



THE NETWORK  
OF MAJOR  
EUROPEAN  
CITIES

## **EUROCITIES Response to the State Aid Action Plan**

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### **EUROCITIES**

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EUROCITIES is the network of major European cities. Founded in 1986, the network brings together the local governments of 123 large cities in some 32 European countries. EUROCITIES represents the interests of its members and engages in dialogue with the European institutions across a wide range of policy areas affecting cities. These include: economic development, the environment, transport and mobility, social affairs, culture, the information and knowledge society, and services of general interest.

EUROCITIES website: [www.eurocities.org](http://www.eurocities.org)

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## EXECUTIVE SUMMARY

EUROCITIES recognises the importance of the European Commission's efforts towards a comprehensive reform of State aid policy. This reform should be carried out in partnership with Member States, local and regional authorities, and other relevant stakeholders in order to achieve legal certainty and ensure that State aid rules better contribute to sustainable growth, environmental protection, social and territorial cohesion.

A majority of the European citizens live in urban areas. The responsibility of cities to provide services of general economic interest is, therefore, an issue that affects many Europeans. Drinking water supply, treatment of waste water, public transport, social services and waste management, are expected to be delivered efficiently, respecting sustainable development principles, at reasonable cost and, above all, on a regular basis for all (security of supply).

High level services of general interest contribute substantially to a good quality of life. European cities tackle this challenge every day, often resulting in excellent rankings in terms of consumer satisfaction. It has been suggested that compensation payments for the provision of these services may constitute unlawful state aid and distort competition. The European Commission has brought some simplification and clarification to this field with the "Action Plan on State Aid" and the decision under Art. 86(3) but this is not sufficient. EUROCITIES remains concerned both about the definition of the concepts of "compensation" and "subsidy" and about the limitations in the types of services of general economic interest exempt from the rules.

## RECOMMENDATIONS

To ensure a continued efficient and effective delivery of services of general interest in the European Union, EUROCIITIES:

- Welcomes the exemption of hospitals and social housing companies from the notification requirements set out in the Action plan. EUROCIITIES recommends that the Commission rethinks its position and extends the exemption from the notification requirements to all other sectors of Services of General Economic Interest, including social services derived from the principle of solidarity and social protection.
- Recommends that the Commission ensures that EU competition policy and cohesion policy contribute to the same goals of a Europe of sustainable growth and the European social model as those set out in the “Growth and Jobs Strategy”. European State aid policy should contribute to and reinforce the positive effects of European cohesion policy.
- Supports the increase in the *de minimis* aid threshold, although we believe that a substantial increase in the threshold is needed.
- Welcomes the proposed general block exemption. It is essential that the block exemption simplifies and decreases the regulatory burden.
- Supports the Commission’s proposal to focus State aid on research and development. Cities are the prime location for the creation of the knowledge society and for the attainment of economic growth and greater social cohesion.
- Expresses its concern about the intention to establish independent monitoring authorities at Member State level. Such authorities would lead to unnecessary bureaucratic hurdles and also increase the costs for public authorities.
- Believes that the proposal of systematic recovery of non-notified state aid will lead to an unnecessary heavy bureaucratic procedure for the agencies granting state aid.

## SERVICES OF GENERAL ECONOMIC INTEREST

EUROCITIES welcomes the Commission's recognition that Services of General Economic Interest (SGEI) are an important part of the European welfare model (para.33 ff.) These services have a crucial role to play in ensuring social and territorial cohesion. They contribute to the competitiveness of Europe's economy. All citizens must have access to high-quality, reliable and affordable services, and cities are the main providers of such services.

### Definition of concepts

EUROCITIES acknowledges the distinction between "compensation" and "subsidies/State aid" used by the Commission. The *Altmark* ruling<sup>1</sup> established four criteria which, if fulfilled, lead to compensation in the area of services of general interest not being considered as subsidies/State aid as defined by Art. 87 of the EU Treaty. This means that financial compensation fulfilling the four criteria is not subject to the provisions of basic EU law concerning subsidies/State aid and does not require prior notification of the European Commission.

It is important that the concepts of "subsidies/State aid" and "compensation" are clearly differentiated. If this is not the case, the public sector will not be able to maintain its scope for action in the field of SGEI. While the Commission considers the "wide margin of discretion" offered by the *Altmark* ruling as a legal fact when discussing the financial compensation of Services of General Economic Interest (para. 33), EUROCITIES considers the continued legal uncertainty in the area of SGEI to be a cause of significant problems.

