

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 2007¹. 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:

¹ 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 activities²
- 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).

² 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

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.**

Our opinion, the description of social services provided by the Communication is in general appropriate and adequate.

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)?**

Characteristics of SSGI identified by the Communication are suitably definite determined. Our opinion, specific features are enough sufficient to clarify and to describe substantiality of SSGI.

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.**

Social services groups (social insurance schemes and services provided directly to the person) are not adequate. They have different features and are organised in various ways. For that reason characteristics as principles of organization and provision of SSGI perhaps could be formulated for each group of SSGI separately.

Furthermore, it could be useful to described specific features of personal social services such the involvement of volunteers, the relationship between social services providers and beneficiaries, participation of NGOs, civil society.

Health services are not directly covered by Communication. It is difficult to make definite separation between personal social services and nursing for example. However a solution of the problem of well integrated long-term care services system is talking point in various EU countries. Our opinion with a view to strengthen and intensify this process in the future

negotiable question could be to characterize long-term care as SSGI in detail and also separately.

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.

Lithuanian Law on Social Services defines the concept, objectives and types of personal social services, regulates the management, granting and provision of social services, licensing and financing of social care establishments, payment for social services and consideration of the disputes related to social services.

Social services are specified as the services aimed at providing assistance to a person (family) who, due to his age, disability, social problems, partially or completely lacks, has not acquired or has lost the abilities or possibilities to independently care for his private (family) life and to participate in society. The objective of social services shall be to create conditions for a person (family) to develop or to enhance the abilities and possibilities to independently solve his/her social problems, maintain social relations with society as well as to assist in the overcoming of social exclusion. Social services shall be provided with a view to preventing the social problems of a person, family and community as well as to ensuring the social security of society.

This concept of personal social services fits a description of services providing to person category covered by Communication.

Social services shall be managed, granted and provided on the basis of principles rather like SSGI organisational characteristics provided by the Communication. These characteristics are:

1) Co-operation. The management, granting and provision of social services shall be based on co-operation and mutual assistance between a person, family, community, the organisations protecting the interests and rights of social groups of people, social services establishments, municipal and state institutions;

2) Participation. Issues of the management, granting and provision of social services shall be settled in co-operation with recipients of social services and/or representatives thereof and the organisations protecting the interests and rights of social groups of people;

3) Complexity. The provision of social services to a person shall be combined with the provision of social services to his family;

4) Accessibility. Social services shall be managed, granted and provided so as to ensure that a person (family) can access social services as close to his place of residence as possible;

5) Social justice. Financial possibilities of a person (family) to pay for social services shall not have any impact on the possibilities of the person (family) to receive the social services;

6) Relevance. A person (family) shall be granted and provided the social services which correspond to the interests and established needs of the person (family);

7) Efficiency. Social services shall be managed, granted and provided with a view to achieving good results and rationally utilising available resources;

8) Comprehensiveness. Social services shall be managed, granted and provided by combining them with cash social assistance, protection of child rights, employment, health care, education, granting of social housing and special assistance measures.

New Law on Social Services which came into force in 2006 also envisages the consolidation of social services organization in municipal and community level; identification of new forms of financing, gradual refusal of direct financing from the State budget of the care institutions under the jurisdiction of counties and proceeding to granting State subsidies to municipalities for organizing the provision of respective social services; the establishment of similar requirements for providers of social services irrespective of their subordination (NGOs, municipal sectors), creation equal opportunities for all social services providers; the possibility for the poorest individuals to receive social services free of charge and etc.

Municipalities shall establish its social services establishments only in the cases when operating social services establishments do not provide or insufficiently provide or it is not worthwhile providing the social services for which the need of the municipal territory's residents has been established.

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)³ ?

Exclusion of specific social services from the scope of the Services Directive made an influence to the better understanding the mission of SSGI and why they need different treatment in EU rules. Specific characteristics of SSGI as well as services being within Services Directive scope are very important for comparing together these 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.

There is no a definition of the „general interest“ in Lithuanian legal acts. National legal acts provide only definitions of “public interest”, “public services”.

“Public legal persons shall be legal persons established by the state or municipalities, their institutions or other non-profit-seeking persons whose goal is to meet public interests (state and municipality enterprises, state or municipality institutions, public institutions, religious communities, etc.)”. (Article 2.36 of Civil Code of Lithuania). Specialists of civil law comment the definition of “public interest” as benefit for all society as well as general welfare.

