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**Second Biennial Report
on social services of general interest**

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<p><i>As Commission staff working document, the Biennial Report on Social Services of General Interest is not binding on the European Commission as an institution.</i></p>

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INTRODUCTION

Social services of general interest (SSGI)¹ play a major role in the European societies by contributing to social protection and social inclusion and enhance the capacity of individuals to enjoy their fundamental rights and to participate fully in the social, economic and political life.

The role of SSGI is all the more crucial in times of economic recessions. As emphasised during the 2009 Czech Presidency Conference on social services², SSGI are an important source of job generation and a key tool for strengthening social cohesion. In the framework of the 2010 European Year for combating poverty and social exclusion, data show that social services play an important role in employment growth and poverty reduction. Thus developing the SSGI potentials, including where appropriate using resources from the European Structural Funds, can make a significant contribution to the achievement of Europe 2020 targets on employment and poverty reduction.

The wider context in which SSGI are provided is affected by a growing, increasingly complex demand due to structural changes in our societies, such as population ageing, changing gender roles and more flexible labour markets.

Moreover, SSGI in all Member States have come under serious pressures as a result of the economic and public budget crisis. The contracting economy has led to the growth of the need and demand for social services and, at the same time, has significantly constrained the financing basis in public budgets.

In a situation like this, increasing efficiency is crucial. Hence, the Commission seeks to underpin the efforts of Member States in the organisation and financing of high quality, cost-effective, accessible and affordable social services.

President Barroso, in his "*Political Guidelines for the next Commission*" of September 2009, recognised the need to "*give a boost to the overall development of the social and health services' sector, for instance by establishing a quality framework for public and social services*". The Commission contributed to the development within the Social Protection Committee of the voluntary European Quality Framework for social services which helps to create a common understanding on this issue across the Member States.

¹ The Commission provided a description of SSGI in its Communication "*Implementing the Community Lisbon programme: Social services of general interest in the European Union*", COM(2006) 177, 26 April 2006. In addition to health services, which were not covered in the Communication, two groups of services were identified: on the one end, statutory and complementary security schemes covering the main risks of life and, on the other, those services provided directly to the person and playing a preventive and socially cohesive role such as social assistance services, employment and training services, social housing, childcare and long-term care services.

² Conference on social services in the European Union, held by the Czech Presidency on 22 and 23 April 2009

This initiative goes hand in hand with the Commission's commitment to help Member States in applying EU rules to SSGI. The correct application of these rules can in fact help public authorities to organise good quality social services in a cost-effective way.

Building on its Communication on SSGI of April 2006³ (hereafter '2006 Communication') and the Communication on Services of general interest of November 2007⁴ (hereafter '2007 Communication'), the Commission has put in place a clarification strategy to provide guidance on the existing rules.

The latest developments – such as the work within the Social Protection Committee or the report presented to the President of the European Commission by former Commissioner Mario Monti – indicate that a number of issues still demand further reflection.

The Commission is engaged in dialogue with stakeholders from all sectors to identify areas where the legal framework may be in need of further clarification and/or where amendments may be necessary. A stakeholder consultation on the application of State aid rules to Services of general economic interest will provide further input in this respect as will a similar exercise to be conducted on the EU public procurement rules.

A key tool for monitoring the sector and fostering dialogue at EU level, this second Biennial Report on SSGI provides an update of the economic and employment data presented in the first Biennial Report published in July 2008⁵ (**Chapter 1**). It also gives an overview of the various initiatives implemented across Europe to guarantee, improve and assess the quality of social services and focuses on the voluntary European Quality Framework developed within the Social Protection Committee, which in many ways represents the culmination of all these other initiatives (**Chapter 2**). Finally, **Chapter 3** describes the latest developments in the debate on the application of the EU rules to SSGI.

³ See footnote 1 above.

⁴ Communication on "*Services of general interest, including social services of general interest: a new European commitment*", COM(2007) 725 final of 20 November 2007.

⁵ Commission Staff Working Document "*Biennial Report on social services of general interest*", SEC(2008) 2179 of 2 July 2008.

1. HEALTH AND SOCIAL SERVICES FROM AN EMPLOYMENT AND ECONOMIC PERSPECTIVE

This chapter presents an overview of data and information pointing to the importance of social services in our economies. It focuses on the developments in this sector since the publication in 2008 of the first Biennial Report on social services of general interest⁶.

The first part of the chapter (section 1.1) documents the fact that health and social services are a dynamic sector which constitutes a significant source of job creation in large parts of the EU and brings important added value to the economy.

Section 1.2 highlights some of the structural challenges faced by the sector due to the particular characteristics of its jobs and its workforce.

Section 1.3 deals with some of the difficulties of delivering adequate social services under the cross pressures from severe budget constraints and growing demands.

The statistical analysis in this chapter draws on data provided by EUROSTAT (notably by the Labour Force Survey (LFS)). These data cover 'human health and social work activities' within the same category⁷, without distinguishing between the provision of health care and the provision of social services. Specific information on the different sub-sectors is scarce, particularly on employment.

It is worth recalling that most Member States view social services as being of general interest and finance them from public budgets.

It is also important to mention that information and communication technologies (ICT) play a key role in addressing societal challenges, e.g. challenges related to ageing as well as to accessibility and sustainability of social and healthcare. For instance, ICT-enabled solutions allow for care to remote areas and to less mobile individuals, or for support to dignified and independent living⁸. The key role of ICT in addressing such societal challenges is stressed in the Europe 2020 flagship "Digital Agenda for Europe".⁹

⁶ See footnote 5 above.

⁷ Definitions provided by the Statistical Classification of Economic Activities (NACE) under Rev. 1 (for data collected before 2005), Rev. 1.1 (for data collected between 2005 and 2008) and Rev. 2 (for data collected after 2008).

⁸ For instance, it has been estimated that, for 6 countries surveyed (Czech Republic, France, the Netherlands, Sweden, Spain and the United Kingdom), an aggregate 9 million bed-days yearly could be freed up through the use of Computer-Based Patient Records, an opportunity for either increasing throughput or decreasing waiting times, corresponding to a value of nearly €3,7 billion. See Swedish Presidency report "*eHealth for a Healthier Europe*"; this study was conducted by Gartner on behalf of the Ministry of Health and Social Affairs in Sweden.

⁹ The Digital Agenda for Europe announces in particular actions to equip Europeans with secure online access to their medical health data, reinforce the Ambient Assisted Joint Living Programme to allow older people and persons with disability to live independently and be active in society, and improve competences of carers through certification.

1.1. Employment trends

- *employment in the health and social services sector grew much faster than in other sectors of the economy*
- *out of the 21.4 million people employed in health and social services in 2009, the vast majority (89%) work in the EU-15 countries*
- *in addition to being an important source of job creation, the health and social services sector has an important economic weight, as it generates around 5% of the total economic output in the EU-27*

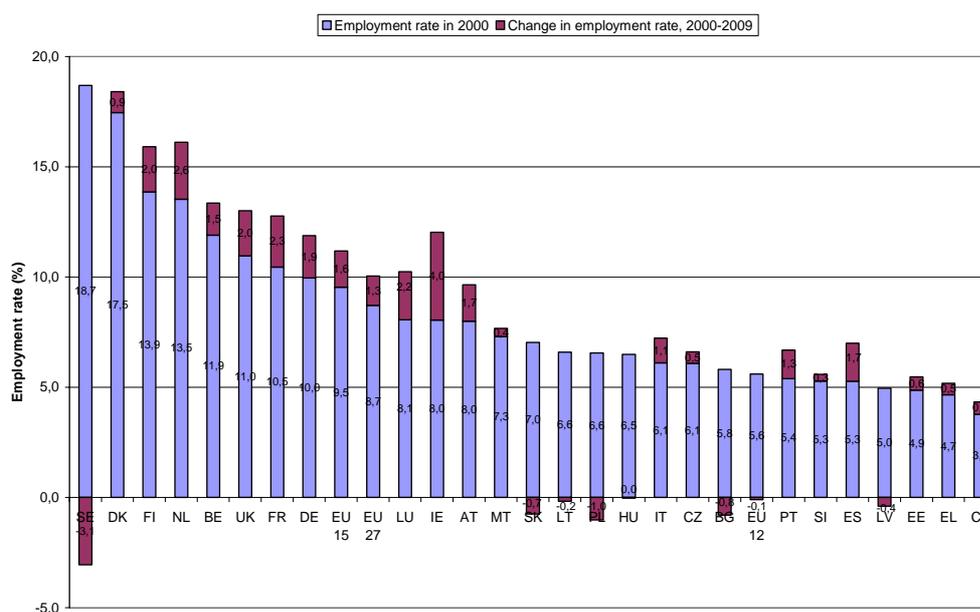
From 2000 to 2009 total employment in the EU grew by 7.9%, which means that a net 15.5 million new jobs were created in this timeframe. However, this rise was not uniform across all sectors of the economy and **employment in the health and social services sector in many Member States grew much faster than in other sectors of the economy**. The employment in this sector registered a 4.2 million net increase between 2000 and 2009, which accounts for more than a quarter of the net employment growth in the total economy.

This rapid growth of employment in the health and social services sector was already identified in the first Biennial Report on social services of general interest, which mentions that in the period 2000-2007, the health and social services sector was one of the most dynamic in terms of job creation, just behind the real estate, renting and business activities sector, as it created 3.3 million new jobs during the period under review.

In the two years since the publication of the first Biennial Report, the number of workers in health and social services grew by almost 0.9 million, reaching 21.4 million (from 17.2 million in 2000 and 20.6 million in 2007). Thus, the employment rate in this sector registered a 1.3 percentage points growth between 2000 and 2009, from 8.7% of the total employment in the EU-27 in 2000 to 10% in 2009 (i.e. an increase of 0.4 percentage points from 2007 to 2009).

Of the **21.4 million people employed in health and social services in 2009**, the vast majority (89%, that is 19.1 million people) work in the EU-15 Member States, while the remaining 11% (2.3 million people) work in the EU-12. Figure 1.1 shows the share of people working in the health and social services sector, by Member State. While the EU-27 average reached 10% in 2009, this share was markedly lower in all EU-12 Member States and higher in most of the EU-15 Member States, i.e. with the exception of Greece, Portugal, Spain, Italy and Austria.

Figure 1.1. Employment rates in human health and social work (as a % of total employment), 2000-2009



Source: EUROSTAT (LFS)

Figure 1.1 also shows that during the period 2000-2009, the workforce in this sector grew much faster in the EU-15 than in the EU-27. The employment share of the EU-15 in the health and social services workforce grew on average by 1.6 percentage points between 2000 and 2009, whereas it grew by 1.3 percentage points in the EU-27. The biggest growth was registered in Ireland, the Netherlands, France, Luxembourg, United Kingdom and Finland, while the proportion of workforce in this sector decreased in Sweden, Poland, Bulgaria, Slovakia, Latvia and Lithuania. As analysed in the first Biennial Report, the drivers included population ageing and an expansion of services to better meet quality requirements and rising demand following a lag in investments during a lengthier period of restrictions on budget growth.

Thus, in the evolution of employment in the health and social services sector, it is possible to distinguish between three categories of Member States, as shown in Figure 1.1. The first group includes Member States such as Sweden, Denmark, Finland, the Netherlands, Belgium and the United Kingdom, where the health and social services sector employed 13-18% of the working population in 2009, well above the EU-27 average of 10%, and where the share of employment in this sector grew faster than the EU-27 average over the past decade (with the exception of Sweden where the workforce in the sector fell by 3.1 percentage points).

The second group consists of Member States such as France, Germany, Luxembourg, Ireland and Austria where the share of employment in the health and social services sector ranges between 9.7% (Austria) and 12.8% (France) and grew faster than the EU-27 average. These Member States are rapidly narrowing the gap with those in the first group, especially Ireland (4 percentage-point growth to 12% in 2009), France (2.8 percentage-point growth to 12.8% in 2009) and Germany (1.9 percentage-point growth to 11.9% in 2009).

Finally, in the third group, the share of employment in health and social services ranges from 4.4% in Romania to 7.7% in Malta and the growth was substantially lower than the EU-27 average (with the exception of Spain) or even negative (in Poland, Bulgaria, Slovakia, Latvia and Lithuania).

