on the private health insurance market is entrusted with the SGEI and may potentially benefit from the Risk Equalisation Scheme, it is not necessary to use the public procurement rules in order to ensure compliance with the 2012 SGEI Framework in this case.</p> <ul style="list-style-type: none"> • Absence of discrimination (2.7) <p>The Risk Equalisation Scheme operates in an identical manner in respect of all insurers on the Irish private health insurance market. It is based on objective criteria: the payments to insurers are determined based on the number of insured individuals falling within clearly defined categories (depending on age, gender and level of coverage as well as hospital utilisation).</p>

Typical arrangements for avoiding and repaying any overcompensation.
<p>The method for compensation depends on objective and easily verifiable parameters, namely the number of persons insured by each insurer in each of the categories – i.e. depending on age, gender, and defined level of cover, as well as with reference to hospital utilisation. The Risk Equalisation Scheme only partially compensates for deviations in risk in relation to the average of the insured Irish population. It does not achieve full risk equalisation and would therefore not normally lead to overcompensation.</p> <p>Under the Scheme, the Health Insurance Authority carries out an overcompensation test in accordance with the 2012 SGEI Framework in order to verify that no company is over-compensated.</p> <p>All insurers are required to maintain and furnish to the Health Insurance Authority, in respect of each year, statements of profit and loss as well as certified balance sheets in respect of its health insurance business, as well as to furnish to the Health Insurance Authority such other information relating to the year as may be prescribed. In its over-compensation test, the Health Insurance Authority determines overcompensation based on forward-looking benchmarking calculations. For the period 2016-2020 overcompensation (return in excess of reasonable profit) will be deemed to have occurred where the net beneficiary's ROS gross of reinsurance and excluding investment activities exceeds 4.4% per annum, calculated on a rolling three year basis.</p> <p>If it is determined that a net beneficiary of the scheme has made a profit which is in excess of the reasonable profit the insurer will be obliged to repay to the Risk Equalisation Fund the amount by which it has been overcompensated.</p>
<p>The content and duration of the public service obligations are clearly specified in the Health Insurance Acts 1994 to 2017, which are published in the Irish Statute Book. The undertakings entrusted with the provision of the public service obligations (i.e. the health insurers) are published in the Register of Health Benefits Undertakings, maintained by the HIA. As regards the amounts of aid granted on a yearly basis, the impact of risk equalisation for each undertaking is set out in the HIA's Report to the Minister for Health on an evaluation and analysis of returns from the previous 12 month period and advice on risk equalisation credits, which is published every year on the websites of the Department of Health and the HIA.</p>
<p>As regards the recommended level of credits and stamp duties applicable as of 1 April 2018, a detailed explanation of the methodology used by the HIA to determine the se rates is set out in the October 2017 HIA Report, which was published in redacted form on the Department of Health's website in November 2017.</p>
Amount of aid granted

Total amount of aid granted (in millions EUR)⁶. This includes all aid granted in your territory, including aid granted by regional and local authorities. **(A+B+C)**

The Risk Equalisation Fund, through which all risk equalisation payments are administered, was established in 2013. The audited accounts of the Risk Equalisation Fund are included in the Health Insurance Authority's annual report and are published on its website, <https://www.hia.ie/publication/annual-reports-accounts>.

2016	2017
620.4	669.4

Health credits and community rating stamp duty for policies renewing from 1 April 2017 to 31 March 2018:

Age range	Non-advanced cover		Advanced cover	
	Male	Female	Male	Female
65-69	€850	€525	€1,175	€675
70-74	€1,250	€1,075	€1,950	€1,500
75-79	€1,750	€1,425	€2,750	€2,125
80-84	€2,375	€1,925	€3,750	€2,925
85+	€2,975	€2,375	€4,875	€3,700

A hospital bed utilisation payment of €90 was paid in respect of each night spent in private or semi-private accommodation by an insured person. A hospital utilisation credit of €30 was paid in respect of each qualifying day admission to a hospital by an insured person.

Community Rating Stamp Duty	Non-advanced cover	Advanced cover
Under 18	€74	€148
Over 18	€222	€444

Health credits and community rating stamp duty for policies renewing from 1 April 2018:

Age range	Non-advanced cover		Advanced cover	
	Male	Female	Male	Female
65-69	€400	€300	€1,000	€650
70-74	€725	€550	€1,750	€1,250
75-79	€1,075	€850	€2,550	€1,925
80-84	€1,450	€1,150	€3,450	€2,700
85+	€2,175	€1,450	€4,975	€3,350

A hospital bed utilisation payment of €100 is paid in respect of each night spent in private or semi-private accommodation by an insured person. A hospital utilisation credit of €50 is paid in respect of each qualifying day admission to a hospital by an insured person.

