

**Sent to all EU Commissioners**

European Commission  
1049 Brussels  
Belgium

07.12.2011

**Reform of the EU State aid Rules on services of general economic interest  
(Almunia Package)**

Dear Sir or Madam,

**The Austrian Association of Cities and Towns (ÖSTB), The Austrian Association for Public and Social Economy (VÖWG) and the Austrian Federal Chamber of Labour (BAK) are vehemently opposed to the intention of the Commission to hastily adopt the new State aid package for services of general economic interest (“Almunia Package”) without engaging in a comprehensive discussion process.**

**With the package submitted, the Commission is adapting the current approach; however, with a stronger market-based orientation, in which primarily economic cost efficiency requirements are put on the configuration of the SGEI, but which hardly leaves any scope for quality considerations. ÖSTB, VÖWG and BAK welcome individual improvements in the new package, such as expanding the exemption decision to social services or the new de minimis regulation for services of general interest. However, compared to the list of issues to be tightened up, these provide only small comfort: in particular the lowering of the notification threshold from currently EUR 30 million to EUR 15 million and limiting the Act of Entrustment to ten years in the new Exemption Decision are lacking in practical relevance and do not make sense; the same applies to limiting the scope of the new de minimis regulation to local authorities representing a population of less than 10,000 inhabitants.**

**Background**

The Commission presented the drafts for the Almunia Package on 16.09.2011. Even the current legal situation concerning the question to which extent public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest is compatible with the EU State aid Rules on services of general economic interest, is anything but clear and easy to understand.

The current rules are also known by the name of “Altmark package” 2005 and based on the court decision of the European Court of Justice in the matter of “Altmark” from 2003. In its decision, the European Court of Justice had confirmed that the funds, which a Member State grants an undertaking for providing services of general economic interest, represent State aid, if they are not strictly limited to the amount, which is required as compensation for the public service obligation, i.e. the obligation to provide services of general economic interest. The Altmark package applies to a wide range of economic activities, of which some, however, are subject to specific rules, which were accepted within the context of market regulation. This includes for example the sectors transport, energy, postal services, financial services, broadcasting and telecommunication. The initial plan was to review the Altmark package by November 2011. The review was to be preceded by a public consultation, which had already been announced for summer 2011.

The “Almunia Package” contains four new legislative acts:

- An overarching **Communication**, in which the Commission sets out the main issues of the Altmark trans decision and the key issues of the new package;
- An **Exemption Decision**, which is to replace the previous exemption decision and on the basis of which State compensation is exempt from the notification obligation with the Commission, if certain criteria have been met;
- A **new de minimis regulation**, which exempts small, local compensation payments from the State aid regime, as well as
- An **aid framework**, which replaces the current aid framework and determines those criteria, according to which the Commission is able to grant State compensation as EU-conform aid.

### Requirements in detail

- We support the stronger **diversified and more proportionate approach** regarding the various types of public services proposed by the EU Commission. Based on this, we welcome the exception of State aid rules for small-volume public services and the exemption of the notification obligation for most social services. All undersigned institutions support the exemption of sensible sectors such as **water supply, wastewater disposal or social services** from the scope of the State aid Rules. It must also be ensured that **ecologically sustainable State subsidies**, for example in respect of highly-efficient cogeneration plants are made simpler. The relevant business sectors are mainly run by local undertakings, which make an irreplaceable contribution to regional value added, an indispensable requirement for social and territorial cohesion within the European Union.
- The distinction between Services of General Economic Interest (SGEI) and Services of General Interest (SGI) should be clarified. In view of the difficulties, to rate services as economic or non-economic, the **focus should be put on the special responsibilities of the relevant services and the public service obligations.**
- The undersigned institutions are opposed to the aid package being more **economically oriented towards the services of general interest policy**, to restricting the **scope of**

**discretion of the Member States** and against **obligations to generate efficiency gains** in public services. Any efficiency considerations should not only be based on economic criteria, but also take into account social, territorial and environmental aspects and criteria such as quality for users and employees as well as their sustainability.

