

FINNISH ANSWERS AND COMMENTS

Questionnaire

Field 1 – Overview of the national SGI

The following replies are based on a preliminary assessment of the coverage and definition of the concept regarding services of general interest.

If needed, we shall elaborate the answers given here in the context of the analysis of the questionnaire form.

The period allowed for answering the questionnaire does not enable a sufficiently broad-based national preparation process. Discussions about the concept of services of general interest require a systematic analysis of the national legal base and achievement of a political consensus on the essential questions related to the issue.

It is still unclear in which context the concept of services of general interest is useful and appropriate in the realm of EU aims or initiatives. There is also reason to analyse in more detail if it is at all possible to make a conceptual difference between economic and non-economic services, and what kind of legal certainty a further development of making such a difference could bring.

We in Finland have not seen it necessary to define the concept 'services of general interest', and therefore our attitude towards using this concept at the Community level is very reserved. The reason for that is, among other things, that all activities are in principle also linked with an economic aspect. Therefore we do not necessarily see it fruitful to enact strict legislation on what is economic or non-economic activity. A clarifying discussion about the necessity of introducing a concept of services of general interest would therefore be justified.

The discussion concerning the regulation of services of general interest must be linked to the discussion on other legislation projects concerning the internal market. Our view is that the final form of the Directive on services now being prepared (e.g. if it covers social and health services, and if it does, how) and revision of the provisions on state aid are of crucial importance to the discussion conducted on services of general interest.

1. What are the general characteristics of the national social SGI with regard to e.g. the following points?
 - Organisation, design and structure (geographical, market structure, administrative level);
 - financing (e.g. contributions, direct funding via government budget, payment of remuneration for the service, charity donations, mutualisation);

- service provider (e.g. state and local authorities, public enterprises, public-private partnership, voluntary non-profit organisations, role of volunteers, private enterprises);
- definition of tasks/obligations (what are these tasks/obligations and how are these laid down, i.e. contract, law or other);
- quality standards.

The term 'services of general interest' is not found in Finnish legislation. Therefore also the concept social services of general interest is unknown, and it has not been considered necessary to issue separate provisions on social services of general interest.

According to the Constitution of Finland, section 19, the public authorities must ensure that everyone obtains sufficient social and health services as separately laid down by legislation.¹ Provisions on services are laid down in specific legislation. In Finland, the statutory responsibility for providing the public social and health services is vested in the local authorities (municipalities). They can produce the services in the manner they want to – either by themselves or together with other local authorities or purchase services from non-governmental organisations or companies. Local authorities may also support service providers by designating for their use premises or granting them assistance. Some organisations provide services that local authorities purchase from them based on a specific agreement on purchase of services.

The concept 'non-profit corporation' is included in Finnish tax legislation. In Finland such corporations are in principle supported regardless of what services they produce. In value added taxation, on the other hand, support is provided to certain services produced by certain service providers.

In Finland the activities of non-profit corporations are considered so important that they have mainly been freed from payment of income tax and value added tax. According to section 22 of the Income Tax Act, a corporation is a non-profit corporation if it meets the following conditions:

- 1. The corporation works solely and directly for the public good in a material, intellectual, ethical or social sense;*
- 2. The activities of the corporation are not aimed at limited groups of people.*
- 3. The corporation does not produce through its operations for those involved in them financial profit in the form of dividends, profit shares or salaries that are higher than moderate or in the form of some other remuneration.*

¹ Extract from the Constitution, section 19:

Those who cannot obtain the means necessary for a life of dignity have the right to receive indispensable subsistence and care. Everyone shall be guaranteed by an Act the right to basic subsistence in the event of unemployment, illness, and disability and during old age as well as at the birth of a child or the loss of a provider.

The public authorities shall guarantee for everyone, as provided in more detail by an Act, adequate social, health and medical services and promote the health of the population. Moreover, the public authorities shall support families and others responsible for providing for children so that they have the ability to ensure the well-being and personal development of the children.

The public authorities shall promote the right of everyone to housing and the opportunity to arrange their own housing.

