



A joint answer from Church and Society Commission of the Conference of European Churches and Eurodiaconia to the

Questionnaire on Social Services of General Interest for the Social Protection Committee and the European Commission

Eurodiaconia and the Church and Society Commission of the Conference of European Churches welcome the decision of the Commission to prepare a communication on social services of general interest but are concerned that the clarification of the role of this sector comes too late in relation to other developments within the service sector, which seem to have an impact also on social services. Eurodiaconia and the Church and Society Commission, furthermore, strongly support the commitment of the Commission to prepare the description of social and health services in close co-operation with civil society.

Eurodiaconia and the Church and Society Commission welcome the commitment of the Commission to foster well-functioning, accessible, affordable and high-quality services of general interest, ensuring that European citizens can effectively enjoy their fundamental rights and that the Commission recognizes the special character of social services. Eurodiaconia and the Church and Society Commission consider it necessary to further define the concrete content of the principles of universal services, continuity, accessibility, high quality, affordability, sustainability and user and consumer protection at European level.

The questionnaire was sent to all our members, covering all EU Member States, and asking for their reactions. This questionnaire at hand is a compilation of the received answers.

The Church and Society Commission (CSC) is one of the commissions of the Conference of European Churches (CEC). CSC links CEC's 126 member churches from all over Europe and its associated organisations with the European Union's institutions, the Council of Europe, the OSCE, NATO and the UN (on European matters).

Eurodiaconia is a federation of 43 members - churches, non-statutory welfare organisations and NGOs in Europe - operating at national and international level. Eurodiaconia members are rooted in Christian faith within the traditions of the Reformation as well as in the Anglican and Orthodox traditions. Eurodiaconia network diaconal and social work of institutions and church communities and co-operate with civil society partners.

You will find herewith the joint reply of Protestant, Orthodox, Anglican and Old Catholic churches and their diaconal associations. Most of them have not been involved in or even informed about the consultation process by their national authorities although they are service providers in the national context. Some churches or diaconal organisations do not have the resources to answer such questionnaires, although they are providers of social services of general interest.

Field 1 – Overview of the national SGI

1. What are the general characteristics of the national social SGI¹ with regard to e.g. the following points?

- **Organisation, design and structure (geographical, market structure, administrative level);**

Most national social SGI (services of general interest) are provided under a “quasi-market” structure, which means that they depart from the normal market mechanisms in terms of supply & demand. Their beneficiaries or users are not mere consumers, but because of information asymmetries and moral hazard, they ought to play an active role in the delivery process, notwithstanding their vulnerabilities. Some such services can also be regarded as public goods or, at least, allow for externalities.

In our understanding, social services are person-related services and having particular requirements of, amongst others, solidarity, voluntary service and the inclusion of the most vulnerable groups of people. Our answer to the questionnaire therefore only reflects on person-related, non profit orientated social services and health services with special regard to the particular situation of services provided by churches or church-linked diaconal organisations.

Social services in Northern Ireland and Ireland are primarily delivered by the state, but substantial non-economic areas are reached via social partnership arrangements with charitable and voluntary sector bodies. The Church of Ireland will comment on these areas as their primary area of engagement. The Church of Ireland views this as a good example of representative participatory democracy. By using a broad spread of social partnerships representing the various social groups in society, government may support voluntary and charitable sector partners in a way that is fair, equitable and transparent. This mechanism enables diversity to exist in a society going through a period of rapid social, economic and cultural change. It encourages social participation by engaging individuals from different groups in a dynamic and on-going way. Those who need services are engaged with other individuals rather than with state officials.

¹ This is the field where it is impossible to give an overview covering all different aspects. So it might be useful to place the services in comparable groups and treat these groups together. Member States are invited to concentrate on those services which seem most important or where the biggest uncertainty is noticeable.

In Germany, the structures of social services are mostly focussing on a variety of different offers.

Cooperation between public, non-profit and, in a small amount, profit service provider's helps guaranteeing this diversity.

In this context the regionally and locally embedded social services are significant resulting from their closed relationship to local community life, i.e. in local authorities or local groups of volunteers.