While the publication of the "Community Framework for State Aid in the Form of Public Service Compensation" (DGCOMP/D(2005)179) is a first step in the right direction in distinguishing "compensation" from State aid in the legal sense, EUROCITIES maintains it is still insufficient.

### Services covered by Art. 86 para. 2.

EUROCITIES fails to understand why the Commission's decision of 13 July 2005 on the application of Art. 86 para. 2 EC exempts undertakings in charge of social housing and hospitals entrusted with tasks involving SGEI from the scope of State Aid, while not extending this to suppliers of services such as the provision of drinking water, social services, waste management services etc.

EUROCITIES urges the Commission to extend the exemption from notification requirements to all sectors of SGEI, including social services derived from the principle of solidarity and social protection. Social services are crucial to citizens' basic needs and play an important role in achieving social cohesion and inclusion within the EU. They focus on people's welfare and follow rules that are different from the mechanisms of the free market. EUROCITIES urges the Commission to respect the special characteristics of these services.

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<sup>1</sup> *The European Court of Justice [Case C-280/00].*

## PRIORITISATION THROUGH SIMPLIFICATION AND CONSOLIDATION

EUROCITIES supports the Commission's proposal to issue a general block exemption policy which will exempt certain categories of State aid from the obligation to notify the Commission. The general block exemption will bring together and simplify existing exemptions such as training, SME and training, in addition to integrating a broader range of exemptions such as R&D and most notably regional development. The general block exemption should be both flexible and ensure legal certainty, in order to simplify the range of aid that is compatible with the Treaty. It is essential that the block exemption simplifies and decreases the regulatory burden.

EUROCITIES welcomes the increase of the *de minimis* aid threshold. However, we suggest to triple the threshold to €300,000 for a three year period, and to establish a second threshold, (€1,000,000) for sectors which have hardly or no effect on trade between Member States.

## A FOCUSED REGIONAL AID POLICY

The conclusions of the European Spring Council 2005 recognise the contribution of European cohesion policy towards achieving the objectives of the "Growth and Jobs Strategy".

The continued commitment of the Commission with regard to the Growth and Jobs Strategy and to sustainable development has an impact on both its cohesion and State aid policies. The Commission therefore has a responsibility to ensure consistency between both policies. European State aid policy should contribute to and reinforce the positive effects of European cohesion policy. EU competition policy and cohesion policy must contribute to the goals of a Europe of sustainable growth and the European social model as set out in the "Growth and Jobs Strategy".

The review of the Commission's regional state aid policy must be seen in the context of the Growth and Jobs agenda and the preparation of the future cohesion policy 2007-2013. Sufficient flexibility should be guaranteed to develop policies at national and sub-national level to promote local and regional competitiveness, employment and European territorial cooperation.

Moreover, it is important that the review of the regional aid guidelines is carried out in close dialogue with representatives of local and regional government.

## DETAILED COMMENTS

### Targeting Innovation and R&D to strengthen the Knowledge Society (II.1)

EUROCITIES supports the proposals to focus State aid on R&D. Research has an important impact on labour markets across Europe and influences the economic development in European cities and the European Union as a whole. Cities are the prime location for the creation of the knowledge society and for the attainment of economic growth and greater social cohesion. In particular, it should become easier to promote the creation of clusters in individual Member States in order to facilitate a more efficient use of research capacity and human resources.

### The establishment of independent monitoring authorities in the Member States (III.1, para. 51)

The Commission presented the idea of independent authorities in Member States to support it in its task of enforcing State aid law (detection and provisional recovery of illegal State aid, execution of recovery decisions). New agencies will lead to an increase in costs and efforts as well as creating another bureaucratic hurdle. New independent agencies will mean additional costs for public authorities. We have serious concerns about these intentions given the many calls for reducing the public sector (dismantling of bureaucratic structures) and, in particular, given the difficult financial situation of the public sector.

### The adaptation of procedural rules (III, para. 57)

An adaptation of procedural rules concerning state aid is urgently required. A further and lasting prolongation of existing procedures in an enlarged EU is unacceptable in particular in ensuring an optimal framework for business to operate. Reducing procedures is indispensable considering the need of the business sector for legal certainty.

### The systematic recovery of non-notified state aid (III, para. 58, second bullet point)

EUROCITIES believes that the systematic recovery on the grounds of non-notification would lead to considerable additional bureaucratic pressures on the agencies granting state aid. In addition such measures would make it more difficult for all potential State aid applicants rather than targeting those who fail the criteria. The proposal of a systematic recovery of non-notified state aid does not sufficiently take into account the impact on the employment situation in the companies concerned. At least, the possibility to delay repayment should be foreseen in order to allow for jobs to be safeguarded in the long-term.