

State aid in the form of public service compensation

2004/2186(INI) - 22/02/2005 - Text adopted by Parliament, single reading

By 478 votes in favour to 155 against with 10 abstentions, MEPs adopted an own-initiative report from Sophia IN'T VELD (ALDE, NL) which says small service providers should be excluded altogether from the requirement to notify the Commission of public funding, as should relatively small-scale sea and air transport links to islands and remote areas. Parliament has welcomed plans to clarify the rules on how EU competition law applies to state aid in the form of compensation for public services.

In the July 2003 'Altmark' case, the Court of Justice ruled that certain forms of government support for public services did not constitute 'state aid' as defined in the Treaties, and thus did not require approval from the Commission under the competition rules. The judgement left some legal uncertainty as to exactly which cases would meet the criteria. The Commission has put forward proposals on how it intends to interpret the ruling, and on a clearer framework for its future approach to the whole area of compensation for public services.

The Commission proposes to exclude small scale public service compensation altogether from the notification requirements, but has not precisely defined 'small' leaving this question open for discussion during the consultation. MEPs say that the exclusion should apply to undertakings with turnover under EUR 50 million receiving annual compensation of under EUR 15 million. The Commission also planned to exclude sea transport to islands carrying fewer than 100,000 passengers per year. Parliament says services to remote communities whether by land, sea or air should be excluded, providing there are fewer than 300,000 passengers per year.

The Commission, subject to certain criteria, plans also to exclude public compensation to hospitals and social housing undertakings, but MEPs warn that extensive state aid may lead to distortions of competition in these areas. Since the organisation of these sectors varies widely between Member States, they say exclusion should be introduced only when a Member State has provided a detailed report to the Commission on their health and social housing sectors

The Altmark ruling said that where open tendering was not used, 'compensation' (as opposed to 'state aid') was limited to that needed for a typical well run undertaking to provide the service and make a reasonable profit. Parliament is now asking the Commission to use a benchmarking exercise to clarify what this would mean in practice.

While the Commission proposed that its new Framework should run until the end of 2007, MEPs say they should be valid for four years. They stress the importance of consulting widely, in particular with the users of public services, in putting the plans into action, and call for an extensive impact assessment before the rules are renewed. Parliament also asks the Commission to clarify the legal status of its planned framework.