



Council of the
European Union

Brussels, 2 December 2022
(OR. en)

15618/22
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COVER NOTE

From: Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director

To: Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union

No. Cion doc.: SWD(2022) 389 final

Subject: COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY OF THE EVALUATION **Evaluation of the State subsidy rules for health and social services of general economic interest (“SGEIs”) and of the SGEI de minimis Regulation.**

Delegations will find attached document SWD(2022) 389 final.

Encl.: SWD(2022) 389 final



Brussels, 1.12.2022
SWD(2022) 389 final

COMMISSION STAFF WORKING DOCUMENT
EXECUTIVE SUMMARY OF THE EVALUATION

Evaluation of the State subsidy rules for health and social services of general economic interest (“SGEIs”) and of the SGEI de minimis Regulation.

{SWD(2022) 388 final}

1. Background and objectives

In 2012, a set of specific State aid rules for services of general economic interest (“SGEI”) – known as “the 2012 SGEI Package” – entered into force. The 2012 SGEI package consists of the SGEI Communication¹; the SGEI Decision²; the SGEI Framework³; and the SGEI *de minimis* Regulation⁴.

The 2012 SGEI Package aimed at clarifying basic concepts relevant for the application of the State aid rules to SGEIs and adopting a more diversified and proportionate approach for a large variety of SGEIs, taking into account their nature and scope and the extent to which they posed a serious risk of competition distortions in the internal market. In this regard, the 2012 SGEI Package sought among others to simplify the rules for small SGEIs of a local nature and for social services.

Launched in June 2019, the evaluation aims to verify to which extent the rules applicable to health and social services under the 2012 SGEI Package reached the objectives of clarification and simplification and whether the rules are still appropriate, also in view of the latest jurisprudence of the Union Courts and sectoral developments in the internal and global markets. The evaluation sought to analyse the effectiveness, efficiency, coherence, EU-added value and relevance of the SGEI rules applicable to health and social services. The evaluation also sought to assess how the SGEI *de minimis* Regulation has been applied. The Commission services collected evidence to understand how the rules have performed since their entry into force in 2012.

2. Methodology

The evaluation is based on data from a number of sources. The Commission services gathered views from stakeholders via an open public consultation and from Member States via a targeted consultation. An expert study provided additional data on healthcare and social housing.

In addition, the evaluation also includes the Commission services’ own analysis, based on a number of elements such as existing studies, the Commission’s case practice, internal statistics and data from the SGEI reports submitted by the Member States every two years.

3. Findings

Effectiveness: The 2012 SGEI Package appears to be effective. Indeed, the 2012 SGEI Package did allow for simplification, for instance, with the introduction of an SGEI-specific *de minimis* Regulation. It also clarified certain basic concepts relevant for the application of

¹ 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, OJ C 8, 11.1.2012, p. 4.

² Commission Decision 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, OJ L 7, 11.1.2012, p. 3.

³ Communication from the Commission – European Union framework for State aid in the form of public service compensation (2011), OJ C 8, 11.1.2012, p. 15.

⁴ Commission Regulation (EU) No 360/2012 of 25 April 2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid granted to undertakings providing services of general economic interest, OJ L 114, 26.4.2012, p. 8.

the SGEI rules. However, the evaluation seems to indicate that there is still room for improvement, in particular to clarify certain concepts such as economic/non-economic activity, effect on trade, reasonable profit, market failure and social housing. Moreover, it appears that there may be a need to reconsider the SGEI *de minimis* ceiling and to align the SGEI *de minimis* Regulation with the general *de minimis* Regulation⁵.

Efficiency: The SGEI *de minimis* Regulation and the 2012 SGEI Decision appears to have had a positive impact on the reduction of the administrative burden. However, there still seems to be room for improvement to decrease this burden, in particular with regard to the monitoring of the SGEI *de minimis* Regulation and transparency requirements. The evaluation also suggests that costs associated with the application of the requirements set by the SGEI rules should be reduced.

Coherence: The State aid rules that make up the 2012 SGEI Package appear to be internally coherent, although some potential inconsistencies with other rules were identified, like for example with the Notice on the Notion of Aid⁶. In addition, the general and the SGEI-specific *de minimis* Regulations were not fully aligned as regards the notion of “single undertaking”, the provisions on mergers and acquisitions, and the application of the *de minimis* rules to undertakings in difficulty.

EU added value: Stakeholders acknowledged the EU added value of the SGEI rules subject to the evaluation and there is an overall agreement that the 2012 SGEI Package brought a better division of tasks between Member States and the Commission, although more methodological guidance from the Commission would be welcomed. Also, it results from the evaluation that the 2012 SGEI Package managed to provide a stable legal environment for Member States.

Relevance: The objectives of the 2012 SGEI Package, to a large extent, appear to be appropriate and correspond to today’s (EU internal) market situation. However, the potential impact and the uncertainties brought by the COVID-19 crisis and the Russian war of aggression against Ukraine cannot be fully evaluated yet. The evaluation also indicated that further adaptations may be considered to fully meet the needs of stakeholders such as the recognition in the SGEI rules of operators active in the so-called “social economy” or the recognition of quality services.

4. Conclusions

The evaluation concludes that the 2012 SGEI Package as regards health and social services is broadly fit for purpose. However, it also results from the evaluation that a further clarification of certain concepts is desirable, either related to the notion of State aid (i.e. economic/non-economic activity, effect on trade) or regarding concepts linked to the SGEI rules (e.g. reasonable profit, market failure, etc.),.

⁵ Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid, OJ L 352, 24.12.2013, p. 1. Please note that the Commission proposes to revise the general *de minimis* threshold to adapt it to the current economic context and proposed to improve transparency requirements – these changes are currently subject to public consultation in the form of a draft general *de minimis* Regulation (see https://competition-policy.ec.europa.eu/public-consultations/2022-de-minimis_en).

⁶ Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union, OJ C 262, 19.7.2016, p. 1.

In addition, the evaluation also shows that an alignment of the SGEI *de minimis* Regulation with the general *de minimis* Regulation and an adjustment of the SGEI *de minimis* ceiling could be further considered.