

Social Services of General Interest

Questionnaire

Introductory Remarks

In the White Paper on Services of General Interest (SGI) the Commission has announced a special Communication on social SGI including health services. A close co-operation with the Member States via the SPC and the High level group on health services and medical care (hereafter "High level group") was explicitly envisaged. This questionnaire aims at collecting input from the SPC and the High level group for the preparation of the Communication.

It has to be recalled that the preparation of the Communication to which this questionnaire contributes cannot replace the work already ongoing in special fields at different levels. Therefore the position of social SGI in relation to

- the planned Directive of Services in the Internal Market must be taken care of in the relevant Council formation;
- the planned package on State aid after the Altmark-decision of the ECJ must be taken care of in the consultation process started by the Commission;
- the evolution of the public procurement provisions with regard to Public-Private-Partnership-Models must be taken care of in the framework of the procedure of consultation started by the Commission in the Green Paper on this topic.

As this exercise is only a first step it will not be possible – especially taking into account the very vast field of different SGI in the Member States – to achieve on the basis of the replies to the questionnaire an overall description of all social SGI in the EU. **Member States are therefore invited to choose the fields which seem to be the most important with a view to their national organisation and in particular the fields that contain "grey zones" not clarified within the EU legal framework and where there may be an impact of Community rules (eg. on the instruments for the delivery and financing of these services).**

The following sectors¹ could be relevant for replying to the questionnaire:

- Statutory social protection schemes
- Supplementary social protection schemes: income protection;
- Health and social care services;
- Support for families: child care;
- Services to promote social integration and to support people in difficulties (e.g. homelessness, drug dependence, disability, mental or physical illness);
- Social housing
- Other services which could be relevant in the framework of the current questionnaire (i.e. services with similarities to social and health services or linked to these like employment: access to placement services or education and training)

A “Background Document – Legal Framework” is sent out together with this questionnaire. This document describes the different legal aspects of EC rules which might affect social SGI or could affect these in future following evolutions in the organisation of service provision. These elements, as well as future developments (e.g. the need to adapt services to the changing needs of users, budgetary constraints) could be taken into account by the Member States when replying to the questionnaire.

Member States are invited to provide only one coordinated reply to the questionnaire. Every Member State is entirely free to decide on the way the answers to the questionnaire are prepared and coordinated. Nevertheless it should be taken into account that social partners and NGOs play an important role in this area. Member States might therefore want to envisage an involvement of these partners at national level.

The following questionnaire aims to assist the Member States in providing all relevant elements of information and of concern in this area. It is therefore more a guidance for national statements than a strict obligation to answer all the questions. The questions in the different “Fields” moreover do not preclude additional remarks not directly linked to one of the questions, when this is felt important by the Member State. Member States are invited to provide the information as much as possible in a comprehensive way.

Member States are requested to send their replies to this questionnaire at the latest by 15 December 2004 to Raymond.Maes@cec.eu.int (fax: 0032-2-2998085)

¹ It is clear that some of these fields go beyond “social protection” in the narrow sense. But nevertheless e.g. also education and training or access to placement services could form part of the social services (e.g. vocational training, training of handicapped persons) or have similarities to social protection which could justify a discussion in the reply to the questionnaire. It is entirely at the discretion of Member States to decide which areas they want to cover in their reply to the questionnaire.

Questionnaire

This questionnaire does not engage the Commission or any of its services

Field 1 – Overview of the national SGI

1. What are the general characteristics of the national social SGI² 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.

Brief Outline of the Dutch Pension System

Introduction

The Dutch pension system is essentially a mixed system as various forms of financing are used and different parties play a part in it. It is founded on three pillars: the state old-age pension (AOW) for everyone, the collective pension for employees, and individual pensions through additional insurance policies. Up till now, the first pillar (state old-age pensions) has been fully funded via the tax system, i.e. the working portion of the population provides the resources, through contributions, from which pensions are paid. The second pillar, formed by the occupational pension schemes, is the responsibility of the employers' and employees' organizations, which provide the supplementary pension schemes on the basis of collectivity and solidarity. Such principles do not apply to the third pillar. Here, life insurance policies are sold to private persons with the aim to gain as much profit as possible for the insurer. Both the second and third pillar are based on capital funding, i.e. the premiums are saved up until the pension is to be paid out.

