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- A Quality Framework for Services of General Interest in Europe

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**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL
COMMITTEE AND THE COMMITTEE OF THE REGIONS**

A Quality Framework for Services of General Interest in Europe

**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
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A Quality Framework for Services of General Interest in Europe

1. INTRODUCTION

The current economic and financial situation has highlighted more than ever the fundamental role of services of general interest (SGI) in the European Union (EU). In areas such as health care, childcare or care for the elderly, assistance to disabled persons or social housing, these services provide an essential safety net for citizens¹ and help promote social cohesion. Services of general interest in the field of education, training and employment services play a key role in the growth and jobs agenda. In the knowledge economy, schools, training centres and universities have to be of the highest quality to guarantee that young people are equipped with new skills for new jobs. At the same time, the budget constraints that currently confront public administrations and the need for fiscal consolidation make it necessary to ensure that high-quality services are provided as efficiently and cost-effectively as possible.

The President's Political Guidelines of 2009² already refer to the modernisation of the services sector as one way to boost new sources of growth and social cohesion and state we *"need to give a boost to the overall development of the social and health's services sector, for instance by establishing a quality framework for public and social services, thus recognising their importance in the European model of society"*³. Europe 2020⁴ reconfirmed the need to develop new services, delivered both physically and on-line, that generate growth and create jobs. This can include innovative services of general interest.

While the Treaty has always ensured that Member States have the flexibility to provide quality services of this type, the Treaty of Lisbon has introduced new provisions: Article 14 of the Treaty on the Functioning of the European Union (TFEU), and Protocol n° 26 on services of general interest. It has also given Article 36 of the Charter of Fundamental Rights the same legal value as the Treaties. It is in this new context that the Commission has decided to bring together in a single quality framework the comprehensive set of actions which it is pursuing on services of general interest. This will ensure that in the coming years the regulatory environment at EU level continues to reinforce the social dimension of the single market, to take better account of the specific nature of these services, and to meet the challenge of delivering them in a way which incorporates the values of quality, safety and affordability, equal treatment, universal access and users' rights recognised in the Protocol.

¹ There is EU legislation, notably in the field of migration, which ensures that - subject to certain conditions - some categories of legally residing third-country nationals enjoy equal treatment with nationals as regards access to and supply of goods and services made available to the public.

² "Political guidelines for the next Commission". Brussels, 3 September 2009.

³ "Political guidelines...", page 24.

⁴ "Europe 2020: A Strategy for smart, sustainable and inclusive growth" COM(2010) 2020).

The objective of this Communication, which is also a follow-up to the Single Market Act⁵, is to present the quality framework which consists of three complementary strands of action:

- Enhancing clarity and legal certainty on how EU rules apply to services of general economic interest (SGEI), and revising the rules when necessary to ensure that specific needs are catered for. This constant review is essential given the evolving nature of these services. The Commission is presenting alongside this Communication reforms of two key sets of rules - for State aid for services of general economic interest and for public procurement - both of which will increase flexibility and simplification for Member States when providing these services. These reforms also aim at increasing consistency between both policies and to deliver greater assurance to stakeholders who fully comply with the public procurement rules that, under certain conditions, they also fulfil the relevant State aid requirement under the Altmark judgment. This should provide more legal certainty and simplification to public authorities and undertakings.
- Ensuring access to essential services: the Commission will take forward its commitment to ensure access for all citizens to essential services in specific sectors building on recent actions in the field of basic banking, postal services and telecommunications.
- Promoting quality: the Commission will reinforce its commitment to promoting quality in the field of social services, and will use these achievements in this area as a model for other services of general interest.

Basic concepts

The debate on services of general interest suffers from a lack of clarity on terminology. The concepts are used interchangeably and inaccurately. Stakeholders have asked the Commission to provide clarity. In doing so, however, the Commission is bound by EU primary law and the Court's case-law. Moreover, the concepts are dynamic and evolve.

