



***Services of general interest  
subject to entrustment of public  
service obligation (PSO) and  
compensation for provision of the  
service concerned***

Podgorica (Montenegro), 16 February 2011



# Services of general interest

- Provision of high-quality and affordable services to all citizens and enterprises are essential for ensuring social and territorial cohesion within the State and the European Union
- It is the responsibility of the State to provide detailed definition of services to be provided (with exception of some sectors)



# Services of general interest

## Non-economic services

- Include traditional state prerogatives such as police, justice, education
- In general not subject to specific EU legislation; may be subject of the general EU rules like non-discrimination

## Economic services

- Subject of internal market and competition (incl. State aid) rules since activities are economic in nature
- Large network industries (telecommunications, electricity, gas, transport, postal services, broadcasting) are covered by specific EU legislation
- Waste management, water supply, waste water treatment, healthcare and other sectors are not subject to regulation at EU level



# Economic vs. non-economic services

- In the area of competition law it is not the sector or the status of an entity carrying service, nor the way in which it is funded, which determines whether activities are deemed economic or non-economic; it is the nature of the activity itself
- Single entity may be engaged in both economic and non-economic activities and therefore be subject to competition rules for parts of its activities but not for others
- Each activity of an entity has to be analysed separately



# Assessment steps in State aid analyses

1. State aid is involved or not:
  - An entity is engaged in economic activity or not : yes/ no
  - All 4 state aid elements are fulfilled : yes/no
2. Not state aid measure
  - General measure
  - No restriction to grant public funds
3. State aid measure
  - Specific measure
  - Looking for appropriate aid objective, eligible costs, intensities, etc.
  - Compliance with procedural rules



# Concept of an entity engaged in an economic activity

- Primary look in what kind of activities an entity is engaged
- Whether activity may be regarded as an exercise of the official powers or as an economic activity (participation in the market)?
- According to the State aid legal framework as “a commercial entity” shall be considered any entity engaged in an economic activity irrespective of its legal status and ownership



# Separation of activities and costs of an entity

**Non-economic PSO**

**Economic PSO**

**Commercial activity**

- If the same entity carries out different activities, in order to avoid cross-subsidisation between activities, activities and their costs and funding shall be clearly separated; Evidence that the costs have been allocated correctly can consist of annual financial statements
- Commission directive No 111/2006/EK on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertaking (of 16 November 2006, published in EC OJ L 218, 17.11.2006, p.17)



# General EC regulation for PSO compensations

- Articles 14 and 106(2), Protocol No 26 of the TFEU
- Judgment of the ECJ in case C-280/00 known as Altmark Trans Judgment (decision of 24 June 2003)
- Commission decision on the application of Article 86(2) of the EC Treaty to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest (of 28 November 2005, published in EC OJ L 312, 29.11.2005, p.67)
- Community framework for State aid in the form of public service compensation (of 28 November 2005, published in EC OJ C 297, 29.11.2005, p.4)





# Sector specific regulations for PSO compensation (1)

## Transport sector

- Article 73 of the EC Treaty
- Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23.10.2007 on public passenger transport services by rail, road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70 (OJ L 315, 3.12.2007, p.1)
- Community guidelines on financing of airports and start-up aid to airlines departing from regional airports (OJ C 312, 09.12.2005, p.1)
- Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the (Recast) (OJ L 293, 31.10.2008, p.3)

## Broadcasting sector

- Communication from the Commission on the application of State aid rules to public service broadcasting (OJ C 257, 27.10.2009, p.1)



# Sector specific regulations for PSO compensation (2)

- Postal services:
  - Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal Community postal services and the improvement of the quality of service; amended with Directives 2001/39/EC, 2003/1882/EC and 2008/6/EC (EU OJ L 15, 21.1.1998, page 14; EU OJs L 176, 5.7.2001, page 21, L 284, 31.10.2003, page 1 and L 52, 27.2.2008, page 3 respectively)
- Electronic communication services
  - Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive); amended with Directive 2009/136/EC (EU OJ L 108, 24.04.2002, page 51; EU OJ L 337, 18.12.2009, page 11)



