



## Activity Report 2010

## NOTE

This activity report briefly summarizes the work performed by the Public Services Intergroup in 2010. This report presents six directions of work which gave structure to our reflexion. The boxed diagrams at the end of the chapter summarize our positions at the end of December 2010, in respect of each theme. This report will go online early in 2011, so that all of members and stakeholders can enrich it with their comments.

## Introduction

The expectations placed in the European Union by public service users and providers continue not to be met. At best, public services are viewed as left by the wayside of European construction. At worse, the European Union is held responsible for the weakening of public services through privatization.

SGI, SGEI, SSGI, SGNEI—the various forms of public services—as seen by European citizens, play a role which is increasingly insignificant and difficult to grasp.

The new session of the European Parliament 2009-2014 must be a session for the clarification and reinforcement of the impact of public services in Europe.

First, because the Lisbon Treaty gives the European Parliament, by co-decision with the Council, a new competency: definition of the principles and determination of the economic and financial conditions enabling SGEIs to perform their missions without prejudice to the competencies of the Member States for the provision, performance and finance of these services.

Second, it is urgent to assure the performance of public services missions, whether directly or indirectly, by the Member States, regions and communes in Europe. Local and national elected members cannot be dispossessed of their political responsibilities and competencies in this field.

Finally, there is a strong demand for social services from European citizens. European citizens wish the European Union to guarantee them access to fundamental services (education, healthcare, water, energy, communications...), and respond to their deep aspirations, for equality of access to and public regulation of the delivery of, such services. The economic and social crisis cannot but reinforce this expectation and the urgency of our responsibility.

The ambition of the Public Services Intergroup is to contribute to the development and clarification of the debate on public services, and to bring forward proposals. Through holding meetings monthly, which regularly draw more than one hundred participants, the Intergroup has demonstrated its capacity to promote in-depth debate and exchange of points of view between political groups, other European institutions (Council, Commission, Committee of the Regions and European Economic and Social Committee), as well with the European public services partners and actors.

European Commissioners Laszlo Andor, Joaquin Almunia and Michel Barnier have replied to our invitations and demonstrated that they were available for debate and discussion.

We have also carried out in-depth work with the Presidency of the Council represented by Laurette Onkelinx, Deputy Prime Minister of Belgium, notably in the organization, holding and follow-up to the 3rd SSGI forum.

This activity report highlights key moments in the on-going process of exchange of points of view and stimulation of new thinking. Hence concrete proposals for the future. This report breaks new ground, in that it “stakes out a position.”

2010 ended with the Communication from the Commission entitled “Towards a Single Market Act for a highly competitive social market economy.”

Whereas the Europe 2020 strategy makes no reference to public services, we greet the Single Market Act proposal with interest because of the frame it provides for work going forward in the next two years. The Public Services Intergroup will contribute to ensuring that the Single Market Act is also a political reference framework, establishing a new balance, through solidarity and public intervention, tempering the excesses of free market competition. Public services must play an effective role in European construction. The European Parliament is committed to action to ensure this.

**Françoise Castex**  
**President Public Services Intergroup**

## HOW PUBLIC SERVICES INTERGROUP WORKS

*The Public Service Intergroup is supported by five political groups (PPE, S&D, ALDE, GREEN, GUE) who are represented on the Intergroup secretariat. The Intergroup operates on a collegiate basis.*

### President

**Castex** Françoise, S&D, JURI - EMPL<sup>1</sup>

### Vice-Presidents

**Auconie** Sophie, EPP, REGI – ECON

**Bennahmias** Jean-Luc, ALDE, EMPL - REGI

**Canfin** Pascal, Greens/EFA, CRIS - ECON - IMCO

**Ruehle** Heide, Greens/EFA, IMCO - REGI

**Ory** Csaba, EPP, EMPL – DEVE

**Portas** Miguel, GUE/NGL, CRIS - BUDG – ECON

**Simon** Peter, S&D, ECON - REGI

**Vergiat** Marie-Christine, GUE/NGL, CULT – LIB

### Members of European Parliament who are members of Intergroup

*The European MEPs whose names follow have expressed their support for the setting up of the Public Services Intergroup in October/November 2009.*

*The Intergroup is open to all MEPs who wish to contribute to its work or simply take part in one of its meetings.*

**Arif** Kader, S&D, INTA - AFET

**Bach** Georges, EPP, TRAN - EMPL

**Belet** Ivo, EPP, ITRE - CULT

**Cercas** Alejandro, S&D, EMPL - AGRI

**Christensen** Ole, S&D EMPL - REGI

**Correia De Campos** António Fernando, S&D, IMCO - ITRE

**Daerden** Frederic, S&D, EMPL - BUDG

**Dantin** Michel, EPP, AGRI - TRAN

**De Keyser** Véronique, S&D, DEV - AFET

**Déli** Karima, Greens/EFA, CULT - EMPL

**Désir** Harlem; S&D, INTA - DEV

**Durant** Isabelle, Greens/EFA, BUDG - TRAN

**Färm** Göran, S&D, BUDG – AFET

**Ferreira** Elisa, S&D, ECON - TRAN

**Gebhardt** Evelyne, S&D, IMCO - LIBE - CRIS

---

<sup>1</sup> AFET Foreign Affairs. DROI Human Rights. SEDE Security and Defence. DEVE Development  
INTA International Trade. BUDG Budgets. CONT Budget Control. ECON Economic and Monetary Affairs  
.EMPL Employment and social affairs. ENVI Environment, public health and food safety  
ITRE Industry, research and energy. IMCO Internal market and consumer protection. TRAN Transport and  
Tourism. REGI Regional Development. AGRI Agriculture and Rural development. PECH Fishing . CULT  
Culture and Education. JURI Legal Affaires. LIBE Civil rights, justice and internal affairs. AFCE  
Constitutional affairs. FEMM Women's rights and equality of opportunity. PETI Petitions  
CRIS Social, economic and financial crisis. SURE Commission of political challenges

