



European Economic and Social Committee

TEN/253
**Social services of general
interest**

Brussels, 28 February 2007

OPINION

of the

Section for Transport, Energy, Infrastructure and the Information Society

on the

Communication from the Commission

Implementing the Community Lisbon programme: Social services of general interest in the

European Union

COM(2006) 177 final

Rapporteur: **Mr Hencks**

Administrator: Agota Bazsik

On 26 April 2006, the European Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the

Communication from the Commission Implementing the Community Lisbon programme: Social services of general interest in the European Union
COM(2006) 177 final.

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 21 February 2007. The rapporteur was Mr Hencks.

At its ... plenary session, held on ... (meeting of ...), the European Economic and Social Committee adopted the following opinion by ... with ... votes against and ... abstentions.

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1. **Recommendations and evaluation**

1.1 Social services of general interest exist to achieve social, territorial and economic cohesion by providing solidarity in order to address all situations of social disadvantage that are likely to threaten people's physical or moral integrity, such as sickness, old age, inability to work, disability, lack of job security, poverty, social exclusion, substance addiction, family and housing problems, and problems linked to the integration of foreigners.

Another aspect of SSGI is integration, which goes beyond simply providing assistance to the most disadvantaged and working to improve their lot. These services also exist to meet all needs, facilitating access to all fundamental social services: they help to ensure the effective exercise of citizenship and of fundamental rights.

1.2 What is important, therefore, is not to set the economic dimension against the social dimension, but to promote a constructive synergy between the two and to find a way of combining them harmoniously.

1.3 With this in mind, the EESC considers that rather than focusing on a dubious and evolving distinction as to whether a service of general interest is economic or non-economic, it is necessary to consider the actual nature of the service, together with its purpose and objectives, and to determine which services are covered by the competition and internal market rules and which services, for reasons of the general interest and in the interests of social, territorial and economic cohesion, in line with the principle of subsidiarity, should be exempted from these by public authorities at the Community, national, regional or local level.

- 1.4 Common benchmarks and standards should therefore be defined at Community level for all services of general interest (both economic and non-economic), including social services of general interest, to be set out in a framework directive, adopted under the co-decision procedure, whereby a Community framework can be established which reflects their specific characteristics.
- 1.5 In order to ensure that the general interest mission is fulfilled in a non-discriminatory and transparent manner and is not abused, Member States should explain why these services are in the general interest and in the interests of social, territorial and economic cohesion in an official legal act of "delegation" or equivalent, and in authorisation rules, setting out the mission that the competent public authority of a given Member State entrusts to service providers for providing an SGI and which lays down their rights and obligations, without prejudice to the right of initiative conferred on operators by the regulations.
- 1.6 With regard to evaluating social services of general interest, the EESC wishes to recall, in this context, its proposal to set up an independent monitoring centre to evaluate services of general economic and non-economic interest, with a membership consisting of representatives of the European Parliament, the Committee of the Regions and representatives of organised civil society from the European Economic and Social Committee. At national, regional and local level, the public authorities should involve all stakeholders, providers and beneficiaries of social services, the social partners, bodies working in the social economy and to combat exclusion, etc., in regulating SSGI.

2. **Introduction**

- 2.1 Social services of general interest, just like SGI, of which they are one component, underpin human dignity and guarantee the universal right to social justice and to full respect of fundamental rights, as set out in the Charter of Fundamental Rights and in international commitments such as the revised European Social Charter and the Universal Declaration of Human Rights. They help to ensure the effective exercise of citizenship. They exist to achieve social, territorial and economic cohesion by providing solidarity in order to address in particular all situations of social disadvantage that are likely to threaten people's physical or moral integrity, such as sickness, old age, inability to work, disability, lack of job security, poverty, social exclusion, substance addiction, family and housing problems, and problems linked to the integration of foreigners.

Nevertheless, another aspect of SSGI is integration, which goes beyond simply providing assistance to the most disadvantaged and working to improve their lot. These services also exist to meet all needs, facilitating access to all fundamental social services.