Some typical aspects of the legal framework surrounding voluntary social services from a German point of view are:

- *A pluralistic offer of social services and a person's right to choose a social service and to have easy access to that service.*
- *Respecting the autonomy as to objectives and implementation of social assistance before the background of a public service obligation;*
- *The conditional preference given to private voluntary providers vis-à-vis public bodies, with any commercial providers being put more and more on an equal footing with voluntary providers;*
- *The adequate provision of public resources in favour of the needy who is legally entitled to a service (person-related support) and/or in the form of payments to the bodies responsible for social services (object-related support).*

Guided by the legal framework, the providers of voluntary social services operate autonomously so that they have flexibility in particular for implementing the value-orientation of their services. The co-operation with public bodies has to complement each other for the benefit of the people concerned.

➤ **financing (e.g. contributions, direct funding via government budget, payment of remuneration for the service, charity donations);**

Most social SGI are financed by those three sources (budget from government or other regional or local authorities, remuneration of service, charity donations), but one should not overlook the financing on other grounds such as social contributions, which is especially the case for social security schemes.

*As an example, **the German system** is structured as follows:*

Funding of social services

A variety of instruments are available to fund social services. They depend on

- *Administrative competence and*
- *Kind of service*

Funding follows legal stipulations and the respective commitments of public funding agencies (municipalities, Länder, State, social security bodies) vis-à-vis the beneficiary having a legal claim to services, and also via programmes.

Award of grants

- *of a global nature for central tasks of an association*
- *for providing a specific service*
- *for personnel costs*
- *for investments*

Award of (case by case) lump compensation

- for settlement of individual services
- also in the form of personal budgets

Agreements on remuneration for services

Service agreements and delivery contracts form the framework for services

Promotion via projects and programmes

For implementing specific programmes (e.g. advice on social matters for migrants)

Use of own resources

Own resources are used fully, e.g. when establishing new activities, or on a pro rata basis. Depending on the programme in question they are required in varying percentages. They also serve for accessing public funds. The associations generate their own resources via membership fees, donations, legacies, lottery moneys, foundations, and church tax. The diversity of the offer is made possible in particular by the specific legal position of the associations, and the legal privileges linked to their non-profit character and allowing the acquisition of own resources, which in turn allow the funding of new activities and lead to a mobilisation of public funds.

- **service provider (e.g. state and local authorities, public enterprises, public-private partnership, voluntary non-profit organisations, role of volunteers, private enterprises);**

In the enumeration the distinction between „private entity with profit making purposes“ and „non-profit private entity“ is missing. The Church-related charitable associations are part of the private non-profit organisations. But the Churches themselves in their various legal structures within the member states are both owners of institutions and direct providers of care (for example: nurseries, advisory services, hospitals and caring facilities sponsored by church communities). For churches working on a social field is a part of being and their vocation.

Diaconal and Church related non-profit organisations always play an important role in the provision of social SERVICES OF GENERAL INTEREST, which supposes an important involvement of volunteers. Volunteers are value adding to the quality of services and their work is not to be seen as an economical surplus, lowering the cost of service provided. Voluntary social services activate people on behalf of the common good and provide opportunities for action and participation to do so. Thus they make an important contribution towards assuming social responsibility, democracy in action and solidarity.

Diakonisches Werk der EKD explains: *The above enumeration of different types of providers does not consider the difference between private for-profit enterprises and non-profit enterprises. It only mentions private enterprises in general.*

Social assistance does not start with professional social services. There is (an informal network), an “ante-room” of such assistance where family and neighbourhood as well as privately organised networks lend support, based on individual motivation and values, as they are typical for a pluralistic society. This visible person-related approach of any such assistance is continued in the social services. They are individual, person-related types of assistance designed to help people to help themselves.

This presupposes a mutual personal relationship between the person in need and the giver of assistance. The helpers must be able to develop sensitiveness and competence to carefully find out the individual desires and state of minds of each person. It requires that each helper receive the needed individual flexibility, which is his/her own responsibility to apply.

Only this way it is possible to achieve the objective to satisfy in a particular way the individual needs of the people concerned. With this, social services face special challenges. In principle, any social service operates on the basis of such an understanding of social assistance. Each social service - independently by which public, non-profit or commercial provider it may be offered - has to satisfy these pre-requisites as well as the technical and qualitative requirements for a service of a professional orientation.

Social services of charitable associations differ from other providers of social services in particular by the values upheld by the responsible bodies and their associations. They are characterised by a broad range of different humanitarian, philosophical and religious objectives. This range, which ties in with the various motivations and value-orientations upheld by the people active in the "ante-room" of assistance, is reflected in the respective principles and support concepts of the associations and their establishments as well as in the individual form of assistance.

