

EPSU position on the EC Communication

“A Quality Framework for Services of General Interest in Europe”, adopted by the Executive Committee 24-25 April 2012

1. The EC published in December 2011 a Communication “A Quality Framework for Services of General Interest in Europe” COM (2011) 900 http://ec.europa.eu/commission_2010-2014/president/news/speeches-statements/pdf/20111220_1_en.pdf. The Communication accompanied proposals on public procurement, concessions and state aid.¹
2. Unfortunately the EC Communication is more of a ‘market’ framework than ‘quality’ framework: ².. While the introduction recognises the ‘fundamental role’ of public services (services of general interest – SGI) in terms of social cohesion, providing a safety net, supporting the knowledge economy, the Communication falls short on practical proposals to achieve this. There is no analysis, or reflection, on how the new Treaty provisions (Charter of Fundamental Rights, Protocol 26 on SGI, Article 14, support for social dialogue) might be used to safeguard and underpin public services as a fundamental part of the EU social model.
3. Furthermore, given the economic and social crisis in Europe, the Communication can be seen as a step back from previous EC positions. It argues that the existence of a Service of General Economic Interest (SGEI) is linked to market failure, which implies that market solutions are intrinsically superior and should take precedence. For this reason it does not reaffirm the previous EC position that “*in case of conflict with competition rules the general interest shall prevail*” (2004 White Paper on Services of General Interest (SGI))
4. The EU since the 1980s has given priority to the development of the Internal Market and competition policy, systematically playing down the role of public services and the public sector in social and economic development.³ Rather than being a ‘drain’ on the ‘real’ economy, the public sector broadly defined drives development and social progress. Public services have the potential as part of the EU2020 or economic governance reforms to pave the way for more sustainable and fairer development. As illustrated by the social partners in local and regional government sector “*there is a continuing need for public investment to mitigate the effects of the crisis, to maintain living standards, and to prepare for future needs.....In this context, sustainable financing requires socially just taxation and other revenues streams, sufficient to ... make long-term investments to meet changing needs of local communities.*”⁴
5. **In EPSU’s view, a ‘quality framework for SGI in Europe’ should be anchored on:**
 - Treaty article 14 on Services of General Economic Interest (SGEI) as well as the Protocol No 26 on SGI, which gives the EU and Member States a shared responsibility for “*a high level of quality, safety and affordability, equal treatment and the promotion of universal access and of user rights*” in public services, including public administration

¹ See Annex I for update

² See also debate on the Communication organised by the European Parliament (EP) Intergroup on public services on 11 January 2012 <http://services-publics-europe.eu/index.php>

³ See ppt from David Hall, PSIRU at <http://www.epsu.org/a/8259> and [EPSU statment on the 2012 Annual Growth Survey](http://www.epsu.org/a/8259) <http://www.epsu.org/r/61>

⁴ European Sectoral Social Dialogue Committee for local and regional Government: Joint statement to the European Council meeting 11 February 2010 on the economic crisis <http://www.epsu.org/a/7116> and see also 2011statement <http://www.epsu.org/a/8090>

- Articles 152-155 on social dialogue, which give the European Commission the responsibility to promote the consultation of social partners and facilitate the social dialogue, including in SGI
 - The Charter of Fundamental Rights
 - The principles of good governance (openness, participation, accountability, effectiveness and coherence) set out in the 2001 White Paper on European Governance
6. Recently in contributions to the EP report on the future of social services (2009/2222(INI)), voted 5 July 2011 (<http://www.epsu.org/a/7804>). EPSU emphasised that EU legislation should underpin the objectives of social, health, employment and housing policies. In case of conflict the achievement of these policy objectives have to prevail over the application of EU rules and procedures. It is important for EPSU to recall that social services are public services, not to be delivered on market principles. The resolution adopted by EPSU's Executive Committee in November 2011 spells out EPSU's main concerns and demands in relation to current EU policies impacting on public services (public procurement, concessions, state aid, trade policy) see <http://www.epsu.org/r/589>.⁵ Missing from the EC Communication is the clear recognition that public authorities have the freedom to provide public services directly and indeed that this can be a valid and responsible option (i.e., through in-house and direct provision). Broader exclusions or 'lighter' internal market rules for social services – as proposed in the public procurement Directives and State Aid regulation – while might be helpful are not the answer. Also needed are positive measures to protect and support quality public services in Europe. EPSU reiterates that such measures include:⁶
- a. The development of a "general interest statute" as part of a regulatory framework applicable to both public services and social economy providers to reflect the specific characteristics of SGI and the particular needs of their users. This demand was also supported by the 3rd Forum on SSGI of 26 and 27 October 2010 (see the 15 recommendations http://www.socialsecurity.fgov.be/eu/en/agenda/26-27_10_10.asp).
 - b. European action programmes in the field of SSGI, in the fields of elderly care, care for people with disabilities, mental health and child care – all of which have job creation potential given changing societal needs. Not least in order to illustrate the potential EU added value of cooperation and a common quality framework for SSGI, such action programmes would need to be underpinned with clear and realistic targets to improve the quality of services and the quality of the employment conditions for those workers delivering social services and with the full involvement of the social partners in design, implementation and monitoring. EPSU deplores the fact that the draft Action Plan for the EU healthcare workforce expected to be adopted on 17 April 2012 does not even say that healthcare is a SGI / SSGI or make any reference to EU principles on public services. Nor does it mention the European Voluntary Quality Framework (EVQF) for SSGI adopted on 8 October 2010 by the Social Protection Committee (SPC).⁷ The EVQF contains provisions dealing with the respect for workers' rights and with the quality of jobs but since its adoption the SPC has not undertaken a structured follow up in view of its use or promotion and the EC has also not delivered on its announcement to "reinforce its commitment to promoting quality in