**Giegold** Sven, Greens/EFA, ECON - CRIS - EMPL  
**Gomes** Ana, S&D, AFET - LIBE  
**Guillaume** Sylvie, S&D, LIBE - FEMM  
**Hoang Ngoc** Liem, S&D, ECON - IMCO  
**Howitt** Richard, S&D, AFET - EMPL  
**Hughes** Stephen, S&D, EMPL - CRIS - CULT  
**Kalniete** Sandra, EPP, IMCO - AGRI  
**Lamassoure** Alain, EPP, BUDG - AFET  
**Lamberts** Philippe, Greens/EFA ITRE - ECON  
**Liberadzki** Boguslaw, S&D, BUDG - TRANS  
**Mathieu** Véronique, EPP, LIBE - BUDG  
**Matias** Marisa, GUE/NGL, ITRE - ENVI  
**Moreira** Vital, S&D, INTA - AFCO  
**Morin-Chartier** Elisabeth, EPP, EMPL - CULT  
**Ranner** Hella, EPP, TRAN - CULT  
**Rapkay** Bernhard, S&D, JURI - ECON  
**Regner** Evelyn, S&D, JURI - EMPL  
**Riquet** Dominique, EPP, BUDG - TRAN  
**Rochefort** Robert, ALDE, IMCO - CULT  
**Schroedter** Elisabeth, Greens/EFA, EMPL - REGI  
**Sosa Wagner** Francisco, NI, ITRE - DEVE  
**Tatarella** Salvatore, EPP, ENVI - TRAN  
**Tavares** Rui, GUE/NGL, LIBE - CULT  
**Turunen** Emilie, Greens/EFA, IMCO - EMPL  
**Van Brempt** Kathleen, S&D, ITRE - ENVI  
**Vaughan** Derek, S&D, Committees BUDG - JURI  
**Vergnaud** Bernadette, S&D, IMCO - ENVI  
**Verheyen** Sabine, EPP, CULT - REGI  
**Weber** Henri, S&D, ITRE - JURI

# Partners and stakeholders of Intergroup

*The interest of the Intergroup is to enable continuous dialogue between MEPs, institutions and actors in public services. By their regular attendance at meetings and their contributions to debate they provide an assurance of the success of this Intergroup.*

## **European Institutions**

European Commission  
Committee of the Regions  
Economic and Social Committee

## **Organisations**

**The European Older People's Committee (AGE) -**  
[isabel.borges@ageplatform.org](mailto:isabel.borges@ageplatform.org)

**Antenne interrégionale Auvergne-Centre-  
Limousin -** [info@regioncentre.fr](mailto:info@regioncentre.fr)

**Association Internationale de la Mutualité -**  
[aim.secretariat@aim-mutual.org](mailto:aim.secretariat@aim-mutual.org)

**Austrian Association of Cities -**  
[Stb-bxl@skynet.be](mailto:Stb-bxl@skynet.be)

**Bundesarbeitsgemeinschaft der Freien Wohlfahrtspflege -**  
[euvertretung@bag-wohlfahrt.de](mailto:euvertretung@bag-wohlfahrt.de)

**Caisse Centrale de la Mutualité Sociale Agricole -**  
[cazeuneuve.jeremie@ccmsa.msa.fr](mailto:cazeuneuve.jeremie@ccmsa.msa.fr)

**Caritas Europa -**  
[aopromolla@caritas-europa.org](mailto:aopromolla@caritas-europa.org)

**Comité européen de coordination de l'habitat social (CECODHAS  
Housing Europe) -** [info@cecodhas.org](mailto:info@cecodhas.org)

**The European Confederation of cooperatives and worker-owned  
entreprises active in industry and services**  
(CECOP – CICOPA Europe) - [cecop@cecop.coop](mailto:cecop@cecop.coop)

**Comité européen des associations d'intérêt général (CEDAG) -**  
[cedag@cedag-eu.org](mailto:cedag@cedag-eu.org)

**The European Centre of Employers and Enterprises providing  
Public services (CEEP) -** [ceep@ceep.eu](mailto:ceep@ceep.eu)

**Comité Européen de Liaison sur les Services d'Intérêt Général  
(CELSGI) -** [celsig@celsig.org](mailto:celsig@celsig.org)

**Confédération des Organisations Familiales de l'Union Européenne  
(COFACE) -** [secretariat@coface-eu.org](mailto:secretariat@coface-eu.org)

**Conseil Régional Provence – Alpes – Cote d'Azur -**  
[Info.paca@bruxeurope.be](mailto:Info.paca@bruxeurope.be)

**Cooperatives Europe -**

[a.mathis@coopseurope.coop](mailto:a.mathis@coopseurope.coop)

**Council of European Municipalities and Regions (CEMR) -**  
[cemr@ccre.org](mailto:cemr@ccre.org)

**Délégation régionale Rhône Alpes -**  
[AMAZUY@rhonealpes.fr](mailto:AMAZUY@rhonealpes.fr)

**Deutscher Caritasverband e. V. -**  
[info@caritas.de](mailto:info@caritas.de)

**Deutscher Landkreistag (DLT) -**  
[Info@Landkreistag.de](mailto:Info@Landkreistag.de)

**Diakonisches Werk der EKD**  
[eu-vertretung@diakonie.de](mailto:eu-vertretung@diakonie.de)

**EPSU**  
[epsu@epsu.org](mailto:epsu@epsu.org)

**European Anti-Poverty Network (EAPN) -**  
[team@eapn.eu](mailto:team@eapn.eu)

**European Association of Service Providers for Persons with Disabilities (EASPD) -** [info@easpd.eu](mailto:info@easpd.eu)