Citizens who are actively involved are:

- *Responsible for social services, for instance as board members of an association providing such services, as members of the parish council in a congregation;*
- *Actors of social assistance due to feelings of personal empathy;*
- *Supporters via intangible and financial donations;*
- *Helpers by assuming concrete tasks in areas of interest to them;*
- *Facilitators who raise the awareness among and motivate other citizens with regard to social issues;*
- *Advocates and mediators for the concerns of those disadvantaged or excluded.*

The work of volunteers is an important element of voluntary social work. Many initiatives and services in the health and social fields would be inconceivable without voluntary helpers. Volunteers can correct any assessment of social work that is limited to technical-monetary aspects, and can contribute to its innovation. Into the social policy debate they can introduce issues and new social needs for action. They can enrich the quality of life and the atmosphere in social establishments and thus introduce something not found in any catalogue of benefits.

*The **German churches and diaconal institutions** also refer to the legal situations: The social mission of the Churches and their charitable associations is, as mentioned in the statement on the Green Paper on „Services of general interest“, the free exercise of religion under the protection of Art. 4 of the Grundgesetz (German Basic Law), Art. 9 of the European Convention on Human Rights and Art. 10 of the European Fundamental Rights Charter. The Churches and their charitable associations perceive their mission in the social area in varying structures. Within the framework it is not the legal structure that is of importance*

but that the organisation in question is assigned to the Church „in a specific way“ (BverfG 46, 73 (German Federal Constitutional Court))

As presented by the Churches and their charitable associations in their statements on the Green Book on Services of General Interest and the EU's Monti Package, the mission of „Services of General Interest“ in the field of healthcare, youth work, family care, care for the elderly and the disabled has been initially devised and since continued by the Churches and/or their charitable diaconal institutions. The state considers the work of the Churches and charitable associations as positive and profitable for society and not only respects their activity but also actively encourages it.

The provision of care for the poor and needy, along with healthcare and education has been taken over by the state in a long and historical process, however without withdrawing responsibility for implementation from others, such as churches and private-sector service providers.

Therefore the requirement for a welfare state as defined in Art. 20 of the Grundgesetz and, for example, the right to self-determination guaranteed to the Churches in Art. 140 of the Grundgesetz associated with Art. 137 of the WRV (Constitutional Law of Weimar) are complimentary. This results in joint action of State and Church welfare services to achieve of the social State, which has found a positive legal expression in numerous norms of German legislation. The memorandum of the BAGFW (Non-statutory welfare in Germany) lists these norms in the appendix. On a European level the meaning of the cooperation with welfare care organisations in the social field has found its expression in the declaration No. 23 of the Maastricht Treaty. Art guarantees the right to self-determination of the Churches. 6 of the EU Treaty along with Declaration No. 11 annexed to the Treaty of Amsterdam, which has been replicated in Art. 52 (para. 1 and 2) of the Draft of the Constitutional Treaty signed by the EU member states on 29th October 2004.

The fact that social services in Germany are significantly depending upon the voluntary efforts of numerous people in the parishes and are therefore frequently anchored in the lower levels of the State shows the importance of the principle of subsidiarity in guaranteeing social standards in Europe. The democratic participation and co-responsibility for the common welfare find expression as horizontal aspects of subsidiarity as well as in the large number of service providers and in the various structures of social services. When reflecting on the distribution of competences in the area of social services of general interest it should be taken into account that according to the principle of subsidiary the social services in member states often are anchored to the lower and geographically closer level and shaped accordingly through different traditions.

- **definition of tasks/obligations (what are these tasks/obligations and how are these laid down, i.e. contract, law or other);**

Social SIG are generally provided in a complex regulatory framework partly common to other services (labour regulations), partly specific (authorization schemes, financing rules,).

Where authorization schemes are present, they can also serve for providing “objective” grounds for public financing and a decisive guarantee of high quality standards respecting the Member States national identity.

Diakonisches Werk der EKD explains:

Continuity and reliability are trademarks of a high quality service provision. The citizens must be able to rely on finding a variety of forms of assistance and support according to their various life situations and orientations. Starting with voluntary work the social services of charitable associations are geared towards sustainability. In other words, they are integrated into the associative structure, have no limitation in time, and happen on a local level. Charitable associations understand that their very task is to assume social responsibility on a continuous level. This task is laid down in different laws or contracts, as far as the States compile them in legal terms.

