



EUROPEAN COMMISSION

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Dear President,

The Commission would like to thank the Bundesrat for its Opinion on the Communication "A Quality Framework for Services of General Interest (SGI)" {COM (2011) 900 final} and apologises for the delay in replying.

The Commission has noted with interest the position of the Bundesrat and would like to provide the following clarifications concerning the main issues raised therein.

Concerning the EU competence on SGI, the Communication clearly indicates that the SGI concept covers both economic activities (SGEI) and non-economic services. In line with the concerns expressed in your opinion, we are clear that where SGI relate to non economic services, the latter are not subject to specific EU legislation and are not covered by the internal market and competition rules of the Treaty. As indicated, some aspects of how these services are organised may, however, still be subject to other general Treaty rules, such as the non-discrimination principle.

On the use of article 14 TFEU, where the Bundesrat has concerns about the Commission overstepping EU competences, the Communication makes clear that any assessment of the use of the Article as a legal basis will respect the existing diversity of services and situations within the EU. In addressing the issue of quality of services of general interest, the Communication makes clear that the organisation, delivery and financing of such services are primarily for Member States to decide at national, regional or local level.

While I can re-assure you that the Commission fully respects the Member States' discretion in defining and providing public services, it is however entrusted by the Treaty with the task of State aid control. This is why the Commission has to ensure that public service compensations are limited to what is necessary for the provision of the service.

The Commission is convinced that the latest State aid and public procurement reforms will provide clearer, simpler and more effective rules.

On State aid, the new SGEI package of rules will for instance:

- clarify key concepts in the field of State aid for SGEI. This meets a broad request by Member States and stakeholders. It greatly increases legal certainty for both public authorities and SGEI providers. For instance, we have clarified the concepts of

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undertaking and economic activity, on the basis of and in line with the case law of the European courts.

- simplify considerably the treatment of social services, regardless of the amount of the compensation. Social services play a very important role in our society and there is less need for a very strict scrutiny. They fall under the new Decision and now benefit from a more generous exemption from notification than before and light compatibility criteria.

I would also like to mention the SGEI-specific de minimis Regulation¹ which was adopted in April 2012. This is intended to be also a major tool of simplification and to reduce administrative burden for small SGEIs. Under this more proportionate approach, there is however a stricter scrutiny for large commercial SGEIs. The threshold for the annual amount of compensation under the Decision has been lowered from 30 million EUR to 15 million EUR; therefore, more important cases will be notified to the Commission, which could be the case for public service compensation in sectors such as water management or district heating.

On the review of the public procurement directives, considerable efforts have also been made to simplify the current procedures. Hence the Commission proposed notably:

- an increased possible use of negotiation through the competitive procedure with negotiation and prior publication;

- simplified procedures for regional and local contracting authorities, who can replace the publication of individual contract notices by the publication of a general notice for their planned procurement for the next year;

- a reduction of documentation requirements. This will be achieved in particular through the compulsory acceptance of self-declarations, whereby a bidder declares on oath that he fulfils the criteria which are a pre-condition for tendering, e.g. no conviction for corruption etc. Only the winning bidder will then be obliged to supply the documentary evidence to prove the facts that he declared in his self-declaration. Furthermore, the proposal prohibits contracting authorities from requiring economic operators to re-submit documents which were previously submitted to them within the past four years in an earlier procedure and which are still valid;

- ambitious measures on electronic procurement aiming at full electronic communication in public procurement within a period of two year after the implementation deadline of the adopted Directive;

- the shortening of deadlines,

- the alleviation of publication requirements.

In addition, the Commission proposed a specific regime for the procurement of social and health services. As they generally have a limited cross-border dimension, social,

¹ Commission Regulation (EU) No 360/2012 of 25 April 2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid granted to undertakings providing services of general economic interest Text with EEA relevance (OJ L 114, 26.4.2012, p. 8).

health and education services may benefit from a specific and much simpler regime. They may be subject to a higher threshold (€500,000) above which Member States will remain free to determine the procedural rules applicable, while respecting the basic principles of transparency and equal treatment. The only obligations shall consist in the publication of a contract notice and of a contract award notice. In addition, Member States will have to make sure that contracting authorities may take into account inter alia all quality and continuity criteria they consider necessary for the services in question. Member States may hence eliminate the price as sole award criterion for such services.

Lastly the public procurement reform fully respects the principle of municipal and local self-government, as well as the particular importance of SGIs, as recognised by the Treaties. In fact, the proposals guarantee the aforementioned autonomy by including new specific provisions relating to public-public co-operation.

On section 3 of the SGI Communication, the Commission is of the view that the demand for services of general interest and the way they are provided has changed significantly. This is partly due to evolving societal needs and technological changes but also to deregulation and privatisation processes. Concerning the latter, the Commission would refer the Bundesrat for more detailed evidence based information to the OECD which regularly takes stock and undertakes studies on the privatisation processes².

Finally, the Commission takes note of the Bundesrat's views on the possible review of the public service regulation for inland transport and a possible generalisation of competitive tendering procedures to award public services contracts for the railway sector. Similarly the Commission has taken note of the Bundesrat's views on the Commission's proposal on concessions which is now being discussed in the European Parliament and in Council.

I look forward to continuing our political dialogue on these important issues.

Yours faithfully,

*Maroš Šefčovič
Vice-President*

² See "Privatisations in the 21st century: summary of recent experiences" – OECD 2010