

Opinion of the European Economic and Social Committee on the ‘Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A Quality Framework for Services of General Interest in Europe’

COM(2011) 900 final

(2012/C 229/18)

Rapporteur: **Mr SIMONS**

On 20 December 2011, the Commission decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on the

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A Quality Framework for Services of General Interest in Europe

COM(2011) 900 final.

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee’s work on the subject, adopted its opinion on 10 May 2012.

At its 481st plenary session, held on 23 and 24 May 2012 (meeting of 23 May), the European Economic and Social Committee adopted the following opinion by 145 votes to 2 with 7 abstentions.

1. Conclusions and recommendations

1.1 The Committee is unhappy with the title of the communication, which is confusing and promises more than the content delivers. The confusion arises because the term ‘quality framework’ apparently means something different from the common value entitled ‘quality’, as recognised in Article 14 TFEU and in Protocol 26; quality in the latter sense is not dealt with at all in the communication, either *per se* or from a sectoral point of view.

1.2 The Committee agrees that there is a need to publish this explanatory memo on services of general interest. To the extent that this Commission communication provides that explanation, the Committee endorses it, subject to certain comments. Over the years, the Committee has repeatedly insisted on the need for high-quality, efficient and modern services of general interest.

1.3 The Committee still believes that it is essential to translate the new primary law provisions on SGIs into derived sectoral and, where appropriate, cross-sectoral law.

1.4 The current financial and economic crisis provides a stark reminder of the central role that services of general interest play in ensuring social and territorial cohesion. Here, the pressure that political decisions have put on public sector funds must be borne in mind. The Committee agrees that there is an urgent need to take appropriate action to maintain services and improve their quality.

1.5 The Committee deems the institutional framework (Article 14 TFEU, Protocol No 26 and Article 36 of the

Charter of Fundamental Rights) to provide a good basis for further development, but does not believe that the communication provides the coherent, specific approach to services of general interest that is needed.

1.6 The Committee considers that providing, commissioning and funding services of general economic interest is, and will remain, a matter for the Member States to deal with by means of sectoral legislation that allows for tailor-made solutions, whereas the EU’s legislative competence mainly relates to establishing the economic and financial framework conditions and checking for manifest error.

1.7 The Committee believes that, when revising sectoral legislation which includes universal service obligations, continuous review is necessary, on the basis of the new provisions of primary law, the changing needs of users and technological and economic change, in cooperation with stakeholders and civil society. It considers that such revision should be approached in a way that takes account of employment and social and territorial cohesion, aspects that have so far been neglected.

1.8 Protocol No 26 emphasises that providing, commissioning and organising non-economic services of general interest is a competence belonging to the Member States. The Committee therefore believes that it is the Member States that are primarily responsible for the evaluation of such services at national, regional or local level, while the role of the European Commission is simply to share best practices and to monitor compliance of those services with the general principles set out in the EU treaties.

1.9 The Committee welcomes the Commission's attempt in the communication to explain basic concepts used in the debate on services of general interest, which directly affect customers and users – in other words, the public in general. Unfortunately, those explanations are not complete. The Committee considers that the definition of SGI should do more than just refer to the existence of a market. It could, for example, make reference to democratically legitimised political decision-making in the Member States. The Committee recommends that there be broad consultation on this matter and that a new glossary be produced which leaves no room for interpretation among the various language versions, in order to prevent any misinterpretation.

1.10 The Committee supports the introduction of greater clarity and legal certainty on the EU rules that apply to services of general economic interest. This also applies to the Commission's publication of the 'guides', which are intended to improve understanding and application of the EU rules on services of general economic interest, particularly if they are appropriately drafted with the help of experts.

1.11 Regarding the permanent guarantee of access to essential services such as postal services, basic banking services, public transport, energy and electronic communications, the Committee believes that there should be a universal right of access, particularly for vulnerable customers such as people with disabilities and those living below the poverty line. Member States will need to make a continuous, fully substantiated assessment, on the basis of the legal regime in force and subject to review by the Commission, of whether to keep these services in public ownership (or bring them into such ownership), or hand them over, in whole or in part and under strict conditions, to the market.

