

# Social Services of General Interest

## Questionnaire

### Introductory Remarks

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

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

This questionnaire forms part of the consultation process announced in the Commission's Communication and its results will feed into the first biennial report in 2007<sup>1</sup>. It will be addressed to the Member States represented in the Social Protection Committee as well as to the European social partners and further European stakeholder organisations in the field of social services. The questionnaire has the following aims:

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

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

#### *Scope*

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

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

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

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

### *Organisational characteristics*

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

- they operate on the basis of the solidarity principle, which is required, in particular by the non-selection of risks or the absence, on an individual basis, of equivalence between contributions and benefits,
- they are comprehensive and personalised integrating the response to differing needs in order to guarantee fundamental human rights and protect the most vulnerable,
- they are not for profit and in particular to address the most difficult situations and are often part of a historical legacy,
- they include the participation of voluntary workers, expression of citizenship capacity,
- they are strongly rooted in (local) cultural traditions. This often finds its expression in the proximity between the provider of the service and the beneficiary, enabling the taking into account of the specific needs of the latter,
- an asymmetric relationship between providers and beneficiaries that cannot be assimilated with a ‘normal’ supplier/consumer relationship and requires the participation of a financing third party.

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

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

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

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

## Questionnaire

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

### Field 1 – Description of social services

1. Please indicate whether the description of the social services as provided by the Communication (see above under "scope") is appropriate and adequate, also with a view to social security schemes responding to the criteria deriving from the *Poucet and Pistre* case law.

Estonian social security funds are open to over-the-counter market and are subject to its rules. Compulsory social security schemes, however, are not regarded as economic activities and should not be subject to the rules of the economy.

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

### 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)?

We support and consider it relevant that the communication of the European Commission already lists first and foremost the following criteria: social services are based on an individual's tailored needs; for social services there is an unequal relationship between the client and the provider of the service where the client is always in a weaker position; financing by a third party.

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.

We propose to consider adding the following criteria:

In addition to a person's individual needs social services are based on the physical and social environment of a specific person. Services are closely related to cultural space, customs and standards.

In the case of social services the participation of service consumer in the decision making process regarding both the general planning of services and provision of services to a specific person. Participation of the individual guarantees the provision of services pursuant to his specific needs, measures are better directed and assistance of top quality.

We consider it important that there should be no limits or preferences regarding the form of ownership when it comes to the organisations providing the service. It is important that the service provider would comply with the service requirements and would guarantee an effective provision. In Estonia, all types of the institutions' form of ownership are represented in the provision of social services, and service transfer is in process from the national (also local government) form of ownership to private forms of ownership. Companies with state (also local government) participation are also common. Estonian health sector functions purely on the basis of private service providers, and provision of social services is heading in the same direction, where services are provided by private organizations, incl. private organizations with state participation.

In addition to meeting the needs of a specific person the provision of services also has a more general social purpose. Social services react to social needs and problems which occur because services in the market are not effective enough. They realise public responsibility following the principle of general interest. Social services enforce effective social policy in local, regional, international and EU level in helping to fight against discrimination, poverty and social exclusion creating social security and solidarity.

As the client consuming social services holds a weaker position and the provision of service deals with the questions concerning a person's life arrangements, the existence of a quality monitoring and assessment system is extremely important, especially the existence of ex-ante verification and the possibility to authorize service providers .

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.

Said characteristics are rather general and apply to all services.

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>

The most important criterion is the fact that social services are based on the needs of a specific person as well as on his physical and social environment, cultural space, customs and standards of the society. The provision of social services intervenes with the individual's life arrangements and triggers changes in it. The client always holds the weaker position which is why the service provider must be familiar with the customs, standards and traditions in order to provide the service to the client in the most suitable way. Provision of services by providers of a different cultural space, service requirements and traditions may not guarantee the provision of assistance to the client in the most suitable way based on his needs and physical and social environment and may cause negative consequences when trying to find a solution to the client's problem. This is why provision of services should definitely comply at least with the standards of the country of location and such conditions should be created that it would be guaranteed for the provision of service to be based on the person's physical and social environment, cultural space, customs and standards of the society. Provision of the service should be carried out in a language comprehensible to the client. Opening the market

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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)

to the provision of social services also ensures a better ratio of their quality and price. However, there should be a reasonable balance between the social services open to the market and the provision of the client's rights and needs. The framework of this Directive of services does not include the possibilities for creating such a balance.

