



## Social Platform response to the Single Market Act consultation

### Introduction

Social Platform is the alliance of 43 European civil society organisations active in the social sector. Our members include organisations working with or representing the marginalised and socially excluded using services and those working as non profit social service providers. Due to their European and national experience, they therefore are well positioned to contribute to the Commission's work to promote an inclusive and sustainable development.

We welcome the Single Market Act, provided that the final outcomes effectively recognise the importance of social cohesion policy to accompany the single market and that the initiatives prioritised include those necessary to achieve a "social market economy" (art. 3.3 TEU). We appreciate that the Communication affirms that public services and social economy play an essential role to achieve this goal. However, this implies that European citizens are taken into account, not just as consumers and workers, but also as public service users.

Although we are not businesses, we are nonetheless affected by this measure. The Social Services of General Interest (SSGI) provided by our members are non profit making and function in the social sphere; some of the services are considered as economic and some of them function in the context of the social economy. This is the reason why Social Platform members are directly interested in some of the proposals contained in the Single Market Act.

Our response will be limited to the proposals on which our members have specific expertise.

### We believe you should act on the following specific proposals:

#### Proposal 4 on the evaluation of the services directive

##### Why?

- Art. 3 TEU provides that the internal market shall work for a "highly competitive social market economy, aiming at full employment and social progress and a high level of protection and improvement of the quality of the environment".

- Recommendation no. 10 of the Third Forum on SSGI<sup>1</sup> highlights the need for legal and political clarification with regard to the rules governing the free provision of services, in particular by assessing the transposition by member states of the services directive concerning the exclusion of the social services listed in art. 2.2.j.
- The Council Conclusions on SSGI invite the Commission to study and assess potential questions which could rise around social services of general interest, the freedom to provide services and the right of establishment<sup>2</sup>.
- The Employment Committee Opinion on the implementation of the services directive calls on the Commission to provide further clarifications regarding both the scope of the directive, in particular in relation to the notions of 'economic activities', 'services of general economic interest' and 'social services of general interest', and the application of the directive to authorisation schemes in the area of social services of general interest, with due regard for the subsidiarity principle<sup>3</sup>.

### How?

1. In order to evaluate the success of the services directive, include indicators to measure both the service quality, accessibility, affordability and users' participation and involvement in the planning, implementation and evaluation of services. Do not limit its evaluation to growth, employment and innovation. Reflect in the evaluation process the objectives and priorities of the Europe 2020 strategy, and in particular its contribution to achieving the poverty target and guideline on tackling poverty and social exclusion.
2. Involve all relevant stakeholders, including civil society organisations (CSOs), in the evaluation process.

## Proposal 9 on an initiative to establish a High Level Group on services

### Why?

- As highlighted by many actors (Conclusions from the Third Forum on SSGI<sup>4</sup>, discussion paper of De Rossa MEP on the future of social services<sup>5</sup>), there is the need of a flexible recognized and permanent space for discussion and joint work on SGI and SSGI to ensure the development, legal certainty and strengthening of SGI and SSGI.

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<sup>1</sup> Third Forum on SSGI - Fifteen recommendations addressed to the European Parliament, the Council and the Commission, Brussels, October 26-27, 2010

<sup>2</sup> Council of the European Union, *Social Services of General Interest: at the heart of the European Social Model – Council Conclusions*, December 8, 2010

<sup>3</sup> European Parliament, Employment Committee Opinion for the Committee on Internal Market and Consumer Protection on the implementation of the services directive 2010/2053 INI, rapporteur: Jean-Luc Bennaïmias

<sup>4</sup> Recommendations of the 3<sup>rd</sup> Forum on SSGI (recommendation no. 11)

<sup>5</sup> Proinsias De Rossa MEP, *Discussion paper "The future of social services of general interest"*, October 2010

- A High Level Group on services cannot be limited to businesses and be exclusively market-oriented. It has also to address Services of General Interest, including Social Services of General Interest, which contribute to more than 26% of the EU GDP; in terms of employment, among SGI, health and social services are the main sector, representing the 33% of SGI and employing 20,5 million employees<sup>6</sup>.
- The study entitled "Ensuring access to services of general interest"<sup>7</sup> commissioned by Social Platform in 2009 shows that within the Commission there is a lack of centralized responsibility in terms of which service ensures that all legislation relating to SGI has clauses ensuring universal access, with attention to those in vulnerable situations. There is no consistent approach on the part of the various Directorates General and the various pieces of legislation to ensure these basic principles.