- 2.2 The specific contribution of social services of general interest is thus based on a direct link to basic rights, and it is local, regional, national and European public authorities that are responsible for ensuring that these rights are fully respected, in line with the principles of

subsidiarity and proportionality, according to which the Commission's actions should not go beyond what is necessary to achieve the objectives of the Treaty.

- 2.3 Since pricing does not always directly reflect the cost of these services, or the cost determined by the law of supply and demand, they could not be provided at a price that is accessible to everyone without funding from public authorities.
- 2.4 In conjunction with their duty to ensure that SSGI are properly funded, public authorities have overall responsibility for ensuring that social services are able to operate and that they maintain their high quality, whilst respecting the competences of the stakeholders.
- 2.5 Furthermore, social services of general interest, like all services of general interest, are not only an important factor for economic and social cohesion, but also make a significant contribution to the competitiveness of the European economy and constitute a major source of local employment.
- 2.6 The range of social services is enormous and covers, amongst others, retirement homes, homes for people with disabilities, shelters for people in distress, homes for children, battered wives, immigrants and refugees, nursing homes, residential care homes, organisations providing social housing or youth protection, social action and educational organisations, residential schools, day centres, crèches and nurseries, medical centres, health, rehabilitation and vocational training centres and personal care services, including those provided in the home and family care services.
- 2.7 In all Member States the status of the operators who provide these services varies, including a considerable number of not-for-profit social and cooperative organisations (such as associations, mutual societies, cooperatives and foundations), of many different types (public, charitable, philanthropic, religious, private, etc.). The operation of these services is governed by regulatory and financial frameworks drawn up by the public authorities.

3. **Commission proposal**

- 3.1 As part of the implementation of the Lisbon Community programme, on 26 April 2006 the Commission presented a communication on social services of general interest, following up its White Paper on services of general interest (COM(2004) 374 final) and the vote in the European Parliament of 16 February 2006 on the services in the internal market directive.
- 3.2 The aim of this communication is to interpret the relevant provisions and to provide the necessary legal clarification. It only covers social services – thus excluding health services (which will be the subject of a specific initiative in 2007) – and does not provide for a legislative initiative in the field in the near future. It will study and decide on the need for and the legal possibility of a legislative proposal in the light of the open and ongoing consultation of all stakeholders, of the biannual reports on social services and of a study currently underway in preparation for the initial report in 2007.

- 3.3 This communication should be seen in the context of the Community's and the Member States' shared responsibility for services of general economic interest, established by Article 16 of the EC Treaty.
- 3.4 The communication divides SSGI into two groups: (a) statutory and complementary social protection schemes and (b) other essential services provided directly to the individual, such as assistance to people in overcoming the challenges and crises they face in life, full integration into society, the inclusion of persons with disabilities or health problems, and social housing.
- 3.5 All of these social services are underpinned by a number of common features, such as solidarity, versatility and personalisation (adapting to the needs of each recipient of assistance), the not-for-profit philosophy, voluntary work, charity, cultural sensitivity or an asymmetrical supplier-user relationship.
- 3.6 The Commission considers that modernising social services is one of the most important issues facing Europe today. It acknowledges that social services are an integral part of the European social model and that, whilst they do not form a distinct legal category within services of general interest, they nevertheless occupy a specific position as pillars of Europe's society and economy, because they contribute to the effective exercise of basic social rights.
- 3.7 The Commission notes that this sector, which is expanding rapidly, is in the process of modernising itself so as to address the tensions that exist between ensuring universal access, quality and financial sustainability. A growing number of social services that have to date been managed directly by the public authorities are now covered by Community rules governing the internal market and competition.
- 3.8 The Commission recognises that the legal position of SSGI vis-à-vis the competition rules is viewed by both public and private operators in the social sphere as a source of uncertainty. The Commission claims it is striving to reduce or to clarify the impact of this uncertainty, but appears unable to dispel it completely.

