

## **REPORT ON STATE AID GRANTED FOR THE COMPENSATION OF SERVICES OF GENERAL ECONOMIC INTEREST (SGEI)**

### **CONDITIONS FOR THE DEVELOPMENT OF SGEIs AND REGULATORY ACTS BY WHICH THEY WERE ESTABLISHED**

#### ***Legal basis for establishing SGEIs in Romania***

The single legal framework for the creation, organisation, monitoring and control of the functioning of public utilities in municipalities, towns and communes is governed by **Law No 51/2006 on municipal public utilities - republished.<sup>1</sup>**

Law No 51/2006, with subsequent amendments and additions, defines municipal public utilities as all the regulated actions and activities which ensure that essential needs of general public use and interest of a social character are met by the local authorities with regard to:

- water supply;
- sewage collection and treatment;
- the collection, channelling and disposal of rainwater;
- centralised heating supply;
- sanitation of localities;
- public lighting;
- natural gas supply;
- local public passenger transport.

The public utilities services are subject to a number of specific public service obligations with a view to ensuring a high level of quality, safety and accessibility, equality of treatment, and the promotion of universal access and user rights. They have the following features:

- a) a socio-economic character;
- b) meets a number of demands and needs in the public interest and utility;
- c) a technical/housing character;
- d) they have a permanent character and operate continuously;
- e) the operating system may be monopolistic in character;
- f) they presuppose the existence of appropriate technical/housing infrastructure;
- g) the scope of coverage has local dimensions: communal, town, municipal or county;
- h) they are the responsibility of the local public administrative authorities;
- i) they are organised in line with economic and efficiency principles in conditions which allow them to fulfil specific public service missions and obligations;
- j) the management method is established by decision of the deliberative authorities of the local public administrations;
- k) they are provided/offered on the basis of the 'beneficiary pays' principle;
- l) operational and investment costs are recovered through prices and tariffs or taxes and, where appropriate, from budgetary allocations. The measure may involve State aid

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<sup>1</sup> Published in Official Gazette No 254/21.03.2006, amended and supplemented by Law No 225/2016 published in Official Gazette No 942/23.11.2016, by Government Emergency Order 111/2017 published in Official Gazette No 1035/28.12.2017 and by Law No 131/2018 published in Official Gazette No 500 of 19 .06.2018.

elements, a situation in which the local public administrative authorities request the opinion of the Competition Council.

### ***The competences of the public administrative authorities***

The public utilities services are the responsibility of the local public administrative authorities or, where appropriate, the intercommunication development associations, whose core activity is public utility services, commissioned according to decisions by the deliberative authorities of member administrative-territorial units. The public utility services are established, organised and managed in compliance with legislative provisions, according to the decisions adopted by the deliberative authorities of the local government divisions, depending on the degree of urbanisation, the socio-economic importance of the localities, their size and degree of development and in relation to the existing technical/housing infrastructure.

The local public administrative authorities have exclusive competence, under the conditions laid down by law, regarding the establishment, organisation, management and functioning of the public utilities services, and also regarding the creation, development, modernisation and exploitation of publicly or privately owned property by the local government units which make up public utilities systems. Furthermore, they have shared competences with the central public administrative authorities and with the competent regulatory authorities with regard to the regulation, monitoring and control of municipal public utilities services.

At the same time, the local public administrative authorities are free to decide on the arrangements for managing the public utilities services under their responsibility. These authorities have the possibility of managing public utilities services directly on the basis of a decision to administer or delegate management, under a management delegation contract.

### ***Regulatory authorities***

According to the provisions of Law No 51/2006, as subsequently amended and supplemented, the following have the quality of competent regulatory authority: the National Regulatory Authority for Municipal Services (A.N.R.S.C.), the National Energy Regulatory Authority (A.N.R.E.) and the Romanian Road Authority (A.R.R.).

The A.N.R.S.C. is the competent regulatory authority for the following public utilities services:

- a) water supply and sewerage; e) sanitation of localities; f) public lighting;
- h) local public passenger transport, in accordance with the competences granted by the special A.N.R.S.C. law, and by Law No 51/2006. It issues licences and develops methodologies and framework regulations for the field of public services utilities from its sphere of regulations and for the market in those services, and monitors compliance and implementation of legislation applicable to those services.

