

SOLIDAR response to the questionnaire of the Social Protection Committee on social services of general interest

SOLIDAR is a European network of non-governmental organisations (NGOs) working in development and humanitarian aid, social policy, service provision and lifelong learning.

SOLIDAR members are civic movements and service providers at the same time. As civic movements they contribute to social cohesion of local communities and encourage civic engagement, as well as mobilise social capital. They form platforms in which people organise themselves on local, regional, national and European level in order to be an active part of the society they live in. These platforms furthermore encourage the organisation of volunteer activities, which are an important contribution to a cohesive society. They are also important employers and as such fulfil an important role for the European Social Model and within the Lisbon Strategy. As service providers members of **SOLIDAR** are organising efficient and high-quality social services close to people. The users of our services are at the same time clients and partners in the provision of the service.

Over the last two years **SOLIDAR** member organisations carried out a thorough consultation on how to modernise the services they offer, taking a proactive stance in shaping the future of social service provision in the European Union. The unequivocal conclusion of **SOLIDAR** members is that they are not against the principle of liberalising social and educational services of general interest on a European level, but that they believe that the right conditions must be put in place and that this must be done in a way which suits the specific characteristics of the not for profit social and educational services sector. This response is based on the consultation process undertaken throughout 2005.

Since 2005, **SOLIDAR** is cooperating with other NGO provider networks, namely EASPD, Caritas Europa, Workability Europe, EPR, FEANTSA, ET Welfare and CEDAG on questions of social service provision. In a seminar „**NGO Social service providers as actors for social cohesion and inclusion**“ in September 2006, common objectives and topics were identified. A report of the meeting will be available soon.

SOLIDAR is a member of the Social Platform and strongly involved in the Platform's work on social services. The Platform's paper „Making the Communication on Social and Health Services of General Interest a tool for high quality social services in Europe“ is an important reference point in this debate.

General remarks:

A step in the right direction

SOLIDAR very much welcomed the EC communication on Social Services of General Interest (SSGIs), especially because of two aspects: firstly the fact that the communication acknowledged that under current EU competition law, nearly all SSGIs are economic services, and secondly that the communication that SSGIs have specificities and special characteristics compared to other services, even other Services of General Interest (SGIs), and that these specificities require special consideration on European level. Taking the two aspects together, the conclusion must be that in order to ensure that high-quality SSGIs can also in the future be provided for all, a sector-specific legal instrument is needed. Currently SSGIs,

despite their specific function for our societies and their specific features are more or less treated like any other economic SGIs.

Coherence needed between approaches to SSGIs and Health Services of General Interest

In the run up to the publication of the communication, Health Services of General Interest (HSGIs) were taken out of its scope. At the same time, a consultation on an EU framework for health services has been launched. The separation between SSGIs and HSGIs is not clear cut. Especially in the area of care services and rehabilitation it becomes clear that the dividing line is thin and not the same in different EU member states. The two areas are conceptually and institutionally closely interlinked; they are both important elements of social protection.

Coherence between the two areas is important, not least in order to ensure the efficiency and the cooperation of the two sectors to ensure best quality for users. It is furthermore important that a clear commitment is made that health services are services of general interest – a fact that currently seems to be sometimes lost in the debates around a European framework for health services.

SOLIDAR calls upon the Commission to ensure coherence between the two processes on SSGIs and HSGIs. It should be clarified what the thinking behind a separated treatment of SSGIs and HSGIs is. Furthermore, it needs to be ensured that the timelines for the two initiatives go hand in hand.

Not either or – why we need a framework directive on SGIs and a sector-specific instrument on SSGIs

Simultaneously to the process on social services, there has been a new momentum for a framework directive on services of general interest (SGIs). The idea of a framework directive on SGIs is based on the understanding that SGIs are an important element of our societies. Their general interest nature should be protected and prevail over competition law. Member states should be given the freedom to define what they understand by SGIs and decide how to organise the provision of SGIs according to the principles of accessibility, universality, affordability, solidarity and democratic control.