4. **General comments**

- 4.1 In its White Paper on services of general interest, the Commission announced that in the course of 2005 it would be publishing a communication on social services of general interest, which would cover, according to the White Paper, health services, long-term care, social security, employment services and social housing.
- 4.2 In these times of uncertainty about growth and employment, when the gap between the most disadvantaged strata of society and the most well-off and between the richest regions in the Union and the poorest is growing, despite Community or national programmes to combat exclusion and poverty, the need for social services of general interest is increasingly clear and this holds all the more true because demographic changes are resulting in new needs.

- 4.3 The EESC can thus only welcome the publication of the Commission's communication, which confirms the importance of social services for the general public, the particular role that these services play as an integral part of the European social model and the benefits of developing a systematic approach in order to identify and recognise the specific characteristics of these services and to clarify the framework in which they operate and can be – in the Commission's word – "modernised". Nevertheless, rather than talking about "modernisation", the EESC would prefer to use the term "improving quality and efficiency".
- 4.4 What is important is not to keep up with one particular trend or another or to adopt the Commission's¹ approach of linking modernisation to outsourcing public service obligations to the private sector. Instead, what is needed is to regularly adapt service provision to the social needs of the public and of local and regional authorities, as well as to technical and economic progress and to new requirements arising from the general interest. .
- 4.5 The EESC regrets that in the communication in question, the Commission excludes health services, contrary to what it had previously stated, at a time when there is so much interaction and so many synergies between social services and health services. The question *what is the link between health services and related services such as social services and long-term care?* that the Commission asks in its consultation document of 26 September 2006 regarding Community action on health services and to which it would like a response by 31 January 2007, should thus have been asked before the decision was taken on social services alone.
- 4.6 In the absence of any explanatory note, this course of action appears incomprehensible, particularly because in the list of what are to be considered social services, the Commission specifically includes activities to integrate persons with long-term health or disability problems.
- 4.7 To date, health services, which are obliged to provide universal access to high-quality care and which operate on the basis of the solidarity principle, have always been considered to be social policy tools, on a par with services providing personalised social care.

5. **Specific comments**

5.1 **Description of social services of general interest**

- 5.1.1 In line with the observations made in point 4.5, the EESC accepts the description of the specific characteristics of social services of general interest proposed in the communication. This description is broadly formulated and open-ended, which leaves sufficient room to take account of future developments in this sector.

¹ COM(2006) 177 final, point 2.1(3).

5.1.2 The EESC welcomes the communication's reference to the particular role of services to the individual in exercising fundamental rights, which highlights the importance and the *raison d'être* of social services.

5.1.3 The communication's description of the common framework's implementing conditions is nevertheless confined to the most common cases. The EESC would suggest that schemes vary from one Member State to another; the list of categories (total or partial delegation of a social mission, public/private partnership) does not always take account of these differences. The EESC therefore welcomes the planned public consultation as an important means of learning more about the activities of social services and their operating methods.

5.2 **The EC internal market and competition rules**

5.2.1 The EC Treaty gives Member States the freedom to define missions of general interest and to establish the organisational principles for providers entrusted with the task of accomplishing them.

5.2.2 However, when exercising this freedom (which must be done transparently and without misusing the concept of general interest), the Member States must take account of Community law and must respect the principle of non-discrimination and the Community legislation on public contracts and concessions when organising a public service, including a social service.

5.2.3 Moreover, when it comes to services that are considered to be of an economic nature, the compatibility of their organisational arrangements with other areas of Community law must be ensured (in particular freedom to provide services and freedom of establishment, and competition law).

5.2.4 According to Community case law, almost all services provided in the social sphere, with the exception of solidarity-based social security schemes, can be considered to be economic activities.

