

Berlin, 5 January 2007

**Answer of the federal government  
of the Federal Republic of Germany coordinated  
with the Federal Länder and relevant stakeholders  
to the questionnaire  
on social services of general interest  
sent out by the Social Protection Committee  
in September 2006**

Preliminary remarks: On 15 December 2004, the German federal government, in consultation with state governments and relevant social organisations stakeholders, published its reply to a European Commission enquiry on social services of general interest. We fully adhere to the opinions expressed in this document.

<b>Field 1 – Description of social services</b>
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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.

The Communication on social services of general interest [COM 2006(177) final] (hereinafter referred to as the “Communication”) distinguishes between two major categories: “statutory and complementary social security schemes” and “other essential services provided directly to the person”. In terms of scope, questionnaire respondents are requested to classify their replies in three groups, as “other schemes, especially complementary social security schemes organised in various ways (mutual or occupational organisations), [and] covering the main risks of life” are to be discussed separately from “basic compulsory social security schemes based on the principle of national solidarity that do not carry out economic activities”. However, as all three types of social services are systematically interrelated and complementary to each other, this three-way distinction does not seem objectively justified from a national point of view. In order to avoid incoherence, the consultation process already initiated to establish a Community framework for reliable and high-quality health services must be taken into

account in future activities, initiatives and projects in the area of social services of general interest.

The Communication emphasises that social services present one or more of the organisational characteristics listed in section 1.1. On this basis, these characteristics can be considered basically accurate and appropriate.

The Communication's wording of the first characteristic seems particularly appropriate to capture the essential features of social security schemes and their institutions, in particular the fact that they – for instance health or long-term care insurance schemes and their associations – fulfil an exclusively social mission and carry out an activity which is devoid of any profit-making intent and based on the principle of national solidarity (cf. the criteria of the *Poucet & Pistre* ECJ case). This ruling must be explicitly adhered to. This does not mean, however, that such a list should be considered definitive.

With regard to the last elements of the second characteristic (“and protect the most vulnerable”), it should be stressed that although this additional specification is accurate for some services (for instance assistance to over-indebted persons, drug addicts or the homeless), on the other hand (person-related) social services as we understand them also cover life-course-specific needs that, in principle, can affect all citizens. This is particularly well illustrated by facilities and services for child care, elderly care and long-term care. This orientation to the general population – or at least to large parts thereof – is a specific constitutive element of compulsory and complementary systems of social security as core areas of national systems of social protection. Person-related services of general interest, too, can be services based on entitlements vis-à-vis public providers, entitlements shared by all citizens within the scope of the social security system involved.

We welcome the clarification made in the sixth characteristic – that the asymmetric relationship between providers and beneficiaries of social services cannot be assimilated with a “normal” supplier/consumer relationship.

In reference to the explicit mention of fundamental (social) rights with regard to the recognition and embodiment of the specificity of social services of general interest, we agree with the four characteristics mentioned in the sub-item of section 1.1 on “services provided directly to the person” (or – to use a somewhat more succinct term – “person-related services”).

The Communication limits itself to social services of general interest and aims at excluding health services. By its scope, however, it also comprises social security systems – and thus for instance the German system of statutory health insurance. On the other hand, the Commission is also currently in the midst of a consultation process intended to produce a Community framework for health services. The German government calls upon the Commission to explain what approach it is pursuing with its separate treatment of health and social services in the Communication and in the planned Community framework for health services.

Furthermore, in-depth discussions and exchanges of experience are already taking place among the Member States, for instance about modernising social protection by developing high-quality, accessible and sustainable health and long-term care services. In this context, the Commission has recently been deploying instruments established at Community level to support national strategies. In Germany's opinion, separate consideration of these issues and the unsystematic multiplication of discussion processes

this may cause – without evidence of any “new knowledge gain for the Member States” in either case – does not appear useful. We do acknowledge, however, that the ECJ rulings regarding reimbursement of costs for cross-border health services and the European Parliament's demand for legal certainty in such situations could mean that a specific measure is necessary at Community level. On the other hand, such issues are tied up with the organisation of social protection systems, which is in principle the responsibility of the Member States – for instance laws governing health insurance schemes and other systems of social security –, so that these areas should not be considered separately. They are, in all Member States, areas of the social protection that are often conceptually and institutionally closely related. For users, and particularly with regard to the effectiveness of the benefits, the most important factor is a smooth transition between various systems which, depending on the national organisation of social protection systems, might be classified as belonging to the social or to the health sphere. Certain services cannot always be classified unambiguously as either health or social services, for instance in the area of “long-term care” and “rehabilitation”. Future processes must therefore be coherently meshed.

