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DRAFT

Ensuring high quality services of general interest: What role for the Europe Union?

Common position of the Social Platform
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1. Why are services of general interest (SGI) essential?

SGI contribute to the respect of fundamental rights and to social cohesion and inclusion

Services of general interest (SGI) are a key element of the European social model. Article 36 of the EU Charter of Fundamental Rights¹ and Article 16 of the EC Treaty² acknowledge the place of SGI amongst the common values of the Union as well as their role in fostering social and territorial cohesion.

Access to SGI is in itself a fundamental right but it is also instrumental in the implementation of other rights i.e. the provision of care services for people with limited autonomy is key in the promotion of equality between women and men as the access to housing is essential in the realisation of the right to live in dignity.

SGI as an expression of collective responsibility

The provision of SGI expresses the commitment of European societies to social justice, the defence of fundamental rights and the promotion of equality for all. To make sure that SGI meet people's changing needs, SGI have to be defined, delivered, monitored and evaluated in a dynamic and democratic way. This process needs to include all groups in society and in particular groups affected by discrimination or in a position of vulnerability.

The active participation of people is particularly crucial in a context of demographic, social and technological changes where the offer of SGI needs regularly to be reviewed to respond to people's new needs. For example access to internet or to a bank account has become indispensable to be fully included in today's society. This implies a collective responsibility to ensure a universal access to these services.

2. The social dimension of services of general interest

The social objectives of SGI

SGI play a key role in the realisation of fundamental rights (including economic and social rights) and in the promotion of social cohesion and inclusion. However the realisation of these social objectives very much depends on the quality of the services provided. Services which are not accessible or which do not respond to individual's needs do not fulfil their social mission.

The following general principles are therefore an essential component of SGI and indispensable for the realisation of the objectives of SGI: equality, accessibility, affordability, safety, proximity, continuity and transparency.

The specificity of person related SGI

Social and health services of general interest differ from network SGI like transport services or electricity supply services. Social and health services are indeed based on a complex interaction between the providers of such services and the beneficiaries. Many of these person related SGI are also characterised by the vulnerability and often dependency of their beneficiaries. The specificity of social and health SGI lies also in the fact that they are an indispensable element of social protection systems.

Like all SGI, person related SGI need to ensure the implementation of the general principles to make sure that they fully develop their positive social impact. In addition however, person

¹ Article 36 of the Charter of Fundamental Rights: "The Union acknowledges and respects access to services of general economic interest as foreseen in national laws and practices, in accordance with the Treaty establishing the European Community, in order to foster the Union's social and territorial cohesion."

² Article 16 of the EC Treaty: "Without prejudice of Articles 73, 86 and 87, and in view of the place occupied by services of general economic interest amongst the common values of the Union, and of the role they play in fostering the social and territorial cohesion of the Union, the EC and its Member States, each within the limits of their respective jurisdictions and within the limits of the implementation of the present Treaty, will ensure that these services operate on the basis of principles and under conditions allowing them to accomplish their mission."

related SGI need also to fulfil other principles. Along with other principles, person related SGI need to be ‘human needs’ and ‘human rights’ centered, protective, user-empowering and conceived and delivered in a holistic approach of the user and his/her needs.

3. What are the main challenges for quality SGI?

Achieving equality for all

Citizens do not have a uniform users’ profile. The diversity of users and in particular the specific needs of women, ethnic minorities, older persons, young persons, disabled persons and LGBT people have to be taken into account when designing and delivering SGI. SGI need therefore to be constantly adapted to meet the diversity of citizens and the diversity of their specific needs. This is crucial in order to guarantee human dignity and fundamental rights of all citizens.

Responding to demographic and social change

SGI also need to find long-lasting responses to the implications of an ageing population and the integration of migrants within Europe. In particular social and health SGI are a crucial element in dealing with these challenges.

Promoting solidarity

Providing a transport or postal service or a social service for elderly people in a remote area of a State or a region might not be financially profitable due to too few beneficiaries of these services or due to a too costly service provision. However the very “universal” nature of a SGI is to be supplied to all citizens equally on a permanent and affordable basis independently of where they live.

Ensuring sustainability

SGI also need to integrate new technologies to help to face today’s challenges of climate change. This implies obviously that financial means are at disposal in order to invest in SGI to be technologically modernised. The issue of financial sustainability of SGI is also an important challenge societies in the EU face.