The activities of production, transport, distribution and supply of thermal energy, and the distribution and supply of natural gases are subject to licensing, regulation and control by the A.N.R.E.

The A.R.R. is the competent regulatory authority for local public passenger transport service, according to the competences granted by special law.

### ***Management method and provision of public utilities***

**The management of public utilities** is organised and performed in the following way:

- a) direct management;
- b) delegated management.

The method of managing public utilities is established by decision of the deliberative authorities of the local government units, based on an advisability study, in line with the nature and status of the service, the need to ensure the best price/quality ratio, current and prospective interests of the local government authorities, and also the size and complexity of the public utilities systems.

Irrespective of the chosen form of management, specific activities for any public utilities service are conducted on the basis of a service regulation and specifications, developed and approved by the local public administrative authorities, in accordance with the framework regulation and with the framework specifications of the service. In the case of associations of intercommunity development having the form of a public utilities service, the service regulation and specifications are developed by the association, and are subject to the opinions of the local public administrative authorities of the member local government units and approved by the association's assembly general.

Assets which make up the public utilities systems by means of which the public utilities services are supplied/provided may be:

- a) managed and operated on the basis of the management decision;
- b) made available and operated on the basis of the management delegation contract.

**Direct management** is where the deliberative and executive authorities, on behalf of the local government units which they represent, directly assume and exercise all their competences and responsibilities regarding the supply/provision of public utilities services, with regard to the administration, functioning and operation of public utilities systems associated with them.

Direct management takes place through the intermediary of a public or private law operator, without applying the provisions of Law No 98/2016 on public procurement, Law No 99/2016 on sector-specific procurement and Law No 100/2016 on works concessions and services concessions, which may be:

- i. specialised public services of local or county interest, with a legal personality, established and organised subject to the local or county councils, depending on the case, by decision of the deliberative authorities of the respective local government authorities;
- ii. regulated undertakings subject to Law No 31/1990, republished with subsequent amendments and additions, with full share capital of the local government units, established by the deliberative authorities of the respective local government units.

Also, and by way of exception to the above, the public utilities services may also be supplied/provided by autonomous local or county administrations, regulated by Law No 15/1990 regarding the reorganisation of state companies as autonomous administrations and training companies, only if they have ongoing investment projects co-financed by European funding, until their completion.

Legal reports between territorial administrative units or, where appropriate, between intercommunity development associations working as a public utilities service and operators/regional operators are regulated by:

- a) decisions concerning the entrustment of public utilities services to the public law operators mentioned in point (i) , and
- b) delegation contracts for the management of public utilities to the operators mentioned in

point (ii).

Operators working under a direct management regime are organised and function on the basis of a regulation on organisation and operations approved by the deliberative authorities of the territorial-administrative units (operators referred to in point i), and those set out in point ii on the basis of a regulation on organisation and functioning, approved by their board of directors.

**Delegated management** is the management method by which the deliberative authorities of the local government units or, where appropriate, the associations of intercommunity development operating as public utilities, in the name and on behalf of member local government units, assigns to one or more operators all or only part of their own competences and responsibilities relating to the supply/provision of public utilities, on the basis of a management delegation contract.

Delegated management involves making available to operators of public utilities systems in respect of delegated services both the right and the obligations to administer and operate these systems.

The delegation of public utilities services, and the operation, administration and running of related public utilities systems can be done on the basis of technical, economic and efficiency analyses of the operational costs, in the form of an advisability study. Delegated management is by the intermediary of private law operators, which may be companies regulated by Law No 31/1990, republished, with private or mixed share capital.

These operators supply/provide public utilities services through the exploitation and administration of technical and building infrastructure belonging to them, based on the management delegation contract and on the licence issued by the competent regulatory authority.

In the case of delegated management, the legal reports are regulated by delegation contracts for the management of public utilities services.

The management delegation contract is a contract concluded in written form, according to which the local government units, either individually or as an association, as relevant, in the position of delegate, grants to an operator as a delegate acting on its own risk and responsibility, by means of one of the arrangements prescribed by law, and for a specific period, the right and obligation to fully supply/provide a public utility service or, where appropriate, only some of its specific activities, including the right and obligation to administer and use the technical-building infrastructure relating to the service/activities supplied/provided, in return for a royalty, where appropriate.

