

# **Services of General Interest in the Internal Market**

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## **EXECUTIVE SUMMARY**

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prepared for the  
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contractor  
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## ***Foreword***

This study on "Services of general Interest in the Internal Market" was commissioned by the European Parliament with the aim of preparing background material and advising Members of the European Parliament Committee on the Internal Market and Consumer Protection on legal and economic issues related to existing and forthcoming proposals by the European Commission with respect to services of general interest.

For this purpose a working group was set up to examine the list of issues and questions given by the European Parliament (Directorate General Internal Policies – Policy Department A1 - Economic and Social Policies). This working group was headed by Prof. Dr. Gabriel Obermann (Wirtschaftsuniversität Wien, AT) with the collaboration of Prof. David Hall (Director of PSIRU, University of Greenwich, UK) and Mrs Barbara Sak (Assistant Director of CIRIEC, BE).

The study seeks to answer the questions listed in the study specification in the following sections devoted to the definition and scope of services of general (economic) interest (SG(E)I), to liberalisation and regulation measures related to SGI, to the financing of SGI, to employment issues and to impact assessment. A final substantial section is devoted to conclusions, which attempt to summarise the findings of the study, and also to present guidelines for policy options and suggest some recommendations. Questions regarding future EU legislation and comments with respect to existing proposals by the European Commission are dealt with in this latter section.

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## *Executive summary*

This paper seeks in sections 1-5 to answer questions of the European Parliament concerning:

- the definition and scope of services of general (economic) interest (SG(E)I);
- liberalisation and regulation measures related to SGI;
- the financing of SGI;
- employment issues affecting SGI; and
- impact assessment and evaluation of SGI.

Section 6 is devoted to conclusions, which attempt to summarise the findings of the study, and also to offer guidelines for policy options and make recommendations concerning possible future EU legislation on SGI and existing proposals by the European Commission. The conclusions in section 6 fall under 8 headings:

### **A. Definition and scope of SGI**

The search for a definition becomes in practice an attempt to define the limits of SGI for EU purposes, which can simultaneously act as an acceptable definition of actual public services/SGI. Defining SGI by a list of services is problematic because there is a wide range of SGIs in Member States, which also change over time. An EU-level definition also risks giving too much weight to EU level provisions of the constitution and directives concerning SGEI and state aid, which were drafted to address specific objectives in relation to competition and the internal market, which are different and more limited objectives than the definition of SGI in general.

A possible and reasonable policy alternative for the future development of the SGI framework would be to accept that the principle of subsidiarity is of central importance, so that the EU definition of SGI/public services becomes simply: whatever Member States decide should be a public service/SGI. (This is elaborated below, in the conclusion concerning “Proposed definition of SGI in services directive or framework directive”).

## **B. Liberalisation and regulation**

The reconfiguration of relations between the authorities and the service-suppliers has numerous economic, legal and socio-political consequences the long-term repercussions of which on the range of SGIs are today only partially in evidence. EU law may have negative effects: for example the recent judgement in the *Halle* case is a particularly restrictive decision with potentially widespread ramifications, undermining the central basis of the French sociétés d'économie mixte, for example, as well as numerous PPPs.

From an economic point of view, especially with regard to transaction costs, there are strong arguments to choose as simple as possible models of provision, regulation and monitoring of specific tasks. According to the principle of subsidiarity - and also to the theory of fiscal federalism - decisions on the organisation and the model of the regulation of public missions are best taken at the lowest institutional (or federal) level.

## **C. Financing**

The possibility of solidarity-based financing in its various forms (including solidarity between territories, socio-economic categories of population and/or economic actors/users, or even generations) should be kept open, including tariff perequation or charge equalisation and cross-subsidisation. Subsidiarity should prevail in establishing financing mechanisms.

Financing SGI using EU funds may be a reasonable and desirable solution if EU-wide homogeneous services are wanted and/or distributional aims should be addressed at the European level. Services determined by local, regional or national preferences and demands or needs, however, should be with the responsibility of the Member States for provision and funding of the services, unless that they do not have sufficient own means in order to provide such a SGI. The aim would be then the promotion of the regional and social cohesion over the whole European Union territory with corresponding funds.

## **D. Employment**

The core SGI sectors of public administration, education and health are crucial to achieving the employment growth necessary, and that increasing public (and private) demand for these services is

the key factor generating growth. These sectors are also central to the creation of a successful knowledge-based economy, and for cohesion policies, as these sectors are important to expand employment for women and in new Member States. EU policy on SGI should therefore concern itself with ensuring that there is growth in public demand and expenditure on these services.

The quality of employment should also become a focus of EU policy in these sectors, both for cohesion reasons and for economic performance. The protection of training in an environment of outsourcing is a EU-wide issue, as is the creation of two-tier workforces resulting from the same processes in both SGI and SGEI. These issues could be addressed through regulation either through EU-wide mechanisms or through the development of guidelines for national regulators.

### **E. Assessment of SGI**

The EU should continue to pursue the objective of a comparative and transparent assessment of SGI and support corresponding initiatives in the Member States. The evaluation should be comprehensive and consider political, social, economic and environmental criteria. Analysis and interpretation should be done within a wide-ranging perspective encompassing the plurality of stakeholders.

A possible strategy for the near future could be to promote assessments of SGI organised by the Member States, to be published and compared across Europe. This task could be assigned to an observatory established on EU-level, which would have a coordination role. It is important to assess the existing and present consequences of sectoral directives already in place **before** going on with new legislative initiatives affecting SGI.

### **F. Draft Directive on Services and issues with respect to services of general interest**

The conclusions of the working documents by the Committee on Employment and Social Affairs (PE 353.297v01-00) and the Committee on the Internal Market and Consumer Protection (PE 353.364v01-00), are supported by the arguments in this paper, in particular that “there is no distinction between what is purely commercial and what serves the public interest”; and the proposal “to exclude services of general (economic) interest (SG(E)I) entirely from the scope of the Draft”.

## **G. Proposed definition of SGI in services directive or framework directive**

The criterion for excluding SGI from the scope of the services directive should be the concept of the general interest as defined collectively (politically) through democratic processes by public authorities in the Member States. A SGI is always defined by reference to a public interest objective or objectives, not by reference to a particular activity, nor type of provider, nor the mode of market organisation or provision. Such public interest objectives are always explicable by reference to the benefits for the community under consideration. The public authority defines, at appropriate level, the conditions under which such objectives are to be realised in each specific service. It follows that the right to define SGI should be assigned to the public authorities at every level in Member States, according to the principle of subsidiarity. Consequently SGI should be simply defined as all those services designated by public authorities within the EU by reference to public interest objectives. This conception of SGI can then be used as the criterion for the exemption of SGI from the services directive, and could also form the core of a framework directive on SGI.

This system is regulated by democratic political activity, and allows for challenges to ensure against abuse of the process, because public authorities can be required to specify the public benefits accruing from any service designated by them as SGI. This approach to excluding SGI from the services directive is coherent with all the principles of the EU constitution.

## **H. Future of EU policy and services of general interest**

The political decision to be taken by the European institutions about the future development of the legal framework with regard to SGI issues concerns ultimately the trade-off between the unaffected functioning of the internal market and a satisfactory supply of SGI according to local and regional preferences in the Member States.

If the EU is prepared to adopt a rule of blanket exemption of SGI under the principle of subsidiarity, a proper way to incorporate this into the legal framework has to be found. Maybe Art. 256 of the old Treaty could serve as an example or basis for a feasible solution for an operational exemption rule.