

Report on the implementation of Commission Decision of 28 November 2005 on the application of Article 86(2) of the EC Treaty to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest (2005/842/EC)

The Report on the implementation of Commission Decision of 28 November 2005 on the application of Article 86(2) of the EC Treaty to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest (2005/842/EC) (hereinafter: 'SGEI Decision') is submitted in accordance with Article 8 of the SGEI Decision and covers the period 2009-2011. Unlike the previous report, which was submitted to the European Commission in December 2008, the required content of the report presented this time was not specified in any detail. For that reason, the report focuses on setting out the entire amount of state aid granted during the period in question in accordance with the SGEI Decision, data on individual sectors, information on some concepts of existing legislation and problems with the application of the current wording of the SGEI Decision.

By way of introduction it should be pointed out that the SGEI Decision is applied in the Czech Republic to the financing of services of general economic interest at all levels of the public authorities. Apart from central authorities (Ministry of Culture and Ministry of Health), regions (higher territorial self-governing units) also apply the SGEI Decision frequently, as do large municipalities (basic territorial self-governing units), especially chartered towns. The financing of services of general economic interest by small towns or municipalities (fewer than 10 000 inhabitants) in accordance with the SGEI Decision tends to be an exception.

Compared to the preceding period in question (2006-2008), there has been an obvious increase in legal knowledge of the state aid rules in the context of financing public services. This fact is influenced not only by the length of time that the current rules have been in force, but also by the provision of awareness-raising activities in the field of services of general economic interest. We would inform the European Commission that in the Czech Republic at the moment there is a series of seminars aimed at municipalities and regions under the auspices of the Czech Competition Authority for the purpose of providing further information in this field. One of the objectives of these seminars is to increase awareness of services of general economic interest and of the methods for financing them in compliance with the state aid rules.

Total amount of state aid granted in accordance with the SGEI Decision

During the period in question from 2009 to 2011 (estimate for 2011), the amount of state aid that was compatible with the internal market granted in accordance with the SGEI Decision exceeds CZK 16 billion. Specific data on individual periods are given in Table 1.

Table 1: Total amount of state aid granted in accordance with the SGEI Decision (CZK 000):

Period	2009	2010	2011 (estimate)
Total amount of state aid granted in accordance with the SGEI Decision per period (CZK 000):	4 909 117	6 402 862	4 991 552

Data on individual sectors

The Czech Republic presents Table 2 in connection with the amount of state aid granted per individual sector. Table 3 presents the average number of recipients of compensation (i.e. public-service providers) in accordance with the SGEI Decision for every year in the period in question, 2009-2011.

Table 2: Amount of compensation for services of general economic interest (CZK 000):

Amount of compensation for services of general economic interest (CZK 000):	2009	2010	2011 (estimate)
Undertakings within the meaning of Article 2(1)(a) (amount of compensation less than EUR 30 million and therefore exempt from the notification requirement).	2 534 982	2 551 706	2 405 863
Credit institutions within the meaning of the last paragraph of Article 2(1) (restricted turnover in the previous two years).	0	0	0
Hospitals identified as SGEI	2 169 284	3 640 809	2 304 590
Transport firms providing air or maritime links to islands in accordance with Article 2(1)(c) (restricted maximum number of passengers per year)	0	0	0
Public service compensation for airports under Article 2(1)d (restricted maximum number of passengers per year)	19 102	20 694	36 500
Public service compensation for ports under Article 2(1)(d) (restricted maximum number of passengers per year)	0	0	0
Social housing undertakings	185 749	189 653	244 599

Table 3: Average number of recipients of compensation per sector during 2009-2011:

SECTOR	Average number of recipients of compensation per sector for one year (2009-2011)
Undertakings (Article 2(1)(a))	1 018
Airports	2
Social housing undertakings	44
Hospitals	132

We can provide the following information about the individual sectors covered by the SGEI Decision:

- Undertakings – general threshold

In this general category various undertakings in the Czech Republic receive compensation for the provision of services of general economic interest. The undertakings concerned mainly provide social services (for example, asylum centres, retirement homes, etc.), cultural activities (especially museums, libraries, theatres), public sports grounds or public facilities, and undertakings providing economic development and regional stability.

- Credit institutions

In the Czech Republic no compensation within the meaning of the SGEI Decision is paid for the provision of public services by credit institutions.

