

Church & Society Commission of the Conference of European Churches
Eurodiaconia

Joint Answer to the Questionnaire on Social Services of General Interest

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.
 - Key principles for the provision of social services mentioned in the Communication are solidarity, a comprehensive and personalised response to differing needs, guarantee of fundamental human rights and protection of the vulnerable. Churches and diaconal organisations share these principles. **In the understanding of Christian Ethics, human dignity does not depend on productivity or economic contribution, but resides in people created in the image of God.**
 - We also share the experience that close links between beneficiary and service provider and common cultural traditions are important quality elements for the provision of services. We believe that **religious ethics and traditions should be explicitly mentioned as part of cultural roots, because spiritual companionship is an essential element of a “comprehensive and personalised integrating response” to the people’s need**, as intended by the Commission’s Communication. The vast majority of the people in the European Union belong to a religious community. The spiritual dimension of the well-being of the people is part of their fundamental rights and should therefore not be ignored.
 - We share the analysis of an asymmetric relationship between service providers and beneficiaries. In the triangle of beneficiary, service provider and financing organisation **special attention has to be devoted to the protection of the beneficiary’s rights** (e.g. the freedom of the beneficiary to choose a specific service provider and an adequate quality of service), as he or she finds him/herself often in the weakest position.
 - We are aware that the European Commission is dealing with health services and social services in different processes. Nevertheless social and health services are often closely linked to each other. **We therefore ask the Commission to pay special attention to the close links between health and social services and to ensure equal**

treatment of similar services, which in practical work cannot be separated from each other.

- The Communication supposes, “that almost all services offered in the social field can be considered ‘economic activities’ within the meaning of Articles 43 and 49 of the EC Treaty” (p. 6). **This conclusion on page 6 of the Communication does not respect sufficiently the specific character of social services as described in the first part of the Communication and is certainly not precise enough to meet the specificities of social services in the internal market.**

Conclusion:

We identify a **large gap between the principles elaborated in the first part of the Communication and the application of the community rules in the second part of the Communication**. We therefore see the main task of a revised Communication to involve the defined principles in the application of community rules.

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 **objective of social inclusion** should be included as a more specific description of solidarity.
 - This is also including an **advocacy element**. Churches, diaconal organisations and other service providers find themselves again and again in the situation to speak for the excluded, the vulnerable, the marginalised people, whose voices would not be heard otherwise (see examples at question No. 6).
 - A **high quality of services** should be mentioned among the principles.
 - The **principle of prevention** should be entered into the list of criteria because it is a key element of many social services.
 - As mentioned above, **religious ethics and traditions** should be mentioned explicitly in addition to “cultural traditions”.
 - the **value-basis of service providers** should be mentioned as an important precondition for the involvement of volunteers.
 - The Commission should take into account the necessary **autonomy** of the service providers, which is needed to be able to react flexibly to the needs of the beneficiaries.
 - In relation to the asymmetric relationship of service provider, financing party and beneficiary, the **freedom of the beneficiary to chose a specific service provider and an adequate quality of service** should be mentioned, which may not be elided by the different interests of the financing party.
 - A definition of “economic activities” in the Communication has to respect the **application of social security schemes**, which are needed to ensure “support for those who are permanently or temporarily in a particular state of need because of their insufficient family income or total or partial lack of independence and for those who risk being marginalised. These services are essential in order to guarantee the fundamental right to human dignity and integrity and are a manifestation of the principles of social cohesion and solidarity ... “ (Rec. 27 of the Services Directive).
 - With regard to the **principle of Subsidiarity** the Communication should respect the criteria or conditions set by Member States to ensure that social services effectively carry out a function to the benefit of the public interest and social cohesion, including the right to define services of general interest. At the same time, the principle of Subsidiarity is not only a question of cooperation between EU and member states, it means to care for solutions that are closest to the people. The Communication should

therefore not only mention, but should more actively contribute to the **development of partnership between public authorities and not-for-profit organisations**, which are closest to the people and best placed to involve volunteers. This would be an example of taking “active European citizenship” seriously.

