

Opinion of the Committee of the Regions on the Communication from the Commission — Implementing the Community Lisbon programme — Social services of general interest in the European Union

(2007/C 57/08)

THE COMMITTEE OF THE REGIONS,

Having regard to the Communication from the Commission — *Implementing the Community Lisbon programme: Social services of general interest in the European Union* (COM(2006) 177 final);

Having regard to the decision of the European Commission of 26 April 2006 to consult it on this subject, under the first paragraph of Article 265 of the Treaty establishing the European Community;

Having regard to its Bureau's decision of 13 June 2006 to instruct the Commission for Economic and Social Policy to draw up an opinion on this subject;

Having regard to Article 16 of the Treaty establishing the European Community, concerning services of general economic interest, as well as Articles 2, 5, 73, 81, 86, 87, 88 and 295 of the EC Treaty;

Having regard to Article 36 of the European Charter of Fundamental Rights, concerning access to services of general economic interest;

Having regard to Article III-122 of the Treaty establishing a Constitution for Europe, signed by the Heads of State and Government in Rome on 29 October 2004;

Having regard to its opinion on the Green Paper on services of general interest (CdR 149/2003 fin) ⁽¹⁾;

Having regard to its opinion on the Communication from the European Commission on Services of General Interest in Europe (CdR 470/2000 fin) ⁽²⁾;

Having regard to its opinion on the Draft Commission decision on the application of Article 86 of the Treaty to state aid in the form of public service compensation, the draft directive amending Commission Directive 80/723/EEC on the transparency of financial relations between Member States and public undertakings and the Community framework for state aid in the form of public service compensation (CdR 155/2004 fin) ⁽³⁾;

Having regard to its opinion on the Proposal for a Directive of the European Parliament and of the Council on services in the internal market (CdR 154/2004 fin) ⁽⁴⁾;

Having regard to its opinion on the European Commission's Green Paper on public-private partnerships and Community law on public contracts and concessions (CdR 239/2004 fin) ⁽⁵⁾;

Having regard to its opinion on the European Commission's White Paper on services of general interest (CdR 327/2004) ⁽⁶⁾;

Having regard to the draft opinion (CdR 181/2006 rev. 1), adopted on 20 October 2006 by its Commission for Economic and Social Policy (Rapporteur: **Mr Jean Louis Destans**, President of the General Council of Eure (FR/PES);

Whereas:

1. social services of general interest (SSGI), although developed differently in the Member States, are an essential element of the European social model ⁽⁷⁾;

⁽¹⁾ OJ C 73, 23.3.2004.

⁽²⁾ OJ C 19, 22.1.2002.

⁽³⁾ OJ C 43, 18.2.2005.

⁽⁴⁾ OJ C 43, 18.2.2005.

⁽⁵⁾ OJ C 71, 22.3.2005.

⁽⁶⁾ OJ C 164, 05.7.2005.

⁽⁷⁾ Draft Report of the European Parliament on a European Social Model for the future, 13.7.2006, in particular points 23 and 24.

2. a stable, transparent legal framework at EU level is therefore required to develop SSGI in strict accordance with the principle of subsidiarity, and in particular the responsibilities of the local and regional authorities in defining the missions, management and financing of these services;
3. in this context, local administrative freedom and the principle of the Member States' freedom to define the missions and organisation of SSGI must be reaffirmed, especially since the local authorities often have primary responsibility for managing these services in their capacity as solidarity players in local life;
4. it is important to recall that SSGI are an integral part of the family of services of general interest (SGI) and, as such, play an essential role in ensuring social and human solidarity and protection throughout the European Union;
5. a link must be established with Article 16 of the Treaty, which stresses the role played by services of general economic interest (SGEI) '*in promoting social and territorial cohesion*' in the EU, and, consequently, the citizens' right to access SSGI must be recognised and guaranteed as a fundamental right to access SGEI under Article 36 of the European Charter of Fundamental Rights;
6. SSGI, like other SGEI, are also effective tools for implementing the Lisbon Strategy for growth and competitiveness in the EU;
7. it would therefore be appropriate to establish clearer distinctions between the concepts of SGI and SGEI in order to better identify the specific features of SSGI;
8. the purpose of this distinction is in particular to highlight the legal consequences of the two concepts and to give local actors legal and financial certainty as to the application of Community law to SSGI and to give them more scope. This should enable the Union to further strengthen the role of local actors in supporting SSGI;
9. to this end, the Commission should work to support the existing law applicable to SSGI in order to secure greater clarity in relation to these services and avoid any uncertainty with regard to EU law applicable in this area;
10. it is appropriate to look ahead in order to ensure the necessary consistency between the EU's position when adopting legislation for SSGI and the position it will adopt during WTO negotiations on trade in services (GATS) for social and health policy;

adopted the following opinion at its 67th plenary session, held on 6 and 7 December 2006 (meeting of 6 December):

