

# 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.

**There is no general definition of the social services of general interest; there is only a general definition of public service in the Institutions Act, that regulates statutory questions of institutions, providing services in the field of education and training, science, culture, sport, health care, invalidity and social insurance and in other activities on non-profitable basis. Services, defined by law or decree of a community or a municipality, are performed as public services, if their continuous and undisturbed performance is provided in public interest by the State, a community or a municipality. This definition refers to social services of general interest intended for the direct user. Public service is performed by public institutions or by other legal or physical persons on the basis of concession. Legislation, regulating different fields of "non-economic" or "social" activities, defines these services as public services in greater details.**

**In this context, it must be stressed that the concept of social services of general interest includes in Slovenia only services intended directly for the user, the term services is never used for compulsory and supplementary social insurance. Persons are included in the system of compulsory insurance (pension and invalidity insurance, health insurance, unemployment insurance and insurance for parental protection) or supplementary insurance, and pay earnings-related contributions, in order to be protected against risks, and later, when they fulfil conditions, to exercise rights under compulsory insurance and thus ensure material and social security on the occurrence of the insured event. Rights provided by compulsory insurance cannot be considered services. It must be stressed that Slovene legislation does not recognise a link between social insurance and social services of general interest intended directly for the individual.**

**Services provided as non-commercial public services have a number of common properties:**

- **Their purpose, content, extent, conditions for performing them, staff and technical standards are governed by regulations adopted by the state or local community and must be created on the basis of law.**
- **Public services are non-profit, and prices are regulated and controlled.**
- **Financing is based on solidarity, some are completely free for users, some are paid, often on the basis of census.**
- **Providers may be owned by the state or local community or may be private individuals, who must obtain a concession or special permit for carrying out activities and operate under the same conditions as a public company.**

- **The state or local community determines the extent of the public service with documents adopted for a period of several years.**

**We have such a system of services in the fields of social security, education and disability insurance.**

**Services/programmes which are not so exactly regulated, such as programmes for the unemployed, addicts, various marginal groups, individual smaller groups of the disabled also belong within the complex of SSGI. They are normally provided by NGOs, their non-profit nature derives from the local tradition and environment, they are not heavily regulated, they are financed from various sources, which providers collect through public tenders which are published according to a uniform procedure by the state or local community.**

**Deriving from the aforementioned, it can be said that the field which we have described and which refers to »services intended for the user« has characteristics which the EC states in their Communication for SSGI and that SSGI are carried out in Slovenia in fields which are specified in the Communication.**

**The extensive legal regulation of social services determines their nature as services in public interest, which shall be guaranteed within the framework of social protection system on principles of solidarity and universal and equitable accessibility and non-profit orientation, which makes them so very different from commercial services subjected to market logic and forces.**

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)?**

**In Slovenia, social services of general interest include social services and developmental and supplementary programmes which are important for the state, of which the particularity is that they are not legally regulated, but they have all the other characteristics of social services of general interest.**

**Social services of general interest have their own attributes and particularities (they are carried out in the public interest, they have a non-profit nature, they must be equally accessible under the same conditions to all who need them, in their provision itself they require a high level of social sensitivity, they are regulated or co-financed by the state or local community, the principle of solidarity is used in their co-financing etc.). Precisely here the stated properties try to delineate social services of general interest from other services. We thus consider that their transparency is ensured with exact regulation through legislation in the fields of social services and their implementation is enabled even in the private sector through a system of concessions.**

**We have a public service in Slovenia which includes social services of general interest in the following fields:**

- **Social protection services and programmes**
  - **Services of general interest in the field of care of the disabled**
  - **Services of education and provision of various seminars and further training**
  - **Social services in the housing sphere**
  - **Social services in the sphere of employment**
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.

**In Slovenia, the state determines the extent of the network of providers of social services of general interest and, in certain cases, the local community is then responsible for ensuring provision of these services (e.g., the social service of family home help).**

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.

**The characteristic that the state determines the extent of the overall network of providers applies for all social services of general interest, as well as for development and supplementary programmes of importance for the state.**

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>1</sup> ?