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)?

The Communication lists the following characteristics of social services:

“– 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.”

These characteristics describe relevant elements of social services. They should be endorsed by the following elements:

- they are a manifestation of the principles of social cohesion and solidarity.
- they are key elements in the application of social security schemes.
- they are value-based, because they are essential in order to guarantee the fundamental right to human dignity and integrity.
- they have a preventive dimension.
- they are strongly rooted in religious ethics and traditions as well as in cultural traditions.
- they are often closely linked to health services

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

We suggest the following amendments:

- *They are a manifestation of the principles of social cohesion and solidarity, which are required, in particular by the non-selection of risks or the absence, on an individual basis, of equivalence between contributions and benefits,*
- *They are value-based, because they are essential in order to guarantee the fundamental right to human dignity and integrity,*

- they are *preventive*, comprehensive and personalised integrating the response to differing needs in order to guarantee fundamental human rights and protect the most vulnerable,
- *they are often closely linked to health services,*
- they are *often* not for profit and *delivered by value-based service providers* in particular to address the most difficult situations and are often part of a historical legacy,
- *they require an autonomy of service providers, which allows a comprehensive and personalised response to differing needs of the recipients,*
- they include the participation of voluntary workers, expression of citizenship capacity *and of social cohesion, which is supported by organisations, which work for the good of all,*
- they are strongly rooted in *religious ethics and traditions as well as 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. *In this asymmetric relationship, special attention has to be devoted to the protection of the beneficiary’s rights (e.g. the freedom of the beneficiary to chose a specific service provider and an adequate quality of service), as he or she finds him/herself often in the weakest position,*

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

- they have a preventive dimension,
- they support the integration and participation of special groups in the society, especially the marginalised,
- they contribute to peace and justice in the society,
- they are innovative and flexible in challenging new personal needs,
- they are based on the personal trust between service provider and recipient and are therefore provided in a personal, continuous way,
- they support the autonomy and the self-help of the recipient,
- they are closely-linked to health services,

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.

Debt counselling

A social service provided by churches and diaconal organisations to prevent indebtedness of families and single persons and to help them to consolidate their debts. This is a relatively new social service of growing importance facing the challenges of private insolvencies, which is of primarily *preventive character*, needs a very *high level of personal trust and continued companionship* over several years with an important *advocacy* element towards creditors.

Rehabilitation measures and integration measures for handicapped people

Social services to help handicapped people to (re-) integrate into the society, e.g. with a special vocational training. In these services it is very difficult to define where healthcare

services end and social services begin. They are often long-term measures, which need high investments e.g. in specialised “sheltered workshops”. Such “sheltered workshops” can only be competitive on the market with additional financial support, because their workers are by definition not able to be as competitive as others. If they were primarily regarded as “economic activities”, they would not be able to fulfil their special task to integrate handicapped people into work.

Hospice services

Services with a high participation of volunteers, which accompany dying people in hospitals and specialised hospices as well as in families and private environments. They are offering attendance, practical help and very often pastoral care. For many recipients, a common value-basis and/or religious ethical background of the service provider is very important in this situation, as they want to be sure to be allowed to die according to their own convictions. Again, this is an area where a comprehensive provision of health services and social services is an important quality factor, where values and religious traditions play a vital role.

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)¹ ?

We understand the Communication as an elaboration of the reasons given in Art. 2, par 2 (xxx) and (j) for the exclusion of healthcare services and social services from the scope of the Directive. The reasons given for the exclusion of social and health services from the Services Directive clearly show that they should not be regarded as economic activities and have to be treated differently according to the “fundamental right to human dignity and integrity and are a manifestation of the principles of social cohesion and solidarity ... “ (Rec. 27 of the Services Directive)”.

