

socialplatform

Social Platform recommendations on the draft package on the revision of state aid rules applicable to SGEI

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Introduction

Social Platform is the alliance of 46 European civil society organisations active in the social sector. Our members include organisations working with or representing the marginalised and socially excluded using services and those working as non profit social service providers. Due to their European and national experience, they therefore are well positioned to contribute to the ongoing revision of state aid rules applicable to SGEI.

Although we are not businesses, we are nonetheless affected by this reform. The Social Services of General Interest (SSGI) provided by our members are non profit making and function in the social sphere; some of the services are considered as economic and some of them function in the context of the social economy. This is the reason why Social Platform members are directly interested in the Almunia's package.

We generally welcome the proposal of revision package and in particular the extension of the scope of exemption from notification concerning social services. We appreciate that some clarifications on essential concepts, such as the notion of economic activity, have been provided.

However, we point out that there is the need to better clarify some points in the text. Notwithstanding the Commission's intention of clarification, some provisions are rather ambiguous and can be interpreted in different ways: this does not ensure legal certainty.

Our comments will be limited to the provisions that have an impact on social services of general interest.

1) Scope of exemption from notification regarding social services:

Draft decision, article 1, paragraph c):

"compensation for the provision of services of general economic interest meeting essential social needs as regards health care, childcare, access to the labour market,

social housing and the care and social inclusion of vulnerable groups. This paragraph only applies where compensation is granted to undertakings whose activities are limited to one or more of the services referred to in this paragraph or in paragraph b). The pursuit of ancillary activities directly related to the main activities does not, however, prevent the application of this paragraph".

- Social Platform calls on the Commission to exempt from notification all social services of general interest with an economic character, for all beneficiaries and not only for vulnerable groups. This would ensure legal certainty for social services of general interest as a whole.
- We strongly advocate for a wide definition of SSGI, based on their universal character and linked with the access to fundamental rights for all, including access to services for the most vulnerable groups: **SSGI are addressed to all citizens** that without them could not fully participate in society, and not just to citizens who are most in need, however access of the later to them should be guaranteed. It is important to confirm the universal concept at European level and the role of the principle of subsidiarity, so that every member state can define the services and the beneficiaries concerned and the ways in which the mission of those services is implemented, depending on users' needs.
- We therefore propose that the Commission uses the term "social services of general economic interest" instead of "services of general economic interest meeting **essential** social needs". We also recommend that the definition of social services of general interest is built on the one given by the Commission in the Communication of 2006¹ and on the specific characteristics of SSGI as recognised in the Communication of 2007².
- Therefore, we ask to clarify that that the term "**vulnerable groups**" refers only to "social inclusion" and not also to the preceding list of services, which has to be interpreted as a non exhaustive list.
- We disagree with the approach taken by the Commission to exempt from notification only the activities limited to one or more of the services referred to in paragraph c) or b). This definition limits considerably the possibility to exempt from notification undertakings that provide other services to the community. Many social economy enterprises are developing new income-generating activities to fill the gap of decreasing state aid. What matters is that accounts are separated. Furthermore, in practice in many cases it is difficult to distinguish between the principal activity and the "ancillary activity-(ies)". The result of the provisions of paragraph c) is that in practice exemption from notification will not be applicable for many social services.
- The applicability of the Decision is limited to services of general economic interest entrusted for duration of maximum ten years. In many cases the duration of an act of entrustment is defined by national law.

¹ European Commission, *Communication for the Commission "Implementing the Community Lisbon programme: Social Services of general interest in the European Union"*, COM (2006) 177, 26.04.2006

² European Commission, *Communication on "Services of general interest, including social services of general interest: a new European commitment"*, COM (2007) 725, 20.11.2007

Why?

- The use of the term “essential” in art. 1, paragraph c) may let understand that there are social services which are essential and others which are not. We consider that all types of social services are essential for the European society.
- It is not clear if the term “vulnerable groups” is referred only to “social inclusion” or also to “social housing, the care” and perhaps also to “access to the labour market”.
- We also noticed that there are discrepancies in the translations into different languages. This does not bring legal certainty and we also think that it is a member state competence to define the list. Some examples:
In French: “services répondant à des besoins sociaux essentiels, **tels que**” (open list)
In English: “services of general economic interest meeting essential social needs **as regards**” (closed list)
In Italian: “servizi di interesse economico generale che soddisfano esigenze sociali fondamentali **per quanto riguarda**” (closed list)
In Spanish: “servicios de interés económico general que atiendan necesidades sociales esenciales **en lo referente**” (closed list).

2) De minimis regulation:

Considering the uncertainty regarding the scope of exemption from notification regarding social services, the Commission Regulation on de minimis aid granted to undertakings providing SGEI is applicable to social services.

We welcome that a specific threshold for SGEI has been set out up to 450.000€ over three years. However, we consider that two conditions laid down in the regulation are problematic:

- a) the condition that aid is granted by local authorities representing a population of less than 10.000 inhabitants.**

Why?

- The local character of a service is not necessarily linked with the size of the population of a local authority.
- 10.000 inhabitants is a very small town.
- In the area of social services, the local character of the service is determined by the fact its beneficiaries are made up of the local population and not by the number of inhabitants.

- b) the condition that the aid is granted by a local authority.**

Why?

- In many member states the responsibility for social services, especially in terms of financing, is shared between different governance levels (local, regional and national level). The condition that aid is granted by

local authorities excludes from the application of the regulation many services with a pure local character.