# Sector specific regulations for PSO compensation (3)

- Electricity generation
- Directive 2003/54/EC of the European Parliament and of the European Council of 26 June 2003 concerning common rules for the internal market in electricity and repealing Directive 96/92/EC; amended with Directives 2004/85/EC and 2008/3/EC (EU OJ L 176, 15.07.2003, page 37; EU OJs L 236, 7.07.2004, page 10 and L 17, 22.01.2008, page 6)



# State aid legal framework for PSO compensations in Montenegro

## International obligations:

- Article 74 of SAA requires to comply with principles set out in EC Treaty, particularly with requirements of Article 86(2) (sets up eligibility for PSO compensations)

## National legal acts:

- Decree on more detailed criteria, conditions and manner for granting state aid, Articles 41-42, 43, 57, 65
- Problem with Articles 44 of Decree as for Universal postal services the same State aid legal framework is applicable, i.e. rules set in Articles 41-42 of the Decree



# Transitional requirements for Montenegro to implement EC rules for PSOs

- Until the end of 2010 all existing State aid measures (aid schemes and individual measures) which foresees compensation for PSO shall be transferred to comply with EU state aid requirements in this field

Note: Article 74 of the SAA

- Longer transitional period (until 3.12.2019) might be accepted for the PSO contracts in transport sector concluded until 01.01.2008 or from 01.01.2008 until 3.12.2009, if they comply with requirements of Regulation No 1191/69

Note: Article 8 of Regulation No 1370/2007



# Concept of State aid (Art.107(1) of the TFEU)

- An aid is granted from a Member State or through State resources in any form whatsoever;
- It favors certain undertakings or the production of certain goods; and
- the advantage has to be selective and thus effect the balance between certain firms and their competitors; and
- It must have a potential effect on competition and trade between Member States



# State aid is not involved (Altmark), if:

- the recipient undertaking actually have public service obligations to discharge and the obligations is clearly defined;
- the parameters on the basis of which the compensation is calculated are established in advance in an objective and transparent manner;
- the compensation cannot exceed what is necessary to cover all or part of the costs incurred in the discharge of the public service obligations, taking into account the relevant receipts and a reasonable profit;
- the undertaking is chosen pursuant to a public procurement procedure which allow to choose the least costly service provider or the level of compensation have been determined on the basis of an analysis of the costs which a typical well runed undertaking would have incurred for this service



# If State aid is involved (Decision + Framework):

- PSO is entrusted to the undertaking by way of one or more official acts, the form of which may be determined by each Member State and it specify:
  - the nature of any exclusive or special rights assigned to the undertaking
  - the undertaking and territory concerned;
  - the duration of the public service obligations;
  - the parameters for calculating, controlling and reviewing the compensation;
  - the arrangements for avoiding and repaying any overcompensation.





# General concepts for large network industries covered by specific EU legislation

- General definition of ‘Universal service’ with equal application throughout EU
- principles are defined at the Community level, but implementation of these principles is left to the States thus their traditions, national and regional circumstances can be taken into account
- Continuity of services (provided without interruption)
- Affordability – price for the service is determined to be accessible for everybody
- Definition, monitoring and enforcement of quality requirements to the service



# Common rules for postal services

- Universal service (scope for PSO) as defined in Directive shall be performed permanently (not less than 5 working days a week), at a specified quality at all points in the territory of the State at affordable prices for all users
- Not subject to the discretion of the State
- Universal service may be entrusted only to company chosen in accordance with applicable public procurement rules and regulations (it may include also competitive dialogue or negotiated procedure with or without publication of a contract notice)



# Common rules for electronic communications

- EU Directive sets scope of Universal service, who can be subject to PSO
- Not subject to the discretion of the State
- Service shall be made available at the quality specified to all end-users in the territory of the State, independently of geographical location at an affordable price
- Designation of undertakings for implementation of universal service the principles of objectivity, transparency, non-discrimination and proportionality shall be respected; designation methods shall ensure that universal service is provided in a cost-effective manner