### How?

1. Besides to the High Level Group on services, set up a Group on Services of General Interest, with a sub-group on Social Services of General Interest, linked to the work of the SPC on this topic. Ensure the participation in the Group of all relevant stakeholders, including non profit service providers and organisations representing users.
2. Make sure that this Group works on the issues contained in the first chapter of the Single Market Act, like social innovation, the access to SGI for vulnerable groups, social considerations in public procurement and the other modalities of contracting out missions of general interest which already exist in member states to ensure social efficacy, quality and sustainability of costs.
3. Entrust the Group to set out the legal and fiscal conditions of compliance of different forms of financial partnerships between public authorities and non profit civil society organisations with EU rules. Such partnerships are a key feature of the European social model.

## **Proposal 17 on public procurement rules and proposal 18 on service concessions**

### Why?

- The Third Forum on SSGI called for promoting the alternatives to public procurement for supplying SSGI, as more and more SSGI are confronted with a public procurement logic that does not seem to be the best option when outsourcing / delegating a given service (recommendation no. 13). The discussions held at the 3rd Forum highlighted that there are different modalities to select providers but also different forms of service delivery. Other forms of financing allow to a better extent to manage flexibility, personalization of services and innovation, which are essential for quality social services.

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<sup>6</sup> CEEP, *Mapping of the public services – Les services publics dans l'Union européenne et dans les 27 Etats membres*, May 2010

<sup>7</sup> Social Platform, *Ensuring access to services of general interest - A mapping of existing European Commission' processes which guarantee universal access to basic services with a particular focus on access of groups facing exclusion and/or discrimination*, 2010

- It also recommended strengthening the social dimension and orientation of public procurement (recommendation no. 14) - as the directives on public procurement devote more special provisions to the environmental dimension than the social one - and giving priority to quality as the main criterion and social inclusion as the main objective (no. 15).
- The Council invited the Commission to clarify and provide more information on existing alternatives to public procurement when member states choose to outsource the provision of social services of general interest.
- The way public procurement is often carried out can have a significantly negative impact on the quality of social services, as concluded by several of our members who are social services providers. They published a [report](#)<sup>8</sup> showing that: for example, tendering procedures demand a price bid and an exact definition and description of all services covered and this tends to lead to standardized lists of services; tendering is inappropriate for social services working with people having multiple needs. Integrated and continuous service delivery can be affected (integration of services is affected by the practice of splitting very complex services in different bids; continuity is affected because of a tendency towards short term contracts which can be lost to other providers; personal relationship may be lost). Tendering tends to drive service providers towards traditional service models with little room for innovation.

## How?

In relation to social service provision:

1. Promote and develop the alternatives to public procurement, starting from the experience of many member states, insofar these alternatives correspond to the historical and operational specificities of most of SSGI and allow them to fulfil at best their mission of general interest and to ensure the participation of social service users.
2. Make the recognition of the specific characteristics of SSGI – already recognized by the Commission in Communication (2007) 725 - the starting point for evaluating the necessity of amending existing rules. It is also essential to take into account the Lisbon Treaty, either in the existing amended frame, or with new legal instruments on the basis of the new provisions laid down in the Treaty.
3. When awarding contracts in the social sector, encourage public authorities to use the “most economically advantageous offer” criterion instead of the “lowest price” and give quality a mandatory weight in the award of contracts. In the social sector the prices of services have often been decreased mainly by reducing salaries: tendering procedures are having a negative impact on staff training and qualification which ultimately affect the capacity of social services to provide quality services<sup>9</sup>.