If this diversity in growth already identified in the first Biennial Report persists in the years to come, it is likely that the Member States in the second group will soon catch up with those in the first group, while the Member States in the third group will lag even further behind.

In addition to being an important source of job creation, **the health and social services sector has an important economic weight, as it generates around 5% of the total economic output in the EU-27** and during the period 1995-2007 registered slightly higher output growth rates (46.1%) than the total economy (45.2%), as Figure 1.2 shows.

Figure 1.2. Evolution of gross output in all sectors vs. health and social work, 1995-2007, EU-27



Source: EU KLEMS

1.2. Structural challenges in the health and social services sector

- *the workforce in health and social services is dominated by women who make up more than 78% of the employment in the sector*
- *the difference in earnings between men and women working in the health and social services sector is greater than in the total economy*
- *the workforce employed in this sector is ageing rapidly*

- *workers in health and social services have often a medium or high level of education*
- *the prevalence of part-time work and temporary contracts is higher in health and social services than in the total economy*
- *wage levels in the sector are below those in the economy as a whole*

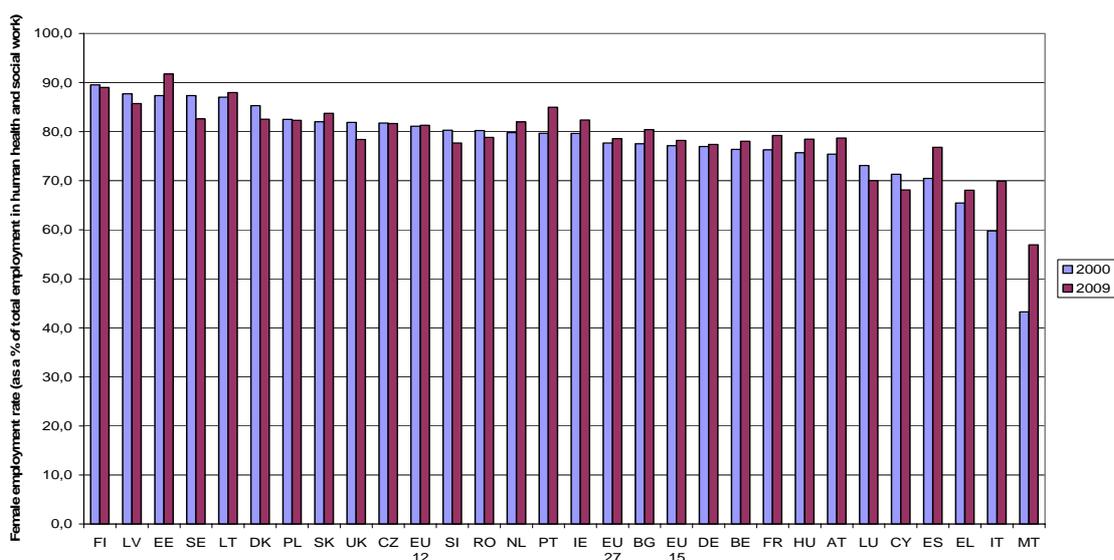
The health and social services sector is confronted with several challenges. Its overwhelmingly female workforce is ageing. There are growing imbalances in skill levels and working patterns; whereas recruitment and retention are hampered by demanding working conditions as well as by lower and slowly growing wages. These challenges are analysed in the present section.

1.2.1. Gender bias

The workforce in health and social services is dominated by women who in EU-27 make up more than **78% of total employment** in the sector (i.e. amounting to 16.8 million women working in this sector). Of the 4.2 million new jobs created in the sector between 2000 and 2009, 3.4 million were occupied by women.

The rate of female employment in the health and social services sector has risen in the EU-15 from 77.2% in 2000 to 78.2% in 2009. In the EU-12 by contrast, the rate of female employment in this sector only grew from 81.1% in 2000 to 81.3% in 2009. The biggest increases in the share of women working in the health and social services were registered in Member States where the sectoral female employment rate was among the lowest in the EU, such as Malta, Italy and Spain. On the other hand, the sectoral female employment rates decreased slightly in Member States with initially high shares of women working in the sector (e.g. Finland, Latvia, Sweden and Denmark).

Figure 1.3. Female employment rate in total employment in human health and social work, 2000 and 2009

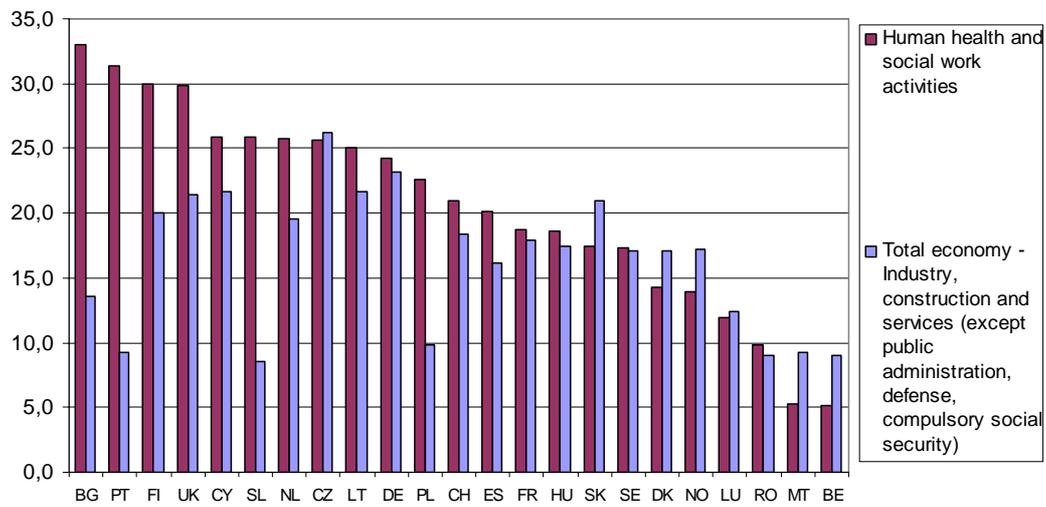


Source: EUROSTAT (LFS)

The gap between the share of women and men employed in the sector continues to widen. In the two years since the publication of the 2008 Report the number of new jobs occupied by women in the health and social services sector rose by more than 0.7 million, equal to about 81% of the new jobs created.

In addition to an uneven gender balance, EUROSTAT data show that in most Member States **the difference in earnings between men and women working in the health and social services sector is higher than in the total economy**. As can be seen in Figure 1.4, Portugal, Bulgaria, Slovenia and Poland are the Member States where the differences in the gender pay gap between health and social services and the total economy are greater (i.e. by 14-20%). In other Member States such as Belgium, Denmark, Slovakia and Malta the gender pay gap in the health and social services sector is lower than in the total economy, while in the Czech Republic, Germany, Hungary, Luxembourg, Romania and Sweden there is no significant difference.

Figure 1.4. Gender pay gap in human health and social work and in total economy, 2008

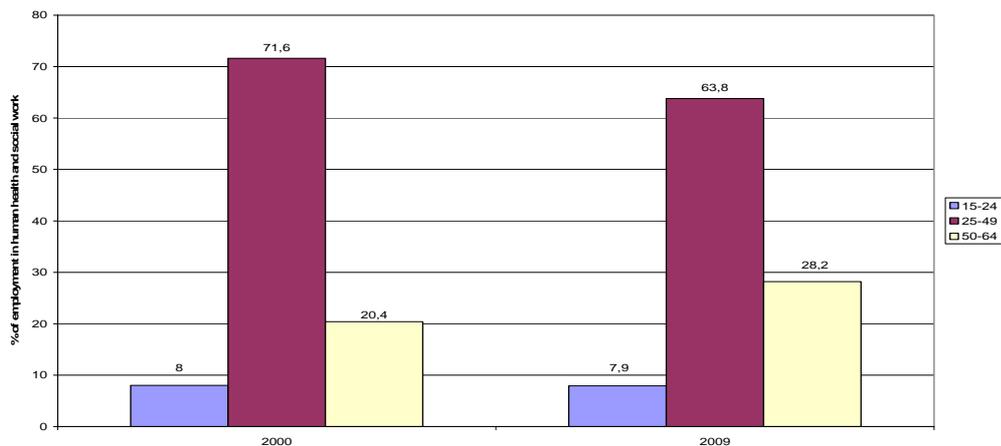


Source: EUROSTAT – Gender Pay Gap in unadjusted form, based on the Structure of Earnings Survey methodology (for the Member States that reported data on the gender pay gap broken down by economic activity)

1.2.2. Ageing of the workforce

The vast majority of the people working in health and social services belong to the age group 25-49 years. Yet, because the share of people above 50 years working in this sector increased from approximately 20% to about 28% between 2000 and 2009 in the EU-27 (Figure 1.5), **the workforce is ageing**. Consequently, the workforce in the younger age groups has decreased throughout the period.

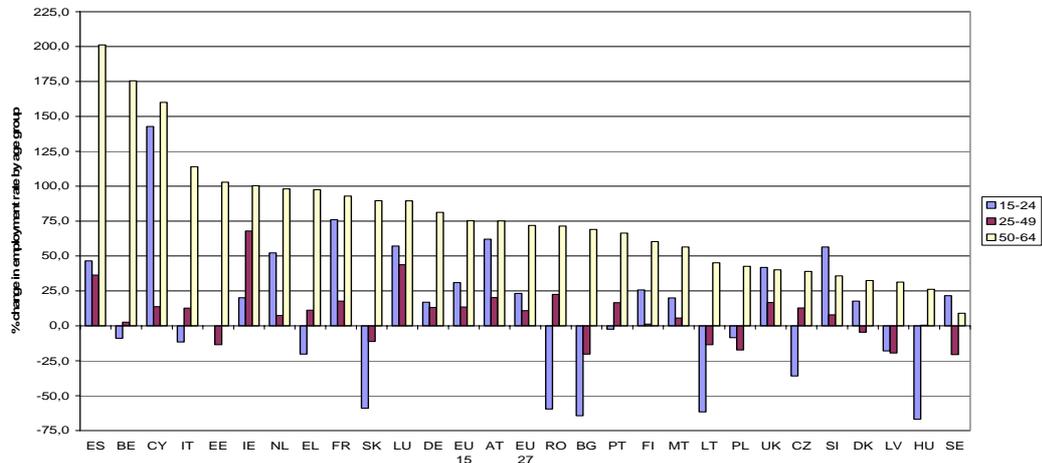
Figure 1.5. Employment shares in human health and social work by age group, 2000 and 2009, EU-27



Source: EUROSTAT (LFS)

The sharpest increases in the share of older people working in the health and social sector were registered in Spain, Belgium, Cyprus, Italy, Estonia and Ireland, while Hungary, Lithuania, Bulgaria, Romania and Slovakia recorded the biggest declines in the share of younger workers in this sector (Figure 1.6).

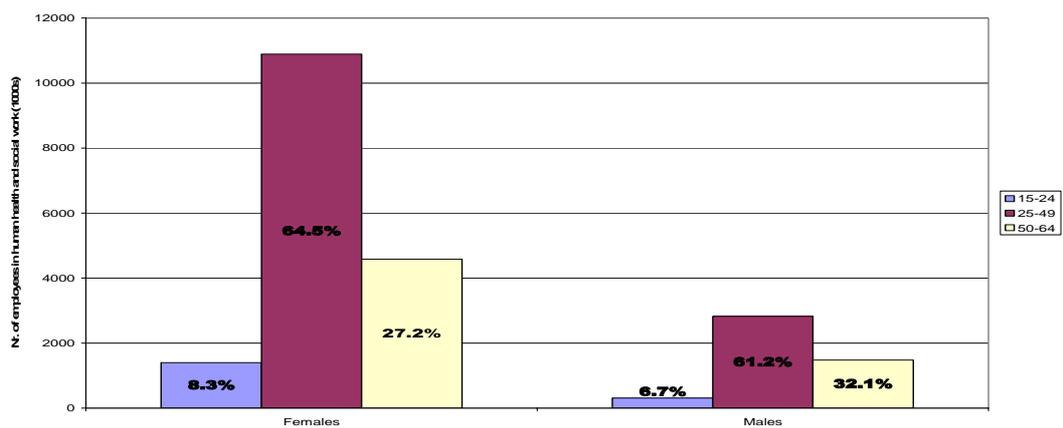
Figure 1.6. Change in employment rates in human health and social work by age group, 2000-2009, EU-27



Source: EUROSTAT (LFS)

Male workforce in the health and social services sector is generally older than the female workforce (32.1% of the male workers belong to the 50-64 age group compared to 27.2% of the female workers in the same age group, while only 6.7% of male workers in the sector belong to the 15-24 age group compared to 8.3% of the female workers in the same age group).