5.2.5 The consequence of the ECJ's broad definition of what constitutes an economic activity, which has been accepted by the European institutions², is that Community competition and internal market rules (such as State aid, the free provision of services, the right of establishment and the "public procurement" directive as well as secondary legislation) increasingly apply to social services of general interest, which is creating growing uncertainty

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In its 2000 Communication, the European Commission thus wrote that "according to the case law of the Court of Justice, many activities conducted by organisations performing largely social functions, which are not profit-oriented and which are not meant to engage in industrial or commercial activity, will normally be excluded from the Community competition and internal market rules" (point 30). The Communication of 26 April 2006, however, states that "almost all services offered in the social field can be considered "economic activities" within the meaning of Articles 43 and 49 of the EC Treaty". See also the EESC opinion on "Private not-for-profit social services in the context of services of general interest in Europe" - OJ C311, 7.11.2001, p. 33.

amongst public authorities, service providers and users. This situation, if it continues, could alter the objectives of SSGI, despite them being central to the "European social model".

- 5.2.6 The underlying aims and principles of the Community framework for services of general economic interest reflect a rationale that is based essentially on models of economic performance. This is not the rationale generally applied to SSGI and is thus not relevant or applicable in this form to the reality of social services in the European Union.
- 5.2.7 As the EESC stated in its opinion on The future of services of general interest (CESE 976/2006), the distinction between economic and non-economic services remains vague and unclear. Almost any service of general interest, even a service provided on a not-for-profit or charitable basis, entails some economic value, although this does not automatically bring it within the scope of competition law. Furthermore, a service can be both economic and non-economic. Similarly, a service can be economic without the market necessarily being in a position to provide that service in a manner which is consistent with the principles governing SGI.
- 5.2.8 Furthermore, in the case law of the European Court of Justice, the concept of economic activity is extremely broad, because it considers an economic activity to be any activity consisting of supplying goods and services in a given market by an undertaking, regardless of the legal status of the undertaking and the way in which it is financed (see the Höfner and Elser judgment of 1991 and the Pavlov judgment of 2000) and it considers that this concept applies regardless of whether the operator intends to make a profit (Ambulanz Glöckner judgment of 2001).
- 5.2.9 The ECJ and the European Commission attach increasing importance to the economic nature of SGI but are not counterbalancing this by recognising or offering guarantees for the general interest missions carried out by these services, which creates a number of legal uncertainties for operators and beneficiaries. We are therefore moving from general interest towards profitable interest, whereas the distinction to be made is not whether or not a service is 'economic' but rather whether or not it is "profitable".

6. **A stable and transparent legal framework**

- 6.1 The EESC doubts that the flexibility which the Commission claims exists in the application of the Treaty as regards recognition of the specific characteristics inherent in missions of general interest, pursuant to Article 86(2) in particular, is sufficient to allay all legal concerns and to guarantee social services for all. The same applies to the open method of coordination.
- 6.2 All services of general interest, including SSGI, have a role to play in implementing Community objectives as defined in Articles 2 and 3 of the Treaty, in particular to achieve a high level of social protection, to raise the standard of living and quality of life, to attain a high level of health protection and to strengthen economic, social and territorial cohesion.

