



# *Services of General Economic Interest : the package of 20/11/2007 State aid aspects*

Berliner Gesprächskreis zum Europäischen Beihilfenrecht

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*The views expressed by the author in this presentation do not constitute any official position on behalf of the Commission*

# Some reminders - 1

- *No definition of SGEI in the EC Treaty as such*
- *Art 16 (Amsterdam Treaty)*  
*'... given the place occupied by SGEI in the shared values of the Union as well as their role in promoting social and territorial cohesion, the Community and the Member States, ..., shall take care that such services operate on the basis of principles and conditions which enable them to fulfil their missions'.*
- *Art 86-2*  
*'Undertakings entrusted with the operation of SGEI... shall be subject ... to the rules on competition, in so far as the application of such rules does not obstruct the performance ... of the particular tasks assigned to them'.*
- *Art 73 (transport policy)*  
*'Aids shall be compatible ... if they represent reimbursement for the discharge of certain obligations inherent in the concept of a public service'.*

# Some reminders - 2

- MS are free to establish or not SGEI; they may be very different between MS
- The Commission can only control:
  - Their proper entrustment and modalities;
  - Manifest errors or violations of EC law
- *Services of general interest (SGI)*:  
services which the public Authorities classify as being of general interest and provided to citizens  
=> if non-market (nESGI), do not fall under competition law
- *Services of general economic interest (SGEI)*:  
Market services qualified as services of general interest (economic activity)  
=> falls under EC competition law

# Evolutions in the Lisbon Treaty

## **Article 16:**

- The Lisbon Treaty adds the «particularly economic and financial» conditions which enable SGEI to fulfil their missions
- The EP and Council shall through Regulations establish these principles and conditions

## **Protocol n° 9 – SGI:**

- Distinction between SGEI and, for the 1st time in primary law, « nESIG »
- Reminding line taken on each one (coherent with Commission's practice)

# Texts adopted on 20/11/07

## Communication SGI including SSGI

- As a part of the SMR package
- Focusing on the importance of the **Protocol** and its recognition of SGI
- Specific **SSGI points** (quality standards, training initiatives...)
- Reference to the two **FAQs on public procurement and State aid**
- Announcement of an **interactive information service**

# FAQ on State aid issues for SGEI

- Aims at answering stakeholders questions (initially on SSGI) in a reader-friendly and non-specialist oriented way
  - Clarification of the application of SGEI texts
  - Practical answers and examples
- Questions related to PSO in transport included

# Structure of FAQ on SGEI

- 4 major groups of questions:
  - 2. When are Treaty rules applicable to SGI?
  - 3. Differences Altmark ruling / SGEI package
  - (pm 4. When is a notification needed?)
  - 5. Act of entrustment
  - 6. Compensation

# Part 2 - Is a compensation aid or non-aid ?

- Aid (Art 87-1) implies:
  - State resources (imputable to the State)
  - **Effect on trade**
  - **Distorsion of competition (economic activity)**
  - Selective advantage



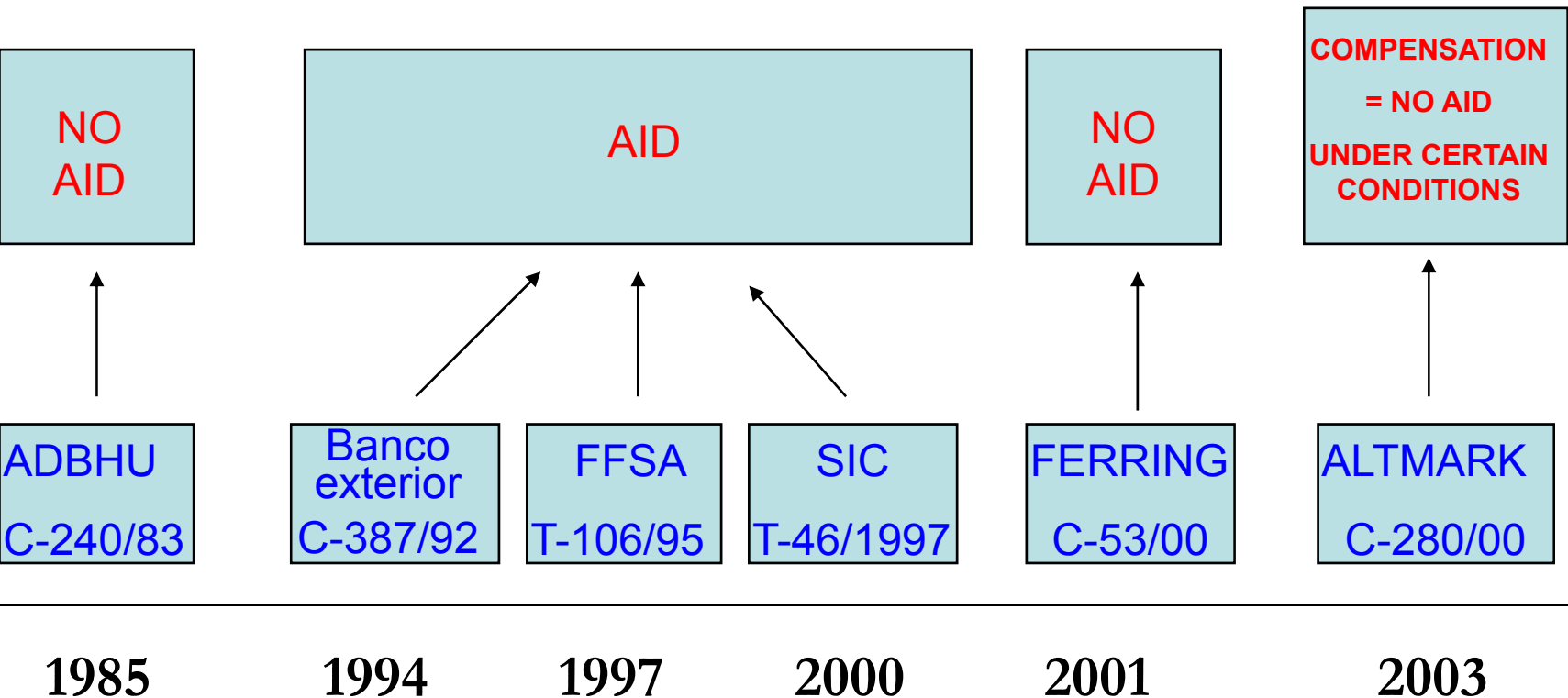
# Part 2. Application of State aid rules to SGEI