Figure 1.7. Employment in human health and social work by gender and age group, 2009, EU-27



Source: EUROSTAT (LFS)

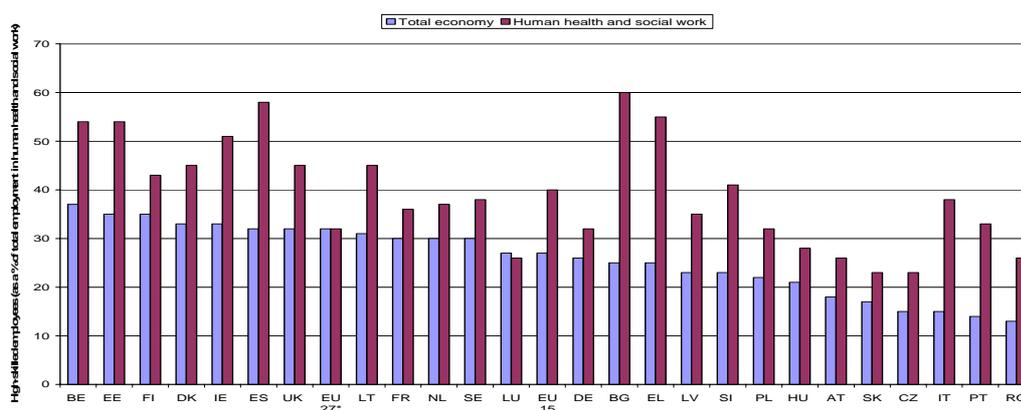
The positive side of this gender bias and ageing pattern in the health and social services sector could be that it may be used in efforts to increase the participation in the labour

market of groups that are currently under-represented in many Member States, such as women and older workers.

1.2.3. Skill-level in the health and social services sector

Workers in health and social services have often a medium (upper secondary and post-secondary non-tertiary education) **or a high level of education** (tertiary education). No fewer than 40% of the workers in health and social services in the EU-15 have a high level of education, a level that is 13 percentage points higher than for the total economy, while in the EU-27 the share is somewhat lower with 32% and exactly equal to the share for the total economy (see Figure 1.8).

Figure 1.8. High-skilled employees in human health and social work, 2006

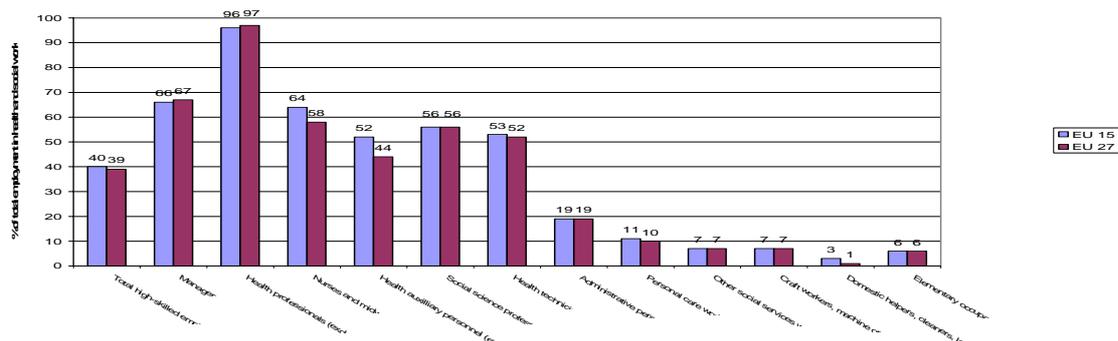


Source: EUROSTAT (LFS) (*EU 27 excl. CY and MT)

Figure 1.9 below shows that the share of high-skilled workers¹⁰ is the highest in some of the largest categories of people working in the health and social services sector, such as health professionals, managers, nurses and midwives, social science professionals and health technicians, which suggests that many of the jobs in this sector require a high level of professional skills.

¹⁰ Skill level is defined by the level of education or training successfully completed.

Figure 1.9. High-skilled employees in the health and social services sector by occupation, 2006, EU-27

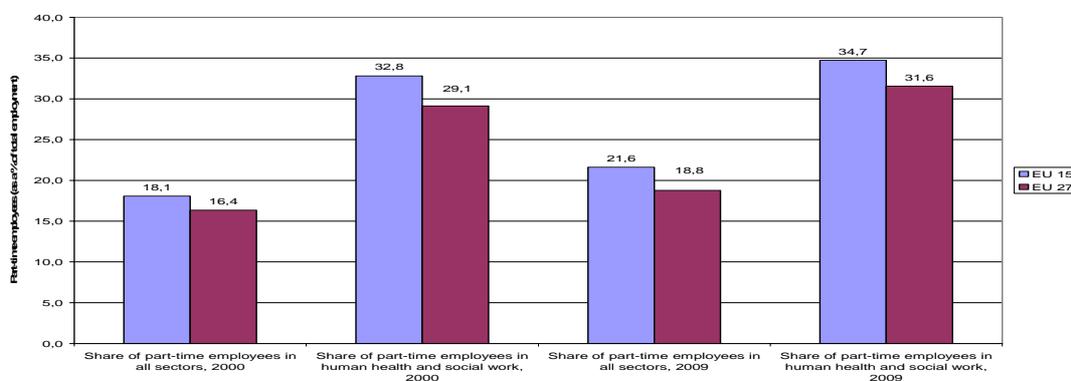


Source: EUROSTAT/TNO

1.2.4. Working patterns in the health and social services

The **prevalence of part-time work in health and social services** is higher than in the total economy. Thus, while people working on a part-time basis in EU-27 as a share of the total employment in the health and social services was 31.6%, part-time workers represented 18.8% of the employment in the total economy in 2009. If compared to the figures reported in 2008 (respectively 31.4% and 18%), the share of part-time workers in the health and social services sectors has grown throughout the period 2000-2009 in line with the part-time employment in all the sectors of the economy (2.5 percentage points).

Figure 1.10. Share of part-time employees, 2000 and 2009, EU-27

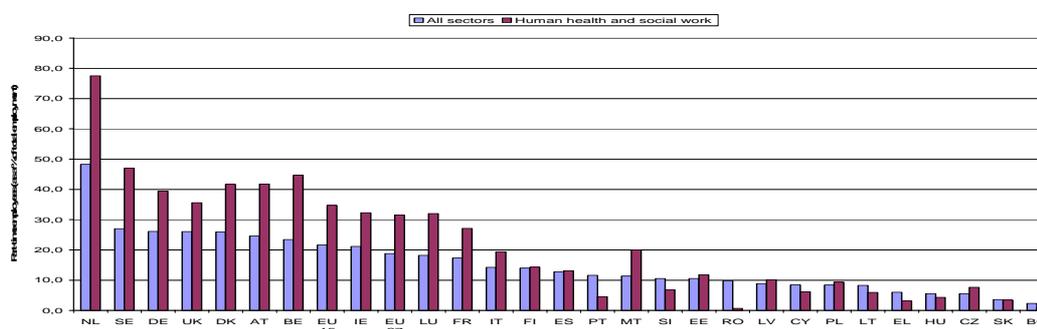


Source: EUROSTAT (LFS)

In several EU Member States, such as the Netherlands, Belgium, Sweden, UK, Austria and Denmark, part-time employment in all sectors of the economy is common (20-40% of total employment), and particularly in the health and social services sector. 77.5% of the working population in the Netherlands, 47.1% in Sweden, 44.7% in Belgium and 41.7% in Denmark and Austria was employed on a part-time basis in 2009. In other Member States, such as Slovakia, Bulgaria, Greece, Hungary or Czech Republic, the rate of part-time employment is well below the EU-27 average both in the economy as a whole and in the health and social services sector, while in Romania part-time employment in the health and social services sector is virtually non-existent

(see Figure 1.11).

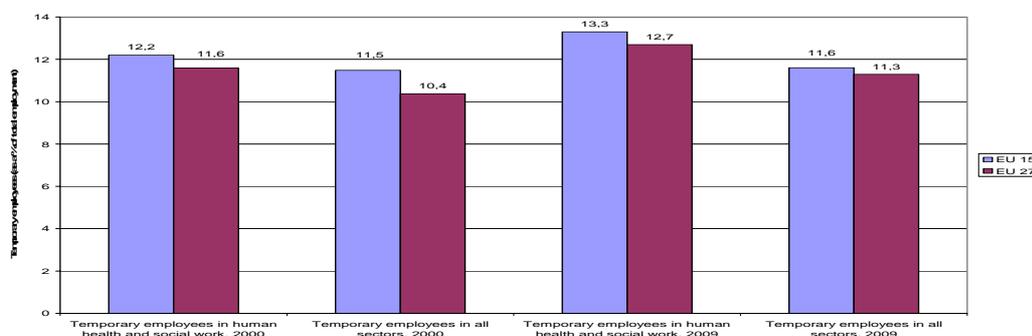
Figure 1.11. Share of part-time employment in all sectors and in human health and social work, 2009



Source: EUROSTAT (LFS)

Temporary contracts for employees¹¹ are also more common in the health and social services sector than in the total economy, although the difference is not as striking as in the case of part-time employment. 12.7% of the workforce in health and social services had temporary employment in 2009, which is on par with the 11.3% share of employees with temporary contracts in the total economy in EU-27 (see Figure 1.12). As Figure 1.12 shows, during the past decade, the share of employees with temporary contracts in health and social services increased by 1.1 percentage points, comparable with the increase of 0.9 percentage points across all sectors of the economy, and this figure has remained constant since the publication of the first Biennial Report.

Figure 1.12. Share of employees with temporary contracts, 2000 and 2009, EU-15 and EU-27

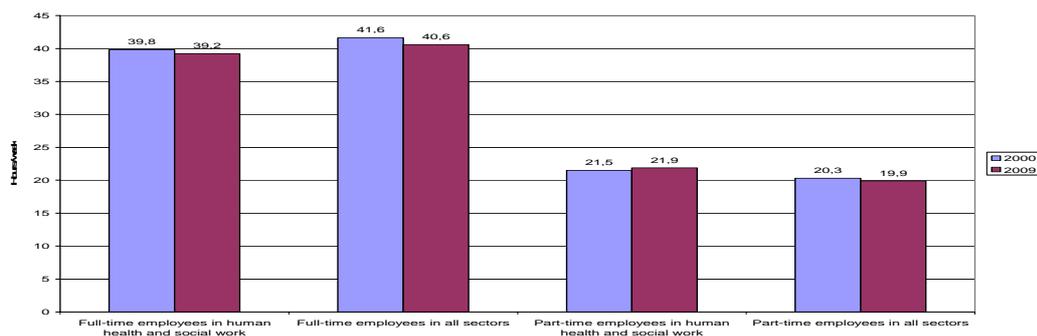


Source: EUROSTAT (LFS)

The differences in **working time** between the health and social services sector and the total economy are not significant. The average weekly number of working hours is the same as in the total economy for both full-time and part-time workers and it remained constant from 2000 to 2009 (see Figure 1.13).

¹¹ This category does not include the self-employed, but refers strictly to people employed in the human health and social work sector on a contractual basis.

Figure 1.13. Average number of weekly working hours, 2000 vs. 2009



Source: EUROSTAT (LFS)

1.2.5. Earnings levels in the health and social services sector

Although skill levels are relatively high and working conditions are often demanding (for instance, night and shift work), wage levels¹² in the health and social services sectors tend to be lower than in other sectors of the economy.

This tendency, which is related to the high rate of female employment in the sector and to the gender pay gap, is becoming more pronounced (see Figure 1.14).