Evangelical Lutheran Church of Finland refers to the definition of tasks under national law of church based social services:

Many of the social services carried out by the Church, for example diaconal services, are in fact basic tasks of the Church in accordance with chapter 1, paragraph 2 of the Church Law. In this respect, we emphasize the principle in the Declaration No 11 annexed to the final act of the Treaty of Amsterdam, which also has been incorporated into the Treaty establishing a Constitution for Europe, article I-52 (1), according to which the Union respects and does not prejudice the status under national law of churches and religious associations or communities in the member States. Accordingly, we maintain that diaconal tasks, which are carried out as basic tasks of the Church, fall within the autonomy of the Church and are thus outside the scope of any Community measures.

➤ **quality standards.**

There has not been a detailed definition at the European level as to what is quality.

Eurodiaconia and the Church and Society Commission are in favour of creating minimum standards to guarantee public safety and to hinder unfair competition, and at the same time provide for freedom of establishment and free movement of services. The White Paper on services of general interest mentions several “high-quality” elements like guarantee of provision of services to consumers and users, complete territorial coverage, effective accessibility, affordable prices, increase in choice, effective safety, security of supply and the protection of the environment. It is good to keep in mind that high-quality services are most needed by those who are the poorest in a society. Participation of people in poverty is needed to define “high-quality” social services.

For social services quality cannot be determined in a quantitative definition of needs, but in a sense of considerations of how the caring processes must be organized in order to achieve satisfactory levels of goals and results. Furthermore it has to be taken into account that social services are often provided to people who can no longer take care of themselves. Beyond that the plurality of services is of great importance in order to meet the substantially different needs of people in this sensitive field satisfactorily and to make voluntary and civic engagement possible in the fast moving social reality.

Eurodiaconia and the Church and Society Commission hesitate to approve the proposal to increase the use of *voluntary* European standards, as those basic standards are not likely to be as high as could be hoped for. In order to avoid social dumping, minimum standards must be guaranteed.

We are also worried about the implications of new granting authorisation. The plans to abolish or restrict a number of procedures and requirements for the granting of authorisation may endanger the right of authorisation of social services in the member states and thus weaken the fundamental pillars of healthcare systems or of the social economy in many Member States. Eurodiaconia and the Church and Society Commission underline the importance of the principle of freedom of establishment for the provision of sufficient supply of social services in the member states. However, should the number of authorisations for a particular activity be limited, member states must choose a procedure in which the quality of the service provided should be one important criterion when taking the decision to authorise.

We can list indispensable requirements for a specific service quality with the focus on the following quality orientations:

Quality orientation of social services

Guiding principles: Guiding principles constitute a value-related framework of orientation in the concrete daily activities of social services.

User orientation: Actions and services are designed and provided in the light of putting a human needs' in the centre. The diversity of human needs means that social services can rarely be delivered in the standardized forms. Time, understanding, respect of the person's individuality are essential to determine the best service to be offered to an individual. These features are hardly compatible with profit requirement (personal cost, time constraints etc.)

Community and civic orientation: A quality service has sufficient knowledge of local circumstances and culture including the availability of services in one's own language. Universal access to services promotes social and territorial cohesion. Where as, the involvement of volunteers is part of social services as a necessary contribution towards a smooth functioning of a social community.

Employee's orientation: The quality of services depends on the involvement, competence, motivation and satisfaction of the trained staff, promoted by respective activities offered by the organisation (e.g. quality training and education).

Service orientation: Providers of social services should have a possibility to offer a wide range of services, as quality social services require a holistic approach of the person and her/his needs. The diversity of socio-pedagogic and caring approaches and methods is taken into account with the objective to improve life situations and chances for participation.

Objective and effectiveness orientation: There must be a constant monitoring of the impact social measures have. Objectives have to be defined and success criteria described that centre around the life situation of the persons in need. There must be an effective empowering approach, enabling people to involve themselves in defining personal needs that contribute to guaranteeing that their needs will be served adequately.

Resource orientation: It is presupposed that available resources, especially of a

financial and ecological nature, are handled conscientiously and responsibly in order to guarantee sustainable action. There must be universal access to services and we must guarantee that this access will remain over generations.

