

# Social Services of General Interest

## Questionnaire

### Introductory Remarks

The Communication on social services of general interest (COM(2006)177) (hereafter "the Communication") announced the continuation of the open process of consultation with Member States, service providers and users of services. This process already led to valuable input to the preparation of the Communication.

The present questionnaire starts a second phase of this consultation process centred on the open list of characteristics reflecting the specific nature of social services of general interest. In addition to the traditional criteria of general interest (universality, transparency, continuity, accessibility etc) recognised for all service missions of general interest, these specific characteristics refer to the organisational conditions and modalities applying to them.

This questionnaire forms part of the consultation process announced in the Commission's Communication and its results will feed into the first biennial report in 2007<sup>1</sup>. It will be 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. The questionnaire has the following aims:

- adding precision to the characteristics already elaborated in the Communication and examine the purposes of these characteristics;
- collecting the experiences with the application of Community law and the concrete needs in this area;
- investigating whether further steps at Community level are needed and if this is the case, collecting further information concerning the possibilities for such steps.

The questionnaire aims not only at a description of the status quo but also at the constant process of modernisation and changes. Therefore respondents are invited also to reflect on these changes and their underlying reasons.

#### *Scope*

Respondents are invited to provide replies on the present questionnaire for social services falling within the following main categories described by the Communication and following from the discussion in the SPC:

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<sup>1</sup> The Commission has also commissioned a study on social and health services of general interest of which the results will become available by Spring 2007 (<http://www.euro.centre.org/shsgi>). This study will merely provide fact-finding material for the biennial report, while the present questionnaire is concentrated on the specific policy related issues raised in the Communication.

- basic compulsory social security schemes based on the principle of national solidarity that do not carry out economic activities<sup>2</sup>
- other schemes, especially complementary social security schemes, organised in various ways (mutual or occupational organisations), covering the main risks of life, such as those linked to health, ageing, occupational accidents, unemployment, retirement and disability;
- other essential services provided directly to the person as assistance in case of personal challenges or crises, to support social integration, to tackle long-term health or disability problems, or to support housing. These services that play a preventive and social cohesion role consist of customised assistance to facilitate social inclusion and safeguard fundamental rights.

Although health issues are not directly covered by the scope of this exercise it is not always easy to distinguish social from health services. Respondents are invited to refer to this issue whenever necessary.

### *Organisational characteristics*

The Communication highlights that social services often present in practice one or more of the following organisational characteristics:

- 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,
- they are comprehensive and personalised integrating the response to differing needs in order to guarantee fundamental human rights and protect the most vulnerable,
- they are not for profit and in particular to address the most difficult situations and are often part of a historical legacy,
- they include the participation of voluntary workers, expression of citizenship capacity,
- 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,
- 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.

This open list is the point of departure for the current questionnaire (in particular it's Fields 2, 3 and 4). Replies could also refer to characteristics shared by different types of services or organisation of the service (e.g. for profit/not for profit; public/private; quality standards; prices for the service or the way they are funded).

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<sup>2</sup> Pertinent criteria can be found in particular in joined cases C-159/91 and C-160/91 *Poucet and Pistre*, case C-218/00, *Cisal*, case 264/01, C 306/01 and C-355/01, *AOK Bundesverband e.a.*, case C-205/03, *Fenin*. (referred to in the Annex II to the Communication, pages 16 et 17)

Participants are invited to provide a coordinated reply to the questionnaire. Since social partners and NGOs play an important role in this area, it is highly recommended to envisage an involvement of these partners in the preparation of the reply. Where possible and relevant, different views and experiences highlighted during the preparation of the response should be summarised.

*Replies to this questionnaire should be sent at the latest by 3 January 2007 to [Raymond.Maes@ec.europa.eu](mailto:Raymond.Maes@ec.europa.eu)*

## Questionnaire

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

### Field 1 – Description of social services

1. Please indicate whether the description of the social services as provided by the Communication (see above under "scope") is appropriate and adequate, also with a view to social security schemes responding to the criteria deriving from the *Poucet and Pistre* case law.
2. If you consider that the description could be improved or other (type of) services should be added, please provide for concrete drafting suggestions.

As stated in the Communication itself, “the organization of social services still differs from Member State to Member State” and so the content of the term ‘social services also differs. The Czech Republic views the definition of social services as stated in the Communication as very broad and when compared to the Czech definition of social services (Act 108/2006 Coll., on Social Services) it is clear that these two definitions do not correspond. Some activities, such as social protection, retraining, social housing, etc. as stated in the Communication are implemented through different agendas or systems in the Czech Republic.

