

## **THE SERVICES DIRECTIVE AND BEYOND....**

### **The future of social, educational and health care services in the EU internal market**

**Social services of general interest are a core element of all European social systems.**

They contribute to social cohesion and to the implementation of fundamental rights of individual users, both key objectives of social protection systems. They create social capital and promote civil commitment.

**Solidar member organisations provide social, care and educational services of general interest to many million women and men across the Union,**

making a vital contribution to social inclusion and cohesion. All these services are accessible for all, affordable, reliable, continuously provided and transparent. We want to ensure that also in the future, Solidar member organisations will be able to fulfill their tasks as civic movements and service providers.

### **NGOs as actors for social cohesion and social inclusion**

Solidar members are civic movements and service providers at the same time. As civic movements they contribute to social cohesion of local communities and encourage civic engagement, as well as mobilise social capital. They form platforms in which people organise themselves on local, regional, national and European level in order to be an active part of the society they live in. These platforms furthermore encourage the organisation of volunteer activities, which are an important contribution to a cohesive society. They are also important employers and as such fulfill an important role for the European Social Model and within the Lisbon Strategy. As service providers the members of Solidar are organising efficient and high-quality social services close to the people. The users of our services are at the same time clients and partners in the provision of the service.

Over the last two years Solidar member organisations carried out a thorough consultation on how to modernise the services they offer, taking a proactive stance in shaping the future of social service provision in the European Union. The unequivocal conclusion of Solidar members is that they are not against the principle of liberalising social and educational services of general interest on a European level, but that they believe that the right conditions must be put in place and that this must be done in a way which suits the specific characteristics of the not for profit social and educational services sector.

**Therefore, Solidar members call for**

- 1. the exclusion of social, care and educational services of general interest from the services directive**
- 2. a sectoral directive for social and health care services.**

## State of play summer 2006

Social services are going through a period of rapid changes. Pressures on financing are causing governments to look for new ways of organising and funding social services, and EU internal market rules and competition law have already significant consequences on the provision of these services. The question of which conditions should in the future apply to social service provision in the EU internal market are therefore high on the agenda of the EU.

After a long time of debates and waiting, the last few weeks before summer brought new insights into the future of social services in the EU internal market, namely the revised text for the services directive by the European Commission and the following agreement in the Competition Council as well as the communication on social services. In the following, Solidar wants to comment on these two documents as well as discuss future possibilities for social, educational and health care services in the EU. The positions stated are the result of an in-depth discussion with Solidar member organisations in a seminar on the future of social services in the EU internal market organised in June 2006.

### 1. The revised text of the services directive of the European Parliament and of the Council on Services in the Internal Market

On the 30 May 2006, the Competition Council agreed a compromise text on the services directive, based on the text amended by the European Parliament in February 2006 and the revised draft presented by the European Commission in April 2004.

- ⇒ **Solidar welcomed the compromise agreed by the Competition Council, as it excludes most social services as well as health care services from the scope of the directive.**

Solidar members agree that the exemption from the services directive is only a first step, and that the work on a sectoral regulation for the sector of social and health care services is the second important step.

The exemption from the services directive however is an important first step, not because Solidar members wrongly believe that in this way they could be protected from competition and internal market regulations, but because the conditions laid out in the services directive were not the right ones to secure fair competition between a variety of providers.<sup>1</sup>

Furthermore, during the last year the debates on how to exclude social services from the scope of the directive showed once again that **a definition of social services** is essential on European level. Solidar is aware that the way social services will be exempted from the services directive will provide a basis for a future definition of social services on EU level, and we therefore think some clarifications regarding Art. 2 are essential.

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<sup>1</sup> In a first contribution to the debate in February 2005, Solidar explained why its member organisation do not consider that the regulations of the directive provide for conditions under which it can be guaranteed that quality social services are accessible to all European citizens.. The rules set out in the services directive do not take into account the specific nature of social services of general interest, their users and providers. Principles such as supply diversity and affordability, as well as high consumer protection are not sufficiently secured. Please see Solidar position on the proposed directive on services in the internal market, February 2005.