Community Rating Stamp Duty	Non-advanced cover	Advanced cover
Under 18	€59	€148
Over 18	€177	€444

COMPLAINTS BY THIRD PARTIES

No complaints by third parties in relation to the application of the principles set out in the Framework have been communicated to the Department of Health.

MISCELLANEOUS QUESTIONS

The Department of Health had no particular difficulty with any of these issues as related to the Risk Equalisation Scheme.

Overcompensation is regularly checked by the HIA as they administer the Risk Equalisation Scheme and is assessed in HIA's Report to the Minister for Health on an evaluation and analysis of returns from the previous 12 month period and advice on risk equalisation credits, which is published every year on the websites of the Department of Health and the HIA.

The Department of Health had no particular difficulty with any of these issues as related to the Risk Equalisation Scheme.

State Aid decision: N395/2005.
Finance for Housing: In relation to State Aid decision N395/2005, the HFA lends to local authorities for housing related purposes, under Section 11 of the Housing Miscellaneous Provisions Act 2009.
The HFA does not lend directly to individuals or households.
Explanation of the (typical) forms of entrustment . If standardized templates for entrustments are used for a certain sector, please attach them.
Under the Housing Finance Agency Acts 1981 to 2007, and Section 11 of the Housing Miscellaneous Provisions Act 2009, the HFA is empowered to lend to local authorities for ancillary services related to social housing provision.
Average duration of the entrustment (in years) and the proportion of entrustments that are longer than 10 years (in %) per sector. Specify in which sectors SGEI were entrusted with a duration exceeding 10 years and explain how this duration is justified?
Loans to local authorities, under Section 11 of the Housing (Miscellaneous Provisions) Act, 2009, relate to “ancillary services” and include roads, shops, facilities for the benefit of the community (including health and leisure facilities), playgrounds, places of recreation, parks, allotments, open spaces, sites for places of worship, factories, schools, offices and other buildings or land and other such works or services, as will, in the opinion of a housing authority, serve a beneficial purpose either in connection with the requirements of the households for which the dwellings concerned are provided or in connection with the requirements of other households. Given the nature of these loans, terms are typically for periods of 25-30 years.
<u>All of these leases have a duration of greater than 10 years.</u>
Explanation whether (typically) exclusive or special rights are assigned to the undertakings.
Loans to local authorities are secured on the authority’s revenues with a Master Loan Agreement (MLA).
Which aid instruments have been used (direct subsidies, guarantees, etc.)?
Not applicable.
Typical compensation mechanism as regards the respective services and whether a methodology based on cost allocation or the net avoided cost methodology is used.

Typical arrangements for avoiding and repaying any overcompensation.
Does not arise.
A short explanation of how the transparency requirements (see Article 7 of the 2012 SGEI Decision) for the aid above 15 million euro to undertakings that also have activities outside the scope of the SGEI are being complied with. In your answer please also include some relevant examples of information published for this purpose (e.g. some links to websites or other references), indicate whether you have a central website

⁵ i If in a certain sector only a small number of individual SGEIs exist in your Member State, we appreciate a detailed description of those services. If a large number of services are entrusted in a specific sector in your Member State (for example because the competence lies with regional or local authorities), individual details of the entrustments would be disproportionate, but a clear and concise general description of the way the sector is organised including the common features of the individual entrustments remains crucial.

on which you publish this information for all aid measures concerned in your Member State (and if so provide the link to this website), or alternatively explain if and how the publication takes place at the level granting the aid (e.g. central, regional or local level).	
Does not apply.	
Amount of aid granted	
Total amount of aid granted (in millions EUR)⁶. This includes all aid granted in your territory, including aid granted by regional and local authorities. (A+B+C)	
2016	2017
Total amounts advanced were €46.65 million. The total amounts of aid granted (i.e. 0.10% margin on the overall amounts advanced) in 2016 were €0.047 million.	Total amounts advanced were €NIL (i.e. redemptions of -€1.9 million). The total amounts of aid granted (i.e. 0.10% margin on the overall amounts advanced) in 2017 were €NIL (-€0.002 million).
A: Total amount of aid granted (in millions EUR) paid by national central authorities	
2016	2017
B: Total amount of aid granted (in millions EUR) paid by regional authorities⁸	
2016	2017
C: Total amount of aid granted (in millions EUR) paid by local authorities⁹	
2016	2017
Share of expenditure per aid instrument (direct subsidy, guarantees etc.) (if available)	
2016	2017
Additional quantitative information (e.g. number of beneficiaries per sector, average aid amount, size of the undertakings) ¹⁰	
2016	2017

⁶ As stipulated in Article 9 b) of the 2012 SGEI Decision.

