



# The Implications of the Europe 2020 Strategy for Services of General Economic Interest (SGEI)

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## Introduction

Services of General Interest (SGEI) are, in the wording of the Treaty of the Functioning of the European Union (TFEU), among the 'shared values of the Union' and play an important role in 'promoting social and territorial cohesion'. These services cover a wide range of activities and utilities ranging from water supply and ambulance services to the setting up of telecommunication infrastructures. Their role in the development of certain regions or in the inclusion of certain social categories has been acknowledged in numerous Commission documents and courts' rulings.

The financing of SGEI is in principle allowed, if this is necessary in order to ensure the proper functioning of the markets for the benefit of the consumers. For Member States the financing of SGEI is a means of achieving the social and cohesion objectives set up in their constitutions. However, for the European Union (EU), this financing may constitute a distortion of the competition between Member States and is subject to close scrutiny. This terrain is therefore a field in which the clear definition of the services and national interests concerned and the delimitation between national and EU competences is of crucial importance.

In several different contexts the Europe 2020 Commission strategy mentions social cohesion as an objective which needs to be reached by the EU in the next decade. However, in none of these contexts are the SGEI mentioned, although these services are instrumental in that respect. What does this silence mean? What are the implications of the 2020 strategy on the definition and financing of SGEI? Are there any consequences for the current and future regulatory framework of SGEI?

## Europe 2020 Strategy and SGEI

The text of the strategy, as a programmatic document setting up the trajectory for the future EU cannot contain all the steps and details of the EU's action in a certain field. The silence of the document on the role of SGEI as such cannot mean that the strategy will have no influence whatsoever on the regulatory framework of SGEI. Competition in general is the key to ensuring that the Europe 2020 priorities of smart, sustainable and inclusive growth will be reached. Competition policy, although only setting up the general framework for the financing of SGEI, is an essential instrument for accomplishing

the objectives of such services. EU competition rules and Commission scrutiny will push Member States towards new solutions for the financing of SGEI, to ensure a high quality of services, while trying to maintain a level playing field.

Thus, the importance and possible consequences of the Europe 2020 Strategy for the regulation of SGEI under EU law must be analysed from the angle of the actions contained therein, which only incidentally touch upon SGEI and against the background of the existing regulatory framework and the shortcomings/needs for improvement arising from it.

#### **SGEI actions in the Europe 2020 Strategy**

Integrated guidelines to cover the scope of the EU priorities and targets will be adopted based on the strategy. The financing of SGEI is already dealt with in detail by a number of Commission documents (directives, decisions, frameworks, etc.) which set out the main characteristics of such services and their financing regime. The SGEI consultation initiated by the Commission in 2010 also required Member States to report on the way they applied the existing legal framework in their national law. However, the control of the SGEI or the exploration of alternative methods for reaching the same objective is not included in the mechanism.



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The Report of former Commissioner Mario Monti on 'A New Strategy for the Single Market' included suggestions on how to drive the Internal Market of the EU further<sup>1</sup>. This was followed by a Commission communication containing 50 proposals on how to relaunch the Single Market<sup>2</sup>. These documents are an important part of the 2020 Strategy, as the Single Market is the common foundation of the flagships introduced by the latter document (*i.e.* knowledge and innovation, low-carbon, resource efficient and competitive economy, high employment economy delivering social and territorial cohesion).

Regarding future developments and activities in the field of SGEI, the communication contains concrete proposals (*i.e.* proposal No 25) on how the challenges in this field will be dealt with by the Commission in the near future. The proposal states that the Commission will undertake to 'implement measures enabling better evaluation and comparison at European level of the quality of the services of general interest on offer, particularly on the basis of experience in the field'. Whether this will introduce incentives to make the services provided more efficient or to assess them in relation to the desired result remains to be seen in the near future.