1. Views of the Committee of the Regions

The Committee of the Regions

1.1 **welcomes** the Commission's initiative, following up on to the White Paper on services of general interest, which had announced a systematic approach that focuses on '*the specific characteristics of social and health services of general interest*' in order to clarify '*the framework in which they operate*';

1.2 **approves** the fact that this specific measure is included in the framework for implementing the Lisbon Strategy and

the Social Agenda insofar as SSGI, like SGEI, are a source of solidarity and competitiveness for the EU economy as well as a potential source of community-based jobs, a component of the European social model and national social protection and inclusion schemes;

1.3 **supports** the Communication's approach of recognising social services as services of general interest. Indeed, these essential and vital services fulfil a specific social protection and solidarity mission and are provided directly by the local and regional authorities or delegated to specific operators with responsibility for them. They therefore depend on the Member States' regulatory process regarding the social public policy objectives entrusted to them. The requirement that their missions be fulfilled properly, as set out in Articles 16 and 86 (2) of the EC Treaty, should apply to them *a priori*;

1.4 **emphasises**, in this context, that SSGI should not be considered as residual services to the population but can, on the contrary, be agents for universal access to quality social services for all citizens;

1.5 **recalls** that SSGI are meant to guarantee the fulfilment of social policy objectives which are the responsibility of Member States such as social protection, meeting fundamental social needs, i.e. health care, housing, education, care of the elderly and people with disabilities, training and jobs, not to mention solidarity with the vulnerable and the dependent, who rely on the social services;

1.6 **recalls** that SSGI play an active part in the effective application of human rights and respect for human dignity, as defined in the European Charter of Fundamental Rights, and arising from the common constitutional traditions of all Member States and their international obligations under the Revised Social Charter of the Council of Europe and the Universal Declaration of Human Rights;

1.7 **considers** that SSGI contribute to the implementation of the Community's mission, as defined under Articles 2 and 3 of the Treaty, and in particular to a high level of social protection, raising the quality of life, the attainment of a high level of health protection, and strengthening economic and social cohesion;

1.8 **affirms**, in this context, that it is in the interest of the Community that SSGI are developed and modernised in a stable economic and legal framework and regulated by the relevant public authorities at local and regional levels;

1.9 **welcomes** the steps taken by the Commission to identify the specific characteristics of SSGI and the measures required to modernise them in the light of the stakes involved in meeting existing and future social needs inherent to an ageing population and the exigencies of social cohesion and inclusion in daily life at local and regional levels;

1.10 **shares** the Commission's views regarding the specific characteristics of these services, especially with regard to the fact that they operate on the basis of the solidarity principle and are personalised. These specificities must be taken into consideration in the application of Community legislation for the internal market and competition, bearing in mind that they have little impact on intra-Community trade and that their development is in the interest of the Community;

1.11 **is convinced** of the need to overcome existing legal uncertainty regarding the conditions for the application of Community law to arrangements for implementing SSGI. All too often, in the absence of legal certainty in relation to SSGI, the

latter tend to fall under the general competition and internal market rules, which may not be appropriate for the specific missions delegated to them by the local and regional authorities. This legal uncertainty became clear during the debate on whether they should be covered by the proposal for a directive on services in the internal market and led to their being excluded from its sphere of application;

1.12 **is particularly satisfied** that specific reference is made to the principle of subsidiarity, recognising the exclusive responsibility of Member States and their local and regional authorities for identifying the scope, organisational principles, financing methods and regulation of SSGI;

1.13 **considers**, moreover, that SSGI should in principle be undertaken by the best suited provider. The core values of universality, accessibility, quality and regional programming cannot be met unaided by the market and require structured public intervention, especially for the delivery and payment schemes of the local and regional authorities closest to the citizens;

1.14 **considers** that the existential nature of the needs to be met (housing, health, jobs), the asymmetry of information between SSGI providers and beneficiaries and, in numerous cases, their extreme vulnerability, requires and justifies a service delivery framework that exempts these services from 'normal' supplier/customer relations;

1.15 **considers** that it is not a matter of bringing fundamental internal market freedoms into conflict with the application of EU fundamental rights or even the obligation to fulfil general interest missions, but rather to reconcile them by adopting a suitable Community Framework for the specific features of these services and the specific missions of public and private operators, always bearing in mind that these grassroots social services generally have little impact on intra-Community trade. This spirit of conciliation should apply to the internal market as well as EU external policy, especially regarding the social and health services aspects of the international negotiations on trade in services (GATS);

1.16 **assumes** that the Member States and, within them, the relevant public authorities are to retain full responsibility for regulating these services; **considers** that the conditions for the application of Community rules for the practical implementation of SSGI need to be clarified in the following areas:

— the required conditions to authorise providers in the light of the status of general services of interest and as conditions for *a priori* compatibility of aid in the form of compensation;

- special and exclusive rights granted in particular to not-for-profit organisations and charities;
- the clear and transparent definition of authorisation schemes for organising external service providers in order to correct asymmetries of information between beneficiaries and providers;
- solidarity-based funding for these services, especially under conditions for compatibility between the provisions of the Treaties and funding schemes and public authority subsidies for service providers in order to ensure reliable access to social and health services for the community and develop new services for emerging needs.