The delegation contract for the management of public utilities services may be:

- a) a service concession contract;
- b) a public services procurement contract.

The obligatory clauses in the management delegation contract must include:

- a) the name of the contracting parties;
- b) the object of the contract, indicating the activities from the sphere of public utilities which are to be supplied/provided on the basis of the management delegation contract, as provided for in special laws;
- c) the duration of the contract;
- d) the territorial area in which the services will be provided;

- e) the rights and obligations of the contracting parties with regard to the supply/provision of the service and to the related system of public utilities, including the content and duration of the public service obligations;
- f) arrangements for sharing risks between parties, in the case of concession contracts;
- g) the nature of any exclusive or special rights granted to the delegate;
- h) the tasks and responsibilities of the parties regarding the investments/investment programmes, and also rehabilitation, modernisation, new objectives, extensions and financing arrangements;
- i) performance indicators concerning the quality and quantity of the service and the arrangements for monitoring and assessment;
- j) prices/tariffs which the delegate has the right to apply on the date of delivery/performance of the service, and also the rules, principles and/or forms of adjustment and modification of the latter;
- k) compensation for the public service obligations performed by the delegate, where appropriate, indicating the parameters for calculating, monitoring and revising the compensation and also arrangements for preventing and recovering any overcompensation;
- l) invoicing for services supplied/provided directly by the users and/or delegate, where appropriate;
- m) the level of the fee or other obligations, where appropriate; when establishing the level of the fee, the local public authority will take account of the value similarly determined for amortisations for publicly owned fixed assets made available to the operator, with entrustment of the service/public utility activities and the level of affordability for the population. The level of the fee is set in a transparent and non-discriminatory manner for all potential operators of public utilities, using the same calculation methodology;
- n) the contractual performance guarantee, indicating the values, and the manner in which it is created and performed;
- o) contractual liability;
- p) force majeure;
- q) conditions for review of contractual clauses;
- r) conditions for asset reimbursement or redistribution, where appropriate, upon termination for any reason of the management delegation contract, including assets resulting from investments made;
- s) reference to contractual balance;
- t) cases of termination and conditions for termination of the management delegation contract;
- u) labour;
- v) other clauses agreed upon by the parties, where appropriate.

In the case of public utilities regulated by Law No 51/2006, the procedure for awarding management delegation contracts is established, where appropriate, in accordance with the provisions of Law No 98/2016 on public procurement, Law No 99/2016 on sector-specific procurement and Law No 100/2016 on works and services concessions.

Sub-delegation by an operator of the management of the service/one or more activities from the field of public utilities is prohibited. The sub-contracting of related works or services, necessary for the supply/provision of the service/one or more of the activities from the sphere of delegated public utilities, should only be under the conditions set out in the legislation on public procurement.

The duration of the management delegation contracts is limited. For management delegation contracts whose estimated duration is more than five years, this is established, where appropriate, pursuant to Law No 98/2016, Law No 99/2016 and Law No 100/2016, and will not

exceed the maximum duration necessary to recover the investments provided for by the operator/regional operator under the delegation contract.

In the case of direct management, the local public administrative authorities, with the exception of those which are members of intercommunity development associations, are required periodically or once every five years to carry out economic efficiency analyses or to change the way in which public services are managed, where appropriate.

Compensation for the public service obligation – represents any benefit, particularly financial, granted to operators directly or indirectly from State resources during the performance of public service obligations or in relation to the respective period, to cover net costs relating to the fulfilment of a public service obligation, including reasonable profit. Within the meaning of this definition, the State resources are as provided for in point 3.2. – *State resources in Commission Notice 2016/C 262/01 on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union*;

For the **period 2016 – 2017**, the following public services for which compensation is due were subject to Commission Decision 2012/21/EU on the date of the start of schemes/measures, and thus exempt from notification:

- thermal energy supply service through a centralised system, and the production, transport, distribution and supply of heat energy to the population,
- services associated with the basic activities of regional airports.