The Commission's objectives and approaches as presented in both the White Paper [COM 2004(374) final] (hereinafter referred to as the “White Paper”) and the Communication are based on a concept which itself is rooted in economic criteria and rests on the general assumption that social services are services of an economic nature. This classification does not do full justice to the specific characteristics of social and health services – particularly when we consider their institutional function as a core element of national systems of social protection or their special goals and features and the specific characteristics of their users. Market mechanisms can bring more competition, innovation and transparency, but they cannot ensure that the services provided will adequately fulfil existing needs or provide a guarantee of sustainability, quality and efficiency. Furthermore, many of the social services offered in Germany constitute assistance provided by non-statutory welfare institutions on the basis of the subsidiarity principle.

2. If you consider that the description could be improved or other (type of) services should be added, please provide for concrete drafting suggestions.

The description of the special characteristics of social services of general interest and thus the request for suggestions to complement the points made in the Communication cannot be dealt with in full isolation from the issue of the purpose of such a list and the use made of the descriptive characteristics at the level of either the Member States or the Community (in this context, cf. also Field 3).

The answer to question 1 of the 2004 questionnaire – to which we refer – can help delimit the area covered by this concept.

As already suggested by the reference made in the title of the Communication to implementing the Community Lisbon programme, and as stressed in the introduction, the Commission sees its work on developing a “systematic approach in order to identify and recognise the specific characteristics of social and health services of general interest and

to clarify the framework in which they operate and can be modernised” as being within the context of their modernisation process. “Modernisation” is a broad and context-dependent term, so that it also needs to be specifically formulated to relate to the objectives and tasks of social and health services.

Germany considers well-functioning, universally accessible and affordable high-quality services of general interest as being crucial to the realisation of social rights, to the protection of human dignity and to the implementation of objectives of an adjustment of societal imbalances and solidarity as well as social and territorial cohesion. We also wish to refer to the importance of social services as described in Art. 34 of the Charter of Fundamental Rights. In this context we wish to stress once again that, in accordance with the principle of subsidiarity, concrete modernisation objectives are meant to be implemented at the level of the Member States or indeed at their regional and local levels. As we see it, accessibility, affordability, complete territorial coverage, adjustment to changes in structures of need and concepts for the promotion of capacities, qualifications, etc. as well as general improvement of the quality of non-profit social and health services can constitute objectives of modernisation efforts geared to strengthening social and territorial cohesion – which includes the objective of facilitated and effective social (re-)integration and participation.

## **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).

Overall, we agree with and welcome the list of special characteristics of social services of general interest as formulated in the Communication.

This list of characteristics defining the specificities of social services of general interest is an outcome of the 2004 consultation process on services of general interest; it has purposely been left open-ended in the present questionnaire. Germany agrees with this approach, as it implies conversely that one or several of these characteristics can also apply to other services (of general interest).

We do not quite see, however, which of the “groups” of social services mentioned in section 1.1 of the Communication the characteristics summarised in the six sub-items are supposed to refer to.

Any description of the services covered by these special characteristics should be kept broad and open, because demographics, social developments and labour-market trends in many Member States have been causing ongoing changes in the organisation of social services right across Europe.

The following criteria for consideration of the specificities of social services in an internal market and competition environment might be of use in defining social services and stressing their specific characteristics:

- The services included in the definition are funded at least in part from taxes or compulsory social contributions. This should also be seen as an indication of the special position of social services as a component of services of general interest within the meaning of Art. 16 EC, and as a justification for their special need for protection.
- The activities of the service providers are not geared towards profit-making, but have a general interest orientation. Evidence of this general interest orientation can be found by examining the organisational structures of the service providers, in particular with regard to the type of business, use of profit, staff salaries, and disclosure of the remuneration of legal representatives

In other respects, please refer to the answer to question 1.

4. Please provide, if needed, for concrete drafting suggestions for the formulation of the characteristics as they are currently presented by the Communication.

a) In terms of editorial changes to be made to the characteristics listed in the Communication, the word "*ausgeschlossen*" ("excluded") in the German version of the first characteristic should be replaced by the word "*versichert*" ("insured"). It is not the risks that can be excluded as such; rather, individuals should be insured against their consequences. The first characteristic could also include the following text: "Solidarity means that providers do not select beneficiaries on the basis of a good risk / bad risk assessment."

b) The following is a suggested reformulation of the last characteristic:

- "an asymmetric relationship between providers and beneficiaries of social services in terms of quality of the benefits and/or of the service providers, an asymmetry which tends to increase when a financing third party is involved."
- This characteristic could also include the following sentence: "In some areas, the beneficiaries are groups of persons who depend on the service, have no "customer sovereignty" and/or are particularly vulnerable and/or in special need of help and support."