### 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.

**Institutions Act: As a public service, activities specified by law or municipal decree founded on law are performed, whose duration and undisturbed provision is ensured in the public interest by the Republic, municipality or town.**

**Public-Private Partnership Act: the public interest is the general welfare, determined by law or regulation issued on its basis, as the Government RS or the representative body of local government decides this.**

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<sup>1</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)

**Services, defined by law or decree of a community or a municipality (general interest), are performed as public services, if their continuous and undisturbed performance is provided in public interest by the State, a community or a municipality.**

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?

**Employment: Within the framework of active employment policies, programmes are implemented which are intended for non-profit employers in the sphere of social services. Subsidising employment in this sphere enables unemployed persons to have work and social inclusion, and providers of social services the possibility of extending social services on national and local levels. They thus carry out activities with the aim of providing greater accessibility and quality of social services to users of these services. They implement programmes of public works which, because of the specifics of implementation and financing, require that a public interest on a local or national level exists for each public work. For employment in the sphere of public services, the creation and implementation of non-market employment projects is encouraged, mainly for the development of new forms of social programmes and social protection and other services in the public interest which enrich local social and working life. Projects that create jobs in the non-profit sector and in non-governmental organisations, in particular, are supported, and the emergence of new units of social entrepreneurship and the development of existing forms of social entrepreneurship is accelerated.**

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

**It has happened in the past that that state has determined the necessary extent of social services of general interest, but provision of these services was not ensured on the part of the local community. In this case, a divergence occurred between programme documents and concrete provision by the local community.**

#### 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:

**Providers of social services of general interest are public institutes founded by the state or local community, and other providers who are chosen on the basis of public tender concessions, public tenders or who have been granted a work permit. It must be stressed in relation to these other providers that once they have been chosen as providers of**

**social services of general interest, the same regulations apply for them as for public institutes.**

- Public procurement
- Public-private partnerships
- Freedom to provide goods and services and freedom of establishment
- State Aid

**Employment: Implementers of active employment policy in the field of social services are non-profit employers chosen on the basis of public tender. Employers who have specified a non-profit character in the act of foundation or who reinvest all income in the basic activity and do not share profit, are considered non-profit employers for the needs of public tenders.**

**Social: On the basis of Article 41 of the Social Security Act (ZSV), social security services can be performed by legal and natural persons if they fulfil the conditions specified in this act and by regulations issued on its basis. Services which the act determines as public services are performed within a framework of the network of public services under the same conditions as social security institutes and other legal and natural persons who obtain concessions at public tender. Social security services outside the network of public services are performed by legal and natural persons who obtain a permit for work, which is issued and revoked by the ministry responsible for social security. On the basis of Article 98 ZSV, development and supplementary programmes are financed from the budget of the RS important for the state, and cooperation with non-governmental organisations. The conditions for awarding funds specified by individual laws, implementing regulations or in public tenders are determined on the basis of Articles 214 and 215 of the Rules on Procedures for Implementing the Budget. A direct user may commence the procedure for awarding funds if: 1. he has free right of use to the necessary amount for awarding the funds provided in his financial plan and 2. other conditions for undertaking obligations specified by laws and implementing regulations that regulate use of budget funds and sectoral legislation are fulfilled.**

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

**Sectoral legislation precisely determines the selection of providers of social services of general interest on the basis of concessions or public tenders or the granting of a permit for work.**

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).

**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.

**Social insurance (pension and disability insurance, health insurance, insurance against unemployment and insurance for parental protection) in the RS are not considered social services of general interest. Nevertheless, social insurances also have some characteristics of social services of general interest (they operate on the basis of the solidarity principle, they are comprehensive and personalised integrating the response to differing needs in order to guarantee fundamental human rights, they are not for profit, they are strongly rooted in local cultural traditions).**

**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?

**We propose that the focus of discussion at the moment is shifted to the field of "services provided directly to persons" (for example creating common elements of quality standards). Slovenia is sure that the field of social services of general interest is variously regulated in member states, because of the different traditions. In view of this, discussion needs to be opened, and Slovenia agrees with the need to unify certain characteristics of social services of general interest.**

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

**We welcome the initiative of SPC in relation to mutual cooperation and creating constructive dialogue in the form of the biennial reports announced by the Communication.**