

SGI PROVIDERS AND EMPLOYERS FACING THE COVID-19 OUTBREAK

CONTRIBUTION TO SHARPENING EMERGENCY MEASURES

Executive Summary

- The crisis triggered by the COVID-19 outbreak is expected to be amongst the most violent ever, with social consequences aggravated by its very nature. **It has clearly shown how crucial the provision of public services and SGIs, such as healthcare, water, energy, waste management, telecommunications, education, housing and transport, is to the well-being of citizens and the economic resilience of the EU.**
- Most SGIs have been working properly throughout the crisis up to now but are dealing with several constraints that must immediately be addressed in order to ensure their continuity:
 - **Supply-side shortages:** in a global economy, international supply chains disturbances will produce multiple impacts on SGIs provision. Supply-side shortages such as, amongst others, the overall issues linked to the management and protection of workers, are now threatening the proper operationalization of SGI activities.
 - **Demand-related shifts and changes in the users' habits:** demand-related shifts are asymmetrical amidst SGIs, with some sectors facing a sharp increase in their usage and other an unprecedented drop. Those disruptions will soon exercise strong pressure – both in nominal and real terms – on indispensable resources to keep those activities running.
- The coordination at EU level must be ensured and an appropriate framework put forward. Important steps have already been taken by the European Commission. Nevertheless, some aspects have not been integrated yet into the EU emergency response:
 - **A level-playing field on State aid:** it is necessary to clarify that all public undertakings may also be subject to Article 107 TFEU in the case of financial problems.
 - **Addressees of State aid in the crisis:** one of the main challenges for SGIs is to maintain financial management, with the support of the banks. An additional support on the preparation of a recovery plan is necessary in the form of aid to enterprises, to ensure that advance payments are recoverable over a long period.
 - **Supporting Public Services SMEs:** The COVID-19 outbreak is affecting small and medium sized public services enterprises, calling for special support based on a general problem of SMEs in such times of crisis, independently of the ownership structure.

INTRODUCTION

The COVID-19 outbreak has already provoked multiple economic impacts for European countries, and its future developments – both in terms of chronology and intensity – are hardly anticipable. The institutional responses against the virus and its effects are being designed and/or amended on a daily basis, across different levels of governance, and are largely affected by a fast-changing and unpredictable reality.

As consumption, private investment and international exchanges of goods and services are already highly compromised, governments must play a strategic role, which should consist in:

- Guaranteeing the necessary provisions to contain the spread of the virus and providing effective healthcare infrastructures, including the provisioning of sufficient medical and care capacities, the stocking of medical, sanitary and hygienic material, the acquisition of reliable data concerning infection rates etc allowing reliable forecasts and a well-functioning co-operation between the health care sector, virologic institutes and governments.
- Protecting economic structures in order to avoid their collapse and, in the near future, foment their full rehabilitation and the consequent re-establishment of growth.

The costs of crisis management are growing exponentially, which implies that any delay in the provision of the necessary funds on the ground will create even further expenses in the future. Short and long-term answers are intrinsically intertwined, and the EU must promptly mobilize every effort in order to prevent a domino effect from setting in and affecting an even larger range of economic activities.

As the European cross-sectoral social partner representing the essential services that are in the front line of the fight against the COVID-19 outbreak, CEEP and its members will facilitate immediate, medium and long-term solutions.

Our members employ indeed over 60 million workers, contribute to approximately 26% of the EU GDP and – due to their essentiality – represent a large percentage of the activities that remain operational throughout the crisis. Public services and SGIs, including healthcare, are the backbone of our social market economy since they provide the very infrastructure without which the whole EU socio-economic system would not be able to function. Therefore, the lack of an appropriate framework capable of supporting those essential services would seriously jeopardize our economy's overall capacity to recover.

SUPPLY AND DEMAND-RELATED CONSTRAINTS

The economic crisis triggered by the COVID-19 outbreak is currently expected to be as violent as the Great Depression or the 2008 crash. However, this time, the multiple social consequences at stake are aggravated by the very nature of the present shock. European citizens are extremely vulnerable whilst facing both economic and health-driven threats.

