

**REGULATION**  
**on state aid granted for the beneficiaries which provide services of general  
economic interest**

The Please present Regulation partially transposes Commission Decision 2012/21/EU of 20 December 2011 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, published in the Official Journal European Union L7 of 11 January 2012; Communication from the Commission on the application of the European Union State aid rules to compensation granted for the provision of services of general economic interest 2012/C 8/02, published in Official Journal of the European Union C 8 of 11 January 2012 and Communication from the Commission 2012/C 8/03 on European Union framework for State aid in the form of public service compensation for the public service obligation, published in Official Journal of the European Union C 8/15 of 11 January 2012 and the criteria under which compensation for public service obligation do not constitute State aid within the meaning of article 107 of the Treaty from the Decision of Court of Justice of the European Union, Cause C-280/00, Almark Trans and Regierungspräsidium Magdeburg/Nahverkehrsgesellschaft Altmark of 24 July 2003.

***Section 1***

***Purpose and Scope***

- 1.** In accordance with Article 5 Para (1) f) of Law No. 139 of 15.06.2012 on State aid can be considered compatible with the normal competitive environment state aids granted to the beneficiaries which provide services of general economic interest.
- 2.** The Please present Regulation lays down the conditions which have to be observed in granting aids to the beneficiaries which provide services of general economic interest (hereinafter - SGEIs).
- 3.** This Regulation is applied to State aid in the form of compensation which is given to beneficiaries to whom was entrusted to provide SGEIs, including air and maritime transport.
- 4.** The Please present Regulation is not applied to the land transport sector, public service, broadcasting sector and the agricultural sector.
- 5.** State aid granted to beneficiaries in difficulty which provide SGEI will be evaluated in accordance with the Regulation on State aid for rescuing beneficiaries in difficulty.

## ***Section 2***

### ***Definitions***

6. In the meaning of the Please present Regulation, the definitions given below shall have the following meaning:

**compensation** - support granted from public funds in order to cover the net costs incurred by a beneficiary for discharging of SGEI obligations, including a reasonable profit;

**net costs for discharging of SGEI obligations** – the difference between the costs incurred by a beneficiary for discharging of SGEI and revenues from SGEI, as are specified and estimated in the act/acts of entrustment of services. Alternatively, it may be calculated as the difference between the net cost covered by the beneficiary for operating with SGEI obligation and the net cost or profit of the same beneficiary operating without SGEI obligation.

**rate of return on permanent capital** – the internal rate of return that the undertaking makes on its invested capital over the duration of the period of SGEI entrustment i.e. internal rate of return relative to the cash flows of the contract.

## ***Section 3***

### ***The state support that is not the state aid***

7. The compensations granted to the beneficiaries which provide SGEI do not constitute State aid if all following conditions are met:

- 1) the beneficiary undertaking must actually be responsible for the execution of some SGEI obligations, and the obligations must be clearly defined;
- 2) parameters on which the compensation is calculated must be established in advance in an objective and transparent manner, in order to avoid conferring an economic advantage which may favor the beneficiary undertaking over the competitors. Compensation payment of the state for losses incurred by an undertaking without the parameters of such compensation to be determined in advance, when it is subsequently found that the provision of SGEI was not economically viable, constitute state aid;
- 3) compensation cannot exceed what it is necessary to cover as a whole or partially of the occasional costs incurred in discharging the SGEI obligation, taking into account the revenue from this activity, and a reasonable profit;
- 4) when choosing the undertaking that will be vested with the obligation of SGEI provision, is not made during the public procurement procedure which allows the selection of the capable bidder of providing those services at the lowest prices, the level of compensation should be determined on the basis of a costs analysis which a well run and adequately equipped undertaking, would have incurred to provide that SGEI obligation, taking into account the revenue from this activity, and a reasonable profit.

