

Services of General Interest = Sustainable Development ?
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CEEP Discussion Days
University of Coimbra

6 March 2003
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C L I F F O R D
C H A N C E

Issues

- Some thoughts on sustainability
- Some thoughts on SGI
- The Communitarian framework
- *Sustainability v SGI ?*

A major question

„When advising on mergers, do you also advise on how to avoid a merger failure ? Or how to avoid a failure of the merged companies ?“

(MEP Christa Randzio-Plath, EC Merger Control Conference, Brussels 7 and 8 November 2002)

Sustainability - Definitions

- „To meet the needs of the present without compromising the ability of future generations to meet their own needs“
(Brundtland Commission, Our Common Future, 1987)
- „An economy and way of life in which both people and nature flourish, a culture that can last“
(NGO Northwest Environment Watch)
- „Sustainability is like love and democracy – multiple meanings, not always perfectly realised, but always struggled for.“
(Denise Lach, Oregon State University)

Core Sustainability Indicators

Economic indicators

- Real income (= GDP – capital depreciation)
- Fixed Capital Formation (= share of man-made & natural capital. total not to diminish)
- Employment (= utilisation of human labour for productive purposes)

Social indicators

- Poverty (= reduced or no access to income, security, political rights and public services)
- Health and Education (– life expectancy at birth, under-5 mortality, adult literacy)
- Equity (= distribution of income, assets, security, political rights and public services)

Environmental indicators

- Biodiversity (= different types of ecosystems, habitats, flora and fauna species)
- Environmental Quality (= quality of air, water and land)
- National resource stocks (= non-renewables: maintain; renewables: do not exceed)

(Source: European Commission, Sustainability Study 1999)

Services of general interest – Search for of a definition

No „Brundtland equivalent“

It is, however, possible to describe characteristics:

- The service meets users' basic needs
- No reasonable alternative to the service
- The provider may be public or private, but follows market principles
- There a few providers of the service
- The service is based on a long-term relationship

(Thomas Wilhelmsson, University of Helsinki)

Core SGI Indicators

Economic indicators:

- Choice (even for basic services)
- Quality
- Safety
- Continuity and reliability

Social indicators:

- Access (economical, i.e. affordable prices, social and geographical)
- Equality of access and treatment

The „more-than-a-consumer“ indicators:

- Transparency (rates, costs, delivery conditions)
- Independent regulatory bodies
- Active representation and participation
- Complaints and justice

(Source: Giustino Trincia, Cittadinanza Attiva (1999); classification: D.S.)

Sustainable development and Services of general interest: something in common...

- Long-term commitments – always endangered by short-sighted concepts (this includes business people *and* politicians)
- Many joint, overlapping and / or complementing indicators
- Definitions become less (e.g. distinction SGI / SGEI), measurable indicators become more important
- A bias in perception (Sustainability = ecology only; SGI = social only); falls short regarding economics

... and some things apart

- Sustainability boasts a fix set of elements (economical / ecological / social). Link SGI – Cohesion (territorial / social / economical) seems less stable; components tend to vary
- Sustainability has become a „common aim“ and a well-established part of European law and policy. Seems dynamic, covering new issues (e.g. CSR). SGI, in contrast, often risks to become victim of religious zeals (e.g. „Langen-Report“), seems static. Recently, no major push forward.
- „Europeanisation“ / internationalisation positive for sustainability, ambiguous for SGI (e.g. TEN)

The EC Treaty framework on Sustainability

Favourable:

- Article 2 („sustainable development of economic activities“, env. quality)
- Article 6 (Horizontal environmental clause)
- Articles 98 – 104 (stable and sound public finances)
- Article 174 (principles of environmental law)
- Article 228 (ECJ may impose fines in case of persistent non-compliance)
- Article 255 (access to documents – may help to foster Aarhus Convention)

Disfavourable:

- Article 33 (agriculture and fisheries – only focus on productivity increase)
- Article 175(2) and 99 (unanimity requirement in environmental decision-making)

Ambiguous:

- Article 17 (Union citizenship – exclusion of non-citizens)
- Article 133 (Nice version – expanded COM mandate at international stage)

The EC Treaty framework on SGI

Favourable:

- Article 2 (“economic and social cohesion”)
- Article 3 (1) t (consumer protection)
- Article 16 (acknowledgement of SGI re social and territorial cohesion)

Disfavourable:

- Article 133 (expanded mandate for COM – current WTO round / liberalisation)

Ambiguous:

- Article 3 (creation of internal market – market opening)
- Article 5 (subsidiarity – SGI torn between fragmentation and “Europeanisation”)
- Article 17 (Union citizenship – justification of SGI - “Europeanisation”)
- Article 31 (abolition of monopolies)
- Article 86 (2) and 87 – 89 (prohibition of state aid; “SGI clause”)
- Article 98 – 104 (public sector under strict scrutiny)
- Article 295 (neutrality clause – risk of mere lip paying service)

Recent developments / Sustainability

- Follow-up of Johannesburg Summit (Aug/Sep 2002)
- Development of „EU Sustainability Strategy“
- Methodology for sustainable impact assessment (SIA; to be applied with WTO negotiations – study of January 2002)
- Draft Convention: „The Union shall work for a Europe of sustainable development based on balanced economic growth and social justice....“ (Article III § 2)

Recent developments / SGI

- Charter of Fundamental Rights: „The Union recognises and respects access to services of general economic interest (...) in order to promote the social and territorial cohesion of the Union“ (Article 36)
- Draft Convention: „The Union (...) shall promote economic and social cohesion“ (Article III § 2)
- GATS: Commission's final WTO offer includes environmental services (but not water), sea / air transport and postal services; excluded: education, health services, audiovisual
- Green Paper on SGI before June. Key question: (Un-) necessity of binding EU rules.

Future challenges

- Enlargement – sustainable development *by means of social / economical / territorial cohesion is the key challenge*
(in EU 25, 25% of total EU population will live in regions with per capita GDP < 75%.
60 % of those will be nationals of accession countries / Current EU 15: 18 %.
To reach current level of EU15 employment, 3 Mio. jobs need to be created)
- Public budget restraints will further increase, due to current recession
- Scrutiny on *financing SGI* will increase (Ferring, Altmark, GEMO,....)
- Will cohesion in EU15 be at stake given the eastward shift of structural funds 2007-13 ?

In case of crisis – merge !

A „Sustainability & SGI“ formula

Sustainability and SGI may complement each other:

- The idea of sustainability is, by its nature, global. It can help to open up SGI's often „small world“.
- It may also foster dynamism and flexibility.
- Horizontal dissemination may „open doors“ to SGI

- SGI can add a fourth dimension of sustainability: democracy
- It can break down the often too-vague idea of sustainability to specific and concrete, measurable commitments.
- It can foster new concepts like CSR and SIA

Charter of Fundamental Rights and Convention pave the way.