## 1.1 The exclusion of social and educational services

Art. 2. 2:

(1) "social services relating to social housing, childcare and support of families and persons permanently or temporarily in need"

(2) "which are provided by the State, by providers mandated by the State or by charities recognised as such by the State"<sup>2</sup>

⇒ **Regarding Article 2.2, Solidar, for reasons of legal security, supports the exclusion of social services through an inclusive list of services**

Solidar members would have like to see an exemption of all social services of general interest as suggested in an amendment of the PS in the 1. reading of the European Parliament in February 2006 ( which was rejected by 10 votes only). Taking the vote into account however, Solidar member organisations agree with the need for legal certainty and see the list proposed by the European Commission and accepted by the Competition Council as a good basis, especially as the addition "and persons in need" makes the list very inclusive.

It is important that the list is not final and leaves room for developments. New social services might be developed to respond to new needs in society and these must be included in the exemption. The concept "people in need" is therefore to be interpreted widely. The basis for such an interpretation is laid out in Recital 10h and could be improved by defining the possible needs, like e.g. health care needs, psycho-social needs and need for job integration. The Recital should become legally binding.

⇒ **Some educational services might not be excluded in the definition and therefore fall under the directive**

Educational services also contribute significantly to social cohesion and social inclusion, yet might not fall under the exemption. French Solidar member La Ligue de l'Enseignement for example runs after-school help programmes (aide scolaire) and educational class trips. It is necessary to clarify how these services would be excluded from the services directive as NGO service providers like La Ligue are already operating in competition with for profit providers.

⇒ **The wording "*mandated by the state*" does not necessarily include all social services provided by NGO providers**

The mandate is very often given for one specific service, whereas NGOs might provide other services for which they have not been mandated by the states. The addition "**and/or recognised by the state**" would ensure that also the social services a recognised not-for-profit provider offers without a mandate by the state are excluded from the directive. The term 'recognised by the state' would clearly reflect the independence of organisations to plan their services according to societal problems, and the possibility to offer a service without a mandate. Solidar member organisation UNALG for example, the Union Nationale des Associations Laïques Gestionnaires in France,

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<sup>2</sup> The text refers to the English language version agreed by the Competition Council 29. May 2006.

provides holidays for disabled people, an important service for social inclusion and social cohesion programme developed by them without a mandate by the state.

⇒ **The term *charity* used in the English version of the text should also be replaced.**

Charity is an Anglo-Saxon concept that does not work for welfare and volunteer organisations in many other countries. Solidar member organisations represent a variety of welfare and volunteer organisations, as well as cooperatives. They all agree that the concept of charities is not very helpful in their respective national contexts. **Not-for-profit organisations** would be better suitable in this context.

LegaCoopBund from South-Tyrol from Italy for example is a network of cooperatives. Social cooperatives are not-for-profit enterprises – not charities – which are recognised by the state, but not always explicitly mandated ([www.legacoopbund.coop](http://www.legacoopbund.coop)). Arbeiter-Wohlfahrt (AWO) from Germany is a welfare organisation, not a charity, often but not in all areas that would fall under the first part of the exemption of social service mandated by the state ([www.awo.de](http://www.awo.de)). Humanitas, one of the largest volunteer organisations in the Netherlands, is also recognised as a not-for-profit service provider but not as charity.

## **2. Beyond the services directive: A sectoral directive for social and health care service**

The exclusion from the services directive is only the first step. What is needed in future is legislation that will ensure that the specificities of social, educational and health care services and their role for our societies are respected and fostered. Fair competition rules need to be set in place, allowing NGOs also in the future to provide high-quality services to all.

A sector-specific legal instrument seems to offer the best opportunity to take the specificities of the sector into account and to ensure legal certainty for high-quality social, educational and health care services of general interest supplied by a variety of providers.

A sectoral directive would need to cover the following aspects:

- A clear description of quality principles for service provision from political level. These principles should not undermine existing national standards.
- The acknowledgment of the combination of quality standards with value-based criteria
- The recognition of the general interest as an important criterion for bodies/agencies providing social and educational services.
- The question of public tendering for social, educational and health care services.