Service of general interest (SGI): SGI are services that public authorities of the Member States classify as being of general interest and, therefore, subject to specific public service obligations (PSO). The term covers both economic activities (see the definition of SGEI below) and non-economic services. The latter are not subject to specific EU legislation and are not covered by the internal market and competition rules of the Treaty. Some aspects of how these services are organised may be subject to other general Treaty rules, such as the principle of non-discrimination.

Service of general economic interest (SGEI): SGEI are economic activities which deliver outcomes in the overall public good that would not be supplied (or would be supplied under different conditions in terms of quality, safety, affordability, equal treatment or universal access) by the market without public intervention. The PSO is imposed on the provider by way of an entrustment and on the basis of a general interest criterion which ensures that the service is provided under conditions allowing it to fulfil its mission.

Social services of general interest (SSGI): these include social security schemes covering the main risks of life and a range of other essential services provided directly to the person

⁵ "Single Market Act: twelve levers to boost growth and strengthen confidence" (COM(2011) 206)

that play a preventive and socially cohesive/inclusive role⁶. While some social services (such as statutory social security schemes) are not considered by the European Court as being economic activities, the jurisprudence of the Court makes clear that the social nature of a service is not sufficient in itself to classify it as non-economic⁷. The term social service of general interest consequently covers both economic and non-economic activities.

Universal service obligation (USO): USO are a type of PSO which sets the requirements designed to ensure that certain services are made available to all consumers and users in a Member State, regardless of their geographical location, at a specified quality and, taking account of specific national circumstances, at an affordable price. The definition of specific USO are set at European level as an essential component of market liberalization of service sectors, such as electronic communications, post and transport.

Public service: Public service is used in article 93 TFEU in the field of transport. However, outside this area, the term is sometimes used in an ambiguous way: it can relate to the fact that a service is offered to the general public and/or in the public interest, or it can be used for the activity of entities in public ownership. To avoid ambiguity, this Communication does not use the term but follows the terminology "service of general interest" and "service of general economic interest".

2. INSTITUTIONAL SETTING: CHANGES INTRODUCED BY THE TREATY OF LISBON

The Treaty of Lisbon, Protocol n° 26 on Services of General Interest and Article 36 of the Charter of Fundamental Rights underline clearly the importance of services of general interest in the EU, and set out the principles that guide the EU approach to these services. They provide a sound basis for pursuing a flexible and pragmatic approach which is essential in this field given the differences in needs and preferences that stem from different geographical, social and cultural situations.

The Protocol establishes, for the first time at primary law level, the fundamental principles which apply to services of general interest. It makes clear that the principles need to be adapted to the different services at stake and, therefore, no "one size fits all" approach is possible. It also confirms that the provisions of the Treaties do not affect the competence of Member States to provide, commission and organise non-economic services of general interest. The need to distinguish between economic and non-economic activities remains, however, and a case-by-case analysis continues to be necessary since the nature of these activities evolves constantly. It is for this reason that the Commission keeps the situation under review as explained in Section III below.

According to Article 14 TFEU, "*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*". This Article creates the possibility for the Union to legislate in the field of services of general economic interest by setting the principles and conditions, particularly economic and financial conditions, which

⁶ "Implementing the Community Lisbon programme: Social services of general interest in the European Union" (COM(2006) 177 final of 26 April 2006).

⁷ Joined Cases C-180/98 to C-184/98 *Pavlov and Others* [2000] ECR I-6451, paragraph 118; Case C-218/00 *Cisal and INAIL*, [2002] ECR I-691, paragraph 37; and Case C-355/00 *Freskot* [2003] I-5263.

enable them to fulfil their missions, using a regulation and through the ordinary legislative procedure. It makes clear that any such regulation must be *"without prejudice to the competence of Member States, in compliance with the Treaties, to provide, to commission and to fund such services"*. This acknowledges the fact that the organisation, delivery and financing of such services are primarily for Member States to decide at national, regional or local level. Various public consultations and an on-going dialogue with stakeholders will continue to examine the need for legislation based on Article 14 TFEU. The consensus at this stage seems to be that this not an immediate priority⁸. The Commission is of the view that a sectoral approach, where tailor-made solutions can be found to concrete and specific problems in different sectors, is more appropriate at this stage.⁹

The Commission will keep under review the need to revise existing sectoral legislation which includes universal service obligations, and the possible need to create new universal service obligations in other sectors. The Commission will also analyse the appropriateness of establishing the principles and conditions which enable specific public services to fulfil their missions on the basis of Article 14 TFEU. Respect for the existing diversity of services and situations within the EU will remain a guiding principle in the Commission's assessment.