Amidst this critical background, the provision of public services and SGIs is even more crucial to the well-being of these citizens as well as for the overall economic resilience of the EU. **Services such as water and energy supplies, waste management, telecommunications, housing or transport have been working very efficiently but are now dealing with several constraints that must immediately be addressed in order to ensure their continuity.** Healthcare services and the preconditions for their proper functioning need special attention.

In the context of a global economy – and considering, moreover, the particular interconnections that link EU Member States – it becomes evident that international supply chains disturbances will produce multiple impacts on the provision of those services, as well as on the ensemble of economic activities, although in quite different magnitudes.

Supply-side shortages

CEEP has been actively collecting inputs from its members since the beginning of the COVID-19 outbreak within EU countries. Through the analysis and systematization of the reports obtained, which encompass a wide range of sectors, **we must highlight some of the main supply-side shortages that are threatening the proper operationalization of activities.**

Due to the volatility and the uncertainty when it comes to the developments of this crisis, providers must strategically re-organize their working systems without reliable parameters, or simply, in the dark. Most – if not all – of them have promptly installed a dedicated taskforce to constantly monitor and adjust their responses to the situation and, yet, they are still struggling immensely to do so.

The overall issues linked to the management of the workforce appear amongst the main concerns of public services' providers. Apart from the challenges related to keeping only the minimum required number of workers on the ground – whilst the demand for many of those essential services have not significantly varied –, enterprises must largely adapt their general working practices in order to increase “teleworking” as much as possible. This transition requires a great deal of coordination, as well as adjustment efforts, especially for those who must reconcile their working schedules with parental supervision, elderly caretaking and/or other indispensable obligations.

Furthermore, **administrators must come up with contingency plans to guarantee that a sufficient number of workers is available – particularly to execute highly technical tasks – to maintain those services operational.** Once the necessary contingent of workers is effectively in place, additional measures – related to the nature of the virus – to protect health and safety must also be put forward, which requires both further management efforts and financial costs for the employers. **Any disturbance in the supplies of water or energy, for instance, can be extremely harmful under these circumstances – not to mention healthcare, which is more than evident.**

Demand-related shifts and changes in the users' habits

Unlike the for-profit sector, demand-related shifts are quite asymmetrical amidst public services and SGIs, which naturally reflects their essentiality. Whilst most businesses are solely facing the issue of shrinking demands, a majority of CEEP members have only experienced modest variations so far, with very few exceptions such as public transport – which is the one sector notably experiencing severe constraints.

However, **there are services facing a sharp increase in their respective demands, mainly the healthcare system, which must be addressed as an absolute priority.** Hospitals are presently facing the most critical supply-related shortages – which encompass equipment, material and staff – and once the chaos is passed, will also have to cope with a serious financial burden due to the cancellation of most of the services responsible for their gross income.

Telecommunication services have also reported an ongoing increasing demand in their sector and have been mobilizing great efforts in order to ensure the stability and high quality of all connections in times of extraordinary need. **Public broadcasters** are also witnessing higher demands and a particular need to constantly adapt their content to provide reliable information for the population regarding the COVID-19 outbreak, as well as to create supplementary content to, for example, support home education.

Additionally, other key **services** such as those **provided by local governments, public administrations, social services and education have been mobilizing every resource at their disposal to efficiently conduct their activities online.**

Finally, we cannot underemphasise the **crisis-motivated disruptions which, if not yet, will soon exercise strong pressure** – both in nominal and real terms – **on indispensable resources to keep those activities running.** Price fluctuations as a result of either demand or supply-driven developments must be closely monitored and no efforts should be spared in order to guarantee that they remain at sustainable levels. Public services are responsible for the very essential infrastructure that powers our entire social market economy. Consequently, price instabilities in that realm will surely provoke multiple spill-over effects and must be a priority challenge to be tackled by policymakers.