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<sup>8</sup> Informal Network of Social Services Providers, *Seminar “Impact of EU legislation on social services”*, Brussels, September 29, 2009

<sup>9</sup> Informal Network of Social Services Providers, *Seminar “Impact of EU legislation on social services”*, Brussels, September 29, 2009, p. 8

4. Promote Socially Responsible Public Procurement (SRPP) which stimulates social innovation and facilitates social inclusion. It allows achieve other policy objectives by the means of public procurement.
5. Ensure a stronger link and better consistency between the debates and measures on quality of SGI, SSGI and the ones on public procurement and the alternatives to it, and reflect the results of these debates while amending legislation.
6. Provide binding clarifications (i.e. an interpretative communication) on the options other than public procurement when contracting out social services, including partnerships between public authorities and non profit private actors, rather than adopting a legal initiative on concessions, to better take into account the specific characteristics of SSGI.

## **Proposal 25 on a Communication on SGI**

### **Why?**

- The [draft report on the Single Market for Europeans](#)<sup>10</sup> (Correira De Campos MEP) highlights that:
  - although the Single Market Act in its objectives tries to rebalance the social dimension with the pure economic aspects of the internal market, the measures foreseen to do so are too limited
  - there is the need of a legislative initiative in the field of services of general economic interest
  - the importance of social services is not sufficiently stressed in the communication.
- The Employment Committee Opinion on a Single Market for Europeans calls on the Commission and the Member States to ensure that services of general economic interest (SGEI) are secured within a framework of universal access, high quality, affordability and clear financing rules, it believes that the Commission should take initiatives using all the options available to it, based upon and consistent with Article 14, Protocol 26 and Treaty provisions on subsidiarity and proportionality, to ensure legal certainty for providers in this respect<sup>11</sup>.
- The European Economic and Social Committee<sup>12</sup> calls on the Commission to adopt a position on funding needs of SGI, not only through a short-term approach focusing on competition only (state aid) but also by ensuring that SGI are financially viable and capable of carrying out their missions, as required under the Lisbon Treaty.

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<sup>10</sup> European Parliament, Committee on the Internal Market and Consumer Protection, *Draft report on the Single Market for Europeans*, 2010/2278 INI

<sup>11</sup> Opinion of the Committee on Employment and Social Affairs for the Committee on the Internal Market and Consumer Protection on a Single Market for Europeans (2010/2278(INI)), Rapporteur: Liisa Jaakonsaari, February 16, 2011

<sup>12</sup> EESC Opinion TEN/421 "What services of general interest do we need to combat the crisis?", September 15, 2010

- Professor Monti's report on the re-launch of the single market<sup>13</sup> proposes to (a) further increase the flexibility of the state aid rules applicable to financial compensation including through an increase of the thresholds and/or through expanding the list of activities for which compensation does not have to be notified irrespective of the amounts involved; b) review the procurement rules to align them with the state aid rules on compensation in order to ensure a consistent approach concerning small services of general interest.
- The Conclusions of the Third Forum on SSGI<sup>14</sup> call on the Commission to amend the rules on state aid and public procurement to ensure that the specific characteristics of SSGI are taken into account.
- In December 2010 the Council adopted the Voluntary European Quality Framework for social services, which now needs to be implemented by member states. The Conclusions of the Third Forum on SSGI<sup>15</sup> highlight the need to create an environment that promotes quality and cost-efficiency of SSGI, also through the implementation of the Voluntary European Quality Framework.

### How?

1. Amend the existing legal framework to ensure that SGI are provided according to the principle of universal access, high quality, accessibility and affordability.
2. Make full use of the Lisbon Treaty provisions, to re-equilibrate the application of competition and internal market rules with the Union's objective of a social market economy. The Communication on SGI should also deal with the definition of the "principles and conditions, particularly economic and financial" according to which SGEI should operate (art. 14 TFEU).
3. Carry out an evaluation of social impact assessment on the liberalisation of network services.
4. Study the opportunity to extend universal service obligations into new areas, in the light of changes to the essential needs of European citizens. See also our response to proposal 40.
5. In the Communication stress more the importance of social services and recognize within SGI the specific characteristics of SSGI, in particular the importance of users' empowerment and users' and service providers' participation in the definition, organization and evaluation of services.
6. Make the recognition of the specific features of SSGI the starting point for evaluating the necessity of amending existing rules. Social services, even if some of them can have an economic dimension, are often not provided on an economic logic and the appropriate legal, political and financial environment must be ensured in order that they can fulfil their missions.