8. A well managed undertaking implies the complying of the accounting standards in force. Aid provider may base its analysis of the management quality of undertaking on representative analytical productivity rates (eg, turnover relative to capital employed, the total cost related to turnover, turnover per employee or staff

costs reported on value added), can also be used in this regard, analytical rates on the quality of offer in relation to user expectations. An adequately equipped undertaking is the undertaking that has the necessary resources to fulfill without delay the obligations of SGEI provision.

## **Section 4**

### ***Compatible state aid***

**9.** If they are not met all conditions set out in point 7 of this Regulation, compensation granted to the beneficiaries for SGEI provision are assessed under Section 11 of the Regulation on the notification form, the examination procedure and decision-making on state aid may be compatible with a normal competitive environment, where the following conditions are met:

- a) the state aid is necessary for the SGEI operating;
- b) state aid does not distort competition unduly.

**10.** State aid must be granted for an SGEI correctly defined, subject to the notification to the Competition Council. Notification of State aid for SGEI provision is done through completion of general notification form provided in Annex 2 of the Regulation on the notification form, the procedure for examining and decisions making on state aid and a special form of notification of a state aid for SGEI provided in Annex 1 to the Please present Regulation.

## **Section 5**

### ***The conditions of state aid granting to beneficiaries, which provide SGEI***

**11.** SGEI provision is entrusted to the beneficiary undertaking under one or more legal acts.

**12.** The entrustment act or acts should comprise:

- a) the content and duration of the SGEI obligations;
- b) the undertaking and, where applicable, the territory where the SGEI will be provided;
- c) the nature of any exclusive or special rights assigned to the beneficiary by the granting authority;
- d) a description of the compensation mechanism and the applied parameters for calculating, controlling and reviewing the compensation;
- e) obligation of the designated beneficiary to keep separate accounting records, so that to Please present costs and revenues related to SGEI and other assets, and to check whether existence of the overcompensation on the level of each SGEI, if their nature is different or provider who entrusted SGEI is different;
- f) the arrangements for avoiding and recovering any overcompensation;

**13.** The duration of the period of entrustment should be justified by reference to objective criteria such as the need to amortize non-transferable fixed assets. The duration of the period of entrustment should not exceed the period required for the depreciation of the most significant assets required to provide the SGEI.

**14.** The state cannot impose specific obligations for SGEI for services which are already provided or can be provided satisfactorily and on conditions, such as price, features in objective quality, continuity and access to service, consistent with the public interest so as it is defined by state, by the undertakings operating in normal market conditions.

**15.** The amount of compensation may not exceed what it is necessary to cover the net costs incurred in discharging the SGEI obligations, including a reasonable profit.

**16.** The parameters on which the compensation is calculated must be established in advance in an objective and transparent way.

**17.** In case when a provider assigns the same SGEI provision to more than one beneficiary, the compensation should be calculated using the same method for all of the beneficiaries.

**18.** The amount of compensation may be determined based on estimated costs and revenues, based on actual costs and revenue, or on both, depending on the efficiency incentives that the state wishes to provide right from the start, in accordance with point 29 of the Please present Regulation.

**19.** If the calculation of compensation is based, in whole or partially on estimated costs and revenues they must be specified in the entrustment act. These should be based on real parameters, which are measurable and observable on the economic environment in which the SGEI provided.

**20.** Estimated costs and revenues should be based, where it is appropriate, on the expertise of regulatory authorities in the field or of other independent entities from the beneficiary. In both cases, it must be indicated the sources on which are based these estimates.

**21.** The costs assessment should reflect and the increases of efficiency obtained by SGEI provider during the duration period of the entrustment.