EU MECHANISMS TO FIGHT THE COVID-19 OUTBREAK AND ITS CONSEQUENCES

The coordination at EU level must be ensured and an appropriate framework for Member States be put forward by EU institutions. Important steps have already been taken by the European Commission. Nevertheless, the aspects outlined below have not been integrated yet into the EU emergency response:

- **It is necessary to clarify that public undertakings may also be subject to Article 107(2)(b) TFEU** in the case of financial problems caused by the COVID-19 outbreak. The unrestricted operations of SGIs is still expected, but it is not possible for providers to finance these services according to market economy principles. In this sense, **an additional financing fund should be set up** – independently of the current extension of State Aid – **to compensate for the additional high costs incurred by SGI providers.**
- **Ownership should not be the decisive factor in determining whether a company receives aid or not, as SMEs with public participation are affected in the same way as private SMEs.** It is therefore necessary to fundamentally rethink the current definition of SMEs in the light of the recent crisis.

Furthermore, it must in this context be recalled that Art. 14 TFEU states “Without prejudice to Article 4 of the Treaty on European Union or to Articles 93, 106 and 107 of this Treaty, and given the place occupied by services of general economic interest in the shared values of the Union as well as their role in promoting social and territorial cohesion, 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.”.

A level-playing field on State aid

The use of the State Aid instrument is appropriate and desirable from a competition policy point of view in the case of the COVID-19 outbreak. In this crisis, the European Commission's focus is on Article 107 TFEU, according to which State aid is normally prohibited. Public undertakings are covered by Article 106 TFEU and may, under certain conditions, be addressees of State aid irrespective of this crisis.

So far, it is not evident whether Article 107(2)(b) TFEU¹ also applies to public undertakings in the event of problems caused by the COVID-19 outbreak or whether they will continue to be subject to the special requirements of Article 106 TFEU². Article 106 TFEU constitutes an exception for these services of general (economic) interest which are compatible with the internal market. If such services

¹ Article 107(2) TFEU: “The following shall be compatible with the internal market: (...) b. aid to make good the damage caused by natural disasters or exceptional occurrences; (...)”, <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A12008E107>

² Article 106 TFEU: “1. In the case of public undertakings and undertakings to which Member States grant special or exclusive rights, Member States shall neither enact nor maintain in force any measure contrary to the rules contained in the Treaties, in particular to those rules provided for in Article 18 and Articles 101 to 109. 2. Undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in the Treaties, in particular to the rules on competition, 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. The development of trade must not be affected to such an extent as would be contrary to the interests of the Union.”, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12008E106&from=EN>

were only subject to Article 106 TFEU, it can be expected that some aspects would not apply to the public sector and SGIs in the same form. These include the following points:

- Member States can compensate undertakings in sectors that have been particularly hit by the outbreak on the basis of Article 107(2)(b) TFEU.
- The principle of “one-time last time” of the Rescue and Restructuring Guidelines does not cover aid that the Commission declares compatible under Article 107(2)(b) TFEU.

Analogous to the banking sector, regarding which the European Commission has already explained that banks are subject to the requirements of Article 107(3)(b) TFEU³, **it is necessary to clarify that all public undertakings and SGI enterprises may also be subject to Article 107 TFEU in the case of financial problems caused by COVID-19.** As for the banking sector, compensation is not intended to preserve or restore the viability, liquidity or solvency. Rather, it is concerned with the high demand-side constraints above-mentioned, which, despite a significant decrease in demand for them in certain sectors, are not allowed to adjust supply accordingly because of their systemic importance.

Addressees of State aid in the crisis

It is essential that public services and SGIs are not disregarded when State aid is granted. Throughout Europe, public services and SGI enterprises face many challenges. **The transport sector can be quoted as an example** at this point: focusing on the European railway system, transport services are suffering from a substantial decrease on the demand side. That is already provoking important impacts on their cash flows. Eurostar has reported a substantial sales impact of -60%. Additionally, demands for ticket reimbursements are also expected to increasingly impose serious constraints for providers. A solution to these problems could be to provide additional financial resources, for example through long-term funds guaranteeing services of general interest. Such funds could and should be furnished at the respectively responsible state level (central, regional or local) and cover all areas of activity of SGIs.

