



SSGI in the EU context – EPSU and ETUC reflections, proposals, requests

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Subject: EP own-initiative report ‘The future of social services’ (rapporteur: Proinsias De Rossa), Trade Union Intergroup Plenary Meeting, 10 March 2011, Strasbourg

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Thesis paper

The thesis paper includes key statements from an EPSU background paper entitled “SSGI in the EU context – EPSU reflections, requests and recommendations” prepared for a contribution to a hearing of the EMPL Committee on the EP own-initiative report ‘The future of social services’ (rapporteur: Proinsias De Rossa) on 25 January 2011 (<http://www.epsu.org/a/7310>).

It also comprises ETUC statements on and proposals for action to promote public services elaborated on in a paper adopted by the ETUC Executive Committee on 1 and 2 June 2010, the ETUC Resolution “Towards a new impetus for public services” (<http://www.etuc.org/a/7368>)

This thesis paper should serve the purpose of an hand-out to support the presentation in the 10 March 2011 Plenary Meeting of the Trade Union Intergroup. It was drafted prior to the circulation of the draft EP report on the future of social services in early March 2011.

EPSU and ETUC are in favour of a sectoral approach and support the elaboration of a sectoral directive on SSGI if this tool is designed in a manner to achieve the political goals set out in this paper and the EPSU and ETUC documents referred to above. For different reasons EPSU and ETUC are no longer advocating for a framework directive on SGEI/SSGI, but ask for regulations according to art. 14 TFEU.

Key messages as elaborated on in EPSU background paper “SSGI in the EU context – EPSU reflections, requests and recommendations” (<http://www.epsu.org/a/7310>)

1. Social services are public services and ensure the **development of a cohesive and fair society**. All public services (SSGI and network industries / economic and non-economic) need to be organised on the basis of public services principles and obligations.
2. EPSU recalls that we need **to get the reference points for policy development and legal initiatives right at EU-level**
 - There is a need to shift from a predominant orientation on compatibility of modalities of organisation, regulation and financing of local SSGI with Community law (one could call ‘compliance mania’) to an approach that gives priority to the realisation of objectives of SSGI and of specific missions of general interest taking due account of the specificities of SSGI and their users

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- For SSGIs this means to start with the question how to take due account of the specificities of social services and their users and how to best translate recognised specific characteristics of the social services and their users into adapted rules and procedures at EU-level.
 - For EPSU it is essential that community legislation should be instrumental to the objectives of social, health, employment and housing policies, and not the other way around. In case of conflict the realisation of these policies and their objectives have to prevail over the application of Community rules and procedures.
3. EPSU calls upon the relevant bodies in the member states and competent European institutions to **make full use of art. 14 TFEU and Protocol Nr. 26** when shaping the legal, policy and quality frameworks for social and health services of general interest. If need be existing strategies and policies in the field of internal market, competition, state aid and public procurement should be adapted to allow for the delivery of quality social services, regulated competition on social markets on a level playing field, quality jobs and decent working conditions.
 4. EPSU calls upon the European institutions to **develop at EU-level a ‘general interest statute’** as way of strengthening the regulatory framework / criteria, applicable to both social economy and public services providers and accommodating their specificities.
 5. EPSU suggests **enlarging the notion of ‘in-house’ to include service providers who meet specific general interest criteria** (building on recent the ECJ case law on inter-municipal cooperation), public authorities or enterprises and private (as a rule not-for-profit) ones.
 6. EPSU has argued that the EU public procurement directives need to be improved to **strengthen possibilities to include social criteria and social clauses in public contracts**. The Commission Guide on Socially-responsible Public Procurement (October 2010) has to be used to encourage the use of social considerations and the pursuit of objectives of social, health, employment and housing policy
 7. EPSU is in line with the objectives and principles included in the current European Voluntary Quality Framework on SSGI that relate both to the characteristics of the service provided (availability, affordability, continuity) and to quality criteria. We now need to put flesh on the bones and **do first concrete steps, in particular in the field of elderly care/long-term care**. EPSU calls on the responsible actors to give appropriate support by means of **action programmes** at different levels (local, regional, national) underpinned with realistic targets in view of improving the quality of services and jobs.
 8. There are no specific targets that providers have to meet and no formal monitoring procedures in the European Voluntary Quality Framework on SSGI. This is particularly difficult when issues of training and professional development are mentioned, which should be mandatory. It does also not contain a separate section on framework requirements for quality (such as sufficient financing, qualified staff, cooperation and partnership in delivering services on the ground) and only a few elements on decent working conditions and quality jobs are being dealt with. However; the importance of achieving good employment conditions, a key concern for trade unions; is recognised.
 9. For EPSU improving the quality of work must be a high priority when implementing the European Voluntary Quality Framework. EPSU insofar considers important to **foresee a**

prominent place to working and pay conditions (that are/have to be mandatory) **when developing and implementing policies to ensure and to improve the quality, effectiveness and efficiency of SSGI.** We would also recommend add a clearer reference to the respect for workers' rights when implementing and further developing this framework.