1.12 The Committee feels that more attention should have been given in the communication to social, health and labour market services of general interest. It also calls on the Commission to step up its work on the definition of social services of general interest. The Committee also considers, as does the Commission, that social services of general interest play a key role in the EU, in sectors such as healthcare, childcare, care of the elderly, assistance to disabled persons, social housing and labour market services.

1.13 The Committee calls on the Commission to put forward proposals to promote quality initiatives without delay, particularly for social services of general interest, since they receive very little attention in the communication and because demand for these services is growing while funding them is becoming increasingly problematic. In addition, the Commission should follow up on the implementation of the Voluntary European Quality Framework for Social Services at Member State level.

2. Introduction

2.1 With the entry into force of the Lisbon Treaty, new provisions have been introduced on services of general

interest, namely Article 14 of the Treaty on the Functioning of the European Union (TFEU) and Protocol No 26 on the interpretation of the term 'common values' in Article 14 TFEU and on non-economic services of general interest. Article 36 of the Charter of Fundamental Rights has also acquired the same legal value as the treaties.

2.2 In addition, the continuing financial and economic crisis provides a reminder of the central role that services of general interest play in guaranteeing social and territorial cohesion and of the effect of the crisis on the public sector. Studies show that 'public services', a concept that is much broader than just SGIs, account for more than 26 % of the GDP of the 27 EU countries and employ 30 % of the European workforce.

2.3 These are therefore the main reasons why the Commission has decided to present this communication.

3. Content of the Commission document

3.1 According to the Commission, the quality framework is to ensure that the regulatory environment at EU level continues to strengthen the social dimension of the single market, that better account is taken of the specific nature of these services, and that the challenge is met of delivering them in a way which incorporates the values recognised in the protocol: quality, safety and affordability, equal treatment, universal access and users' rights.

3.2 The Commission notes that, over the years, both the demand for services of general interest and the way they are provided have changed significantly. According to the Commission, services previously provided by central government are now to a large extent outsourced to lower-level public bodies or to the private sector through related regulations.

3.3 The trend mentioned in point 3.2 is bolstered by the process of liberalisation, new priorities in government policies and the changing needs and expectations of users. Since many of these services are economic in nature, the internal market and competition rules apply to them 'in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them'.

3.4 Despite the fact that there are some concerns about the impact of those rules, in particular on social services, the Commission believes that they can be applied in a way that takes account of specific needs and enhances the provision of services while, of course, applying the necessary degree of flexibility.

3.5 The 'quality framework' presented by the Commission consists of three strands of action, which the Commission has not developed into concrete proposals.

4. General observations

4.1 The Committee is unhappy with the title of the communication, which is confusing and promises more than the content delivers. The confusion arises because the term 'quality framework' is apparently to be understood differently from the common value entitled 'quality', as recognised in Article 14 TFEU and in Protocol 26; 'quality' in the latter sense is not dealt with at all in the communication, either per se or from a sectoral point of view. This also applies to the other values, such as safety, affordability, equal treatment, promotion of universal access and user rights.

4.2 The absence of an impact assessment alongside the communication is also very serious, because the Commission's assertions and observations, as set out in point 3.2, are open to a good deal of debate. For example, according to the Committee and experts in the field, these services have always been provided at regional and local level.

4.3 The Committee agrees that there is a need to publish this explanatory memo on services of general interest. It has mentioned in previous opinions ⁽¹⁾ that efficient, modern, accessible and affordable services of general interest, which form one of the pillars of the European social model and the social market economy, are necessary and should be given constant attention, particularly now that Europe is suffering from the financial and economic crisis.

4.4 To this extent, the Committee supports the Commission's approach and urges it to continue working to ensure that account is taken of the special features of social services of general interest, in areas such as the law on state aid and on labour market services.

4.5 The Committee still believes that it is essential to translate the new primary law provisions on SGIs into derived sectoral and, where appropriate, cross-sectoral law.

