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Sustainability Growth Innovation

Position Paper

The EU Single Market at 30:

SGIs in the Single Market

19 July 2023

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On 23 June 2023, for the UN Day of Public Services, SGI Europe organised an event on "The EU Single Market at 30: What role for SGIs?" On this occasion, SGI Europe reflected on the place of services of general interest (SGIs) and public services in the EU social market economy. The event explored the different sides of the EU Single Market, the tensions and reconciliations between market and social components, its objectives, achievements, evolution and a reflection on its future. Building upon the conclusions of this event, this Position Paper highlights the contributions and the pre-conditions for SGIs to contribute to the future of the Single Market.

Introduction

Since its creation in 1993, the **EU Single Market has been a living ecosystem, changing shape and form as new geopolitical challenges**, such as the integration of new Member States, bringing the EU from 12 Member States to 28 (and 27 in 2020, when the United Kingdom officially withdrew from the EU), the Great Recession, the sovereign debt crisis or the COVID-19 pandemic, materialised.
In 1985, the White Paper "Completing the Internal Market: White Paper from the Commission to the European Council" outlined the objectives of the Single Market, such as **joining markets of the Member States into one expanding and flexible common market**. Since then, the narrative and expectations of citizens dramatically changed, including with the inclusion, through the Lisbon Treaty of new values of **sustainable development and a highly competitive social market economy**.[1]

The *Monti report* (2010) states that EU citizens' economic, social and environmental welfare **can be defended better with the Single Market** than with economic disintegration and purely national measures.[2] With the expansion of the EU Acquis, more **tensions between market integration and social objectives** appeared. In seeking appropriate reconciliation between social and market considerations, **services of general economic interest (SG(E)Is) play an instrumental role.**

The Treaty of Lisbon has been a milestone also for SGIs and public services. With Article 14 TFEU and Protocol 26, the Lisbon Treaty establishes a basis allowing competent authorities to ensure that citizens throughout the EU can benefit from high-quality SGIs. It also shifted the debate from liberalisation – and its macro impacts – to social and local SGIs, centred around the challenge of **maintaining quality and scope in the context of increasing pressure on public finances.**

With the principle of subsidiarity, **Member States are directly in charge of organising SGIs and addressing related challenges**, with the EU assisting in modernising them and adapting them to a changing environment and evolving needs of citizens regarding their scope and quality. At the same time, the European Commission can contribute to ensuring that, where **EU rules** apply to these services, those **are predictable and proportionate.**

SGIs and their position in the market reflect the different traditions of their organisation. The continental tradition sees services of general economic interest as instruments for broad social policy at national, regional and local levels. Nordic countries effectively combine open markets and competition with social protection based more on safety nets for individual workers, whilst Anglo-Saxons countries focus more on consumer welfare and general market opening.

[1] Monti, A new strategy for the Single Market at the service of Europe's economy and society, p.14
[2] Monti, A new strategy for the Single Market at the service of Europe's economy and society, p.21

The **organisation of the Single Market is essential for the provision of services of general interest**. However, it is also important to stress that **services of general economic interest are important for enterprises and citizens to access and benefit the single market.** When addressing the state of the Single Market in 2023, it is necessary to adopt a comprehensive approach to it: not only is the Single Market at the heart of competition policy, which remains a powerful instrument to integrate markets and make them competitive but also impacts, amongst others, industrial, energy, transport, digital, social, environment, climate change, regional policies, as well as justice, rule of law and democracy.

SGIs are crucial to reach territorial, economic and social cohesion and enable economic activities

SGIs are crucial to succeeding in the post-COVID-19 recovery, promoting upward convergence and fostering a stronger and more resilient European social market economy. SGIs employ over 60 million workers and contribute approximately 26% of the EU GDP. SGIs **guarantee minimum well-being standards for everyone, making lives better and less dependent on external factors and circumstances** such as the place of living (urban/rural areas), social background, external circumstances and accidents.
The ability to **access SGIs is a critical prerequisite for the EU social market economy**, is an important source of job creation and can facilitate access to other SGIs services with an enabling function, such as education, housing, labour market and social services.

