



european network of service providers in employment and rehabilitation

Services Directive after the amended proposal of the European Commission from 4 April 2006

ENSPER briefing & analysis

➤ Updated state of play

The European Commission has adopted an amended proposal for a Directive on Services in the EU single market.¹ This is the next stage in the legislative process after the European Parliament's vote at first reading in February 2006. The amended proposal builds on the Parliament's work, and on discussions in the Council to date. It will help to create more growth and jobs in the EU by freeing up cross-border trade and investment in services. Businesses will find it easier to establish anywhere in the EU, saving time and money. They will also find it easier to provide services across borders – Member States will be obliged to remove unjustified obstacles. Consumers will have more choice, information and protection. And services providers will be properly supervised under enhanced provisions for cooperation between national authorities.

The Council will now debate and vote on the amended proposal. The Austrian Presidency would like to reach a common position by the end of its Presidency, though this seems ambitious. It will then pass back to the Parliament for a 2nd reading which looks unlikely to be before 2007.

➤ Main features of the amended Proposal regarding the social sector

Scope: In line with the European Parliament's amendments, healthcare, social services relating to social housing, childcare and support of families and persons in need are excluded from the scope of the Directive.

- With regard specifically to healthcare services and social services Article 2 on Scope (p. 41) states that this Directive shall not apply to:

¹ See the full proposal at http://europa.eu.int/comm/internal_market/services/services-dir/proposal_en.htm

- *healthcare services whether or not they are provided via healthcare facilities, and regardless of the ways in which they are organised and financed at national level or whether they are public or private;*
 - *social services relating to social housing, childcare and support of families and persons in need;*
- Recital 10h (p. 22) makes it especially clear that the exclusion from the Directive concerns those social services relating to social housing, childcare and support to families and persons in need which, because of their interest for society, are either provided by the State, or by providers mandated by the State, with the objective of ensuring support to those who are in a particular state of need. Recital 10h states:

This Directive does not cover those social services in the area of housing, childcare and support to families and persons in need provided by the State or by providers mandated by the State – at national, regional or local level – with the objective of ensuring support to those who are in a particular state of need because of their insufficient family income, total or partial lack of independence or to those who risk to be marginalised.

These services are essential to guarantee the fundamental right to human dignity and integrity and are a manifestation of the principles of social cohesion and solidarity and should not be affected by this Directive.

➤ **The position of social NGOs**

Social NGOs are broadly pleased with the revised European Commission proposal for the Services Directive, which excludes social services. The Platform of European Social NGOs led the sector's lobbying efforts to exclude healthcare services and social services from the scope of the Directive.

'The Commission has been wise to follow the European Parliament's line, cutting social services out of the Services Directive' said Anne-Sophie Parent, President of the Social Platform. *'The Social Platform welcomes the new proposal, which provides for a broad exclusion of social services. This is crucial to ensure that social services users and society at large do not lose out from a directive not suited to the nature of the sector'*.

The Social Platform believes that the definition of social services used in the proposal could provide a sufficient basis to cover all social services of general interest. But the text does not achieve the Commission's aim of legal clarity, so further precisions are needed. *'The Social Platform expects the forthcoming Communication on social and health services of general interest to clarify the broad definition of social services implied by the new proposal'* said Claire Roumet, Chair of the Social Platform's Social Services Working Group. *'Any arbitrary distinctions between different social services would not be acceptable and would cause legal uncertainty for social service providers'*.

The new proposal is also clear that the directive must be implemented in a way which takes into account social policy objectives, social cohesion and implementation of fundamental rights. *'This is an encouraging sign the Commission is beginning to respond to demands for a more social Europe. It has taken the Parliament's cue to abandon the bulldozer approach to completing the internal market and start considering the social impacts'* said Ms Parent.

➤ **What is the significance for ENSPER's members?**

From the Commission's amended Proposal, it becomes clear that social services, medical services as well as vocational training provided by ENSPER's member organisations to people with disabilities and other vulnerable groups are definitely *excluded* from the scope of the Services Directive. This preserves more or less the current state of play for cross-border service provision eliminating any potential threats that could have emanated from the Directive but also restricting potential opportunities.

Social Services and the Services Directive: Declaration from the European Network of Service Providers in Employment & Rehabilitation (ENSPER)

The European Network of Service Providers in Employment and Rehabilitation (ENSPER) welcomes the revised European Commission proposal for the Services Directive, which excludes social and health services - as the Services Directive in its original format would make it difficult for public authorities to guarantee high quality standards in our sector. EPR now calls on the Council to respect the Commission's amended proposal.