**European Economic and social committee (EESC) -**  
[leonora.dinicolantonio@eesc.europa.eu](mailto:leonora.dinicolantonio@eesc.europa.eu)

**European Foundation Centre (EFC) -**  
[efc@efc.be](mailto:efc@efc.be)

**European Trade Union Confederation (ETUC) -**  
[etuc@etuc.org](mailto:etuc@etuc.org)

**Eurochild -**  
[info@eurochild.org](mailto:info@eurochild.org)

**Eurodiaconia -**  
[office@eurodiaconia.org](mailto:office@eurodiaconia.org)

**European Foundation for the Improvement of Living and Working Conditions (EUROFOUND) -**

[Information@eurofound.europa.eu](mailto:Information@eurofound.europa.eu)

**Europabüro der bayerischen Kommunen -**  
[info@ebbk.de](mailto:info@ebbk.de)

**European Broadcasting Union -**  
[ebu@ebu.ch](mailto:ebu@ebu.ch)

**European Hospital and Healthcare Federation -**  
[sq@hope.be](mailto:sq@hope.be)

**European Network of Cities and Regions for the Social Economy -**  
[reves@revesnetwork.net](mailto:reves@revesnetwork.net)

**European Platform for Rehabilitation -**  
[epr@epr.eu](mailto:epr@epr.eu)

**Finnish Federation for Social Welfare and Health -**  
[SosiaaliturvanKL@stkl.fi](mailto:SosiaaliturvanKL@stkl.fi)

**German Association of local public utilities (VKU) -**  
[witte@vku.de](mailto:witte@vku.de)

**German Association of Towns and Cities (DST)**  
[Ulrich.haarmann@staedtetag.de](mailto:Ulrich.haarmann@staedtetag.de)

**German Association of Towns and Municipalities**  
[dstgb@dstgb.de](mailto:dstgb@dstgb.de)

**Hauptverband der Österreichischen Sozialversicherungsträger -**  
[posteingang.allgemein@hvb.sozvers.at](mailto:posteingang.allgemein@hvb.sozvers.at)

**International Union of Tenants -**  
[Barbara.steenbergen@iut.nu](mailto:Barbara.steenbergen@iut.nu)

**MP4-Champ social -**  
[mp4.champsocial@gmail.com](mailto:mp4.champsocial@gmail.com)

**Nantes Métropole -**  
[Philippe.malinge@nantesmetropole.fr](mailto:Philippe.malinge@nantesmetropole.fr)

**Spanish National Organisation of the Blind (ONCE) -**  
[soi@once.es](mailto:soi@once.es)

**Pour la Solidarité Asbl -**  
[info@pourolasolidarite.eu](mailto:info@pourolasolidarite.eu)

**Représentation de la région Aquitaine à Bruxelles -**  
[info@bureau-aquitaine.be](mailto:info@bureau-aquitaine.be)

**Représentation de la région Ile-de-France à Bruxelles -**  
[info@iledefrance-europe.eu](mailto:info@iledefrance-europe.eu)

**Représentation de la région Midi-Pyrénées à Bruxelles -**  
[office@midipyreneeseurope.eu](mailto:office@midipyreneeseurope.eu)

**Représentation de la région Rhône-Alpes à Bruxelles -**  
[delegation.bruxelles@region-rhone-alpes.fr](mailto:delegation.bruxelles@region-rhone-alpes.fr)

**Social Platform -**  
[platform@socialplatform.org](mailto:platform@socialplatform.org)

**SOLIDAR -**  
[mathias.maucher@solidar.org](mailto:mathias.maucher@solidar.org)

**Union sociale pour l'habitat -**  
[drip@union-habitat.org](mailto:drip@union-habitat.org)

**Veolia Environnement -**  
[david.berman@veolia.com](mailto:david.berman@veolia.com)

# 2010 Meetings of IGSP

Thursday 14 January - Brussels

**Consultation of stakeholders on the priorities and working program of InterGroup Social Policy**

Participants: 70

Wednesday 20 January - Strasbourg

**Constituent meeting**

Participants: 40

Wednesday 24 February – Brussels

**Public services and the Lisbon treaty: examination of Article 14**

Guest: Raquel Cortes Herrera, SG, Commission

Participants: 130

Wednesday 24 March - Brussels

**Mapping public services – Manifest error of assessment**

Guests: Ralf Resch SG CEEP, Lida Balta DG COMP

Participants: 140

Monday 21 June – Brussels

**State assistance to public services: assessment of "SGEI package"**

Guest: Commissioner Joaquin Almunia

Participants: 150

Thursday 8 July - Strasbourg

**Transposition of the Directive on Services and Public Services**

Guests: MEP Evelyne Gebhardt, Marie Martin-Prat, DG Market.

Participants: 70

Thursday 16 September - Brussels

**Publics Services 2020**

**Intergroup Common Conference – Belgian Presidency of EU**

Guest: Lorette Onkelinx, Deputy Prime Minister, Belgium

Participants: 160

Wednesday 6 October - Brussels

**Public sector contracts, concessions, in house, PPP**

Guests: MEP Heide Rühle, Mireille Flam, Vice-President CEEP

Participants: 100

Wednesday 10 November - Brussels

**What political options after 3rd SSGI Forum**

**(in partnership with Social Economy Intergroup)**

Guests: Lorette Onkelinx, Commissioner Lazslo Andor, Pervenche Berès

Participants: 100

# Hearings of Personalities in 2010

## European Commission

- **Laszlo Andor**, Commissioner for Employment, Social affairs and Equality of Opportunities
- **Joaquin Almunia**, Competition Commissioner
- **Michel Barnier**, Commissioner for Interior Market and Services
  
- **Lida Balta**, DG Competition
- **Nicola Pesaresi**, DG Competition
- **Marie Martin-Prat**, DG Interior Market and Services
- **Raquel Cortes Herrera**, General Secretariat

