

<p>Social Services of General Interest Feedback report to the 2006 questionnaire of the Social Protection Committee</p>
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1. Introduction

The present document synthesises the contributions received to the second questionnaire launched by the Social Protection Committee in September 2006 as part of the continuation of the open consultation process mentioned in the communication on social services of general interest (COM(2006)177) (hereafter "the Communication"). This questionnaire was addressed to the Member States represented in the Social Protection Committee as well as to the European social partners and further European stakeholder organisations in the field of social services. It is important to stress that this document only attempts to give an accurate summary account of the responses as they were presented to the Commission's services. It does neither take position as to the comments received, nor seek to correct any potential misunderstandings or factual inaccuracies, nor aim at drawing conclusions from the contributions.

Therefore, the report does not express the views of the Commission services and therefore it does not engage the Commission or any service of the Commission.

Given the wide range of topics the consultation raised, it is impossible to do full justice to the richness of the replies in a summary report. Those interested in reading more are invited to consult the individual responses to the consultation that will be published on the following link:

http://ec.europa.eu/employment_social/social_protection/questionnaire_en.htm

2. Description of social services

2.1. Scope of social services

In general the scope as described by the communication is recognized and found appropriate and adequate. Social services of general interest are those services that make a right effective. Some contributors underlined, like the communication, that the role of social services is not limited to assistance to the most vulnerable groups but concern the social protection of the whole population and that these services also play a preventive role. Social services of general interest (SSGI) address the whole population (individuals or families) and are related to the realization of social policy goals and objectives.

Most respondents feel that the EU should not try to come to a definition of SSGI. Like for services of general interest in general this definition role belongs to the competent national authorities. Moreover, for some contributors it is not desirable to distinguish a specific category of SSGI since SSGI are not different from other services of general interest. It is argued that a distinction between SSGI and SGI might lead to more confusion.

Some contributors feel that only social services of an economic nature should be listed, since they consider that most SSGI cannot be classified as economic activity, because of their specific social nature.

Others emphasise the need to establish a clear distinction between SSGI that cannot be classified as economic activity and therefore are not submitted to competition and internal

market rules and SSGI which are of an economic nature but nevertheless, because of their specific features, require that these rules should be applied in an appropriate manner.

Some contributions point out that statutory social security schemes should be presented separately since these have been clearly recognised as non-economic by the European Court of Justice but others do not agree with this separation. It is however also mentioned that even if statutory social security schemes are non-economic and complementary social security schemes are economic, they both allow for a sustainable social protection system based on solidarity. Other contributions mention that the division between social security schemes and social services is not always clear. Statutory and complementary social security schemes are not in themselves social services, but are implemented by these services. Some respondents reject the integration of the supplementary social security schemes into social services, as it is not clear how this would add value. Some respondents highlight the strong link between social security and the 2nd group of “person oriented” services.

The exclusion of health services from the scope of the Communication appears as a concern for many contributors. Some point out that the Communication still covers health since it specifies that social security schemes covering the main risks of life, including health are SSGI. Others highlight the thin line and the complementary aspects between social and health services (e.g., long-term care, the medico-social sector, etc) and regret the separate treatment. Also, it is argued that the objectives and modes of organisation of health services are similar to the ones of social services. Most contributors state that coherence with the health initiative must be guaranteed and a common approach would be preferable. Some of these contributors feel however that a common approach would only be needed in specific areas. It is proposed to refer in the description to services taking care of women and children victims of domestic violence, victims of human trafficking and women in distress.

Also, regarding social housing, a much broader approach should be taken, encompassing the part played in promoting a socially mixed society. More attention should also be paid to job training for members of vulnerable groups and to services specialised in employment for handicapped people.

2.2 The notion of general interest

Almost all contributors agree that there is no general definition of the general interest. The general interest is defined by the national public authorities responsible for the service. It was recalled that several aspects relating to the general interest are defined at Community level (e.g., fundamental rights, protection of public health). Even though, some contributions mentioned that it would not be meaningful to try to define the general interest at the European level. In the same time it is highlighted that it is important to distinguish services of general interest from other services and to identify which services of general interest are of an economic nature.

Some contributions reported that services of general interest are determined by law, also when provided at the municipal level. The content of the term depends on the content of the respective Act. First, the general interest is defined and then the ways how to implement it are worked out.

Many elements of the expression of the general interest have been reported: it includes the provision of services targeted to the society as a whole; it refers to services provided or funded by the State, semi-governmental organisations and NGOs; it is carried out in light with public interest, profit is secondary. Other key elements listed are the objectives of a social nature the link with public funding, the implementation of the principle of solidarity, accessibility, availability, equal access and equal terms, democratic control. Reference is often made to principles such as social justice, welfare, social capital, users' participation, social integration, human dignity, cohesion.

In the field of social services the general interest must take into account the welfare state principles which are based on constitutional rights. Indeed, most Member States' constitutions state that (minimum) conditions for an existence in dignity should be guaranteed.

It is also mentioned that the distinction between which social services embody elements of general interest is more relevant than the distinction between economic and non-economic. For instance, the COREVA¹ ruling has recognised the economic aspect of the activity but has established other characteristics defining the general interest.

