



Deutscher Verein für  
öffentliche und private  
Fürsorge e. V.

DV 20/11 – Department for International Affairs  
June 21, 2011

## **Deutscher Verein's opinion on the Communication from the Commission to the European Parliament, the European Economic and Social Committee and the Committee of the Regions: Reform of the EU State aid rules on Services of General Economic Interest, COM (2011) 146 final, dated March 23, 2011<sup>1</sup>**

Since the publication of the so-called Monti Package (Altmark Package) on EU State aid rules on Services of General Economic Interest (SGEI) in 2005, Deutscher Verein has taken part in a number of consultations on the implementation of the rules. It has always demanded that the particularities of the social SGEI rendered on a personal basis be taken account of in the application of European rules and that the functioning of social services in Germany not be impaired by European competition law.

The EU Commission announced that the "Monti Package" is going to be revised at the end of 2011. In its latest Communication and a Report describing the Commission's practice the Commission shows what its reform will focus upon and ushers in the political debate. The public and non-profit providers of social services in Germany welcome the fact that the EU Commission has taken up the demands of the 3<sup>rd</sup> Forum on Social SGEI 2010 and published a "Guide to the application of the European Union rules on state aid, public procurement and the internal market to services of general economic interest, and in particular to social services of general interest".

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<sup>1</sup> Policy officer responsible in Deutscher Verein/German Association of Public and Private welfare: Cornelia Markowski. The opinion was subject of deliberations in the „Committee for International cooperation and European integration“ and adopted by the board of Deutscher Verein at June 21, 2011.

With reference to the afore-mentioned foci of the reform, Deutscher Verein herein has compiled its demands for an adaptation of the current State aid rules. Our opinion is addressed to the EU Commission.

## **1. More clarity on the SGEI concept**

### **1.1 The basic concept of social SGEI from a German POV**

The Deutscher Verein welcomes the EU Commission's statement in its Communication and in the Single Market act that SGEIs are very important indeed and play a major role in the EU's society and for its values. SGEIs provide citizens with essential services on a permanent basis. Social services do even more and try to attain further objectives like showing solidarity with socially deprived members of society and contribute much to furthering equality, equal opportunities and social inclusion. They also play a key role in implementing basic rights, human dignity in particular<sup>2</sup>.

In Germany, the basic concept of social SGEI derives from the welfare state principle laid down in the constitutional law<sup>3</sup>. At the national and municipal level, it is provided for in social security law, tax law and budget law and implemented by the local authorities<sup>4</sup>. If the services are provided by third parties, this basic concept is realised by a triangular relationship between service provider, beneficiary and (public) social security institution<sup>5</sup>. Within the framework of this triangle, every provider rendering high-quality services gets a licence. All suitable providers can offer services. It is not the public authority which decides if the provider is being accepted, it is the beneficiaries who exercise their right to choose. This concept has been successful in Germany in providing affordable, high-quality services for everyone and as needed.

### **1.2 More clarity regarding the lack of impairment of the EU cross-border social services trade**

If a social service is subject to a qualification as an "undertaking", Deutscher Verein wants State aid rules to be adapted to allow an interpretation that takes better account of the

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<sup>2</sup> Stellungnahme des Deutschen Vereins zur Mitteilung der Kommission „Dienstleistungen von allgemeinem Interesse unter Einschluss von Sozialdienstleistungen: Europas neues Engagement“, KOM(2007) endg. vom 20. November 2007, NDV 2008, 200

<sup>3</sup> see also Deutscher Verein's opinion as a contribution to the European Commission's public consultation on state aid: services of general interest rules, p. 1 f., available at: [http://www.deutscher-verein.de/01-verein/ueberuns/geschaeftsstelle/arbeitsfelder/stab/pdf-1/DV%2024-10%20German%20Association%20position%20paper%20state%20aid%20law%208%209%2010\\_EN.pdf](http://www.deutscher-verein.de/01-verein/ueberuns/geschaeftsstelle/arbeitsfelder/stab/pdf-1/DV%2024-10%20German%20Association%20position%20paper%20state%20aid%20law%208%209%2010_EN.pdf)

<sup>4</sup> Opinion Public consultation on State aid 2010, p. 1 f.

<sup>5</sup> Deutscher Verein's opinion on the „Green Paper on the modernisation of EU public procurement policy“ COM(2011) 15/4, dated January 27,2011, p. 3, available at: <http://www.deutscher-verein.de/01-verein/ueberuns/geschaeftsstelle/arbeitsfelder/stab/profil/view>

social services' local nature. A local nature excludes an impairment of the cross-border trade within the EU<sup>6</sup>.

The local role of a social service results, for one thing, from the nature of the service provided and, for another, from the personal basis on which the service is delivered: the human connection between staff and beneficiaries. This personal touch, so experience teaches us, can best be provided in consideration of people's local social frame of reference and its culture and environment, that is, when the staff knows the language, mentality, ethical and religious principles and local structures (voluntary workers, local authorities, local associations and organisations), in other words, by a local service provider<sup>7</sup>.

Local and social services, in contrast to "large-scale commercial services" in particular, are only of a small-scale size and do hardly pose a serious risk of creating distortions of competition in the internal market. This has also been acknowledged by the Commission in its Communication. Often, a number of very comparable social services work in a local area or in neighbouring municipalities. Since there is no national or regional singularity, there is also no international market<sup>8</sup>. And usually, there will be no beneficiaries from across any border whatsoever.

