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from : General Secretariat
to : Permanent Representatives Committee (Part I) / Council (EPSCO)
Subject : **Application of Community rules to social services of general interest:
Operational conclusions of the Social Protection Committee**

Delegations will find attached operational conclusions of the Social Protection Committee on the application of Community rules to social services of general interest.



The Social Protection Committee

SPC 2008/17 - final

OPERATIONAL CONCLUSIONS OF THE SOCIAL PROTECTION COMMITTEE ON THE APPLICATION OF COMMUNITY RULES TO SSGI

Over recent years, the Social Protection Committee (SPC) has played an active role in analysing the impact that EC rules on internal market and competition have on social services of general interest (SSGI).

The report attached to the present document follows up on the Communication on "Services of general interest, including social services of general interest: a new European commitment"¹ and its two accompanying documents. These documents provide answers to frequently asked questions (FAQs) relating to the application of State aid² and public procurement rules³ (PP rules), most of which were collected during the consultation process in the area of social services.

¹ COM(2007) 725 final of 20 November 2007.

² Commission Staff Working Document "Frequently asked questions in relation with Commission Decision of 28 November 2005 on the application of Article 86(2) of the EC Treaty to State aid in the form of public service compensation granted to undertaking entrusted with the operation of services of general economic interest, and of the Community Framework for State aid in the form of public service compensation", SEC(2007) 1516 of 20 November 2007.

³ Commission Staff Working Document "Frequently asked questions concerning the application of public procurement rules to social services of general interest", SEC(2007) 1514 of 20 November 2007.

In 2008, the work of the SPC has focused on the following tasks: (i) analyse the answers provided in the two Staff Working Documents on public procurement and State aid, in light of Member States' experience concerning the application of such rules; (ii) identify more examples derived from the SSGI area which could be added to these documents; (iii) review whether further questions arise or specific problems have to be reported concerning the application of public procurement and State aid rules and (iv) discuss questions concerning the application of Community rules other than public procurement and State aid rules.

A seminar dedicated to these issues was held in March 2008 and a questionnaire was sent to Member States and stakeholders active at European level in July 2008 to gather relevant information on the application of Community rules to SSGI.

The seminar and the replies to the questionnaire have shown that Member States and stakeholders are increasingly aware of the impact that Community rules might have in the field of SSGI. There is however also some remaining reluctance to a systematic application of Community rules to all aspects of the organisation, financing and provision of SSGI.

The SPC notes that the FAQs are generally welcomed and considered useful by most Member States and stakeholders. There are however remaining questions regarding the application of PP and state aid rules that the FAQs should address, with a view to reduce legal uncertainty in the social field. These questions relate in particular to the criterion of "affectation of trade between Member States", to the scope of PP rules and to the application of the SGEI package. They are identified in section 2.2 of the present report. The SPC proposes that these questions are taken into account when the Commission updates the FAQs. New relevant case-law - for example the Bupa⁴ and the Coditel⁵ cases - should also be referred to in the revised version of the FAQs documents. Furthermore, one should explore whether the FAQs should cover other Community rules. The SPC however notes that the FAQs cannot be the answer to all legal issues arising in the social field.

⁴ Judgement of the Court of First Instance of 12 February 2008 in case T-289/03, OJ C 79 of 29.03.2008, p.25.

⁵ Judgement of the Court of 13 November 2008 in case C 324/07.

The SPC also observes that the FAQs and the Interactive Information Service (IIS)⁶ are not always known by those most concerned. The SPC believes that disseminating information on these guidance tools is crucial to increase legal certainty in the social field and that both the Commission and the Member States should take the necessary steps to increase public authorities and stakeholders' awareness. In particular, the FAQs should be available in all official languages and regularly updated. The IIS should also be accessible in all official languages. Member States should ensure that these documents and other relevant information are brought to the attention of their local authorities and other relevant actors.

Finally, the SPC has identified a few themes which are likely to deserve specific attention:

- **public-public cooperation**: public-public cooperation is a way for Member States to organise the provision of social services and it is not always clear whether and under which conditions these cooperation frameworks fall under the scope of PP rules. Several Member States take the view that the Commission's current position on public-public cooperation unduly restricts their autonomy in organising and providing social services.
- **the role of non-profit providers**: in general, activities in the social field are not reserved to non-profit providers. However, in the light of the important role they play in the social field, their skills and expertise are legally recognised in several Member States and this recognition could have consequences in terms of the application of Community rules.
- **PP procedures and possible alternatives**: some Member States have opted for lighter or simplified regimes for the procurement of social services, as allowed under the PP Directive, but this is not the case everywhere. Moreover, in some Member States, there are specific procedures which can constitute alternatives to the application of PP rules in the social field (licensing models, calls for proposal, grants to projects initiated and carried out by a service provider on its own initiative).

⁶ The IIS is a web service aimed at providing concrete guidance to citizens, public authorities and service providers in the area of services of general interest. It has been set up in January 2008.

The SPC proposes that these themes are explored more fully by the Commission when revising the FAQs. Moreover, if it results from such analysis that the existing legal framework should be adapted, for example concerning the cooperation between public authorities, the SPC suggests that the Commission takes the appropriate steps, as part of its commitment "to continue to consolidate the EU framework applicable to SGI, including social and health services, providing concrete solutions to concrete problems where they exist"⁷.

The SPC also considers that there is scope for exchange of information and mutual learning between the Member States regarding the PP procedures applicable to SSGI and possible alternatives to these procedures.

⁷ See the Communication referred to in footnote 1.