## Presidency of the Council

- **Laurette Onkelinx**, Deputy Prime Minister, EU Belgian Presidency

## Committee of the Regions

- **Jean-Louis Destans**, President of the General Council of Eure, member
- **Henk Kool**, Deputy Mayor of the Hague, member

## European Economic and Social committee

- **Raymond Hencks**, member
- **Pierre Bauby**, expert

## European Parliament

- **Pervenche Berès**, President of Commission for Employment-Social Affairs
- **Evelyne Gebhardt**, Rapporteur services directive
- **Proinsias de Rossa**, Rapporteur on the future of social services
- **Sophie Auconie**, Rapporteur on the future of social services
- **Heide Rühle**, Rapporteur on public sector supply contracts

## Stakeholders

- **Angelika Poth-Mögele**, Council of Communes and Regions of Europe
- **Armin Duttine**, VER.DI Trade Union
- **Jens Lattmann**, Association of German Towns (DST)
- **Joseph Niemec**, Secretary of European Federation of Trade Unions
- **Laurent Ghekiere**, President of SGI Commission, CEEP
- **Marc Bellanger**, Legal expert
- **Mireille Flam**, Vice-President CEEP, deputy to the Mayor of Paris
- **Nutzenberger**, German Association of Towns and Municipalities (DStGB)
- **Ralph Resch**, General Secretary, CEEP
- **Stéphane Rodrigues**, Legal expert
- **Uwe Zimmermann**, Director for Europe and Economics, DStGB

# POINTS COVERED IN YEAR 2010

*Our clarifications,  
some shared points of view  
and joint proposals.*

# I

## Support point of Lisbon Treaty

*The first approach of the Intergroup was to seek to grasp the new legal framework constituted by the Treaty of Lisbon*

### **1. New competency of Parliament in the field of public services.**

Art. 14 TFUE (ex Art. 16 TCE): Without prejudice to Article 4 of the Treaty on European Union or to Articles 93, 106 and 107 of this Treaty, and given the place occupied by services of general economic interest in the shared values of the Union as well as their role in promoting social and territorial cohesion, the Union and the Member States each within their respective powers and within the scope of application of the Treaties, shall take care that such services operate on the basis of principles and conditions, particularly economic and financial conditions, which enable them to fulfil their missions. *The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall establish these principles and set these conditions* without prejudice to the competence of member States, in compliance with the Treaties, to provide, to commission and to fund such services.

### **2. New specific protocol for SGEIs establishes roles of local authorities**

Protocol on services of general interest (n°26):

Article premier

The shared values of the Union in respect of services of general economic interest within the meaning of Article 14 of the Treaty on the Functioning of the European Union include in particular:

- the essential role and the *wide discretion of national, regional and local authorities in providing, commissioning and organising services of general economic interest* as closely as possible to the needs of the users;
- the diversity between various services of general economic interest and the differences in the needs and preferences of users that may result from different geographical, social or cultural situations;
- a high level of quality, safety and affordability, equal treatment and the promotion of universal access and of user rights.

Article 2

The provisions of the Treaties do not affect in any way the competence of Member States to provide, commission and organise non-economic services of general interest.

### **3. New legal basis establishes right to access to public services**

Article 36 of the Charter of Fundamental Rights of the Union: access to Services of General Economic Interest.

“The Union recognises and respects access to services of general economic interest as provided for in national laws and practices, in accordance with the Treaty establishing the European Community, in order to promote the social and territorial cohesion of the Union.”

### **4. Transverse social clause**

Article 9 “In defining and implementing its policies and activities, the Union shall take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health.”

These four points of the Treaty of Lisbon are very positive elements. Are they sufficient to secure the organisation and management of national and local public services? This question remains a point of debate with the European Commission. The Intergroup has on several occasions taken a stance to say that the Treaty constitutes a necessary legal basis but not a sufficient one. The Treaty leaves too much room still to interpretation, and hence to legal unsafeness.

**The Intergroup believes that the legal environment of public services should be clarified on the basis of the new provisions of the Treaty as is authorised by Article 14 and in respect of Articles 9, 106 (3), 114 TFUE and Protocol 26.**

## II

# Principles and conditions of delivery of public services in the European Union

The Public Services Intergroup wishes to clarify the expectations of actors in public services.

A public consultation process was launched targeted to all stakeholders in order to gather their reflections and concrete proposals in this field<sup>2</sup>.

We draw from this public consultation a number of converging proposal covering the principles and conditions of delivery of public services in the European Union.

### 1. Common *principles* of delivery of public services

- principle of diversity taking into consideration national and local diversity,
- **principles of quality and mutability**, given the changing nature of needs to be satisfied,
- principle of protection of users,
- **principles of necessity, universality and accessibility taking into consideration the essential and even vital nature of the needs to be met**
- principle of continuity, including financial and territorial continuity to assure the maximum extent of the domain of equality and sustainability for public services, so ensuring better cohesion at the local and community level

There arise from these principles a certain number of common requirements for the conditions under which public services are delivered.

### 2. Common *conditions* of delivery of public services

- legal certainty and foreseeability,
- economic and financial security, irrespective of the mode of delivery of public services (in-house, delegation, convention, concession...)
- freedom of choice for public organizing authorities in the fields of contracting and execution
- evaluation of European legislation in regard to the quality of services delivery (notably evaluation of sectorial directives)
- management and administration on a basis of equal representation and notably the inclusion of end-users.

