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October 2011

State aid rules and SGEI

EFSI calls for a legislative framework which prevents providers from distortion of competition

On 16 September 2011, the European Commission launched a public consultation on the new texts regarding the application of State aid rules to Services of General Economic Interest (SGEI) and therefore to Social Services of General Interest (SSGI). EFSI, the European Federation for Services to Individuals, takes the opportunity to set out its view on the revision proposed by the Commission.

Facing the growing demand on social services in all the Member States, EFSI stresses the importance of private companies' role, together with public entities, in the development of the sector, in order to guarantee accessibility, proximity, quality, choice and innovation for the citizens. Only their joint and collaborative actions and expertise will participate in the development of social services, thus increasing users' well-being, enhancing work-life balance, boosting job creation and reducing informal economy.

Ensuring an equal treatment between providers

EFSI considers that it is of crucial importance that European decision-makers ensure the development of a coherent and flexible legislative framework for SGEI that do not deprive access to the market for private companies. Flexibility is highly desirable as the current pressure on public finance and current and future societal changes require constant adaptation from social services providers.

Considering the general debate about SSGI, EFSI considers that their particularity should not lead to a special treatment excluding them from free market logic. Their social nature should not prevent the implementation of full EU competition, state aid and public procurement award contract rules to SSGI as those rules ensure quality, easy access and protection for consumers.

Thus, EFSI firmly opposes the introduction of a new exemption of notification for compensation of SGEI “meeting essential social needs as regards health care, childcare, access to the labour market, social housing and the care and social inclusion of vulnerable groups”¹. This exemption will jeopardize transparency and provoke distortive effects and unequal treatment between providers of SSGI.

The existence of multiple designing, funding and delivering process of social services across Europe should prevent the EU from adopting such a framework -subject to various misinterpretations- that could undermine social services benefits. Furthermore, contrary to what is stated in the draft Decision² the risk of distortion of competition in those sectors is a sizeable reality that the Commission should neither underestimate nor ignore. EFSI stresses the fact that some social services, such as childcare, domestic help or tutoring, are already structured in competitive national markets (and not just locally).

Yet, if this exemption was to be implemented, it should go with a compulsory provision for Member States to make their decision to grant compensation publicly available. Furthermore, the interpretation of the exemption differs from one language to another. Thus, EFSI urges the Commission, based on the English version, to harmonize the 22 translations of the Decision. It should also be stated that notions such as “essential social needs”, “social inclusion” or “vulnerable groups” have to be clarified in a restrictive way so as to protect existing services provided in competitive markets.

Moreover, EFSI recalls that it is the nature of the activity and its preventive effect that determine whether this activity is deemed economic or non economic. Any approach based on the sector, the status or the way in which an entity is funded is not acceptable. Thus, EFSI welcomes the Commission’s clarification of “undertakings” and “economic activity”³. Any other approach would undermine the principle of equal treatment between providers.

As a consequence of such unequal treatment, consumers’ choice will be limited as well as their opportunity to have access to a wide range of high quality social services.

Ensuring access and better quality of social services

Lately, society experienced an increased outsourcing of public sector tasks and developed public-private partnerships (PPP) in order to meet the growing demand. SGEI are thus characterized by a great diversity of providers for similar activities: public providers as well as not-for-profit and for-profit providers. Such multiplicity and complementarities lead to innovation, higher quality and a

¹ Draft Decision on the application of Article 106 (2) of the Treaty of the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest, Article 1, paragraph (c)

² Draft Decision on the application of Article 106 (2) of the Treaty of the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest, point (10) p. 3

³ Draft communication on the application of the European Union state aid rules to compensations granted for the provision of services of general economic interest, p 3 to 9

highly dynamic sector. In addition, it allows consumers to choose their supplier in a service where the personal interaction can be essential (eg. home care for elderly and disabled people).

EFSI agrees that any approach of SGEI and SSGI should secure the high quality of services, all the more so regarding the current economic and social crisis. From this perspective, EFSI welcomes the new provision that requires to Member States to take into account efficiency incentives when determining the amount of a compensation⁴.

EFSI recalls that private companies providing personal services are also committed to protect general interest and enhance accessibility and quality. Moreover, the introduction of public-private partnerships in services leads to cost effectiveness.

Lastly, private companies providing personal services are actively involved in the research of innovative solutions, adaptation to the changing needs of each individual and the development of workers' skills.

EFSI requests the Commission to implement an exchange of best practices between Members States in order to demonstrate that an equal treatment between not-for-profit and for-profit providers ensure the development of affordable and innovative social services for all users. For instance, the French and Belgian systems demonstrate that they meet social needs by competitive subsidized regulation of demand.

EFSI urges the Commission to review its draft texts regarding the application of State aid rules to SGEI in order to ensure that their implementation will ensure an equal treatment for services providers.

About EFSI:

As the European Federation for Services to Individuals, EFSI brings national federations and associations as well as private companies together in order to promote services to individuals in Europe. Through its members, EFSI is present in 22 EU members' states⁵.

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⁴ Draft communication on the EU framework for State Aid in the form of public service compensation (2011), p.9

⁵ Austria, Belgium, Bulgaria, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Luxemburg, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, United-Kingdom.