Quality management: *It is necessary in order to guarantee that the quality orientations are being implemented in the social services.*

Protection: *Because of the sometimes vulnerability and often dependency of the users, mechanisms need to be in place and effectively monitored and defend user's rights by public authorities, users and users organisations to prevent abuses: physical, mental but also financial (conflicting commercial interest of the providers).*

Partnership: *The co-operation between the social services and the funding agencies must be based on a partnership necessary for a qualified rendering of services. In legislative terms these aspects are taken into account mostly by agreements being supposed to be made only with providers of services that fulfil the requirements of capacity to perform, economic viability and financial prudence when rendering the service. Therefore efficiency and transparency are integral parts of agreements. Legal provisions that guarantee an individual right for the citizens create legal certainty.*

There must be possibility to develop new kinds of cooperation with the public and municipal sector and various social and health organisation to foster delivery of high quality services.

2. Please indicate whether and if so how these characteristics are likely to develop and change in the coming years. This with a view of the modernisation of these services (taking into account developing users' needs, quality standards and (financial) efficiency).

If efficiency, transparency and cost reduction are paramount, then social objectives may be partly overlooked. There is a danger that the values and objectives as well as the fundamental rights within the Member States and in EU Treaties will remain unaccounted for, and that the existing social protection, which is shaping the European social model, will therefore be reduced.

Increasing use is made of reporting tools, as well for financial as for other purposes (social reporting, including training, non-discrimination tests for job policies...)

The Methodist Church in Great Britain describes its experiences in the United Kingdom:

The UK has seen much 'privatisation' of social services over the past 20 years. Local Authorities been required to put their services through a competitive process. Compulsory Competitive Tendering caused difficulties of quality; the determining factor in awarding contracts was price. The subsequent 'Best Value Process' was about balancing quality service provision against costs; achieving sustainable development; being accountable and transparent, by engaging with the local community; ensuring equal opportunities and Continuously improving the outcomes of the services they provide.

These processes in many instances opened the market for charitable and voluntary organisations and in some churches. Such organisations who put themselves in the market for providing services have learned to compete in this environment, using language and evaluation tools that demonstrate ability to provide services and importantly meet quality targets but also learning how to demonstrate the

'added' value that an organisation with a charitable or faith base is able to bring. The Best Value process is a helpful tool in this regard.

3. Are there examples of social SGI, which use market mechanisms to fulfil their tasks; what could be learnt from these experiences?

There seems to be a general trend toward the increasing role of market mechanisms in the social field (e.g. residential care for the elderly). The “market creaming” issue should not be overlooked in this respect.

Church of Ireland supports this strongly.

Field 2 – Definitions of social SGI

4. Is there at national level a notion or definition of social SGI or social services generally?

Such definitions are not always available and they can't easily be derived from the regulatory environment they are embedded in.

Church of Ireland believes the definition of social SGI is more developed in the UK than in Ireland.

In Germany there is no general used definition for social services.

5. It has been argued that social SGI are different to other SGI – Do you agree with this? Is a more detailed analysis of these possible differences – especially in relation to networks industries² – a way forward to gain more certainty?

Social SGI differ indeed fundamentally from other SGI to the extent that they are person-centred, as well on the provider as on the beneficiary side, rather than mere industries like (tele) communications or the provision of energy. The aim for the most social services is to improve their users life situation on the way that in the end their services are no longer needed and the service user will leave the service (e.g. employment office, family counselling).

Most services of general interest offered by the Church of Ireland are both social and person-related and would find such a distinction helpful.

In their statement on the Green Paper of the European Commission and the Monti Package the German Churches have referred to the fact that social services fundamentally differ from other services in the field of services of general interest. The European Commission has acknowledged the characteristics of services of general interest in the social field in its White Paper.

² In this context reference has to be made to the Commission Staff Working Paper “Horizontal Evaluation of the Performance of Network Industries providing Services of General Economic Interest” (SEC(2004) 866), which gives a good overview of the different aims and the performance of these services.