---

<sup>2</sup> The contributions of stakeholders to this public consultation on Article 14 of the Treaty on the operation of the European Union is available on the Intergroup website: <http://services-publics-europe.eu/>

**This consultation process has given the Intergroup a basis of principles and conditions applicable to the delivery of public services. Some principles have already been spelled out in existing legislation (Treaty, Charters, Protocol). Intergroup's goal is therefore that concrete consequences be drawn from the foregoing, in terms of positive law.**

**The Intergroup has fixed as its priorities striving for equality of access, the democratic legitimacy of services, and the quality and continuity of the services needed by citizens.**

### **III**

## **Revision of the rules on State Assistance provided in the form of public service compensation**

Under the leadership of its two Vice-presidents, Pascal Canfin and Peter Simon, Public Services Intergroup initiated a second consultation with stakeholders on the practical difficulties encountered in the application of the “Monti Kroes”<sup>3</sup> package on state assistance in the form of compensation for public services.

Although the purpose of the regulation is at first sight restricted to questions of notification and the compatibility of assistance with Treaty provisions, its implementation obliges actors to re-examine all of their practice in the field of the finance of SGEIs and to become fully familiar with Community methodology in the field of SGEI definition. Hence the answers to the questionnaire sometimes went beyond the problems raised by the mere application of the regulations on state assistance, and related more generally to the interrelationships brought into being between national and Community regulations on public services and SGEIs.

**I/ The stakeholders all pointed out problems of interpretation and understanding of the different principles governing the rules on state assistance, which adversely affect the discharge of stakeholder responsibilities;**

- Distinction between services of general economic interest and non-economic services of general interest, and social services of general interest.
- Distinction between economic and non-economic activity.
- Distinction between locally-limited activities and truly transborder activities.

**II/ All of the contributions rang alarm bells in regard to the massive overuse of public sector tenders as a means to finance public services.** The majority of contributions emphasize the fact that the public sector procurement under competitive tendering is up to date the only way to secure finance for public services, both in terms of contractual relationships and finance.

III/ In a general manner, contributions emphasized **the lack of resources available to local administrations** to implement the decision of the Commission on state assistance through public service compensation, notably the requirement for regular controls over the compensation made.

---

<sup>3</sup> This legislative package sets up legal framework on the right to state assistance applicable to public service compensation. It completes the rules set up on this issue by EU Court of Justice in 2003 in its “Altmarck” decision.

The consultation process brought to the fore a number of **proposals**:

- **streamline the control procedures** advocated by the Commission over how intracommunity trading in services operates by, for example, introducing the presumption of absence of impact on intracommunity trade for local services of general interest.
- **replace the notion of “public procurement” in the 4th criterion of the Altmarker Jurisprudence by the concept of invitation to tender.** This modification would allow to give greater legal certainty to other procedures for financing works or services, and would also respond to the requirements for transparency and non-discrimination under the public services directives.
- **increase the threshold of the *de minimis* regulation.**
- **improve the criterion for “mandating”** by giving greater flexibility to its application.
- **increase the number of SSGI sectors which benefit from the exemption to notify** without consideration of threshold, by acting on the basis of the same considerations as led to the current exemption of hospitals and social housing.
- **introduce other criteria** than purely economic and financial to calculate compensation (social criteria, positive externalities...)
- **lighten the workload of administrative and budget control** weighing down on local authorities by reversing the burden of proof of over-compensation. Hence the control procedure would only be necessary if there was a verifiable risk of adverse effect on competition.

This investigatory and consultation work has also raised the question of the margins of manoeuvre available to the public sector authorities, when defining the field of services in the general interest

**The Intergroup believes that the rules of the Altmarck-SGEI package applicable to SSGI service providers and to local authorities must be simplified and better suited to the special features of social services providers (small service providers, local nature) and to national special features, in terms of the organisation and finance of these services.**

**It is essential to clarify the concepts and seek to take into consideration other criteria than purely financial.**

**The Intergroup requests the European Commission to elaborate a methodology which must be easy to understand and directly applicable, intended for authorities organizing public services.**

## IV

### **Application of the services directive: Balance sheet , challenges and prospects**

The application of the framework agreement was the subject of a meeting in the presence of Evelyne Gebhardt, rapporteur to the European Parliament on this issue for many years, and Maria Martin-Prat for DG Internal Market.

A great majority of the Member States has already adopted modalities for 'horizontal' application, and most of them have also brought in modifications to specific regulations. Some countries have opted for vertical (sector by sector) transposition.

Only the "social services relating to social housing, assistance to children, families and persons in situations of temporary or permanent need, which are provided by the state or by service providers mandated by the state or charities recognised as such by the state" (article 2.2 j) are without the scope of the Directive. The exact scope of the above exception in regard to certain social services, under the Services Directive must be specified. In a more general manner, the special features of SSGI operators need to be taken into account by the rules of the internal market and of the Services Directive in particular.

**The Intergroup requests clarification of the notion of mandating. The rules surrounding mandating must be easy to apply by the organizing authorities.  
The Intergroup issues the reminder that the social services were excluded by reason of their special features, and that legal certainty is essential in this field.**

## V **Forward-looking programme for public services in Europe**

*The aim of Intergroup is to give its opinion on the agenda of the European Union and the public services field. 2010 was marked by two communications, Strategy for Europe 2020 in the earlier part of the year, and the Single Market Act at the end of the year.*

*On 16 September, 2010, the Intergroup held a seminar on the 2010 Strategy under the title "Thinking public services for 2020". The colloquium was organized in collaboration with the Belgian presidency of the European Union. The main directions of work are shown below.*

### **(Re) thinking public services for 2020**

European public services account for 26% of EU GDP, employ more than 64 million people, involve more than 500,000 providers of services to 500 million Europeans, and contribute to numerous missions in the general interest, including economic missions.

The Intergroup regrets that the public services (in all their forms and whatever name they come under) are not mentioned at all in the Communication "Europe 2020, a strategy for smart, sustainable and inclusive growth," although José Manuel Barroso had made this the theme for his successful campaign for the Presidency of the Commission.