**22.** The costs which are taken into account in the calculation of compensation shall include all costs incurred for the SGEI provision. They are calculated as follows:

a) when the beneficiary's activities shall be limited to SGEI, taking into account all of its costs;

b) when the beneficiary carries out activities which do not fall within the scope of the SGEI, taking into account only the costs of the SGEI. SGEI costs consist of direct consumption incurred in discharging the SGEI and proportional contribution to the common costs both to SGEI as well as to other activities. Appropriate contribution to common costs shall be determined according to the level of reasonable profit, estimated to be achieved by undertaking throughout the activities which are not the subject of the SGEI or, if it proves more appropriate, by using other methods;

c) investment costs, especially those concerning infrastructure, may be taken into account when these investments are necessary for the performance of SGEI.

**23.** The income which needs to be taken into account when calculating compensation shall include at least all of the revenues from the provision of SGEI.

**24.** If that beneficiary has exclusive rights associated with other activities than the SGEI which the aid is granted, generates profits that exceed a reasonable profit, or

benefits from other advantages offered by the state, they are included in income. The concerned state aid provider may decide that the profits accruing from other activities than those falling within the scope of the SGEI may be assigned in whole or partially for SGEI financing.

**25.** Reasonable profit is the rate of return on permanent capital throughout the duration period of the entrustment document, which would be required by a typical undertaking, considering whether or not to provide the SGEI, taking into account the level of risk. The level of risk depends on the concerned sector, the nature of service and compensation characteristics.

**26.** In cases thoroughly justified other indicators can be used to determine what should be a reasonable profit, what will be the average return on own capital during the duration period of the entrustment act over, return on engaged capital, return on assets and return on sales.

**27.** State aid provider must submit to the Competition Council evidence which show that the profit does not exceed the amount that would be required by a typical undertaking which considers whether or not to provide the service, by making the reference to the return achieved on similar types of contracts entrusted in competitive conditions.

**28.** In the calculation of compensation can be introduced incentives for the effective SGEI provision. The mechanism of stimulation of the efficiency improvement should be based on objective and measurable criteria established in the act of SGEI entrustment.

**29.** Incentives in terms of efficiency can be designed in different ways to suit the specifics of each case or sector. Thus, in the entrustment act / acts can be defined:

a) a fixed level of compensation that includes increases of efficiency that are expected to be obtained by the beneficiary during the duration period of the entrustment act, or

b) can be defined efficiency purposes, the carrying out of which depends on the compensation granting. If the beneficiary does not meet the purposes, the compensation should be reduced according to a calculation method specified in the entrustment act /acts. However, if the beneficiary exceeds the purposes its compensation should be increased by applying a method specified in the entrustment act / acts .

## ***Section 6***

### ***The categories of the state aid beneficiaries***

**30.** State aid rules are applied only if the SGEI provider is an undertaking defined in the Article 4 of the Competition Law no.183 of 11 July, 2012.

**31.** An entity engaged in economic activities as well as non-economic activities is considered to be an undertaking only in part concerned of the economic activities.

**32.** If a public authority does not allow third parties to provide a particular service (for example, because it wants to provide by themselves) this does not rule out the existence of an economic activity. If there are undertakings willing and able to provide respective service on the market, that service has an economic character.

**33.** The Please present Regulation shall not be applied when the state acts through the exercise of public authority prerogatives.

**34.** It is conceivable that an entity acting in the exercise of public authority prerogatives in case provision of such service is a task that is a part of essential state functions or is related to those functions, by its nature, its purpose or and by the rules applied in this case. In general, activities that are intrinsically part of the public authorities' prerogatives and which are exercised by the state are not economic activities, unless the state has decided to introduce market mechanisms. Thus, activities such as those related to national security or the police, security and control of air navigation and safety of sea traffic control, monitoring antipollution, organizing, financing and execution of prison sentences, are not economic activities.

**35.** Activities from the social security sphere have economic character depending on how they are established and structured and namely:

1) The criteria by which are determined whether the social security system is based on the principle of solidarity and do not imply an economic activity are the following:

a); if the affiliation to system is necessary;

b) if the system has a purpose exclusively social or not;

c) if the system has or not a lucrative purpose;

d) if the labor conscription depend or not on the contributions made;

e) if the labor conscription granted are not necessarily proportionate to the wage earnings of the insured persons;

f) whether or not the system is subject to state control.

