HT.6515 Dutch response to the public consultation on the revised SGEI Decision

The Hague, 4 November 2025

This response reflects the views of the Dutch 'Interdepartementaal Staatssteun Overleg (hereafter: ISO)'. The ISO is a central State aid coordination body composed of all Dutch ministries and representatives of the regional and local authorities. The Minister of Economic Affairs is responsible for competition policy in the Netherlands and, in that context, the ministry of Economic Affairs chairs the ISO.

This is the Netherlands' response to the public consultation on the revised Commission Decision 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 (hereafter: the SGEI Decision).

The proposed revised SGEI Decision aims to introduce new rules for affordable-housing SGEIs which should prevent undue distortion in the private housing sector and bring sufficient legal certainty to Member States and public authorities, while at the same time allowing them to tailor the rules to their specific national and local housing contexts. The new SGEI Decision also proposes introducing sectorial changes concerning critical medicine, aviation and maritime sectors as well as changes aimed at updating and simplifying the rules.

General comments

Robust State aid control is essential for ensuring a level playing field and well-functioning, competitive internal market. At the same time, State aid intervention may be needed to address certain market failures and/ or to accomplish the goals of European Union interests.

The revision of the SGEI Decision is welcomed, as it enables compensation for SGEIs to speed up the construction of affordable housing, addressing the urgent needs of the housing sector and the challenges European citizens face in having access to affordable housing. Moreover, the Netherlands welcomes the increase in the general threshold set out in Article 2 paragraph 1 under a) for non-specific SGEIs to EUR 20 million and the proposed simplification of administrative requirements, particularly with regard to the calculation of overcompensation. The Netherlands also endorses the provisions as set out in Article 7, paragraph 3 of the draft SGEI Decision. This stipulates that EU Member States will no longer have to calculate the amount of compensation ex post if the provider is obliged to reinvest all profits in the SGEI. Especially for local and regional authorities these alterations are important improvements, decreasing administrative burdens and providing more flexibility for the financing of SGEIs at a local and regional level.

Specific comments on social and affordable housing SGEI

The Netherlands welcomes the proposed amendments to the SGEI Decision. These changes provide much-needed flexibility within the State aid legal framework to support undertakings entrusted with providing affordable housing. The Netherlands, like many other EU Member States, is facing a shortage of affordable homes. The targeted revision of the SGEI Decision on affordable housing, without a notification threshold, is therefore particularly welcome. Furthermore, we welcome the conditions outlined in the Annex regarding the combination of social and affordable housing. The proposed requirements for SGEIs for social and affordable housing leave sufficient discretion for EU Member States to design, finance and implement SGEIs for social and affordable housing within their national contexts, in accordance with the principles of subsidiarity and proportionality.

The draft SGEI Decision also correctly considers in recital 28 that a longer timeframe than 10 years is necessary for social and affordable housing projects. In practice, this can be more than 25 years, as is the case with social housing.

While the draft SGEI Decision provides flexibility regarding the criteria that EU Member States can apply to affordable and/or social housing projects, the Netherlands would like to draw the Commission’s attention to two criteria mentioned in the draft SGEI Decision:

The criterion of ‘already owning residential property’ as a possible exclusion ground for the SGEI target group of beneficiaries, as mentioned in recital 15, can lead to excessive administrative burdens. Very few households that own residential property seek to rent affordable housing. Yet all households would be required to prove that they do not own property, which would lead to implementation problems in the national practice.[1] In some cases, property ownership may also be temporary or incidental, such as inheriting a home in a different region. This should be treated with flexibility and fall under the discretion of EU Member States.

The criterion to verify eligibility of affordable housing beneficiaries at regular intervals should not result in an obligation for EU Member States to adopt regulations that would terminate rental contracts in such cases. For example, gradually raising the rent to market levels for households that are no longer eligible would address the issue and prevent them from instantly losing their home if their income increases.