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<sup>13</sup> Mario Monti, *A new strategy for the single market, Report to the President of the European Commission*, May 9, 2010

<sup>14</sup> Third Forum on SSGI - Fifteen recommendations addressed to the European Parliament, the Council and the Commission, Brussels, October 26-27, 2010 (recommendation no. 7, 8, 9, 12, 13, 14 and 15)

<sup>15</sup> Third Forum on SSGI - Fifteen recommendations addressed to the European Parliament, the Council and the Commission, Brussels, October 26-27, 2010 (recommendation no. 3 and 4)

7. Ensure a better coherence between state aid and internal market rules, for instance as regards the definition of economic and non economic activities.
8. Ensure the universal access to SGI and SSGI. It is a member state competence defining the assignments and the recipients of these services depending on the member states' needs and not from an arbitrary European perspective. Therefore, we highly appreciate the proposal mentioned in the Single Market Act to carry out an in-depth analysis of possible obstacles to high-quality universal services which takes into account the evolution of the needs of European citizens.
9. Ensure consistency between the Commission's work on quality frameworks for Services of General Interest, the existing Voluntary European Quality Framework for social services and the process of amending legislation, in particular with regards to public procurement rules and the alternatives to it.
10. Monitor the implementation by member states of the Voluntary European Quality Framework for social services. The level of provision of social services both in terms of quantity and quality is very diverse within the EU. This fact contributes to disparities among European regions in terms of growth, poverty and social exclusion.
11. Give to the Communication on SGI the form of an interpretative Communication to provide legal certainty.

More specific proposals can be found in [Social Platform key messages to the Third Forum on SSGI](#).

## **Proposal 29 on the implementation of the Charter on Fundamental Rights and on social impact assessment of internal market legislation**

### **Why?**

Proposal 29 reflects the legal obligation (art. 8, 9, 10 TFEU) for the European institutions to mainstream equality, high level of employment, adequate social protection, fight against social exclusion and anti-discrimination (on the grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation) into all EU policies and activities.

### **How?**

1. Article 8, 9, 10 TFEU provide for rights to be approached by the European institutions as objectives to be achieved and not just as limiting constraints for the EU policies and activities.
2. While carrying out the impact assessment on fundamental rights compliance, use the same approach as Human Rights impact assessment, that seeks to assess compatibility also through sociological examination of the impacts, both intended and unintended, that a measure could have on the enjoyment of human rights or on the ability of the State to protect and fulfill human rights. Ensure that relevant indicators are applied.
3. Make sure that the "in-depth analysis of the social impact of legislation concerning the single market" is not limited to a purely legal exercise of



compliance with the Treaty provisions and case-law. Ensure a participatory dimension in order to take into account inputs by civil society organizations with grass roots knowledge of the impact for the people affected or potentially affected.

4. Carry out the social impact assessment of legislation concerning the single market with the involvement of relevant stakeholders, including civil society organizations (CSOs). See also our response to proposal 48.
5. Engage in carrying out an ex post social impact assessment of a measure and do not limit the assessment to an ex ante evaluation.

## **Proposal 36 on a Social Business Initiative**

### **Why?**

- The European Parliament<sup>16</sup> asked the Commission to promote the social economy<sup>17</sup> in its new policies and to defend the social economy's concept of a "different approach to entrepreneurship", which is driven primarily not by a profit but by social benefit motivation, to ensure that the particular features of the social economy are properly taken into account in the framing of legislation.
- Social economy represents up to 10% of all European businesses, with two million undertakings or 6% of total employment, and has great potential for generating and maintaining stable employment, due mainly to the fact that those activities, by their very nature, are not likely to be delocalised<sup>18</sup>.
- The Employment Committee Opinion on a Single Market for Europeans<sup>19</sup> welcomes the proposals supporting the innovative potential of the social economy and insists that the internal market should respect the diversity of legal entities; regards the diversity of business models represented inter alia by cooperatives and mutual societies as a common good that has proven its resilience in the crisis and should be treasured; draws attention to the part of the social and green economy involving cooperatives, mutual societies, associations and foundations, which plays an especially valuable role in creating sustainable employment and growth and combating poverty and exclusion.