#### **I. EXPENDITURE OVERVIEW**

<b>Total SGEI government expenditure by legal basis (millions EUR)</b>	<b>2016</b>	<b>2017</b>
Compensation for Services of General Economic Interest (1+2)	141.58	137.26
1) Compensation granted on the basis of the SGEI Decision	141.58	137.26
2) Compensation granted on the basis of the SGEI Framework	0	0
<b>Total for the period 2016-2017</b>		<b>278.8</b>

## II: DESCRIPTION OF THE APPLICATION OF THE 2012 SGEI DECISION

1. Airports with average annual traffic which does not exceed the limit set in Article 2 (1.e)

### • *Legal basis*

In the course of 1997, most special autonomous airport operations of national importance were transferred from the Ministry of Transport to county councils, as special autonomous operations of local importance (*Government Decision No 398/1997 on transferring certain autonomous airport operations from the Ministry of Transport to county councils*<sup>2 3</sup>).

The transfer of competences for airports of regional interest by the Ministry of Transport to the local public administrative authorities at county level has made it possible to correlate territorial development requirements with the level of modernisation and development of air transport.

Subsequently, through the adoption of Government Emergency Order No 61/2011 (OUG No 61/2011) *regulating certain measures concerning the financing of special airports of local importance*, the legal framework necessary for the designation by county councils of undertakings providing services of general economic interest was created, in line with designation to be made according to the conditions imposed by European legislation in force at the time of adoption, as is evident from Articles 3 and 4 of the above-mentioned Government Emergency Order.

OUG No 61/2011 reflects how the Romanian State intended to establish the official current form referred to in the Commission Decision concerning SGEIs, which entered into force in 2011, and specified by County Council decision. This legislative act extends the financing possibilities to certain items of expenditure by regional airports, and to the expenditure for investments relating to aircraft movement areas and related equipment, allowing such airports access to non-reimbursable external funding available for that sector. Likewise, clauses were introduced to ensure compliance with European regulations on State aid by the local authorities, under whose authority regional airport administrations operate, when allocating funding from local budgets to finance the operation of the airports.

OUG No 61/2011 was amended by Government Emergency Order No 107/2013 (OUG No 107/2013), with a view to ensuring the financing possibilities for airports of local interest and from the State budget, from the budget of the Ministry of Transport, taking into account the need to ensure the legal framework which makes it possible to supplement the sources of financing for public sector investment objectives managed by autonomous airports of local interest, bearing in mind their importance for the development of the regions served.

At the same time, the amendments made specify the obligation to comply with Commission Decision 2012/21/EU of 20 December 2011 on the granting of State aid to a regional airport.

### *Development of specific airport activities*

OUG No 61/2011, amended by OUG No 107/2013, gives county councils the possibility of entrusting autonomous special airports of local interest with the provision of a

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<sup>2</sup> Published in Official Gazette No 186/1997

<sup>3</sup> Published in Official Gazette No 460/2011

service of general economic interest, in accordance with the specific requirements of Commission Decision 2012/21/EU of 20 December 2011.

The responsibility to ensure that a service of general economic interest to be entrusted to a special airport of local interest complies with the relevant European legislation falls on the county council with authority over the airport in question.

The decision of the county council to entrust the provision of the service of general economic interest must contain the following elements:

- a) the identification details of the autonomous special airport of local interest, including the territory in question;
- b) the content and duration of public service obligations;
- c) the nature of the exclusive or special rights granted by the authority which grants those rights;
- d) a description of the compensation mechanism and the parameters applied for the calculation, control and re-examination of the compensation;
- e) the arrangements for preventing over-compensation and recovery of any over-compensation;
- f) a reference to Commission Decision 2012/21/EU of 20 December 2011.

Bearing in mind the fact that the Commission Decision also specifies, in addition to the explicit clauses on activities which may be subject to an SGEI, the means of calculating the compensation for the fulfilment of public service obligation, the above-mentioned legislative act states that compensation for performance of the public service obligation is calculated in compliance with Commission Decision 2012/21/EU.

Article 8 of this legislative act specifies that activities which are not directly associated with the basic activities of the airport may not be considered one of the activities covered by the service of general economic interest: for example the construction, financing, use and rental of the land or buildings or of parts of the latter only for offices and storage or for hotels and economic operators situated on the premises of the airport, or for shops, restaurants and car parks.

Over the period in which an autonomous special airport of local interest benefits from compensation for the performance of public service obligations, the airport tariffs practiced by it must be approved by the county council responsible for management, and must be applied in a transparent and non-discriminatory manner for all users of the airport infrastructure.