# Common rules for electricity generation

- PSO may be imposed to undertaking in the electricity sector to ensure security, including security of supply, regularity, quality and price of supplies and environmental protection, including energy efficiency and climate protection
- Very limited discretion of the State, when identifying PSO
- Obligations shall be clearly defined, transparent, non-discriminatory, variable and shall guarantee equality of access for EU electricity companies to national consumers.
- The State shall ensure monitoring of security of supply and findings shall be published every two years



# Requirements for bus and rail PSOs

- PSO contracts shall be awarded in transparent procedure – public procurement & concession
- Contracts may be awarded to “in-house” companies without using open procedures. Such service providers do have limited access to tendered out PSO routes
- In rail sector PSO might be entrusted without open procedures
- Contracts shall be limited in time:
  - coach and bus services: 10 years or 15 years, if renewal of rolling stock is foreseen by contract;
  - Rail services: 15 years or 22,5 years, if renewal of rolling stock is foreseen by contract



# PSO compensations in aviation sector

## To airport managers

- If the authority imposes on the airport operator (D category airport with less than 1 million passengers) certain public service obligations in order to ensure that the general public interest is appropriately served, the airport operator may be compensated for the additional costs deriving from the public service obligation. It is not impossible for the overall management of an airport, in exceptional cases, to be considered a service of general economic interest.

## To air carriers

- The State may impose a public service obligation in respect of scheduled air services between an airport in the Community and an airport serving a peripheral or development region in its territory or on a thin route to any airport on its territory any such route being considered vital for the economic and social development of the region which the airport serves



# Requirements for broadcasting PSOs

## Entrustment of PSO

- Wide definition of PSO mandate is accepted, when entrusting to broadcaster the task of providing balanced and verified programming
- Such a definition should be consistent with the objective of fulfilling democratic, social and cultural needs of society, guaranteeing pluralisms, including cultural and linguistic diversity

## The choice of funding

- Single-funding: PSO is financed only through public funds
- Dual-funding: PSO if financed by different combinations of State funds and revenues from commercial activities (for ex – the sale of advertising)



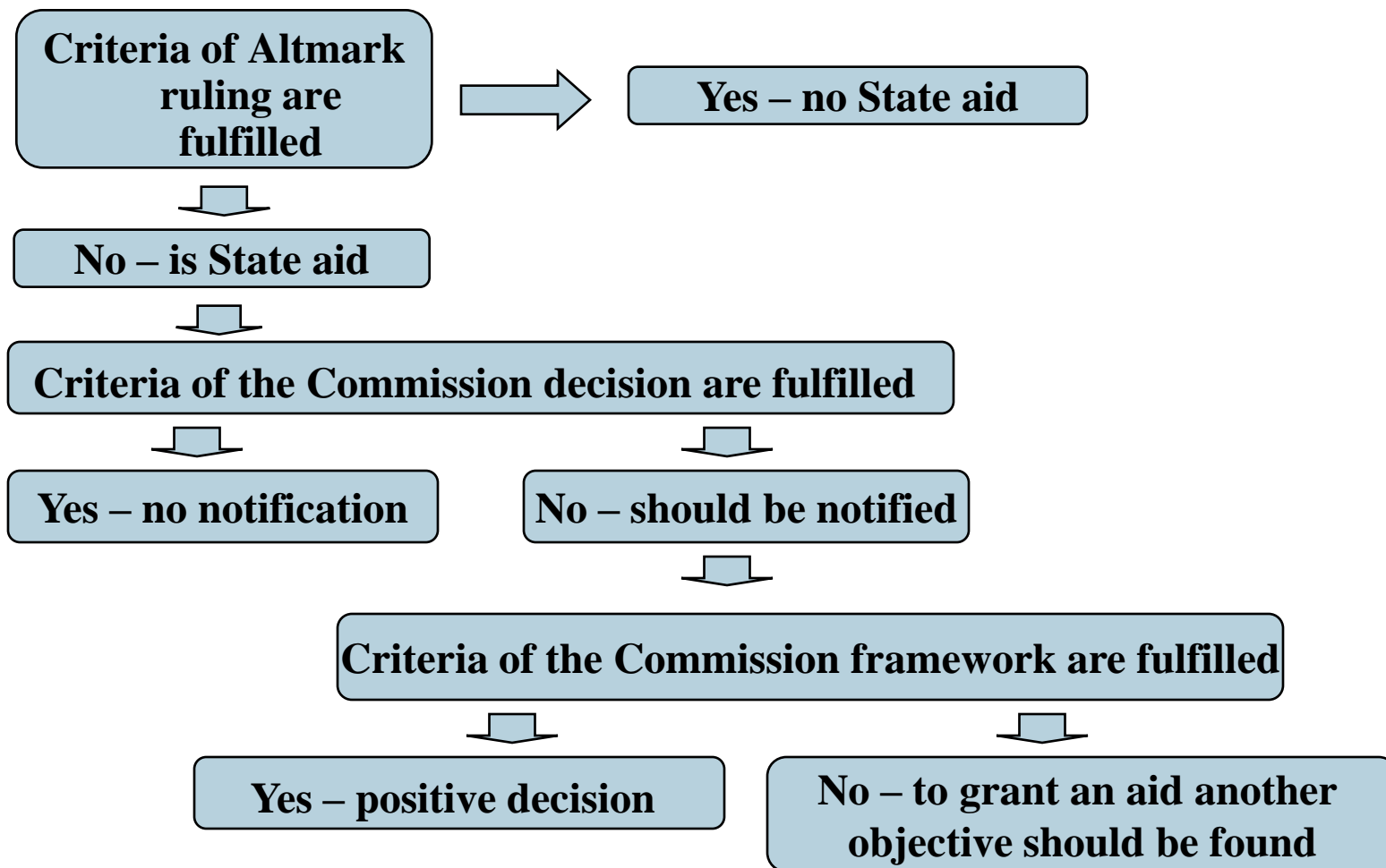
# Compensation for PSO :