3. A QUALITY FRAMEWORK FOR SERVICES OF GENERAL INTEREST IN EUROPE

Over the years, the demand for services of general interest and the way they are provided has changed significantly. Services which the State traditionally delivered directly have increasingly been outsourced by national, regional and local authorities, and are now often provided by the private sector (either profit or not-for-profit). This change in approach is driven by processes of deregulation, by changes in government policies, and changes in users' needs and expectations. Since many of these services are of an economic nature, the internal market and competition rules apply to them, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. Indeed having access to a range of offers on the price and quality of services can bring significant choice and benefits for public authorities. While some stakeholders are concerned about the impact of these rules, in particular on social services, the Commission is convinced that they can be applied in a way that takes into account specific needs and that enhances the provision of the services. The rules must of course be revised on an on-going basis to ensure that they can continue to provide the necessary flexibility for public authorities to respond to evolving needs of the society and keep up to date with technological change.

The Commission's approach to providing a quality framework is based on three strands of action: first, increasing clarity and legal certainty on the EU rules that apply to these services; second, providing the tools that enable Member States to ensure that citizens have access to

⁸ A recent example is the European Parliament Resolution of 5 July 2011 on the future of social services of general interest (2009/2222(INI)), point 48: *"Considers that an EU framework regulation on SGEI, permissible under Article 14 TFEU, is not the central issue at this time"*.

⁹ It should be noted that Article 14 TFEU makes clear that its application is without prejudice to articles 93, 106 and 107 TFEU which establish the role of the European Commission in the control of State aid and the conditions under which derogations from the application of this control can be granted to SGEI. This is explained further in the Communication on the application of the European State aid rules to compensation granted for the provision of services of general economic interest (C(2011)9404) adopted alongside this Communication.

essential services and reviewing the situation on a regular basis; and third, promoting quality initiatives in particular for social services which address particularly important needs.

1. Strand 1: Increasing clarity and legal certainty

The Commission aims to ensure that the EU regulatory framework which has an impact on the way services of general economic interest are organised, financed and provided, enables them to accomplish their public service mission. To do so, the Commission has an on-going dialogue with stakeholders from all sectors to identify areas where the legal framework may need to be clarified or amended. Two examples of this commitment are the revisions of the State aid rules for services of general economic interest and the public procurement rules which accompany this Communication.

In these reforms, the Commission has sought to achieve further consistency between State aid and public procurement policies to the benefit of stakeholders. To the extent possible, the Commission has created a more coherent framework. The Commission considers that full compliance with open or restricted public procurement procedures awarded on the basis of either the lowest price or, under certain conditions, the most economically advantageous tender means that the contract is awarded at the "least cost to the community" as required by the Court as one of the conditions for excluding the existence of State aid.

1.1. The revision of the State aid rules for services of general economic interest

The EU rules which apply to the public financing of services of general economic interest adopted by the Commission in 2005 have proved to be effective. However, the Commission and stakeholders agree that they can be made clearer, simpler and more proportionate to ensure an easier application and, hence, to promote a more efficient delivery of high quality services, to the benefit of citizens. The reform has three objectives: to clarify the basic concepts relevant to SGEI, to simplify the State aid rules for small services organised at a local level and which have a limited effect on trade between Member States, and to introduce a more targeted treatment of other services, so as to better differentiate medium size services and social services, on the one hand, and, on the other hand, large-scale activities with a clear EU wide dimension which will be subject to a more effective competition scrutiny.