3. Characteristics

3.1. The pertinence of most of the proposed characteristics is recognised

First of all, many contributors confirm that the characteristics applying to services of general interest (e.g., universality, affordability, accessibility, quality, continuity, etc) do apply to social services of general interest. However, some contributions have pointed out differences in the application of these principles to social services. They argue that the universality of a service does not relate to social services which are provided to particularly disadvantaged groups and this type of service should be tailored to the needs of the beneficiary. Some stress that those services are generally targeted towards persons in need of help, who cannot be assimilated to the ordinary consumer.

Continuity should also be understood in a special way. Network services should be provided continuously, while certain social services should be provided with no interruption in periods when they are needed. Affordability and accessibility should be understood with regard to price maintaining and guarantees for the most vulnerable.

On top of that, the specific characteristics for SSGI, which cannot be described as simply “organisational”, are recognised by most as pertinent to gauge the specific features of social services of general interest, even if some feel it has to be made clear which characteristic applies to which of the two groups of social services as described in the April 2006 Communication. Moreover not all of the organisational characteristics apply to all the social services. Others highlight that the pertinence of the characteristics depends on the use that will be made of it. Finally one contributor rejects the idea of organisational characteristics to distinguish SSGI from SGI arguing that SSGI are not different from other services of general interest.

¹ Coreva decision of 16-10-1995, The Court of Justice of the European Communities

3.2. Comments made on each proposed characteristic

To synthesize the main issues at stake, it is proposed to go through each of the characteristics listed in the Communication with a description of the comments received. The characteristics are presented according to the pertinence the respondents attribute to them.

(i) "They operate on the basis of the solidarity principle, which is required, in particular by the non-selection of risks or the absence, on an individual basis, of equivalence between contributions and benefits"

It has been mentioned that the operation on the basis of solidarity is the main characteristic of SSGI. Social justice has also been mentioned as a mode of operation of SSGI. From these principles of solidarity and social justice derive important specificities of SSGI: the risks they cover are not individual but structural, as they offer wide protection without being selective or discriminating. Public responsibility is therefore required to ensure reliable provision of and in regulating social services. Furthermore, certain organisations consider that as such they are key elements in the operation of social security schemes.

However, it was also pointed out that social services do not operate exclusively on the basis of the solidarity principle, but also on the basis of welfare principles, whereby access to other social welfare services is often subject to a means test or assessment of the specific need.

(ii) "They are comprehensive and personalised integrating the response to differing needs in order to guarantee fundamental human rights and protect the most vulnerable"

While the importance of the link between fundamental human rights and social services is acknowledged, it is often pointed out that this characteristic mixes two different notions and is formulated in a too restrictive way. Social services of general interest -while aiming at protecting the most vulnerable and ensuring the equal dignity of all human-being- do not only address the need of the most disadvantaged people but base their work on a universalistic approach. Indeed, in the course of a life-time needs might arise that call for specific help (e.g. child care or care for the elderly). It is a fundamental right for everybody to have access to the appropriate social services. In the meantime, the vulnerability of certain users of social services has been highlighted as distinguishing them from normal consumers.

It was also highlighted that personalisation implies the integration of different services. Moreover, the aim of the operators of social services to addressing the specific needs of everyone and to guarantee an equal access over the territory has been stressed. As they must be tailored for individual situations, standardised products would not meet the requirements.

Finally, it has been mentioned that person-oriented social services often address not only the physical and mental needs but also the spiritual aspect of care for each human being.

(iii) "An asymmetric relationship between providers and beneficiaries that cannot be assimilated with a 'normal' supplier/consumer relationship and requires the participation of a financing third party"

The asymmetric relationship and the often vulnerable position of the beneficiaries are acknowledged. The asymmetric relationship is moreover expressed through the fact that users find themselves in circumstances outside one's control (illness, poverty). This underlines the need to put an emphasis on quality.

Some contributions mention that there is generally no direct link between the actual cost of the service provided and the financial contribution of the user, but also that there is not always the participation of a financing third party (e.g., child care).

(iv) "They are not for profit and in particular to address the most difficult situations and are often part of a historical legacy"

Three types of reactions can be distinguished:

1. For many contributors the non-for profit nature is not a distinguishing characteristic. There should be no limits or preferences regarding the form of ownership of the providers of SSGI as long as the service providers comply with the service (quality) requirements and guarantee an effective provision.
2. It has often been mentioned that whatever the nature of the provider (for-profit or not-for profit), profit is not the main purpose of providers delivering social services of general interest. Even if some profits are made through the provision of a social service, it should be looked at how this profit is then used. Some contributions highlighted the importance of non profit providers and that profits are often invested to achieve social objectives.
3. Other contributors would like to enlarge the reference to public authorities, organisations close to public authorities with a specific public status, charity or welfare organisations, churches or their organisations, associations, mutualities, cooperatives or organisations consisting of volunteers.

(v) "They include the participation of voluntary workers, expression of citizenship capacity"

The contribution of volunteers in the provision of certain social services of general interest is recognised, however, its importance varies across the EU. It is also mentioned that some social services of general interest (e.g., child care, social housing) do not necessarily include the participation of voluntary workers and often require highly skilled workers. Volunteers should not be singled out as an exclusive characteristic. Furthermore, the scope of workforce employed should be significantly enlarged, and not reduced to the existence of voluntary workers especially considering the growth potential for European labour markets that social services represent.