- It is to be feared that the introduction of an efficiency term might result in the **over-emphasis of the fourth criterion of the Altmark decision** and might possibly apply to all remunerations of public services (including those, which are exempt from the notification obligation).

Note: in order to meet the fourth Altmark criterion, it is necessary to issue an invitation to tender, on the basis of which the applicant can be determined, who is able to provide a public service at the lowest cost to the general public. Alternatively, the amount of the required compensation will be determined on the basis of an analysis of the costs, which an average, well-run and adequately equipped undertaking in the relevant economic sector has to bear.

- We welcome, that the **Exemption Decision** - instead of including only hospitals and social housing, as it is currently the case - is to exempt a large area of social services from the obligation to notify the Commission. We vehemently protest against reducing the **notification threshold** from currently EUR 30 million to EUR 15 million as well as against limiting the **entrustment period to maximal ten years**. We particular criticise the fact that the Commission names as reason for reducing the notification threshold the **increased internal market relevance of the environmental services** (e.g. water supply, wastewater disposal, wastewater disposal).
- We welcome the creation of a **de minimis regulation** for services of general interest; however, the selected area of application is too limited. The amount of compensation of max EUR 150,000 is too low. The additional requirement of restricting the number of inhabitants represented (10,000) is to be deleted.
- The **aid framework** massively and unpredictably intervenes in national policy-making. We reject obligatory consultations to assess demand, the obligation to generate efficiency gains as well as **drastic interventions in national policy-making** (reduction of the entrustment period, requirement to issue invitations to tender, restriction of compensation etc.). Apart from that, we criticise that the aid framework does not even stipulate clear criteria as to when a case of such interventions by the Commission exists.
- In the interest of legal practitioners, we demand **clearer and easier to understand rules** with regard to the entire aid package. The undersigned institutions firmly reject any additional decision criteria, which result from this package and which cannot be based on the "**Altmark decision**".
  - As the provision of services of general interest is of far-reaching significance for European citizens, such a fundamental decision should not be taken without involving the European Parliament and initiating a relevant public discourse process. Hence, it would have been sensible to adopt the aid package within the framework of an **ordinary legislative procedure** on the legal basis of **Article 14 TFEU**.

### Final comments

Whilst the European Commission at the beginning of this procedure chose to adopt a very transparent and detailed approach, at the end of it we were confronted with a very different picture. Almost like a “quick fire round”, the aim now was to “rubber-stamp” the bill in question after only one multilateral session. In particular in the case of such an important issue, the undersigned institutions find it difficult to understand, why the bill should be adopted in such a hurry. Should it not be the utmost maxim, to let all participants have their say, to carefully consider their concerns and objections and ONLY THEN to prepare a relevant bill?

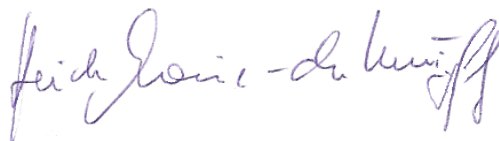
Otherwise one could easily give the impression that the European Commission is determined to prepare an already preconceived bill, without taking the various justified statements of the interest groups involved into account. In order to avoid this certainly wrong impression, the Member States - as it has already been done in a joint letter of seven Member States, among them Austria - should definitely make an attempt to slow this process down and to return the discussion to an objectively legitimised and professionally sound level.

Therefore, the Austrian Association of Cities and Towns, the Austrian Association for Public and Social Economy and the Austrian Federal Chamber of Labour expressly demand a joint continuation of the discussion process on State aid Rules, a consideration of our justified objections and the preparation of simplified, legally secure and easy to use aid rules for all areas of application. We kindly ask you to support our request and remain,

Yours faithfully,



Thomas Weninger  
ÖSTB General Secretary



Heidrun Maier-de Kruijff  
VÖWG General Secretary



Herbert Tumpel  
BAK President