On the basis of these objectives, the Commission has adopted or proposed a number of important changes:

- First, a new Communication addresses a number of issues that have raised questions of interpretation at national, regional and local level.
- Second, in future a larger number of social services will be exempted (irrespective of the amount of compensation) from the ex ante notification and assessment process by the Commission, if they fulfil some basic conditions of transparency, correct definition and no overcompensation. This list now includes, in addition to hospitals and social housing, services of general economic interest meeting social needs as regards health and long term care, childcare, access to and reintegration into the labour market, and the care and social inclusion of vulnerable groups.
- Thirdly, there will be a deeper and more focused scrutiny of large aid measures, for example in the field of network industries, which may have a significant impact on the functioning of the Internal Market. For these cases, Member States will be

required to include in the compensation mechanism incentives for efficiency gains over the life of the contract, tailored to the needs of specific sectors.

- Finally, the Commission is proposing a new *de minimis* rule specifically for services of general economic interest which will exclude the existence of aid and, hence, the need for Commission scrutiny for amounts of aid up to €500.000 over a three year period. For certain sectors, in particular transport and public broadcasting, special sectoral rules continue to apply.

1.2. The reform of the rules on public procurement and concessions

The Commission is also proposing a significant reform of the rules on public procurement and concessions which will promote better quality in the provision of the services of general economic interest.

First, the reform provides for specific treatment for social and health services. These will be subject to a lighter regime which takes into account their specific role and characteristics. They will be subject to higher thresholds and will have to comply only with transparency and equal treatment obligations. In addition, in order to encourage a quality approach, the reform promotes the use of the economically most advantageous tender criterion which means that Member States do not have to award such services on the basis of the lowest price alone.

Second, there is now greater legal certainty on how EU public procurement rules apply to relations between public authorities. "Public-public cooperation" concerns situations where public entities such as local authorities cooperate in order to fulfil public tasks. While the public status/legal nature of parties to a public contract is not in itself sufficient to exclude related contracts from the scope of EU public procurement directives, the reform clarifies, in line with European Court of Justice case-law, the cases where such contracts are not covered by EU public procurement rules. The new rules will ensure that the application of public procurement rules will not interfere with the freedom of public authorities to decide how to organise and carry out their public service tasks. In turn, there are provisions to ensure that public-public cooperation does not cause distortions of competition in relation to private economic operators.

Third, the reform recognises the importance in certain circumstances of a procedure with negotiation and prior publication when awarding contracts for the provision of services of general economic interest, and has ensured that this is part of the tool box available for contracting authorities. Similarly, the Commission has proposed to enable public authorities to take into consideration as award criteria the life cycle of the requested products, services or works. This reform will also help to ensure that contracts are not awarded on the basis of the lowest price only but adequately reflect increased environmental and societal considerations.

Finally, the reform will introduce a new self-standing regime for concessions. This is particularly important for services of general economic interest as concession contracts are traditionally used to deliver public services or utilities obligations. The key features of the public procurement reform will also apply to concessions, and, as for procurement contracts, there will be new rules on the modification of existing contracts. In some sectors, concessions can be granted from 20 up to 100 years and, as a consequence are more likely to need to be revisited during their lifetime. On the basis of the case law of the Court, the Commission proposes to introduce new provisions which specify under which conditions a modification of

the terms of a concession contract is allowed without a new competitive tendering, and provisions to ensure compliance with the equal treatment and non discrimination principles.

The reform of the public procurement rules is one of the twelve priority actions of the Single Market Act which the Commission has confirmed in the Annual Growth Survey 2012 should be fast-tracked. The Commission therefore calls on the Parliament and the Member States to reach agreement on these proposals by the end of 2012.

1.3. Communication and information actions on how to apply EU rules

The Commission is committed, to helping public authorities, service providers, users and other stakeholders to better understand and apply EU rules to services of general economic interest, in response to the questions and requests for explanations that have been raised by stakeholders. The Commission has taken a number of actions in this area.

At the end of 2010, the Commission published a new guide¹⁰ which covers three key issues:

- how Member States can finance these services in compliance with State aid rules;
- how public authorities can use public procurement rules and, at the same time, ensure quality, innovation, continuity and comprehensiveness of social services,
- how Internal Market rules and, in particular, the Services Directive, apply to social services without preventing Member States from regulating them to guarantee quality and accessibility.