According to section 23 of the Income Tax Act a non-profit corporation is liable to pay taxes only on its business income and on certain income from real estate.

As a rule, no value added tax is paid on sale of health and medical care services. Neither is tax paid when the person providing care services delivers in connection with the care such services or goods that ordinarily are linked with care. The exemption from tax only applies to the care and treatment provided in health care establishments maintained by the state or local authorities, to care referred to in the Private Health Care Act, or to care provided by such health care professionals who pursue their activity in virtue of a right based on the relevant law or who have been registered in virtue of the law.

Non-taxability also applies to ambulance services by vehicles that are particularly equipped for that purpose; examinations and laboratory services related to health care and medical care; dentures sold by dentists, dental technicians, denturists and related work performances; breast milk; human blood; organs and tissues; as well as to goods and services directly used in health care and medical care that a health care professional delivers to another professional.

Sales of goods and services in the form of social services are, as a rule, likewise non-taxable. If the services are sold by the state or local authorities, no added value tax is paid on the activity. If the services are sold by someone else, the precondition for exemption from tax is that the municipal social welfare authorities supervise the service provider. Exemption from tax applies to services provided for the purpose of taking care of children and young people, child day care, special care for mentally handicapped persons, other services and support for people with disabilities, and to services for substance abusers or other such activities.

No value added tax is, as a rule, paid on the sale of educational services and services and goods delivered in that context (including catering). Exemption from tax however only applies to general and vocational education, university education and basic education in the arts organised on the basis of a law or subsidised from state funds.

According to the Constitution of Finland (section 19) the public authorities shall promote the right of everyone to housing and the opportunity to arrange their own housing. The Housing Fund of Finland can, in this respect, grant state-subsidized ARAVA loans and interest-subsidized loans for constructing, purchasing and renovation of social rental housing. The subsidies can be granted to a local authority or other public corporation and to a non-profit corporation that fulfils the preconditions laid down in ARAVA and interest-subsidy legislation and designated by the Housing Fund. The primary function of the non-profit organisations is to build, purchase and renovate rental housing in order to secure good and safe housing at reasonable cost. The aim of state loans and guarantees, interest subsidies, grants and housing allowances is to set the level of housing costs of tenants at affordable level compared with the rent level and housing costs on the market. Allocation of rented dwellings takes place on social grounds. Effective targeting of the subsidies is secured by cost and quality control, cost-effective rents and permitting only a moderate return on the funds invested by owners. State-subsidized rental housing must also primarily remain in rental use in areas where there is demand for rented flats.

2. Please indicate whether and if so how these characteristics are likely to develop and change in the coming years. This with a view of the modernisation of these services (taking into account developing users' needs, quality standards and (financial) efficiency).

In Finland the local authorities are responsible for providing the public social and health care services. Local authorities are according to the legislation obliged to provide services but they are free to decide on how the services are produced. Local authorities may produce all their services either themselves or purchase them from other service providers, such as the third sector or the private sector. Local authorities increasingly purchase social and health care services. The government has issued quality recommendations for many services in the field of social welfare. The access to services is ensured by defining uniform criteria for care and maximum times within which access to care must be provided. The qualification requirements for social and health care staff are being revised.

The services purchased from outside service providers must conform to the quality requirements defined by the public sector, such as the requirements for the number and education of staff. The service provider must have a licence granted by the relevant State Provincial Office for delivering 24-hour services, and the State Provincial Office supervises the operations and keeps a register of private providers of social services within its area. It is important from the point of view of client safety that, besides addressing the defects that have been observed, also the advance supervision of services is effective. It is thus important to define quality requirements for social services and to ensure the supervision of their observance at national level. The language rights of the clients must also be safeguarded.

3. Are there examples of social SGI which use market mechanisms to fulfil their tasks; what could be learnt from these experiences?

Both the state and local authorities contribute to the financing of statutory social and health services. As a rule, local authorities still produce the social and health services they are responsible for providing. Use of purchased services has however increased. Private service providers, i.e. non-governmental organisations and private companies produce one fifth of all social and health services. NGOs play a greater role in social service provision, whereas the major part of private health care services is produced by companies.