5. Are there characteristics to be added? Please provide for concrete drafting suggestions and examples of services concerned by these characteristics.

In order to keep the list manageable, it should not be burdened with overly detailed inventories of characteristics. The German view is that only “essential” characteristics of social services of general interest should be included, so that the list – depending on national structures – can remain open for other characteristics of specific offers of social services to be included. We refer in this context to the answer of the German federal government related to the criteria of the 2004 questionnaire (p. 7 of this document), which was already quoted in the preliminary remarks:

“Because of their personal connection and purpose, benefits of social protection and social security are as a rule not economic goods that could be freely exchanged on the market. The vast majority of benefits are funded from taxes, social charges or own funds of charitable organisations, and have not been “paid for” by the user in a concrete case. Hence, the conditions for products and pricing orientated in line with the market differ from those applying to other services. Having recourse to forms of service provision organised along market-orientated lines can make sense in isolated cases to exploit efficiency potentials. For instance, long-term care facilities are only partly funded from social charges and taxes. The fee shares of the long-term care facilities not covered by these are paid by the beneficiaries of the long-term care services. If the benefits of long-term care insurance, the amount of which is limited, are insufficient, social assistance covers the entire long-term care requirement in cases of financial need.”

Person-oriented social services involve personal contact between the service provider and the recipient of the service; they can therefore not be freely exchanged. Moreover, continuous provision of the service is a decisive quality factor in the eyes of many recipients. Certain social services promote personal development, self-determination and equality of social participation. Social services thus have a generally acknowledged social purpose that can extend beyond the direct provision of the actual service within the scope of the social security system. They sometimes complement functions normally performed within the family and help families to master difficult life situations. Particularly in the case of counselling services, personal support services and long-term care, the choice of service provider is not bound to criteria such as economic efficiency and quality of service alone: here, crucial importance is placed on the local social culture and on the provider's commitment to certain values. This is one of the reasons why most social services tend to be demanded and provided on a small territorial scale. Moreover, clients are often only marginally able to make objective choices regarding who will supply the help they need; they want to, indeed they often have to rely on familiar offers.

Additional “national characteristics” of the first large group of social services named in the Communication are the self-administrative principle and the involvement of self-help and non-government organisations embodied in German social security laws. Person-related social services also involve more and more participative elements with regard to their selection, organisation and evaluation. We therefore propose the following addition to the fourth characteristic at the top of page 6:

- “they include the participation of voluntary workers, expression of citizenship capacity and/or self-administration involving the recipients themselves and non-government organisations”.

The following aspects could also be considered:

- the preventive character of certain social services;
  - the suitability of the service to ensure and foster the integration and participation of specific groups to life in society;
  - services for the realisation of social policy objectives, particularly those listed in Chapter IV of the European Charter of Fundamental Rights and in Title XI of the EC Treaty (in compliance with the principle of subsidiarity);
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.

Most social services provided by non-profit organisations fulfil one or several of these additional characteristics.

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>1</sup>

The scope of application of the Services Directive and the exclusion of certain social services (Directive 2006/123/EC of 12 December 2006) are the result of long negotiations and the search for a balanced political compromise. This result should not be interpreted by other instruments.

<p><b>Field 3 – Use of characteristics by Member States</b></p>
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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.

<sup>1</sup> Available at [http://ec.europa.eu/internal\\_market/services/services-dir/proposal\\_en.htm](http://ec.europa.eu/internal_market/services/services-dir/proposal_en.htm)

In Germany there is no concept of “general interest” that might cut across the various fields of policy, and no general or legal definition of “the common good”. On the other hand, individual legal provisions, for instance in the social and health area, define the general interest in a manner reflected in concrete public service obligations that are derived from the welfare state principle or seen as part and parcel of the services of general interest which the state has to guarantee.

For instance the general section of the Code of Social Law (Code of Social Law I / SGB I), which covers all statutory social security systems, states that the laws of the Code should

- help secure a dignified existence,
- create equal prerequisites for the free development of personality, especially for young people,
- protect and foster the family,
- enable people to earn their living through the exercise of a freely chosen activity and
- help people to cope with the unexpected difficulties of life, for instance by helping them to help themselves (Section 1 (1) sentence 2 SGB I).