The same proposal states that the Commission will examine the suitability and possibility of extending universal service obligations into new areas in the light of changes to the essential needs of European citizens, potentially on the basis of Article 14 of the TFEU. Except for the universal service obligations defined in liberalisation directives, the drive towards defining new areas as SGEI always came from the Member States. Furthermore, Article 14 of the TFEU (as well as Article 16 of the TEC) has until now been interpreted as a rather general declaration of principles and an acknowledgment of the importance of such services at EU level and not as a substantive change to the existing framework. Introducing new universal service obligations based on this legal basis would constitute a novelty and change the division of competences between the EU and Member States.

#### **The Legal Framework**

The existing legal framework governing SGEI raises a series of questions and challenges for the Member States, as well as local and central authorities, when defining such services and designing a system of financial support. Member States have the exclusive competence to define such services. The Commission will, however, have the competence to perform a manifest error test to avoid situations of Member States removing entire sectors from the application of the EU competition rules. In the absence of a regulatory definition of SGEI, the Commission is limited to checking whether the service concerned satisfies certain minimum criteria common to every SGEI mission within the meaning of the Treaty. The jurisprudence has explained that these minimum criteria are the following: the presence of an act of public authority entrusting the operators in question with an SGEI mission, the universal and compulsory nature of that mission, as well as an indication of reasons why the service in question deserves to be characterised as an SGEI.

Following Proposal 25 of the Commission's communication to relaunch the Single Market, the Commission has recently published a Communication on the Reform of the EU State Aid Rules on Services of General Economic Interest. This communication calls for '[...] clearer, simpler, more proportionate and more effective instruments to ensure an easier application of the rules and hence to promote a more efficient delivery of high quality SGEIs to the benefit of people living in the EU<sup>3</sup>'.

Although it is welcomed that the Commission envisages an easing of the administrative burden of public authorities as regards measures that are of a relatively limited scale and thus only have a minor impact on trade between Member States, there are still a number of implications. At this point, for example, there is no specific approach to SGEI based on the economic sectors to which the services belong nor as regards the exact limits Member States have under State aid rules when defining an economic activity as SGEI. This would have been a welcome approach since the definitions of the services differ significantly depending on the sector. By extending universal service obligation into new areas, as

proposal 25 suggests, the task of public authorities to define SGEI would become even more difficult and the risk of committing manifest errors would become greater if no such sectoral approach were to be introduced.



To give an example, the social housing sector and hospital care are excluded from the obligation of notification to the Commission disregarding the level of compensation given by Member States. At first sight this means that the Member States have a wide margin of appreciation when it comes to the financing of these sectors. But, the definition of what services are covered remains a crucial issue and, at this point, there is no guidance on the specific requirements for each sector. The specific characteristics of the social housing sector (e.g. income of the target group, share of non-SGEI objectives that can be pursued by the provider) will be different than those in the hospital sector where aspects such as the content of the services provided, requirements of compulsory affiliation, universal obligation but also the distinction between medical services and other non-SGEI services, such as management activity, will have to be taken into account. Different aspects will

therefore have to be considered in the definition of the service and a more detailed view on the content of these SGEI, as well as on the related services, would provide greater legal certainty for the national authorities.

## Conclusion

The priorities set out in the Europe 2020 Strategy need effective competition rules to materialise. The current legislative framework for financing SGEI, as part of EU competition policy, expires in November 2011 and the Commission is in the process of amending its rules. The overall objective of this reform is to boost the contribution that SGEI can make to the wider EU economic recovery and also guarantee certain services at affordable conditions to the general population. It goes without saying that this reform will go alongside the priorities set out in the strategy and help to create the conditions for establishing and safeguarding the benefits for companies and citizens and guarantee long-term prosperity. It is only hoped that it will also provide adequate guidance to the public authorities and facilitate their task of defining SGEI in an efficient and effective manner.

## Notes

- <sup>1</sup> Report to the President of the European Commission, Barroso J. M., by Monti, M., 9 May 2010.
- <sup>2</sup> COM(2010) 608 final/2.
- <sup>3</sup> COM(2011) 146 final, 23 March 2011, p. 6.