### **How?**

1. Recognise in the Social Business Initiative the innovative potential of social economy, "by facilitating access to credit and tax relief, the development of

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<sup>16</sup> European Parliament resolution of 19 February 2009 on social economy 2008/2250(INI)

<sup>17</sup> Social Economy actors are economic and social players active in all sectors of society; they are set up to respond to people's needs. They are characterized principally by their aims and their methods: a different way of doing business which continuously associates the general interest, economic performance and democratic operation (definition by [Social Economy Europe](#)). It is important to recognise the distinction between the market or business sub-sector of the social economy and the non-market sub-sector of social economy (see CIRIEC, *The social economy in the European Union*, 2007, chapter 3)

<sup>18</sup> European Parliament resolution of 19 February 2009 on social economy 2008/2250(INI)

<sup>19</sup> Opinion of the Committee on Employment and Social Affairs for the Committee on the Internal Market and Consumer Protection on a Single Market for Europeans (2010/2278(INI)), Rapporteur: Liisa Jaakonsaari, February 16, 2011



- microcredit, the establishment of European statutes for associations, foundations and mutual societies, as well as tailored EU funding and incentives to provide better support to social economy operating within market and non-market sectors, which are created for the purpose of social utility”, as already asked by the European Parliament<sup>20</sup>.
2. Make a clear distinction between social economy and social corporate responsibility, by launching an initiative aimed at defining the characteristics of “social enterprises” in the EU.
  3. Redefine the concept of corporate social responsibility, for instance by adding new requirements, like social and environmental impact reporting.
  4. Launch a consultation to measure the added value of the creation of labels / statutes of general interest enterprises.

### **Proposal 37 on European statutes for foundations, cooperatives and mutual associations**

#### **Why?**

- The European Parliament<sup>21</sup> affirmed that there is a need for the recognition of European statutes for associations, mutual societies and foundations to ensure that social economy enterprises benefit from equal treatment in internal market law. It considered that the withdrawal of the Commission's proposals for regulations of the European Parliament and of the Council on the statute for a European association and on the statute for a European mutual society (COM(1991)0273) is a significant setback for the development of these forms of social economy within the European Union. Therefore it urged the Commission to review its work programme accordingly.
- Some MEPs launched a [Written declaration](#)<sup>22</sup> to call on the Commission to take the necessary steps to introduce proposals for European statutes for associations, mutual societies and foundations and to propose a feasibility study and an impact assessment for the statutes for associations and mutual societies.

#### **How?**

1. Establish a European statute for associations, which is missing from the Single Market Act, besides to the creation of European statutes for foundations and mutual societies and the revision of the European statute for cooperatives. The Single Market Act does not clearly include associations in the sphere of social economy, along with foundations, cooperatives and mutual societies.

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<sup>20</sup> European Parliament resolution of 19 February 2009 on social economy 2008/2250(INI), paragraph 10.

<sup>21</sup> European Parliament resolution of 19 February 2009 on social economy 2008/2250(INI)

<sup>22</sup> Written declaration on establishing European statutes for mutual societies, associations and foundations (WD 84/2010)

## Proposal 40 on basic banking services

### Why?

- The Economic and Social Committee<sup>23</sup> considers that the universal right of access to SGI should no longer be restricted to services provided by network industries but should encompass everything required for a decent standard of living, social well-being and the guarantee of fundamental rights. The service right concern the following services: bank account and payment facilities; affordable loans, subject to state micro-credits or guarantees; decent housing; home-care facilities; mobility; social services; specific measures for people with disabilities; access to energy; secure access to digital services.
- In 2008 in the EU almost 12% of people living in households reported not to have a bank account. Being financially excluded carries a serious risk of social exclusion<sup>24</sup>.
- Considering societal evolution, the extension of universal service obligations is essential: to have a bank account is necessary today to receive social protection benefits, to get a salary, to pay daily invoices. Other services, like the access to Internet become very important to apply for a job, to access administrative services or to enjoy lower prices for transport. The accessibility of these services has to be ensured for all people, including people with disabilities, at affordable prices or free of charge.
- Tackling financial exclusion requires addressing the growing problem of over-indebtedness, also due to unfair credit and lending practices<sup>25</sup>.