- **Notion of economic activity** :
  - ❑ **Examples of economic activities:**
    - ✓ ***Höffner & Elser*** : public employment procurement
    - ✓ ***Glöckner***: emergency and patient transport services
    - ✓ ***Smits***: medical services etc.
  - ❑ **Examples of non economic activities:**
    - ✓ ***Eurocontrol***: maintenance and improvement of navigation safety
    - ✓ ***Cali & Figli***: anti-pollution surveillance in maritime areas
    - ✓ ***AOK Bundesverband***: management of compulsory insurance schemes etc.
- **Effect on trade:**
  - ***Vlaams Gewest***: broad definition of the notion
  - ***Dorsten swimming pool***; no effect on trade etc.

# Part 3 - Is a compensation aid or non-aid ?

- Aid (Art 87-1) implies:
  - State resources (imputable to the State)
  - Effect on trade
  - Distorsion of competition (economic activity)
  - **Selective advantage: is a compensation an advantage? Very debated issue over the years**

# pm: there has been a large evolution in case-law



# Part 3: ALTMARK JUDGEMENT

SGEI COMPENSATION IS NOT AN AID  
**BUT ONLY IF**

1. Public service obligation clearly defined
2. Parameters of the compensation objective and established in advance
3. Compensation cannot exceed costs
4. **Choice of company (service provider):**
  - **Tender procedure to choose the company**
  - OR**
  - **Compensation on basis of costs of a typical well-run undertaking**

# Part 3: when the compensation is an aid

- If the Altmark criteria are not fulfilled, the compensation is an aid
- Two possible ways for compatibility:
  - For very small SGEIs, *de minimis* (up to 200.000 € within 3 years)
  - SGEI Package (“Monti/Kroes package” of 28/11/2005)

# SGEI PACKAGE of 28/11/2005

**COMMISSION  
DECISION 86/3  
OJ 2005 L 312/67**

- **«Small» SGEI:**  
(<100 million of turnover + annual compensation < EUR 30 million)
- **Social housing**
- **Hospitals**
- **'Small' air and sea transport PSOs**

**EXEMPTION FROM  
NOTIFICATION**

**FRAMEWORK  
OJ 2005, C 297/4**

**«LARGE» SGEI**

**NOTIFICATION**

**TRANSPARENCY  
DIRECTIVE**

**Separate accounting  
requirement:**

- **separation of SGEI activities from**
- **commercial activities**

# Part 5. Act of entrustment

- One or more official acts carrying ***legal force***; not only agreements
- Examples: concession contracts, ministerial instructions, law and regulatory / municipality acts, etc.
- Examples of the missions to be included and adaptation to changing needs in the provision of services

# Part 6. Compensation

- Definition of the *parameters*, not of the exact amount of compensation necessary; practical examples
- Main objective: *no overcompensation* at the end
- ***Separate accounts***: obligation for SGEI providers having other commercial activities
- **The SGEI package does not require the most efficient operator**



# The interactive assistance tool

- **Operational since Monday, 28/01/2008**
- Objective: respond to public authorities, practitioners and citizens' questions on State aid and public procurement issues related to SGEI
- The answers given will be used as a **feedback for updating both FAQs**

# Web links

- FAQ - State aid rules for SGEI on:

[http://ec.europa.eu/comm/competition/state\\_aid/legislation/faq\\_sieg\\_en.pdf](http://ec.europa.eu/comm/competition/state_aid/legislation/faq_sieg_en.pdf)

(FR, EN, DE available)

- Interactive assistance tool on:

[http://ec.europa.eu/services\\_general\\_interest/index\\_en.htm](http://ec.europa.eu/services_general_interest/index_en.htm)

# Conclusion

Thank you for your attention