

EPSU analysis on European Commission Communication on Implementing the Community Lisbon programme: Social Services of General Interest in the European Union (COM (2006) 177 final)

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{Adopted by the EPSU Executive Committee on 9 June 2006}

On the 26th of April 2006 the European Commission (EC) published its long awaited Communication on Social Services of General Interest (SSGI). The Commission has been working on this paper for several years. Nonetheless, the quality and content of the paper falls far short of EPSU's expectations. The European Commission has not developed any new policy on the issue of SSGI. Worse, it is of the opinion that internal market regulations should always be followed and that there is no need, at this point, to develop any legislation in which the general interest aspect of social services would be protected. In EPSU's opinion the Communication as a whole lacks genuine concern for the solidarity and public service aspects of social services. For this reason EPSU calls on the European Commission, but also the European Parliament and Council, to refocus attention on the need for a framework directive on all services of general interest. This note will comment on some specific issues as they were addressed by the European Commission in its Communication.

Separate legislation for Social services of General Interest?

1. The EC communication on SSGI is part of the EU discussion on Services of General (Economic) interest (SG(E)I). EPSU, ETUC, other European Industry Federations and NGOs are calling for a legal framework to protect SGIs (economic and non-economic). The aim of this instrument is to guarantee that the general interest will prevail over market rules and that SG(E)I are governed by the common

public services principles, such as accessibility, universality, affordability, solidarity and democratic control. EPSU wants governments to be clear about their obligations to their citizens and society as a whole and to have a transparent public debate on the concept of public services at European, national and local level. The legal framework will facilitate this by obliging national governments to take common public service principles into account when making decisions about, for instance, restructuring or decentralisation. The accessibility and quality of public services should be at the centre of governmental policies. Not only because this concerns the way our tax money is spent, but also because this is the governments' main mission.

2. There is also another reason why we would like to establish a general legal framework before talking about any specific sectoral legislation. A sectoral approach would force the member states to define their public services of general interest according to standards and characteristics of a particular sector, set out by European legislation. SGIs should then fit into the EU institutions' view on social services, educational services, public utilities and so on, herewith limiting the freedom for member states to categorize or define these SG(E)Is themselves. Member states could have a completely different view on the definition of health care services, but how much space is left in the sectoral legislation to apply their own definitions? As it is important that member states are completely free to define what SG(E)I are themselves and should not be subjected to European definitions and criteria, it is necessary to have a general framework. General legislation will also reduce the risk that specific services of general interest be overlooked and more or less ruled by free market forces, because they will not fit into any European sectoral description or initiative.

{{Definition of Social Services of General Interest}}

3. It is impossible to make an overall definition of social services of general interest in the EU. Even though the EC-questionnaire and the EC white paper on SGI already set out the outlines for a definition of social services - for instance by stating that these services have a personal character-, the feedback to the EC questionnaire showed clearly that the way social services of general interest are defined varies from one member state to another. It is for this reason that the EC was unable to give a clear definition of this type of services in the Communication. However, although the EC is pretending to give the member states a full say on the definition question, the EC has given an outline of the concept of social services, which

includes and excludes some specific services with a GI and a social character.

4. According to the EC, there are two main categories of social services: a) Statutory and complementary social security schemes covering the main risks of life b) Other essential services provided directly to the person. These services play a preventive and social cohesion role and consist of customised assistance to facilitate social inclusion and safeguard fundamental rights. They consist of certain subcategories -* Assistance for persons faced by personal challenges or crises -* Activities to ensure that the persons concerned are able to completely reintegrate into society and the labour market (they complement and support the role of families in caring for the youngest and oldest members of society in particular) -* Activities to integrate persons with long-term health or disability problems -* Social housing

5. It is not clear whether member states are allowed to point out other social services of general interest, which do not fit in the above-given description. The Communication gives us the impression that this is not possible. This, of course, raises the question what kind of status the other social services will have, and in which way they will be “protected from the market forces”. You could have, for instance, some doubts on the requirement that all social services should be provided to the person. Many services with a clear general interest and a social character needn't necessarily be provided directly to the person. Many non-profit organisations do play an important role in civil society, but they are not providing any services directly to a person, for instance human rights and environmental groups, social research institutions, animal protection institutes, etc. How would the EC categorise them? Would any financial support to these organisations be regarded as (illegal) state aid? Would they be SGI, SGEI or are they just economic activities and services? The same could be said of many community services, which organise social events and activities or provide facilities for neighbourhoods and villages like libraries, swimming pools and parks. It is difficult to argue that these services are specifically delivered to the person, but there is no doubt that these services are essential for the social cohesion of a society .