If the aid amount cannot be split between central, regional and local authorities only the total amount of aid granted for all authorities should be reported.

⁸ See footnote 7.

⁹ See footnote 7.

¹⁰ The Commission would welcome any data that you might have on aid granted under the 2012 SGEI Decision, for example the number of beneficiaries per sector, average amount of aid, amount per aid instrument, size of the undertakings, etc. Should such other quantitative information data not be readily available in your Member State,

they can of course be presented in a more aggregated and/or estimated way. In that case please indicate that estimations have been used as well as the type of aggregation made.

3. DESCRIPTION OF THE APPLICATION OF THE 2012 SGEI FRAMEWORK Please

structure this part of your report by the following sections:

- 1) SGEI compensation exceeding EUR 15 million, falling outside the SGEI Decision (please specify the Commission decision approving each measure if applicable):
 - i. Postal services
 - ii. Energy
 - iii. Waste collection
 - iv. Water supply
 - v. Air or maritime links to islands with average annual traffic above the limits set in Art. 2(1)(d)
 - vi. Airports and ports with average annual traffic above the limit set in Art. 2(1)(e)
 - vii. Culture
 - viii. Financial services
 - ix. Other sectors (please specify)

For each of the items outlined above please provide information in the form of the following table:

Clear and comprehensive description of how the respective services are organized in your Member Stateⁿ
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.
Explanation of the (typical) forms of entrustment . If standardized templates for entrustments are used for a certain sector, please attach them.

If in a certain sector only a small number of individual SGEIs exist in your Member State, we appreciate a detailed description of those services. If a large number of services are entrusted in a specific sector in your Member State (for example because the competence lies with regional or local authorities), individual details of the entrustments would be disproportionate, but a clear and concise general description of the way the sector is organised including the common features of the individual entrustments remains crucial. Since cases falling under the SGEI Framework will be limited in number, the Commission expects a detailed description of each concrete measure.

<p>Average duration of the entrustment (in years) and the proportion of entrustments that are longer than 10 years (in %) per sector. Specify in which sectors SGEI were entrusted with a duration exceeding 10 years and explain how this duration is justified?</p>	
<p>Explanation whether (typically) exclusive or special rights are assigned to the undertakings.</p>	
<p>Which aid instruments have been used (direct subsidies, guarantees, etc.)?</p>	
<p>Typical compensation mechanism as regards the respective services and whether a methodology based on cost allocation or the net avoided cost methodology is used.</p>	
<p>Typical arrangements for avoiding and repaying any overcompensation.</p>	
<p>A short explanation of how the transparency requirements (see Paragraph 60 of the 2012 SGEI Framework) are being complied with. In your answer please also include some relevant examples of information published for this purpose (e.g. some links to websites or other references), indicate whether you have a central website on which you publish this information for all aid measures concerned in your Member State (and if so provide the link to this website), or alternatively explain if and how the publication takes place at the level granting the aid (e.g. central, regional or local level).</p>	
<p>Amount of aid granted</p>	
<p>Total amount of aid granted (in millions EUR)¹². This includes all aid granted in your territory, including aid granted by regional and local authorities. (A+B+C)</p>	
2016	2017
<p>A: Total amount of aid granted (in millions EUR) paid by national central authorities¹³</p>	
2016	2017

¹² As stipulated in Paragraph 62 b) of the 2012 SGEI Framework.

¹³ If the aid amount cannot be split between central, regional and local authorities only the total amount of aid granted for all authorities should be reported.

B: Total amount of aid granted (in millions EUR) paid by regional authorities¹⁴	
2016	2017
C: Total amount of aid granted (in millions EUR) paid by local authorities¹⁵	
2016	2017
Share of expenditure per aid instrument (direct subsidy, guarantees etc.) (if available)	
2016	2017
Additional quantitative information (e.g. number of beneficiaries per sector, average aid amount, size of the undertakings) ¹⁶	
2016	2017

4. COMPLAINTS BY THIRD PARTIES

Please provide an overview of complaints by third parties, in particular litigation before national courts, regarding measures in scope of the 2012 SGEI Decision or 2012 SGEI Framework. Please be as specific as possible in your reply and include the sector for which you have received the complaints, the contents of the complaints and the possible follow-up by your authorities or the likely outcome of the court proceedings.