10. EPSU is in favour of initiatives to support the professionalisation of the social services workforce. We call for a **strengthening or development of social dialogue and collective bargaining in the health and social services sector** both within member states as at European level as this would facilitate addressing and negotiating relevant issues **related to qualifications and training, professional standards, decent work and pay conditions.**
11. EPSU suggests giving priority in the years to come to the **elaboration of specific sectoral policies with tangible goals – e.g. EU action plans on elderly/long-term care, care for people with disabilities, mental health, child care** or housing in order to illustrate the potential EU added value of joint work and of common quality frameworks at EU-level.
12. EU policy should encourage member states to **design 'action plans'** (with clear objectives; to be monitored involving the social partners) **setting out how employment growth and the promotion of the quality of employment is going to be improved.** This tool should support social partners and public authorities in promoting professionalisation of the social services workforce. In the context of workforce development low pay must be addressed, migrant workers' right respected and collective bargaining and social dialogue be developed. Volunteers cannot substitute for a professional workforce; guidelines could be developed on the appropriate use of volunteers.

ETUC statements on and proposals to promote public services (<http://www.etuc.org/a/7368>)

The three new foundations of the Lisbon Treaty (Charter of Fundamental Rights, legal base in Article 14 TFEU, Protocol 26) are “an important cornerstone in the construction of a new architecture for SGIs and a transversal regulatory approach with regard to SGEIs, not only by making it legally possible henceforth, but also by making it necessary in the light of the guidelines now set out firmly in primary law (Protocol). Article 14 offers the possibility to move away from a mere derogation from internal market rules to a more positive stance, taking into account the shared values embodied by public services across the EU. The Charter of Fundamental Rights, together with Article 14 TFEU and the new protocol can be used to build up an authentic notion of SGIs as common values of the EU. These three new foundations above all place a shared responsibility on the EU and Member States to ensure the application of principles that are inherent to public services, i.e., the principle of solidarity, universal access, equal treatment, availability, continuity and sustainability, of quality public services and principle of user rights. The EU should now skip from the strict derogation approach that has prevailed so far to a promotion approach based on the notion of common value, i.e. solidarity and social and territorial cohesion. It is also important to note that the treaty reserves an original power of self-determination and autonomy for local and regional authorities.” (10.)

“The ETUC is convinced that the new article 14 together with the new protocol is an **obligation** to act. It is unacceptable that the Commission continues to abstain from any action. The ETUC

asks the Commission to come up with a legislative proposal on the basis of the new article 14. The previous demand for a “framework directive” which was based on internal market rules (Article 114) is from now on replaced by the new demand for regulation(s). ” (11.)

“The **content** of such a regulation should reinforce the ‘public service mission’ of public services and provide that (1) the power of definition is with the relevant local, regional and national public authorities, (2) the exercise of this discretion should not be open to challenge in any legal proceedings except in case of manifest error, and (3) the burden of proof should fall on the European Commission or other complainant and not on the local or regional or national authority. More provisions are possible. The **subsidiarity** rules are important in creating a balance between the nationally established public services and European competition rules and the internal market. ...” (12.)

“In complement to regulations each Member State, local and regional public authorities can (on the appropriate level) establish a **register** of non-economic services of general interest, which are excluded from the application of the rules on the provision of services, on competition and on state aid. ...” (13.)

“... Social services are part of a “grey area”, which is prejudicial to the accomplishment of the missions entrusted to them. They are faced with an increasing level of legal insecurity, uncertainties and disputes. Therefore, regulations on health and social services should take the new treaty provisions fully into account. A derogation from internal market rules should be applied according to Art. 86, paragraph 2 EC, as far as the development of trade is not really affected. The creeping precarization of public services must be reversed. ...” (18.)

“... In general, new initiatives regarding public services should be benchmarked against the public service provisions of the Lisbon Treaty and should have Article 14 as their legal basis. ...” (19.)

“The ETUC attaches a very high priority to the introduction of a **social progress clause** governing primary law, and for the necessary instruments in secondary law to balance the movement of workers and services, fundamental rights and the competition rules. In case of conflict social rights should prevail over internal market freedoms. ...” (20.)