- shall not exceed what is necessary to cover the costs incurred in discharging the public service obligations;
- only the costs associated with the service of general economic interest shall be taken into consideration;
- the costs linked with investments (infrastructure and transport means) may be taken into account when necessary for the operation of the service of general economic interest.
  
- When a company carries out activities falling both inside and outside the scope of services of general economic interest, the internal accounts shall show separately the costs and receipts associated with the service of general economic interest and those of other services, as well as the parameters for allocating costs and revenues.





# State aid is / isn't





# If requirements for PSO compensation are not fulfilled, then:

- Public funds can be granted, if another State aid legal framework is found to establish compatibility with State aid rules, for example:
  - regional (investment) aid
  - aid for research, development and innovations
  - aid for environmental protections
  - or others
  
- or, **if eligibility is not established under any other objective, public funds may not be granted at all!!!!**



# Case analyses: broadband sector

- Aid for Broadband internet connections:
  - for Estonia (case N 196/2010) accepted as PSO
  - for Lithuania (case N 183/2009) accepted as sectoral aid

Difference in approach:

- PSO because measure is designed to develop high-speed broadband services, i.e. establishment of next-generation access network with objective is to achieve a data transfer rate of at least 100 Mbit/s, covering entire territory of Estonia
- Sectoral aid because measure is designed to develop an infrastructure of electronic networks offering wholesale broadband services in rural areas of Lithuania which are not served and where there are no plans for coverage in the near future



# Case analyses: electricity generation & secure energy supply

- Aid for new electricity generation capacity for security of supply:
  - for Ireland (case N 475/2003) accepted as PSO
  - for Latvia (case N 675/2009) accepted as sectoral aid

Difference in approach:

- PSO because measure is designed to bring into Irish electricity market new electricity reserve generation capacity in order to meet the electricity demand at any time of the year, including peak periods
- Sectoral aid because measure is designed to address lack of actual electricity deficit and necessity to diversify dependency of a single fuel source
- Aid to reconstruct energy connection networks for security of supply:
  - for Lithuania (case N 197/2008) accepted as regional sector specific aid

Difference in approach:

- Because aid foreseen for energy supply networks and systems to secure safety and reliability of energy supply and development of renewable energy sources reduce energetic dependence from fossil energy sources



# Hvala na pažnji!

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