

ELISAN and Social Services of General Interest - SSGI

Following an enquiry toward its members on issues related to EC law application to Social Services of General Interest (SSGI), ELISAN has stated following observations and recommendations.

1. Regarding the enforcement of existing EC law

ELISAN is observing with attention the implementation of relevant EC law applying to SSGI in the national legislation of each member States. ELISAN calls for the member States to be aware of some particular issues around it.

Relating the definition of SSGI, the implementation of the EC Directive on services and Monti Kroes Package on State aids to SGEI are representing a good opportunities for Member States to state clear delimitation between social services regulated under market rules, under public services obligations and public services out of the market scope. Basing on the EC terminology (SGEI, non economic activities), they could explicit what inside social services would belong to:

- ♦ Non-economic sector (out of the scope of EC law)
- ♦ General economic interest (SGEI protection EC framework)
- ♦ Market

Regarding the organisation and provision of SSGI, ELISAN calls for the member States to clearly exclude the social services that they would have qualified of general interest out of the scope of Services directive, in order to protect them from the market. ELISAN is particularly paying attention to:

- ♦ The fact that they would largely define the material scope of such excluded social services, namely the notion of “childcare and support of families and persons permanently or temporarily in need”, as mentioned under article 2 2 j) of the Services Directive;
- ♦ The fact that they would give a flexible interpretation of the notion of “act of entrustment”, requested to externalise the provision of SSGI. “Entrustment” requirement must not be restricted to a simple approach of public procurement, that would weaken local partnerships and promotion of local initiatives (namely from third sector)

Regarding the financing issues of SSGI and the implementation of EC law on State aids, ELISAN calls for the Member States to fully apply and take advantage from the several exemption regulations on State aid allowance to SGEI, such as De minimis et Monti Kroes Packages, in order to guarantee sustainable financial means and to satisfy the whole needs of general interest. That regulation should not interfere with financial and housing choices of each public authority.

ELISAN recommends that regional and local authorities should be fully involved in the national process of implementation of such EC legislation.

ELISAN also calls for the Commission to continue its efforts on clarifying EC law application to SSGI, namely:

- ♦ Deepening some of the issues, that were addressed in the Frequently Asked Questions documents, but could not entirely satisfy stakeholders’ requests (as described in the different contributions to the 2008 SPC Questionnaire)

- ♦ Largely informing the local authorities, by ensuring an efficient publicity of its work papers and individual answers through the Interactive Information System (ISS)

ELISAN calls for the Commission to give answers to unsolved issues on application of Internal market rules to public cooperation, such as:

- ♦ Confirming that the public-public cooperation remains out of the scope of Internal market rules, such as public procurement rules to the relationships between members belonging to a cooperation between neighbouring commune's structure.
- ♦ Making clear and adapting the concept of « In House » contracts. In House criteria should be more specific under SSGI approach.

ELISAN finally calls for the Commission to give substantial clarification to the application of State aid rules to SSGI. That issue is one of the main concerns of social provider, which feels the exemption regulations to be non adapted to their sector and needs. Therefore, the Commission might:

- ♦ Precise the definition of a "State aid" related to SSGI (define a precise criteria to trade affection; distinguish between individual aids, fiscal measures and State aids...)
- ♦ Precise the exact conditions of application of De minimis Regulation to SSGI, through the release of a FAQ work paper for instance;
- ♦ Adapt the application of the Monti Kroes Package requirements to SSGI, namely give a flexible approach of "parameters of calculating, controlling and reviewing the compensation, as well as the arrangements for avoiding and repaying any overcompensation"

ELISAN underlines that providing that all those above-mentioned issues are of high political importance and complex tasks to deal with, the deadlines to implement the EC law seems to be too short. ELISAN will contribute through its members to make the Member States and Commission aware of the difficulties that the local authorities shall encounter in their everyday management. Namely, ELISAN will be reactive to the following deadlines:

- ♦ Delivering before December 2008 to the Commission of a first mid term feedback report from the Member States on the application of Monti Kroes Package;
- ♦ Implementing the Services directive before December 2009, respective to each Member states calendar and method

2. Regarding the continuation of the European debate around SSGI statute

ELISAN calls for the Member States and the EC authorities to revive the thought over a specific framework on SSGI inside EC law system.

ELISAN will contribute and react on following forthcoming deadlines :

- ♦ The Second Forum on SSGI, organized end October 2008 under the French Presidency of EU
- ♦ The setting up of "roadmap" on SSGI, which might be discussed on the next meeting of Council on social affairs, in December 2008
- ♦ The elections of the European Parliament in July 2009

The Board of directors gathered in Athens on 17th October 2008