- Public services are not services like any other, as they are the **instruments of the implementation of the social contract and constitute a major pillar of the social market economy.**

- Public services are not only at the heart of a **model of a society** as we would wish it to be, but also one of **the end purposes of the construction of the European Union.**

-A certain number of services are practical embodiments of the **fundamental rights** set out in the Charter. The challenge now is to realise the full potential of the Treaty, notably its Article 9 (the transverse social clause).

- Budget policies must not whittle away at the financing of public services. Public services play a determining role as a means to emerge from economic crisis. These services enable the **creation of jobs of high quality that must be provided locally, cannot be off-shored** and build economic and social cohesion.

- A further review of past policy on public services networks would now appear necessary, so as to re-assess the effects of liberalization. Some partners even asked for a moratorium on current round of liberalization.

- The Intergroup considers it to be a priority to set up **regular consultations with citizens and end-users of public services** in order to precisely measure their expectations and include them in the European strategy in this field.
- The Intergroup pleads for the principles assured implementation across Europe, both in terms of the quality of service and of service user rights.
- The Intergroup wishes to undertake **reflexion on how European public services are delivered in key sectors of society for the purposes of European integration and development**, in areas such as rail infrastructure.
- In the **fields of energy networks and in the European transport market**, the explore the possibility of creating true **services of general interest in Europe**.
- The Intergroup finally emphasizes the need for discussion with the European Commission and Council on the definition of a model of society and the drafting of a legal framework to preserve the place of public services within the Single Market. The conclusion of the third forum on "Social Services of General interest" and the 15 proposals (see appendix) formulated at that forum can usefully form the basis of that discussion.

## VI

### **Single Market Act: Framework for action ?**

The Commission on 27 October 2010 approved a Communication whose purpose is to cement anew the bond of trust between European citizens and the Single Market. The draft proposals and broader project known as the **Single Market Act** is up for debate until 28 February 2011. The Commission's approach continues along the lines of the Monti report on the internal market of May 2010. Its purpose, in line with Article 3 of the Treaty of the European Union, is to "reinforce the social market economy tending to full employment and social progress, a high level of protection and improvement of the quality of the environment", by putting enterprise and Europeans at the heart of the Single Market.

#### **Central question of public services**

Public service issues are raised on many occasions in this draft set of proposals for the Single Market, both in the economic and in the social fields.

#### **13 measures in particular have a direct link with public services:**

- **White Paper** on transport policy (policy proposals 7. due date 2011)
- **Directive** on energy taxation (proposal 8. Due date 2011)
- **Plan** for energy efficiency (proposal 11. Due date 2011)
- **Revision of public** sector market directives (proposal 17. Due date 2012)
- **Initiative** on services concessions (proposal 18. Due date 2011)
- **Communication** on services of general interest and "a set of actions" (proposal 25 - "between now and 2011")
- **Revision** of orientations on trans-European transport networks (proposal 26 - 2011)
- **Communication** on priorities for energy infrastructures (proposal 27. Due date 2011)
- **Decision – action program** on the radio-electrical spectrum (proposal 28 - no deadline)
- **Implementation** of Charter of Fundamental Rights (proposal 29. Due date 2011)
- **Quality** of the legal structures of social economics. (proposal 37. Due date 2011/2012)
- **Legislative initiative** for universal banking service (proposal 40. Due date 2011)
- **Revision of rules** on the rights of air passengers (proposal 43. Due date 2012)

The Single Market Act will therefore over the next two years form the framework of legislative work required for the concrete implementation of the recommendations of our Intergroup in the field of public services.

**SMA has not been debated by the Intergroup. The Intergroup has not yet finalised a position. The work on the Single Market Act proposals will begin on 12 January, 2011, with a meeting with Commissioner Barnier.**

# ANNEXES

## 2010: reminder of key events

### **Dates**

Declaration from President Barroso on a Communication on a framework of quality for Services of General Interest.

### **9 May**

Publication of report by Mario Monti on a New Strategy for the Single Market

### **10 May**

Adoption of Rühle report on public procurement markets (European Parliament)

### **10 June**

Public consultation on the revision of the Monti Kroes package on state assistance in the form of public service compensation (Décision CE / art 106.3)

### **26 and 27 October**

3rd Forum on Social Services of General Interest, Belgian Presidency of EU

### **27 October**

Publication of biennial report of the European Commission on Social Services of General Interest

### **27 October**

Launch of public consultation on the Communication from the Commission "Towards a Single Market Act for a highly competitive social market economy"

### **6/7 December**

Conclusions of the EPSCO council on Social Services of General Interest

# **15 recommendations of the 3<sup>rd</sup> SSGI Forum organized by the Belgian presidency on 26 and 27 October to go before the European Parliament, the Commission and the Council of the European Union**

## **1. Acknowledge the need to better respond to emerging social needs confronting our societies**

Given the particularly serious and austere context of public finances arising from the economic crisis leading to social crisis, the time has come to heighten the awareness of policy makers to the need for the strong recognition of social services. This should be conducive to concrete actions notably to meet the new needs of the population. This recognition entails:

- acknowledgment of the role played by SSGIs both from the standpoint of social cohesion and of the development and economic competitiveness;
- promotion of greater cooperation between service providers and stakeholders in social services and greater involvement of social service users to improve quality without wasting resources;
- a strong political commitment to find new resources to guarantee, both effectiveness in term of the quality of the services and efficiency given the costs of SSGIs, in order to cope with new major challenges in our society (aging, inclusion).