6. On the other side, there are all types of services, which are provided to a person, and play a social cohesion role, but are in general not regarded as SSGI, for instance post and telecommunication services or waste-collection. This Communication is therefore simplifying the complex world of social services of general interest without explaining why it decided to choose for the two ill-defined categories. Worse, the EC gives the citizens the impression that they are handling

all kinds of social services, when they are actually only addressing social care and support services (including social housing and social security).

7. It is also striking that education services and health care services are both services of general interest with a clear social function, but that they are not covered by the Communication. The EC did not give an explanation why education services were exempted from the scope, but we may expect that this be related to the services directive, from which education and training are not explicitly excluded. This may be in line with the definition of SSGI as it is used in this Communication, which also reminds of the way social services are described in the services directive. The communication stated that the EC would take a separate initiative on health care services.

8. Instead choosing for a general sectoral approach to SSGI, the EC decided once again to divide one big sector into smaller sub sectors. It thereby again raises a lot of confusion giving member states less elbowroom to develop their own policy.

9. Although EPSU would also not be able to draw a complete list of all social services with a general interest, in order to acknowledge the limitations of the EC definition, it is useful to give a more general overview of the possible SSGI in different EU member states.

10. Social services of General Interest can be: a) Care services -* Health care services - e.g. primary care, hospitals, specialists, paramedics, pharmacists, rehabilitation centres -* Long term care for elderly, mentally ill or disabled people -* Medical and non-medical home care services b) Support and protection services - e.g. child protection, family support, support for homeless people, drug abusers, refugees and asylum seekers c) Community services, e.g. youth work, neighbourhood facilities, sport and cultural facilities d) Civil society organisations (trade unions, political groups, many NGOs) e) Child care services f) Social protection schemes, both statutory and supplementary g) Employment services h) Training and education services i) Social housing

Characteristics of Social Services of General Interest

10. According to the EC, social services often present one or more of the following organisational characteristics: -* They operate on the basis of the solidarity principle, which is required, in particular by the non-selection of risks or the absence on an individual basis, of equivalence between contributions and benefits -* They

are comprehensive and personalised integrating the response to differing needs in order to guarantee fundamental human rights and protect the most vulnerable. -* They are not-for-profit, in particular to address the most difficult situations, and are often part of a historical legacy. -* They include the participation of voluntary workers, expression of citizenship capacity -* They are strongly rooted in (local) cultural traditions -* An asymmetric relationship between providers and beneficiaries that cannot be assimilated with a normal supplier/consumer relationship and requires the participation of a financing third party.

11. The EC did not clarify which role these characteristics play in the definition question and in the debate on SSGI in general. Would these characteristics be used to point out which services are SSGI and which are not? Or are they a justification for the statement that normal market rules cannot apply to these services? It looks like the EC will take them as the starting point of the in-depth consultation process. And this is cause for some concern.

12. As a matter of fact, the aforementioned characteristics can apply to social services of general interest, but this is not necessarily the case. Overall, you could conclude that in these characteristics, the EC stresses the “charity” aspect of SSGI, but is ignoring the fact that many of the social services with a general interest serve a broad public and consist in general day-to-day public services like child care or elderly care. There is a real threat that all these types of services will be considered as normal “market” services, especially if private companies are engaged in delivering them. Pro market forces could argue that the fact that there are private companies involved means that these services do not need special treatment or solidarity-based regulation. It is however important that to guarantee good quality of social services and to enhance the social cohesion in society, many of the SSGI need to serve a diverse and broad public and not only disadvantaged people.

Health care services and SSGI

13. As there is a general trend towards a holistic approach regarding health and health care, it becomes more and more difficult to make a clear distinction between health care services and other care services. It is to be noted that many health care professionals are now working for social service providers and that many non-medical professionals work in health care settings. Although, the EC has decided that health care services should be excluded from the SSGI-communication, it has not made a clear distinction between health care services and other care services.

In the services directive, however, health care services are defined as healthcare and pharmaceutical services provided by health professionals to patients to assess, maintain or restore their state of health where those activities are reserved to a regulated health profession in the Member state in which the services are provided.

14. According to this proposal healthcare services will cover primary care, hospital care, and specialist medical care, but also healthcare as provided within long-term or mental health care institutions, or by home care services. As these services in their entirety also seem to be regarded as social services, any legislation on health care will thus affect the policy on social care services. This can result in the complex situation in which some care services in an institution are covered by the health care legislation and other services in the same organisation by the social services regulations. If the EC developed further legislation on social or health care services, it should at least take the open boundaries between “regulated medical” health care and non-regulated health care within social services into account. This communication completely ignores this complex subject.