No complaints by third parties in relation to the application of the principles set out in the Framework have been communicated to the Department of Housing, Planning & Local Government.

5. MISCELLANEOUS QUESTIONS

a. We kindly invite you to indicate whether your authorities have experienced difficulties in applying the 2012 SGEI Decision and ask you to in particular consider the following issues:

- drawing up an entrustment act that complies with Article 4 of the SGEI Decision;
- specifying the amount of compensation in line with Article 5 of the SGEI Decision;

¹⁴ See footnote 13.

¹⁵ See footnote 13.

¹⁶ The Commission would welcome any data that you might have on aid granted under the 2012 SGEI Framework, for example the number of beneficiaries per sector, average amount of aid, amount per aid instrument, size of

the undertakings, etc. Should such other quantitative information data not be readily available in your Member State, they can of course be presented in a more aggregated and/or estimated way. In that case please indicate that estimations have been used as well as the type of aggregation made.

- determining the reasonable profit level in line with Article 5(5)-(8) of the SGEI Decision;

- regularly checking overcompensation as required by Article 6 of the SGEI Decision;

Please be as specific as possible in your reply, include relevant examples and, if applicable, the sector for which the difficulties are (most) relevant.

There have been no particular difficulties with the application of the SGEI Decision.

b. We kindly invite you to indicate whether your authorities have experienced difficulties in applying the 2012 SGEI Framework and ask you to in particular consider the following issues:

- carrying out a public consultation in line with paragraph 14 of the SGEI Framework;

- complying with public procurement rules in line with para 19 of the SGEI Framework; -

- determining the net avoided cost as required by paras 25-27 of the SGEI Framework; -

- determining the reasonable profit level in line with paras 33-38 of the SGEI Framework;

Please be as specific as possible in your reply, include relevant examples and, if applicable, the sector for which the difficulties are (most) relevant.

There have been no particular difficulties with the application of the SGEI Decision.

c. If you have any other comments on the application of the SGEI Decision and the SGEI Framework on issues other than the ones covered in the previous questions please feel free to provide them within your report.

Postal Services

1. DESCRIPTION OF THE APPLICATION OF THE SGEI DECISION AND THE SGEI FRAMEWORK AND AMOUNT GRANTED

An Post is a designated activity (limited liability) company, wholly owned by the Irish State. One ordinary share is held by the Minister for Public Expenditure and Reform and the remainder of the issued share capital is held by the Minister for Communications, Climate Action and Environment. The Company's principal activity is to operate the national postal service and the network of Post Offices.

An Post delivers two Services of General Economic Interest (SGEIs) as follows:

1. An Post is the designated universal postal service provider.
2. An Post is obliged to provide counter services, through the post office network, for the Company's own, and Government business.

In December 2017 funding was provided to An Post in accordance with 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 (the SGEI Decision). The Department, following a meeting with the Commission, considered that the funding fell within the parameters of Commission Decision 2012/21/EU on Services of General Economic Interest and was therefore non notifiable State Aid.

2. Amount of Aid Granted

Funding of €30m in the form of a State loan facility was provided to An Post on the basis that it will be used to fund the two Services of General Economic Interest with which An Post has been entrusted. The money was ring-fenced to support the renewal of the post office network (€15m) and the continued fulfilment of a 5 day per week mails delivery service (€15m).

In accordance with Article 4 of the Commission Decision the operation of the SGEI shall be entrusted to the undertaking (An Post). A letter of entrustment for the purposes of Article 4 of the SGEI Decision was issued as a condition of the loan and to ensure State aid requirements are met.

Clear and comprehensive description of how the respective, services are organised in your Member State

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.	<p>This funding was provided on the basis that it will be used to fund the two Services of General Economic Interest with which An Post has been entrusted, namely:</p> <ul style="list-style-type: none"> • Pursuant to Section 17(1) of the Communications Regulation (Postal Services) Act 2011, An Post is designated as the universal postal service provider for a period of 12 years (expiring 2023). • Pursuant to Section 12(1)(d) of the Postal and Telecommunications Services Act, 1983 ('the 1983 Act') An Post is obliged to provide counter services for the Company's own, and Government business. Under Section 12(1)(b) of the 1983 Act, the object of the company is described as meeting the industrial, commercial, social and household needs of the State and satisfying all reasonable demands for such services throughout the State. This is facilitated through the provision of a nationwide network of Post Offices.
Explanation of the (typical) forms of entrustment . If standardized templates for entrustments are used for a certain sector, please attach them.	A Letter of Entrustment was issued by the Minister for Communications, Climate Action and Environment to the Chairman of An Post setting out the terms on which the funding was to be made available. The funding is subject to the terms and conditions provided in a Term Facility Agreement agreed between An Post and the Minister for Finance.
Average duration of the entrustment (in years) and the proportion of entrustments that are longer than 10 years (in %) per sector. Specify in which sectors SGEI were entrusted with a duration exceeding 10 years and explain how this duration is justified?	The SGEIs identified are entrusted, for the purposes of Commission Decision 2012/21/EU for the duration of the term in the Term Facility Agreement, and in any event not exceeding 10 years.
Explanation whether (typically) exclusive or special rights are assigned to the undertakings.	An Post is the designated postal operator in Ireland.
Which aid instruments have been used (direct subsidies, guarantees, etc.)?	Aid has been provided by way of a State loan facility to the designated operator.
Typical compensation mechanism as regards the respective services and whether a methodology based on cost allocation or the net avoided cost methodology is used.	The state aid element is the amount saved by An Post arising from any interest payments which are fixed below that which would be payable under normal commercial terms.