Meanwhile, other contributors would like to reinforce this characteristic by adding that volunteering is an added value for both the user as well as the volunteer, promotes active citizenship and social inclusion, as well as social cohesion and the creation of social capital. Volunteers are crucial for the detection of needs and the development of innovative solutions in social service provision. The importance of professionalisation of workers in social services is also stressed.

(vi) "They are strongly rooted in (local) cultural traditions. This often finds its expression in the proximity between the provider of the service and the beneficiary, enabling the taking into account of the specific needs of the latter"

The notion of proximity is largely recognised. For some, the service provider must be familiar with the customs, standards and traditions in order to provide the service to the user in the most suitable way. For others, the notion of proximity should be reinforced to stress that they are provided at a local level to respond to specific and locally expressed needs, and to ensure equal access throughout the country. Along with local cultural traditions, a reference to religious traditions is also proposed.

3.3. Proposals for additional characteristics

Finally, some contributions have proposed additional characteristics to highlight the specificities of social services of general interest:

- they work with the capacity of the user and assist him/her to **become independent (towards empowerment)**;
- The aspect of universal access should be further stressed

- they often include an element of **advocacy** in order to defend the interests of the beneficiary and to work for social justice in society;
- they are provided according to the wishes and **the personal choice** of the beneficiaries;
- they should rely on a **multidisciplinary approach** towards the beneficiaries and should be flexible;
- they place an important emphasis on **users' rights**. Indeed, the ability of the individual to **participate in the choice of provider and method** is important for a satisfactory result from the service;
- as the user of social services holds a weaker position and the provision of service deals with the questions concerning a person's life arrangements, the **existence of a quality monitoring and assessment system** is extremely important, especially the existence of **ex-ante verification and the possibility to authorize service providers**; it is underlined that the quality of a service will be strongly dependent on the quality of the labour input, hence the necessity of improvements of working conditions
- they affect the recipient and his or her integrity personally, which imposes special requirements as to the provision of these services;
- they often concern **acute needs** that must be met;
- they imply an **active role of local communities** in their set up, management and organisation;
- the providers of social services of general interest often operate in a **democratic and autonomous** manner (e.g., mutualities, associations, some social housing organisations) involving the participation of their beneficiaries in the decision making process regarding both the general planning of services and the provision of services to a specific person;
- the recognition of the right of initiative of the providers and the recognition of the existence of providers created specifically to cover certain services, for instance in the area of social housing.
- They imply **government regulation and planning** related to the identified needs
- Funding can be public or private (mutual contributions, patronage...) but is dedicated to social rights. Financing through taxes and/or compulsory social contributions;
- The existence of an **act of power or authority** which specifies the general interest objectives to be achieved by the service and the means for doing it
- Regarding the personal social services
 - o Developed by the State or, in the framework of public-private partnerships, by private non-profit social solidarity institutions, recognised by the State which would be responsible for technical supervision and monitoring, financial support, and quality control for the services provided
 - o fulfilling a role of prevention and support to social inclusion

Some contributors stated that discussion should focus not only on how they are organised. Some also mentioned that the purpose of SSGI and the outcomes they achieve are more important and would provide a more straightforward basis for a common description. In this light, the following characteristics have been proposed:

- in addition to meeting the needs of a specific person, the universal availability of services also aims at **guaranteeing the fulfilment of social policy objectives (e.g., the promotion of social cohesion) and the general good**. Social services react to social needs and problems which occur because services in the market are not effective enough. They realise public responsibility following the principle of general interest and constitute a fundamental pillar of the European social model;
- they meet the social needs of societies, groups or individuals and which national, regional and/or local authorities consider to be essential in the light of the general interest. Social services **seek to provide security and equal opportunities for all** and social policy is

also about **redistribution** between rich and poor, between those who are employed and those who are not, between young and old, between families with children and families/persons without etc. They are often free of charge. It is the responsibility for the Member States to set and to decide the targets and how to meet the targets at the local level.

3.4. The need and use of characteristics at national and EU level is debated

Respondents are divided on the need and the use of characteristics. Many respondents are against the use of characteristics at EU level mainly for reasons of subsidiarity and because of the high diversity in the organisation of social services at the Member State, regional and local levels. For most of those in favour of the use of characteristics at EU level, they should be used in a non-binding manner at EU level and serve as guidelines for Member States when defining and organising their social services of general interest. In this respect, some contributions indicated that all or most of the characteristics are already embodied in their national law. For few respondents, the characteristics should be legally binding and allow for checking the application of EU rules.

For those against the use of characteristics at EU level, the main reasons are as follows. The definition and organisation of social services is a national or local responsibility and there is no need to fulfil it with EU wide characteristics. Therefore, there is no need for EU action until issues in the management of national processes are identified by Member States. Moreover, the proposed characteristics are too narrow to encompass the diversity across the EU, the role of market mechanisms and free choice. There is a need to agree on terminology first. Using an agreed checklist for social services can be an issue due to the differences in terminology and cultural traditions across EU Member States. Finally, for some respondents, social services are not legally different from services of general interest and there is no need for separate definitions.