- In many member states inter-municipal cooperation has been used as an effective way to deliver better social services in a more efficient way, especially in small municipalities and in rural or remote areas. It is also a useful form of service delivery that allows pooling together public funds.

3) Communication:

On the definition of services of general economic interest:

We appreciate that the first sentence of the Communication recalls what SGEI are, in the light of art. 14 TFEU. At the same time, we regret that art. 14 TFEU is not explicitly quoted and that the reference to the “principles and conditions that enable them to fulfil their mission” does not contain the explicit mention to “particularly economic and financial conditions”. We also recommend that protocol 26 is mentioned too.

On the existence of a service of general economic interest:

We think that the following sentence can be problematic as it needs clarification: “The Commission considers that it is not possible to attribute compensation to services that are already provided or can be provided satisfactorily and under conditions such as price and access to the service, consistent with the public interest, as defined by the state, by undertakings operating in accordance with the rules of the market” (paragraph 43).

SGEI may be provided on a market, but member states have to ensure that public services are accessible and affordable for all citizens, in particular for those people with less financial means.

On selection of provider:

Paragraph 56: “The compensation offered must either be the result of a public procurement procedure which allows for selection of the tenderer capable of providing those services at the least cost to the community, or the result of a benchmarking exercise with a typical undertaking, well run and adequately provided with the necessary means”.

Paragraph 57: “The simplest way for public authorities to meet the fourth Altmark condition is to conduct a transparent, open and non-discriminatory tendering procedure in line with the applicable public procurement rules, insofar as the tender allows for the selection of the tenderer capable of providing those services at the least cost to the community”.

We ask the Commission to clarify that “at the least cost to the community” does not have to be interpreted by public authorities as meaning that they have to apply the award criterion of the lowest price only, and we would prefer the use of the term “best value” as this implies more than price. As we have stated in our [response to the Green Paper on the modernisation of public procurement](#), the way public procurement is often carried out can have a significantly negative impact on the quality of social services, as concluded by several of our members who are social services providers. Our members testify that in the social sector tendering procedures are having a negative impact on staff training and qualification which affect the capacity of social services to provide quality services, as providers are

forced to lower prices through lowering salaries to win contracts³. To this tendency which is due to an inefficient use of public procurement procedures, one has to add the worrying impact that ongoing austerity plans have led to reduce the means available for social services and to measures more directly affecting the workers in the social services sector⁴.

Public procurement rules set out at EU level should take into account that quality is an essential dimension - and not an extra added value - in the provision of social services and should therefore be designed to encourage and motivate public authorities to set up tendering procedures that ensure that high-quality social services are delivered across Europe.

Therefore we ask that in the specific area of social services, **the award criterion of the lowest price only has to be abolished**. Public procurement rules set out at EU level should take into account that quality is an essential dimension - and not an extra added value - in the provision of social services. Therefore, while tendering for social services, **when the award is made to the most economically advantageous tender, the criterion of quality has to be compulsory** and should be given a mandatory weight which is higher than the one that is given to the other criteria (see our answer to questions 97, 97.1, 97.1.1, p. 7).

Our experience and the discussions held at the 3rd Forum on SSGI highlighted that in the area of social services there are different ways to select providers but also different forms of service delivery, which in comparison to public procurement allow to a better extent to manage flexibility, personalization of services and innovation, which are essential for quality social services. Our recommendation to the Commission is therefore to **promote the existing alternatives to public procurement** (see our answer to question 113, p. 9), as asked also by the EPSCO Council⁵.

We believe that paragraph 57 puts an unnecessary emphasis on public procurement, as a way to ensure compatibility with state aid rules, showing a kind of bias on the part of the Commission, dissuading authorities from what can be a legitimate manner of funding the provision of services without the use of procurement procedures. Therefore the text should read:

Paragraph 57: **"One** way for public authorities to meet the fourth Altmark condition is to conduct a transparent, open and non-discriminatory tendering procedure in line with the applicable public procurement rules, insofar as the tender allows for the selection of the tenderer capable of providing those services at the **best value** to the community".

4) Framework:

If a social SGEI does not fulfil with all the requirements set out in the Decision, the framework applies.

On genuine service of general economic interest:

3 Informal Network of Social Services Providers, Seminar "[Impact of EU legislation on social services](#)", Brussels, September 29, 2009

4 European Commission, Commission Staff Working Document, Second Biennial Report on social services of general interest, page 36

5 Council of the European Union, Social Services of General Interest : at the heart of the European Social Model, Council Conclusions, 8 December 2010

Paragraph 13 provides that “services that are already provided or can be provided satisfactorily and under conditions, such as price and access to the service, consistent with the public interest, as defined by the State, by undertakings operating in accordance with the rules of the market cannot be defined as services of general economic interest”.

We think that this can be problematic. SGEI may be provided on a market, but member states have to ensure that public services are accessible and affordable for all citizens, in particular for those people with less financial means.

Paragraph 14: “For the scope of application of the present framework, Member States should show that they have given proper consideration to the public service needs supported by way of a public consultation or other appropriate instruments to take the interests of users and providers into account”.

We consider that it is worth clarifying how this could work in practice. We also think that consultation of users is very positive, but in the phase of the design, plan and evaluation of a service of general interest, rather than in the definition of the general interest.

We also doubt that providers’ interest is relevant for the definition of the general interest.

Other issues :

We finally call on the Commission to provide clarifications on the situations of under-compensation.

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