### How?

1. Ensure free access to basic banking services (bank account and payment cards). Ensure that access to bank accounts is free of charge, cover a number of relevant services and is accompanied by accessible, affordable, quality services such as those suggested by the Economic and Social Committee.
2. Make sure that basic services for ensuring financial inclusion include services such as: payment card, free or low cost bank statements, withdrawals and transaction cheques, direct debit or standing orders, no overdraft possibility, making remittances.
3. Ensure universal access to other basic services, such as the internet (i.e. ensure e-accessibility, web-accessibility and affordability). See also our response to proposal 25.

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<sup>23</sup> EESC Opinion TEN/421 "What services of general interest do we need to combat the crisis?", September 15, 2010

<sup>24</sup> Nicole Fondeville, Erhan Özdemir and Terry Ward, *Financial exclusion in the EU. New evidence from the EU-SILC special module*, European Commission, Social Situation Observatory – Income distribution and living conditions, Research note 3/2010, p. 4

<sup>25</sup> European Commission, *Financial services provision and prevention of financial exclusion*, March 2008

## Proposal 44 on mutual evaluation of internal market legislation

### Why?

- Ideally, a 'mutual evaluation' process to be applied to single market legislations would ensure exchange of information and experience, "peer review" processes whereby member states are engaged on the path for a successful implementation of any internal market measure (comprehensive and systematic review of national legislations).
- As the European Parliament<sup>26</sup> outlined, the mutual evaluation process has to deal with the question whether national requirements are compatible with the criteria already established by the Court of Justice on the freedom of establishment. It does not concern the application of Community competition law. As in the case of the service directive, this procedure will not and should not prevent national authorities from establishing a high level protection of public interests, particularly to pursue health and social policy objectives.

### How?

1. Include in the mutual evaluation of legislation concerning internal market, the relevant stakeholders, including CSOs, both at European and national level.
2. Ensure participation of service users as essential requisite for the success of this kind of evaluation.

## Proposal 48 on consultation and dialogue with civil society

### Why?

- Proposal 48 reflects the obligation for the European institutions (not just the Commission) to maintain an open, transparent and regular dialogue with civil society, set out by art. 11 TEU.
- The Employment Committee Opinion on Governance and Partnership in the single market<sup>27</sup> emphasises the importance of a stronger and earlier involvement of stakeholders in designing, adopting, implementing and monitoring the measures to boost growth and citizens' rights in the single market; notes that many of the measures proposed in the Single Market Act fall within the responsibilities of national or sub-national authorities and thus would require their active involvement at all stages; emphasises furthermore that dialogue with the social partners and civil society is of the essence in restoring confidence in the single market; expects new and bold ideas from the Commission as to how this dialogue can actually be improved; demands that the social partners be involved and consulted in all relevant single market legislation affecting the labour market.

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<sup>26</sup> European Parliament, *Draft Opinion of the Committee on Employment and Social Affairs for the Committee on the Internal Market and Consumer Protection on the proposal for a directive of the European Parliament and of the Council on services in the internal market (COM(2004)0002 – C5-0069/2004 – 2004/0001(COD))*, Draftswoman: Anne Van Lancker, 26.4.2005

<sup>27</sup> Opinion of the Committee on Employment and Social Affairs for the Committee on the Internal Market and Consumer Protection on Governance and Partnership in the Single Market (2010/2289(INI)), Rapporteur: Jurgen Creutzmann, February 16, 2011

## How?

1. Establish the procedures and mechanisms to set up a “structured dialogue” with civil society: agree and formalise the procedures and mechanisms, including appropriate staffing and budgets, through negotiations between the EU institutions and European CSOs in a mixed commission, the results of which should lead to an Inter-institutional Agreement between the EU institutions.
2. There is a difference between consultation and dialogue. Set up a regular dialogue between the institutions and CSOs throughout the whole policy cycle, not just in the preparation phase of proposals, but also during their elaboration, implementation and evaluation. See also our response to proposal 29.
3. Clarify to which “texts” proposal 48 refers to.

More specific proposals can be found in [Social Platform position paper on civil dialogue](#).

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