In this context, the Committee of the Regions would recall that the fulfilment of SSGI missions should in no way be hindered by the application of the rules of the Treaty;

1.17 **stresses** that when implementing management principles and procedures for SSGI, the Member States and local and regional authorities must respect the general principles of the EC Treaty, including the principles of equal treatment, free movement, free competition and transparency;

1.18 **observes**, in this context, that respecting the principle of subsidiarity should not prevent the EC from exercising the responsibility it shares with the Member States to monitor the proper functioning of SSGI in compliance with Article 16 of the Treaty;

1.19 **questions** the decision not to include health services in the Communication whilst noting the Commission's intention to deal with them in a separate initiative; clear and distinct definitions of social and health services should be put forward;

1.20 **regrets** that the Commission restricts itself to drawing up a list of 'organisational characteristics' for SSGI but does not take this opportunity to define these concepts more precisely, especially with regard to the underlying policy orientations for defining these services in Member States;

1.21 **believes** that under no circumstance can this list of organisational characteristics be considered exhaustive or restrictive, in deference to the recognised freedom of the Member States and their local authorities to define the organisation of SSGI;

1.22 **approves** of the Commission's reference to the general need for modernisation and quality in the SSGI sector, a need which is being met by the ongoing decentralisation of services to regional and local levels; in particular with a view to quality, it should be ensured that in future providers of social services continue to be subject to the quality standards and legal conditions of the Member State in which the service is provided;

1.23 **shares** the Commission's concern to arrange monitoring of the situation regarding social services of general interest and is willing to be fully involved in this process;

1.24 **welcomes** the link established by the Commission between SSGI and the examination of national action plans for social inclusion, bearing in mind the local dimension of this objective ⁽⁸⁾, but nevertheless asks the Commission to be more specific about how the open method of coordination, its preferred option, will be applied to the follow-up of its Communication, particularly with regard to what it expects from the various stakeholders in this process;

1.25 **supports** the Commission's commitment to giving consideration 'to the need and legal possibility for a legislative proposal' for SSGI, whereby the Commission aligns itself with the broader position adopted by the Committee of the Regions regarding '*a proposal for a legal framework which should make possible a definition of positive principles*' for all SGEI ⁽⁹⁾, whilst affirming that these two initiatives must be complementary and consistent.

2. Recommendations of the Committee of the Regions

The Committee of the Regions

2.1 **asks** the Commission to clarify the nature of the legislative proposals on SSGI as soon as possible and to establish the important monitoring and dialogue procedure and the biennial reports;

2.2 **urges** the Commission to deliver on its commitment to give consideration to the need and legal possibility for a legislative proposal on SSGI at the end of the open process of consultation;

⁽⁸⁾ CoR opinion No ECOS-027 of 22.4.2004 on the Joint report on social inclusion summarising the results of the examination of the National Action Plans for Social Inclusion, in particular points 2.5 and 2.6.

⁽⁹⁾ CoR opinion No ECOS/040 of 23.2.2005 on the Commission's White Paper on services of general interest, in particular point 1.18.

2.3 also **reiterates** its recommendation to the Commission ⁽¹⁰⁾ to draw up a proposal for legislative regulation which should make possible a definition of certain positive principles for all SGEI, as an 'umbrella' initiative for other complementary legislative proposals, and due to their specific features, for SSGI in particular, with a view to providing greater legal certainty for local and regional authorities and service providers;

2.4 **asks** the Commission to develop more specific and stringent classifications (categories) and definitions (concepts) for the relevant SSGI and to take account of the general interest requirements identified by Member States, and to recognise them as distinct aspects of the definition of these services;

2.5 therefore **urges** the Commission not to draw up a restrictive list of SSGI concepts, missions and organisational characteristics, in deference to the principle of subsidiarity and

the Member States' freedom to define the principles, missions, financing methods and organisation of SSGI;

2.6 **suggests** that the Commission involve the Committee of the Regions in a permanent monitoring and evaluation process for SSGI (particularly in order to monitor compliance with the right of access to all services, the financial sustainability of services and achieved performance objectives);

2.7 **approves** the Commission's undertaking to deliver the first biennial report on SSGI by mid-2007 giving the results of its study on the functioning of the sector, its socio-economic importance, as well as the implications of the application of Community law; and finally

2.8 **calls for** consistency between the Communication's orientations and the EU's external policy for international negotiations on trade in services (GATS).

Brussels, 6 December 2006.

The President
of the Committee of the Regions
Michel DELEBARRE

⁽¹⁰⁾ CoR opinion No ECOS/040 of 23.2.2005 on the Commission's White Paper on services of general interest, and in particular point 1.18.