



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 20.11.2007

SEC(2007) 1515

COMMISSION STAFF WORKING DOCUMENT

Progress since the 2004 White Paper on services of general interest

Accompanying document to the

**Communication on "Services of general interest, including social services
of general interest: a new European commitment"**

{COM(2007) 725 final}

{SEC(2007) 1514}

{SEC(2007) 1516}

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Companion document to the Communication on "A single market for 21st century Europe"

Services of general interest, including social services of general interest: a new European commitment

The first Communication of the Commission in 1996¹ initiated a reflection about the role the EU could play in ensuring the provision of high-quality services of general interest. The Commission's White Paper² of 2004 highlighted the main elements of an EU approach, clarifying key principles of EU action and setting out areas for further work. This annex presents recent, on-going or planned EU initiatives in the following areas:

(1) Respecting diversity in a coherent framework

In its White Paper, the Commission announced that it would re-examine the feasibility of and the need for a framework law for services of general interest. The present Communication responds to this undertaking.

In the meantime, the issue of services of general interest has featured prominently in the discussion on the directive on services in the internal market. This so-called "services directive" was adopted on 12 December 2006³. The aim is to facilitate the freedom of establishment and the freedom to provide services across the EU. Already in the Commission's original proposal, it was made clear that the directive did not cover non-economic services of general interest. Furthermore, it provided a number of exceptions for services of general economic interest. The European Parliament, followed by the Council and the Commission, provided further clarification to the effect that, while non-economic services are indeed excluded, services of general economic interest are in principle covered by the directive. It follows that services of general economic interest fall within the scope of application of the Services Directive as long as they are not explicitly excluded. Telecommunications, transport services, healthcare services, certain social services and audiovisual services are explicitly excluded from its scope (Article 2). For those services of general economic interest not excluded, the provisions of the Directive aiming at facilitating the freedom of establishment will allow Member States to take account of the specificities of services of general economic interest. In particular, the review and assessment of certain requirements under national law that Member States will have to carry out "should not

¹ Communication "Services of general interest in Europe" (OJ C 281, 26.12.1996).

² COM(2004) 374, 12.5.2004.

³ Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the Internal Market.

obstruct the performance of the particular task assigned to services of general economic interest” (Article 15(4)). The Directive also provides that the specific rules in Article 16 on the free movement of services do not apply to services of general economic interest provided in another Member State (Article 17), in particular postal services, water supply, electricity and waste management. Member States have to transpose the Directive by the end of 2009.

(2) Clarification and simplification of the state aid rules

The funding of services of general economic interest (SGEI) must comply with state aid rules set out at EU level. The application of state aid rules for the financing of services of general economic interest has been clarified in July 2005 when the Commission, building on the case law of the European Court of Justice, adopted its "SGEI Package"⁴. Its aim was to clarify and simplify the legal framework for the compensation of public service obligations which constitute state aid, according to the Altmark criteria⁵, and to reduce the administrative burden related to such state aid notifications. As a result, the SGEI Decision allowed legal certainty and continuity in the organisation and finance of public service missions especially at a local level, and at the same time the SGEI Framework gave a solid and clarified basis on which Member states as well as SGEI providers could anticipate the Commission's assessment regarding compensation schemes that should be notified in order to be declared compatible with the Treaty state aid rules. As mentioned above, Member States can grant compensation for SGEI without notifying it to the Commission for public services up to € 30 million per year and for hospitals and social housing without limits, provided the necessary safeguards are in place. Member States are responsible for ensuring the respect of the principles and requirements set out in the "SGEI Package" and the Commission is determined to monitor its impact on the ground, either when the allocated compensations are exempted from notification, or when their compatibility is assessed by the Commission on the basis of the SGEI framework.

These measures allow companies to receive public support to cover all the net costs incurred, including where appropriate a reasonable profit, in carrying out public service tasks as clearly defined and entrusted to them by public authorities, within official acts, whilst ensuring that there is no over-compensation liable to distort competition. The SGEI package constitutes a safe tool for Member states and public service providers to organise and provide such services in a transparent and predictable manner, perfectly compatible with Community rules. Showing respect to the national traditions related to the organisation of public services within the different Member States, the requirements related to an act of entrustment and the safeguards avoiding overcompensation through a transparent accountability, can guarantee the legal certainty in this field.

In the field of public broadcasting, the Commission has adopted in 2001 a Communication on the application of state aid rules to public broadcasting⁶, in order to explain how the state aid rules apply to the funding of public service broadcasters. As for other SGEI fields, this text

⁴ Also referred to as the "Altmark package", it includes besides an amendment to the Transparency Directive the following texts adopted on 28.11.2005: Commission Decision on the application of Article 86(2) of the Treaty to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest (OJ L 312, 29.11.2005, p. 67-73) and Community framework for State aid in the form of public service compensation (OJ C 297, 29.11.2005, p. 4-7).