Subsidiarity and market ruling

15. Following the Court rulings, the Commission concluded that any activity consisting in supplying goods and services in a given market by an undertaking constitutes an economic activity, regardless of the legal status of the undertaking and the way in which it is financed. In practice, this means that every public service in which some kind of payment (not necessarily by the users) is involved can be considered as economic activities and that all those services will be governed by market rulings, unless specific legal provisions have been taken. Because of the very broad definition of economic activities, a discussion as to whether a public service is economic or not could become completely irrelevant and in any case should not be an issue in our legal framework debate on social services. The common public services principles like solidarity; accessibility or democratic control should apply to all the public services. Moreover, all service providers should take measures to guarantee quality, whether they are engaged in economic or non-economic activities, whether they are public, private or non-profit.

16. One of the other main principles of public services in general and SSGI in particular is the subsidiarity rule. Although the EC Communication explicitly acknowledges the subsidiarity principle concerning social services, it also states that member states should fully apply the internal market and competition rules to

SSGI. They refer to this as an ongoing logic. How the subsidiarity principle relates to the internal market rules is not clarified at all. The Communication does not provide new guidelines protect SSGI against market forces. It just reiterates the existing court rulings and regulations without adding much of an interpretation or explanation. The EC only says that member states should act according to the existing rules of European public procurement, PPPs, state aid and market regulations and gives a very superficial overview of these rules.

17. The general message of this exercise is that the member states' governments need many lawyers to draw all the contracts and legislation. No additional tools were given to the member states to protect their SSGIs against legal pressures. The EC obviously did not give any thought to the principle that general interest should prevail over market rules, and how this has to be worked out in practice respecting the subsidiarity principle.

18. Following the EC Communication means that market rules should always be respected and that the market rules as they are interpreted by the Court give member states enough space to guarantee and improve the quality of their social services. But users, providers and EU Member states' governments , have all indicated that a simple application of market rules without European legal provisions could have a devastating effect on the provision of public services such as health care and social services. Unfortunately, the EC did not express any concern about the sustainability of SSGI, or the practical applicability of the EU law for national or local governments. Modernisation should be achieved by PPPs or outsourcing.

{Modernisation???

19. The EC makes some interesting but disquieting points in the communication on the modernisation of social services. According to the EC modernisation means: -
* Introduction of benchmarking methods, involvement of users and quality assurance -
* Decentralisation of the organisation of these services to the local or regional level -
* The outsourcing of public sector tasks to the private sector -
* The development of public-private partnerships.

20. The EC is thus of the opinion that decentralisation, outsourcing and the development of public-private partnerships have a positive effect on the delivery of social services or more generally on the social economy. It ignores the fact, that the

organisation of social services within member states and the role of the private and non-profit sectors is a very complex issue in which several professional disciplines are involved . It is absolutely impossible to give a realistic and truthful overview of modernisation and related changing processes in one paragraph and in trying to do so, the Commission again simplifies reality. In addition to this, the EC has not given any reasons or arguments why outsourcing, PPPs or decentralisation should be encouraged. There is enough evidence available in which the shortcomings of outsourcing and PPPs are highlighted and there is no doubt that these processes can have a negative effect on the quality of social services. Decentralisation-operations could endanger the quality of social services if local authorities, for instance, are not provided with the necessary financial resources to deliver those services . The paragraph on modernisation therefore gives the impression that this is the EC's political view, but that there is no basis for their assumptions in facts or figures. And considering the subsidiarity principle, the EC should probably not interfere in this debate at all.

Consultation process

21. As mentioned before, the consultation process will be focused on the characteristics of SSGI as set out by the EC in this Communication, but that is not all. Reading paragraph 3.1, it becomes more and more obvious that the EC does not want to change or extend the European Communities' rules by developing specific provisions for the protection of public services against market rules. On the contrary, it expects member states to change their ways of providing public services so that they will be compatible with existing legislation, thereby again disregarding the subsidiarity principle and the general interest. Of course the EC is willing to explain these laws and court rulings, so that the legal uncertainties are clarified, but it is not the intention of the EC to assess existing regulations regarding their effects on public services, let alone to change any market rulings.

Conclusions

22. Looking at the Communication on SSGI and other sectoral initiatives, we can draw the conclusion that a sectoral approach to public services is a dead-end road. Until now, most of the sectoral debates on public services have been centred on market rules; the general interest side of it did not once get the attention that it should receive. This formal EC document thus, once again, underlines our arguments as to why a general legal framework on public services is needed and

that we as trade unionists cannot put up with a sectoral approach.

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