This guide has replaced the document on Frequently Asked Questions and takes into account developments in case-law, Commission decisions, changes to the legislative framework, discussions within the Social Protection Committee (SPC)¹¹ and questions received from stakeholders through the **Interactive Information Service (IIS)**¹². The IIS is an on-line service which provides information to citizens, service providers, public authorities and other stakeholders and allows them to raise questions about EU law and services of general economic interest. Since it started to work in January 2008, the Commission services have replied to nearly 200 questions through this service.

The Commission has also produced a guide on "buying social"¹³ which is a tool to help public authorities to buy goods and services in a socially responsible way in line with EU rules. It highlights the contribution which public procurement can make to social policy. The document contains practical examples on a broad range of social issues, such as promoting equal opportunities and employment opportunities, improving labour conditions, social inclusion of vulnerable persons, such as disabled persons, and compliance in substance with the provisions of the fundamental ILO conventions. A new edition of "Buying Green! A handbook on green public procurement"¹⁴ was published in October 2011. The handbook provides guidance on how to reduce the environmental impacts of public sector consumption

¹⁰ Guide to the application of EU rules on State aid, public procurement and the internal market to services of general economic interest, and in particular to social services of general interest (SEC(2010) 1545.

¹¹ "Report by the Social Protection Committee on the application of Community law to SSGI" of November 2008

¹² See: http://ec.europa.eu/services_general_interest/index_en.htm

¹³ <http://ec.europa.eu/social/BlobServlet?docId=6457&langId=en>

¹⁴ Available at: http://ec.europa.eu/environment/gpp/buying_handbook_en.htm

and how to use green public procurement to stimulate innovation in environmental technologies, products and services.

The Commission Staff Working Paper on public-public cooperation¹⁵ summarises and explains the case-law of the ECJ on how public procurement rules apply to situations where public entities such as municipalities cooperate in order to fulfil public tasks conferred on them (see above Section 1.2). It should contribute to the better understanding of the legal provisions in order to mitigate legal risks surrounding this form of cooperation between public authorities.

The Commission pays specific attention to the social services sector. The **biennial reports on social services of general interest**¹⁶ published in 2008 and 2010 monitored developments in the social services sector and fostered dialogue at European level. . The Commission has also helped successive Council Presidencies in organising the SSGI Forums which have been essential in sharing information and promoting dialogue and better understanding of the rules among stakeholders. The Commission is committed to support future rotating Presidencies of the Council to organise the 4th European Forum on Social Services of General Interest in around twelve months' time.

The Commission will continue to work within the Social Protection Committee which, working with all relevant institutional and civil society stakeholders, will prepare a report by the end of 2013 on the application of EU rules to SSGI.

2. Strand 2: Ensuring access to essential services

The sectoral legislation adopted at EU level has always carefully balanced the need to increase competition and the use of market mechanisms with the need to guarantee that every citizen continues to have access to essential services of high quality at prices that they can afford. This has been the case, for instance, in the network industries from telecommunications and postal services to transport and energy. In addition, the Commission's annual Consumer Markets Scoreboard¹⁷ monitors the performance of around 30 services markets with regard to comparability, trust, problems and complaints, overall satisfaction, switching and choice.

Given that users' needs and technologies evolve constantly, it is necessary to review regularly both existing universal services obligations and the need to introduce new ones. The examples below illustrate the pro-active approach which the Commission takes in this field. Member States remain free to extend existing universal service obligations, or to introduce new ones, provided that the measures comply with EU law.

2.1. Postal services

¹⁵ Commission Staff Working Paper concerning the application of EU public procurement law to relations between contracting authorities ('public-public cooperation') SEC(2011) 1169 final, of 4 October 2011.

¹⁶ SWD – First and Second Biennial Reports on social services of general interest, SEC(2008) 2179 and (SEC(2010) 1284

¹⁷ http://ec.europa.eu/consumers/consumer_research/editions/docs/6th_edition_scoreboard_en.pdf. For some of these services, such as electricity or bank accounts, the Commission has carried out in-depth market studies (available on the same website).