For those in favour, characteristics defined at EU level could provide a basis for a clear distinction between services of general economic interest and social services of general interest and be therefore a tool for better clarity (in some cases also to determine whether a service provider is an undertaking in the sense of the Treaty and coordination. Moreover, they could serve as guidelines for the definition of social services of general interest and their compliance with EU rules ie, the non cumulative characteristics would be used as a “cluster of evidence”. For instance, when drafting a mandate to attribute a mission of social general interest to a service, Member States could refer to the characteristics to clarify the mission. In this light, they would be a tool to define *a priori* compatibility with EU law and respond to the need for clear *a priori* conditions for compatibility with EU rules in order to secure public authorities and providers while introducing the possibility to appeal (as planned in the Monti-Kroes package) and a regular evaluation process. Furthermore, they could be used in a comparative and monitoring way at EU level.

Finally, also for those in favour of non-binding EU characteristics, some clear restrictions have been highlighted. These characteristics should be flexible as the sector is evolving and defining social services of general interest remains a Member States competence. Furthermore, the characteristics should not overrule the variety of social services requirements which are the result of a long-term democratic policy process reflecting the population needs more than a legal process. Moreover, the methodology to use the characteristics should be set-up in a proportionate, transparent and securing manner.

For some contributors, the characteristics proposed are too narrow to encompass the diversity of situations across the EU. The examples of child care and care for the elderly have been used to illustrate this point.

One example is child care. Across the EU there is general agreement on the need for societies to provide child care to families/individuals (e.g. Barcelona targets) and there is therefore not much discussion about the general interest and the social character of these services. However, there are across the European Union many different ways in which child care is organised and provided. Child care services for instance do not necessarily include the participation of voluntary workers, and also are not exclusively provided by non-profit organisations. Also, not all child care providers deliver on the basis of solidarity and they not always require the participation of a financing third party. Finally, it has to be said that in most EU-countries the character of these services is not born out of deep-rooted historical traditions, but could be seen as relatively modern and dynamic, since the character and the number of child care services have developed considerably in the past decades closely connected to the changes in the working patterns of women.

Another example is elderly care; in this case as well the general character of this type of services is recognised. Elderly care is serving the needs of a general public and not necessarily only the most vulnerable. Indeed, as all people grow older, these services serve a very large part of society. They are provided by public, non-profit as well as profit-based organisations. The character of the elderly care sector has also recently changed significantly because of population ageing, the shift in working patterns of women, and the increase in the number of single elderly persons. Some of the services include the participation of voluntary workers, but many of them do not. It is also important to notice that not all elderly care services include the contributions of a financing third party.

3.5. The link with the Services Directive

For some, the Services Directive goes some way to recognise the special nature of social services. For instance, the special role of the State as mentioned in the Services Directive could be a good starting point for differentiating social services from services of general interest. Others highlight however that the framework of the Services Directive is not suitable for creating a reasonable balance between opening up the market for SSGI and the provision of the users' rights and needs.

Some contributors state that the relation between SSGI and the Services Directive is clear, but other contributors find the exclusion of certain social services from the Services Directive vague and feel it creates confusion. For instance: what is "commissioned" by the state? what are "charity organisations recognised as such by the State"? Some contributors are of the opinion that the exclusion is too restrictive and that all social services should be excluded from the Services Directive.

Certain contributors feel the Communication could be a helpful basis for further interpretation of the scope of the exclusion. Some contributors feel however that the political compromise on the Services Directive should be respected and that there should be no attempts to interpret this Directive through other instruments.

Moreover, the exclusion in the Services Directive should match the scope of social services mentioned in the Communication and the characteristics should apply to the exempted social services.

Others think however that the characteristics are not suitable for defining the scope of SSGI which are exempted from the Services Directive (where concrete social services are

exempted) and point to the fact that SGI are already exempted. The characteristics are too limited and cannot be used to exclude or include specific social services in the scope of the Services Directive. For some, the principles in the Services Directive are more in line with describing SSGI by their purpose than are the characteristics used in the Communication. Others consider the exemption from the Services Directive is in line with the characteristics identified in the communication. The liberalisation of services, to which the Directive would apply, would question the existence of certain public regulation tools and certain means of financing, while these are essential to guarantee social cohesion and equal treatment across the country.

Finally, it has been stressed that the exclusion does not solve the problem of legal security because social services of general economic interest remain subject to the general principles of the Treaty.

4. Experiences with the application of Community law

In general, contributions have mentioned that EU rules should take account of SSGI specificities and that the general interest should be reinforced in the body of EU rules and prevail in case of conflict with EU rules. Also, it has been highlighted that clarifications are still needed, in particular regarding the notion of undertaking, the distinction between economic and non-economic.

One Member State indicates that there are no problems as such with the application of Community rules, but in some concrete cases the question arises to which extent the Community rules give enough room to allow for a smooth transition of public towards private provision.

4.1. Public procurement

Regarding public procurement, the issues highlighted are threefold: how public authorities prepare tenders, the consequences of public procurement procedures on the providers and on the users.