In the Czech Republic, social services are understood as “an action or a set of actions that provide help and support with the aim of either socially integrating persons or preventing them from being socially excluded”. More precisely, social services can be divided into social consultancy services, social care services, and preventive social services. Social care services include: personal assistance, informal care, home-care service, emergency care, guidance and reading services, support for independent housing, respite services, day care centers, daily short-term hospitals, weekly short-term hospitals, homes for people with disabilities, homes for senior citizens, homes with a special regimen, shelter homes, and social services provided in healthcare institutional facilities. Preventive social services include: early care, telephone crisis lines, interpreting services, shelter homes, half-way houses, drop-in centers, crisis intervention, low threshold daily centers, youth centers, hostels, , after-care services, social stimulation services for families with children, social stimulation services for seniors and persons with disabilities, social therapeutic workshops, therapeutic communities, field programmes, and social rehabilitation.

Because a great many people were addressed when gathering answers to the questionnaire (see the appendix), we have selected the most important of the answers received and these range from (i) agreement with the definition of social services, (ii) it is too general, (iii) unclear, or (iv) disagreement with it:

*1) We regard the description of social services in the Communication as **satisfactory**, even if different terminology is used by the law of the Czech Republic and even if the social services are divided differently according to Czech law.*

2) The description of social services is **unclear** from the point of view of social policy and social benefit schemes, primarily in what is involved in social security schemes. However, other types of services should not be added (see Question 2 above) but rather the services should be described in more detail and their content should be specified. Furthermore, neither the Communication from the Commission (Implementing the Community Lisbon Programme, Social services of general interest in the European Union,) of 26 April 2006, nor the submitted Questionnaire clearly explain this problematic issue; in fact, it evokes some concern that the social protection schemes and therefore also the social benefit schemes should be regarded as social services. This principle is unacceptable from the point of view of social policy and social benefit schemes. Everything about social services of general interest is so unclear that it is difficult to formulate a good argument and factually correct standpoint. Because it is up to the individual Member States to define this term and its content, our opinion is that non-contributory benefit schemes in state social assistance, social care and help in great need should not be regarded as social services of general interest.

3) From the point of view of family policy, the definition of social services in the Communication is **satisfactory, although general**. We do not have any suggestions with regard to other types of services because generally this description corresponds to services the aim of which is to give back citizens their social independence and sovereignty.

4) **We do not agree** with the drafted description of social services and the description of them as defined by the terminology used. In our opinion, the term social protection schemes, which would also include social services, would be much more suitable.

## Field 2 – Pertinence of the characteristics

3. Please indicate whether the characteristics identified by the Communication are pertinent to gauge the specific features of social services of general interest as compared to other services (of general interest)?
4. Please provide, if needed, for concrete drafting suggestions for the formulation of the characteristics as they are currently presented by the Communication.
5. Are there characteristics to be added? Please provide for concrete drafting suggestions and examples of services concerned by these characteristics.
6. Please provide as a maximum 3 relevant examples of social services representing one or more of the (additional) characteristics which could be taken as good example for the special nature. Please indicate which concrete element of the characteristics is clearly deducible from the example chosen.
7. How could these characteristics relate to the exclusion of specific social services from the scope of the Services Directive (Art. 2(2)(j) read together with the relevant Recital 27) as politically agreed on 29 May 2006 (Doc. 100003/06)<sup>3</sup> ?

We think that the characteristics identified are more or less sufficient and applicable. However, we do draw attention to the fact that the characteristic “non-profitability” does not necessarily have to apply to all types of social services. Moreover, based on feedback from those addressed in connection with this Questionnaire, it was also noted that service accessibility could be regarded as another characteristic and that emphasis should be placed on good quality social services.

<sup>3</sup> Text available at the following website: [http://ec.europa.eu/internal\\_market/services/services-dir/proposal\\_en.htm](http://ec.europa.eu/internal_market/services/services-dir/proposal_en.htm)

Below is the standpoint of one of those addressed, for illustration. This person represents a NGO that provides social services and it draws attention to the fact that the identification of the characteristics of social services does not quite non-correspond to the current situation in some Member States: *“Social services are characterized according to traditional EU Member States. Post-socialist countries lack, for example, solidarity principles (i.e. insurance companies play a very small role in compensating people for the loss of health and/or old age; people are used to emoluments from the state, i.e. public funds). Therefore we think it is important to emphasize the principle of insurance cover (for example old age and helplessness care) as one of the ways of funding social services. Also post-communist countries quite often lack traditions based on which social services are provided through various components of civil society at the local level; this is also an issue that needs attention.”*

### Field 3 – Use of characteristics by Member States

8. Please give a definition of what the "general interest" is in your country, and specify in which way (at national, regional or local level) it is defined or is intended to be defined in the future.