Figure 1.14. Evolution of hourly earnings in the health and social services sector and in all sectors, 1995-2007, EU-27



Source: EU KLEMS

¹²

Due to the unavailability of data on net hourly earnings in various sectors of the economy in all the Member States, this section refers to average gross hourly earnings, which are computed as the compensation received by employees (before taxes and social contributions) in health and social works and in the total economy divided by the number of total hours worked by the employees in the respective sector. Although this is an approximation, it nevertheless provides an indication of the average gross hourly earnings across sectors.

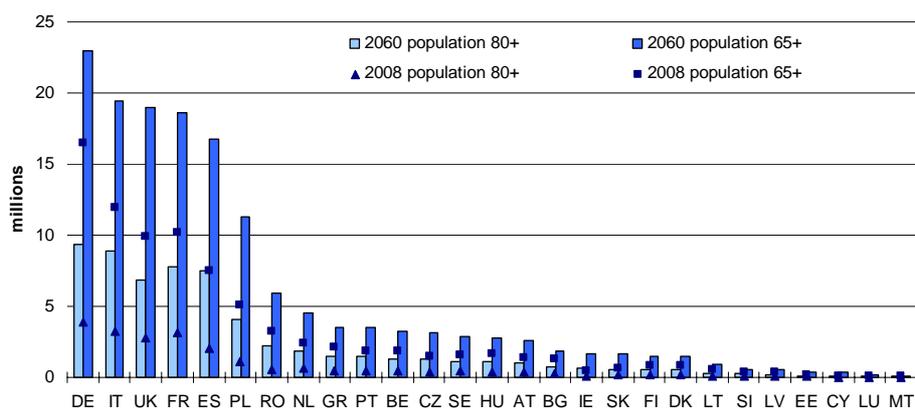
1.3. Main challenges in addressing the demand for health and social services

- *the ageing of the European population is a key driver of the growing demand for social services, which can be an opportunity for the creation of new jobs*
- *social protection, including health and social services, is mostly financed from public budgets*
- *reports from independent experts on social protection policies confirm that social services have been affected by austerity measures aimed at reducing public expenditure in order to balance budgets and decrease structural deficits*
- *maintaining an adequate supply and quality of health and social services under increasing budget constraints is a key challenge faced by policy makers*
- *spending on social services creates jobs and contributes effectively to poverty reduction*
- *the economic, social and employment potentials of SSGI are clearly underdeveloped in certain Member States. Public perceptions show that as a result, social needs are insufficiently met and expectations are frustrated*

1.3.1. A growing demand for health and social services

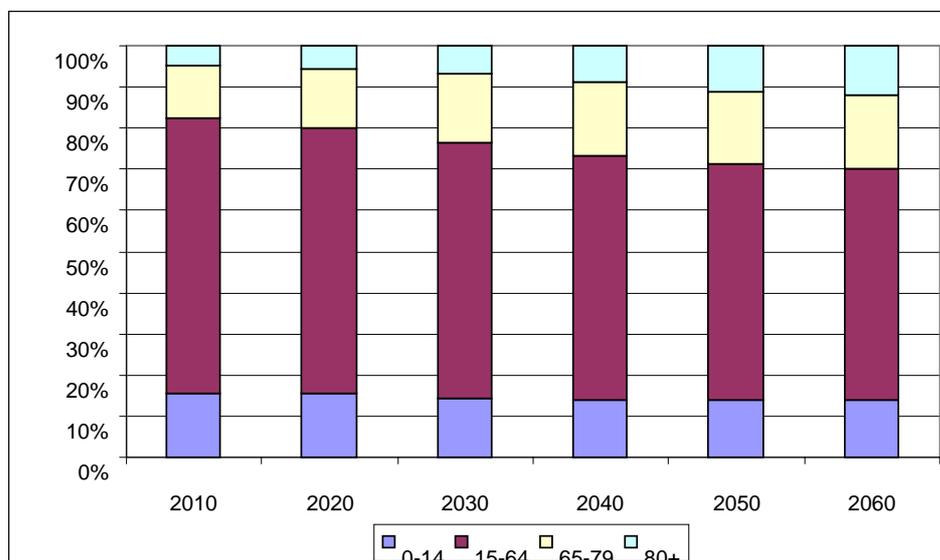
The ageing of the European population will continue to be a key driver of the growing demand for health and social services. In the EU-27, between 2008 and 2060, the population aged 65+ is projected to increase from 84.6 to 151.5 million, while the population aged 80+ is projected to increase from 21.8 to 61.4 million (see Figure 1.15 below). These figures represent an increase of 79% and of 181% respectively, the "very old" being thus the fastest growing segment of the population as also shown by Figure 1.16 below.

Figure 1.15. Projected population for ages 65+ and 80+ by Member State, 2008 and 2060



Source: 2009 Ageing Report: Underlying Assumptions and Projection Methodologies for the EU-27 Member States (2007-2060)

Figure 1.16. EU-27 population projection by age group, 2010-2060



Source: EUROSTAT, EUROPOP2008 (EUROstat Population Projections 2008-based) convergence scenario; 2009 EPC/EC Ageing report

Ageing can bring with it new patterns of morbidity (multiple chronic diseases, disability and dependency) spread over a long period of time. Evidence shows that **the need and demand for health care and social services is strongly and positively correlated with age**: health deteriorates with age and correspondingly, the demand for health and social services increases with age¹³. This means that due to the ageing of the population, there

¹³ Joint Report prepared by the European Commission and the Economic Policy Committee (AWG), *The 2009 Ageing Report: economic and budgetary projections for the EU-27 Member States (2008-2060)*, February 2009.

will be greater pressure to provide more and substantially different care and social services in the future than it is currently the case with a younger population structure.

The projections in the 2009 Joint Report of the European Commission and of the Economic Policy Committee¹⁴ show that the number of elderly people with a disability who rely on informal care is likely to nearly double in the EU-27 by 2060, increasing by more than 120% in the Czech Republic, Ireland, Cyprus, Luxembourg, Poland, Romania and Slovakia.

While the demand for long-term care services for the elderly will substantially increase, the availability of informal carers (family, friends and other relatives) may be further limited by the changing family structures, the growing participation of women in the labour market and the increased workforce mobility.

The decrease in the number of informal carers may in turn lead to a marked rise in the demand for formal care, which will further increase the trend towards employment growth in health and social services.

The growth in the demand for social services will also reflect other deep-rooted trends in the European economies and societies resulting from changes in gender roles and family structures (e.g. an increase in single households, increased participation of women in the labour market), from more flexible labour markets as well as from technological change and globalisation. Due to these trends, the demand for social services is becoming more complex: an increasing number of people will require efficient services adapted to diversified needs and choices.

Thus, a higher demand for formal health and social services is likely to act as a driver for increasing labour needs and the creation of new jobs.

1.3.2. Developments in expenditure on health and social services

Recent developments

Expenditure on social protection can be disaggregated into cash benefits and benefits in kind. Cash benefits include notably pensions, maternity payments, sick and parental leave, family allowances and unemployment benefits. Benefits in kind, i.e. benefits granted in the form of goods and services, encompass health care services, social assistance and services such as childcare and care for the elderly and disabled. While only part of the spending on cash benefits is intended for the consumption of social services, practically all the spending on benefits in kind finances social services. Therefore, the rest of this section will refer interchangeably to benefits in kind and health and social services.

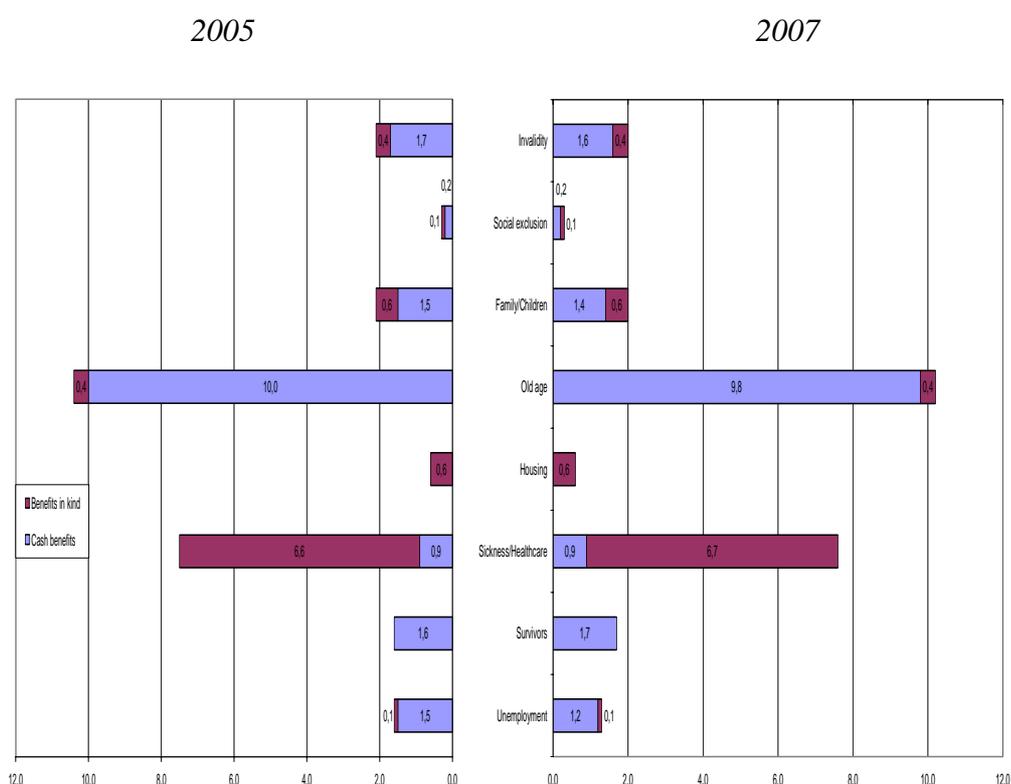
Figure 1.17 shows that in the last two years since the publication of the 2008 Biennial Report (which, on this point referred to data up to 2005), expenditure on social protection in the EU-27 remained fairly stable, decreasing slightly by 0.2 percentage points, from 26.1% of the GDP in 2005 to 25.9% in 2007. This relative decrease may be

¹⁴ See footnote 13 above.

primarily due to the economic growth, but also to the efforts made by the Member States to control public expenditure on social protection. Thus, spending on old-age cash benefits decreased by 0.2 percentage points, from 10% of the GDP in 2005 to 9.8% in 2007, while spending on benefits in kind for sickness and healthcare grew slightly by 0.1 percentage points, from 6.6% of the GDP in 2005 to 6.7% in 2007.

The level of spending on the provision of benefits in kind has also remained stable in this period: thus, in both 2005 and 2007, spending on assistance and rehabilitation programmes for the disabled accounted for 0.4% of GDP and child day care for 0.6%; spending on mobility and resettlement schemes, vocational training, placement services and job-search assistance for the unemployed represented only 0.1% of the GDP, while social housing services amounted to 0.6% of GDP.