First of all, public authorities doing public tenders in the field of social services are facing many difficulties according to the responses to the consultation. Drafting tenders is reported as being a difficult and demanding task. Indeed, public authorities (and very often municipalities) have difficulties to define the content of the services and to develop requirements in a detailed way all the more that the services will have to be personalised to the specific needs of each user. These difficulties are reinforced by the fact that public authorities do not necessarily know in details the needs and specificities of social services. Therefore, the risk of public tenders focusing on prices has been often mentioned. In this respect, the new EU public procurement regulations allowing for social, employment, ethical as well as ecological considerations to be taken into account has been welcomed and considered as an important step forward. However, it is now important that the inclusion of social, employment, ethical and ecological considerations is also transposed into national legislation. Moreover, the difficulties in drafting public tenders taking account of all important criteria (e.g., the long-term sustainability and continuity of the services, the risk of segmentation of the services) pose a risk for the quality and the social efficacy of the services. For instance, sustainability has been described as underpinning the confidence in the social protection system of Member States.

Furthermore, the public procurement rules are seen as not flexible enough regarding inter-municipal cooperation. For some contributors, inter-municipal procurements need to be removed from the scope of application of the Procurement Directives. Inter-municipal cooperation on a social service aiming at attaining a sufficient population base is made more difficult or even impossible by the public procurement legislation. In order to obtain a sufficient population base, small municipalities often need to cooperate with large municipalities in order to be able to provide certain social services (e.g., social activities for people with disabilities, which must be provided close to the person's home). According to contributors, under the procurement legislation it is not possible for a smaller municipality to purchase these services directly from a large municipality nearby.

Moreover, contributors point out that some public authorities do apply public procurement rules even when not necessary or in a restrictive manner to be sure to comply Community rules. Therefore, a clearer communication on the application of public procurement rules is requested by some contributors.

In addition, a need for clarification of the obligations deriving from the principle of openness has been expressed. The Treaty presupposes that the principle of openness must be observed in purchases that are not covered by the scope of the Directive on public procurement, i.e. they must be advertised publicly. However, the application of this principle is subject to interpretation. The vagueness of the obligations on how to act has been experienced problematic and four cases are currently pending at the European Court of Justice regarding application of the obligations derived from the Treaty to purchases not covered by the Directive on public procurement².

Finally, one contribution has highlighted the possibility to reconcile the pursuit of the general interest and public procurement procedures. Under the process for UK public sector procurement, the structure of the specifications takes into account the wider Government objectives. These specifications focus on the organisation's strategic goals and describe business requirements in terms of output or outcome.

Secondly, the issues related to providers revolve around the administrative burdens placed on small organisations, the risks of important concentration moves leading to monopolistic situations, and the changing relationship between the providers and the public authorities, the risks on the right of initiative of providers being one illustration.

Contributors indicate that providers have experienced increased paperwork in the last few years, manifold bureaucratic requirements for applications and reporting. These increased requirements bind a lot of valuable resources of organisations, which is especially difficult for small NGOs. Also, small NGOs face difficulties as small operating units risk being evaluated as uneconomical. In the long run, tendering decisions might lead to concentration processes and oligopolies in a region, as especially small organisations might have problems ensuring their survival if losing a tender.

Furthermore, the application of public procurement is reported as changing the traditional type of relationship between public authorities and providers, for instance in Germany from cooperation to regulation of competition. As a result, it is said that private initiatives in social services that require public financing may be difficult to carry out within the framework of public procurement legislations.

² the case of Finnish Senaattikiinteistöt-Senate Properties C-195/04 (lower than the threshold value), service procurement concerning social contributions in Ireland C-507/03, Irish ambulance services C-532/03 and Spanish respiratory therapy services C234/03)

The change of relationship between public authorities and providers. The case of France:

The European directives concerning public procurement induced increasing penetration of competition logics in the contractual methods between local authorities and solidarity associations.

Usually, in France, the contractual relationship between local authorities and solidarity associations (health, social and medico-social) is governed by two main modalities:

- the convention around objectives with subsidising
- or a framework of creation of the activity fixed by law

These two methods follow a logic of promotion of the initiative by the associative actor submitting a project.

However, this logic is thwarted gradually by a new logic, which is induced (inter alia) by the European level, that of competition of the operators within the framework of a call for tenders. In the latter case, the local authority has the control of the order and of the conditions of carrying out a project.

This passage from a logic of subsidy to a logic of remuneration of services, with competition of the operators by the local authorities, standardises the associative specificity in the implementation of missions of general interest.

Thirdly, regarding the users of social services, the main issue reported is the lack of choice of the provider. The individual's choice of the method of care or provider of a social service is made difficult by public procurement legislations. Indeed, under a tender selection process only one provider is chosen.

In the light of these issues, the positive effects of public procurement applied to social services (more quality, more choice and reduced prices) are questioned by some contributors. If the market functions well, competition may contribute to making the activities more effective and to cost savings, but there are several problems in the field of social welfare and health care that are caused by market failures, such as asymmetric information. Services must also be ensured in situations where the service concerned only is needed for a few users. When a user is in need of several services simultaneously, it is vital to tailor an entirety of services according to one's individual needs. Social and health services are also developed continually so that provision of services may at the same time involve reforming and developing the service in question.