The Third Postal Directive¹⁸ is a milestone in the reform of postal markets in Europe which began in 1992. It has brought many benefits to citizens, including improvements in the quality of service and new, innovative postal delivery services. The Directive defines the minimum requirements regarding the scope of the universal service obligation: a high quality postal service must be provided (at least) five working days a week, throughout the entire territory, at affordable prices for all users for basic letters and parcels of certain weights, and for registered and insured items. It also contains provisions to ensure the high quality of the postal universal service and the Commission is monitoring how it is being implemented. It has recently set up a European Regulators Group for Postal Services (ERGP)¹⁹ which works on issues such the financing of the universal service obligation and monitoring of market outcomes²⁰. The Commission has also created a Postal Users Forum, which had its first meeting in December 2011 and brought together end-users – both individual customers and businesses – with other stakeholders including operators and trade unions, to look at evolving consumer needs in a changing communication environment and with a view to the sustainable development of the sector.

In the context of its work on e-commerce the Commission will present a *Green Paper on the cross-border parcel delivery* in 2012. This will focus on issues such as the quality of cross-border postal delivery services and their pricing to identify solutions for obstacles experienced by consumers and business. The Commission also intends to present the results of two studies on the pricing behaviour of postal operators and its effects on the markets, and the principles to calculate the net cost of the postal universal service obligation (USO). By the end of 2013 it will present the Fourth Report on the Application of the Postal Services Directive.

2.2. Basic banking services

Access to basic payment services under fair conditions is important for financial and social inclusion and to allow consumers to benefit fully from the single market. In early 2011, the Commission did an impact assessment to examine whether EU legislation was needed in this area. Having considered all options, the European Commission decided, at this stage, to propose a Recommendation²¹. It aims to ensure that basic payment services and a payment card are offered to every EU citizen and resident who does not already have a payment account in the Member States where they seek to open one. This basic payment account should be provided either free or at a reasonable charge by payment services providers. The Recommendation sends a clear message to Member States and providers about what is expected while leaving flexibility at national level on how to achieve it.

The Recommendation also provides criteria for assessing how Member States have implemented it and to see whether further action is necessary. On the basis of a review and impact assessment which it will carry out in 2012, the Commission will decide whether further action is necessary in this area.

2.3. Transport

¹⁸ Directive 2008/6/EC of the European Parliament and of the Council, of 20 February 2008, amending Directive 97/67/EC with regard to the full accomplishment of the internal market of Community postal services

¹⁹ Commission Decision of 10 August 2010 establishing the European Regulators Group for Postal Services, OJ C 217.

²⁰ Documents available on the website of ERGP: http://ec.europa.eu/internal_market/ergp/index_en.htm

²¹ Commission Recommendation on access to a basic payment account (C(2011)4977).

Public service obligations in the transport sector are laid down in specific pieces of legislation for air services, inland transport and maritime transport²². This sector-specific legislation establishes the principles that Member States should follow when defining public service obligations in each transport mode.

The 2011 White paper²³ on transport states that a higher share of travel by collective transport, combined with minimum service obligations, will allow increasing the density and frequency of service, thereby generating a virtuous circle for public transport modes.

The attribution of public service contracts defining public service obligations in the different transport modes must respect the principles of transparency, non-discrimination and award following a competitive tendering procedure. This can best be achieved by means of open public tender procedures. The quality of passenger transport services will be of increasing importance in the coming years, given the ageing population and the need to ensure that public (collective) transport is an attractive alternative to individual transport, helping to achieve resource efficiency and fuel security objectives. The creation of a dynamic, open rail market should bring significant benefits for passengers in terms of quality, efficiency and volume of services offered) and for the public authorities and tax payers through reduced public funding for public service contracts.

In 2012, the Commission intends to make a proposal on the opening of the market for national passenger services in 2012. This follows the opening of the market for freight services and for international passenger services. The Commission will also consider revising the public service regulation for inland transport in 2012 to generalize competitive tendering procedures for the award of public service contracts for the railway sector. While Member States have a wide margin of discretion in identifying areas where it is necessary to impose public service obligations for passenger transport services, to be sustainable these services need to be efficient, high quality and provided in a stable financial context. Mandatory tendering should help to ensure this.