## **2. Consider SSGIs as an indispensable investment in Europe's future**

Special thinking must be given to the decision-making processes intended to lead to “good economies”. A well-advised investor will be careful not to cut back strategic expenses. The medium and long-term financial impact of budget cuts in the sectors of aid to children, youth and the jobless will be particularly heavy. Budget cuts must not result in giving priority to certain target groups over others. An assessment of the social impact of these measures is also indispensable. Since SSGIs present the characteristics of strategic investment, special precaution should be taken during arbitration and budget cuts with the following three imperatives in mind:

- definitive prevention of major cuts in the social service budget, whose outcome (if implemented) would be considerably higher social and economic costs in the near future;
- preserve the best natural resource of the European Union – its human capital;
- ascertaining that any reduction of social services budgets do not have dramatic consequences on the condition of women, likely to be twofold victims, first as the initial beneficiaries of these services (assistance for young children, support to the elderly, housing aid...), and second as workers, given the continually rising proportion of women working in the non-profit social sector.

## **3. Creating an environment to promote the quality and cost efficiency of SSGI**

The political and legal environment in Europe must be able to protect and develop social services of general interest, particularly in periods of crisis.

To do so, the following is recommended:

- use the new legal framework of the European Union arising from the Lisbon Treaty in particular Article 14 of the Treaty on the functioning of the European Union, the protocol on services of

general interest and the Charter of Fundamental Rights that enjoy great legitimacy, in order to protect the crucial role of SSGI, and ensure that Member States competencies and responsibilities can best meet the needs of their populations and perform missions of general interest fulfilled by these services;

□ create a space of dialogue with all stakeholders in order to help Member States concretely implement the European Voluntary Quality Framework in terms of concrete results and quality of their social services. This dialogue should also provide continuity, direction and substance to each SSGI Forum.

#### **4. Implementing the European Voluntary Quality Framework for social services with view to a more inclusive and more cohesive European society**

The European Voluntary Quality Framework for social services contributes to a common understanding of the principles of quality which, over and above certain technical questions, include an undeniable emotional dimension, that of the quality of life of the European population. Hence the implementation and the practicality of the framework is essential. Under these circumstances it is important to:

- define the common coordination tools to optimize the use of the European Voluntary Quality Framework and to agree on the main pre-requisites needed for its implementation (pre-conditions such as stable financing and legal framework, and recognition of qualified personnel);
- to exchange best practice to develop comparable quality indicators;
- to develop comparable quality indicators at the most appropriate level while ensuring that the definition of quality criteria at the local level consistently complies with the principles of quality already set down at the international level;
- identify several pilot sectors to test the effective application of the entire process.

#### **5. Adopting a multi-sector multi-stakeholder approach at several levels**

The specificity and diversity of SSGIs must be taken into account by the manner of encouraging debate, taking into consideration the role of SSGIs in European expansion. This should result in:

- giving preference to a multi-sector approach in the themes which structure thought processes (including for example the quality of SSGIs), such an approach to be transversal and interdisciplinary, including all stakeholders and taking into account the local context;
- taking account of and preserving the specificity of non-profit service providers in developing quality;
- taking into account local definitions of quality which in turn are coherent with the principles and standards of quality already laid down at the international level (for example ILO conventions).

#### **6. Need for common rules**

There is clearly incoherence at present between the rules which have an impact on social services of general interest (SSGI) and their interpretation at various levels. Beyond the quality issues, the reduction of the incoherence resulting from these rules and their application is necessary in order to ensure quality, and should be achieved by European national and local initiatives promoting consistent approaches, such a coordination methods insuring compliance with common rules, as well as respect of local and sectoral specificities.

## **7. Clarifying basic principles of the control of state aid**

Operators and providers of SSGI often encounter difficulties in interpreting and/or understanding the various principles that govern the control of state aid by the European Union.

To help comprehension of this control scheme and to contribute to an application of the underlying rules, the following appears necessary:

- taking greater advantage of the principle of proportionality in the implementation of control by the European Union for operators whose resources are in many cases limited;
- clarifying certain essential concepts that are pre-requisites for control by the European Union, such as economic activity and the notion of allocation of trade between the Member States;
- improving legibility of the application of the control of state aids, while respecting the principle of subsidiarity.

## **8. Adapting the rules of the « Altmark-SGEI » package applicable to SSGI service providers and to local authorities**

The European rules on state aid apply to SGEI and more particularly to the procedures and schemes for their financing. These rules have been designed from the standpoint of insuring the fulfilment of public service missions while guaranteeing conditions for fair competition.

As a complement to the case law of the Court of Justice of the European Union, the Commission adopted a set of texts in 2005 (known as “Altmark-SGEI package”) to remove uncertainties on the precise scope of application state aid rules to financial transfers between the public authorities and SGEIs, potentially including SSGI operators.

However it appears that the rules are still not sufficiently clear. That being the case, it would be appropriate for the Commission to take initiatives to:

- simplify the existing rules and adapt them in view of the specificity of social service providers (small providers, local nature);
- Further clarify the relationship between the criteria in the Altmark judgement and the conditions of application of the “Altmark-SGEI package”;
- improve the criterion for mandating (act of entrustment), particularly by means of greater flexibility in its application;
- extend the scope of the SSGI sectors benefiting from the exemption of notification without thresholds, taking inspiration from the considerations that led to the current exemption of notification for the hospital and social housing sectors and taking into account the fact that, at this stage of the development of the internal market, the intensity of the distortion of competition in these sectors is not necessarily proportional to revenues and the amount of compensation.

## **9. Reviewing criteria for calculating the over-compensation of public service in the context of the control of State aids**

When a social service provider is granted financing to fulfil its mission of general interest or public service, it must be fair compensation for the costs incurred for that mission. Beyond that, the financing is considered as over-compensation, whereby State aid constitutes aid incompatible with the single market.

The procedures of control and calculation of this overcompensation, as applied in the “Altmark-SGEI” package, may appear to be particularly rigid and scarcely suited to the specificity and to the essentially local dimension of SSGIs.