Figure 1.17. Expenditure on social protection benefits as a % of GDP

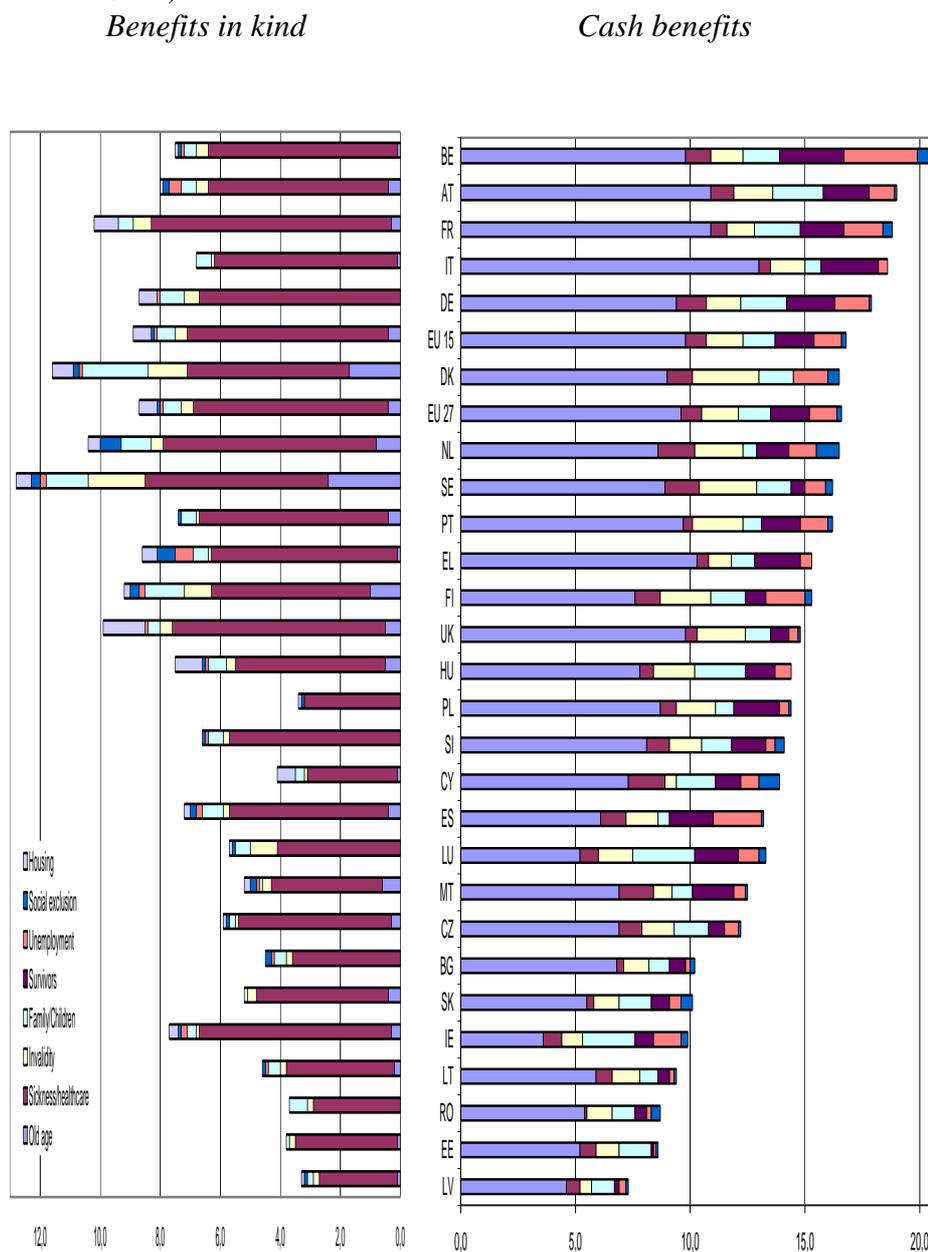


Source: EUROSTAT (ESSPROS 2007)

Disaggregating the social protection expenditure by social policy area allows a more in-depth reflection on the function of various types of expenditure. Although some Member States such as Belgium, Austria, Italy and Germany spend a higher proportion of their GDP on cash benefits than the EU-27 average (16.5% of GDP), they spend less than the average on benefits in kind (8.7% of GDP in the EU-27). Some other Member States such as Sweden, Denmark and the Netherlands spend comparatively less than the EU-27 average on cash benefits, but they allocate a considerably larger share of their social protection expenditure to benefits in kind for health and social services. Lastly, a third group of Member States, comprising Latvia, Estonia, Romania, Lithuania and Bulgaria, spend substantially less than the average on both cash benefits (less than 10% of GDP)

and benefits in kind (less than 5%) (See Figure 1.18).

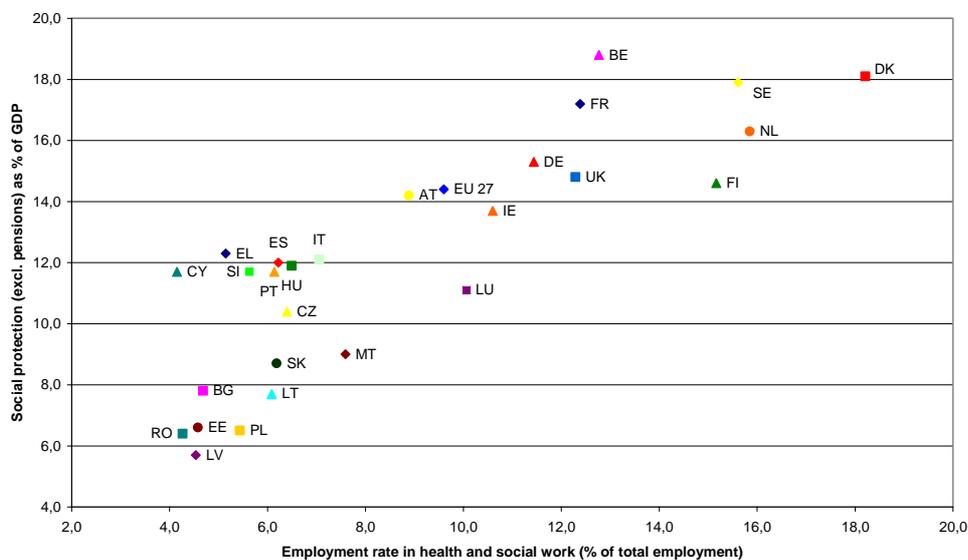
Figure 1.18. Expenditure on social protection benefits by social policy area as a % of GDP, 2007



Source: EUROSTAT (ESSPROS 2007)

The level of social protection expenditure is strongly correlated with the proportion of people employed in the health and social services sector. Thus, in Member States such as Latvia, Romania, Estonia, Poland, Bulgaria or Lithuania, where the level of social protection expenditure (excluding pensions) is low, the employment rate in health and social services is also quite low. On the other hand, in Member States such as Denmark, Sweden, Belgium, France or the Netherlands, a high level of social protection expenditure is positively correlated with an equally high employment rate in health and social services (see Figure 1.19).

Figure 1.19. Employment in health and social work vs. social protection benefits (excluding pensions), 2007

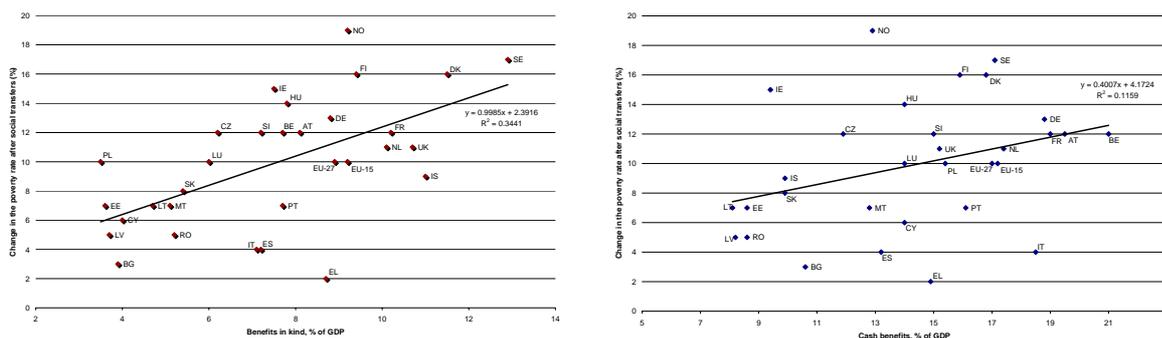


Source: EUROSTAT (ESPROSS 2007)

The main explanation for the strong correlation between social protection expenditure and the employment rate in the health and social services appears to be the **relatively large weight of wages and salaries in spending on benefits in kind**, as wages can account for **up to 80% of total expenditure** in sectors such as long-term care, disability care or childcare.

Figure 1.20 below shows the correlation between the two main parts of social protection expenditure, i.e. benefits in kind (health and social services) and cash benefits (social transfers), and the change in the at-risk-of-poverty rate before and after social transfers. The left panel shows the change in the at-risk-of-poverty rate vs. benefits in kind, while the right panel shows the change in the at-risk-of-poverty rate vs. cash benefits. The correlation is stronger when social protection expenditure takes the form of spending in health and social services than when it takes the form of cash benefits. This suggests that **spending on social services contributes effectively to poverty reduction**.

Figure 1.20. The change in the poverty rate vs. benefits in kind and cash benefits



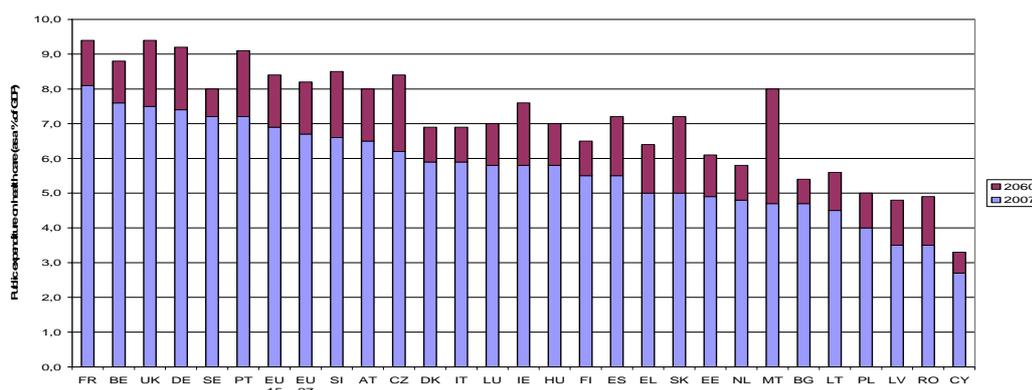
Source: EUROSTAT (ESSPROS 2007) and EU-SILC 2008

Future expenditure developments

The ageing of the population coupled with the ageing of the workforce and with the ‘elder ageing’ (i.e. the rapid increase in the number of people aged 80 and over) – the so-called "triple ageing" phenomenon – will have marked implications for health and social services expenditure.

If age-disease patterns remain unchanged, expenditure levels will increase in line with population ageing. According to the 2009 EPC/EC projections, **public expenditure on health in the EU-27 will increase by 1.7% of GDP by 2060 due to population ageing**, i.e. a 25 % increase with respect to current spending, from 6.7% to 8.4% of GDP. This increase will range from 0.4% of GDP in Bulgaria and Cyprus to 3.8% of GDP in Malta, with most Member States registering increases in public health expenditure between 1 and 2.5% of GDP (see Figure 1.21).

Figure 1.21. Public expenditure on health care as % of GDP, 2007-2060

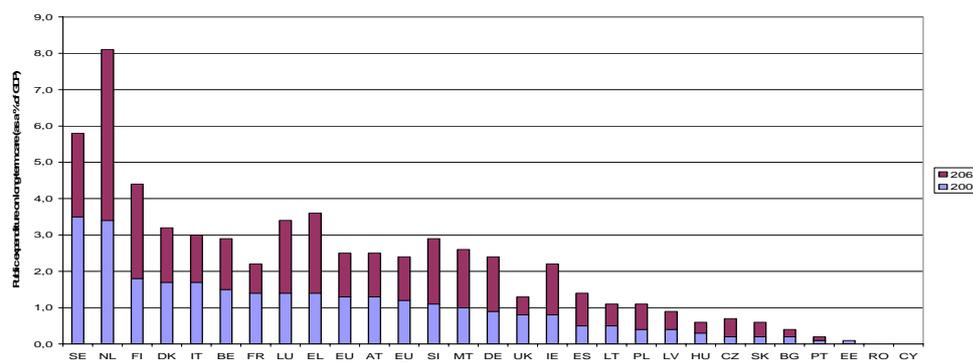


Source: 2009 EPC/EC Ageing report (EPC Ageing Working Group reference scenario)

By 2060, public expenditure on long-term care is projected to increase by 1.2 percentage points, from 1.2% to 2.4% of GDP, ranging from less than 0.1 percentage points in Cyprus, Romania, Estonia and Portugal to more than 2 percentage points in Luxembourg, Greece, Sweden, Finland and to more than 4 percentage points in

the Netherlands (see Figure 1.22).