2.4. Energy

The Third Energy Package entered into force on 3 March 2011. It defines universal service obligations, contains clear provisions on public service obligations and consumer protection for both electricity and natural gas and provides for the protection of vulnerable customers against energy poverty²⁴. Measures adopted on the basis of these Directives must be in the general interest, clearly defined, transparent, non-discriminatory and verifiable, and guarantee equality of access of EU electricity and gas companies to EU national consumers and vice versa.

²² Regulation (EC) n° 1008/2008 of the European Parliament and the Council, of 24 September 2008, on common rules for the operation of air services in the Community (Recast) and Regulation (EC) No 1107/2006 of the European Parliament and the Council, of 5 July 2006, concerning the rights of disabled persons and persons with reduced mobility when they are travelling by air; Regulation (EC) n° 1370/2007 of the European Parliament and the Council of 23 October 2007 on public passenger transport service by rail and by road and repealing Council Regulations (EEC) n° 1191/69 and 1107/70; Council Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage).

²³ White Paper - Roadmap to a Single European Transport Area. Towards a competitive and resource efficient transport system. COM(2011) 144

²⁴ Directive 2009/72/EC on electricity and 2009/73/EC on natural gas.

To promote the implementation of competitive, energy efficient and fair retail markets the Commission established the Citizens' Energy Forum²⁵ in 2008 as a regulatory platform based on the experience gained in previous *fora*. The Commission Staff Working Document "An Energy Policy for Consumers"²⁶ took stock of the consumer benefits that existing energy policy measures provide. It identified a range of EU legislative and policy initiatives that contribute directly or indirectly to improving consumer welfare in the energy sector.

In line with the European Council Conclusions of December 2011, Member States should implement the Third Energy package fully and as quickly as possible. The Commission underlines the importance in this context for Member States to define clearly the concept of vulnerable customers. The Commission plans to organise a 5th meeting of the Citizens' Energy Forum in November 2012 to continue fostering stakeholders' dialogue on key issues such as the protection of vulnerable customers, the optimal retail market model, price transparency, and the possible benefits of smart meters on energy demand management.

2.5. Electronic communications

The Universal Service Directive in the field of electronic communications²⁷ provides a social safety-net where market forces alone do not deliver affordable access to basic services for consumers, particularly where they live in areas which are difficult or costly to service, or who have low incomes or disabilities. The safety-net concept covers three specific objectives: availability, affordability and accessibility. The Commission has recently adopted a Communication on universal service in e-communications²⁸ reporting on the outcome of the public consultation in 2010 and the third review of the scope of universal service obligation in electronic communications. One of the key questions addressed is what role universal service obligations should play in meeting the objective "broadband for all". From the analysis the Commission concludes that there is currently no need to modify the scope of the universal service obligation at EU level. The analysis also concludes that further guidance on how to implement the universal service rules is needed given the risk of divergent national approaches and the potential financial implications for industry. The Commission will put forward this guidance in 2012 and it will help to tackle the risk of social exclusion while allowing, according to the principle of subsidiarity, for account to be taken of different national circumstances, the need to minimise market distortions, and to avoid imposing a disproportionate burden on the sector²⁹.

3. Strand 3: Promoting quality – the example of social services of general interest

Social services of general interest play a major role in European societies by contributing to social protection and social inclusion. At the same time, demand for these services increases as the ability to finance them becomes more constrained, currently as a result of the economic

²⁵ http://ec.europa.eu/energy/gas_electricity/forum_citizen_energy_en.htm

²⁶ SEC(2010) 1407 final, of 11 November 2010.

²⁷ Directive 2002/22/EC of the European Parliament and of the Council, of 7 March 2002, on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive), as amended by Directive 2009/136/EC.

²⁸ "Universal service in e-communications: report on the outcome of the public consultation and the third periodic review of the scope in accordance with Article 15 of Directive 2002/22/EC" (COM(2011) 795 final of 23 November 2011).