2) Social security systems have an economic character if they are characterized by:

a) the optional nature of the affiliation;

b) the principle of capitalization (rights correlation to the paid contributions and the financial results of the system),

c) their lucrative character;

d) the granting of some rights which are in addition to those granted by a basic system.

3) If the social security system combines features of both categories, the classification system is the result of an analysis of the items in subpoints 1) and 2) and their importance.

**36.** If public hospitals are part of a national health service and are based almost entirely on the principle of solidarity, are funded directly from state resources and provide their services free of charge, on the basis of universal coverage, those organizations do not act as undertakings.

**37.** In the case of point 36 of the Please present Regulation, even those activities which could have an economic character, but only operate in order to provide another uneconomical service, have no economic character. An organization that purchases goods - even in large quantities - in order to provide a uneconomical service, is not acting as an undertaking simply because it is a purchaser in a given market.

**38.** In case, hospitals and other health care providers offer services for remuneration, which they obtain either directly from patients or the insurance company that they are affiliated, then there is a degree of competition between hospitals in the provision of services health. There where it is happening, a medical service that is provided by a public hospital is not sufficient for this certain activity to be classified as uneconomic.

**39.** Medical services which are provide by independent physicians and other private practitioners on surcharge and at your own risk should be considered as an economic activity.

**40.** Organized public education within the national educational system financed and controlled by the state, can be considered a non-economic activity. Non-economic nature of public education is not, in principle, effected by the fact that students and their parents are sometimes forced to pay enrollment or study fees that contribute to the running costs of the system, if financial contributions represent only a fraction of the cost actual service, and therefore they do not affect non - economic nature of a service of general education funded primarily by public funds.

**41.** If educational services are funded primarily by parents, students or business income, considering their nature, their financial structure and the existence of competing private organizations, these educational services should be considered as those that have an economic purpose.

## ***Section 7***

### ***Incompatible state aid***

**42.** Compensation granted for the provision of SGEI, but used by the beneficiary to act on another market for purposes other than those established by the entrustment act / acts constitutes incompatible state aid that must be repaid.

**43.** Overcompensation is the amount received by the beneficiary in addition to the amount of compensation determined under point 15 of the Please present Regulation.

**44.** Since overcompensation is not necessary for SGEI obligation, this may constitute incompatible State aid.

**45.** If the beneficiary received compensation that exceeds the amount determined under point 15 of the Please present Regulation, and do not comply with the conditions set out in point 9 of the Please present Regulation, the beneficiary concerned must repay overcompensation from which he has benefited. The parameters for calculating the compensation will be updated for future.

**46.** If overcompensation does not exceed 10% of the average annual compensation, the overcompensation can be reported for the next period and may be deducted from the amount of compensation due for the period

**47.** In order to ensure that the recipient does not receive compensation that exceeds amount stipulated in point 15 of this Regulation, state aid provider performs regular checks at least every three years during the duration period of the entrustment act / acts and its termination.

## ***Section 8***

### ***Conditions of state aid monitoring***

**48.** Monitoring of state aid granted to the beneficiaries that provide SGEI is made in accordance with Section 14 of the Regulation on the notification form, the procedure of examination and adoption of the decisions on state aid.

## ***Section 9***

### ***Availability of information***

**49.**

State aid provider shall keep available, during the period of entrustment and for 6 years from the end of the duration period of entrustment act/acts, all the information necessary to determine whether the compensation granted is compatible with this Regulation.

**50.** On written request by the Competition Council , state aid provider shall Please present to the Competition Council with all the information that the latter considers necessary to determine whether the compensation measures in force are compatible with this Regulation.