According to Lithuanian Law on Public Administration (Article 2.) “public service” means the activities of special institutions and organisations founded by state or local authorities and providing services in the social sphere, in the sphere of education, science, culture, sports and other services provided for by law. Private persons may also provide public services in the cases and manner provided for by law.

³ Text available at the following website: http://ec.europa.eu/internal_market/services/services-dir/proposal_en.htm

However, conceptions of „general interest“ as „public interest“ could be defined systematically by the explanation of the essential specific principles and features.

“General interest“ is based on particular principles, as solidarity, social justice, welfare, social capital, users participation, human dignity, social cohesion, and etc.

“General interest“ could be defined as a whole of interests oriented toward general welfare of all, i.e. local, regional, national society, the assurance opportunities for all to get necessary social help, which couldn't be ensure without social services costumers, NGO, social services providers active participation and the State and municipalities aid.

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?

Our opinion the characteristics could be used at all levels not excepting local or regional level. However primarily there is a need for further clarification and better understanding what is SSGI at the European level.

In any case it is very important as effective tools to modernise delivering and evaluating of social services at national, regional and local level as well as to develop sufficient public policies.

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

There have not been any problems with giving a concrete mandate to fulfil the general interest mission of a SSGI yet.

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?

They are effective tools for the appropriate implementation of public policies in the areas of social protection and the fight against poverty and exclusion at European level as well as to achieve EU Treaty goals, such as social and economic cohesion, high level of employment, raising the standard of living and quality rights.

Every MS has unique social services system. It's depends on specific habitants needs, social services needs as well as economic, political or social situation in the State. Furthermore social services purposes and state's role are different (for instance long-term care and social insurance scheme). Furthermore social services are evolving rapidly with the emergence of new social and health needs linked to social inclusion or ageing. For this reason to determine even and strong roles or closed checklist in the EU level the same as to put them in practice is complicated in this field.

Our opinion there is necessity to assess and to clarify characteristics for better understanding SSGI and after that to determine just common SSGI organization's principles and mission of these services at EU level.

Field 5 – Experiences with the application of Community law
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12. 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**

13. Please indicate whether difficulties (may) still arise and if so in which legal areas and for which type of social services.

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

15. 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).

Social services are specific services. Social services cover a broad range of activities such as statutory and supplementary pension schemes, social housing, long-term care, personal social services and etc. Many users of SSGI are in a vulnerable position and mostly dependent. For that reason the State control mechanisms need to be in place to ensure that these members of society receive services of high quality. The provision of many social services is based on principles of voluntary, public and NGOs partnership, active participation of civil society.

The development and the establishment of the private social services sector should be harmonized with habitants` needs for social services and with financial ability of the State. For that reason the State also should interfere in social services market development process.

For these reasons, our opinion, social services should be safeguarded from the application of the “naked” competition rules.

SSGI are provided not for aim of profit and, our opinion, the application of elements such public procurement, public-private partnerships, freedom to provide goods and services and freedom of establishment, state Aid could not be applied even as for other services.

For that reason there are needs to further analyze the effects of Community regulations in the area of competition rules, including regulations governing state aid and etc.

Field 6 – Social security schemes responding to the criteria deriving from the *Poucet and Pistre* case law

16. 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.

To some extent questions in the Fields 2, 3 and 4 have significance with regard to social security schemes, financed by social insurance contributions, especially formulation of features of social services. Such formulation could help to establish a proper classification of social services and further development in the light of Community rules and national practice.

17. 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.

Our opinion, there is a need for further clarification on the application of Community rules. This could positively affect European Social model.

Field 7 – Future steps at Community level

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

Our opinion, most important in this process is a strengthening of social dialogue in order to find common understanding and expectations of social partners, providers and other concerned parties. This could be achieved by active discussions and consultations with social services providers, beneficiaries, NGO, municipalities, etc. The exchange within MS of information on innovative good practices how to involve social partners in this process could be very useful at this stage.

19. 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?

Social policy objectives such as provision of personal social services, social housing and etc. lie primarily within the competence of the MS. However there is a need of more active role at the EU level. Decisions could not be made without the evaluation of all advantages and disadvantages. As an important step in this direction could be in-depth consultants, studies, exchange of information, further implementation of open method of co-ordination and etc.

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

The monitoring and dialogue procedure in the form of biennial reports announced by the Communication are measures of the highest importance in this stage.