² This is the field where it is impossible to give an overview covering all different aspects. So it might be useful to place the services in comparable groups and treat these groups together. Member States are invited to concentrate on those services which seem most important or where the biggest uncertainty is noticeable.

Three-pillar system

third pillar	individual insurance	10% of total pension benefits
second pillar	occupational pension schemes	40% of total pension benefits
first pillar	AOW	50% of total pension benefits

Source: Central Planning Office (2000)

First pillar: AOW

As legislator, the Dutch government created a general framework in which it takes care of part of the old-age pension for all citizens. This is the first pillar that consists of a basic state pension (AOW), which is a fixed amount for everyone, paid out monthly and linked to the minimum wage (AOW amounts to 70% of the minimum wage). AOW is provided on the basis of a burden sharing arrangement: the generation up to 65 years old pays for those who are aged 65 and over. In 1996, an AOW reserve fund was set up in order to meet future increases in the tax and premium burden on the basic state pension. All Dutch citizens who have been residing in the Netherlands from the 15th until the 65th year of their lives are entitled to a full AOW benefit. For each year that a person was not residing in the Netherlands but abroad, the full pension is reduced by 2%. It is also possible to take out additional insurance on a voluntary basis. If, due to an incomplete AOW benefit and lack of other sources of income, a pensioner's income should fall below the subsistence level, he or she may apply for a social security benefit. In September 2000, the number of people receiving AOW was 2,325,600, involving a total amount of 4.8 billion euros.

Second pillar: occupational pension schemes

In the second pillar, supplementary pensions are built up for more than 90% of the employees. The employers' and employees' organizations ('social partners') consult together on various matters and the decisions taken may be laid down in a collective labour agreement. Thus, the occupational pension schemes form an important issue in the employment conditions negotiations. The employers make pension commitments vis-à-vis their employees, and these commitments are then transferred to an industry-level pension fund, a company pension fund, an occupational pension fund, or an insurance company. Capital funding is a basic requirement. The independent Pension and Insurance Supervisory Authority of the Netherlands (PVK) exerts supervision over these matters.

All civil servants in the Netherlands are member of the General Pension Fund for Public Employees (ABP), which, together with the Pension Fund for the Employees in Health, Welfare and Social Institutions (PGGM), is part of the second pillar. The management boards of the industry-level and company pension funds are composed in accordance with the equal representation principle and have at least two members. Pensioners can participate via the participation council, which is an advisory body consisting of representatives of active and inactive participants, and pensioners.

As legislator, the Dutch government created a number of essential guarantees, including legislation aimed at safeguarding pension entitlements and facilitating pension build-up. This pension build-up is subject to a certain provision of the Wages and Salaries Tax Act

which stipulates that tax shall be levied on the future pension rather than on current pension entitlements and that pension premiums shall be allowable against wage and income tax.

Profit is not an objective of pension funds. Profits remain within the funds and are used to increase the yield or to decrease the premiums paid by participants. As pension funds make no profit, they are exempt from paying company tax.

Dutch pension market

	Number	number of active participants in millions	total invested capital (in million euros)
Industry pension funds	96	5,39	317
Company pension funds	744	0,87	141
Insured schemes	approx. 40,000	0,35	30

Source: PVK (2001)

The Policy Research Council (WRR) examined whether, and under what conditions, individual saving and investing achieve the same results as collective saving and investing on the basis of solidarity principles via pension funds. For this purpose, the WRR used a model-based approach in order to guarantee optimal comparability. It turned out that the principle of intergenerational solidarity on which pension funds are based, leads to an increase in prosperity. In other words, all participants profit from solidarity.