⁵ A briefing note on the different developments regarding public procurement, concessions and state aid was provided to the EPSU Executive Committee in November 2011 – see <http://www.epsu.org/a/8280> in EN/FR – and this is updated in the attached Annex.

⁶ See also EPSU's 12 key messages on social services of general interest (SSGI) of 1 March 2011 (<http://www.epsu.org/a/7452>)

⁷ See http://www.socialsecurity.fgov.be/eu/docs/agenda/26-27_10_10_spc_qf_document.pdf

Unfortunately the EC SGI Communication does not announce any practical steps to give follow-up to it and the document has not even been translated into the EU official languages.

- the field of social services, and will use these achievements in this area as a model for other services of general interest” (COM (2011) 900, p. 3)
- c. The strengthening or development of social dialogue and collective bargaining in relation to social services, 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.
 - d. Clear and meaningful terminology is regrettably absent. EPSU deplores that the EC has itself created much of the confusion. In terms of the understanding in particular of social services of general interest (SSGI) there now many inconsistencies in the way they are being defined in EU legal texts and communications, adding another layer of legal and political uncertainty to the already existing ones⁸.
7. In conclusion, the EC SGI Communication is a disappointment and echoes the prevailing political climate as regards human, social and employment rights. It argues in favour of more competition in non-liberalised public services while refusing to acknowledge any shortcomings of sectors liberalised to date, including on the quality of services and employment. The EC continues to argue that increased competition makes public services cheaper, more efficient and of higher quality, while not drawing any lessons from failures or shortcomings of liberalised sectors in Europe or indeed elsewhere – e.g. the US healthcare system which is inefficient by any measure. The EC ignores the increasing evidence that contracting out is not cheaper and continues to claim (most recently in its impact assessment on the concessions Directive) that cost-savings can be made of ‘up to 30%’.⁹
 8. The proposal for a concessions Directive, which is justified in terms of ‘transparency’, is clearly aimed at promoting public service concessions and Public-Private Partnerships (PPPs) as can be seen from the EC impact assessment. Furthermore, because neither the

⁸ For example:

- The Communication “A Quality Framework for Services of General Interest in Europe” of 20 December 2011, as does the Communication on SSGI of 26 April 2006, refers to a broad concept of SSGI that “include social security schemes covering the main risks of life and a range of other essential services provided directly to the person that play a preventive and socially cohesive/inclusive role”. The description suggests SSGI include health and education services. The 2011 Communication adds that the “term social service of general interest consequently covers both economic and non-economic activities”.
- The “Guide to the application of the European Union rules on state aid, public procurement and the internal market to services of general economic interest, and in particular to social services of general interest”, SEC(2010) 1545 of 7 December 2010 enumerates a number of different types of social services comprising “other essential services provided directly to the person” (see under section 1.1, p. 4, http://ec.europa.eu/employment_social/social_protection/docs/com_2006_177_en.pdf).
- The December 2011 proposal for a Directive on public procurement replacing Directive 2004/18/EC states (on p. 10): “The evaluation on the impact and effectiveness of EU public procurement legislation has shown that social, health and education services have specific characteristics which make them inappropriate for the application of the regular procedures for the award of public service contracts”. It, however, does not provide a definition of what should be understood by the term “social services” and the relevant Annex refers to “health and social services” and “other community, social and personal services” without going into detail what these categories comprise.
- The revised State aid package for SGEI of December 2011 (see Annex for details) states that in order to benefit from the exemption from notification, social services should be “clearly identified services, meeting social needs as regards health and long-term care, childcare, access to and reintegration into the labour market, social housing and the care and social inclusion of vulnerable groups.” (Recital 11; the same formulation is also being used in Art. 2 1. c)).
- The draft Action Plan European Health Workforce 2012, expected for adoption on 17 April 2012, does not make reference to health services as SGI. On the other hand it nevertheless introduces a terminology that is not commonly used when mentioning social care and long-term care. Footnote 1 explains that “This document excludes the wider social health services” (sic!) and announces a “separate Commission staff working paper on family services dedicated to social care at home, child care and housework addresses the issue of the long-term care of the elderly, both informal and formal”.

