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**Sosiaali- ja terveysturvan keskusliitto ry (STKL) /
Finnish Federation for Social Welfare and Health**

Conference

**'Current EU Affairs - Services of General Interest:
SSGI from a social NGO point of view'**

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What is Solidar?

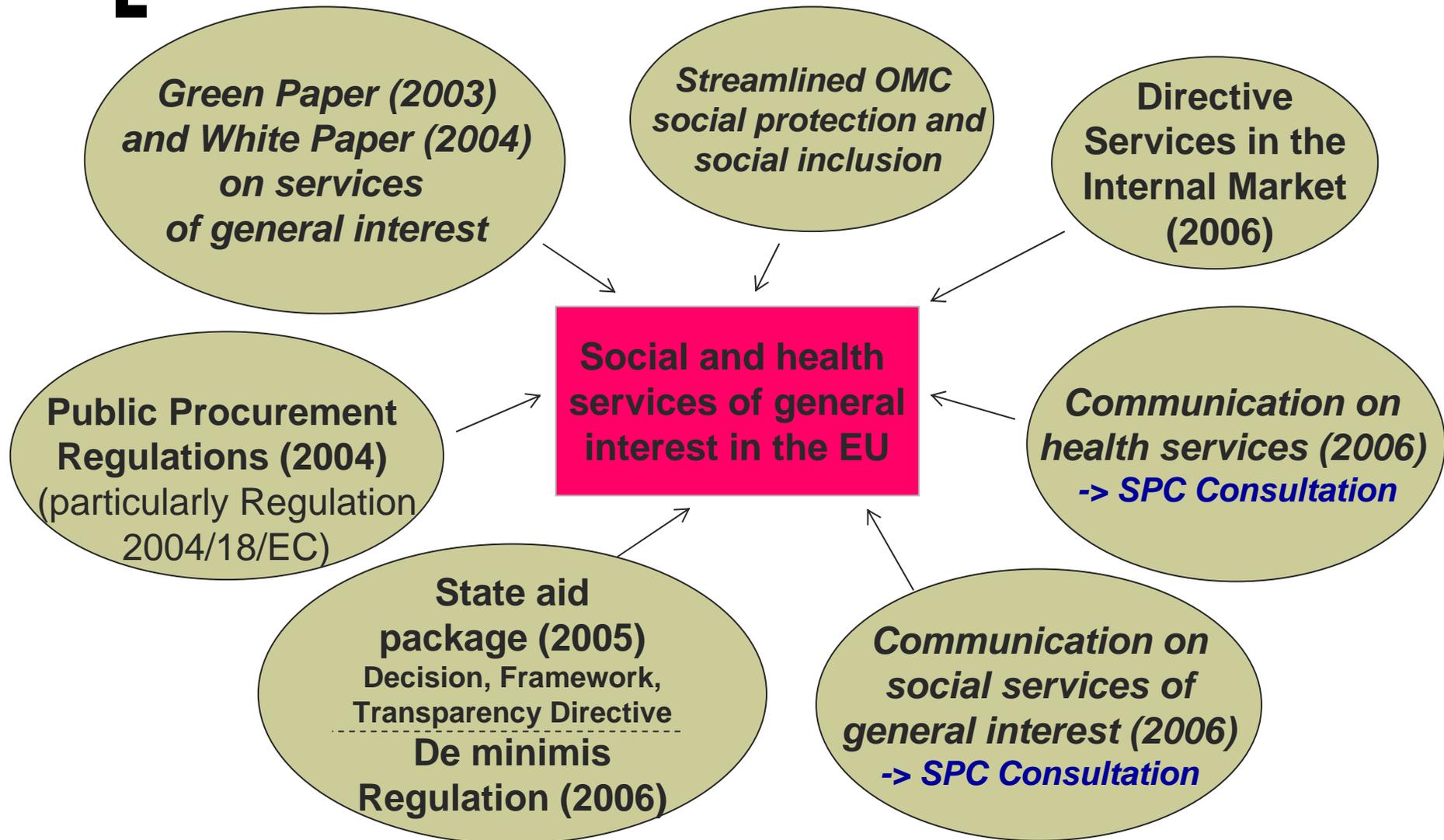
- 1. European network of NGOs in 20 countries (17 of which member states the EU), working for social and economic justice (co-operating with trade unions, civil rights and civil society organisations)**
- 2. NGOs working in the fields of social policy, social services provision (different fields), international development, humanitarian aid, and life-long learning; actively involved in the fields of social inclusion, social protection, anti-discrimination, migration and integration at national, regional and local level**
- 3. Member organisations are social service providers, civic movements (= > advocacy) and membership organisations (= > volunteers) at the same time**
- 4. Member of the Social Platform**
- 5. Strongly involved in the debates and policy processes on S(H)SGI, the Service Directive and the OMC on social protection and social inclusion at European and national levels**