Autonomous special airports of local interest, entrusted with the provision of a service of general economic interest and which benefit from compensation for the performance of public service obligations, keep separate accounts for activities relating to a service of general economic interest where the airports in question are also performing economic activities which are not associated with the service entrusted to them.

The compensation granted by the county councils for airports to perform a service of general economic interest over the period analysed, together with information linked to the performance of the service, is presented in the Summary Table No 1.

The following summary table has been completed for services of general economic interest which involve services related to air transport (by type of activity):

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



Services referring to the following were entrusted as services of general economic interest:

- the construction, administration, routine maintenance, repair and modernisation of aircraft movement areas (runway, taxiways, aprons) administered by the airport, and of the related equipment;
- the organisation, equipment and operation of passenger flows in the airport terminals;
- allowing the use, in accordance with the law, of the areas and facilities necessary to the public authorities carrying out specific control activities at the airport;
- ground-handling services for aircraft;
- search and rescue operations on the airport's premises;
- guarding and security functions in cases of emergency, and fire prevention and control;
- processing flights made by aircraft legally exempt from payment of airport charges, including their passengers;
- purchase and maintenance of specific equipment required for ground servicing provided to aircraft;
- protection of airport infrastructure.

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

The service of general economic interest constituted by activities related to air transport was entrusted directly and applied by decision of the county council.

**Average duration of the entrustment (in years)** and the proportion of entrustments that are longer than ten 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 average duration of entrustment is 8.1 years.

Explain whether (typically) **exclusive and special rights** are assigned to the undertakings.

With the exception of the Oradea Autonomous Airport, where Bihor County Council Decision No 172/2011 granted the exclusive right to provide an SGEI, including the activities described in response to the first question, other cases were not granted exclusive or special rights.

**Which aid instruments have been used (direct subsidies, guarantees, etc.)?**

Compensation is paid based on monthly SGEI-related grant applications, and compensation is regularised annually on the basis of Article 5(9) of Decision 2012/21/EU.

**Compensation is** paid from the public funds and, where appropriate, from non-reimbursable external financing programmes, in accordance with the rules of accumulation.

The costs taken into account when determining the amount of compensation include all the costs incurred for the performance of activities relating to the entrusted service of general economic interest. These are calculated on the basis of the generally accepted principles of recording and monitoring expenditure, as follows:

- a) where the activities of the provider are limited to those relating to the service of general economic interest, all costs may be taken into account;
- b) where the provider also performs other activities which are not linked to the service of general economic interest, account is taken only of the costs associated with the service of general economic interest;
- c) the costs attributed to the service of general economic interest may cover all the direct costs

incurred in operating the SGEI and a pro-rata contribution to the costs common to both the SGEI and other activities;

d) the costs linked to the investments, excluding costs incurred by the maintenance and repair of infrastructure, may be taken into account when that work is necessary for the functioning in good conditions of the service of general economic interest.

The revenue taken into consideration when calculating compensation for the performance of obligations of the service of general economic interest includes the revenue obtained from the performance of activities relating to the service of general economic interest and any profit from other activities performed, other than those relating to the service of general economic interest.

Internal accounting must present the costs and revenue relating to the service of general economic interest separately from those which relate to other activities.

**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 compensation mechanism used in the entrustment of the SIEG, in the majority of cases analysed, is based on cost allocation.

The amount of compensation may not exceed what is necessary to cover the costs incurred in discharging public service obligations, taking into account the revenue generated and a reasonable profit for performance of the respective obligation, within the meaning of the Commission Decision of 20 December 2011 on the application of Article 106(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;

The compensation is granted based on an explanatory memorandum setting out the expenses required to discharge the public service obligation properly. Records of the amounts paid out as compensation must be kept for at least 10 years following the date of the last payment.

Over the duration of the public service compensation, the costs and revenues related to activities covered by the SGEI and those related to other activities and services are shown separately in the beneficiary's account records, together with the parameters for allocating them.

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

Where the amount of compensation paid out is found to have exceeded the amount determined based on the calculation parameters, the undue amount must be repaid and the parameters must be updated for future payments. The amount of overcompensation must be repaid within 90 days of the end of the previous financial year; where the amount of overcompensation does not exceed 10% of the amount of the average annual compensation, such overcompensation may be carried forward to the next period and deducted from the amount of compensation payable in respect of that period.