Figure 1.22. Public expenditure on long-term care as % of GDP, 2007-2060



Source: 2009 EPC/EC Ageing report (EPC Ageing Working Group reference scenario)

This variation of the projected changes in public expenditure on long-term care reflects the situation of formal care provision and its expected evolution in various Member States. In those Member States where the public expenditure on long-term care and its projected increase are low (well below 1% by 2060) - such as Cyprus, Romania, Estonia, Portugal, Bulgaria, Slovakia, the Czech Republic, Hungary and Latvia - the need for long-term care services will continue to have to be met by informal carers, family, friends or relatives. By contrast in Member States where the public expenditure on long-term care is above the EU-27 average and is projected to almost double by 2060 - such as in Greece, Luxembourg, Finland, the Netherlands and Sweden - the elderly population will rely more on the formal care providers, reflecting the changes in household composition, gender patterns and family relations towards smaller households and a greater participation of women in the labour market.

1.3.3. Perceptions of and expectations about the quality, accessibility and affordability of social services in Member States

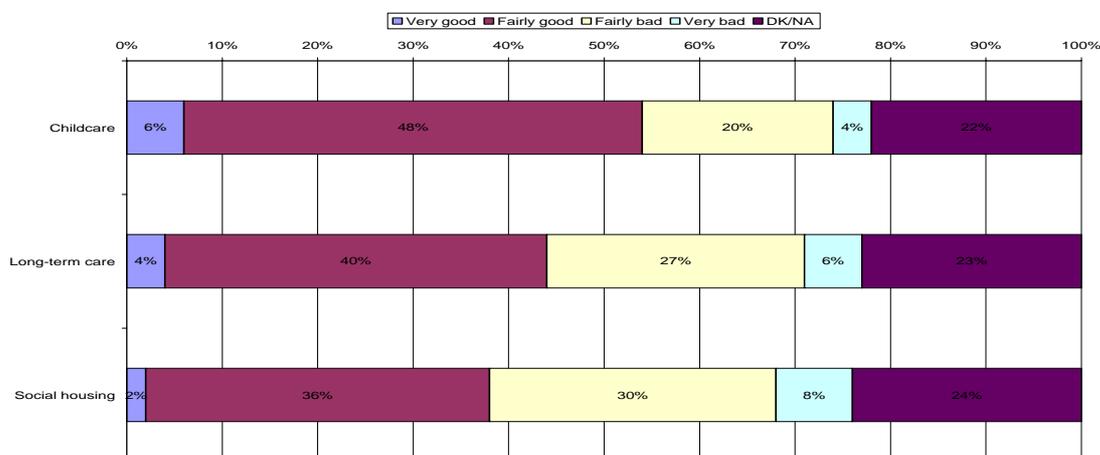
Maintaining adequate levels of spending on health and social services while containing the growth in the public expenditure is a challenging task for policy makers in Member States, especially in the light of rising public expectations regarding the quality, accessibility and affordability of social services.

A **Eurobarometer on Poverty and Social Exclusion released in October 2009** shows that European citizens are divided when it comes to assessing the quality, accessibility and affordability of social services, and in particular childcare, long-term care and social housing.¹⁵

¹⁵ Their standpoint may be partly explained by a certain lack of familiarity with these types of social services, as only about one tenth of interviewees are using them or have used them in the 12 months prior to the survey (see Figure 1.25).

A majority of respondents consider the quality of childcare services (54%) to be fairly good or very good, while 44% and 38% share this view when it comes to long-term care and social housing services (see Figure 1.23).

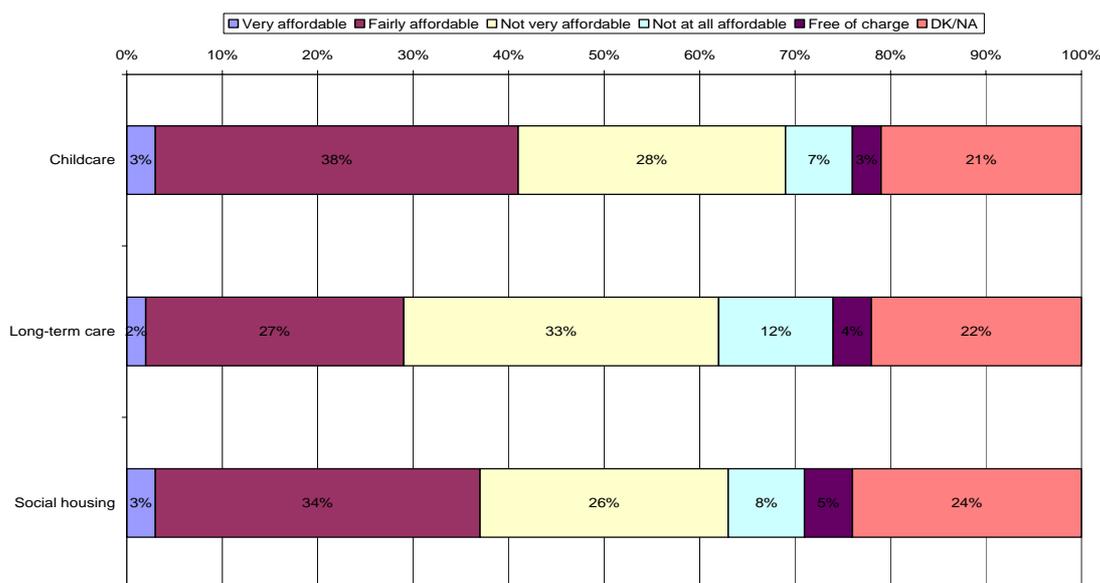
Figure 1.23. Perceived quality of social services by type of service



Source: Special Eurobarometer 321

Figure 1.24 shows that childcare services, whose quality had been assessed by an absolute majority of interviewees as very good or fairly good, also collected the most votes when assessing its affordability (41%). In contrast, 45% of the respondents perceived long-term care services as not very or not at all affordable, even though their quality was appreciated by a significant share of the sample. As for social housing services, the proportion of respondents who appreciate their quality (38%) is very close to the proportion of those who find them affordable (37%).

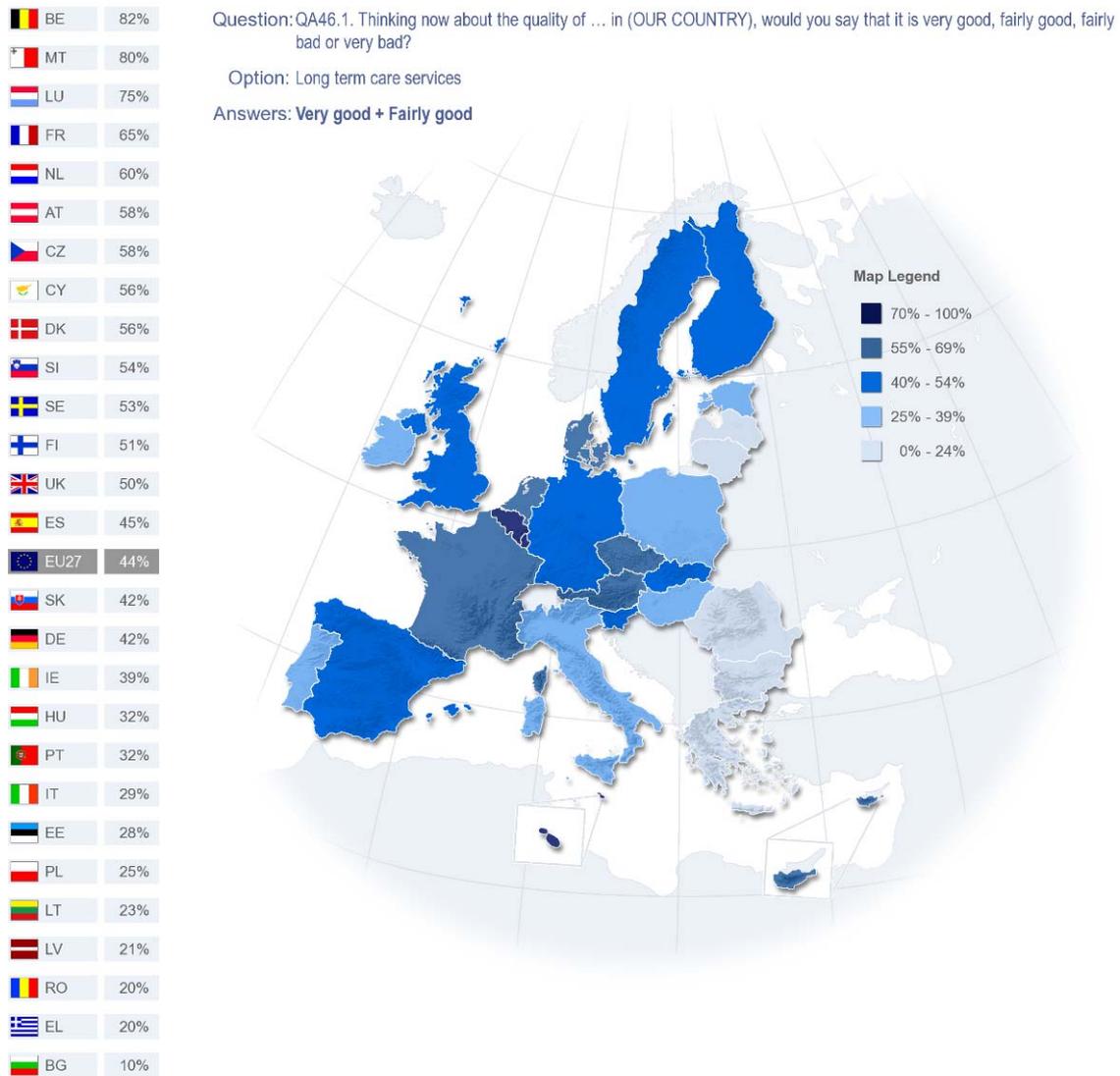
Figure 1.24. Perceived affordability of social services by type of service



Source: Special Eurobarometer 321

A closer look at the positioning of the Member States (see figure 1.25 below) reveals very large differences in the perceived quality of long-term care services, with positive assessments (very and fairly good) ranging from as low as 10% in Bulgaria to 82% in Belgium. The big differences in the proportion of positive assessments are partially due to high levels of “don’t know” responses in certain Member States, which range from 6% in Belgium to 45% in Latvia. However, the view that the quality of long-term services is fairly or very bad dominates public opinion in eleven Member States and particularly so in Greece (73%).