The proportion of purchased services varies by activity. Local authorities purchase more than half of the following services they are responsible for providing from private service providers: shelter services for battered family members, housing services for people with disabilities and mental health problems, interpreter services for people with disabilities, residential care and housing services for substance abusers, and residential care for children and young people. On the other hand, local authorities purchase less than 15 per cent of the child day care services, residential care services for older people and men-

tally handicapped people, sheltered workshop activities for mentally handicapped persons, family counselling and child guidance services and home services from private service-providers. The proportion of purchased services has increased in particular in regard to residential care for children and young people, housing services and institutional rehabilitation for substance abusers,, and housing services for older people and mentally handicapped persons. Furthermore, joint municipal boards purchase social services from private service providers.

Local authorities and joint municipal boards purchase markedly less health care services than social services. Private services are mainly purchased by households, employers and the Social Insurance Institution. Part of the expenses incurred through the use private health services is refunded from statutory health insurance. In Finland, service users significantly contribute to the financing of services through the client fees collected from them.

In Finland, not only public employment services but also private employment services are regulated by law. The purpose of the regulation is to protect job-seekers from malpractice; an example is the prohibition against collecting payment from jobseekers.

Housing policy does not fall within the competence of the European Union. Nevertheless, many issues within its field of competence have important bearings on the housing sector. One such issue is internal market rules and especially state aid rules applied to housing (articles 86 and 87-88). There have been several cases in the EU Court of Justice and in the Commission concerned with different kind of construction and housing subsidies. Although in most of the cases the subsidies have been seen as compatible with internal market and state aid rules, there is inside social housing sector well - grounded concern about the legal and operational certainty as long as there is no Community regulation. In this respect we strongly support, as a first step, the new Commission draft decision on the application of Article 86 to state aid in the form of public service compensation to undertakings carrying out services of general economic interest.

Many of the social services carried out by the Church, for example diaconal services, are in fact basic tasks of the Church in accordance with chapter 1, paragraph 2 of the Church Law.² In this respect, we emphasize the principle in the Declaration No 11 annexed to the final act of the Treaty of Amsterdam, which also has been incorporated into the Treaty establishing a Constitution for Europe, article I-52(1), according to which the Union respects and does not prejudice the status under national law of churches and religious associations

² The responsibility of the Church to organise diaconal work cannot be compared to the responsibility of the local authorities to provide services. According to chapter 4, section 3, of the Church Order parishes and their members shall carry on diaconal work for the purpose of providing help based on Christian love in particular to those in the greatest need of help and to those who are not helped in some other way. Further provisions on this activity are laid down in the rules for the diaconal work approved by the Church Council or the relevant parish council. According to section 6:9 of the Church Order a parish must have one post of a deacon. Services are also offered to persons who are not members of the Church. The arrangements for diaconal work vary from one parish to another.

or communities in the member States. Accordingly, we maintain that diaconal tasks, which are carried out as basic tasks of the Church, fall within the autonomy of the Church and are thus outside the scope of any Community measures.

Field 2 – Definitions of social SGI

4. Is there at national level a notion or definition of social SGI or social services generally?

No, there is not.

5. It has been argued that social SGI are different to other SGI – Do you agree with this? Is a more detailed analysis of these possible differences –especially in relation to networks industries – a way forward to gain more certainty?

Since the concept of services of general interest is not used in Finland, it is not possible to give an unambiguous answer to this question. Besides aspects related to ensuring the access to services, significant aspects related to social coherence are linked with social and health services. Personal interaction, respect for human values and valuations as well as ethicalness are highlighted in the delivery of social and health services.

6. In case you feel that social SGI are different to other SGI please indicate what could then be the elements for a description at European level of these specificities of social SGI's, taking into account the diversity of general interest missions related to social services in the Member States and the general principles³?

There are no such criteria for social SGI in Finland.

Could the elements worked out in the “Key issues” of the Conference “Social Services of General Interest in the EU” (28 and 29 June 2004) be a good base for this description in the European context? Which elements have to be added; which have to be amended?