**A short explanation of how the transparency requirements (see Article 7 of the 2012 SGEI decision) for the aid above 15 million euros 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 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).**

We have not had any such cases (aid exceeding 15 million euros granted to undertakings which carry out activities which do not come within the scope of the SGEI). The majority of the local public authorities, in their capacity as providers of State aid, have published the decisions of the county councils to entrust public services on the websites of their own institutions. For example:

<http://www.cibihor.ro/Informa%C8%9Bii%20de%20interes%20public/hot%C4%83r%C3%A2ri-2011>

<https://www.cism.ro/2017/03/ph-403-04-2017/>

[www.cjsuceava.ro](http://www.cjsuceava.ro)

<https://www.cimaramures.ro/toate-hotararile/hotararea-nr-11-din-29-01-2014>

#### **Amount of aid granted in the regional airports sector**

<b>Total amount of aid granted</b>	<b>(in millions EUR) A+B:</b>
<b>2016</b>	<b>2017</b>
18.76	26.68
<b>A. Total amount of aid granted (in millions EUR) paid by national central authorities</b>	
<b>2016</b>	<b>2017</b>
4.62	7.38
<b>B. Total amount of aid granted (in millions EUR) by local authorities</b>	
<b>2016</b>	<b>2017</b>
14.14	19.30
<b>Share of expenditure per aid instrument (direct subsidy, guarantees, etc.) (if available)</b>	
<b>2016</b>	<b>2017</b>
100% - direct subsidy	100% - direct subsidy
<b>Additional quantitative information (e.g. number of beneficiaries per sector, average aid amount, size of the undertakings etc.)</b>	
<b>2016</b>	<b>2017</b>

Please provide an overview of **complaints by third parties**, in particular litigation before national courts, regarding measures in the scope of the SGEI Decision, and make a short presentation of the case and also its result.

From the information received, following questions from providers of compensation for the provision of services of general economic interest, no complaints were received from third parties.

**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;**
- **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, with relevant examples.**

The local public authorities have not experienced any difficulties in applying the

2012 SGEI Decision.

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

No other observations have been made by providers of State aid or by undertakings which have been entrusted with the performance of a service of general economic interest in regional airports.

**If no State aid has been granted for the provision of services of general economic interest under the Commission Decision, please indicate any other instruments that have been used to ensure that those services are provided, and give a brief description of those instruments, indicating the sectors in which they have been granted.**

This is not the case.

## **2. SGEI compensation not exceeding 15 million euro (Article 2(1)(a))**

### **Service of general economic interest in the heating sector**

#### **• Legal basis**

The public thermal energy supply service in Romania operates in a centralised system, through thermal power and thermoelectric power plants which provide thermal energy for a town, town district or neighbourhood.

The specific activity of public thermal energy supply services used for heating and hot water consumption, and the production, transport and supply of thermal energy in the centralised system is regulated by the *Law on the public heat energy supply service No 325/2006*<sup>4</sup>, with subsequent amendments and additions, and by *Government Order No 36/2006 on the establishment of local reference prices for the thermal energy supplied to the population by centralised systems*<sup>5</sup>

The public thermal energy supply service in the centralised system operates through the intermediary of specific technical-housing infrastructures belonging to the public or private domain of the local public administrative authorities or community development association, and which form the centralised system for the supply of thermal energy of the local authorities or the intercommunity development association.

The state aid scheme for the period 2014 - 2019 for economic operators which provide a service of general economic interest producing, transporting, distributing and supplying thermal energy in the centralised system to the population, initiated by Order No 1121/1075/2014 by the Minister for Regional Development and Public Administration and the Delegate Minister for Budget<sup>6</sup>, was drafted on the basis of Government Order No 36/2006, with subsequent amendments and additions, and Emergency Government Order No 110/2009 concerning the granting of state aid to economic operators providing the public service of the production, transport and distribution of thermal energy in the centralised system to the population<sup>7</sup>. The scheme was developed in line with Commission Decision 2012/21/EU of 11 January 2012. Through this scheme, state aid is granted under the following arrangements:

1. allocation from the local budgets to the territorial-administrative units of amounts to fully cover the difference in price between the production, transport, distribution and supply of thermal energy delivered to the population and the local thermal energy prices invoiced to the population, in accordance with Article 3(4) of Government Order No 36/2006, approved with subsequent amendments and additions by Law No 483/2006, with subsequent amendments and additions;
2. the allocation of money from the local budgets of the territorial-administrative units to cover losses incurred by the provision of the public services of producing, transporting, distributing and supplying thermal energy to the population through a centralised system and not covered by the price/charge, in accordance with Article 5 of Government Order No 36/2006, approved with amendments and additions by Law No 483/2006, with subsequent amendments and additions.