4.6 The Committee feels that more attention should have been given in the communication to social and health services of general interest. It also calls on the Commission to step up its work on the definition of social services of general interest. It notes, moreover, that there may be other services of general interest not mentioned by the Commission, for example in culture, education and public broadcasting. The Committee also considers, as does the Commission, that social services of general interest play a key role in the EU, in sectors such as healthcare, childcare, care of the elderly, assistance to disabled persons, social housing and labour market services.

4.7 The introduction of new provisions as a result of the entry into force of the Lisbon Treaty (Article 14 of the Treaty

on the Functioning of the European Union (TFEU) and Protocol No 26 on services of general interest, as well as Article 36 of the Charter of Fundamental Rights, which has acquired the same legal value as the treaties) has given the Commission the opportunity to bring together all the initiatives it has taken in relation to services of general interest. The Committee considers this a valuable initiative, although it notes that the communication does not yet provide the coherent, specific approach to services of general interest that is needed, for example as regards access. It therefore calls on the Commission to put forward concrete proposals.

4.8 Article 14 TFEU has given the EU legislative competence in the field of services of general economic interest; in particular it can use regulations to determine the principles and conditions relating to such services, especially economic and financial conditions, to enable these services to carry out their tasks. In the Committee's view, it is clear from the context of this article that this refers to framework and sectoral conditions in the areas of EU competence and not to the conditions of the service itself, since the latter are established by the national authorities (in this context, 'national authorities' means central, regional and local government).

4.9 That article also makes clear that providing, commissioning and funding such services is and will remain a competence of the national and sub-national authorities of the Member States. The Committee has repeatedly argued this in the past. The Commission should also continue to build up its knowledge of these services at national level, so that it is in a position to assess compliance with EU rules.

4.10 The Commission proposes to keep under review the need to revise existing sectoral legislation, including universal service obligations. The Committee wishes to note that it considers it essential for this continuous review to be carried out on the basis of the new provisions of primary law, the changing needs of users and technological and economic change, in conjunction with stakeholders and civil society. That is particularly the case when the need for new universal service obligations in other sectors is being investigated. The Committee has already set out its views on the subject in an earlier opinion ⁽²⁾.

4.11 Article 1 of Protocol No 26 sets out the basic principles that apply to services of general economic interest and Article 2 describes the competence of the Member States to provide, commission and organise non-economic services of general interest. The Committee therefore believes that it is the Member States that are primarily responsible for evaluating the services referred to in Article 2 at national, regional or local level; the role of the European Commission is, within the framework of checking for manifest error, just to monitor those services' compliance with the general principles of the EU treaties.

⁽¹⁾ OJ C 48 – 15/02/2011, pp. 77-80; OJ C 128 – 18/05/2010, pp. 65-68; OJ C 162 – 25/06/2008, pp. 42-45; OJ C 309 – 16/12/2006, pp. 135-141.

⁽²⁾ OJ C 48 – 15/02/2011, pp. 77-80.

4.12 The Committee welcomes the Commission's attempt to explain various concepts used in the debate on services of general interest. Unfortunately, those explanations are neither complete nor always correct. Among other things, the meaning of 'essential services' and its place in the general scheme is not covered, and it is not clear in the Dutch version whether 'onmisbaar' (p.3, second bullet point) is the same as 'essentieel' (both rendered as 'essential' in the English version). In addition, the list of specific universal service obligations is incomplete. The Commission communication itself provides an example of this confusion: the heading and the first sentence of Strand 2 refer to 'essential', but the whole of the subsequent text under that heading deals with 'universal service obligations'. The Commission should not hesitate to enlist the help of recognised experts in the field in giving a clear formulation of the basic concepts used in connection with SGIs.

4.13 The Committee also notes that there is room for interpretation among the different language versions, going beyond the list of basic concepts. For example, the question arises whether concepts such as 'universal access' used alongside 'universal service', and 'utilities' used alongside 'public service obligations' and 'public service mission', mean something different in each case. It is typical of this confusion that the Commission states in the box dealing with the basic concepts that it will not use the term 'public services' in the remainder of the Communication, but four paragraphs later states '... which enable specific *public services* to fulfil their missions ...'.