We refer to the points of view presented at the beginning. It should be clarified first for what purpose the concept and criteria of social services of general interest can be used.

7. Which of the different sectors outlined under Field 1 should have priority for the examination at European level

There is no need to define the sectors until the objectives have been defined in more detail.

These principles are *inter alia* quality, availability, equal access, universality, affordability, continuity, participation, transparency).

Field 3 – Experience with EC internal market or competition rules

8. Please indicate for the services identified under question 7 with regard to the EC rules listed below (see also background document) whether:

- a. it is established (in case-law or by way of Community law) that these services fall outside the scope of these rules

As a general rule, if the local authorities themselves provide and produce services, the internal market rules do not apply to such public activity. On the other hand, if the local authorities purchase services from the private or third sector the competition legislation in force must be observed in the procurement.

- b. it is established (in case-law or by way of Community law) that these services are falling within the scope of these rules

See above 8 a.

- c. it is unclear if these rules apply to these services, there is a need for clarification ("grey zone")

The situation is to some extent unclear in regard to services produced by the local authorities responsible for providing services in regional co-operation, i.e. in situations where the public sector organises services by internal co-operation arrangements (in-house definitions).

- Internal market rules;
- Art. 81 and/or Art. 82 EC;
- Art. 86 EC;
- Art 87;
- Public procurement rules;
- External trade negotiations.

9. Please describe experiences concerning the influence of these EC rules on social SGI (may be “good” or “bad” examples; e.g. have these rules enabled the efficient provision of certain services or have they limited the freedom to realise national social policy goals)?

There is to some extent unclarity regarding the organisation of ambulance services. For example, when a case where a municipality had purchased ambulance services from the regional rescue services was brought to the Market Court, the Court considered that it was not question of work done together by two procurement units but of a purchase that should have been made subject to competitive tendering.

Are there examples where the mentioned EC rules were taken into account in advance when planning or reforming national social policy?

The European Court of Justice has established in its case law that health services, hospital services included, are services referred to in the Treaty Establishing the European Community (e.g. C-157/99). The Court has specified this interpretation by stating also that health services are services meant in the Treaty regardless of how a Member State has organised and finances its social protection system. Accordingly, a Member State may demand an advance permission for hospital care or treatment provided in another Member State. Advance permission for some other treatment may not be required. In other words, a patient may seek care other than hospital care and afterwards apply for compensation from the system of his or her own country. In Finland this is organised so that the Social Insurance Institution refunds such expenses in accordance with the national health insurance legislation and compensation rates.

The European Court of Justice has issued its judgment in the case of the Republic of Finland (C-229/00), according to which the Finnish legislation is not in conformity with the Directive on transparency (89/105/EEC) in regard to the decision-making process concerning the special reimbursement of medicines. The legislation has been amended accordingly.

In its case law the European Court of Justice has also looked at the Finnish home care allowance for children and established that this benefit is covered by the scope of the Regulation on co-ordination of social security systems (C-333/00).

The provisions on public procurements are applied to purchase of social and health services. There are different views about the appropriateness of competitive tendering and the benefits achieved in that way. If the market functions well, competition may contribute to making the activities more effective and to cost savings, but there are plenty of 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 clients or patients. When a client is in need of several services simultaneously, it is vital to tailor an entirety of services according to the client'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.

According to the case Telaustria 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. In other respects, the meaning of the principles derived from the Treaty in regard to procurements not covered by the scope of the Directive is subject to interpretation. The vagueness of the obligations on how to act has been experienced problematic, and that could maybe be paid attention to. The issue has also been touched upon in Finland's opinion on the Commission's Green Paper on public-private partnerships.

Furthermore, four cases are 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 procurement (the case of Finnish Senaatti-kiinteistöt-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)

Finland has not made commitments regarding social and health services or educational services in international trade agreements.