Diakonisches Werk der EKD refers the conclusions of the Memorandum of the Civic Added Value of Voluntary Social Services that is done by 'Bundesarbeitsgemeinschaft der Freien Wohlfahrtspflege'. In the conclusions three results are pointed out:

- 1. Social services are implementing social rights and social justice, promoting social cohesion and securing a balanced economic and social development and the objective of a balanced economic and social development.*
- 2. Social services are integrated into the associative structure (of social model); they have no limitation of time, and happen on a local level. Continuity, reliability and sustainability are trademarks of a high quality service provision.*
- 3. Mobilising resources of civil society is decisive for the future viability of Europe. Neither the State nor the market can do this. Voluntary organisations are in a position to make it happen. Volunteer involvement needs a structural framework that enables initiative.*

- 6. In case you feel that social SGI are different to other SGI please indicate what could then be the elements for a description at European level of these specificities of social SGI's, taking into account the diversity of general interest missions related to social services in the Member States and the general principles³?**

In social services, the outcome cannot be properly assessed on grounds of classical “consumer satisfaction” and “standardised goods” approaches. As most of the effects are long-run effects and there is an important asymmetry of information between provider and beneficiary: each of them knows essential things the other does not necessarily know. Non-profit providers generally have special skills in this respect that should be duly taken into account.

The Methodist Church in Great Britain declares:

Social Services are to enable the support of the most vulnerable in society; people who deserve the best in quality and safety. At the same time there is a need to demonstrate cost effectiveness in terms of the benefits to wider society as a whole.

Could the elements worked out in the “Key issues” of the Conference “Social Services of General Interest in the EU” (28 and 29 June 2004) be a good base for this description⁴ in the European context? Which elements have to be added; which have to be amended?

The elements worked out in the “Key issues” can only be a starting point for further reflections.

³ *These principles are inter alia quality, availability, equal access, universality, affordability, continuity, participation, and transparency).*

⁴ *Document in Annex*

7. Which of the different sectors outlined under Field 1 should have priority for the examination at European level

Since we haven't place the services in comparable groups and treated these groups together, we suppose the sectors referred to are those mentioned in the introduction to the questionnaire instead as under Field 1, i.e.:

- *Statutory social protection schemes*
- *Supplementary social protection schemes: income protection;*
- *Health and social care services;*
- *Support for families: child-care;*
- *Services to promote social integration and to support people in difficulties (e.g. homelessness, drug dependence, disability, mental or physical illness);*
- *Social housing*

Moreover, no single service deserves priority as they all belong to a same model, which may not be unravelled. Moreover, we think other sectors should also be added as services for the integration of migrants, child care services, which play a key role in the Lisbon strategy, services for the elderly and people with disabilities, services for long-term unemployed and their families, services in the field of education, vocational training, projects empowering people in poverty, youth welfare, sports, etc ...

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| Field 3 – Experience with EC internal market or competition rules |
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8. Please indicate for the services identified under question 7 with regard to the EC rules listed below (see also background document) whether:

- a. it is established (in case-law or by way of Community law) that these services fall outside the scope of these rules**
- b. it is established (in case-law or by way of Community law) that these services are falling within the scope of these rules**
- c. it is unclear if these rules apply to these services, there is a need for clarification ("grey zone")**

It seems clear that most services fall in the so-called “grey zone”, which does not so much call in the first place for further clarification than for an adapted framework guaranteeing that the specific nature of those services be correctly taken into account.

- **Internal market rules;**
- **Art. 81 and/or Art. 82 EC;**
- **Art. 86 EC;**
- **Art 87;**
- **Public procurement rules;**
- **External trade negotiations.**

Substantial juridical insecurity remains in regard of all the listed EU regulations.

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| <i>German churches make some fundamental remarks on this:</i> |
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| <i>- A coherent approach concerning social services is lacking. The characteristics of social services are of equal importance for internal market regulations, the procurement law, for foreign trade and not least for the competition regulations in the EU Treaty.</i> |
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- *European competition law cannot be applied without consideration for the characteristics of the social sector. We must come to a reflection, which harmonises competition law and the existing, and further developing social model.*

-*On the social services considered by the Commission for whose preparation this questionnaire corresponds, must work out the characteristics of social services. Only then should reflections be initiated on how these characteristics can be taken into account within the mentioned EU regulations.*

In the field of state subsidy legislation the following aspects have to be taken into further consideration:

The reflections of the European Commission in the frame of the Monti Package in the spring of this year show that the DG Competition of the European Commission recognises the characteristics of the social field. According to the jurisdiction of the Court of Justice of the European Union, application of European Competition Law must allow for the characteristics of services in the social field as described (Urt. v. 7. 2. 1985, ADBHU, 240/83, Slg. 1985, 531, Rn. 18; Urt. v. 10. 5. 2000, Ferring, T-46/97, Slg. 2000, II-2125; Urt. v. 24.7.2003, Altmark Trans, C-280/00). This has always been defended by the German Federal Government in relation to the Institutions of the European Union, most recently in the preparation of this questionnaire.

