



Ministry of Health and Social Affairs
Sweden

Questionnaire on social services of general interest

Sweden welcomes the consultation processes based on the Commission Communication on Social Services of General interest (COM(2006) 177 final)). However, we had certain difficulties in providing an answer to the questionnaire. The main reason for that is that the very broad definition set out by the Commission is not applicable to the Swedish system. Further, the concept of “social services of general interest” does not exist in Swedish terms. According to the Swedish system it is a clear distinction between social services (for instance social assistance) and social security schemes and unemployment insurance. Social services and social security schemes vary considerably as regards scope, financing, administration etc.

In Sweden it is mainly municipalities and county councils that are responsible for providing social services.

Sweden is looking forward to a continuing discussion on this matter at EU-level. At this stage it is too early to decide how future developments and possible regulation of the area should be.

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.

The description of the social services provided by the Commission’s communication is very broad. As far as Sweden is concerned, however, it is difficult to discuss social services (for example, social assistance, home help service and care of misusers), social security schemes and unemployment insurance together, as they vary considerably as regards scope, financing, administration and requirements for something in return etc. In the case of social security schemes, the insurance itself and its financing is one part and its administration is another. The second step, administration, could be regarded as a service where national legislation so allows. In Sweden public insurance is administered by government agencies through exercise of official authority without any needs assessment.

The concept of “social services of general interest” does not exist in Swedish terms. Also, there is no definition of what is meant by the term social service. When the term is used in Sweden the reference is most often to services falling under the jurisdiction of the Social Services Act (2001:453) and other associated legislation.

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 Commission’s criteria when assessing what is a social service of general interest could be supplemented by a needs assessment requirement.

A needs assessment can apply generally to a group or individually to each beneficiary and be carried out by a government agency, other public body or interest organisation.

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)?

Certain services of general interest are services of economic interest and these are covered by the provisions of the EC Treaty. The question is whether it is possible to talk about social services of economic interest and social services of non-economic interest. Where it is possible to distinguish social services of non-economic interest, these fall within the framework of exclusive national competence.

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.

a) Social services are characterised by the fact that they affect the recipient and his or her integrity personally, which imposes special requirements as to the provision of these services.

b) In case the service is exposed to competition at the market (the municipality) where it is carried out the ability of the individual to participate in the choice of provider and method is important for a satisfactory result from the service.

c) In many cases the social services are designed on the basis of the individual's needs and often contain an element of exercise of official authority, secrecy and legal security.

d) Other characteristics are that they often concern acute needs that must be met.

e) There are often requirements concerning continuity of provision of the 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.

a) For example in elderly care it is important that the recipient of the service feels secure and has confidence in those who are to help with personal hygiene etc.

b) Individuals have the opportunity to influence their situation to a greater extent when they can themselves choose the provider themselves.

c-d) Taking children who suffer significant harm into care in private homes (in return for compensation).

e) Continuity of service from the provider is important, for example for older people in housing for the elderly and people with personal assistance.

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 ?

The individual's freedom of choice promotes free movement of services, freedom of establishment and competition without the agency undertaking a public procurement process, for example. Childcare is mentioned in Article 2 (2) (j) and other services in the example above are aimed at helping people in a position of dependency or at risk of marginalisation.

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.

In Sweden it is mainly municipalities and county councils that are responsible for providing services of general interest. There is no precise definition what is meant by this in the legal act. The preparatory texts of the Local Government Act (1991:900) define this as matters common to all members of a municipality and county council or at least the great majority of them. These municipal duties are regulated in several different laws which normally describe the individual services to the public in detail. Some of these services are provided in part, after public procurement procedures, by private actors. There are also private service providers in schools, health care, community services and housing. To achieve the best results it is important to have freedom of choice as to whether a service is to be opened to competition or not.

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?

The question is impossible to answer as there is no national definition of social services of general interest in Sweden.

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

No, there have not been any problems in relation to national legislation. Municipalities and county councils are bound by the competence regulations of the Local Government Act (1991:900). These stipulate that municipalities and county councils may only engage in matters of public interest.

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

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?

It is too early at present to decide how future developments and possible regulation of the area should be. If any checklists are drawn up they should be flexible, as the services and the underlying conditions for them change.

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.

Public procurement

Inter-municipal cooperation on a social service aimed at attaining a sufficient population base is made more difficult/impossible by the public procurement legislation, including the Remedies Directives which are at present undergoing review.

In order to obtain a sufficient population base, small municipalities often need to cooperate with large municipalities in order to be able to provide certain social services. This also applies between municipalities and county councils. One example is social activities for people with disabilities, which must be provided close to the person's home. Under the procurement legislation it is not possible for a smaller municipality to purchase these services directly from a large municipality nearby.

The individual's choice of the method of care or carer/provider of a social service is made more difficult/impossible by the legislation on

public procurement, including the Remedies Directives mentioned above.

Private initiatives in social services that require public financing may be difficult to carry out within the framework of the procurement legislation.

Public-private partnerships

Cooperation with private actors, such as non-profit organisations, is made more difficult or impossible by the above-mentioned procurement legislation.

Partnerships with non-profit organisations aimed, for example, at providing housing for homeless people or help to older single people cannot be undertaken without first going through procurement procedures.

In addition, Community law is still not clear on how an institutional public-private partnership should be implemented, for example in the social services sector.

State aid

The Swedish model for financing social services is based on local, regional and national solidarity. Central government, county councils and municipalities are each responsible for financing social services via state, municipal and county council tax. This means that the rules on government funding are difficult to interpret in relation to the social welfare model. The Commission has previously drawn attention to the issue of hospitals and government funding, but not given any signals as to how Community law should be interpreted in this respect. The same applies to social services. It is important that the rules on government funding do not obstruct financing of social services, which are a fundamental citizen's right.

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.

The judgment supports the Swedish view that social insurance systems should not be included in this process.

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?

It is important that social services continue to be a national responsibility in the future and that the member states are free to build up and finance their systems as they themselves think fit.

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?

Continuing to discuss the issue of social services of general interest at EU level would clarify how these services relate to the EU's rules on competition and the internal market. For individuals this means guaranteeing that services of a high standard are available. Social services are so specific in their nature that competition rules must be adapted accordingly. The question is also whether social services differ so much from other services that they should be specially regulated. It is too early at present to decide how future developments and possible regulation of the area should be. The way the definition of social services of general interest is formulated will determine continued discussions.

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

Sweden welcomes a continued dialogue on the question of social services. The question of social services is so complex that member states need more time to develop their positions.