Various thresholds within the framework of state aid controls do also show us that at limited market intensity there is no impairment of trade either. In view of this ascertainment, and with a view to relieving these mainly local and regional operating services of some of their administrative burden, Deutscher Verein would like to see the "de-minimis" Regulation's thresholds increased to €500,000 in three years. For, say, investment cost grants for new buildings or renovations or a modernisation of a social facility or technical staff costs etc. the current threshold is simply too low.

### **1.3 Compensation for the costs incurred in discharging a public service obligation**

In the "Altmark Trans"-judgment by the ECJ of 2003, it was laid down that compensation does not constitute a State aid if it covers the costs that a typical, well-run and adequate provider would incur. This 4<sup>th</sup> Altmark criterion allowed the EU Commission a certain State aid efficiency check.

Even though one can understand that currently there is a focus upon an efficient allocation of State resources to reduce EU Member States' budget deficits, Article 106 Para 2 TFEU

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<sup>6</sup> Opinion Public consultation on State aid 2010, p. 9

<sup>7</sup> Opinion Green Paper public procurement, p. 6

<sup>8</sup> cf., European Commission's Decision, State Aid No. 258/00 "Deutschland - Freizeitbad Dorsten" January 12, 2001, p. 5

still does only provide for the prevention of an over-compensation, regardless of efficiency. This is taken account of in the “Monti Decision” from 2005, which deems all *necessary* costs of services that are entrusted with a General Interest obligation (even if public funds could perhaps have been used more efficiently or turn out to be higher than initially expected). Deutscher Verein would like suggest that in order to not unduly extend the EU’s competences the announced reform should not deviate from the existing rule.

#### **1.4 More clarity regarding the State aid control criteria**

Deutscher Verein asks for a clarification of the State aid control criteria applied by the EU Commission in accordance with Article 107, 106 TFEU and the pertinent secondary law, e.g. by publishing a list of criteria. The Guide to the application of the European Union rules on State aid<sup>9</sup> provides a very good compilation of answers to questions of interpretation on the application from the EU Commission’s perspective. However, as it cannot be legally enforced it also cannot provide legal security.

## **2. Adaptation of State aid requirements to various types of SGEI and a simplification of regulations**

### **2.1 Distinguishing social services and health services from other SGEI**

Deutscher Verein wants to have social SGEI exempted from its notification obligation under the same terms as they apply to the hospital sector and social housing pursuant to Article 2 Para. 1 b) of the Decision<sup>10</sup>. These sectors’ activities promote essential services for people in need just as social services do. Therefore, their comparable nature would necessitate a differentiation between social services and other SGEIs, rather than between social services and health services.

Furthermore, in many cases social services and health services can hardly be distinguished at any rate in practice, e.g. when care is given to the elderly or the disabled. In the EU State aid rules, both of them should therefore receive the same treatment.

### **2.2 A simplified calculation of costs**

The announced reform is supposed to simplify the current EU State aid rules in terms of the determination of the calculation parameters. Again, Deutscher Verein welcomes the

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<sup>9</sup> Guide to the application of the European Union rules on state aid, public procurement and the internal market to services of general economic interest, and in particular to social services of general interest SEC(2010) 1545 final, dated 7 December 2010

<sup>10</sup> Opinion Public consultation on State aid, p. 8

European Commission's announcement to make local and social services' administrative burdens in relation to their size dependent upon the type of service provided.

It would make things easier in practice, and for such State aid control, if the parameters to determine the compensation would be defined rather broadly. Delivering a service and public funding does not constitute an exchange; State aid only serves the purpose of compensating for a public service obligation and its costs without which rendering the service would not have been possible in the first place. Therefore such State aid does not require any especially concrete calculation parameters.

An over-compensation is anyway prevented by national regulations: witness provisions set forth in social and tax law that ensure that a specific social SGEI is assigned and budget law that provides for an efficient use of State funds. In Germany, subsidies are only granted if there is a pertinent approval letter outlining the modalities and also a source-and-disposition statement audited for a proper use of the subsidies. Deutscher Verein asks for respect for the national financing and compensation system in the field of social SGEIs when a third party is commissioned.

In addition to the core demands herein, we would also like to refer you to Deutscher Verein's previous contributions to consultations and its opinions on EU State aid rules, the contribution to the public consultation 2010 in particular<sup>11</sup>, wherein you will find detailed remarks on individual legal matters and positions.

Social SGEIs, just like all SGEIs, are a necessary foundation for people's well-being and participation in society – all over Europe. This special role should continue to be taken account of by creating effective procedural regulations, leaving sufficient interpretative latitude and providing enough scope regarding the European rules for the EU Member States and their regional as well as local actors.

Deutscher Verein für öffentliche und private Fürsorge e. V. / German Association of Public and Private Welfare is a central forum for local authorities and welfare organisations including their facilities and institutions, the Federal states and scientific representatives regarding all fields of social work in Germany. It monitors and comments developments in social policy mainly of child and youth welfare, family policy, social assistance systems, systems of basic allowance for job seekers, care and rehabilitation relaying on its expertise and experiences.

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<sup>11</sup> Opinion Public consultation on State aid 2010, p. 1 f.