

Implementing the Community Lisbon programme: social services of general interest in the European Union

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PURPOSE : to present a communication on social services of general interest (SSGI) in the EU.

CONTENT : this Communication is a follow-up to the White Paper on services of general interest, which had announced its intention to identify the specific characteristics of social and health services of general interest and to clarify the framework in which they operate. It should be remembered that the existing Community framework respects the subsidiarity principle. Member States are free to define what they mean by services of general economic interest, or in particular by social services of general interest. On the other hand, the Community framework requires Member States to take certain rules into account when they determine the arrangements for applying the objectives and principles they have established. This Communication is a further step in taking the specific nature of social services into account at European level and clarifying the Community rules applicable to them.

The Communication begins by attempting to define and categorise social services in the EU, and describes a general trend towards modernisation and quality. It presents an open list of characteristics reflecting the specific nature of social services as services of general interest. In addition to the traditional criteria of the general interest (universality, transparency, continuity, accessibility, etc.)

recognised for social service missions, these characteristics refer to the organizational conditions and modalities applying to them. Social services constitute a booming sector, in terms of both economic growth and job creation. Although they are organised very differently in the Member States, certain general aspects of this modernisation process can be seen, such as the outsourcing of public sector tasks to the private sector, with the public authorities becoming regulators, guardians of regulated competition and effective organisation at national, local or regional level.

The Communication goes on to discuss the application of the subsidiarity principle and the distinction between economic and non-economic services of general interest. Member States freedom to define missions of general interest and to establish the organisational principles of the services intended to accomplish them must be exercised transparently and without misusing the notion of general interest. Member States must take account of Community law when fixing the arrangements for implementing the objectives and principles they have laid down. For example, they must respect the principle of non-discrimination and the Community legislation on public contracts and concessions when organising a public service. To understand properly the specific conditions for the application of the Community framework to social services, the Communication deals with the most frequent situations. These include the following:

- delegation, where Community law on public contracts and concessions may come into play;
- use of public financial compensation, which must be compatible with competition rules;
- regulation of the market, with particular reference to the rules and general principles of the Treaty pertaining to the freedom to provide services and freedom of establishment;

- compatibility with the rules on access to the market: Community rules encourage public authorities to be clear about the correspondence between the burdens associated with the mission and the restrictions on access to the market they consider necessary to allow these organisations to perform properly.

The characteristics of social services of general interest identified in this Communication will constitute the starting point for a consultation by the Commission of all the actors concerned: Member States, service providers and users. This consultation will notably look at:

- the elements constituting these characteristics as well as their pertinence to gauge the specific features of social services of general interest;

- how they could be considered by the Member States when defining the general interest missions of social services and the arrangements for their organisation, so as to ensure a good institutionalised link with the Community framework;

- the experiences with the application of Community law in the field of social services of general interest and possible problems that are faced in this context;

- how the same (or other) characteristics could be considered by the Commission where it has to check subsequently and individually, the compatibility of the organization modalities of social services with the applicable Community rules.

Furthermore, in order to improve the reciprocal knowledge of operators and the European Commission of questions concerning the application of the Community rules to the development of social services, a monitoring and dialogue procedure in the form of biennial reports will be established. The aim is to take better account of the diversity of social services, and to consider how the Commission and Member States could use the specific characteristics of social services of general interest in order to reduce the legal uncertainty inherent in situations where a case-by- case approach is needed. In the light of this experience, the Commission will decide how to follow up this process and identify the best approach to take, including, giving consideration to the need and legal possibility for a legislative proposal.