During the COVID-19 pandemic, when non-essential economic activities were halted, **services of general interest represented a significant part of the activities that remained operational throughout the crisis.** Those services guaranteed the well-being and security of citizens whilst playing a vital role in maintaining a certain level of economic activity and preventing the collapse of the Single Market. **The strength of SGIs and the public sector was crucial to overcoming the crisis, highlighting the essential differences between private business interests and services of general interest.**
Similarly, the "energy crisis" faced in 2022, the consequence of the Russian hybrid warfare against Ukraine, the difficulties faced to continue to provide affordable energy impacted citizens, other services of general interest (such as housing, water provision, transport etc.), endangering the whole market economy, with fears of massive recession and difficulties in the protection of the most vulnerable.

Those recent challenges highlight the **limits to what the market can deliver**. Each of these crises has exacerbated the tendency to seek emergency solutions at the national level. **Whenever relevant, the EU provided pan-European solutions to the challenges and emerged stronger**: temporary fixes – such as the suspension of the state aid rules and the general escape clause of the stability and growth pact – provided instant regulatory relief and supported the quick roll-out of financial support to enterprises facing problems. However, the prolonged suspension of the application of the rules, without a firm timeline regarding the return to normal, contributes to feeding the uncertainty.

As the Single Market remains the biggest asset of the EU economy, **adapting** its instruments, such as the **state aid and public procurement frameworks, from "enforcement of fair competition" to "active policy tools" will lead to better channel productive investments for the benefit of competitiveness and sustainability**.

Position

Necessary pre-conditions for guaranteeing that SGIs contribute as actors in the economy

SGIs are essential in supporting the competitiveness and adaptability of the EU industrial base. In the context of green reindustrialisation, SGIs are responsible for providing the infrastructure without which most European economies' value chains would collapse.

To ensure that SGIs can continue to contribute to the EU economic and industrial base, SGI Europe calls for the following:

Acknowledging SGIs as drivers for innovation and the uptake of new products and services

In light of the ongoing economic and social transition and the emergence of new needs, **the understanding of the role of SGIs evolved in Europe. SGIs have an important stabilising and counter-cyclical role for the economy and society.** EU legislation on sectoral policies and the evolution of public procurement and state aid frameworks have tried to create a level playing field.

In this context, SGI Europe calls for considering SGIs as more than remedies to market failures. To satisfy the market efficiency test, the market demands and the calculation of costs by comparison to a private undertaking have to be proven. Since SGIs contribute to competitiveness, sustainability and innovation and are core enablers of all economic activity, public authorities cannot be constrained in designing their policies by applying "classic economic approaches". **The transformative power of SGIs should be better acknowledged to further boost the uptake of innovative products by citizens and consumers, especially in the context of the green and digital transition.**

For example, the revised Interpretative Guidelines on public passenger transport services (PSO) by Rail and Road (Regulation (EC) 1370/2007) was, in its first draft, merely referring to the need to show "user demand" when entrusting providers with the public service obligation. The finally adopted Guidelines expanded the definition, now explicitly **asking competent authorities to consider existing and prospective demand from users, as well as the expected demand which can reasonably arise from pursuing policy objectives** such as the promotion of sustainable transport, regional connectivity, public health or social cohesion for assessing the demand for transport.

With this expanded definition, public authorities are **better empowered to shape markets instead of merely filling existing needs.** Even if the demand does not yet exist, setting the right policy framework can help to create it. SGIs can play a central role in supporting the uptake of such new products and services.

Leaving local, regional and national authorities freedom of funding, managing and organising SGIs

In creating an enabling environment SGIs to flourish, the specificities and achievements of employers and enterprises of services of general interest must be considered. **The European primary law – Article 14 TFEU and Protocol 26 – is neutral about ownership, leaving the Member States the freedom of funding, managing and organising SGIs.**

As an established principle, **contracting authorities have the right to use their own operators to fulfil public service tasks**. The ECJ has established certain conditions under which the internal award is exempted from procurement rules.

It is critical to leave enough space for public authorities to organise SGIs adequately and in line with their culture and national practices. In this regard, the current treatment of 'in-house' provision can, in many cases, constrain providers of SGIs from organising themselves most efficiently. Accordingly, to remain competitive, **SGI Europe calls for guaranteeing the complete freedom to delegate the realisation of services of general interest to their bodies if they are the most suitable to execute them**. It can enable good governance, whilst the systematisation of externalising services to ensure competition can lead to the under-exploitation of their resources and know-how.

This freedom of funding, management and organisation must be respected, and the **EU acquis must not create a distinction between publicly or privately owned enterprises**. One such example is the SME definition, where an enterprise does not qualify as an SME if it is owned more than 25% by the state (regardless of the size of the enterprise), therefore putting at risk the level playing field with their exclusion from the regulatory carve-outs regularly put in place for SMEs.