The Communication should also reflect the explanation given by the European Commission on 15 November on the Second Reading of the Services Directive in the European Parliament, which states about the role of churches and diaconal organisations as service providers: “Concerning the impact of the Services Directive on Social Services, social services relating to social housing, childcare and support of families and persons in need are a manifestation of the principle of social cohesion and solidarity in society and are provided by the State, by service providers on behalf of the State or by acknowledged charitable organisations. These services have thus been excluded from the scope of application of the Services Directive. It is clear that this exclusion also covers services provided by churches and church organisations which serve charitable and benevolent purposes.”

Field 3 – Use of characteristics by Member States
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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.

¹ Text available at the following website: http://ec.europa.eu/internal_market/services/services-dir/proposal_en.htm

As European organisations, we will not answer this question, which is requiring national information

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?

As European organisations, we will not answer this question, which is requiring national information.

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

As European organisations, we will not answer this question, which is requiring national information.

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?

Because of the Subsidiarity principle, the European Union does not have a mandate to define organisational characteristics for social services of general interest. We welcome the fact that the EU is taking its task seriously to support the Member States in their efforts for social inclusion and in the modernisation of social protection. We believe that this is an area, where the open method of cooperation could be intensified.

We would welcome a more intense cooperation of the EU with partners of civil society and with the churches and church organisations in the field of social services, taking into account art. I-47 and art. I-52 of the Constitutional Treaty as well as declaration 11 to the Treaty of Amsterdam.

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.

We are concerned that the application of community rules does not take sufficiently into account the characteristics of social services as described in the first part of the Communication. This concern is based on the Communication itself, which does not seem to take into consideration in its second part the specific character of social services as

described in the first part and is certainly not precise enough to meet the specificities of social services in the internal market.

In our view, public social regulations have proved to be an effective way to safeguard a high quality of services and freedom of choice of the recipient on the basis of a plurality of service providers and competition among them. The integrated combination of social protection instruments and competition principles seem to be more adequate for this sector than an enhancement of public procurement procedures, which are mainly focussing on profitability and cost reduction.

We would welcome an extension of public partnership with value-based not-for-profit organisations, which are able to bring in an added value into this partnership, e.g. by the involvement of volunteers as part of active European citizenship

We ask the European commission to respect the Member States' right to define procedures of entrustment of service providers, which guarantee the necessary autonomy and flexibility of service providers for a high quality of services, which are part of a historical legacy.

We ask the European Commission to take into account the important role of churches and diaconal organisations as providers of social services, also with respect to their legal status according to national law.

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).

Churches and church organisations are concerned about a lack of legal certainty for a long-ranging provision of services. They are concerned that the application of community rules is mainly focussing on profitability and cost-reduction and not on a high quality of services and the development of social inclusion. They are concerned that market rules will not take sufficiently into account the necessary sustainability of social security systems, e.g. with regard to demographic developments.

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.

Field 7 – Future steps at Community level

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

We expect the European Union to respect the Subsidiarity principle in this area and therefore do not expect further steps at Community level. We would encourage the EU and the Member States to intensify their cooperation in the framework of the Open Method of Co-ordination. We would welcome an enhanced cooperation with partners of civil society as well as with churches and church organisations.

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?

As already explained, we do not expect EU legislation in this sector. A framework directive does not seem suitable for us to meet the particularities of social services in the different member states. A revision of the Commission's Communication should come to a better balance between the consideration of special characteristics of social services and the application of Community rules. We would welcome an intensified cooperation of EU Member States in this field.

We would welcome a more intensified dialogue and cooperation of the EU with not-for-profit organisations from civil society like churches and church-related organisations in order to strengthen active European citizenship and those who are engaging for the common good (e.g. with regard to ESF).

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

During recent years we participated actively in the dialogue procedures of the European Union. We were disappointed to see that major concerns of churches and diaconal organisations might have been taken into account on the level of principles, but did not find their way into the application of community rules. Our understanding of this dialogue is that it should have a practical impact and not stay on the level of poetic preambles. For the future, we hope to see the values and principles of the Communication implemented into the application of community rules, which would allow us to see a practical outcome of the exercise to participate in these consultations.