The term “general interest” has as yet not been defined in the Czech Republic. Generally, this term may be characterized as follows: “General interest is an activity from which the citizens of a given community, region, or state prosper and benefit; it is an activity that is in accordance with the public interest and the rate of profit is secondary.” (Czech Republic 2006)

9. How can the characteristics be used by the Member States, at national, regional or local level, when defining the particular general interest mission of a social service and determining the arrangement for its performance and organisation?

In the Czech Republic, the characteristics that support social inclusion and social cohesion are described in the explanatory report to the Act on Social Services. Social services should meet the following characteristics:

- Accessibility – from the point of view of help, territory, information, and economic accessibility,
  - Effectiveness – will be modified so that it satisfy the needs of people and not the ‘needs’ of the system,
  - Quality – will be provided in the manner and extent required by the current know-how and possibilities of society,
  - Safety – will be ensured so that it does not limit the rights and interests of other people,
  - Economy – will be ensured so that public and personal expenditures used for aid and support will cover, to the maximum possible extent, the identified needs.
10. Have there been problems in the past with giving a concrete mandate to fulfil the particular general interest mission of a social service?

Public administration rights and duties are described in Act 108/2006 Coll., on Social Services. We cannot provide you with a statement on the giving of a mandate as this question is not quite clear.

#### **Field 4 – Use of characteristics at EU level**

11. Please indicate how (e.g. in a binding way or not), in your view, the organisational characteristics could/should be used at EU level (e.g. agreed checklist) in order to verify whether for a specific social service the applicable Community rules are respected?

Those addressed in the Czech Republic with regard to this Questionnaire more or less agree on the answer to this question; their opinion is that the organizational characteristics can be used and that they might even be useful. Several people said these characteristics should be described more in detail or they drew attention to the fact that they should be compatible in certain aspects (cross-border cooperation, for example).

With regard to whether these characteristics should be binding or not, our opinion is that it is not necessary for them to be regulated in a binding way; we rather think that it would be better to set up a monitoring scheme and possibly also to compare how they are applied in individual Member States.

#### **Field 5 – Experiences with the application of Community law**

The Communication and its Annex provide for a further clarification on the conditions of application of Community rules and principles to social services in particular in the following fields:

- Public procurement
- Public-private partnerships
- Freedom to provide goods and services and freedom of establishment
- State Aid

12. Please indicate whether difficulties (may) still arise and if so in which legal areas and for which type of social services.

13. Please provide for concrete examples and experiences to illustrate these difficulties.

14. Please give an indication on the debate in your country/organisation on how these difficulties should be addressed (e.g. clarification of the non-applicability of state aid rules to different social services of general interest).

Community Law is not applied to social services, as laid down by Act 108/2006 Coll.. Public procurement follows Act 137/2006 Coll., on Public Procurement. The term public-private partnerships is not regulated by the law of the Czech Republic, nonetheless, a definition is given in the guidelines on funds from EU structural funds. The relationship between the partners ensues from a contractual agreement made by the parties to contract.

**Field 6 – Social security schemes responding to the criteria deriving from the *Poucet and Pistre* case law**

15. Please indicate whether the questions in the Fields 2, 3 and 4 could also have significance with regard to social security schemes responding to the criteria deriving from the *Poucet and Pistre* case law.
16. Please indicate whether there is a need for further and specific clarification on the application of Community rules as enumerated in Field 5 with regard to these social security schemes.

Currently, neither the Czech Republic nor its social security scheme has any experience in the fields stated above. Of course, it cannot be said with absolute certainty that problems will not occur in the future, nonetheless, it may be said that we do not expect any conflict between the law of the Czech Republic and Community Law.

We would welcome clarification of the Community rules and their possible impact on the social service scheme in the Czech Republic.

**Field 7 – Future steps at Community level**

17. Which expectations do you have concerning future steps at Community level?
18. In case further steps should be considered, what could be the content, but also the advantages or disadvantages of these, including in particular intensified exchange of information, open method of co-ordination, Commission's Communications but also a Framework Directive for social services?
19. Please indicate the expectations with regard to the monitoring and dialogue procedure in the form of biennial reports announced by the Communication.

Future steps should be particularly directed at exchanging and gaining information, monitoring and possibly comparing the social services situation at the level of individual Member States in relation to the Community rules. With regard to these actions we would welcome coordination from the Community. If, on the basis of these actions, important facts arise, these can, in our opinion, be formulated via the

Commission's Communications. We do not think that it is necessary or even desirable to create a special directive for social services.

We also draw attention to the fact that each EU Member State has its own social service scheme. We see no problem in, for example, the application of open-methods, but we do see a problem in the fact that each country reacts to certain peculiarities caused by demographic, developmental, or other trends and it is these trends that each country takes into account when it comes to its social service scheme. There may also be further concern that if the services are defined too specifically there will be no room to develop them (the definition will not allow for further development or deviation from the defined framework).