Typical arrangements for avoiding and repaying any overcompensation.	In the event that the Actual SGEI compensations exceed the SGEI costs, An Post will be required to repay to the Minister for Finance, within 30 Business Days of a request from the Minister for Finance, an amount equal to such excess.
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3. COMPLAINTSBYTHIRDPARTIES

Please provide an overview of complaints by third parties, in particular litigation before national courts, regarding measures in scope of the 2012 SGEI Decision or 2012 SGEI Framework. Please be as specific as possible in your reply and include the sector for which you have received the complaints, the contents of the complaints and the possible follow-up by your authorities or the likely outcome of the court proceedings.

There have been no complaints by Third Parties.

SGEI Report for SA.37030 (2013/N) – Ireland Sale of State Assets (Peat Stations) – SGEI Framework 2011

Electricity and Gas Regulation

Dept. of Communications, Climate Action and the Environment

28 June 2018

1. DESCRIPTION OF THE APPLICATION OF THE SGEI DECISION AND THE SGEI FRAMEWORK AND AMOUNT GRANTED

Please structure this part of your report by the following sections:

SGEI compensation under the Framework: State aid SA.37030 (2013/N) – Ireland Sale of State assets (ESB Peat Stations)

The below is a description of the scheme as it is currently operated. In the context of a change in ownership of the ESB assets (see paragraphs 14 to 18 of the notification), the change in ownership would have been the only alternation made to the public service obligations and the compensation scheme.

In 2001, Ireland notified the Commission of a compensation scheme related to certain public service obligations imposed on the Electricity Supervisory Board (ESB). By letter dated 30 October 2001 (N 6/A/2001) (OJ C 77, 28.3.2002, p. 26), the Commission considered the compensation scheme as compatible with the Treaty.

The notified measure would have been a modification of this compensation scheme. The modification solely consists of the transfer of the compensation to a new beneficiary. However the modification did not take place as the assets were not sold by the ESB.

In the initial decision, the Commission approved a scheme by which Ireland would compensate ESB, the incumbent electricity operator owned by the Irish State, for the costs incurred in discharging certain public service obligations.

The public service obligations concern the building and the operation of two new peat-fired generation stations.

Irish law required ESB to have at its disposal each year a certain quantity of electricity generated out of peat, equivalent to a maximum quantity of electricity that would have been generated with 15% of the overall primary energy necessary to produce the electricity consumed in Ireland in one year.

After having examined different scenarios for meeting its target of peat-fired electricity generation, ESB settled for the most economical option, which consisted in accelerating the closure of six existing stations and in building two new and more efficient stations.

This translated into five separate public service obligations to be imposed on ESB:

(a) to build and to commission two new peat stations at Lanesborough (Lough Ree) and Shannonbridge (West Offaly);

(b) to take the output of the two stations until 2019;

(c) to fuel the new stations with peat bought from Bord na Móna, the dominant producer of peat in Ireland, on terms equivalent to the Fuel Supply Agreement between that company and Edenderry Power Ltd., another undertaking generating electricity from peat;

(d) to take the output of the old peat stations until they were decommissioned;

(e) to purchase the output of the peat station owned by Edenderry Power Ltd.

Given that the cost for generating electricity in the two new stations was and still is above the average market price for electricity, ESB is not able to completely recover its costs through the market.

Therefore, Ireland proposed to set up a scheme for the compensation of the share of the costs that ESB could not cover by selling electricity. This share is equivalent to the difference between ESB's costs for discharging the public service obligations (i.e. the costs for taking the electricity output of the old stations, for removal of the old stations, for the building of the new stations, for taking the electricity output of the new stations and for taking the output of the Edenderry Power station) and ESB's revenues out of the public service obligations.