In the debate on a sector-specific directive and framework directive the two initiatives are often presented as mutually exclusive. Some claim that one can only want one or the other. **For SOLIDAR the two initiatives are not mutually exclusive** and SOLIDAR therefore also supports a transversal framework directive on services of general interest as it can send out a strong political signal of the importance of these services for our societies, and could set the framework for overall consumer protection.

What a framework directive can however not do is deal with the specificities and the specific problems of the social, educational and health care service sector and answer the fundamental questions of social service provision in Europe. Some sub sectors of SGIs are already regulated in sector-specific directives and the same will be needed for the social and health service sector in order to really meet the needs for legal certainty of local, regional and national not-for-profit providers.

The initiatives for a sector-specific directive on social services and a framework directive on services of general interest should not be discussed as mutually exclusive. Whereas only a sector-specific legal instrument on social services of general interest can

answer the needs of local, regional and national providers for legal certainty for high-quality social services throughout the EU, a framework directive on services of general interest can complement such an initiative ensuring transversal consumer protection and underlining the important role services of general interest play for our society.

Field 1 – Description of social services

Question 1 and 2:

SOLIDAR overall agrees with the three types of social services identified, even though a clear separation might not always be possible on national level (see also comments above on the necessary coherence between SSGIs and HSGIs). In the following our focus will be on the third category of personal SSGIs.

SOLIDAR welcomes the fact that the description of the third category of personal SSGIs is very wide and therefore leaves room for future developments. New social services might be developed to respond to new needs in society and these must be included in the definition.

Field 2 – Pertinence of the characteristics

It is important to note that even though SSGIs are part of a larger group of SGIs, they have specific characteristics due to their specific function in society, their users and the organisational characteristics and the structures of service provision, namely very often not-for-profit organisations. The listed organisational characteristics help in the attempt to define this specificity.

It remains unclear what the link between the description of the three categories of services and the characteristics are, as some aspects appear in one list and not in the other and vice versa.

Question 3 and 4 Some comments on the listed characteristics:

Characteristic 2:

The last aspect of protection of the most vulnerable is questioned by many NGO service providers, as they base their work on a universalistic approach, ensuring that their services are open to everybody in society. Whereas some services tackled the needs of the most vulnerable, others are based on the idea that in the course of a life time needs might arise that call for specific help, e.g. child care or care for the elderly. It is a fundamental right of everybody to have access to these services.

In addition, it would be good to include the aim of realisation of socio-political objective. This would ensure the recognition of the fact that SSGIs are a fundamental pillar of our Social Models.

Text proposal: „provide help to people in certain life situations, protect the most vulnerable and aim at the realisation of socio-political objectives of society. “

Characteristic 3:

Text proposal: add: „SSGIs are often provided by NPOs that organise their services around a commitment to certain values and particular approaches (see Social Platform contribution, April 2006)

Characteristic 4:

It should be clearly stated that the involvement of volunteers is a benefit for both the volunteer and the user of the service. In addition to citizenship capacity, volunteering fosters social inclusion and cohesion, as well as creates social capital. The question of volunteering needs to be given special attention when discussion tendering procedures in the social services sector. Volunteering is an investment in the future rather than a replacement of paid labour and a cost saving measure.

Text proposal: „they include the participation of volunteers, expression of citizenship capacity. Volunteering is an added value for both the user as well as the volunteer, promotes active citizenship and social inclusion, as well as social cohesion and the creation of social capital. Volunteers are crucial for the detection of needs and the development of innovative solutions in social service provision.”

Characteristic 6:

The asymmetric relationship between user/beneficiaries and providers is important and is rightly highlighted in the Commission’s list of characteristics. This special relationship however needs to be taken into account no matter whether or not a financing third party is involved.

Question 5 Characteristics to add

- Preventive aspects of social services
- The link between service provision and political advocacy work that many NGO service providers ensure.

Question 6 Examples

Preventive social services: Many social services have a preventive aspect as well, like for example community work, education services, and counselling services.

The services NGOs offer for migrants, such as language courses, legal advice, and other integration services, are linked to advocacy work NGOs do. With funding for migrant organisations not being available and political rights often not granted to migrants, NGOs in cooperation with existing migrant organisation play an important role in raising their voices in policy-making on local, regional, national and European level.