The internal market rules of the EC have considerably influenced the national alcohol policy. Finland has had to give up some restrictions on access to alcoholic beverages, and the taxation of alcoholic beverages has been lowered in order to curb their importation from other EU countries. The national regulation of importation of alcoholic beverages from outside the EU has been approved by judgment C-394/97 of the European Court of Justice. The status of the national alcohol monopoly was established in judgment C-189/95. The sole right of the Finnish Slot Machine Association to organise certain gambling games has been confirmed by judgment C-124/97.

As a whole, the impact of the internal market rules and competition legislation of the EU on the Finnish social services system has not been considerable so far.

The recent proposals for legislation, such as the proposal for a Directive on services and the proposals regarding state aid, together with the judgments of the European Court of Justice, have brought about uncertainty. It has sometimes proved difficult to separate business that is subject to competition from other NGO activities.

The application of competition and internal market legislation may affect indirectly the capacity of Member States to provide services and finance them in the way they want to. Possible effects of the Directive on services, which is under consideration, must be examined further. It must be taken into account, in particular, that there are differences in the Member States' service systems. It is not possible to decide on the continued consideration of services of general interest until we know the final content of the draft Directive on services in regard to social and health care services.

Field 4 – Further steps at European level

10. Are there specific fields of European law and activities which necessitate further clarification with regard to their impact on social SGI (see also question 8), like e.g:
 - Internal market rules;
 - Art. 81 and/or Art. 82 EC;
 - Art. 86 EC;
 - Art 87;

- Public procurement rules;
- External trade negotiations.

Answering this question would require a broad-based political preparation, for which there is no possibility in this context. The need for regulation varies by country and sector according to geographical and historical factors, political decisions and technological development. It is therefore difficult to form a view on what general regulation would be needed at the EU level.

11. Should the work to be carried on only concern social services of general *economic* interest and concentrate on e.g. competition rules and certain internal market rules or should social SGI both of an economic or non-economic nature be subject for further work?

Possible regulation should be limited to obvious market failures at European level, to principles for solving conflicts and to operations across borders in regard to services.

12. What should be the concrete aim (especially concerning further steps) of the Communication of the Commission on social SGI including health services?

No clear added value is foreseeable until the objectives are clarified. It is necessary to focus first on analysing the effects of the Directive on services and the revisions concerning state aid.

13. Do you consider the use of the open method of co-ordination (existing or new) an appropriate means for further steps? If so, what should be the concrete task of this method? (e.g. common objectives, exchange of good practices, evaluation etc).

Prior to a discussion about expanding the scope of the open method of co-ordination it is necessary to wait for the outcome of the evaluation of this method to be carried out in 2005. It must however be taken into account that defining sufficiently exact joint objectives in this multifaceted area may lead to inappropriateness and conceptual confusion.

14. Could at some stage and without prejudging the right of initiative of the Commission, legislative acts be considered as an appropriate means for further steps (under the assumption that a valid legal base can be found), and if so what should be the concrete task of these instruments (Directives, Regulations, Recommendations)? The following additional questions seem to be possible:

- Should these legal acts limit the scope of EU rules and their application to social services?

This requires political discussion. At this stage it is difficult to take a stand on this question.

- Should these legal acts establish common standards for social services, allowing EU rules, like the Internal Market rules, to be applied while taking into account fully the social policy goals?

This requires political discussion. At this stage it is difficult to take a stand on this question.

- Should there be legally defined criteria, e.g. criteria concerning quality, affordability, accessibility or solidarity at European level?

It is possible to issue at European level general guidelines or recommendations on this issue, if that is generally seen sensible with a view to clarifying the States' operational models.

For example, in the case of social housing, a further step to increase the legal and operational certainty in this field could perhaps be to develop recommendations concerning quality, affordability and accessibility of supported housing as a social service, at European level.

No such European added value can be seen linked to a further definition of legal criteria as could be co-ordinated with the principles of subsidiarity and relativity.

It is advisable to clarify the relationship between the national decision-making power and the Community law, in particular in the implementation of the EU's internal market rules and competence legislation, but it appears at this stage that it will not be possible by means of the concept of services of general interest.

In the further work it is important to focus on those joint criteria that enhance legal certainty and on measures to ensure the right of the Member States to decide on their social and health care provision at national level.