

## **M E M O R A N D U M**

### **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;

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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.

- 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:

- 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.

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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)

### *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).

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.

### Reply:

Initially, we wish to underline that, in relation to eligibility assessment for social services in Denmark, the authority responsible is always charged with ensuring that the services provided for in legislation are available to citizens and that a given service is supplied in accordance with legislative requirements for quality and timeliness. These requirements apply in all circumstances irrespective of whether the service is in fact supplied by an authority or a private provider.

Denmark finds that the description of social services in the Commission Communication is too narrow, as, in Denmark's opinion, it is not necessarily a characteristic that a service is provided on not-for-profit basis, just as services in Denmark are not necessarily provided by NGOs. Thus, certain services can be supplied by private providers for profit. However, local authorities always perform eligibility assessment on the basis of concrete, individual evaluations and always carry the responsibility, see above.

Denmark has not formally defined the concept of social services, but according to the Act on Social Services, which sets out the legal authority for most services, their purpose is to offer counselling and support aimed at preventing social problems, offer a range of services of general interest, which may also have preventive purposes, and make allowances for needs ensuing from physical or mental impairment or special problems.

One object of the Act is to ensure that provided services are of high quality and of continuous supply. Further, payment for services can never exceed the actual costs, and in some cases financial assistance is available. Another characteristic is that, as a starting point, a citizen cannot be deprived of a service due to non-payment.

These services are created by law and are subject to a range of provisions on right of appeal and legal protection, and services are allocated on the basis of equality.

As a matter of form, we want to underline that this reply does not cover health services, as such services are not covered by the Commission Communication on social services.

## **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> ?

Reply:

In Denmark's opinion, social services are legally or in terms of content not significantly different from other services of general interest, except that they often, though not always, target society's most disadvantaged people and are often allocated on the basis of concrete, individual evaluation. Note, however, in this connection that several services, such as child care facilities and allocation of housing, are universal.

For this reason, it is difficult to set up exact criteria to define how social services of general interest differ from other vital and mandatory social services.

In the social and other related areas, quality, continuity and security of supply are key characteristics. To this should be added that a high degree of user involvement is a key feature of social services, and that decisions on citizens' right to receive services will be made by the relevant local council.

Social services will undergo constant modernisation, particularly aimed at meeting desires for improved quality, individual user considerations, free choice between various providers, etc. Free choice is a means to be used for promoting the objectives of improved quality and user consideration.

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<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)

The desires – and not least free choice - cannot be fulfilled within the relatively narrow characteristics listed in the Commission Communication.

The provision of personal and practical assistance to people with physical impairments is an example of a service subject to free choice and thus influenced by market mechanisms.

As to such services, the local council determines quality and price requirements posed to all providers, public as well as private. The local councils must approve and conclude agreements with any provider who meets the local council's requirements to quality and price. The council can only refrain from approving if rejection is founded on non-performance of financial viability, professional integrity, etc.

One objective of the quality standard is to ensure that the local authority makes uniform decisions, so that citizens with similar needs are apportioned similar assistance. In addition, the quality standard should ensure that citizens know their rights vis-à-vis the local authority. According to the regulations, the local council must at least once annually draw up a quality standard and follow up on quality and control of services.

As to housing, Denmark uses the concept of social housing, and it is as such not completely clear whether the concept of social housing covers the various housing types, including social housing as defined by the Commission.

Under Danish legislation, subsidies are available for establishment of social housing, youth housing and retirement housing. Social housing and youth housing may only be constructed by social housing associations, whereas social retirement housing can be constructed by non-profit housing associations, independent associations for social housing for the elderly and local authorities. However, no duty to construct has been implemented, and therefore no transfer of an obligation exists.

To this should be added that construction of youth housing and family housing is not a public responsibility. However,

construction of retirement housing is a public responsibility, as local councils have a duty to assess whether retirement housing is provided to the extent necessary.

Denmark has for many years and increasingly believed that diverse resident composition is necessary to counter ghettoisation. To this belief should be added that social housing associations can only solve their obligations to less empowered applicants, if these groups can be integrated into widely diverse resident groups. This is why all applicants have access to entering waiting lists irrespective of their incomes or needs. Despite the wide access, it remains an undisputed fact that the social housing sector solves the most demanding task in the housing market. Residents with jobs or self-employed people are severely under-represented, while people outside the labour market are heavily over-represented.

Despite differences in resident groups, the key point is that social housing works and must continue to work as a service offered to everybody in Denmark.

As to the question of relations to the Services Directive, Denmark opines that the Services Directive does not, in as much as it generally excludes the entire social area from its area of application, constitute a suitable basis for discussions of the special characteristics of social services.

### **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.
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?

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

Reply:

Rendering a precise definition of general interest in Denmark is difficult. However, in Denmark's view the area must not be defined too narrowly, and we must keep in mind that this is a dynamic area under constant development. The borderline between what the public sector performs and what the private sector does should be adjustable, depending on what the individual Member State finds to be the most effective approach, without this choice impacting on the measure being a social service of general interest.

Denmark also finds it crucial to emphasise that it proves difficult to find a common definition of social services of general interest, as the individual Member States have different setups. Thus, what constitutes a social service of general (economic) interest in one Member State, may not necessarily be a social service of general (economic) interest in another. Therefore, Denmark finds it inappropriate and irrelevant to reach a common definition of social services of general interest.

## MEMORANDUM

### 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?

Reply:

As the reply to Field 7 shows, Denmark finds horizontal regulations to be sufficient.

In this context, we wish to state that the setup and organisation of social services are items of national competence. Therefore, the Member States must still be entrusted with adjusting definition and general characteristics to reflect political priority-listings and national customs.

### 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).

Reply:

As mentioned in Field 3, Denmark finds it difficult to set up precise common definitions for social services of general interest. However, in Denmark's view it would be appropriate to achieve greater knowledge sharing among the Member States about this field.

**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.

Reply:

As the overarching main rule, public authorities allocate the conventional social services, i.e. the services defined in regulation 1408/71, and membership of a specific fund or organisation is not required.

One exemption is unemployment benefit, which in Denmark presupposes membership of an unemployment insurance fund that manages daily cash benefit payment on behalf of the state. However, Danes can choose freely among the individual unemployment insurance funds and membership is voluntary, so the problem of mandatory membership of a certain fund covered by the mentioned Court ruling cannot arise. Additionally, in accordance with the Danish Act on Employment Services and Unemployment Insurance, the National Directorate of Labour under the Ministry of Employment determines the detailed regulations to be managed by unemployment insurance funds. The National Directorate of Labour also supervises unemployment insurance fund management, and sets the maximum unemployment benefit levels an unemployment insurance fund can pay out.

We should add that, in a comprehensive reform in 1973, Denmark abolished the concept of “health insurance institutions” as was the subject of the Court ruling.

Currently, Denmark has no need for further clarification as to the relation between social security and Community rules in excess of the ongoing adjustment of regulation 1408/71 and regulation 883/04 of which the latter still does not apply.

### **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.

Reply:

Denmark finds the open method of coordination to be a suitable instrument for exchanging experience on any conflicts between Community rules and social services of general (economic) interest, but finds no basis for setting up common goals be it neither of quantitative nor qualitative nature.

Denmark would like the Commission from time to time to produce communications or reports on recent case law as well as experience reaped through the open method of coordination, but also finds, in principle, that sector regulation should, as far as possible, be avoided to allow application of horizontal rules.