4.2. Public-private partnerships

Regarding public-private partnerships (PPP) the main comments relate to the need for clarification at EU level of the rules: how an institutional public-private partnership should be implemented? What is the applicable law to PPP and to institutional PPP? In social housing, there are uncertainties on the status of PPP of certain mixed operations (e.g., some HLM organisations). These issues should be debated in the framework of the Green paper currently under review.

The issues reported on public-private partnerships are linked to the fact that public procurement is needed. Therefore, some of the problems exposed in the previous part are also applicable: the freedom of choice of citizens should be taken into account; cooperation with private actors like NGOs is reported more difficult as it needs to go through public

procurement first (for instance, providing housing for homeless people, help to older single people);

Therefore, for some contributors, cooperation between municipalities should not fall under EU law and PPP should be excluded from public procurement rules.

4.3. Internal market rules, freedom of establishment and freedom to provide services

In the field of freedom of establishment and freedom to provide services, the issues reported relate to unclear rules, the scope of the Services Directive and the application of internal market rules.

Concerning the need for clarification, to be compatible with EU rules, all measures aiming at regulating the market must be “proportionate”. It is asked how the proportionate feature of a measure is defined.

On the Services Directive, the current wording of the exclusion of social services from the Directive is said to be vague and to create confusion about which services are covered by the Directive and which are not and are therefore covered by the Treaty dispositions on internal market. Some request that all social services dealing with people having temporary or long-term need for assistance and support, irrespective of their financial situation should be excluded from the Services Directive.

On the application of internal market rules, the will to suppress the obstacles between Member States and the barriers considered discriminatory for the operators from other Member States induces a risk of questioning the national regulations framing the activity of social and health services (e.g., approvals, prior authorisations, systems requiring an habilitations) and of non taking into account their specific characters. Indeed, these national frameworks are built with the stakeholders with the aims of protecting the users, bringing quality and distributing the offer over the whole national territory. Although contributions state that this risk of deconstruction of the national regulatory frameworks seems temporarily to have been ruled out after the adoption of the revised Services Directive, they also stress that it is important to specify within a specific Community legal framework the conditions of agreement and contracting between social services operators and the relevant public authorities.

4.4. State aid

In general, the pragmatic approach of the Monti-Kroes package with its aim to create more legal certainty and transparency (e.g., a priori criteria, exemptions, threshold for notification) is welcomed. Following this package, some actors are requesting from their public authorities a mandate respecting the principles of proportionality, non-discrimination, transparency in order to formalise legal security for the operators in the sector. Some insist the issue of the mandate should be addressed in a flexible manner.

However, according to the replies to the consultation, there are still some clarifications to be brought and issues to be tackled and it is felt that a lot will depend on how the regulations are interpreted and applied.

First of all, regarding the clarifications, the notion of "hospital" leads to questions and it has been reported that public authorities have asked questions to the Commission in order to validate their mandates. For instance, does the notion include social welfare institutions (care homes)? It has been stressed that the type of institutions covered by the notion of hospitals

should be considered according to each national system. Furthermore, in relation to financing of social housing, a broad application of the exemption is expected in order to include not only dwellings but also ancillary infrastructure elements that contribute to the overall social housing environment. More broadly on competition rules, the notion of "undertaking" and the criteria "effect on trade" calls for clarification. The definition of an undertaking is still vague, taking into account the diversity of bodies providing social services. Although some of those bodies provide social services on payment there are other bodies that do so without payment such as voluntary organisations, foundations etc. State aid that covers only a part of their expenditures cannot be considered as "remuneration" according to the ruling on *Bond van Adverteerders*³, since the aid does not correspond to the price value of that service. Moreover, some SSGI providers – whether they constitute undertakings or not – provide services in a small geographical area, e.g. in a town, or a village. The geographical coverage is so small that a question arises as to whether state aid to those bodies would satisfy the "effect on trade" criterion. This criterion is necessary for the existence of state aid according to article 87 of the Treaty. For example, care services for older persons in rural areas of Cyprus do not constitute an economic activity attractive to undertakings abroad.

Secondly, some issues have been highlighted regarding the requirements in the *Altmark* decision (e.g., mandate, a priori cost definition). Indeed, the requirement for an official act mandating the providers can be problematic in countries where the operators are autonomous. In accordance with the provisions of Community law, it is not the existence, nor the nature of the financing of the activities which induces the social general interest qualification but on the contrary the qualification which enables the public authorities to grant them public financing (direct or indirect), in particular in the form of compensation for the charges bound for the accomplishment of the mission. Even if they are entrusted with public service delegations, the social protection mutualities undertake activities of general interest of their own initiative. The compensation paid to social services of general interest is limited to the cover of the general interest missions (as defined in an official act) and does not give rise to over-compensation (to cover for instance some provider's initiatives). Moreover, there is the question of the *a priori* evaluation of the public service costs.

Regarding the required cost analysis, it is asked how to proceed when the activity is provided by only one operator or by only not-for profit providers or when there is no private company on the market to benchmark with. It has also been pointed that it is difficult to separate activities subject to competition rules from other activities, for instance, for some, the combination of obligatory and voluntary social schemes should remain possible without separate bookkeeping. Moreover, regarding the question of financing, characteristic and operational elements of the social activities have to prevail. For instance, the logic of overall participation to the interdependent social protection system; the logic of sustainable projects in response to the needs of the population and to the requirement of accessibility based on needs.