In addition to the problems of the transport sector described above, many other sectors of SGIs have been hit hard by the crisis. For example, **electricity and gas utilities are also severely affected by the crisis and will face long-term problems.** They need inter alia: a general electricity and gas failure guarantee to provide for up to 3 months of supply for enterprises, so that no shutdowns have to take place until further notice. This is necessary because many companies have confirmed that they will run into liquidity problems and will no longer be able to pay their electricity and gas bills. Therefore, shutting off the electricity and gas supply because of unpaid bills would mean an immediate shutdown of the electricity and gas supply for these companies. An unsecured deferral is also not financially viable for the energy supplier, because one payment default would destroy the margin from 100 industrial contracts.

The main challenge is to maintain financial management. The most important instrument for this is the support of the banks. Therefore, an additional support on the preparation of a recovery plan is necessary in the form of aid to enterprises, so that advance payments recoverable over a long period avoid the risk of default. Such a recovery plan should be **based on three criteria:**

³ Article 107(3) TFEU: “The following may be considered to be compatible with the internal market: (...) b. aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State; (...), <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A12008E107>

- The enterprise's **average gross operating surplus** for the same period over the past 3 years.
- The enterprise's company's **order book or its production activity** for the same period over the last 3 years.
- **Present and future reimbursements.**

Supporting Public Services and SGI SMEs

The COVID-19 outbreak is increasingly affecting not only large public undertakings, but also small and medium sized public services and SGI enterprises. As a matter of fact, public services and SGI SMEs are particularly affected due to their local structure and lower reserves. **Special support is therefore now particularly essential. The need for such support is based on a general problem of SMEs in such times of crisis and must therefore not be made dependent on the ownership structure.**

However, the current framework states in Article 3 (4) of the European Commission's Recommendation 2003/361/EC that "an enterprise cannot be considered an SME if 25 % or more of the capital or voting rights are directly or indirectly controlled, jointly or individually, by one or more public bodies". This legal basis is a problem for public services and SGIs, because it excludes many local public services and SGI enterprises from the Recommendation's legal scope. They face the same problems as privately owned SMEs, such as limited financial and human resources or administrative burden.

In the current case of the COVID-19 outbreak, SMEs with public participation are affected in the same way as private SMEs. Ownership should not be the decisive factor in determining whether a company receives aid or not. Furthermore, it cannot be assumed that SMEs with public ownership are automatically solvent. In fact, SMEs with public participation are often owned by small municipalities that are barely able to overcome the organisational and financial hurdles of this crisis. In this sense, **it is necessary to fundamentally rethink the current definition of SMEs in the light of the recent crisis.**

A modernisation and fundamental re-thinking of the EU definition based on the above-mentioned arguments is the only viable long-term solution. As an immediate response, however, Member States should be fully aware that the definition is contained into a Recommendation, hence a non-legally binding act. **We therefore call on Member States to deviate from the Recommendation in order to enable public services SMEs to benefit from unprecedented measures put in place by the European Commission and the EIB to support small and medium sized enterprises.**

We refer in particular to the decision of the European Commission and the EIB group to mobilise €8bln of working capital loans backed by the EU budget, the proposal from the EIB group to increase this amount to up to €40bln, with the final aim of creating a pan-European guarantee fund of €25bln, which could support €200bln of financing for companies with a specific focus on SMEs.

It is of outmost importance for our small and medium-sized member enterprises to benefit from the EIB unprecedented responses and commitment to tackle the crisis. There is also untapped potential which lies in the cooperation between the EIB group and National Promotional Banks and Institutions (NPBIs), which can play a very effective multiplayer role on the ground if equipped with a specific dedicated support such as funding, securitisation and other instruments.