Structure of presentation

- **Main steps and documents of European policy process on SSGI**
- **Core issues discussed and open questions: in recent years and currently**
- **Overview of core issues in replies by Member States to 2004 enquiry of Social Protection Committee on SHSGI (consultation on 2004 White Paper SGI)**
- **Analysis of replies of MS to 2006 SPC enquiry on SSGI (consultation on 2006 Communication SSGI)**
- **First assessment of package of non-legislative initiatives of 20 November 2007 and Communication on active inclusion of 17 October 2007**
- **Positions - concerns, demands, expectations - of social NGOs (European networks/ platforms)**

Legal and *political* framework at EU level

(I)



Core issues discussed + open questions (I)

- **Distribution of competencies between MS (i.e. public authorities at national, regional and local level) and EU: definition of SSGI ; determination of general interest mission and public service obligations; definition of modes of organisation, regulation, provision, financing and control/evaluation of SSGI**
- **Definition of Community concept for general interest, building e.g. on „quality guidelines“ of White Paper on SGI**
- **Specificities of SSGI and their users: which currently agreed upon? “only” listed or also recognised? => to which extent “binding force” or at least “guideline character”?**
- **Elaboration of legal instruments for SSGI (contents?; purpose?): Sectoral directive for SSGI ; Framework directive for SGI ; Interpretative communication on SSGI ; with new Lisbon Treaty: Regulation on SSGI**

Core issues discussed + open questions (II)

- **Compatibility of modalities of organisation (e.g. delegation; mandating; in-house), regulation (e.g. territorial and financial planning; qualification of staff; service quality) and financing (e.g. cross subsidisation; tariff perequation) within MS with Community rules?**
- **Solutions in case of non-compatibility (ECJ rulings; FAQ Staff WP => interactive web-site and dedicated report)**
 - *Exemption of SSGI from application of Community rules*
 - *Adapted legal frameworks for SSGI at EU level (state aid => implementation phase for state aid package until 2008; public procurement => social criteria; PPP; service concessions), taking into account specificities of SSGI and their users*
 - *Flexible solutions, taking into account enumerated(?)/recognised(?) specificities of SSGI and their users*
 - *Adaptation of rules/modalities/procedures of organisation, regulation and financing of SSGI at local, regional or national level in MS*

Core issues discussed + open questions (III)

- **What happens/Rule used in case of non-compatibility of modalities of organisation, regulation and financing within MS with Community rules: Priority of realisation of general interest (objective/missions) as defined within MS over Community rules (internal market, competition, public procurement)?**
- **Quality guidelines, quality principles and/or quality standards: to be defined and monitored at which level and by whom? based on which criteria? exclusive focus on sector-specific quality criteria or combination with cross-sector approach?**
- **Conceptualisation of SSGI: Residual services for the most vulnerable persons/targeted services vs. universal services and life-course oriented services for principally all citizens**

White Paper on SGI 2004 + SPC consultation on SHSGI 2004

- Central elements/points shared amongst all/several MS
- Important differences comparing the 25 MS
- Comparison of replies D - 24 other MS: shared positions

Selected results/insights of 2004 SPC Questionnaire on SHSGI (1)

Central elements/points shared amongst all/several MS

- Identification/enumeration of core sectors of SHSGI
- Existence of sector-specific regulation/legal standards
- Challenges identified across EU MS as to the modernisation of SHSGI and instruments applied across EU MS to implement structural reforms in the field of SHSGI
- Dominant features when using market mechanisms/instruments to organise competition
- Existence/recognition of specificities of SHSGI + identification of major aspects of these specific characteristics