The exact costs are calculated each year by the Commission for Electricity Regulation (CER), the Irish regulator. A distinction is made between uncontrollable costs, which are certified by the CER as incurred (local rates, use of system charges, the cost of peat supplied by Bord na Móna), and controllable costs (payroll, materials, operation and maintenance of the stations). These latter costs, whose behaviour ESB can influence, are measured against a benchmark (projections made at the time when the public service obligations were initially imposed) and may be subject only to partial compensation, depending on how efficient ESB is in discharging its obligations. Efficiency gains are not left to ESB, but reduce the incurred costs and thus the amount of compensation.

In determining the costs, the CER first makes an estimate about the costs which will be incurred to discharge the public service obligations in the coming year, an estimate which is corrected ex post by increasing or reducing the compensation accordingly.

The costs are recovered through a levy imposed on all subscribers to the electricity grid and collected by the State-owned Transmission System Operator (TSO). The levy is based on the capacity of the grid connection.

EXPENDITURE OVERVIEW

Please complete the following table:

Total SGEI government expenditure by legal basis (millions EUR)		
	2016/17	2017/18
<i>Compensation for Services of General Economic Interest (1+2)</i>		

(1) Compensation granted on the basis of the SGEI Decision		
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SGEI expenditure in respect of **SA.37030 (2013/N)** was €115.4 million for 2016/17 and €117.8 for 2017/18¹. This is not Government expenditure, as the compensation associated with the PSO for **SA.37030 (2013/N)** is funded by a Levy on final electricity customers

¹ The 12 month period within which Public Service Obligation payments are calculated extends from October to September, therefore falling within two calendar year periods.

3. DESCRIPTION OF THE APPLICATION OF THE 2012 SGEI FRAMEWORK Please

structure this part of your report by the following sections:

- 1) SGEI compensation exceeding EUR 15 million, falling outside the SGEI Decision (please specify the Commission decision approving each measure if applicable):

x. Energy

For each of the items outlined above please provide information in the form of the following table:

Clear and comprehensive description of how the respective services are organized ' in your Member State"
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.
<p>In the initial decision of 2001, the Commission considered that the obligation imposed on ESB to have at its disposal a specific quantity of electricity generated out of peat equivalent to that which would be generated annually by using (up to) 15% of the overall primary energy necessary to produce the electricity consumed in Ireland, constitutes an obligation to fulfil a service of general economic interest relating to security of supply.</p> <p>In the decision of 2013, the Commission noted that this SGEI for security of supply purposes, which was not manifestly erroneous, was based on a financing regime providing for a continued operation of the two plants until 2019. The obligations were and remain defined as including the building, commissioning and operation of the two power stations, which were set up on this basis and which were planned for sale at the time of the 2013 notification. The entrustment of the public service obligations to a new operator would not have modified the justification of the entrustment.</p> <p>Therefore, the Commission saw no reason in 2013 to depart from its initial assessment, as far as the operation of the two plants in the case at hand until 2019 is concerned, and thus concluded that the SGEI relating to the security of electricity supply is genuine and correctly defined in the present case, for the same reasons explained in the initial decision.</p>
Explanation of the (typical) forms of entrustment . If standardized templates for entrustments are used for a certain sector, please attach them.

The public service obligations were imposed on ESB through the statutory instrument S.I. 217/2002 – Electricity Regulation Act 1999 (Public Service Obligations) Order 2002. S.I. 217 of 2002 specifies the content of the public service obligations, their respective duration, as well as the parameters for calculating the compensation. The duration of 15 years is appropriate in view of the lifetime of this kind of plants.

In the 2013 notification Ireland informed the Commission that a statutory instrument of equal status, effect and substantially identical content would be executed in order to transfer the public service obligations to the prospective purchaser (likely by just amending S.I. 217 to substitute the purchaser's name for that of ESB). The Commission has stated that it considers that the requirements in points 15 to 17 of the SGEI framework are met. The change of ownership did not occur. Therefore a new Statutory Instrument was not required.

If in a certain sector only a small number of individual SGEIs exist in your Member State, we appreciate a detailed description of those services. If a large number of services are entrusted in a specific sector in your Member State (for example because the competence lies with regional or local authorities), individual details of the entrustments would be disproportionate, but a clear and concise general description of the way the sector is organised including the common features of the individual entrustments remains crucial. Since cases falling under the SGEI Framework will be limited in number, the Commission expects a detailed description of each concrete measure.

