



**EUROPEAN COMMISSION**

**DG Competition**

Markets and cases V: Transport, Post and Other  
Services State aid and other services

Bruxelles, 05.07.2012  
COMP/F3/VD/MC/JP/ack •  
2012/072381

Permanent Representation of  
France before the European Union  
**For the attention of Mr. Arnaud  
Boulangier**  
Place de Louvain 14  
B-1000 Bruxelles (Belgium)

Subject: **State aid - SA34751 (2012/CP) - France**  
**Social Housing in France**

Sir,

In the case referred-to above, the Commission has received a complaint relating to the granting of alleged State aid in the social housing sector in France, of which you will find the non-confidential version annexed.

The complaint concerns social-housing landlords, who, according to the complainant, receive government support in relation to the performance of a service in the public interest, mainly defined as “the construction, acquisition, improvement, allocation, management and sale of capped-rent rental housing where this is intended for people with incomes below the maximum limits set by the administrative authority...<sup>1</sup>”

The complainant challenged the conformity of the measures in question with the Altmark ruling and the Commission decision of 20.12.2011 on the application of Article 106, paragraph 2, TFEU to State aid in the form of public service compensation granted to certain undertakings entrusted with running services in the general economic interest<sup>2</sup> ("SGEI Decision"). In particular, the complainant challenges:

- 1) the mandate to manage the Service of General Economic Interest (SGEI): the complainant considers that the conditions for access to social housing in France do not meet the notion of social housing as specified in the SGEI Decision, in other words the provision of social housing for disadvantaged citizens or socially less advantaged groups who, for reasons of solvency, are not able to find housing under market conditions,

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<sup>1</sup> Article L411-2 of the Construction and Housing Code

<sup>2</sup> OJ L 7, 11.1.2012, page 3

Please state the case title and number in all correspondence.

2) Transparency of the system of compensation: the complainant considers that the parameters for calculating compensation do not make it possible to ensure that compensation does not exceed the net costs incurred in discharging the public service obligations, including a reasonable profit and

3) Controlling overcompensation: the complainant considers that there is no adequate instrument for verifying the absence of overcompensation.

The Commission services would like your authorities to clarify the points raised in this complaint, and in particular the three points made above.

If your authorities consider that this is not a case of unlawful aid and that it is compatible with the Treaty and, in particular, with the SGEI Decision, we would appreciate it if they would inform us of their own statement of the facts and the reasons why they consider that the alleged aid is not illegal and it is compatible.

Please also clarify the following points in relation to the points raised by the complainant relating to compatibility conditions as set out in the SGEI Decision:

1) SGEI Mandate for Management

a) SGEI

i) Please explain what the nature of public service obligations is in the field of social housing

ii) What is the social aspect of the public service in question?

iii) What are the criteria for choosing the final beneficiaries of social housing (income, marital status, location, etc.)?

iv) Please explain how these criteria characterise disadvantaged persons or those part of socially less-advantaged groups which, for reasons of solvency, are not able to find housing under market conditions.

v) Please indicate what percentage of the population meets these criteria.

b) Terms of reference

i) Please explain which laws assign public service obligations in the field of social housing

ii) Please demonstrate that the terms of reference entrusted meet the conditions laid down in Article 4 of the SGEI Decision, including:

(1) The duration of the public service obligations

(2) A description of the compensation mechanism and parameters for calculating, controlling and reviewing the compensation.

(3) The rules for recovering any overcompensation and ways to avoid these

(4) A reference to the SGEI Decision

2) Compensation and transparency

a) Compensation

i) Please detail the parameters for calculating the compensation

- ii) The complainant has provided a list of various forms of aid paid to capped-rent housing agencies. Can you review this list and complete it as necessary?
- iii) Can you also explain how each of these aids works and indicate the annual amount paid for each form of aid?
- iv) Are these aids all considered compensation for the provision of a public service?

b) Transparency

- i) Are the bodies with public-service missions entitled to conduct business that is distinct from their public service mission?
- ii) Where appropriate, undertakings providing services of general economic interest that perform other business activities have an obligation to keep separate accounts for each separate activity under Article 5.9 of the SGEI Decision. Please specify whether this separation and accounting transparency requirement is met.

3) Controlling overcompensation

- a) According to Article 6.1 of the SGEI Decision, Member States shall ensure that the undertaking does not receive compensation that exceeds what is necessary to cover the net costs incurred in discharging the public service obligations, including a reasonable profit. Please describe the control mechanisms in place for overcompensation in the field of social housing.
- b) In addition, this article contemplates that Member States shall carry out regular checks on overcompensation, or ensure that these are carried out. Please specify whether the French authorities exert this type of control in the field of social housing.
- c) In particular, what is the level of profit (average and maximum) of the agencies in charge of social housing?
  - i) Is this level of profit regularly monitored?
  - ii) To what extent is it then considered reasonable?

4) Social housing market in France

The DG Competition would also like to have some general information on social housing in France:

- a) The complainant refers only to social-housing landlords as undertakings in charge of public service obligations in social housing. Please specify which agencies are in charge of these obligations in France.
- b) How many social housing units are there in France?
- c) How many social housing tenants are there in France?
- d) What is the occupancy rate for social housing?
- e) What is the economic importance of the social housing sector compared to the strictly commercial rental sector?
- f) What is the geographical distribution of social housing in France?

g) What is the geographical distribution of social housing needs in France?

Kindly send us your clarification on these points within 20 working days from the date of receipt of this letter.

The Commission will then be in a position to forward your response to the complainant, insofar as it is plausible, in order to resolve the latter's suspicions. To this end, we will assume that you do not object to the transfer of your response to the complainant. Otherwise, please indicate the specific items that you consider confidential and send us a non-confidential version of your reply.

We draw your attention to the fact that if the information received is not sufficient, the Commission services could be forced to send you an order to provide information in accordance with Article 10, paragraph 3 of Regulation (EC) No 659/1999 of the Council of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty<sup>3</sup>. In addition, if they are insufficient to clarify the above points, they may not have any other choice but to open a formal investigation procedure on the basis of available information.

Yours sincerely,

[Signature]  
Joaquin FERNANDEZ MARTIN  
Head of Unit

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<sup>3</sup> OJ L 83 of 27.3.1999, page 1