Question 7

The exemption of social services from the scope of the services directive was a compromise resulting from long negotiations, as well as the attempt to provide legal certainty. SOLIDAR members have analysed the wording of the exemption and, even though they would have

preferred a more general exemption of social services (such as it was provided for health services), feel that the exemption is satisfactory.

SOLIDAR is aware that the way social services will be exempted from the services directive will provide a basis for a future definition of social services on EU level. It is however clear that the exemption does not provide final legal certainty and that the definition currently negotiated by the European Commission can have a positive or negative effect on the interpretation of the exemption in future.

Field 3 – Use of characteristics by Member States

As a European NGO network, SOLIDAR will not try to answer this question. All SOLIDAR members however agree that even though the term is still differently defined and interpreted on national level, a general EU framework for SGIs is needed in the future.

The increasing introduction of tendering procedures in all EU member states poses questions of how the provision of high-quality of SGIs fulfilling all criteria laid out in the white paper can be guaranteed.

Field 4 – Use of characteristics at EU level

NGO service providers were hoping for a clear exemption of social services from the scope of the services directive. It is however already now clear that further clarification will be needed about which services fall under the exemption and that the definition of social services of general interest will influence and help this process. Criteria of SSGIs can help member states in identifying which services are excluded, as well as regarding specific regulations taking the specificities of SSGIs into consideration in for example state aid rules, concerning sector specific exemptions and higher thresholds, as well as sector specific criteria in public procurement.

Field 5 – Experiences with the application of Community law

o Public Procurement

The idea behind the buzzword ‘New public management’ is that less state involvement leads to less bureaucracy, increased flexibility and finally greater efficiency. In all European countries more and more services are subject to tendering procedures. Tendering is supposed to create more competition, and as a consequence raise the quality and the choice for users, while at the same time lowering prices. Whether tendering procedures in the social sector have these positive effects is yet to be seen.

One problem with tendering procedures for example is that very often the experience of public administration in the area of social services is very weak. As a rule, there is little or no awareness of the needs and specificities of the sector and the services provided. In addition, all SOLIDAR members have experienced increased paperwork in the last few years, manifold bureaucratic requirements for applications, reporting etc. These increased requirements bind a lot of valuable resources of organisations, which is especially difficult for small NGOs.

Public procurement procedures risk focusing solely on reducing costs and neglecting criteria such as sustainability and quality. To reduce social services purely to their economic aspects neglects and endangers the important role these services play for our societies.

The EU public procurement regulations now allow social, employment, ethical as well as ecological considerations to be taken into account. This is an important step forward compared to the clear restriction to the criteria of the lowest price and the best cost-effectiveness in the old procurement regulations. It is however important now that the inclusion of social, employment, ethical and ecological considerations is also transposed into national legislation (many transpositions are still outstanding).

Furthermore, tendering might risk violating the right of the user to choose the provider (e.g. ‘Wunsch- und Wahlrecht’ guaranteed in German social law), as the service provision as the result of a public procurement procedure and selection based on a tender is only given to one organisation. Small NGOs face difficulties as small operating units risk seeming uneconomical. In the long run, tendering decisions might lead to concentration processes and oligopolies in a region, as especially small organisations might have problems ensuring their survival if not having won a tendering twice in a row. Public procurement procedures also change the traditional type of relation between state agencies and NGOs, e.g. in Germany from cooperation to regulation of competition.

Cross-subsidisation between profitable and unprofitable services is crucial to ensure that all these services are available to everyone who needs them. Yet compulsory public procurement can lead to a creaming-off of the profitable parts of the market by some, leaving the unprofitable parts for others – making it difficult to run a viable enterprise.

- **State aid**

Members of SOLIDAR welcome the new state aid regulations of the European Commission, as they lay the ground for more legal certainty and transparency. Especially the threshold for notification requirements is important for NGO social service providers to limit the time-consuming bureaucratic requirements.

The regulations are however not as clear and comprehensive as SOLIDAR members would have wished. A lot will depend on how the regulations will now be applied.