Based on the person's weaker position regarding the provision of social services and a situation where the provision of services intervenes with the questions concerning his life arrangements, the systems of ex-ante verification and effective ex-post verification should be ensured when social services are concerned. Prior to the provision of social services, service providers should undergo ex-ante verification and apply for a specific authorization (licence).

Considering the principle that the provision of organization of social services should be carried out on the levels as close as possible, based on the client's physical and social environment, in addition to the national minimum requirements for social services the local level has a right and possibility to create supplementary services and establish supplementary requirements, which is why in the case of such services the provision of single national authorization is doubtful.

We would like to add that excluding social services in their current wording from the Directive's impact area is vague and creates confusion about the fact which services are covered by the Directive and which are not (for example the wording housing; family and persons in need – what kind of services these wording covers?) We find that the impact area of the Directive of Services should exclude all social services that deal with people having temporary or long-term need for assistance and support, irrespective of their financial situation.

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

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

The term "general interest" has not been defined on legislative level. There have been discussions stating that the definition could cover national security, health protection, human welfare, environmental protection, cultural heritage (national language), etc.

We concur that the definition should cover services with both economic and non-economic characteristics.

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?

#### 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?

#### 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).

#### Public procurement

Estonia's new Public Procurement Act, currently under deliberation in the Parliament, is based on the requirements of the EU and it provides that public procurement may be omitted only if the service is purchased from companies with state or local government participation, or from foundations. In all other situations, public procurement must always be carried out prior to the provision of services if the value limit is exceeded. Taking into consideration that the supplier can freely choose whether to use open procurement, limited procurement, adversarial dialogue or negotiated procurement with prior publication of a procurement notice, the procurement procedure becomes easier.

We admit that with social services it is difficult to define the service description in a very detailed way as the service has to be adjusted to the needs of each individual client. We consider it important that in the course of the procurement service providers should comply with the general requirements for the provision of the service and guarantee the required result.

Social services are currently not subject to public procurement. However, procurements are already carried out when purchasing social services as it is reasonable to have a method for choosing between the service providers.

Free provision of services and establishment, see point 7

#### State aid

Social services are services that the society is interested in and whose provision is considered necessary by the state but the market is not capable or interested in providing these services, or would provide them insufficiently.

Taking into account that it remains unclear whether social services should be classified as services of general interest with economic nature or services of general interest with non-economic nature, and that according to the European Court of Justice they should rather be categorized as services of economic interest, we consider it important that it should be possible to exclude social services from the rules of state aid.

We consider relevant that the Commission has adopted a decision that already significantly simplifies the requirements of benefits in cash paid to service providers, and provides them with necessary legal certainty. This decision establishes thresholds and criteria so that with most social services the received benefits shall automatically be regarded as being in compliance with rules on competition and thus the obligation of prior notification is not applicable..

Likewise, compensations to hospitals and companies administering social housing are not subject to it. We consider important that the definition of social housing would also cover social welfare institutions (care homes).

With current criteria, compensations paid for social services are included in the listed criteria, but we consider it important that upon the future development and change in the systems of social services the possible failure to regard them as state aid would be monitored .

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 find sensible to have general principles, aims and guidelines of offering social services on European level. But every member state should have the possibility to apply the norms according to concrete situation and needs of the state or region.

Still it is important to define the relationship between EU internal market rules and the rights of every member state to regulate the specific issues of social service provision on national level.

We support the idea that social SGI have both a non-economic and economic nature, but both aspects should be examined more to clarify the concept of social SGI

Taking into account both the economic and non-economic characteristics of social services we consider it necessary to introduce clear differences in the implementation of EU rules on competition regarding social services. Likewise, pursuant to the principle of subsidiarity, provide the Member States with a right to regulate the principles for the presentation of social services, types of services, requirements for services and funding principles.

We do not support monopoly businesses, e.g. the health sector consists entirely of private businesses.. Provision of social services is heading in the direction, where services are provided by private businesses with state (also local government) participation as well as private businesses without state participation. In the case of (national) monopoly it remains unknown whether services are provided for the best possible price and quality, a certain competition must remain. However, it must be taken into account that the provision of social services only pursuant to the principles of over-the-counter market in bringing state participation to a minimum may bring forth a situation where the state with its different levels is not capable of guaranteeing the availability of services to clients in the best possible way..

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?

We do not think it is necessary to settle common goals and objectives on European level in the framework of open method of co-ordination.

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