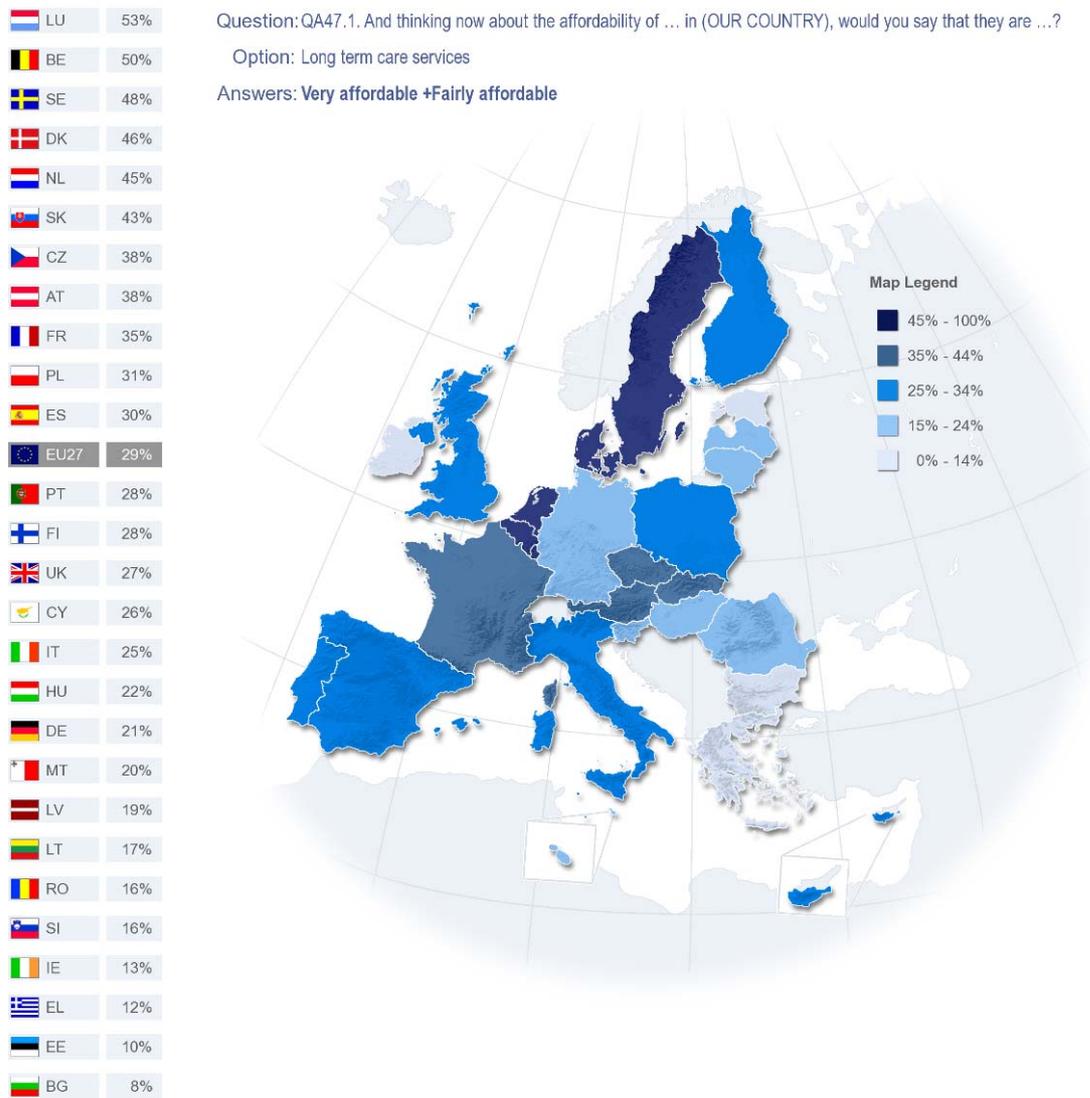
Figure 1.25. Perceived quality of long-term care services by Member State



Source: Special Eurobarometer 321

The opinion that long-term care services are affordable ranges from just 8% in Bulgaria to 53% in Luxembourg (see figure 1.26 below). However, in the majority of Member States, the prevailing view is that long-term care is not affordable. In twelve Member States, this view is held by an outright majority (highest in Greece – 71%) and this is the case for a relative majority in ten more Member States. Only in the Benelux countries and in Denmark and Sweden is long-term care considered affordable. The percentage of “don’t know” responses ranges from 5% in Slovakia to 42% in Bulgaria.

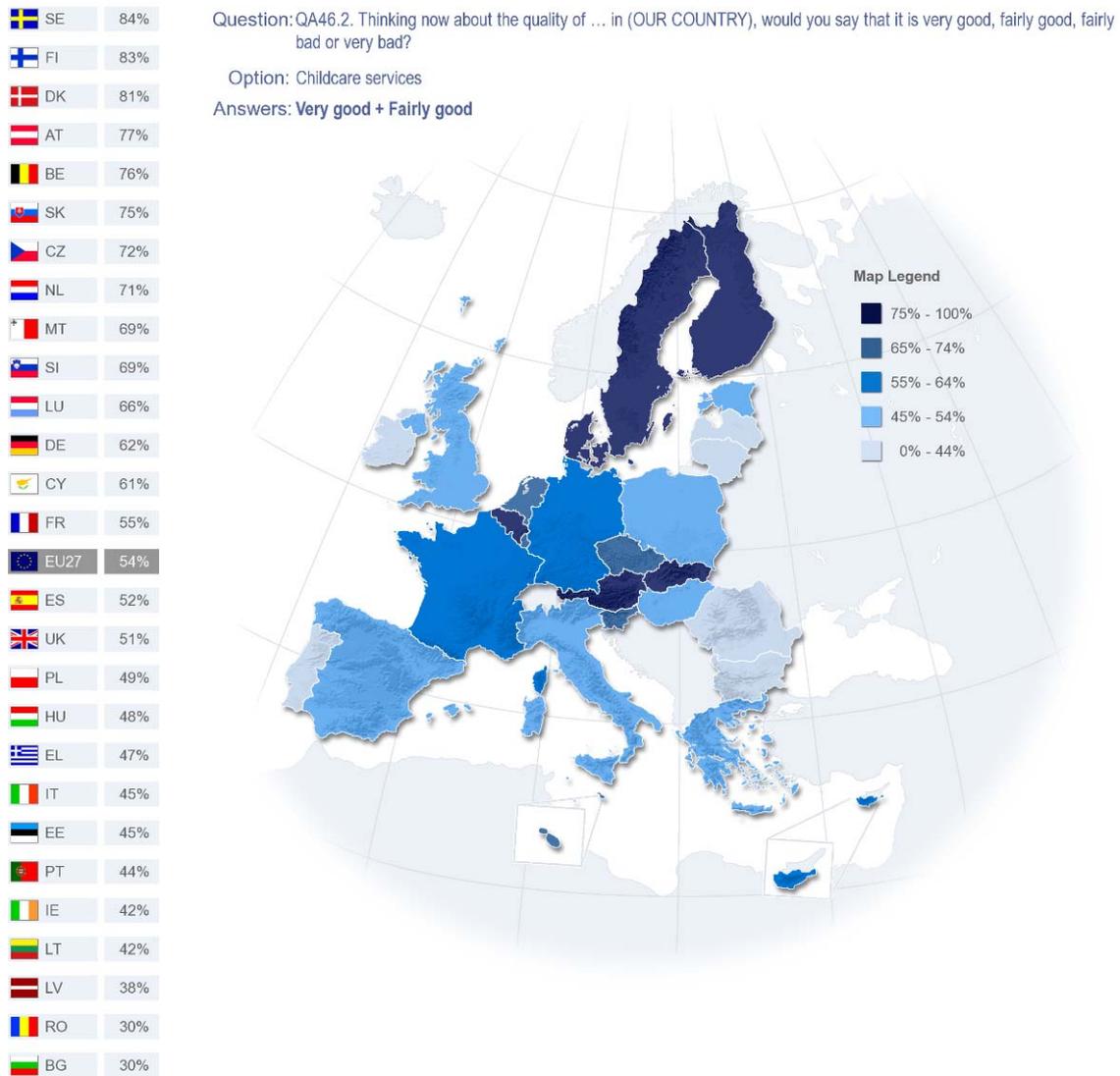
Figure 1.26. Perceived affordability of long-term care services by Member State



Source: Special Eurobarometer 321

There are also big differences in the way citizens have been gauging quality between Member States with regards to childcare, although the differences are slightly less extreme than for long-term care (see figure 1.27 below). Positive assessments range from 30% in Bulgaria and Romania to over 80% in Scandinavia. In most Member States a majority feel that the quality of childcare services is good, with an outright majority in sixteen Member States and a relative majority in a further nine Member States holding that opinion. Negative assessments are highest in Greece (42%), Romania, and Italy (each 38%), while “don’t know” responses dominate in Bulgaria (40%).

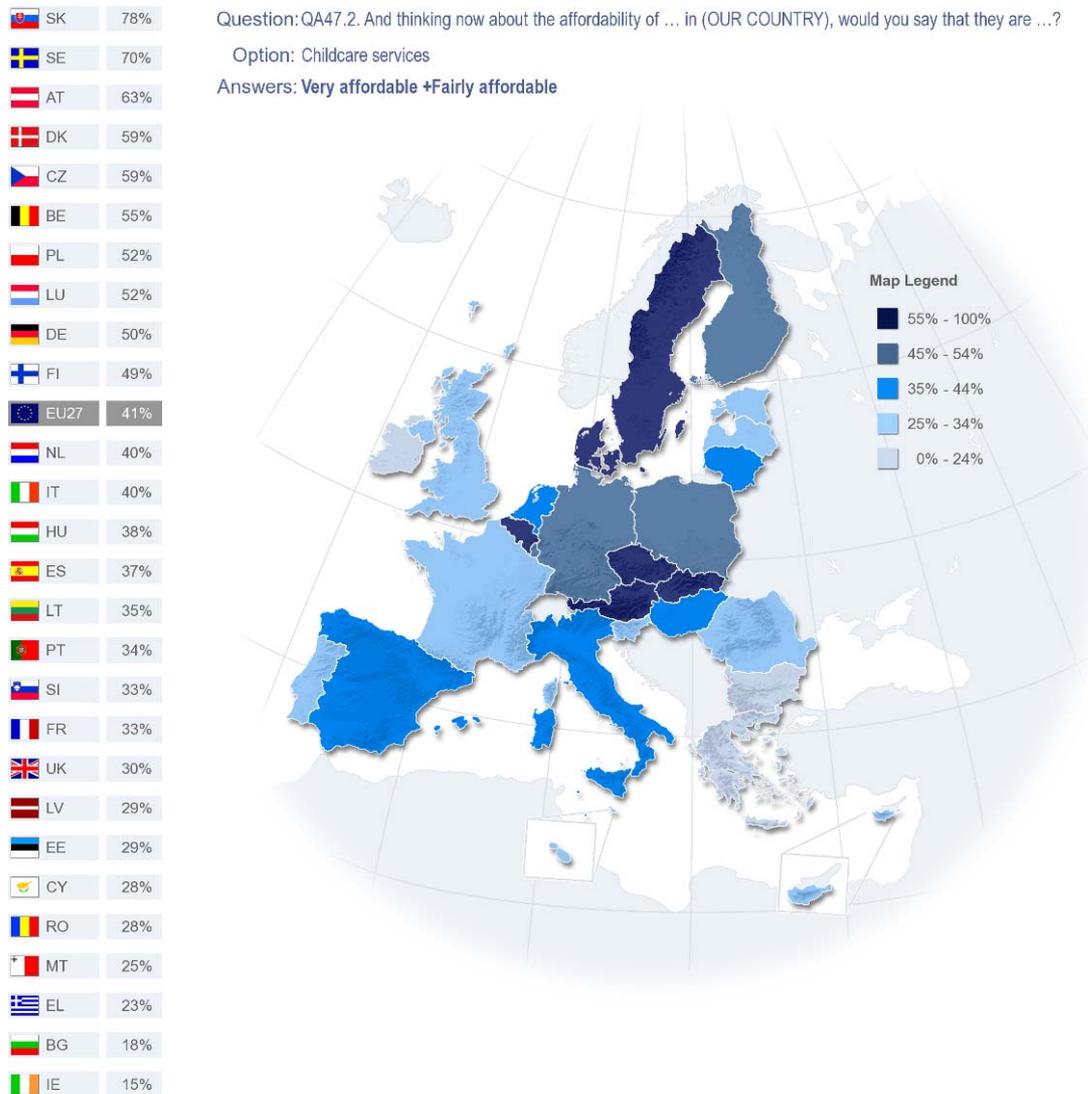
Figure 1.27. Perceived quality of childcare services by Member State



Source: Special Eurobarometer 321

The opinion that childcare services are (very or fairly) affordable ranges from 15% in Ireland to 78% in Slovakia (see figure 1.28 below). Even if the most popular view in the majority Member States is that childcare is affordable, opinion is different in Greece (58% consider it not affordable) Slovenia and Ireland (each with 50%), while “don’t know” responses range from 2% in Slovakia to 49% in Bulgaria.