Selected results/insights of 2004 SPC Questionnaire on SHSGI (2)

Important differences comparing the 25 MS

- Explicit focus on/different importance attributed to the “social dimension“ of housing
- Extent to which market mechanisms are made use of
 - => *“Special case“ NL (also: request for “transitional regime”)*
 - => *Request for a (legal + political) framework to “accompany“ such transitional processes*
- „Social dimension“ of SHSGI/SGI vs. general interest obligations related to SHSGI/SGI and procedures to guarantee their realisation
- Common analysis of SGI and SGEI vs. focus on services of economic nature in the field of social and health care policy, too
- Use of OMC in principal; if so, which “ type“ of OMC should be applied to which policy fields?
- Need and usefulness of legislation; if yes: sector-specific (communication; directive) vs. horizontal instruments (framework directive) {B, F} at EU level
- Working on common (minimum) standards, inter alia also related to service quality in a broader sense

Selected results/insights of 2004 SPC Questionnaire on SHSGI (3)

Comparison of replies D - 24 other MS: shared positions (1)

- Concept „PSS“ {A, CZ, DK, EST, I, LT, LV, NL}
- Reference to specific category of providers „not-for profit general interest-oriented organisations“/PSS {A, CY, I, IRL, L, LT, P, PL, SLO} – central role of NGO {A, F, FIN, H, I, M, (P)}
- Central and independent role of local territorial authorities, esp. of municipalities {A, CZ, DK, EST, FIN, S}
- Federal system {A, B} – decentralised structures {I}
- Tasks needing (political) decisions/governance {B, F, FIN, I, IRL, L}: planning, authorisation, (partial) financing
- Functions of PSS {A, B, CZ, F, FIN}
- Specific characteristics of SHSGI {CZ, E, F, FIN, H} – criteria to define SHSGI {A, B, E, EST, M} – necessity of specific framework regulations and need to recognise the specificities of SHSGI as well as of their users {A, B, CY, CZ, E, F, I, LV}

Selected results/insights of 2004 SPC Questionnaire on SHSGI (4)

Comparison of replies of all 25 MS: shared positions (2)

- Importance of public service/general interest mission {A, F, GB, IRL}
- Grey zones with regard to the application of Community rules
 - => *A priori definition of elements of service provision* {A}
 - => *(Act) of entrustment* {NL}
 - => *Definition and implementation of public service/general interest obligations* {IRL}
 - => *In house provision* {A, FIN}
 - => *Social planning* {A, CY, I, S}
- Necessity to regulate quasi-markets {A, F, FIN, H, M, S}
- Taking into account non-economic criteria in the assessment/evaluation of SHSGI {A, F}
- Exemption of SHSGI from the scope of application of the Services Directive {A, B, CY}
- No application or (even) extension of the OMC {EST, GB, S} or no further steps prior to the availability of the results of the evaluation of the OMC by MS in 2005 {F, FIN, H, S, SLO}

Communication on SSGI 2006 + SPC consultation on SSGI 2006

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- Central elements/points shared amongst all/several MS
- Important differences comparing the 25 MS
- Experiences with the application of Community law

Selected results/insights of 2006 SPC Questionnaire on SSGI (1)

Central elements/points shared amongst all/several MS (1)

- Scope of SSGI [FIN] as outlined in Communication on SSGI 2006 considered appropriate
- EU should not endeavour to come to a definition of SSGI, a definition of “general interest” (missions; obligations) and or the organisational, regulatory and financial framework - as they fall within MS competencies and should clearly remain there
- In no MS there is a general definition of “general interest” [FIN]
- In case of conflict: realisation of general interest mission must prevail over application of Community rules [FIN, H]
- Confirmation of applicability of quality guidelines for SG(E)I (as listed in the WP SGI 2004 - such as universality, accessibility, availability, affordability, continuity, territorial coverage) also for SSGI

Selected results/insights of 2006 SPC Questionnaire on SSGI (2)

Central elements/points shared amongst all/several MS (2)