It would be contradictory and therefore against the spirit of the law, if the objectives of competition were to be set above the aims of social protection, because it is part of the European Union's responsibilities to achieve a high level of social protection (Art. 2 of the EU Treaty). In the preamble to the Union Treaty the importance of fundamental social rights is emphasized and these are guaranteed at the EU level by Art. 33 ff. of the European Fundamental Rights Charter.

This is even more important since the well being of the community is taken more and more into consideration at the EU level. Thus the Commission on Services in the social sector and in the Health protection sector envisages services in their Green Paper „as an indispensable part of the European society model“ and ranks it among the values that are common to all member states (Cif. 2 of preamble to Green Paper). In the Green Paper the Commission itself refers to the fact that in the Amsterdam Treaty the emphasis has shifted (Cif. 7 of the preamble) with the recognition of the value that services of common economic interest take within the common values of the Union (Art. 6 EU Treaty). This corresponds to the opinion that Art. 16 should strengthen forms of economy aimed at the well being of the community in the framework of the European economic regime. The judgment “Altmark” (Rs. C-280/00) strengthens public general interests. With the withdrawal of the objective concept of public subsidies the Court of Justice has under certain conditions withdrawn compensation payments from the control of the Commission.

In addition it has to be pointed out that the judgment of the European Court of Justice „Altmark“ only refers to a part of the services of general economic interest. The adjudicated situation is a „purchased“ public interest obligation in an otherwise commercial market. In contrast to this, services in the social and health sector in Germany are generally delivered through non-profit making

structures. Therefore the “Altmark” judgment, under certain circumstances, does not refer to social services of general interest.

Beyond that, the four conditions identified in the Altmark judgment cannot be applied to all social services in the same way. This is for example true for the fourth condition, according to which the amount of balanceable costs depends on a comparison with a generally well-managed company. The Court of Justice settled in its „Chronopost“ judgment (Rs C-83/01, 93/01, 94/01) that specific services do not arise from purely commercial considerations. Under certain market conditions a comparison with a private company is therefore inappropriate, but other available objectives and verifiable factors should be taken into account. In its judgment „AOK Bundesverband“ (Rs. C-264/01, C-306/01, C-354/01 und C-355/01) the Court of Justice decided that even if an economical activity of some kind exists, the primary purpose of solidarity must be considered. This indicates that there is some leeway regarding the „functional understanding of enterprise“.

9. Please describe experiences concerning the influence of these EC rules on social SGI (may be “good” or “bad” examples; e.g. have these rules enabled the efficient provision of certain services or have they limited the freedom to realise national social policy goals)?

It has been observed that in some cases, even when European rules do not apply, national or regional public authorities sometimes decide to comply these rules in order to avoid any risk of contradicting EU rules. More over, the requirement of written decision criteria often adds to the complexity of the procedures and the exclusion of good-quality service providers.

With regards to personal social services, which link to "mandatory membership of a social protection scheme" is less clear, Member States should be entitled to take some precautions in ensuring their delivery. This does not mean that all form of competition should be prohibited but we believe that, due to their specific function and nature, it is still for the public authorities to establish the rules commanding the provision of social services.

10. Are there examples where the mentioned EC rules were taken into account in advance when planning or reforming national social policy?

Field 4 – Further steps at European level

11. Are there specific fields of European law and activities which necessitate further clarification with regard to their impact on social SGI (see also question 8), like e.g.:

- **Internal market rules;**
- **Art. 81 and/or Art. 82 EC;**
- **Art. 86 EC;**
- **Art 87;**
- **Public procurement rules;**
- **External trade negotiations.**

12. Should the work to be carried on only concern social services of general *economic* interest and concentrate on e.g. competition rules and certain internal market rules or should social SGI both of an economic or non-economic nature be subject for further work?

This distinction between economic and non-economic services should be avoided, as it is misleading: by the very definition of a service at European level, we are in the economic sphere. What remains true is that some definitions vary across the various DG's concerned, which does not ease the tasks of the service providers.