²⁹ Note that paragraphs 20 to 30 of the Community Guidelines for the application of State aid rules in relation to rapid deployment of broadband networks (OJ C 235 of 30 September 2009, p. 7) make specific reference to the definition of SGEI in the electronic communication sector.

crisis and, in the longer term, of demographic ageing. The Commission, the Member States and stakeholders representing service users and providers have undertaken a number of recent initiatives in the area of social services' quality.

In 2007³⁰, the Commission announced a strategy to support the quality of social services across the EU. As a follow-up, the Commission has supported, via the PROGRESS programme³¹, European initiatives to develop tools for quality definition and measurement and has supported the development, within the Social Protection Committee of a voluntary European Quality Framework for social services.

3.1. Projects supported by the PROGRESS programme

From 2008 to 2010, the PROGRESS programme financed eight projects to develop tools for the definition, measurement, assessment and improvement of social services quality with a special focus on long-term care. All the projects had trans-national partnerships and exchanged good practices among public authorities, service providers and other actors with different cultural backgrounds and dealing with different legal and administrative context and different socio-economic conditions. Practically all projects highlighted the importance of involving users in the definition and evaluation of social services quality³².

In 2012 the Commission will support a number of new transnational projects through the PROGRESS programme aimed at implementing the voluntary European Quality Framework in different Member States and in a variety of sectors;

3.2. The Social Protection Committee: voluntary European Quality Framework for social services

In October 2010, the Social Protection Committee adopted a voluntary European Quality Framework for social services. It aims to develop a common understanding of the quality of these services within the EU. It is designed to be flexible enough to be applied to a variety of social services in the national, regional and local context in all Member States and to be compatible with existing national quality approaches. It identifies principles and criteria that a social service should comply with to address the needs and expectations of the service user. The Framework also includes elements for a methodology which should help public authorities to develop at the appropriate level quality tools (standards or indicators) for the definition, measurement and evaluation of social services quality. The framework includes a rights-based focus and can help, for example, to increase the protection of children's rights, when moving from institutional childcare to alternative care systems.

3.3. Statute for a European Foundation

Foundations which have as their mission to provide public benefit play an increasing role in providing and financing social services of general interest in the EU. However, they still face difficulties in establishing themselves in other Member States or pooling their assets on a cross-border basis. There is a need to enable foundations of general interest to be established,

³⁰ "Services of general interest, including social services of general interest: a new European commitment" (COM(2007) 725 final of 20 November 2007).

³¹ PROGRESS is the EU programme for employment and social solidarity which provides financial support to implementation of the objectives of the European Union's Social Agenda.

³² Commission Staff Working Document "Second Biennial Report on social services of general interest" (SEC(2010) 1284 final, of 22 October, pp. 59-66).

to operate and to finance themselves on a cross-border basis, subject to adequate supervision. This would allow them to reduce the administrative burdens created by the complexity of running operations in various Member States. This would ultimately free up more of their resources to promote the wellbeing of EU citizens.

To bring about these benefits, the Commission will table a proposal in 2012 to create a statute for a European Foundation which will exist alongside national forms and be optional.

4. CONCLUSIONS

The current economic and financial crisis is a reminder of the central role that services of general interest play in ensuring social and territorial cohesion. At the same time, the crisis is having a significant impact on the public sector as finances are squeezed, and it is essential that every effort is made to maintain the provision of these services and improve their quality. This Communication shows that the Treaties provide the European institutions and Member States with the necessary legal tools to do this. The European Commission is fully committed to playing its role by putting in place a quality framework for these services, as seen in the two proposals on the revision of State aid rules applicable to services of general economic interest and on public procurement and concessions which it has tabled in parallel to this Communication. It will also deliver a series of other actions in the coming months which taken together will give the EU a sound quality framework for SGI for the coming years. It will take this work forward as part of its broader commitment to put the social economy and social innovation at the heart of its work under the Europe 2020 strategy, as seen most recently in its Social Business Initiative³³ which supports the development of new and socially innovative ways of doing business and providing services.

³³ "Social Business Initiative – Creating a favourable climate for social enterprises, key stakeholders in the social economy and innovation" (COM(2011) 682 final of 25 October 2011)