- Confirmation of main elements identified/proposed as specific characteristics of SSGI in the Communication on SSGI 2006
 - => *Operation on the basis of solidarity => social insurance schemes + personal social services/life-course oriented*
 - => *Asymmetric relationship and vulnerable position of beneficiaries ≠ normal consumers - both elements underlining the need to put a specific emphasis on quality*
 - => *Operation on the basis of welfare principles => social assistance schemes + personal social services/targeted*
 - => *Motivation of providers: purpose is not profit making, but reinvestment of profit into operation of services; focus on usage of profit is essential*
 - => *Broad rejection to conceptualise SSGI as only/mainly for (most) vulnerable/disadvantaged persons <=> universal; life-course oriented*

Selected results/insights of 2006 SPC Questionnaire on SSGI (3)

Important differences comparing the 25 MS (1)

- Need to establish clear distinction between SSGI of economic and non-economic nature => ECJ criteria (<=> not necessarily national approaches/concepts)
- Scope/clear demarcation line between sub-categories of SSGI: request to separately present obligatory/compulsory/statutory social security schemes (as they are clearly recognised as non-economic by ECJ)
- Separate treatment of SSGI and health services in the single market dossiers being deplored
 - => *Interfaces: long-term care, rehabilitation, services for drug addicts*
 - => *Additional dividing lines cutting across national systems/structures on the backdrop of the large, albeit not complete exclusion of social services from the services directive*
- Focus set on sector “social housing”
 - => *Not only individual services, but also services for groups/of collective nature*
 - => *Links to community-based and urban regeneration policies, as a rule also entailing the aim to preserve or re-establish social mixity in a neighbourhood*

Selected results/insights of 2006 SPC Questionnaire on SSGI (4)

Important differences comparing the 25 MS (2)

- Proposal of additional specific characteristics of SSGI
 - => *Participation of client, objective of empowerment*
 - => *Users' rights and user choice*
 - => *Preventive and inclusive role*
 - => *Support fulfilment of social policy objectives and realisation of the general good*
 - => *Social services as we find them across Europe - i.e. with public regulation and public (co-)financing - are an expression of the fact that the market alone would not deliver in sufficient and desirable quantity and quality (accessibility, availability, affordability, ...)*
 - => *Imply (national, regional, local) government regulation and planning*
 - => *Recognition of right of own initiative of NGO service providers/social economy organisations to provide services, independently of delegation of task by public authority*

Selected results/insights of 2006 SPC Questionnaire on SSGI (5)

Important differences comparing the 25 MS (3)

- Specific characteristics of SSGI: usage at all [GB], way of usage, obligatory vs. voluntary nature to use them
 - => *As orientation framework at MS level or at EU level?*
 - => *With legal value/binding force for acknowledged criteria to be taken into account when designing adapted Community rules or “flexible solutions” when it comes to the compatibility of national modalities of organisation, regulation and financing with Community rules (e.g based on a set of criteria such as transparency, equal treatment/non-discrimination, etc.)*
- Consideration of specificities of types of providers {B, F} <=> functional approach; minority opinion/strategy
- Building further work on the distinction between economic and non-economic SSGI
- Preference for {B, DK, F} vs. openness for {(FIN) [FIN], L} vs. refusal of {D, GB, S} new legal instruments (sectoral; horizontal/framework) in the field of SSGI

[Selected results/insights of 2006 SPC Questionnaire on SSGI (6)]

Important differences comparing the 25 MS (4)

- Need to elaborate adapted Community rules and - when answering this positively - comprising which issues?
 - => *Exemptions?*
 - => *Higher thresholds (e.g. in state aid regulation or public procurement)*
 - => *Introduction of additional criteria (e.g. in public procurement rules) taking into account specificities of SSGI and their users*
- Demand for more clarity with regard to statutory social security schemes
- Setting up a form of OMC for the field/important parts of the field of SSGI
 - => Pro {(B), (CZ), GB, LT, LV, P}
 - => Contra {A, (B), CY, (CZ), D, DK, EST, FIN, GR, IRL, L}

Selected results/insights of 2006 SPC Questionnaire on SSGI (7)