4. How does the EU affect the provision of SGI?

So far the EU has not received by its Member States any specific competence to deal with SGI. This has resulted in an incoherent policy at EU level, leaving the promotion of SGI as a secondary concern after the main EU priorities to promote the four freedoms and competition policy. The above-mentioned challenges European societies face as regards SGI have not been addressed at EU level in a coherent way.

Absence of any distinct SGI competence at EU level

The EC and EU Treaties do not deal separately with SGI and do not take responsibility to ensure that they fulfil their role to achieve fundamental rights and social cohesion.

For long time Article 86(2) of the EC Treaty on competition policy has been the only article dealing with SGI. It declares that the EU rules on state aid can be restricted in the case of the fulfilment of the general interest mission of a SGI. However, this is stated clearly as an exception to the general competition rules and SGI are not stated as a strong value in itself which would enable the EU to act in order to promote or defend SGI actively. Since 1999 and the entry into force of the Amsterdam Treaty Article 16 of the EC Treaty underlines the importance of SGI for social, economic and territorial cohesion. However, this article is not more than a mere statement. It does not give any particular legislative power to the EU which could strengthen the importance of SGI. The same, Article 36 of the Charter of Fundamental Rights is recognising the citizen’s rights to equal access to SGI, however again without any possibility for the EU to promote SGI.

Today there is still not a single article in the EC or EU Treaty which gives the EU legislative competences in order to promote SGI effectively and consolidate their importance for citizens' social and fundamental rights and social inclusion. As a result and not surprisingly there is no coherent approach towards SGI at EU level.

EU policy and SGI: an approach based on controversial assumptions

Certain SGI have been subject to legislation under the driving EU internal market and competition policies. Since the late 1980ies the EU has opened up markets in EU member states and liberalised SGI such as telecommunication services, postal services, transport services or energy supply services. This liberalisation at EU level goes hand in hand with a strict application of EU competition rules, mainly in the field of control of state aids. At the same time the EU has imposed an obligation for EU Member States to provide for SGI equal access to "universal services" affordable for all citizens and with a market surveillance power of regulatory bodies.

The approach the EU has adopted since more than 20 years towards SGI is based on the assumption that opening up markets and controlling state aids will modernise SGI and ultimately bring more choice and better quality services to all beneficiaries. The underlying assumption of this approach is that the market is able to define and match perfectly the needs of all citizens as regards SGI and that more choice for users of SGI will ultimately also increases their quality. As a consequence traditionally state-owned SGI providers in EU Member States, like postal services or electricity supply services providers have been progressively privatised. However, the risks of the drive to privatise SGI combined with the pressures to reduce public expenditure to meet macro-economic needs of the Stability Pact are likely to threaten the delivery of high quality SGI where these are found "unprofitable" through geographical remoteness or because of the low purchasing power of people with low incomes or living in poverty. So far there has been no independent evaluation of the cost and benefits of this policy approach and in particular as regards the quality of services and the impact of this policy on social inclusion and social cohesion.

The "government of judges"

Today, the European Court of Justice is deciding case by case in case of conflicts between EU competition policy rules and the general interest mission of a SGI provided at national level. In many cases the ECJ has stated in favour of the general interest as defined at national level and admitted that EU competition rules have to adapt to the provision of an SGI. However these case-by-case solutions do not provide any long-lasting legal certainty. In addition the current situation unveils the huge lack of democratic control at EU level in such an essential issue for citizens' daily life and their fundamental rights like SGI.

The "services directive": releasing citizens' protests

The latest liberalisation of services in the EU has been operated through the "services directive". It initially foresaw the liberalisation of health and social SGI, despite the very particular features these personal SGI have. The services directive has been widely contested and in particular the "country of origin rule" established in the initial proposal of the directive. Citizens' trust in the EU has been largely discredited and they don't believe that liberalisation and competition policy is the automatic answer to all their preoccupations. Finally all healthcare services and many social SGI have been excluded from the services directive. However, despite the final adoption of the services directive, there is still legal uncertainty on how EU rules shall now apply to social and health services of general interest.