⁵ Case C-280/00, Altmark, [2003], ECR I-7747.

⁶ OJ C 320, 15.11.2001, p. 5.

allows for a full coverage of the net costs incurred by the fulfilment of public broadcasting tasks without interfering with other markets related to these activities.

In transport, financing of public services is also governed by sector specific rules. In air and maritime transport, services are subject to Council Regulations (EEC) No 2408/92 (air) and (EEC) No 3577/92 (maritime) respectively and Commission State aid guidelines for aviation/airports from 2005 and Maritime Transport from 2004 supplement the above mentioned SGEI Package. Only for land transport, a different set of Community legislation applies: a new regulation on public service obligations for road and rail transport will replace existing legislation on the subject of financing of public service obligations, which are Council Regulations (EEC) No 1191/69 and (EEC) No 1107/70.

(3) A clear and transparent framework for the selection of providers of services

The 2004 White Paper identified a number of possible issues raised by the increasing use of public-private partnerships (PPPs) and concessions. PPPs are forms of cooperation between public authorities and businesses, which aim to carry out infrastructure projects or provide services for the public. These arrangements, which typically involve complex legal and financial arrangements among private operators and public authorities, have been developed in several areas of the public sector and are increasingly used within the EU, in particular in transport, public health, public safety, waste management and water distribution.

The Commission launched a wide consultation of stakeholders in 2004 and reported in November 2005⁷. The consultation highlighted the need to clarify how EU rules should apply to the choice of private partners in "institutionalised PPPs", which are public service undertakings held jointly by both a public and a private partner. The Commission is also considering further steps to clarify the rules applicable to concessions.

(4) Recognising fully the general interest in social and health services

In its White Paper, the Commission announced its intention to develop a systematic approach in order to identify and recognise the specific characteristics of social and health services of general interest and to clarify the framework in which they operate.

As regards social services, the Commission adopted a Communication⁸ aimed at taking better account of the characteristics of these services and reducing possible areas of legal uncertainty. Following the Communication, the Commission initiated a consultation of Member States, service providers and users, through a questionnaire launched by the Social Protection Committee. It commissioned a study on social services of general interest in the EU and requested the advice of a group of legal experts on the interaction between the provision of social services of general interest and Community rules. It also took good note of the opinions of the European Parliament, the European Economic and Social Committee and of the Committee of Regions.

Following the "High Level Process of Reflection on patient mobility and healthcare developments in the European Union" in 2003⁹, the Commission launched a consultation¹⁰ on

⁷ COM(2005) 569, 17.11.2005.

⁸ COM(2006) 177, 26.4.2006.

⁹ See http://ec.europa.eu/health/ph_overview/keydocs_overview_en.htm.

¹⁰ SEC(2006) 1195, 26.9.2006.

the issues to be addressed through Community action on health services, and the appropriate tools to be used for different aspects. The Commission will present its ideas for further initiatives to reinforce cooperation between Member States and provide greater certainty over the application of Community law to health services and healthcare later in 2007.

(5) Assessing the results and evaluating performance

Since 2001, the Commission has published every year an evaluation report on the performance of network industries - telecommunications, electricity, gas, transport and postal services - providing services of general economic interest.

These reports are based on a methodology¹¹ to assess the performance of these services. They give a general overview of the functioning of the industries concerned, focussing in particular on the compatibility of market outcomes with the social and economic objectives of the European Union. Results have been discussed widely, for instance with the European Economic and Social Committee. The latest edition¹² was published in July 2007. The Commission is currently revising its methodology and will present the next steps in the course of 2008. As part of the sixth research framework programme, the Commission is also financing projects under the topic "privatisation and public policy in different contexts".

(6) Reviewing sectoral policies

The Commission is active in monitoring and updating sector-specific regulatory frameworks in place at EU level. In the *energy sector*, the Commission adopted a Green Paper on a European strategy for sustainable, competitive and secure energy¹³ setting out first initial guidelines and launching a public consultation. It presented a new "energy package" early in January 2007, including a Strategic EU Energy Review, paving the way for the adoption of a prioritised action plan by the European Council. As part of the package, the Commission published an evaluation of progress made in the realisation of a single European energy market, as well as results from an enquiry into the functioning of the gas and electricity markets. The Commission adopted a package of follow-up measures in September 2007 addressing notably public service standards and consumer rights. The new legislation foresees in particular a comitology procedure allowing the Commission and Member States to arrive at a common agreement on recommendations and guidelines concerning the implementation of public service relevant to national legislation.