### **2.1 The Commission communication on social services is showing the way...<sup>3</sup>**

Setting out the specificities of social services, while at the same time recognising that most social services are classified as being of economic nature by EU competition law,

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<sup>3</sup> COM(2006) 177 final.

the communication points out two things: firstly that currently EU competition law is already impacting on national social service provision and secondly that social services of general interest cannot be treated by EU competition law as any other services, but that their specific nature, characteristics and objectives need to be taken into account.

The logical conclusion is that we need to find a way to ensure legal certainty for the delivery of social services in Europe.

By acknowledging that almost all social services are, according to EU law, of economic nature, the European Commission is not trying to create more competences for EU level, but it is putting the finger on the problem that social services do already fall under EU competition law and that this problem has to be tackled. The distinction between economic and non-economic services is a legal distinction for applying community rules, which does not hold in reality, as "the presence of an element of solidarity, the pursuit of social objectives or the non-profit nature of the provider do not rule out the possibility of carrying out an economic nature" (Annex, p.14). The communication helps in this respect clarifying the situation of social services in Europe.

The urgent need to ensure that the EU's legal framework systematically recognises the specific role that social services play in society and the contribution of NGOs providing social, health care and educational services for social cohesion is now more apparent than ever. Solidar had hoped that the communication would send out a stronger message regarding such a sectoral legislation.

- ⇒ **Solidar agrees with the preliminary list of criteria for social services including the principle of solidarity, services adapted to the needs of people, not-for-profit, involvement of people/ volunteers, locally based, cultural and historical dimensions and the asymmetry between providers and users.**

## 2.2 Social and health care – two separate issues?

After first intending to issue a communication on "social and health care services" the European Commission in the end only dealt with social services focused in its communication. This is partly due to the fact that other initiatives for health services, especially regarding patients' mobility are currently planned in DG Sanco of the Commission.

- ⇒ **Even though there is a difference between social and health care services, the line between the two categories is often very fine and sometimes impossible to draw. There will always be services that are on the border between social and health care service. A clear separation therefore seems to be difficult and should be rejected.**

## 2.3 Framework directive on services of general interest and sectoral directive –why it is not "either or"

At the same time, there are currently initiatives calling for a framework directive on services of general interest (SGIs). The idea of a framework directive on SGIs is based on the understanding that all SGIs are an important element of our societies. The general interest nature should be protected and prevail over competition law. Member states should be given the freedom to define what they understand by SGIs and decide

how to organise the provision of SGIs according to the principles of accessibility, universality, affordability, solidarity and democratic control.

In the debate on sectoral directives and framework directives the two initiatives are often presented as mutually exclusive. Some claim that one can only want one or the other. **For Solidar the two initiatives are not mutually exclusive.** Solidar supports a transversal framework directive on services of general interest as it can send out a strong political signal of the importance of these services for our societies, and could set the framework for overall consumer protection.

What a framework directive can however not do is deal with the specificities and the specific problems of the social, educational and health care service sector and answer the fundamental questions of social service provision in Europe. Some sub sectors of SGIs are already regulated in sector-specific directives and the same will be needed for the social service sector in order to really meet the needs for legal certainty of local, regional and national not-for-profit providers.

- ⇒ **The initiatives for a sectoral directive on social services and a framework directive on services of general interest should not be discussed as mutually exclusive. We need to push for a sectoral directive on social services of general interest to answer the needs of local, regional and national providers for legal certainty for high-quality social services throughout the EU. A framework directive on services of general interest can complement such an initiative ensuring transversal consumer protection and underlining the important role services of general interest play for our society.**

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**solidar** is a European network of non-governmental organizations (NGOs) working in development and humanitarian aid, social policy and social service provision.

**solidar** promotes economic and social justice in Europe and worldwide by working in alliance with trade unions and labour movement organizations.

**solidar** is a member of the Platform of European Social NGOs and of the Civil Society Contact Group that launched the [act4europe](http://act4europe.org) campaign on the Convention on the future of Europe

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