



Social Services of General Interest

Social Services of General Interest and Community law

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- Statutory and complementary social security schemes, organised in various ways and covering the main risks of life (linked to health, ageing, occupational accidents, unemployment, disabilities ...)
- Services to the person having a role of prevention and social cohesion, facilitating social inclusion and safeguarding fundamental rights (social assistance services; employment services, social housing, child care, long-term care...)





SSGI and Community law

- At national level, social services are engaged in an important modernisation process
 - to better respond to changing needs and societal challenges (e.g. ageing of the population),
 - and at the same time facing financial constraints.

- This modernisation process is characterised by increased outsourcing of public tasks to the private sector/increased devolution to the local level.





- Consequence: jurisprudence considering the activities performed by some SSGI as *economic activities* → a growing proportion of SSGI falls into the field of application of Community rules on competition and internal market.
- Public authorities and service providers are confronted with a new environment : Community rules are often not well known and wrongly applied;
- Very largely shared uncertainty !





- 2003 Green Paper (SGI)
- 2004 White Paper (SGI): to develop a systematic approach towards SSGI in order to identify and recognise their specific characteristics and to clarify the framework in which they operate and can be modernised
- 2005 consultation





- 2006 Communication (specific to SSGI):
 - Proposed an indicative list of organisational characteristics of SSGI;
 - Described the modernisation process;
 - Described the Community rules applying to SSGI;
 - Commit to better identify the specificities of SSGI, to assess the experience of stakeholders with the application of Community rules and to identify the best approach to take to enhance legal certainty.
- 2006 consultation (SPC questionnaire – Study on SSGI – LEG)
- **At this stage, no need to change the rules, rather to explain them better!**





What is the added value of the 2007 Communication?

- It emphasizes the importance of social services for the fulfilment of EU objectives:

- it lists a number of specific **objectives** that social services are often meant to achieve;
- it explains how these objectives are reflected into **principles** expressing how social services can be organised, delivered and financed.

- ***Building on the consultation process, a step forward in recognising the specificities of SSGI & enhancing mutual understanding!***





What is the added value of the 2007 Communication?

- It acknowledges the difficulties in understanding and applying Community rules experienced in the social field



it expresses the Commission's commitment to provide explanations about the rules applicable (*enhance legal certainty*).





How does the Communication enhance legal certainty?

- First, it provides a series of clarifications of the legal framework that applies to SSGI.
- Second, it puts in place the necessary tools to give concrete guidance on practical questions that are regularly raised by citizens, public authorities and service providers:
 - **two FAQs documents on State Aid and Public Procurement, focused on SSGI**
 - **an interactive information service**





Clarifications brought by the Communication

- Underlines the role of the Protocol on SGI annexed to the Lisbon Treaty
 - increased political visibility;
 - highlights responsibility of MSs as far as the scope and nature of SGEI are concerned - acknowledges the diversity of these services;
 - reminds that the single market framework only applies to economic services.
- (New) Article 14
- Clearer distinction between economic SGI and non-economic SGI





Clarifications brought by the Communication Article 86 (2) – sections 2.2. and 2.3 of the Communication:

- Exclusive rights remain possible!
- measures intended to regulate markets, such as authorisation requirements
- special focus on social services where there is a lack of awareness - importance of acts of entrustments.





Clarifications brought by the Communication

- Importance of existing State Aid legislation: services performed at local level generally exempted from notification requirements!
- Announces clarification initiatives in the area of public procurement rules.





FAQs document on State Aid

- Concrete examples of activities that have been considered as non-economic (question 2.4), or not affecting trade between Member States (question 2.10), and therefore not subject to competition rules;
- What does it mean when an activity is subject to competition rules? It does not mean that public authorities have:
 - to ensure that a multiplicity of operators operate on the market
 - to privatize public entities,
 - to abolish existing special or exclusive rights that are necessary and proportionate for the provision of the service (question 2.11)





FAQs document on State Aid

- Explains under which conditions public financing to service providers will not to be considered as State aid or will benefit from an exemption of the notification requirement (question 3.3).
- Examples show that these requirements are rather basic; special focus on two important conditions:
 - act of entrustment: can take various forms/are compatible with the autonomy enjoyed by service providers;
 - a priori definition of parameters of costs: no obligation to provide detailed calculation in advance, but only to determine the basis for the future compensation





FAQs document on State Aid - (questions 3.8 & 6.11)

- No judgment of the **efficiency** of the service provider
 - Public authority to define the extent of the mission
 - If non measurable tasks do generate costs (e.g. time spent with the people), these costs can be compensated.





Interactive Information Service (IIS)

- IIS to address questions by citizens, public authorities and service providers “with a view to providing guidance on the pertinent Community law rules concerned”
- Pilot in EN, FR, DE – afterwards in all official languages
- http://ec.europa.eu/services_general_interest/registration/form_en.html





- Questions can be sent to the Commission by filling out a [mail form](#) (name/country/organisation/question)
- no analysis of the facts of an individual case or provide a formal interpretation of Community law in relation to a specific situation - no advice on how to structure calls for tender, contracts or on how to organise compensation mechanism
- no legal advice on issues of national law





Next steps:

- Regular updating of the FAQs documents
- Evaluation of State Aid Package





- Expert meetings in March 2008
- Questionnaire to Member States and stakeholders in July 2008
- Report adopted by the SPC in November 2008
- Operational conclusions approved by the EPSCO Council in December 2008





Operational conclusions of the SPC:

- Proposal to add new questions to the FAQs documents
- Invitation to the Commission and the Member States to increase public authorities and stakeholders awareness on FAQs and IIS (to make available in all official languages)
- Three themes deserving specific attention:
 - public-public cooperation
 - the role of non-profit providers
 - PP procedures and possible alternatives





Where to find the documents?

- DG EMPL:
 - http://ec.europa.eu/employment_social/spsi/ssgi_en.htm
- SG: http://ec.europa.eu/services_general_interest/index_en.htm
- DG COMP
http://ec.europa.eu/comm/competition/state_aid/legislation/sgei.html
- DG MARKT
http://ec.europa.eu/internal_market/publicprocurement/sgi_en.htm





Questions?