Average duration of the entrustment (in years) and the proportion of entrustments that are longer than 10 years (in %) per sector. Specify in which sectors SGEI were entrusted with a duration exceeding 10 years and explain how this duration is justified?
Fifteen years – see above. The Commission has deemed this duration appropriate in the view of the life time of electricity generating plants.
Explanation whether (typically) exclusive or special rights are assigned to the undertakings.
SI 217 of 2002 accords priority dispatch to the generating stations subject to that Order.
Which aid instruments have been used (direct subsidies, guarantees, etc.)?
Levy on final customers.
Typical compensation mechanism as regards the respective services and whether a methodology based on cost allocation or the net avoided cost methodology is used.

According to point 21 of the SGEI Framework, the “compensation must not exceed what is necessary to cover the net cost of discharging the public service obligations, including a reasonable profit”. In the initial decision, the Commission found the compensation granted to ESB to be proportionate to the costs incurred by discharging the public service obligations.

The compensation mechanism is based on the cost allocation methodology, meaning that the compensation is determined as the difference between the cost to ESB of generating the peat-fired electricity and the total revenues derived by ESB from selling this electricity to customers.

Given that the cost allocation method focuses only on the public service obligations as such (and the costs and revenues of fulfilling them), an assessment based on this method is easily severable from the actual operator and therefore appears to be suited for an assessment where the future operator is not yet known. Moreover, it is the methodology which was approved by the Commission in the initial decision, on the basis of a 15-year support period until the end of 2019. Applying the cost allocation methodology would therefore ensure the highest degree of continuity. In contrast, the net avoided cost methodology, which is described in point 27 of the SGEI Framework as the preferred methodology, is based on a comparison of a given provider’s situation with and without the public service obligations to fulfil. However, for such an assessment to be meaningful in the case at hand, the identity and the activities of the future provider would need to be known already, which is not the case. Therefore, it appears to be duly justified to apply the cost allocation methodology, in line with points 27 et seq. of the SGEI Framework.

The Commission also held that the rate of return was in line both with the standard rate of return undertakings in the electricity sector would expect from this kind of investment and with the rate of return the Commission for Regulation of Utilities (CRU²) was applying in its yearly electricity market price estimate (recital 50). This assessment is still valid. In particular, Ireland has indicated that ESB’s actual rate of return has in fact been slightly lower, due to extended outage periods arising out of defects in the generators as they were originally installed.

Typical **arrangements for avoiding and repaying any overcompensation.**

² Previously known as the Commission for Energy Regulation (CER)

The compensation mechanism distinguishes between uncontrollable costs, which are fully compensated, and controllable costs, which may only be compensated to some extent, depending on efficiency. Therefore, the compensation mechanism also features efficiency incentives.

Moreover, the undertaking concerned is required to separately account for the costs incurred in discharging the public service obligations. Finally, each year, in order to prevent overcompensation, the CRU makes, on the basis of information communicated by ESB, an ex-ante estimate of the costs to be incurred in providing the service of general economic interest in the following year. This estimate is then corrected ex post on the basis of the actual data, with the possibility for the CRU to deduct any excessive compensation from the compensation in the following year.

In the 2013 letter, the Commission stated that it was satisfied that the mechanism of calculating the compensation is in line with the SGEI Framework.

A short explanation of how the **transparency requirements** (see Paragraph 60 of the 2012 SGEI Framework) are being complied with. In your answer please also include some relevant examples of information published for this purpose (e.g. some links to websites or other references), indicate whether you have a central website on which you publish this information for all aid measures concerned in your Member State (and if so provide the link to this website), or alternatively explain if and how the publication takes place at the level granting the aid (e.g. central, regional or local level).

There was open, transparent and public parliamentary debate in connection with the provisions concerning public service obligations (PSO) set out in the Bill which, when approved by the Irish Parliament, was enacted as the Electricity Regulation Act 1999 and which established the framework for the peat PSO. These debates included discussions of peat electricity generation and the associated role of a PSO in this context.

There was no formal public consultation process on the making of the Order or the PSO obligations imposed on the ESB in relation to electricity generated from peat, as there is no legislative obligation to conduct such a process. In the Irish legal system, the order imposing the PSO on ESB (S.I. 217 of 2002) is described as secondary legislation which is permitted only to implement the detail of what the primary legislation (in this instance the Electricity Regulation Act 1999) passed by the democratically elected parliament in more general terms provides for. In these circumstances, the Irish authorities are satisfied that requisite public oversight of the proposal occurred. It is now standard practice for CER since the time of its establishment to engage in consultation on proposals for regulatory decisions relating to the electricity and gas markets.