It is important that the „Altmark-Trans“ decision of the European Court of Justice is respected when it comes to the financing of social services. According to the ruling, compensation payments for enterprises that have a general interest mission are, when fulfilling certain criteria, not to be considered state aid under European competition law. The practicality of the criteria is currently evaluated by actors on national level.

In order to give organisations the security for mid- and long-term planning, it is necessary to ensure highest possible legal certainty regarding the criteria according to which payments are not considered state aid under EU competition law.

<p>Field 6 – Social security schemes responding to the criteria deriving from the <i>Poucet & Pistre</i> case law</p>
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Field 7 – Future steps at community level

Question 17 and 18 Future initiatives and their aims

Ensuring coherence – allowing real cooperation

SOLIDAR expects that the process on the clarification regarding the situation on social and health care services and the debates on how to best ensure high-quality service provision by a variety of providers in the future is continued in a coherent, open and transparent manner, in consultation and active involvement of all stakeholders.

Currently there seems to be incoherence not only between the processes on SSGIs and HSGIs, but also regarding the consultation process on SSGIs specifically. The fact that two questionnaires (one for the study and one by the SPC) were published around the same time, both aiming at a better understanding of the social service sector, is confusing and time-consuming for stakeholders. In order to ensure involvement of a variety of experts and actors from local, regional and national level, targeted consultation and cooperation is needed. NGO social service providers, such as SOLIDAR members, are ready to play an active role in the discussions about the future of social services in the EU internal market. They are ready to take up their responsibility as providers of services for social inclusion and social cohesion, as well as employers of a rapidly growing sector.

More specifically, SOLIDAR would like to suggest the following initiatives:

i. A sector specific legal instrument on SSGIs and HSGIs

The first bi-annual report, expected mid 2007, should make a clear political statement in favour of a sector-specific legal instrument for SSGIs and HSGIs.

ii. Clarification of separation of HSGIs and SSGIs

As mentioned before, the separation of health and social services has confused providers and users of services alike, and risks creating an incoherent approach to the future provision of high-quality SSGIs and HSGIs. The European Commission should official clarify why it chose to follow this separation and, if this separation is not reversible, should state how it nevertheless will in future ensure a coherent approach to SSGIs and HSGIs.

The debates on how to ensure the future of social and health care of general interest for all cannot be pre-empted or restricted by process run at the same time by other DGs.

iii. A framework directive on SGIs

As stated in the general remarks at the very beginning of this response, SOLIDAR believes in the complementarity of a sector-specific legal instrument on social and health services of general interest and a framework directive on SGIs.

iv. An evaluation of effectiveness and appropriateness of tendering procedures in the social sector in the EU

How appropriate is the use of standard tender procedures for social services? Do they lead to more choice, quality and transparency and reduced costs? It is difficult for public authorities to translate the criteria necessary for quality social services into tender

procedures. But if quality criteria are not effectively reflected in the tender conditions, the answers to the tender may not be adequate or possible to evaluate. As tendering has been introduced and become the norm for some time in some EU member states, now seems to be an appropriate time to conduct an independent assessment of the effectiveness, disadvantages and advantages of this mechanism. Do tendering procedures in the social and health care services deliver? This is particularly important as conducting tender procedures is often very costly.

v. Development of quality principles of EU level (vs. set standards)

Better understanding at EU level of quality in social services may also lead to developing some agreed quality principles for social SGIs, which could complement and go beyond principles applicable to all SGIs. These principles could also serve as a lever for ‘mainstreaming’ the concept of quality service in public procurement or internal market rules. In this context it must however be borne in mind that it is extremely complex to ascertain the quality of social service provision, and difficult to summarise what constitutes quality in a few principles. The concept of a ‘principle’ must be distinguished from that of a ‘standard’.

solidar is a European network of non-governmental organizations (NGOs) working in development and humanitarian aid, social policy and social service provision.

solidar promotes economic and social justice in Europe and worldwide by working in alliance with trade unions and labour movement organizations.

solidar is a member of the Platform of European Social NGOs and of the Civil Society Contact Group that launched the [act4europe](http://act4europe.org) campaign on the Convention on the future of Europe



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