We believe that the provisions contained in individual laws will continue to provide an appropriate framework to define general interest guidelines or requirements and concerns . The task of formulating and implementing concrete public service obligations should remain in the hand of the government authorities entrusted by a country's institutional system with the organisational responsibility for providing and guaranteeing a specific social service. This is generally laid down in the objectives determined in the course of planning activities regarding individual services or in the statements of purpose and the objectives defined to be achieved of a particular service.

We cannot see any advantage in shifting decision-making on the understanding and concrete formulation of the “general interest” in the area of social services to Community level. Moreover, we can hardly see how in such a case a link could be guaranteed between the Community level and democratically selected and objectively and legally justified decision-making bodies at local, regional and national level. From a German point of view, however, this is absolutely indispensable.

What has been said so far shows that above and beyond the general principles of how the general interest should be understood – in particular accessibility, affordability, complete territorial coverage or the possibility thereof, quality, continuity, transparency (as constitutive components also reflected in the concept of universal service) – determining public service obligations in actual fact tends to be best achieved for individual areas of social and health services. The power of definition is in the hands of the Member States and their territorial subdivisions. The Community has no competencies in this respect. We are therefore not in favour of a comprehensive Community regulation, particularly as we see no necessity for such a move.

The following are examples of criteria for the structuring of general interest missions or public service obligations in the social and health area: community orientation, alignment to demand and to user needs, link to civil society (voluntary commitment), warranty of variety of offer and – in some cases – of beneficiaries' freedom of choice of service provider.

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?

The White Paper and, more recently, the Communication have confirmed the basic responsibility of the Member States – and/or of state facilities and public authorities at national, regional and local level – for defining the objectives and decisions regarding the modalities of organisation, regulation, provision and financing of social and health services of general interest. It should therefore be stressed that the characteristics of social services listed in section 1.1 of the Communication are merely guidelines, and that they are in no way binding for the Member States. The responsibility for social services arising from general interest missions embodied in national legislation and for the organisation of such services should not be shifted to European level. It must remain in the hands of the relevant state authorities at local, regional or national level. The freedom of organisation mentioned above and the liberty to choose whether, how and by whom a particular social or health services is offered are an expression of the solidarity existing within a particular civil society and important corollaries of the principle of subsidiarity. This means that Europe must offer the necessary leeway for this to happen – if necessary through clarifications.

Irrespective of this, we doubt whether a pan-European definition and comprehensive description of (specific) organisational characteristics is possible at all in view of the great variety of social protection systems and of the social services provided within these systems in the individual Member States.

10. Have there been problems in the past with giving a concrete mandate to fulfil the particular general interest mission of a social service?

No. The entrustment system in place in Germany and the assumption of a general interest mission involving the provision of a particular service by a non-government body has proven successful.

<b>Field 4 – Use of characteristics at EU level</b>
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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?

We refer to our answers to questions 8 and 9.

On the other hand, Germany is basically open to the use of the organisational characteristics named in the Communication or of other characteristics which might be defined once the consultation process initiated with the present questionnaire has been concluded or after presentation of the “Study on the situation of social and health services of general interest” – above all if, where services of general economic interest (SGEIs) are concerned, such characteristics were to serve as a basis for provisions in those areas of Community state aid and public procurement legislation that would help take the specificities of social services into adequate account. These provisions should address individual problems directly and propose solutions. Examples of this could be exceptions from the scope of application of specific regulations, exemptions, raised thresholds or more precise criteria for consideration in determining compensation payments or sector-specific relevant criteria within the scope of public calls for tenders.

Implementing such steps should involve as close a co-operation as possible between the Community and the Member States. Any splitting of the body of public procurement regulations should be avoided.

<b>Field 5 – Experiences with the application of Community law</b>
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The Communication and its annexes 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.

### “State aid”

Germany welcomes the measures announced or implemented by the European Commission (particularly in the “State aid package”) aimed at achieving more legal certainty and transparency in the application of state aid laws and at reducing administrative burdens, particularly as regards notification requirements for Member States, regions and local authorities. For public service compensation above the de minimis threshold, the Community framework as it has been presented is, in our opinion, well suited to create greater legal certainty and transparency, as it clarifies the prerequisites under which compensation which is to be classified as state aid is permissible under Community law.