**NOTIFICATION SPECIAL FORM OF STATE AID  
FOR SERVICES OF GENERAL ECONOMIC  
INTEREST**

1. General Condition

1.1. Describe briefly the extent of support, noting the form of the use and value.

1.2. Service obligation of general economic interest (hereinafter - SGEI) has been entrusted by a legal act? ( please tick)

	YES		NO	

Please present the relevant supporting documents (act entrusting SGEI)

1.3. Are the parameters on which the compensation calculated have been established beforehand in an objective and transparent way? ( please tick)

	YES		NO	

Please present relevant supporting documents (studies, analysis, surveys etc..).

1.4. Compensation does not exceed what is necessary to cover all or part of the costs incurred in discharging the SGEI obligation, taking into account the revenue from this activity, and a reasonable profit? ( please tick)

	YES		NO	

Please present relevant supporting documentation (financial projections).

1.5. Assignment of a beneficiary's SGEI was performed by procedure of public procurement? ( please tick)

	YES		NO	

Please present relevant supporting documents.

1.6. If the provision of SGEI was assigned by public procurement procedures, specify if it was open, transparent and unconditional.

1.7. Demonstrate, where appropriate, open, transparent and unconditional

character of public procurement procedure.

2. Conditions for compatibility of State aid

2.1. Is State aid necessary to operate the SGEI's? ( please tick)

	YES		NO	

Justify the need for state aid granting.

2.2. Specify how competition is affected by state aid.

a) Specify the relevant product and geographic markets, on which beneficiary is active and on which the aid could have an impact.

b) Describe the structure and competitive situation on the relevant market and provide documents (studies and market analysis). c) Describe the characteristics of the sector where the beneficiary is active.

**The amount of compensation**

2.3. Confirm that the compensation does not exceed what is necessary to cover the net costs incurred SGEI obligation, including a reasonable profit?

	YES		NO	

2.4. Confirm that the basic parameters on which the compensation is calculated have been established beforehand in an objective and transparent way?

	YES		NO	

2.5. What are the considered criteria for determining the parameters under which the compensation is calculated? How to ensure the transparency of those parameters?

**Costs necessary to provide SGEI's**

2.6. Activity of the beneficiary undertaking is limited to the SGEI for which compensation is given? ( please tick)

	YES		NO	

If no, what are other activities conducted by the beneficiary undertaking .

Necessary costs for SGEI (calculation of compensation ) are :

costs related to the SGEI ;

investment costs ;

common costs (according to point 22 of subpoint 2 of this Regulation). Please present supporting documents relating to costs taken into account when calculating compensation.

**Incomes**

2.9. Specify income taken into account in the calculation of compensation and provide documents relating to it.

**Reasonable profit**

2.10. Provide documentation on the profits taken into account when calculating

compensation. Explain that this income does not exceed the amount required for a company, which considers whether or not to provide the SGEI in question (analyzes, studies, etc. ) .

**Incentives**

2.11. Compensation includes incentives for the efficient provision of SGEI ? ( please tick)

	YES		NO	

2.12. If yes, what are objective and measurable criteria established in the Act of SGEI entrustment which ensure that incentive mechanism works correctly.

2.13. What incentives are designed to improve efficiency?

- fixed level of compensation;
- are defined efficiency targets to be met depends on the allowance.

*Provisions applicable to beneficiaries who carries out activities outside the scope of the SGEI or providing several SGEI.*

SGEI scope ( please tick)

	YES		NO	

2.15. If yes, the beneficiary undertaking keeps its accounting records separately according to activities? ( please tick)

	YES		NO	

2.16 The beneficiary undertaking provides many SGEI? ( please tick)

	YES		NO	

2.17. If yes, the beneficiary undertaking accounting allows highlighting the existence of any overcompensation in each service? ( please tick)

	YES		NO	

Please present documentation to support the allegations in points 2.14. - 2.17.

2.18. Confirm that the compensation granted for the provision of SGEI's is not used by the beneficiary to act in another market for purposes other than those established by the entrustment of SGEI's? ( please tick)

	YES		NO	