- Hospitals

According to the data provided above, hospitals and other undertakings providing health care are financed in the Czech Republic to a large extent in accordance with the SGEI Decision. It is not only central bodies of the Czech Republic (Ministry of Health) that participate in the financing but also basic and higher territorial self-governing units (municipalities and regions).

- Air and maritime links

In the Czech Republic from a geographical perspective no support is given to any air or maritime links to islands.

- Airports

In the Czech Republic, compensation for the provision of public services in accordance with the SGEI Decision is paid overall to two small regional airports, which do not, however, operate scheduled international flights.

- Ports

Given the geographic location of the Czech Republic, in practice the SGEI Decision is not used for compensation paid to ports.

- Social housing undertakings

A uniform system of financing the provision of social housing has not been introduced in the Czech Republic. Individual facilities are financed separately, especially at the municipal level.

On certain legislative concepts set out in the SGEI Decision

In the Czech Republic the act of entrustment generally takes the form of an agreement. Other forms of entrustment are decisions or other types of administrative acts. The term 'entrustment agreement' is not standardised; in most cases it is an agreement on public service obligations, or an agreement on payment of grants and the foundation charter (an agreement on the foundation of the entity with the setting of relevant criteria for the payment of

compensation). The duration of the obligation established in the agreement is not standardised; it varies according to the type of public service and the specific needs of the buyers of public services. As a rule an agreement is concluded for a period of 1-10 years. In some cases the entrustment is not enshrined solely in one legal act. In the field of health care, for example, the following laws are usually considered to be acts of entrustment together: Law No 20/1996 on health care, as amended, Law No 48/1997 on public health insurance, and amending some related laws, as amended, together with specific decisions on payment of grants.

Parameters for calculating the amount of compensation are determined in individual cases in advance, and generally correspond to the nature of the public service provided. As examples we can cite the number of hours of services provided or functional determination of expenditure including specific determination of ineligible expenditure. In some cases the methods for determining the parameters are set by the buyers (for example the method of financial programming of the Ministry of Health).

Reasonable profit is always determined on a case-by-case basis. For some public service obligations, however, the amount of compensation does not include any reasonable profit.

With regard to review mechanisms, whose role is to prevent overcompensation arising, in the Czech Republic there is strict compliance with the requirement of separate accounting for activities relating to the public service obligation and other activities performed on a commercial basis. In this way it is impossible to use compensation to finance the undertaking's other commercial activities. With regard to the different types of review mechanism, as a rule the amount of compensation is checked in accordance with Law No 320/2001 on financial auditing in public administration, and amending some related laws, as amended. Moreover, in some cases further additional checks are specified under the agreements. Individual purchasers of public services also have adjusted mechanisms for the recovery of amounts of compensation overpaid.

Some purchasers of public services also include expenditure linked to investments in the calculation of compensation. However, such expenditure must be used for investments in infrastructure that is essential for the provision of services of general economic interest.

Problems implementing the current SGEI Decision

During the period in question, purchasers of public services did not report any fundamental problems implementing the SGEI Decision, nor were there any complaints from third parties. However, from its advisory work, the Czech Competition Authority found a problem with the form of entrustment of the organisational unit of public entities that is not a legal person in its own right. Furthermore, the Czech Republic would welcome a simplification of the existing rules and clearer explanation of the basic concepts in the field of legislation regulating the financing of services of general economic interest (for example in the form of methodology). With regard to the interim results of the reform of the rules on the financing of services of general economic interest (draft legislation), the Czech Republic is convinced that these requirements will be to a large extent been attained by means of the new rules.

In conclusion we would state that in addition to the SGEI Decision, services of general economic interest in the Czech Republic are financed also on the basis of the judgment by the European Court of Justice in the *Altmark* case¹, Commission Regulation (EC) No 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to de minimis aid and Article 107(3) of the Treaty on the Functioning of the European Union. Framework 2005/C297/04 has so far not been used in the Czech Republic.

¹ Judgment of the Court of 24 July 2003, C-280/00 *Altmark Trans GmbH and Regierungspräsidium Magdeburg v Nahverkehrsgesellschaft Altmark GmbH*, and *Oberbundesanwalt beim Bundesverwaltungsgericht* [2003] ECR I-7747.