In this context, we ask the Commission to clarify with the Member States how the exemption decision of 28 November 2005 (2005/842/EC of 28 November 2005 – JO L 312 p. 67 of 29 November 2005, hereinafter referred to as “exemption decision”) as part of the state aid package can be best applied to individual cases. In view of the increased legal certainty demanded by all stakeholders, this should be done as soon as possible. The Member States and their territorial subdivisions must be given as much organisational leeway as possible, and the concrete implementation of the exemption decision must be organised in a manner such that the competent national authorities can take the recognised specific characteristics of social and health services into suitable account. We believe this would be an important contribution towards ensuring the legal and factual implementation of the public service obligations defined by them for providers of social and health services.

With regard to funding for social services, European Court of Justice case law ( “Altmark-Trans” in particular) must be taken into account. The court has ruled that, under certain prerequisites, payments made to offset the costs of tasks assigned with a general interest mission and assumed by an undertaking do not constitute state aid as defined in European competition law.

The German government agrees in principle with the flexibility provided by section 2.2.1 of the Communication, which says that state authorities delegating social and health services may, if they wish, establish technical specifications only in terms of the aims to be achieved by the provider. There is, however, still a need to clarify the extent to which general objectives constitute an adequate reference variable and control instrument and can be achieved without follow-up negotiations whenever service provision requires a costly change of course, for instance when the service provision needs to be adjusted to changed and/or unexpected needs of the beneficiaries. This applies a fortiori in the area of social services, where attainment of the objective pursued with the services delivered depends not only on their proper provision but also on other socio-economic factors (such as employment market and vocational training market situation).

Services demanded and offered on a local basis and close to the place of residence of the users are therefore not likely to constitute a Community law problem in terms of potential impairment (obstruction, restriction, distortion) of internal market trade.

Because of the socio-political sovereignty of Member States for organising activities fulfilling a legally defined task, financed largely from public funds or taxes and devoid of profit-making intent, the specific characteristics of social services must also be taken into full account in competition and state aid law. This should apply not only to state, regional

and local authorities, but also, regardless of legal form, to institutions acting without profit-making intent and for which the state bears ultimate organisational responsibility / warranty liability.

If financial assistance is indeed found to constitute state aid, consideration should also be given the possibility of raising thresholds due to the (rather insignificant) amount of the financial assistance or to the (specific) character of the social and health services of general interest.

### Public procurement

The Communication states that, under Community law, delegation of social tasks to external organisations must, at the very least, respect the principles of transparency, equal treatment and proportionality. Germany basically shares this view, but it wishes to stress once again that the implementation of these principles is incumbent on the Member States, particularly when the delegated task falls below the thresholds of Public Procurement Directives. The Treaty does not stipulate a special European award system for contracts falling below the set thresholds. In this regard, Germany disagrees with the Commission interpretative communication on the Community law applicable to contract award not or only partially subject to the provision of the Public Procurement Directives, and it has brought an action in this respect before the Court of First Instance.

The Communication states furthermore that the concept of “concessions” needs to be clarified. This view is shared by the German government. It must be said, however, that within the scope of the recently revised Public Procurement Directives (2004) European lawmakers have tried in vain to achieve a harmonised understanding of service concessions. The chances that the term can be clarified any time soon are therefore to be viewed with some degree of scepticism, even though this type of regulation would appear expedient and – from the point of view of providers – desirable, particularly in the context of the recognition process for providers of social services in public-private partnerships (PPPs).

The Communication also mentions the decision in the “Stadt Halle” case<sup>2</sup>. According to this ruling, any contract award where a private shareholder has a holding in the contractor – even a small minority interest – is not an “in-house” operation and can therefore not be exempted from Community public procurement rules. One of the main objectives of this judgment is to prevent the private shareholder from having an indirect advantage over other private competitors. Although this objective is basically a positive one, the judgment ultimately complicates the establishment of public-private partnerships: since the ruling there has been a noticeable tendency to place public undertakings back under full public control. Public shareholders are taking back full control of public undertakings in order to secure their “in-house” status. Ultimately this means that the judgment has had negative effects on PPPs. The discussion on PPPs should include consideration of necessary corrective measures, perhaps including legislative proposals.

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

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<sup>2</sup> C-26/03, judgment of 11 January 2005

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).

For years now, stakeholders in Germany have been expecting improved legal certainty and thus a higher medium-and long-term planning certainty with regard to the permissibility of state aid, to the criteria for Community law-compliant granting of compensation for the performance of delegated tasks involving public service obligations, and to Community law requirements for the delegation of public tasks to third parties.