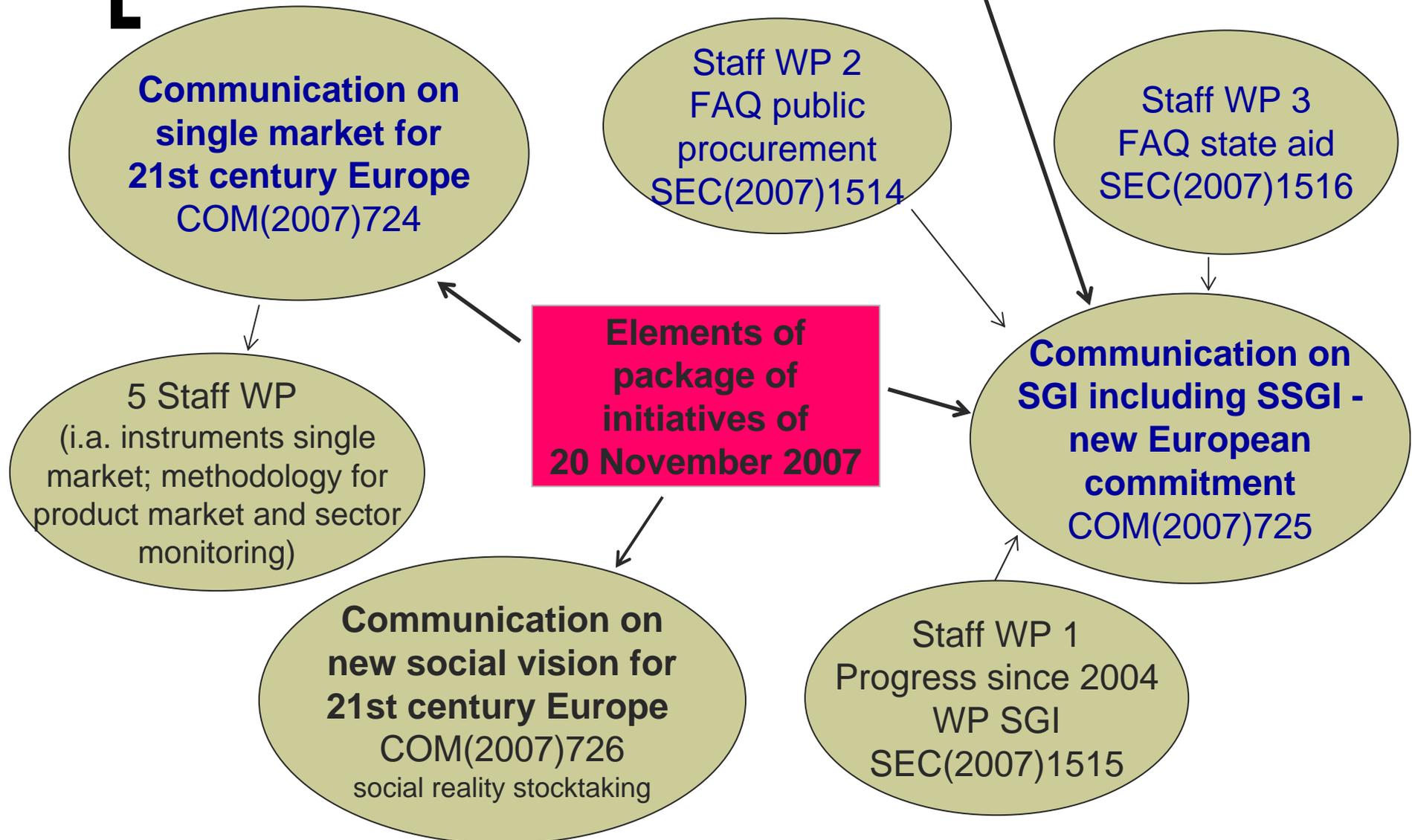
Experiences with the application of Community law

- Public procurement
 - => *Risk of focus on prices (too strongly; alone)*
 - => *Need of transposition of social, employment, ethical and environment/ecological criteria in national legislation*
 - => *Encouragement to make effective usage of them due to non- or under-application (fear of inappropriate application and consecutive recourse - national level - or infringement procedures - EU level)*
 - => *Difficulties and costs to draft public tenders taking into account social, employment, ethical criteria => Risk for quality and social efficacy of services*
 - => *Lack of flexibility of public procurement rules to facilitate inter-municipal co-operation*
- Fundamental freedom of internal market (to provide services, of establishment)
- State aid
 - => *In general: pragmatic approach of state aid package welcomed*
 - => *Need to address issue of mandate in flexible manner (<=> “self-mandating”)*
 - => *Need to adapted rules with regard to specific Altmark criteria*