In 2006 the European Commission has also started two different consultation processes, one on health services and another on social SGI. The separation of policy processes linked to these two SGI is pursued despite the common characteristics these personal SGI share and fact that it's impossible in practice to draw a clear dividing line between these services. So far the EU has not adopted a coherent approach towards social and health SGI aiming primarily to safeguard citizens' interests as regards these person related SGI.

5. What the EU needs to do about SGI

The EU is committed to the values of fundamental rights, non-discrimination as well as an internal market which shall improve the well-being of all citizens. However, opening up markets and applying competition rules cannot be seen as an objective in itself or as the only mean to achieve quality SGI affordable and accessible for all.

The Social Platform believes that it is now high time for the EU to act and to adopt a more proactive approach towards SGI at European level. This approach needs to be based on sustainable and social development, be respectful of citizens' rights and guarantees them an equal and affordable access to high quality SGI operated under citizens' control.

- **Empowering citizens**

The EU needs to have political courage to propose more than non-binding principles applicable to all SGI. While the general internal market and competition policy rules apply to all services of general economic interest provided inside the EU, the EU needs also to empower citizens and enable the efficient enforcement of EU wide binding SGI principles like accessibility, equality and affordability.

- **Improving citizens' democratic control over SGI at local and national level**

The EU needs to push in favour of better democratic control over SGI. This implies an increased role for national parliaments, other nationally elected bodies and citizens over the definition, monitoring and evaluation of SGI. In the sector of person related SGI, non-profit organisations need to be included effectively in this process.

- **Promoting an independent evaluation of EU policies on SGI**

A more transparent and democratic way of conducting EU policies on SGI needs to be developed. The independent evaluation of the impact of EU legislation (i.e. internal market rules and sectoral directives) on the provision and the quality of SGI is a crucial element of democratic control. The European Parliament should play a key role in this evaluation and could be supported by an independent observatory on SGI. Civil society organisations in particular those representing people dependent on SGI need to be closely involved in this work.

- **Increasing legal certainty**

The European Court of Justice and the European Commission have stated repeatedly that in case of tension between the application of Treaty rules on internal market and competition policy and the fulfilment of a mission of general interest of a SGI, the latter shall prevail. This approach needs to be consolidated in legally binding acts which give clear rules to national and local authorities about the approach they have to adopt towards SGI. As regards public procurement for example it has to be made sure that person oriented SGI providers are not chosen merely on price-oriented criteria.

- **Adopting a horizontal approach towards SGI for all EU actions**

In general, all EU legislation that might have an impact on SGI needs to be analysed carefully. Particular SGI impact assessments have to make sure that the general interest tasks of SGI are not endangered by EU legislation. Services also need to be examined as regards their possible nature as SGI. Financial services for example, although not classified as SGI by EU institutions, enclose some services (e.g. holding a bank account) which can be qualified as SGI. General SGI principles need to be applied in such cases.

- **Recognising the role played by NGOs**

NGOs contribute in a rich and innovative way to the promotion of quality SGI respectful of people's needs. Some networks bring together self organised groups of people who encounter discrimination in accessing services or whose needs are not met. Their role is crucial as they can be very effective watchdog in the present context of liberalisation

Other NGOs, who are providing services and are at the front of responding to the gaps left by the absence of State provision of SGI. The recognition of their advocacy is important as well as a better understanding of their economic nature. The not for profit sector or social economy is indeed not sufficiently promoted in its positive characteristics at the European level.

- **Promoting a qualitative approach to social and health services of general interest**

Social NGOs have welcomed the Commission's communication on social services of general interest and have regretted the fact that it was not extended to health services of general interest. Following the various consultations, the EU should come now with proposals on how to promote the quality of these services.

- **Improving financing of SGI**

Structural funds and European Social Fund need to set investment in SGI and SGI structures as a priority. The EU needs also to ensure that the Structural Funds are effectively used to deliver a co-ordinated, focused and long term response in particular to the demographic and social changes that an enlarged EU faces as regards

- **Encouraging the exchange of good practices to deal with challenges ahead**

The EU needs to find a coherent approach towards challenges European societies face as regards SGI. A first step could be to include work on SGI and their impact on social inclusion within existing mechanisms at EU level like the OMC on social inclusion and social protection or the forum on demography. This would clearly encourage exchange of best practices.

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