Together, the target AOW build-up and supplementary pensions result in 70% of the last-earned income. Collective supplementary pension schemes therefore have a build-up period of 35 years (2% a year) or 40 years (1.75% a year). In the build-up of supplementary pensions, the AOW that participants receive upon retirement is also taken into account. Pension funds therefore apply a threshold amount over which no pension build-up takes place. Just like AOW, pension benefits are whole life benefits. Three quarters of the participants are ensured of continuation of pension build-up in case of disability. On 1 January 2001, the pension funds' membership comprised 5,140,574 active participants, 6,246,814 inactive participants, and 1,967,747 pensioners (turnover: more than 1,034 billion guilders).

Pensions

	number of active participants in millions
Old-age pension	5,48
Widows' and widowers' pension	5,52
Partner's pension	5,47
Orphans' pension	5,48
Disability pension	4,38
Bachelors' pension	0,18
Temporary old-age pension	4,87
Temporary survivors' pension	4,76

Source: PVK (2002)

Obligatory pension arrangements

At the request of representative organizations of employers and employees in a certain industry, the Minister of Social Affairs and Employment may impose on all employers in that industry the obligation to make pension arrangements. The application of this legal instrument may involve large industries such as the construction industry, metal industry, and healthcare, as well as smaller sectors such as those of bakers, butchers, and agricultural workers. For more than 50 years now, social motives and the desire to prevent competition within industries regarding pension as an employment condition have been the underlying reasons for opting for this legal instrument.

Third pillar: individual insurance

The mixed system in the Netherlands also allows each citizen who has the means to do so, or who thus wishes to use his or her disposable income, to make additional pension arrangements. This is the third pillar consisting of individual pension arrangements with insurance companies. To facilitate these arrangements, the Dutch government guarantees to some extent a favourable tax climate.

In short, the government, the social partners as well as the citizens play a role and bear responsibility in the Dutch pension system, in which funding is a mix of burden sharing and capital coverage.

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).

The main characteristics of the system are stable. The pension sector itself will develop: the organisation, the governance, the communication, the schemes, and the supervision are rapidly changing to apply to the changing needs and demands of members and society.

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

The Dutch Pension funds are market organisations and are considered to be undertakings in the meaning of the EC Treaty. Membership for individual employees is however compulsory. Some Industry-wide Pension funds are also compulsory for employers. So competition between Pension funds is prevented or restricted. The European Court of Justice has decided in 1999 that the compulsory membership of Industry-wide Pension funds is justified as social objectives and solidarity can not be materialised without this special facility. Dutch industry-wide pension funds actually apply schemes based on solidarity, they are non-profit associations and where financing is concerned, they aim to achieve a cost-covering premium. The compulsory collective pension system guarantees (together with the general old-age law) an adequate pension structure for everybody in the enterprise, furthers the concept of solidarity between the generations and prevents risk selection.

Field 2 – Definitions of social SGI

4. Is there at national level a notion or definition of social SGI or social services generally?
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 industries³ – a way forward to gain more certainty?

Social SGI are different to other SGI indeed. An analysis as mentioned can be helpful.

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 principles⁴?

Elements are: social protection, solidarity, non-discrimination and collective –based.

³ In this context reference has to be made to the Commission Staff Working Paper “Horizontal Evaluation of the Performance of Network Industries providing Services of General Economic Interest” (SEC(2004) 866), which gives a good overview of the different aims and the performance of these services.

⁴ These principles are *inter alia* quality, availability, equal access, universality, affordability, continuity, participation, transparency).

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 description⁵ in the European context? Which elements have to be added; which have to be amended?

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

The Pensions sector seems to be not the most adequate example of social SGI. Health care and social protection (for example unemployment) are better candidates to start with. Furthermore it is important that other directives are more or less specifically made for Pension Funds (1408/71, IORP and UCITS). Pension Funds should therefore be excluded from a Public Services Directive

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
 - b. it is established (in case-law or by way of Community law) that these services are falling within the scope of these rules
 - c. it is unclear if these rules apply to these services, there is a need for clarification ("grey zone")
- 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)?
10. Are there examples where the mentioned EC rules were taken into account in advance when planning or reforming national social policy?

⁵ Document in Annex

Field 4 – Further steps at European level

11. 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.

12. 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?

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

14. 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).

15. 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?
 - 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?
 - Should there be legally defined criteria, e.g. criteria concerning quality, affordability, accessibility or solidarity at European level?