Respecting the principle of subsidiarity

Citizens' **expectations from providers of services of general interest vary according to the different traditions** existing across Europe. Due to their importance to citizens and companies, SG(E)Is are treated differently than other services in the different Member States.

A particular emphasis on the principle of subsidiarity has **left space for national policies to design the provision of services of general interest in line with their political, historical and cultural contexts**. This is one of the reasons why, with respect to SGIs, the **principle of subsidiarity**, as enshrined in Article 5 TFEU, must be applied in the context of the EU: the Union is justified in exercising its powers only when the Member States are unable to achieve the objectives of a proposed action satisfactorily, and there is an added value if the action is carried out at EU level.

While political responsibility for the provision of SGIs remains with the elected officials of the relevant representative bodies and is regularly evaluated by citizens through elections, SGI Europe believes that further nourishing the principle of subsidiarity respects the diversity of the EU and more precisely meets citizens' expectations. **The principle of subsidiarity – and to some extent of proportionality – is a cornerstone for the optimal running and organisation of providers of services of general interest.**

Meeting the investment challenges

For the Single Market to continue its deepening and integration, **cross-border infrastructure projects are needed**. Just like roads, rails, electricity infrastructure, and other facilities for service delivery need to be provided across borders, more cross-border investments will be needed.

Public investment has a particular role in providing SGIs and public services. In their current understanding, SGIs are seen as remedies to market failures and complement the market. The communication of the European Commission, "**Long-term competitiveness of the EU: Looking beyond 2030**"[3], recognises public investment and infrastructure for the provision of a high level of public services and infrastructure as **fundamental to the resilience of our economies**. It also highlights the importance of increasing public investment and the **capacity of the energy, transport and connectivity infrastructure throughout the EU**. While keeping debt and deficits under control, removing obstacles to counter-cyclical public productive investments – through the revision of the EU economic governance framework – must be a priority to meet the investment challenges SGIs face**.**

[3] European Commission, COM(2023)168, "Long-term competitiveness of the EU: looking beyond 2030"

However, whilst public investments must play a crucial role – especially in times of crisis when private investors are reluctant to risk – relying solely on public investments will not bring medium and long-term solutions to the investment challenge. For further attracting private investments, **completing the Capital Markets Union and further facilitating the investment flows across the 27, as well as creating enabling frameworks, regulatory certainty and measuring cumulative effects will be needed**. SGI Europe also calls for exploring all combinations between public and private funding, including the broader use of innovative sources of financing, facilitating public-private partnerships when appropriate, and simplifying the complexity of rules to support the absorption of structural funds by Member States.

Reflecting on the development of EU Public Goods

Public services and services of general interest are core elements of the EU social market economy. **Accessible, high-quality and affordable services of general interest are instrumental to the lives of citizens and enterprises**. SGIs are more than enabling elements of the EU industrial ecosystems; they are vital actors, directly impacting the performances of many of the "Drivers of competitiveness" highlighted by the European Commission in its communication "Long-term competitiveness of the EU: looking beyond 2030".

Contributing throughout the whole EU socio-economic ecosystem, SGIs and public services must now take centre stage at the EU level. Throughout recent crises, EU leaders have seized opportunities to improve cooperation. **Shaped by crises and external pressures, these responses have improved the coherence and relevance of the EU.**

SGI Europe now calls for engaging in a **reflection to improve this coordination and coherence, going beyond crisis response**. In recent years, we have witnessed the rapid uptake of Important Projects of Common European Interest (IPCEIs) on critical projects for resilience and open strategic autonomy – on microelectronics, batteries, and hydrogen. In total, 208 companies from 21 Member States have joined IPCEI projects, with €26,7bn of state aid approved and an additional €50bn of expected private investment.

The success of those IPCEIs highlights the importance of the EU level in such industrial projects. Building upon those developments, SGI Europe calls for starting a reflection on the **creation of "pure" and genuine EU Public Goods**.

With the preparation of the **Strategic Agenda for 2024-2029** now in motion, we believe that there is room for more action to **preserve the EU's edge on critical and emerging technologies relevant to green and digital transitions**. We see those possibilities – which could, in the long run, serve as a basis for EU Public Goods – in sectors such as **energy** (through a genuine Energy Union, starting with guaranteeing the security of supply and energy security as a whole), **healthcare** (especially on pandemic preparedness and healthcare scientific research), or **security** (including of our critical and strategic infrastructures, including **water** and **public transport**).