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<sup>4</sup> Published in Official Gazette No 651/27 of July 2006

<sup>5</sup> Published in Official Gazette No 692/14.08.2006 (approved by Law No 483/2006) and subsequently amended by Emergency Government Order No 69/2011 and Emergency Government Order No 56/2012

<sup>6</sup> Published in Official Monitor under No 667 on 11 September 2014

<sup>7</sup> Published in Official Monitor No 685/12.10.2009

The state aid provided for in point 1 is granted to all economic operators who supply thermal energy for the population and covers the value difference between the price of producing, transporting, distributing and supplying thermal energy to the population, set by the regulatory authorities, and the local prices of thermal energy invoiced to the population, approved by decision of the local council, correlated with the quantity of thermal energy invoiced to the population.

The state aid provided for in point 2 is granted only to economic operators under the authority of the local public administrative authorities which ensure the thermal energy supply service for the population through a centralised system, and aims to cover all costs generated by the provision of the service of general economic interest.

The estimated total value of state aid to be granted under this scheme is 2 570 million lei.

The estimated number of beneficiaries under the scheme is **55 economic operators maximum**.

Based on the data received, it was found that 45 operators benefited from state aid in the framework of the scheme for the period 2016 - 2017.

The amount of compensation for the provision of the public service for the production, transport and distribution of thermal energy through a centralised system to the population over the period 2016 - 2017, registered for each beneficiary economic operator, is set out in Table No 2 attached to this report.

For the service of general economic interest involving the production, transport, distribution and supply of thermal energy, the following summary table was completed:

**Explanation of what kind of services in the respective sector have been define as SGEI in your Member State. Please list the contents of the services entrusted as SGEIs.**

The service of general economic interest involving the production, transport, distribution and supply of thermal energy in the centralised system to the population.

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

The service of general economic interest of producing, transporting, distributing and supplying thermal energy through a centralised system to the population is entrusted by direct management or delegated management transport.

We would also point out that the service of producing, transporting, distributing and supplying thermal energy through a centralised system to the population was entrusted without issuing a call for tenders, the non-fulfilment of the Altmark conditions led to the initiation of the state aid scheme provided for in Order 1121/2014. '

**Average duration of the entrustment (in years)** and the proportion of entrustments that are no 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.

In accordance with the information submitted by operators included in the scheme, the average duration of service entrustment is 15.6 years, but undertakings also exist which have an entrusted service for a longer period of 25 years.

- Contracts concluded for a duration of between 1 and 15 years account for most of the

- contracts - 27 contracts (69% of all total contracts analysed);
- Contracts concluded for between 15 and 25 years - 13 contracts (23.7% of the total);
- Contracts concluded for an undetermined period - 4 contracts (7.3% of the total).

## **V Explanation of whether (typically) exclusive or special rights are assigned to the undertakings.**

Only where five operators have been explicitly assigned special rights by decisions of the local councils. Although the entrustment acts do not explicitly provide for the granting of exclusive rights, by entrusting provision of the service of a single undertaking, it benefits *de facto* from an exclusive right on the part of the territorial administrative unit, the provider of state aid.

Which aid instruments have been used (direct subsidies, guarantees etc.)?

### **Direct subsidy for:**

- full coverage of the difference between the price for producing, transporting, distributing and supply thermal energy delivered to the population and local prices of thermal energy invoiced to the population, in accordance with Article 3(4) of Government Order No 36/2006, approved with amendments and supplements by Law No 483/2006, with subsequent amendments and supplements, or for
- coverage of the losses caused by the provision of public services for the production, transport, distribution and supply of thermal energy for the population in the centralised system and not covered by the price/charge, in accordance with Article 52 of Government Order No 36/2006, approved with amendments and supplements by Law No 483/2006, with subsequent amendments and supplements.

