



7th EPSU Congress, 14-17 June 2004,
Stockholm

European Federation of Public Service Unions
45 Rue Royale
1000 BRUSSELS
Tel.: 32 2 250 10 80
Fax: 32 2 250 10 99
e-mail: epsu@epsu.org
Website : www.epsu.org

EPSU Statement on the White Paper of the European Commission on Services of General Interest, COM(2004) 374

Adopted by the Executive Committee, 14 June 2004

The EPSU Executive Committee, meeting on 14 June 2004, took note of the White Paper of the European Commission on Services of General Interest. EPSU acknowledges a number of positive elements contained in the White Paper. On the whole though the White Paper offers little more than was already known before its actual publication and is therefore overall disappointing as the outcome of a long discussion process. Indeed, a number of the statements made in the White Paper have to be viewed very critically.

The White Paper does not remove the imbalance between general interest considerations and competition rules. Without making clear what constitutes a non-economic service the imbalance remains of competition law being applied by default. The Commission claims to be 'neutral' as to the ownership of the service provider. This 'neutrality' is however not interpreted in the sense of positive subsidiarity, leaving it to national, regional and local levels to determine the organisation of public services. The Commission understands 'neutrality' as 'equal treatment' of public or private providers of services of general interest, subject to the same rights and obligations. Is the Commission neutral though, if it continues to maintain that the term 'public service' is not precise and therefore should not be used? EPSU strongly rejects this concept of 'neutrality'. In contradiction to Article 295 of the Treaty, the Commission approach 'prejudices the rules in Member States governing the system of ownership'.

Many of the measures proposed in the White Paper in favour of services of general interest would only intervene in 2005 or even later. In the meantime the political reality for services of general interest is pre-determined by the proposals contained in the Services Directive and the Commission state aid package.

On the positive side, the EPSU Executive Committee welcomes the following aspects of the White Paper:

- The White Paper stresses the essential role of the Member States and of regional and local authorities in the area of services of general interest. The strict respect of the principle of subsidiarity is highlighted.
- The Commission welcomes new Article III – 6 of the draft Constitutional Treaty and considers that this provision will provide an additional legal basis for Community action in the field of services of general economic interest. The Commission does however not proceed to submit a legal framework on SGI at this point in time but will re-examine the need for and feasibility of it once the Constitutional Treaty is in force, i.e. not before 2006.
- The Commission will review the situation of services of general interest and the need for horizontal measures in 2005 and intends to submit a report on its findings to the

European Parliament, to the Council, to the European Economic and Social Committee and the Committee of the Regions before the end of 2005.

- Importantly, the White Paper makes the point that the performance of a general interest task prevails, in case of tension, over the application of Treaty rules.
- The Commission announces its intention to review its evaluation methodology so as to ensure that all interested parties, including providers and *employees*, are fully involved. The explicit reference to the involvement of employees constitutes certainly a progress in comparison to the current evaluation methods. It is also noteworthy that the Commission intends to make proposals for a legal framework to strengthen co-operation between national regulatory bodies.

The EPSU Executive Committee views the following points critically. These critical points outweigh the positive aspects contained in the White Paper:

- The evaluation and the conclusions from the Green Paper consultations seem to be flawed. It is not apparent how the Commission has weighted the 281 responses to its Green Paper, coming from a vast range organisations and even individuals. It is not clear from the Commission's analysis how it has taken account of these differences. The Commission for example states in the summary of the responses received during the consultation, that there were "*a few comments claiming the Green Paper had too strong an internal market and competition focus*". A closer analysis however would suggest that 'more than a few' comments criticised the internal market and competition focus. Virtually all of the submissions from public authorities criticised this particular issue.
- It is therefore quite questionable, how the White Paper can conclude that the pursuit and achievement of public policy objectives with competitive objectives are reconcilable.
- The Commission disqualifies its own statement of 'prevalance' of general interest tasks, in cases of tension, over application of Treaty rules, by stating that it is "*thus the missions that are protected rather than the way they are fulfilled... A level playing field for all providers and the best use of public money has to be ensured.*" This statement does not sit well with earlier references of the subsidiarity principle and the right of local authorities to organise their services.
- In Annex 1, the Commission states, that the White Paper focuses like the Green Paper mainly, but not exclusively, on issues related to '*services of economic interest*', as used in Articles 16 and 86 (2) of the Treaty. The White Paper does however not provide further clarification on the terminology of '*services of general interest and services of general economic interest.*' A definition is actually provided in the Draft Services directive, which qualifies "*non economic activities as activities performed by the State for no consideration as part of its social, cultural, education and judicial functions, where there is no element of remuneration*", as provided by Article 50 of the Treaty. The Commission consistently stretches the concept of '*services of general economic interest*' as part of its internal market strategy beyond the idea of removing obstacles to free movement by regulating trade. Rather than providing protection of services of general interest there is a race to apply internal market rules to every conceivable area, which has actually altered the capability of local and regional authorities executing self-administration. The Commission's statements on health and social services therefore raise strong concerns. EPSU queries the terminology '*social service of general interest*'. The terminology seems to suggest that there could also be '*social services of general economic interest*' which might be subject to EU competition rules.

- The White Paper states that “*in principle*” the definition of the missions and objectives of social and health services is a competence of the Member States. Article 152, 5 however, is unequivocal about this competence of the Member States. The White Paper then goes on to say that the “*distinction between the ‘missions and instruments’ can assist Member States which use market-based systems to deliver social and health services to anticipate the possible impact of EU competition law*”. Read in conjunction with the proposals on health and social services in the Draft Services Directive, this statement is highly worrying. Health and social services are, in the majority of EU countries, not based on market elements but solidarity considerations and collective funding prevail. In fact, the attempt to ‘marketise’ health care in the UK and the Netherlands has spectacularly failed.
- With regard to the water sector the Commission intends to publish the results of its assessment it has undertaken in the context of its Internal Market Strategy. It is again questionable why this question should be left in abeyance and be re-opened in the context of the Internal Market Strategy, if the Green Paper consultation has revealed that a big majority of public authorities and other organisations reject the idea of liberalising water. The Commission’s statement in Annex 2 has to be challenged: “*No agreement exists with regard to the opening of the water sector at Community level*”. On the contrary, it would appear, that there is broad opposition to opening the water sector at Community level, including from the European Parliament.