Finally, the Netherlands proposes introducing a turnover threshold in Article 7, paragraph 3 of the SGEI Decision. For instance, if a provider engages in non-SGEI activity related to the SGEI[2], and this activity accounts for only [5] % of the provider’s annual turnover, the provider should still be eligible for the exemption. This would help to avoid excessive administrative burdens, such as the need to track and precisely allocate multiple revenue streams. It would also prevent the creation of unintended barriers to new housing developments containing both SGEI and a small non-SGEI component, for example as a result of city planning or

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[1] In social housing in the Netherlands 19.000 households of 2,1 million households own property.

[2] For example, an operator rents out the ground floor of an apartment building in an inner city to a store

architectural reasons.[3] Please see also our request under 'Other comments' regarding SGEI's in relation to non-economic SGI-activities.

Specific comments on critical medicines SGEI

The Netherlands welcomes the explicit inclusion of critical medicines in the draft SGEI Decision. However, the Netherlands has two concerns relating to critical medicines in the draft SGEI decision. Firstly, it is important that the definition of critical medicine aligns with the definitions in the Critical Medicines Act and the revision of the Pharmaceutical Package. Currently, this is not the case. These legislative acts are currently under negotiation in the Working Party on the Critical Medicines Act and in the Trilogue (the revision of the Pharmaceutical Package). We therefore urge the Commission to align the definition in the revised SGEI decision with the final definitions of these pieces of legislation.
Secondly, there is the paragraph concerning market failure and the vulnerability assessment. In the draft SGEI Decision, market failure must be substantiated by a vulnerability assessment. In the Netherlands, we are exploring several instruments relating to the concept market of failure with regard to the SGEI, e.g. stockpiling (medicines/APIs), technology transfer for final registrations ,and scalable production. Market failure is assessed based on the fact that financial margins are too low for (certain) generic medicines for a return on investment in these examples (stockpiling, production registrations and keeping capacity available for times of shortages/crisis). Could the Commission please clarify what a vulnerability assessment entails and whether an assessment of return on investment would be sufficient to establish a market failure?

Specific comments on the maritime and air transport SGEI

The Netherlands welcomes the proposed amendments to Article 2, paragraph 1, sub d) and sub e) of the draft SGEI Decision for the aviation sector (air links and airports).

The Netherlands also welcomes the proposed amendments to Article 2, paragraph 1, sub e) of the draft SGEI Decision for the maritime sector (ports).
However, it is unclear how 'freight' can be defined in terms of linear meters in Article 2, paragraph 1, sub d) of the draft SGEI Decision. Clarification on this matter would be welcomed.

Other comments

To ensure a careful revision of the SGEI Decision and the necessary internal coordination of the response to the public consultation, the Netherlands would have preferred a regular consultation period to an accelerated one. The Netherlands requests that the Commission take this into account in future public State aid consultations.

[3] For example, an operator in an inner city development needs to allocate the ground floor for offices and stores, since they are not suitable for homes, but this operator is not able to finance the non-SGEI activity because of the obligation to reinvest all profits in the SGEI.

With regard to the scope of the SGEI Decision, the Netherlands welcomes in Article 2, paragraph 1, point (a) of the draft SGEI Decision, the increase in the annual amount from EUR 15 million to EUR 20 million for the provision of SGEI in areas other than transport and transport infrastructure, including social services not referred to in Article 2, paragraph 1, point (c) and critical medicines.

With regard to transparency, the Netherlands notes that the requirement for the entrustment act shall to include a reference to the SGEI Decision has been removed. In our view, it is important to refer to the SGEI Decision in order to ensure transparency and provide an overview of the measures based on it. At the same time, however, we do not object to the deletion of this requirement.

The Netherlands is not in favor of the introduction of the transparency obligation (Article 8 of the draft SGEI Decision). We question the effectiveness of the transparency obligation and the added value next to a reporting obligation (of which the results are integrally published), However, we believe that if this requirement is introduced, it is important for the transparency obligation to include a reference to SGEI aid. The Netherlands considers it important to distinguish between ‘regular’ State aid and aid granted in the context of an SGEI.

Finally, the Commission is asked to consider whether the rules can be clarified and simplified in situations where SGEI activities and non-economic SGI-activities might overlap. This is particularly relevant when assessing overcompensation, especially in relation to separate accounting.