At the same time, ENSPER reaffirms its support for some key principles embedded in the Services Directive, and asks these principles are taken into consideration in all future EU legislative and policy-making processes affecting the provision of social and health services.

Consequently, what we continue to strive for is:

1. Strengthening user rights and involvement

ENSPER stresses that the specific situation of the user in social and health services requires special measures to strengthen user rights and to guarantee that users will indeed benefit from competition. Such measures could comprise:

- Ensuring that users receive all the information/assistance to understand their own need and have a clear view on the various services and service providers available
- Ensuring that users have a real choice and can decide themselves on which service and service provider they want
- Ensuring that users are involved in the design, delivery and evaluation of the services they receive
- The evaluation of all services is an indispensable tool. Evaluation criteria must be carefully formulated to correspond to the goals of social services

2. Application of the business model to social services

ENSPER is keen to ensure that the 'rehabilitation business' is a 'good' business combining a business approach with essentials of the Social Model. Therefore it advocates

- Putting in place of systems and structures to ensure transparency and accountability
- Setting guarantees in the contractual relationship between the public authority and the service provider
- Instituting monitoring systems and complaint procedures (rewards & sanctions)

- Continued evaluation and target-setting
- Understanding by public authorities and funders that the most economical solutions are not necessarily the best and emphasis on the development of sustainable services

3. More market and competition

ENSPER holds the view that the achievement of more flexible and competitive markets - a key objective of the Services Directive - in the rehabilitation sector offers better opportunities to the 'best' service providers in terms of expertise, reputation and quality. In a more competitive and flexible environment, it is easier for high-level service providers to distinguish them from the others and to obtain a greater market share. The ENSPER believes that elements to compete will comprise a high degree of specialisation, quality and proximity to the costumers - finally to the advantage of the users.

However, ENSPER underlines that competition in the social and health services sector must be designed to suit the specificities of the sector in a way which does not undermine the European Social Model. Many personal social and health services differ to other Services of General (Economic) Interest by the fact of the vulnerability and often dependency of their users. The 'client' in social services is often in a weak position, which means that he/she cannot make a real and informed choice for a provider or service. In this respect, orientation towards more competitive services should also include the provision of highly specialised rehabilitation services to people with complex dependency who require more personalised and costly solutions.

Finally, ENSPER wants in this context to underline that in practice, competition in social and health services mainly relates to the selection and contracting of service providers by the public authorities, rather than offering a real choice to the service-users.

4. Less bureaucracy and regulation

ENSPER strongly believes that service providers are able to offer more and better outputs with less financial resources if they are given more freedom to be creative and to manage with more efficiency. This requires less bureaucracy, the simplification of laws and regulations or even deregulation in both the *setting up* of new services and in *operating* services

ENSPER supports the principle of deregulation with regard to cross-border service provision, as envisaged in the Service Directive, but also emphasises that a more general application of this approach at national level could allow service providers to offer 'more with less resources', and would as such create a 'win-win' situation for public authorities, service providers and, above all, people with disabilities.

5. Quality of services

ENSPER strongly supports the aim of the Services Directive to promote the quality of services, and emphasizes that services in the social sector should be:

- *Multifaceted* (ie providers should provide a wide range of services to cater to individuals in a holistic way);
- *Human-needs centred* (personalised and non-standardised services are needed, which take time, understanding and respect to respond to each person's needs);
- *User-empowering* (Enabling people to get involved in defining their personal needs and capacities helps guarantee that their needs will be served adequately and contributes to their independence);
- *Protective* (mechanisms need to be in place to prevent abuse of vulnerable people: physical, mental and also financial)

However, ENSPER holds the view that voluntary standards and codes of conduct are *not* sufficient to guarantee quality in social and health services, and that a European Quality Framework or Quality System is indispensable for two main reasons

- Greater competition and liberalisation of the market of service-provision to people with disabilities involves the establishment of many new service providers that often lack experience and specific expertise.
- Increased trans-national service provision or the “Europeanisation” of the rehabilitation market calls for a Quality Framework at European level. It would not only provide guarantees to users and purchasers of services but would at the same time allow “good” service providers to distinguish themselves from their competitors.

- THE END -

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