Like comparable statutory instruments, S.I. 217 of 2002 was laid before both Houses of the Oireachtas (Parliament). Laying of an order before parliament is a step in the legislative process which invites any discussion or other parliamentary intervention which members of either House may wish to initiate. The statutory instrument does not become law definitively until 21 days have passed following that laying before parliament. In these circumstances, the Irish authorities are satisfied that the parliamentary process permitted adequate public oversight of the proposals, consistent with the practice of the time.

In addition, the Commission for Regulation of Utilities (CRU) engages in consultation on its proposed calculation of the PSO and determination for the amount for the next year, in the annual process of PSO determination set out in the relevant Order. After the consultation has concluded, the final amount of the PSO levy for inclusion in customers' electricity bills is calculated and certified by the CRU in a subsequent published decision paper.

CRU documentation and consultation and decision papers relating to the PSO levy are published and publicly available on its website, at www.cru.ie and https://www.cru.ie/document_group/ps0-levy-2017-2018/

Amount of aid granted

Total amount of aid granted (in millions EUR)¹². This includes all aid granted in your territory, including aid granted by regional and local authorities. (A+B+C)	
2016/17	2017/18
A: Total amount of aid granted (in millions EUR) paid by national central authorities¹³	
2016	2017

¹² As stipulated in Paragraph 62 b) of the 2012 SGEI Framework.

¹³ If the aid amount cannot be split between central, regional and local authorities only the total amount of aid granted for all authorities should be reported.

B: Total amount of aid granted (in millions EUR) paid by regional authorities¹⁴	
2016	2017
C: Total amount of aid granted (in millions EUR) paid by local authorities¹⁵	
2016	2017
Share of expenditure per aid instrument (direct subsidy, guarantees etc.) (if available)	
2016	2017
Additional quantitative information (e.g. number of beneficiaries per sector, average aid amount, size of the undertakings) ¹⁶	
2016	2017

SGEI expenditure in respect of **SA.37030 (2013/N) only** was €115.4 million for 2016/17³ and €117.8 for 2017/18. This is not Government expenditure, as the compensation associated with the PSO for **SA.37030 (2013/N)** is funded by a Levy on final electricity customers.

³ The 12 month period within which Public Service Obligation payments are calculated extends from October to September, therefore falling within two calendar year periods.

4. COMPLAINTS BY THIRD PARTIES

Please provide an overview of complaints by third parties, in particular litigation before national courts, regarding measures in scope of the 2012 SGEI Decision or 2012 SGEI Framework. Please be as specific as possible in your reply and include the sector for which you have received the complaints, the contents of the complaints and the possible follow-up by your authorities or the likely outcome of the court proceedings.

There have been no complaints in relation to the State Aid accorded under the SGEI Framework.

5. MISCELLANEOUS QUESTIONS

- a. We kindly invite you to indicate whether your authorities have experienced difficulties in applying the 2012 SGEI Decision and ask you to in particular consider the following issues:
- drawing up an entrustment act that complies with Article 4 of the SGEI Decision;
 - specifying the amount of compensation in line with Article 5 of the SGEI Decision;

¹⁴ See footnote 13.

¹⁵ See footnote 13.

¹⁶ The Commission would welcome any data that you might have on aid granted under the 2012 SGEI Framework, for example the number of beneficiaries per sector, average amount of aid, amount per aid instrument, size of the undertakings, etc. Should such other quantitative information data not be readily available in your Member State, they can of course be presented in a more aggregated and/or estimated way. In that case please indicate that estimations have been used as well as the type of aggregation made.

- determining the reasonable profit level in line with Article 5(5)-(8) of the SGEI Decision;

–regularly checking overcompensation as required by Article 6 of the SGEI Decision;

Please be as specific as possible in your reply, include relevant examples and, if applicable, the sector for which the difficulties are (most) relevant.

N/A

b. We kindly invite you to indicate whether your authorities have experienced difficulties in applying the 2012 SGEI Framework and ask you to in particular consider the following issues:

–carrying out a public consultation in line with paragraph 14 of the SGEI Framework;

–complying with public procurement rules in line with para 19 of the SGEI Framework; -

determining the net avoided cost as required by paras 25-27 of the SGEI Framework; -

determining the reasonable profit level in line with paras 33-38 of the SGEI Framework;

Please be as specific as possible in your reply, include relevant examples and, if applicable, the sector for which the difficulties are (most) relevant.

N/A

c. If you have any other comments on the application of the SGEI Decision and the SGEI Framework on issues other than the ones covered in the previous questions please feel free to provide them within your report.

N/A