Communication on active inclusion
COM(2007)620

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Framework at EU level (II): Citizens' Agenda



Positions of social NGOs (I): First assessment of package of 20/11/07

- Lisbon Treaty Art. 14 on SGI + Protocol No. 9 on SGI
- Quality initiative
 - Work to be (also) done in the framework of an OMC on quality of SSGI
 - Contribution to development of (sector-specific) voluntary quality guidelines or principles (exchange of experience and good practice) in an open, interactive and bottom-up process involving all stakeholders (including users, providers, regulating and financing bodies); however, not in favour of obligatory approach and European quality standards
- FAQ state aid + FAQ public procurement - interactive information service (database)
- Dialogue and monitoring tool (2006) => Dedicated report on SSGI every two year (2007) as exchange tool with stakeholder

Positions of social NGOs (II): General concerns, demands, expectations

- Regulated competition on social markets
- General interest + social protection schemes in MS as additional starting or even main reference points for analysis and framework setting for SSGI to complement single market concept/logic
- Usage and legal value/recognition of specificities of SSGI and their users
- Adapted Community rules in the fields of state aid and public procurement (secondary law), not least by making use of (still to be broadly agreed) specific characteristics of SSGI and of their users
- Flexible/adapted solutions with regard to the compatibility of national modalities of organisation, regulation, delivery and financing of SSGI with Community rules, taking into account recognised specificities of SSGI and their users

Positions of social NGOs (III): General concerns, demands, expectations

- **Public procurement: Recognition of additional social criteria + specific challenges + (multi-stakeholder and multi-dimensional) evaluation of effectiveness and appropriateness of tendering procedures/other modalities of delegation of tasks by public authorities to third parties**
- **Adaptation of/put under scrutiny modalities, procedures of organisation, regulation and financing of SSGI as currently implemented at local, regional and national level of MS, however, leaving leeway for local proven models**
- **More legal security for providers, regulating and financing bodies, following a step-wise approach, based on existing primary law, but also considering sector-specific legal instruments on SSGI (and if appropriate, additional legal frameworks for SGEI)**
- **Ensuring coherence between Community policies and approaches to social and health services**

References

(in addition to new DG EMPL web-site)

Social Services of General Interest in the European Union – Assessing their Specificities, Potential and Needs, Brussels, 28 and 29 June 2004 (together with Social Platform and with the support of European Commission, DG Employment and Social Affairs) [Conference Documentation (D + E + F)]

=> <http://www.soziale-dienste-in-europa.de/Anlage25563/gemeinwohl2004.pdf>

Analysis of the replies of all European Union member states' governments to the questionnaire of the Social Protection Committee preparing the Communication on Social and Health Services of General Interest

=> <http://www.soziale-dienste-in-europa.de/>

[/Anlage25573/auswertung-antworten-ms-mitteilung-sgdai-ed.pdf](http://www.soziale-dienste-in-europa.de/Anlage25573/auswertung-antworten-ms-mitteilung-sgdai-ed.pdf)

Communication on social services of general interest in the European Union [COM(2006)177 final] - Expert meeting for the purpose of analysing, assessing and discussing related issues and further steps [Documentation of Seminar (D + E)]

=> http://www.soziale-dienste-in-europa.de/Anlage/Et_Mitt_SDAI_2006.pdf

Summary report 1st Forum on Social Services of General Interest

=> <http://www.mtss.gov.pt/eu2007pt/en/left.asp?01.02.03.01>

Social and Health Services of General Interest Towards an EU strategy? Comparing and debating EP, EESC and CoR Reports on the Communication of the Commission on SSGIs (F + E)

+

Social Services of General Interest in the internal market of the 21st century The Reform Treaty: the new state of affairs (F + E)

=> <http://www.ssig-fr.org/>