

Press and Information Division

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Opinion of Advocate General Léger in Case C-280/00

*Altmark Trans GmbH and Regierungspräsidium Magdeburg v
Nahverkehrsgesellschaft Altmark GmbH*

**ADVOCATE GENERAL LÉGER TAKES THE VIEW THAT THE
FINANCING OF PUBLIC SERVICES CONSTITUTES STATE AID FOR THE
PURPOSES OF COMMUNITY LAW**

In the Advocate General's view, Member States must in principle notify their financing plans to the Commission and may not implement them without prior authorisation from the Commission. The Advocate General states that this review machinery is not liable to disrupt the functioning of public services in the Member States.

The question of the financing of public services is currently the subject of several cases before the Court of Justice.

In view of the importance of the question, the Court, in order to answer a question put by a German court, decided to have recourse to an **exceptional procedure**.

The case concerns a public bus transport service in the Landkreis (district) of Stendal in Germany. In 1994 the Landkreis issued transport licences to Altmark and granted it subsidies to cover the costs of discharging its public service obligations. A competing company, NVGA, brought proceedings before the German courts, claiming that the subsidies paid to Altmark were contrary to the Community rules on State aid. The Bundesverwaltungsgericht (Federal Administrative Court) asked the Court of Justice for a ruling on the nature of those subsidies.

Altmark and NVGA submitted argument to the Court at a first hearing in late 2001. However, in view of the importance of the question, the Court decided to arrange a

second hearing to request **all the Member States** and the **Council** and the **Commission** to put forward their points of view.

Advocate General Léger today delivers his second Opinion in this case.¹

The Advocate General's opinion is not binding on the Court. The function of the Advocate General is to propose to the Court, acting with complete independence, a legal solution to the cases assigned to them.

The Advocate General considers that **State financing of public services constitutes State aid within the meaning of the Treaty**. In his view, such financing is normally subject to the Community machinery for review of aid. That means that, in principle, **Member States must notify their financing plans to the Commission** and that **they may not grant that financing without prior authorisation from the Commission**.

At the hearing, some Member States submitted that this review machinery could endanger the functioning of public services. They consider that the procedure for examining aid is relatively long and that, for certain kinds of public services, it is difficult to wait for the Commission's authorisation.

The Advocate General examines this argument in detail. He explains that the aid review machinery is not liable to disrupt the functioning of public services, for several reasons.

First, the Advocate General points out that the Treaty rules apply only to aid paid to entities that carry on an **economic activity**. It follows, in his view, that the financing of certain essential sectors of the State, such as compulsory social security schemes or compulsory education, does not have to be examined by the Commission.

Second, the Advocate General points out that, with respect to financing that does have to be notified, the **Commission is obliged to carry out an initial examination of the aid within two months** from notification. If it does not react within that period, the Member States may grant the financing without waiting for authorisation. Moreover, in cases of particular urgency, the Treaty provides for a duty of sincere cooperation between the Commission and the Member States, which should make it possible to give priority treatment to such cases.

Third, the Advocate General notes that the Commission could adopt a "regulation for exemption by category". Such regulations define the conditions under which certain categories of aid are compatible with the Treaty. Aid paid in accordance with those regulations is then exempted from the obligation to notify. Consequently, **if the Commission were to adopt such a regulation, the Member States could finance public services without having to wait for authorisation from the Commission**.

In those circumstances, the Advocate General considers that the Community machinery for review of aid (whether by individual decisions or by exemption

¹ Advocate General Léger delivered his first Opinion on 19 March 2002, following the original hearing.

regulations) is not liable to harm the quality and continuity of public services in the Member States.

Reminder: The judges of the Court of Justice of the EC are now starting their deliberations in the present case. Judgment will be delivered at a later date.

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Available in English, French, German, Italian and Spanish

For the full text of the Opinion, please consult our Internet page
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