⁹ EPSU’s Public Services Monitor gives details of a number of studies that show the contracting out is not cheaper or better, see for example the Danish-led international study, <http://www.epsu.org/a/8011>, summary now also available in English

proposed concessions Directive nor the public procurement Directives sufficiently safeguard the respect for collectively agreed terms and conditions of employment in the different national models, there is a real risk that these proposals may weaken workers' – and citizens – rights¹⁰.

9. Regarding the public procurement Directives, EPSU will seek to secure a number of key improvements, namely:
 - Recognition of Treaty articles on the right of public authorities to choose how to deliver public services and the need for quality etc.¹¹ Respect for in-house and public-public co-operation must be guaranteed and outside scope of Directives.
 - Respect for employment protections, working conditions and collective agreements in force where the contract is carried out. This demands clear recognition of the right to apply labour clauses in public Contracts. ILO C94 on Labour Clauses in Public Contracts in Recital/Article should be explicitly mentioned.
 - On sub-contacting there should be joint and several liability in all sectors and at all levels of the supply-chain. Contracting authorities remain however responsible for the delivery of public services.
 - Better wording is needed to ensure that social aspects of sustainable procurement can be included at each stage of the procurement process. This means broadening the technical specifications, the interpretation of social dimensions of production processes and their consideration in award.
 - 'Lowest price' tendering should be removed in principle. Securing the 'most advantageous' / best value offer for all public contracts should be the objective and we need to create more space for sustainability considerations to be included.
 - Social Services: The definitions need to be improved and/or left to Member States. Areas of the chapter need strengthening and working conditions provisions need to apply here.
 - Selection process: contracting authorities need to be able to assess track records on other contracts not just last one and with same authority but wider.
 - The exclusion provision needs to be strengthened on working conditions breach of collective agreements, as well as social security and tax avoidance.
 - The wording on 'abnormally low tenders' needs improving; 50% figure not appropriate, particularly for services and works (10-15% this should be maximum). There should be more automatic rejection if working conditions etc. are undermined, and the burden of proof should be on the bidder to prove compliance.
 - Transparency: the details of public contracts need to be made public and open to scrutiny and evaluation. Trade unions should be informed and consulted when a tender implies a transfer of undertakings.
 - Euro procurement passport: this should include the track record of company on social and environmental performance.
10. Regarding the concessions Directive, many of the above points are also relevant and if the proposal goes through they will need to be introduced into the Directive. The EC proposal however demands a different strategy and approach by EPSU. There is no EU secondary legislation for services concessions and many actors consider that a more in-depth assessment is needed of the national situations and of the relationship with the public procurement Directives before proceeding further. The EC proposal contains many difficult points that are impossible to address properly in the absence of such an assessment. Key concerns are the definition of concessions, the transfer of risk, and the duration. EPSU supports the call for a better impact assessment of the EC proposal before proceeding further.

¹⁰ See also the ETUC resolution adopted on 6 and 7 March 2012, <http://www.etuc.org/a/9801>.

¹¹ See Annex II

11. For both the public procurement and concessions Directives, persistent and coordinated lobbying will be in any case needed to address the shortcomings and improve the texts. For EPSU, quality public services, the right to 'in-house'/public-public cooperation, labour clauses, and transparency should be the focus our lobbying and for our work in the social dialogue.¹² Positively, many organisations realise that a more 'social' public procurement Directive in particular would be an important signal that the Internal Market can be 'socialised.' This would help to keep the objective of a EU social agenda – including an 'enabling framework' for public services – on the table.
12. On SSGI EPSU will continue to press for positive policies on social services and to build in a public service dimension to relevant EU initiatives, including the Action Plan on the EU healthcare workforce.

¹² See for example joint EPSU/CEMR statement on the EC Guide on Socially Responsible Public Procurement (SRPP): defining principles, requirements and standards of Socially Responsible Public Procurement (SRPP) for local and regional government

<http://www.epsu.org/a/7769>