Certain “reasonable adjustments” should be envisaged:

- the calculation of compensation should not be exclusively on the basis of economic and financial criteria but should also take into consideration social criteria;

- the control of over-compensation should be spaced more over time, for example on a three-year basis;
- the hypothesis of over-compensation which is a reality in the field of SSGIs should also be integrated into the overall analysis of the Commission;
- the criteria for the calculation of compensation should be better adapted to the specific characteristics of the service provider (size, type of mission, legal status...) and to a certain number of external aspects associated with the provision of SSGI, such as added social value, involvement in the community, volunteers, reinvestment in infrastructure...

## **10. Need for legal and political clarification**

It is more than necessary to fill the gap between those who claim that the European rules pose no problem and the players themselves (local authorities or SSGI service providers and a number of Member States), who make reference to the difficulties confronting them arising from the implementation of some of these rules.

In particular, with regard to the rules on the free provision of services and the freedom of establishment within the single market, the following procedures are appropriate:

- assessing the transposition by Member States of directive 2006/123/EC of the European Parliament and the Council of 12 December 2006 on services in their internal market as concerns the exclusion of social services provided in Article 2.2, sub-j;
- clarifying the following concepts, if need be by an interpretative communication, as listed in the article referred to above:
  - “charities”;
  - “persons in need”;
  - “service providers mandated by”;
- in a more general way facilitating the correct functioning of SSGIs thanks to greater involvement of all authorities concerned and sharing responsibility in this field (competent European institutions, Member States, and local authorities), in well-understood compliance with the principle of subsidiarity.

## **11. Setting up a Task force or high level group on SSGI**

It is observable that each of the European Union institutions dealing with the issue of social services has its own logic without taking into account other players and the reality they deal with. To correct this approach, a new dynamic must be created that brings viewpoints closer together, so that common groundwork can be defined on questions relating to SSGI.

It is consequently urgent to:

- set up an inter-institutional and inter-sector structure including representatives of the competent European institutions and stakeholders (local authorities and private operators) to constructively discuss the problems facing SSGIs and to propose the most appropriate solutions;
- dispose of adequate resources for the correct operation of this structure.

### **2.12. Setting up a legal instrument adapted to SSGI**

SSGI are viewed exclusively from an economic standpoint without taking into account the specificities and their special missions as pertain to solidarity, social and territorial cohesion, nor is account taken of their considerable contribution to economic development and competitiveness.

However, the Lisbon Treaty has created new opportunities to reconcile the Union's economic and social objectives, as shown particularly by Articles 3.3 TEU and 9 TFEU. Moreover protocol n°26 and Article 14 TFEU offer the EU the legal basis to legislate in the field of social services of general interest (SSGI) and services of general economic interest (SGEI): the SSGI may fall into either these categories.

It is essential to:

- create a legislative instrument/framework adapted specially to SSGIs in order to acknowledge their specificity and facilitate the fulfilment of their missions with sufficient legal security and foreseeability;
- define new common references in the legal framework of the European Union, for the organization, financing and evaluation of the missions carried out by SSGIs.

### **13. Promoting alternatives to public procurement for supplying SSGI**

Increasingly, SSGIs are confronted with a public procurement logic which does not appear to be the best option when outsourcing/delegating a given service (leading to rigidity, difficulties in insuring diversity of providers, absence of tailor-made solutions, etc.).

Give more information on the various forms of provision of services:

- in-house, public-private partnership, public-public partnership (such as intermunicipal cooperation), authorization schemes, compensation or subsidy, regulated competition and user choice, mandating, etc.;
- adapt the instruments and modalities allowing choices to be made in regard to the objectives pursued, to the needs and rights of users, to the quality of service provided, to the specificities of SSGIs and local conditions. Hence, the idea is to concentrate on the best way of achieving the public objective as defined by the competent public authority in the Member States, and thus to use the instruments in a way which is compatible with the requirements of European Union law. However these rules and procedures must also be screened in order to verify the extent to which they contribute to or hinder the achievement of the objectives defined by the relevant provisions of the treaty (see Article 9 TFEU on the horizontal social clause; Article 14 TFEU and Protocol No. 26 on SGI; Articles 34 and 36 of the Charter of Fundamental Rights of the European Union);
- allow the various alternatives to public supply contracts to take account of innovation and custom made services for users, while ascertaining that the Member States clarify and adopt their own rules and procedures to better link the mandate and the public service mission to the provision of a given service or a specific category of services.

### **14. Strengthen the social dimension and orientation of public procurement**

The directives on public procurement, except for a few specific rules, devote more special provisions to the environmental than to the social dimensions. Hence the question of the extension of these rules to the social dimension arises.

With this in mind, it is recommended to:

- make better use of existing possibilities, as described by several commission documents (see the communication on social considerations in public supply contracts and the guide to socially responsible public purchases);
- promote better use of the guide on the application of EU rules to SGEI and in particular to SSGI and of the Commission's interactive information service;

- encourage and support the use of the option of the most economically advantageous offer (also see recommendation to 15);
- take account of more social objectives in this election criteria, the award and execution of public supply contracts as well as in technical specifications, particularly in terms of the inclusion and protection of human health, workers and employment, while monitoring compliance with the requirement of a link to the object of the contract.

### **15. Giving priority to quality as the main criterion and to social inclusion as the main objective**

Public supply contracts are awarded for the most part to the service provider with the lowest bid, often to the detriment to the quality of the services provided (an important criterion for social services).

Consequently, the following are appropriate:

- encouraging and motivating the contracting authorities to give quality a mandatory weight of more than 50% in the award of the public procurement contract for supplying an SSGI, in compliance with the fundamental principles of the law of the European Union on the transparency, non-discrimination and equal treatment;
- ensuring that the contracting authorities require a constant level of quality in services provided and can insure plurality of services providers according to the diversity in the SSGI sector, hence giving users a sufficiently informed choice;
- promoting cooperation and partnerships through networks of service providers in order to contribute to the quality of supply by SSGIs, particularly when services are delivered in response to complex needs.

