



EUROCITIES statement on state aid and local public services

January 2016



Introduction

City authorities play a central role in providing public services and contribute to Europe's economic stability and to economic, social and territorial cohesion. We support social progress through local public services that strengthen the well-being of our citizens, as well as how secure citizens feel about their social situation. We ensure the provision of high quality public services to our citizens. Public services such as drinking water supply, treatment of waste water, waste management, social services and publicly supported housing are expected to be delivered efficiently, affordable, respect sustainable development principles, at reasonable cost and especially, on a regular basis for all.

The EU treaties recognise the added value of public services, for instance in articles 14 and article 106(2) of the TFEU¹ as well as Protocol No 26, which confirms that "The shared values of the Union in respect of services of general economic interest (...) include in particular: the essential role and the wide discretion of national, regional and local authorities in providing, commissioning and organising services of general economic interest as closely as possible to the needs of the users".

European cities should be empowered in our role as promoters of economic and social innovation. Today's demographic, social and economic trends pose new challenges to our society, create new forms of exclusion and put pressure on traditional social protection systems. City authorities react by adapting and modernising their services, by introducing new programmes and policies to prevent social polarisation and exclusion, to promote health and well-being of young people and the elderly, as well as participation and diversity.

The mid-term review of the State Aid rules for services of general economic interest (SGEI) Package is an opportunity to assess and simplify rules for local authorities by keeping administrative, legal and financial burdens to a minimum. This is essential given the financial pressures currently faced by the public sector and the need for smarter use of human and financial resources.

EUROCITIES already recognises the added value of the State Aid Modernisation process. The new package on state aid for SGEI in 2012 took into account some of our cities' concerns and proposals such as for example reduction of checks for overcompensation (multi-annual approach now), and extending exemptions.

In view of the mid-term review of the SGEI package, EURO CITIES further recommends that state aid rules:

- better match public procurement rules

¹ Treaty on the functioning of the European Union

- are simplified and more proportionate to the nature and size of local public services
- are more flexible so that local authorities can choose the most appropriate form of service provision (for instance direct, in house, concession or procurement)
- ensure the legal certainty and predictability needed for the provision of high quality public services
- keep reporting requirements to a minimum

In order to achieve these recommendations, we suggest the following:

1) Harmonising definitions and streamlining rules

The diversity and multitude of rules and regulations, as well as their economic and technical complexity, does not make it easy for cities. There is still a large amount of legal uncertainty on how to apply the rules, especially if the terms used are not consistent. The definitions used must be standardised and systematised.

The European Commission's objective was to further reduce the administrative burden on authorities and companies, and concentrate the Commission's resources on the implementation of aid rules for cases with the greatest impact on the domestic market. This has not so far been sufficiently achieved. The purely local impact of state aid granted to an economic activity is still hard to prove, as for instance it is difficult to predict the eventual effects on cross-border investments. The Commission decisions² aimed at offering additional guidance to member states and stakeholders only offer limited help to local authorities as each local context is different.

A number of concepts, used in state aid control, in particular 'reasonable profit', 'economic activity' and 'well run undertaking', still raise difficulties for cities in practice:

- 'Reasonable profit'

The 2012 Package has provided clarifications on the concept of 'reasonable profit' and introduces some new indicators: any 'reasonable profit' can be calculated taking into account in relation in particular to the quality of the service provided and gains in productive efficiency. These quality and efficiency control prerequisites are unduly complicated and exceed the Commission's competences.

- 'Economic activity'

Due to the complex nature of local public services and the fact that they are increasingly provided in different ways, an activity which is economic in one member state might not be economic in another. For instance, higher private education paid by students or their parents is an economic activity but basic education services are generally not.

The concept of services of general economic interest is a dynamic one. Local authorities have the right to define what is economic and what is not. In times of economic downturn, EU citizens might be exposed to financial uncertainties and job insecurity. In such an environment, a greater burden falls on each member state to maintain certain public services for as many people as possible.

² European Commission press release from 29.04.2015, IP/15/4489

The Commission's powers of control regarding 'economic activity' are confined to obvious errors in assessment. However, recently the Commission seems to have gradually extended its notion of what it considers as 'service of general economic interest' to cover a very extensive and broad range of services that were formerly considered as non-economic. It is important that the Commission considers carefully how it assesses what is an economic activity. An excessively loose interpretation can run the risk of having an impact on policy areas in which the Commission has no formal competence.

- A 'typically well-run undertaking'

The fourth Altmark criterion to determine if a public service compensation is or not a state aid also needs to be clarified. It states that the level of compensation should be calculated on the basis of a typical well-run undertaking if the service provider is not selected by a public procurement procedure. The issues are: what is a 'well run undertaking'? What kind of entities is covered? This must be clarified by the European Commission.

2) Extending exemptions

In the 2012 package of state aid rules, the Commission has extended the notification exemption and compensation thresholds to cover a broad range of social services. The inclusion of 'vulnerable persons' offers the possibility for compensation services, in particular elderly care, nurseries and for disabled people, which we had previously requested. However, even if social housing is also exempted from thresholds, recent Commission decisions have restricted the scope of application (for instance in the Dutch housing case - see below on publicly-supported housing). We also believe that compensations for waste and sewage disposal, as well as water supply provided by local providers should be exempted from the thresholds.

3) Raising exemption thresholds

The 2012 package reduced the general threshold for notification exemption from 30 million euros per annum to 15 million euros per annum.

The halving of the threshold value has mainly had an impact on large municipalities, where investments are on a large scale and easily reach the new threshold. Even taking into consideration the time period for the depreciation of a building pursuant to Article 2, paragraph 2 of the 2012/21/EU resolution, limiting the value threshold to €15 million per annum would also have an adverse effect. The operation and construction sectors usually require large subsidies.

The financial support for activities that undisputedly comply with SGEI terms are often not covered by the current threshold value in larger cities. As a general rule, the way to guarantee a subsidy which conforms to the law in such cases is through the exemption decision and through an entrustment.

Halving the threshold means a considerable limitation for large cities where large investments are often needed. We would suggest raising the threshold at least to its former level.

4) Publicly-supported housing

Social housing or publicly-supported housing is an important resource for fighting poverty and social exclusion, and for improving social cohesion. It should not be limited to those most in need of affordable housing.

The exemption of social housing from state aid notification in the Almunia package is welcomed in principle. However, as city authorities, we do not agree with the restriction of access to social housing to 'disadvantaged citizens or socially less advantaged groups' as stipulated in the package. This is contradictory to subsidiarity and to the local right to define, organise and finance services of general economic interest, such as social housing. Focusing only on low-income groups limits social cohesion, as it can prevent social mix; it also limits the integration of refugees for example. We recommend that the sentence, which refers to 'disadvantaged citizens or socially less advantaged groups' in recital 11 of the decision of the Almunia package is deleted.

5) Reducing reporting requirements

Many reporting requirements impose considerable administrative burden on city authorities. We request a reduction of reporting requirements to a minimum.

6) Providing more supportive instruments

In addition to the interactive information service, which is a useful tool, we would welcome training in all EU languages for city officers on how to deal with state aid rules, organised by the European Commission (such as the ones provided during the State Aid Modernisation process for member states).