In the *electronic communications sector*, the Commission has submitted to the European Parliament and the Council its proposals on the reform of the regulatory framework. These proposals, which are required by the present legislation to adapt the framework to technological changes and market developments, aim to enhance competition and complete the European market for electronic communications to ensure that businesses and consumers can provide and use electronic communications in a seamless manner across borders. The proposed reform builds upon a public consultation launched by the Commission in 2006 on policy options for updating the EU regulatory framework for electronic communications (dating from 2002). In addition, long-term issues such as the concept and scope of universal service will be addressed in a Commission Communication to be published in 2008.

¹¹ COM(2002) 331, 18.6.2002.

¹² SEC(2007) 1024, 12.7.2007.

¹³ COM(2006) 105, 8.3.2006.

In the *transport sector*, the Commission recently provided a mid-term review of its 2001-2010 White Paper on transport¹⁴. The Commission supports the adoption by the European Parliament and the Council of a new Regulation on public passenger transport services by rail and by road of 23 October 2007. The regulation will enter into force two years after its publication in the *Official Journal of the European Union*, which is pending. This regulation will provide legal certainty for services of general economic interest in public passenger transport by rail and bus as it will address all issues concerning the financing of such services and lay down the conditions for public intervention in relation to market functioning.

In the *postal sector*, building on the review of experience to date and previous commitments of the EU, the Commission adopted a proposal for a revised directive on postal services in October 2006¹⁵, confirming that the internal market for postal services should be fully in place by 2009. Discussion has started with Parliament and the Council and has made a significant step forward with the first reading in the European Parliament on the 11th July 2007 and the political agreement reached in the Council on 1st of October 2007.

Moreover, the EU has been active in the field of *audiovisual policy*¹⁶, as well as in the field of *water*¹⁷ and *waste management*, through its environmental policy. The Commission has also recently published a White Paper on *sport*¹⁸ and a Communication on *culture*¹⁹ which, inter alia, address the question of how to balance the EU's regulatory framework for competition and the single market with public policy objectives in these fields.

The EU also supports financially the development and functioning of a number of sectors and services between and across the Member States, for instance through the Structural Funds and the Trans-European Networks. It has also recently taken on new responsibilities in promoting Europe-wide services of general interest, such as the European satellite navigation system GALILEO, as well as in developing common standards to facilitate the functioning of major networks at EU level, in particular through the work of European agencies, such as the European railway agency or the European aviation and maritime safety agencies.

(7) Reflecting our internal policies in our international trade policy

Since the White Paper, the Commission has continued to take due account of the EU's internal regulatory framework on services of general interest in the World Trade Organisation (WTO) General Agreement on Trade in Services (GATS) negotiations. This was reflected in the revised services offer submitted by the EU in June 2005. At the beginning of 2006, the EU joined other WTO members in submitting plurilateral requests in several sectors, but did not participate in any request addressing audiovisual and cultural services, education services, health services or water for human use.

The EU also concluded a series of negotiations enabling the Members States that had joined the EU since 1995 to modify their trade commitments under the GATS, notably to ensure that

¹⁴ COM(2006) 314, 22.6.2006.

¹⁵ COM(2006) 594, 18.10.2006

¹⁶ In December 2005, the Commission adopted a legislative proposal for the revision of the "Television without Frontiers" Directive. See COM(2005) 646.

¹⁷ Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for the Community action in the field of water policy (EU Water Framework Directive) (OJ L 327, 22.12.2000).

¹⁸ COM(2007) 391, 11.7.2007.

¹⁹ COM(2007) 242, 10.5.2007.

services in sectors such as education, health, culture and audiovisual would enjoy the same guarantees throughout the EU. The EU has been the first member of the WTO to invoke such procedures and complete the negotiations to modify existing commitments following the enlargement of 1st of May 2004. A similar process is under way following the accession of Romania and Bulgaria to the EU.

The Commission is committed to continuing to ensure that EU trade policy is consistent with the EU internal framework for services of general interest in upcoming negotiations, including at bilateral level. In particular, bilateral agreements concluded by the EU will specify, like the GATS, that the Parties retain the right to regulate and to introduce new regulations to meet legitimate policy objectives.

(8) Promoting services of general interest in development cooperation

The 2004 White Paper stressed the importance of assisting developing countries in creating a sound regulatory and institutional framework for the promotion of investment in and access to services of general interest. In August 2006, the Commission launched a new "Governance Initiative" in the context of the partnership with the ACP countries and Africa. The Governance Initiative is essentially a new incentive mechanism that will give ACP partner countries access to additional funding on condition that they commit themselves to achieving concrete results in the area of governance including aspects related to the investment in and access to services of general interest. A sum of € 2.7 billion from the 10th European Development Fund will be reserved for such incentives. Moreover, the use of targets in terms of access to health and education as a condition for financial support provides an incentive to promote access to these essential services.