Therefore, it is asked to adapt the four *Altmark* conditions to the specificities of social services of general interest or more broadly to adapt competition rules to the specificities of social services of general interest in order to allow Member States to finance them. In this light, it is recalled that access to social services is a fundamental citizen's right and therefore the rules on government fundings should not obstruct the financing of social services.

Considering that social housing and hospitals are already excluded together with small aids, some contributors propose to enlarge the exemption in the Monti-Kroes package to all social services of general interest. Indeed, social services are services that society is interested in and whose provision is considered necessary by the state but the market is not capable or interested in providing these services, or would provide them insufficiently.

³ *Bond van Adverteerders* ruling of 26 april 1988, The Court of Justice of the European Communities

5. Future steps at Community level

5.1. Ambivalent opinions towards EU regulation

The outcome of the consultation is not conclusive regarding future steps at EU level. In general, most Member States and associations of local governments as well as one social partner do not see the need for a special legal instrument on social services. On the other hand, organisations from the civil society welcome the idea of an EU legal initiative for social and health services of general interest aiming at providing legal certainty in the field. Most social partners for their part seem to favour a legal framework for services of general interest prior to assessing the need for further instruments for SSGI.

However indications are given on issues that could be addressed in further initiatives at EU level:

- Recognise the specific nature and role of social services and raise awareness about the essential role played by those services (social cohesion, employment);
- Define the characteristics of social services of general interest;
- State some principles of quality for SSGI like the evaluation of needs and participation of the beneficiaries;
- Reassess the Member States responsibility and freedom in the definition, organisation and financing of social services;
- Clarify the position of social services of general interest in regards to EU rules, notably competition, internal market and public procurement rules with the aim of balancing the specific characteristics of the sector and the current EU rules in order to promote high standards of social protection and preserve their contribution to social policy objectives;
- Define conditions for a priori compatibility with EU rules of special rights granted to providers of SSGI, of contractual or conventional relationships between providers and public authorities;
- Ensure a stable and transparent legal framework in the respect of the principle of subsidiarity as stated in the EC Treaty;
- Recognise the role played by actors from the social economy and establish at the European level the participation of social actors in the decision-making (identification of the needs, definition of the missions, evaluation);
- Focus on cross-border situations or where exclusive rights are granted.

The principle of subsidiarity and the primary responsibility of Member States to define and organise their social services sector have been largely expressed in the contributions, by Member States but also by social partners and organisations from the civil society. It is also mentioned that any EU level action in the field of social policy would require thorough analysis and impact assessment.

Among the Member States, only a few have expressed the advantages of a Directive on social services of general interest. For these Member States, an EU legal initiative, to be taken as soon as possible, should confirm the specific characteristics of SSGI and focus on bringing legal clarity and a stable framework which should strike the right balance between these characteristics and EU rules. It should also promote a high level of social protection and quality and allow for the development of the European social model. This instrument should also respect Member States' freedom to organise their social services sector (as regards operating, financing and evaluation). For some, the scope of the Directive on SSIG would

exclude social security schemes as these are non economic. Some have basically expressed their positive expectations on further legal initiatives.

The issue of finding an appropriate legal basis for such an instrument is raised. Some contributors stressed that a more detailed examination of what exactly can be achieved with which legal instrument is needed. Furthermore, there could be an examination of whether a legal instrument could more clearly define the conditions under which restrictions of competition law for social services of general economic interest are covered by Article 86(2) of the EU Treaty.

Six Member States do not state clearly whether they are in favour of a framework Directive on SSGI. However, they clearly express the need for more legal certainty, for instance regarding the relationship between EU rules and Member States' rights, the concept of SSGI, the need to define clear and unambiguous criteria allowing Member States to define which social services are of general interest, the need to avoid a case by case interpretation by the European Court of Justice, the need to avoid an inhomogeneous geographical implementation. It is suggested to start with an OMC kind of cooperation and move to making the criteria emerging ever more stringent.

Finally many Member States have either expressed a preference for other non-legislative instruments or stressed that a legislative instrument is not necessary or appropriate for the moment, stressing that there seems to be no added value of such a framework and that there is no evidence of any significant EU-wide problems requiring EU-wide action, pointing out that EU-level criteria (beyond the one already in the Treaty) must not be applied to Member States social policy goals and highlighting that powers that belong to Member States would in this way be transferred to the European Union.

In general, organisations from the civil society welcome the idea of an EU legal initiative for social and health services of general interest aiming at providing legal certainty in the field. If needed, this Directive could be broken down into sector directives and the first of them could be a response to the recent consultation on health services. Some organisations from the civil society promote both a framework directive on services of general interest and a specific directive on SSGI to solve the specific issues that a directive on SGI would not address. It is mentioned that a piecemeal approach should be avoided to prevent conflicting approaches across different sectors of services of general interest. It is also highlighted that the scope of the directive should be on social and health services of general economic interest. In terms of method, it has also been proposed to extend the pragmatic and proportional approach followed in the Monti-Kroes decision to all SSGI and to the questions relating to internal market rules (i.e., special rights and authorisation regimes), and to define *a priori* conditions for compatibility with EU rules in order, on the one hand, to secure public authorities and operators and on the other hand, to allow relevant public authorities to organise and finance SSGI according to the principle of subsidiarity.