4.14 The Committee also recommends, therefore, that broad consultation take place on all these issues and that a new glossary be produced, so as to prevent any misinterpretation. In doing so, it should take into account the different social systems in the Member States.

5. Specific comments

5.1 The Commission's approach in preparing this communication, using the three strands of action mentioned in point 3.5, seems to the Committee to offer a good framework as a basis for future development.

5.2 The first strand of action relates to the introduction of greater clarity and legal certainty as regards the EU rules applying to services of general economic interest. The Committee naturally sees this in a positive light, having argued for it for many years. Unfortunately, the Committee notes that it is not backed up by any new, concrete proposals.

5.3 Regarding the revision of the state aid rules for services of general interest, the Commission has already adopted or proposed the following changes:

5.3.1 A new communication addressing in more detail the problems of interpretation arising at national, regional and local level;

5.3.2 An increase in the number of social services exempted from the requirement of ex ante notification to and assessment by the Commission, provided that they fulfil certain conditions. As well as hospitals and social housing, the list now includes services of general economic interest meeting social needs relating to health and long term care, childcare, access to and reintegration into the job market, and the care and social inclusion of vulnerable groups;

5.3.3 More thorough and more focused scrutiny of large-scale aid measures that may have a major impact on the operation of the internal market; and

5.3.4 A proposal for a new de minimis rule, intended specifically for services of general economic interest, 'which will exclude the existence of aid' for amounts of aid up to EUR 500 000 per annum over a three-year period. For certain sectors (the Commission refers here to transport and public broadcasting), sectoral rules continue to apply.

5.4 The following points are relevant in the Commission's proposal on the revision of the rules on public procurement and concessions, aimed at improving the quality of provision of services of general economic interest:

5.4.1 There will be a separate, lighter regime for social services and healthcare services, which will take account of their particular role and specific characteristics. Higher thresholds will apply and these services will only have to comply with transparency and equal treatment obligations. Use of the 'most economically advantageous tender' criterion will be encouraged (according to the Commission, this concept also covers social and environmental aspects).

5.4.2 There will be greater legal certainty on the question of how EU public procurement rules apply to relations between public authorities. We refer in this respect to the Committee's recent opinion on Public procurement and concession contracts.

5.5 The Committee also warmly welcomes the publication of the Commission's 'guides', which aim to improve understanding and application of the EU rules on services of general economic interest, particularly if they are put together with the help of recognised experts.

5.6 The second strand of action relates to the guarantee of permanent access to essential services. The Commission seeks to maintain a balance in this respect between, on the one hand, taking into account the need to increase competition and, on the other, securing access to high-quality and affordable essential services for all members of the public, as also set out in the 2004 white paper on this subject.

5.7 In this context, the Commission gives the following examples of essential services: postal services, basic banking services, public (passenger) transport, energy and electronic communications. With reference to point 4.6, the Committee assumes that this list is not exhaustive. The Committee also considers the examples mentioned above to be essential services, which should be affordable and for which there should be a universal right of access, particularly for vulnerable customers and those who are in need of support, such as people with disabilities and people affected by poverty and exclusion. In the event of conflict with competition rules, the general interest prevails.

5.8 The third strand of action relates to quality initiatives, particularly for social services of general interest, for which social demand is increasing and funding is becoming increasingly problematic, due to the financial and economic crisis and the ageing population.

5.9 On this point, the Committee recalls in particular that it is still awaiting a communication from the Commission on

health services, as promised in connection with social services of general interest.

5.10 The Commission gives four examples of such initiatives in relation to the third strand of action. In this connection, the Committee wishes to point out that three of the four examples relate to initiatives that have already begun. The planned support from the PROGRESS programme for new transnational projects should therefore not only cover implementation of the Voluntary Quality Framework, but should also take into account the results of these projects.

5.11 The Committee welcomes the Commission's emphasis on the fact that public procurement contracts are awarded at the 'least cost to the community' and not necessarily to the lowest bid. This is particularly important for the best mix of social policy and labour market services, which have a marked influence on one another. However, the social aspect of procurement has to be strengthened throughout society as a whole.

Brussels, 23 May 2012.

The President
of the European Economic and Social Committee
Staffan NILSSON
