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LEGAL ALERT

NEW DECISION APPLICABLE TO COMPANIES PROVIDING SERVICES OF GENERAL ECONOMIC INTEREST IN THE EUROPEAN UNION

The European Commission has adopted a new decision applicable to Services of General Economic Interest in the European Union: Commission Decision (EU) 2025/2630, of 16 December 2025, on State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest (SGEI) (Decision).

The Decision repeals the previous Commission Decision 2012/21/EU, of 20 December 2011, and comes at a time when the economic situation is different from that which prevailed when the repealed decision was adopted, particularly with regard to the housing crisis. The Decision lays down the conditions under which State aid in the form of public service compensation is exempt from the notification requirement laid down in Article 108(3) of the Treaty on the Functioning of the European Union.

This Decision can be linked to two other legal instruments on SGEI: (*i*) the Commission Communication on SGEI; and (*ii*) Commission Regulation (EU) 2023/2832, of 13 December 2023, on *de minimis* aid for the provision of SGEI.

Entrustment of SGEI operation

The Decision amends the information obligations to which the Member State is subject in relation to the act entrusting the operation of the SGEI to a particular undertaking. In this regard, it is no longer mandatory to make express reference to the SGEI Decision in the act of entrustment.

Amount of compensation

In this context, the Decision changes the maximum amount up to which compensation is covered by the exemption from the notification obligation, now covering compensation not exceeding an annual amount of **EUR 20 million**, whereas the Decision 2012/21/EU only allowed a maximum amount of EUR 15 million.

Control of overcompensation

Rules are introduced to make the control of possible overcompensation more flexible. In fact, rules are introduced to allow, in certain circumstances, the control of overcompensation to focus solely on checking that the level of profit to which the provider is entitled under the act of award is reasonable from an ex ante perspective.

Reports from Member States to the Commission

Under the previous Decision 2012/21/EU, Member States were required to submit biannual reports to the Commission on the implementation of that decision. With the 2025 decision, these reports are no longer required, thus ending the reporting obligation that had been imposed on Member States.

Concept of social and affordable housing

Given the current economic context marked by the housing crisis, the Decision also aims to enable SGEIs in this field to fulfil their objectives, thereby tightening the requirements that social and affordable housing, as SGEIs, must meet.

Social housing as an SGEI must therefore meet several requirements:

- It must be intended primarily for disadvantaged or socially disadvantaged households, including homeless people, who are unable to access the housing market under normal conditions, and may include a limited percentage of non-disadvantaged households to avoid the concentration of poverty;

- Housing must comply with the minimum quality, environmental and accessibility standards applicable in the Member State and remain allocated to social housing for a minimum period of 20 years, except in duly justified cases. This requirement may be waived where the provider is primarily engaged in SGEI, has very limited commercial revenues (up to 5%) and is required to reinvest all profits in the service;
- The compensation granted may cover investment and operating costs, including the construction, acquisition, renovation or adaptation of buildings, compliance with accessibility requirements, environmental standards and climate change adaptation measures.

Cumulatively, the Decision establishes several requirements for housing to be considered affordable as an SGEI:

- It must be intended for households that are unable to access affordable housing due to market failures or malfunctions. Affordability must be assessed using reliable indicators (such as rent/income or price/income ratios), also taking into account energy costs, and Member States must identify and justify these needs;
- Housing must be made available at prices or rents below market rates, set on the basis of transparent criteria, in particular household income, market prices and providers' costs;
- Comply with minimum quality, environmental and accessibility standards and remain affordable housing for at least 20 years, except in justified cases. As with social housing, this period may be waived where the provider is primarily engaged in SGEI, has limited commercial revenue (up to 5%) and reinvests profits in the service;
- Public funding may cover investment and operating costs, including construction, acquisition, renovation or adaptation of buildings, compliance with accessibility requirements, environmental standards and climate change adaptation measures.

Morais Leitão's Competition Law team is at your disposal for any clarification on this subject.

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