Most social partners seem to favour a legal framework for services of general interest prior to assessing the need for further instruments for SSGI. It is mentioned that instead of defining categories of services of general interest, actions should be taken to safeguard them all.

Finally, some contributors are of the opinion that the principles of open competition should not be undermined. There should be full stocktaking of the delivery of social services, with no inherent bias towards public or private provision. The boundary between public and private must not be frozen and the frontier between economic and non-economic services should be seen as dynamic. EU rules should apply to any provider in the same market, profit and non profit.

5.2. A clear need for further exchange of information, a dialogue and monitoring tool and a quality initiative

Monitoring coordinated by the Commission is largely welcomed by all contributors. It is also mentioned that the OMC could contribute to this specific field and the focus should be on the exchange of good practices. In this respect, topics for exchange of good practices are often mentioned: quality in the field of social services, debates on minimum standards, how to involve social partners, providers and other interested parties to find a common understanding and progress on SSGI at national level, and experience with the application of EU rules. The need for statistics and the need to define common indicators have also been stated. Finally, it has been specified that exchange of experiences should focus on specific and comparable sectors within the broad SSGI category, where questions and problems arise.

Some limits to the OMC are stated: the OMC would not contribute to achieving legal certainty.

However, it has been stressed that the use of the OMC in the field of social services should be limited to exchange of experiences and not go in the direction of defining common goals and indicators, nor create supplementary administrative burden for the Member States. The contributions which did not find the use of the OMC appropriate in this field also highlighted the high administrative burden. These Member States would favour monitoring and dialogue procedures allowing for exchange of information and coordinated by the Commission or periodic reporting based on a questionnaire.

Moreover, several contributions from social partners or organisations from the civil society stressed the necessity to involve them in the OMC in this field.

Furthermore, the need for a quality initiative has been supported. Some organisations from the civil society asked for an evaluation of effectiveness and appropriateness of tendering procedures in the social sector and also for the development of some agreed quality principles (to be distinguished from standards) for social services.

The need for the national public administrations to inform and publicise at national and local level the results and clarifications emerging at European debates on social services of general interest is recognised.

The proposed dialogue and monitoring tool in the form of biennial reports is largely welcomed and should aim at contributing to the sharing of information, including the part played by SSGI and their weight in the economy, highlighting commonalities and differences between Member States, monitoring experiences and issues arising from the application of Community rules and ECJ decisions and further develop and clarify the Community framework encompassing the SSGI. The importance of social dialogue has been stressed by many contributions from Member States, local authorities' organisations, social partners and organisations from the civil society. It has also been mentioned that this tool should not place additional administrative burden on Member States.

In general terms, the role the SPC plays in the process should be clarified (if possible through a concrete mandate from the Council) and strengthened in the event of legislative proposals affecting social services.

Annex

ORGANISATIONS THAT REPLIED TO THE SSGI QUESTIONNAIRE⁴

Social partners

CEA

CEEP

The Confederation of European Business

EPSU

ETUC

European organisations

Action Européenne des Handicapés

AEIP

Autism Europe

Caritas Europa

CECODHAS

CEDAG

COMECE

Conference of European Churches

EASPD

Eurodiaconia

ESIP

GEIE TS (ARSEAA, AWIPH, FTC)

SOLIDAR

⁴ Only those organisations are listed here that directly submitted a reply to the Commission services.

National organisations

Austria

Verband der Öffentlichen Wirtschaft und Gemeinwirtschaft Österreichs

Wienerberger AG

Belgium

Mutualité Belge

Denmark

Local Government Denmark

Finland

The Association of Finnish Local and Regional Authorities (AFLRA)

France

Centre Technique des Institutions de Prévoyance

Collectif SSGI-FR (CEEP France - FAPIL - FEHAP - FHF - FNARS – FNMF – FNSEM - MFP - MGEN - MSA - PACT-ARIM - UNCCAS – UNIOPSS – USH)

Mutualité Fonction Publique (MFP)

Mutualité Française

Mutuelle Générale de l'Éducation Nationale (MGEN)

Représentation des institutions françaises de sécurité sociale auprès de l'Union européenne – REIF (ACOSS, CANSSM, CCMSA, CNAF, CNAMTS, CNAV, RSI)

UNIFED

Union Sociale pour l'Habitat

UNIOPSS

Germany

Deutscher Caritasverband

Deutscher Verein für öffentliche und private Fürsorge e.V.

Deutsche Socialversicherung

Evangelische Kirche in Deutschland

Kommissariat der Deutschen Bischöfe

Luxembourg

Confédération générale de la fonction publique (CGFP)

Représentants de la Société Civile du Luxembourg (syndicats CGFP, OGB-L et LCGB, fédérations du secteur social EGCA et COPAS et organismes Caritas, Croix-Rouge et Femmes en Détresse)

The Netherlands

Verbond Van Verzekeraars

Spain

ONCE

Sweden

Forum for Voluntary Social Work

Swedish Union of Local Government Officers (SKTF)

United Kingdom

Association of British Insurers