## **Typical compensation mechanism as regards the respective services and whether a methodology based on cost allocation or the net avoided cost methodology is used.**

Most undertakings benefiting from state aid use the methodology based on cost allocation. As a rule, compensation is granted on the basis of monthly returns, depending on the quantity of thermal energy provided to the population, calculated as the difference between the price of producing, transporting, distributing and supplying thermal energy delivered to the population and the local price invoiced to the population. Compensation is calculated on the basis of six-monthly or annual financial situations presented by the undertakings to the supplier public authorities.

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

In order to avoid overcompensation for public services of general economic interest, suppliers establish their own verification and reimbursement mechanisms for any overcompensation. Some territorial administrative authorities, providers of state aid in the context of schemes provided for by Order No 1121/2014, perform monthly checks of the amount of operating subsidies granted to undertakings which provide the service of general economic interest involving the production, transport, distribution and supply of thermal energy. At the same time, where undertakings register a profit at the end of the year, the state aid provider calculates whether the profit is reasonable or not. Reasonable profit is calculated until 31 May of each year for the previous year, taking into account the economic indicators from the situations registered at the end of each year, for each individual enterprise.

Where overcompensation for a public service is found, the beneficiary is asked to reimburse the relevant amount. When the value of overcompensation does not exceed 10% of the annual compensation value calculated in accordance with the legal provisions, this may be carried over and deducted from the compensation value for the year following the one in which the overcompensation was recorded.

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 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 have been no such cases.

Most local public authorities in their position as providers of state aid have published on the websites of their own institutions the decisions of the local councils to entrust public services for the supply of thermal energy.

(ex: <http://www.primariaarad.ro/files/hotariri/h7105.pdf>,

<http://www.primariabacau.ro/subpagina/hot-r-rea-nr-228-din20-10-2014&page=5>,

<http://www.primariatulcea.ro/hotararile-consiliului-local-2016> etc.)

However, at national level, the Competition Council has organised and administered a site on which all state/de minimis aid schemes granted in Romania are published. This can be found at: <http://www.aiutordestat.ro/?pag=1>

In the context of state aid granted in the period 2014 – 2019, for economic operators which provide the service of general economic interest of producing, transporting, distributing and supplying thermal energy to the population in a centralised system, the highest annual sum granted to compensate for costs was EUR 14.95 million in 2016.

#### **Amount of aid granted in the sector producing, distributing and supplying thermal energy**

##### **Total value of aid granted (in millions EUR) A+B:**

<b>2016</b>	<b>2017</b>
122.82	110.58
<b>C. Total amount of aid granted (in millions EUR) from the state budget</b>	
<b>2016</b>	<b>2017</b>
8.96	6.00

##### **D. Total amount of aid granted (in millions EUR) from the local budget**

<b>2016</b>	<b>2017</b>
113.86	104.58

Share of expenditure per aid instrument (direct subsidy, guarantees etc.)  
(if available)

<b>2016</b>	<b>2017</b>
100% - direct subsidy	100% - direct subsidy

Additional quantitative information (e.g. number of beneficiaries per sector,



average aid amount, size of the undertakings etc.)

2016	2017
48 undertakings	45 undertakings

Please provide an overview of **complaints by third parties**, in particular litigation before national courts, regarding measures within the scope of the 2012 SGEI Decision. Please provide a brief description of the cases and their outcome.

From the information received, following the questions to providers of compensation for the provision of services of general economic interest, there were no third party complaints.

Please indicate whether you have experienced any difficulties in applying the 2012 SGEI Decision, in terms of:

- 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;
- 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, including relevant examples.

The local public authorities have not experienced any difficulties in applying the 2012 SGEI Decision.

If you have any **other comments** on the application of the SGEI Decision on issues other than the ones covered in the previous questions, please feel free to add them.

No other comments were made by suppliers of state aid or by the undertakings to which the service producing, transporting, distributing and supplying thermal energy through a centralised system to the population has been entrusted.

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If no state aid has been granted for the provision of services of general economic interest under the Commission Decision, please indicate any other instruments that have been used to ensure that those services are provided, and give a brief description of those instruments, indicating the sectors in which they have been granted.

This is not the case.