- 6.3 Consequently, the Union, which is responsible for achieving these aims, is also responsible for the implementing instruments which are, where fundamental rights and social cohesion are concerned, economic or non-economic SGI. The EU must therefore, with due respect for the principles of subsidiarity and proportionality and in conjunction with the Member States, safeguard and contribute to the existence of SGI that are accessible, affordable and of high quality for everyone.
- 6.4 Given the problems of producing an exhaustive definition of the concept of SGI/SGEI on the one hand and the given the risk entailed in adopting a restrictive approach on the other, the distinction between economic and non-economic should be dropped in order to focus instead on the particular mission of the services in question and on the requirements (public service obligations) imposed on them for the performance of their duties and which should be clearly established.
- 6.5 Furthermore, the great diversity of situations, rules and national or local practices, and the obligations on managers or public authorities, mean that the rules to be implemented must take account of the specific characteristics of each Member State.
- 6.6 It is not, therefore, a question of deciding what is economic or not, but of deciding which services are covered by the competition and internal market rules and which services, for reasons of the general interest and in the interests of social, territorial and economic cohesion, in line with the principle of subsidiarity, should be exempted from these rules by Community (for European SGI), national, regional or local authorities.
- 6.7 As the EESC³ has been urging for years, common benchmarks for services of general interest must therefore be defined at Community level, as well as common standards (in particular for management and financing methods, the principles and limits of the Community's action, independent performance evaluation, consumer and user rights, a minimum level of public service missions and obligations) that should apply to all services of general interest, including SSGI, to be set out in a framework directive adopted under the co-decision procedure, whereby a Community framework can be established which reflects their specific characteristics, in order to complement the services directive.
- 6.8 In order to ensure that the general interest mission is fulfilled in a non-discriminatory and transparent manner and is not abused, Member States should explain why these services are in the general interest and in the interests of social, territorial and economic cohesion in an official legal act of "delegation" or equivalent and in authorisation rules, setting out the

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EESC Exploratory opinion on "Services of general interest" – OJ C241, 7.10.2002, p. 119.

EESC Opinion on the "Green Paper on Services of General Interest" – OJ C80, 30.03.2004, p. 66.

EESC Opinion on the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the White Paper on services of general interest – OJ C221, 8.9.2005, p. 17.

EESC Opinion on The future of services of general interest – OJ C309, 16.12.2006, p. 135.

mission that the competent public authority of a given Member State entrusts to service providers for providing an SGI and which lays down their rights and obligations, without prejudice to the right of initiative conferred on operators by the regulations.

6.9 This act (in the form of legislation, a contract, agreement, decision, etc.), could, in particular, detail:

- the nature of the specific mission of general interest, the related requirements and attendant public service obligations, including pricing, the provisions to ensure continuity of service and the measures to avoid potential interruptions in service provision;
- the rules for drawing up and, if necessary, amending the official act;
- the authorisation and professional qualifications arrangements;
- the funding methods and the models for calculating compensation for the costs incurred in accomplishing specific missions;
- the arrangements for evaluating the implementation of SGI.

6.10 The EESC recommends adopting a specific legal framework that is common to social services and health services of general interest, as part of an overall approach in the form of a framework directive for all services of general interest. This should help to ensure the appropriate legal stability and transparency for SSGI at Community level, in strict compliance with the principle of subsidiarity and in particular with the powers of local and regional authorities to define the missions, management and funding of these services. The principles set out in this legal framework should form the basis for the EU's stance in international trade negotiations.

7. **Evaluation**

7.1 The White Paper on services of general interest set particular store by an evaluation of social services of general interest, by means of a mechanism to be clarified in a future communication.

7.2 In order to enhance mutual information and exchanges between European operators and institutions, the Commission proposes a procedure involving follow-up and dialogue, in the form of biannual reports.

7.3 In this context, the EESC recalls its proposal that an independent monitoring centre be set up to evaluate services of economic and non-economic general interest, with a membership consisting of representatives of the European Parliament and the Committee of the Regions and representatives of organised civil society from the European Economic and Social Committee.

7.4 At national, regional and local level, the public authorities should involve all stakeholders, providers and beneficiaries of social services, the social partners, bodies working in the social

economy and to combat exclusion, etc, in regulating SSGI at all stages, in other words, in establishing, monitoring, and implementing quality standards and ensuring their cost-effectiveness.

- 7.5 This monitoring centre should comprise a steering committee, which will define the aims and the terms of reference of the evaluations, select the bodies entrusted with the task of carrying out the studies and examine and deliver an opinion on the reports. The committee will be able to call on the services of a scientific advisory group, which will study the methodology used and make recommendations on the matter, as and when required. The steering committee will ensure that presentations are given and public discussions held on the evaluation reports in all Member States, with the involvement of all stakeholders. The evaluation reports must consequently be available in all of the Union's working languages.

Brussels, 21 February 2007.

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