We see the problem that for example - according to the definition of the directive on services in the internal market - nearly all services of general interest are seen as economic. We urgently ask for clarification with specific reference to voluntary and social profit services and to the non-profit character of church activities and of diaconal organisations, which do belong neither to the public nor to the private sector.

The Methodist Church in Great Britain reflects:

We agree that the 'pursuit of social objectives or the non profit nature of the provider do not rule out the possibility of carrying out an economic activity', and that, 'non profit making entities may compete with profit making undertaking'.

The German Churches explain from their national perspective:

So far a distinction between economic and non-economic activity has not been convincing. Regardless of the fact that a distinction between economic and non-economic activity in some areas is very difficult, such a distinction would not be suitable to do justice to the specificity of non-profit social services within the framework of EU regulation. The judgment of the Court of Justice in the case of "AOK Bundesverband a.o." (Rs. C-264/01, C-306/01, C-354/01 und C-355/01) shows that an economic activity does not lead to the application of European competition law in every case. In connection to this it must be taken into account that certain service providers, in this case providers of social services must be respected according to their specific characteristics.

13. What should be the concrete aim (especially concerning further steps) of the Communication of the Commission on social SGI including health services?

The communication should elaborate the particularities of social services to be the basis of the provision of a legal framework allowing those services to be considered on a positive way rather than as "exemptions" from the current European rules.

14. Do you consider the use of the open method of co-ordination (existing or new) an appropriate means for further steps? If so, what should be the concrete task of this method? (e.g. common objectives, exchange of good practices, evaluation etc).

An extension of the Open Method of Co-ordination to the greater area of social services encounters difficulties due to the shared competences between the European Union and the member states. The variety and heterogeneity of social services in the member states cannot be taken into account adequately by measures of the European Union.

15. Could at some stage and without prejudging the right of initiative of the Commission, legislative acts be considered as an appropriate means for further steps (under the assumption that a valid legal base can be found), and if so what should be the concrete task of these instruments (Directives, Regulations, Recommendations)? The following additional questions seem to be possible:

- **Should these legal acts limit the scope of EU rules and their application to social services?**
- **Should these legal acts establish common standards for social services, allowing EU rules, like the Internal Market rules, to be applied while taking into account fully the social policy goals?**
- **Should there be legally defined criteria, e.g. criteria concerning quality, affordability, accessibility or solidarity at European level?**

The subsidiarity principle should be respected with the necessary precaution. Most of these services are provided in the framework of fragile internal balances between political and administrative authorities, and any European regulation should aim in the first place at better addressing the specific realities of social services with regard to the EU regulation itself.

*The **German Churches** explain further:*

*In the field of social services of general interest no additional powers of the EU should be created. It must be taken into account here that especially social services are developed by the different traditions of the member states. They are settled on a local level and supported by community activities, as recognised by the European Commission itself in the White Paper. With Art. 16 of the EU Treaty, Article 34 and Article 36 of the Charter of Fundamental Rights, Art. 86(2) and the competences for the co-ordination and promotion of social policies in Art. 136 ff. a sufficient normative frame is to be found in the *acquis communautaire*.*

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Eurodiaconia is a federation of 43 members - churches, non-statutory welfare organisations and NGOs in Europe - operating at national and international level. Our members are rooted in Christian faith within the traditions of the Reformation as well as in the Anglican and Orthodox traditions. We network diaconal and social work of institutions and church communities and co-operate with civil society partners.

Eurodiaconia Mission: We link our members to serve for solidarity and justice. Our strategic aims are to ensure quality of life for all in a social Europe, to link institutions of diaconia, social initiatives and churches in Europe, to be and to enhance a network of competence.

The Church and Society Commission (CSC) is one of the commissions of the Conference of European Churches (CEC). The CSC links CEC's 126 member churches from all over Europe and its associated organisations with the European Union's institutions, the Council of Europe, the OSCE, NATO and the UN (on European matters).

Its task is to help the churches study church and society questions from a theological social-ethical perspective, especially those with a European dimension, and to represent the member churches of CEC in their relations with political institutions working in Europe.

Eurodiaconia and the Church and Society Commission (CSC) of the Conference of European Churches (CEC) have a joint Social Policy working group working on this issue.

Caritas Europa, Eurodiaconia, the Church and Society Commission (CSC) and the Commission of the Bishop's Conferences of the European Community (COMECE) have a joint working group working on this issue.