The practical concordance that should be sought between internal market and competition rules on the one hand and social objectives on the other does not mean, for instance, that basic freedoms have to be pitted against social services, but rather – particularly in the light of necessities on both sides of the equation – that they should be aligned as much as possible in the context of Community law.

**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.

Germany welcomes the fact that the ECJ, in the *Poucet & Pistre* case, has established criteria that recognise the special character of social security systems and exclude them from the concept of an undertaking. This applies specifically to statutory systems of health, long-term care and pension insurance, accident insurance and unemployment insurance.

In its double function as precautionary insurance and provider of benefits in kind, social insurance systems pursue exclusively social objectives; they are generally binding and of obligatory nature. Access and benefits must be guaranteed to all regardless of individual risk. Contributions and benefits are also largely stipulated by law; they are based on the one hand on the financial capability of the insured persons, on the other on the individual need. There are two reasons why “participation” is not voluntary: to protect individuals from the consequences of errors of judgment in assessing their own need for precautionary planning and financial provision in a long-term perspective (the “protective function”), but above all to promote and guarantee solidarity between all participants. Solidarity in the sense of a specific redistribution of means is at the very core of the concept of social insurance.

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.

We see no need for further or more specific clarification.

### Field 7 – Future steps at Community level

17. Which expectations do you have concerning future steps at Community level?

In view of the heterogeneous European structures in the area of social services of general interest, we need a variety of sector-based, regional and local approaches based on the principles of subsidiarity and regional and local self-administration. It is primarily up to the relevant national, regional and local authorities to determine, define, organise, finance and monitor services of general economic interest – as these are for the most part provided locally.

Particularly for social services of general interest of a non-economic nature, the Community basically has no competence. Sector-specific Community law provisions should come into play only in the case of services of general economic interest that have Community-wide relevance because of their scope, size and structural interconnection. One such derogation allowed by ECJ case law concerns compensation in the case of cross-border purchasing of health services.

Germany hopes that debate on the future organisation of services of general interest in the social and health area will not be restricted or anticipated by activities in areas closely related to the afore-mentioned fields. The German government therefore insists on close co-ordination of activities, initiatives and projects in the overall area of health and social services.

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?

Germany is opposed to a Framework Directive for services of general economic interest. In this context, the German government also refers to the Commission's own admission in the White Paper that the consultation process on the Green Paper failed to demonstrate any added value of a horizontal framework as compared to the current sector-specific approach. Horizontal regulation does not do justice to the specific characteristics of the individual service sectors, particularly in the social and health area; it would therefore have to be kept very general, and sectoral provisions would continue to be necessary. Among the stakeholders consulted there are also other opinions regarding a horizontal Framework Directive for services of general economic interest.

Taking into consideration the variations of precise procedures in which the Open Method of Co-ordination (OMC) has been or is being applied to various fields of policy – including social protection –, applying it to social services of general interest is neither necessary nor appropriate to reach the desired objectives. Moreover, implementing the OMC for a particular field of policy implies, inter alia, the definition of common objectives and (with the co-operation of relevant stakeholders in the Member States) the elaboration of national reports covering Community-wide indicators (and leading to a EU-level reporting process). These elements of the OMC alone clearly show the conflict with the current system of competencies in the social and health area. This does not mean that there can be no structured exchanges of information and experience with other Member States on individual jointly agreed issues in future.

Sector-based evaluations in the area of services of general economic interest must be restricted to Community areas for which the European Union is responsible and tie in with the objectives established in the sector-based Community regulations for these services (particularly with regard to opening up the market and to universal service obligations). Social and health services do not, however, constitute one of these Community areas.

19. Please indicate the expectations with regard to the monitoring and dialogue procedure in the form of biennial reports announced by the Communication?

In principle, the German government welcomes the fact that the Commission wishes to be better informed on the situation of social services. The planned biennial reporting system should not, however, duplicate other reporting obligations of the Member States. We therefore point out that within the scope of the OMC, as the Commission itself describes, there will soon be reporting obligations regarding several of the social services of general interest discussed here. Generally speaking, any expansion of EU reporting obligations should always aim for concrete improvements and be kept short and to the point. At the same time, the proposed approach should not be allowed to obstruct efforts to create a leaner and simpler (“streamlined”) reporting system. In particular, no action should be taken to disturb the system of competencies and the distribution of responsibilities described above.