Figure 1.28. Perceived affordability of childcare services by Member State



Source: Special Eurobarometer 321

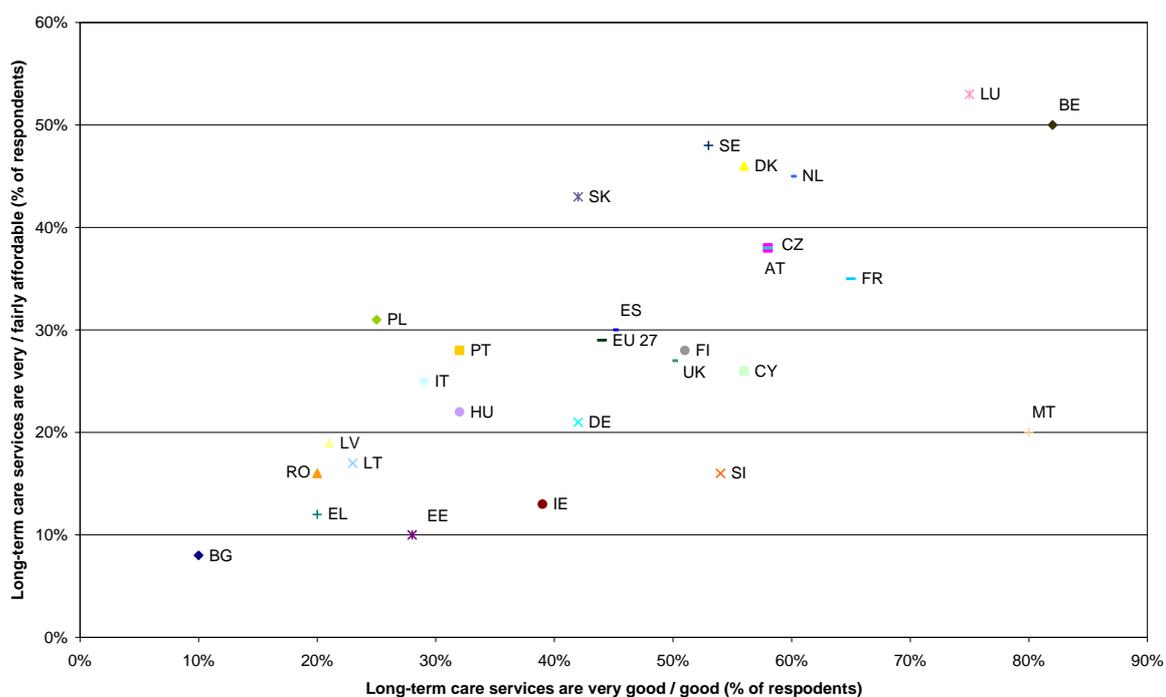
It seems that there is a strong link between citizens assessment of the quality of social services and of the affordability of those services, particularly for the two types of services that are used by the largest proportions of respondents, namely long-term care and childcare (see Figures 1.29 and 1.30). In an attempt to profile the answers, three groups of Member States can be distinguished: in Bulgaria, Romania, the Baltic States, Ireland, Italy, Hungary, Greece and Portugal, the assessment of both the quality and the affordability of these services is lower than the EU-27 average. In Sweden, Denmark, Austria, the Czech Republic, Luxembourg and Belgium, both quality and affordability are rated positively by above-average proportions of citizens. In several other Member

States, such as France, Finland, the Netherlands or Slovakia, people's perception of quality and affordability varies much more widely according to whether long-term care or childcare services are being assessed.

While acknowledging the importance of the strong link between quality and affordability, current evidence from research and practice in the early childhood education and care services shows that quality assessment of the services has to go far beyond issues of accessibility and affordability, as it will be highlighted in the next Chapter.

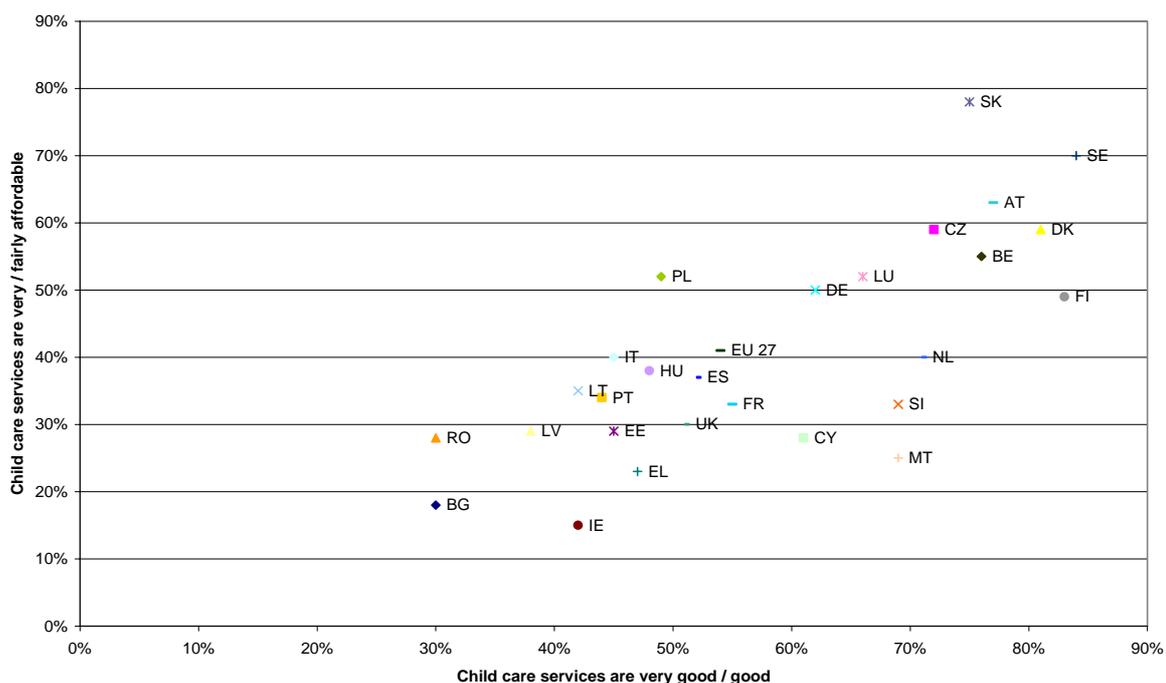
In all Member States, European citizens are of the opinion that the provision of both long-term care and child care services should be the responsibility of the public sector, whether at national level (45%) or at regional/local level (41%). An even larger proportion of respondents believe that the public sector should be responsible for providing child care services at national level (55%), but only 33% think this should be the responsibility of the regional or local authorities.

Figure 1.29. Quality vs. affordability of long-term care services



Source: Special Eurobarometer 321

Figure 1.30. Quality vs. affordability of childcare services



Source: Special Eurobarometer 321

1.3.4. The impact of the current economic and financial crisis on the provision of social services

Due to the structural factors presented above, we can expect a long-term trend of increasing expenditure on health and social services. Social expenditure in general (comprising both benefits and services) is also subject to cyclical variations. As has been observed since the 1970s, social expenditure increases as a share of GDP during economic recessions or periods of slow growth and decreases during economic expansions. Against this background we can say that social expenditure in the EU plays its role as part of the automatic stabilisers and fluctuates with the business cycle. The current economic and financial crisis is having a significant impact on the organisation and financing and quality of social services.

Just as social protection expenditure can help mitigate the impact of economic slowdowns and support growth in the long run, growth contributes to the building up and sustainability of social protection. The ratio of social protection expenditure as a share of GDP has declined during periods of rapid growth in the second half of 1990s, after having increased sharply in the early 1990s when growth rates were very low, reflecting a correlation between growth, employment and expenditure. From 2000 to 2004, social protection expenditure grew slightly more rapidly than GDP due to dynamic developments in health care and unemployment expenditure. The trend of increasing expenditure relative to GDP was reversed in 2004, when a period of higher GDP growth started and, in 2007, social protection expenditure relative to GDP in the EU-25 declined to the level observed in 2000. Due to the lack of data, it is impossible to say to what extent these cyclical fluctuations reflect expenditure on benefits and services.

The scope, magnitude and effects of the economic crisis vary greatly among the EU Member States. Consequently, the social services sectors in various Member States have been affected differently depending on the sources of financing that are available to them, which may be sensitive to the economic cycle. As a result of the crisis, we have seen a strong increase in the share of social protection expenditure in GDP in 2008 and 2009. Available data do not allow us to determine whether this increased share applies equally to services and to benefits.

The reduction of the expenditure on social services as a consequence of the measures taken to redress national budgets in response to decreasing tax revenues carries the risk of widening and entrenching poverty, vulnerability and social exclusion. As the impact of economic recession varies considerably from one Member States to another and even among regions within the same Member States, the already existing vulnerabilities associated with poverty, age, disability, employment or migration status may become deeply embedded in the social structures of various Member States and regions, thereby putting an additional strain on social cohesion.

Aware of this risk, most Member States, according to the *Second joint assessment by the Social Protection Committee and the European Commission of the social impact of the economic crisis and of policy responses*¹⁶, have included specific measures to mitigate the impact of the economic crisis on the social services sector within their recovery packages. These measures are targeted at the most vulnerable categories of people, such as families with children (in Austria, Hungary, Luxembourg, Malta or Portugal), migrants and ethnic minorities (in Bulgaria, Hungary, Sweden and the United Kingdom), the disabled (in Belgium, Slovenia and Sweden) or other vulnerable groups, such as young people, jobless families, the low-skilled and older workers (as in France and Portugal).

Since most sources of vulnerability are closely associated with the effects of the economic downturn, such as increasing unemployment, loss of income at household level and decreasing purchasing power, several Member States have adopted specific measures aimed at preserving employment, supporting activation, managing the adverse impact of job restructuring and promoting re-integration in the labour market. Most of these measures build on existing labour market policies that have developed along the principles of flexicurity and active inclusion. Many of these measures which were of temporary nature, have been prolonged. Some Member States, especially those that can rely on strong social protection systems (such as Austria, Belgium, Denmark, Finland, Germany or Sweden), focused their response to the crisis on support for the smooth functioning of labour markets in order to limit job losses, thereby cushioning the social impacts.

As economic growth is resuming in 2010, a cyclical decrease in social expenditure as a share of GDP can be expected. Moreover, a number of Member States are adopting austerity measures. However, evidence concerning the impact of the economic crisis and of the subsequent austerity measures on the social services sector in the EU Member States is only emerging now and will become available in 2011. An analysis of preliminary reports prepared by a network of independent experts on social protection

¹⁶ Council of the European Union, 16169/09 ADD 1, Brussels, 24 November 2009.

policies¹⁷ confirms that in a number of Member States (for instance, in Bulgaria, Czech Republic, France, Italy, Lithuania, The Netherlands or Romania), social services have been affected by **austerity measures that aim at reducing public expenditure** in order to balance budgets and decrease structural deficits.

The new or reinforced measures have been taken mostly in the area of flexible working time arrangements, which are seen as an effective means of keeping people in employment (in Belgium, Bulgaria, France, Germany, Luxembourg, Hungary, Austria, The Netherlands, Poland or Slovenia). Other new measures have been taken to strengthen Public Employment Services (in France, Malta, The Netherlands, Poland, Portugal, Spain, Sweden or the United Kingdom), to facilitate territorial and job mobility (in Bulgaria, Lithuania, The Netherlands and Slovenia) and to promote the creation of jobs in the social economy (in Latvia, Portugal and Spain).

At the same time, as the austerity measures in several Member States tend to significantly reduce the means available for social services and thereby to lower their availability and quality, rising unemployment, pay cuts, inflation and currency devaluation have lowered disposable household income and generated an increasing demand for social services and for complementary sources of income and financial aid. There are signs that demand for social services in a number of Member States (such as Estonia, Latvia, Hungary, Portugal, Romania and Slovakia) is rising or has stabilised above pre-crisis levels.

To the extent that ongoing austerity measures lead to absolute or relative staff reductions in the social services sector and/or involve pay cuts, this will obviously influence working conditions and staff motivation. Measures more directly affecting the workers in the social services sector have been adopted in several Member States (such as in Bulgaria, Greece, Ireland, Latvia, Portugal or Romania), including reducing wages, changing the contractual arrangements to part-time and temporary positions, freezing the recruitment of new employees or staff redundancies. In combination with a growing crisis-generated need for services, this is bound to have an adverse impact on the quality of social service provision, as suggested by the rising number of complaints about the quality of social service provision that have been submitted to the Ombudsman offices and national regulatory bodies in several Member States (such as Greece and Romania).

Member States have also made use of the **European Social Funds** to enhance support to the unemployed, in order to maintain workers in employment and to respond to the needs of the most vulnerable groups that are facing structural barriers to integrate the labour market. Many of the measures financed via the ESF that have been taken in various Member States (such as Austria, Czech Republic, France, Finland, Germany, Italy, The Netherlands, Portugal, Slovenia or the United Kingdom) prepare workers for the upcoming economic recovery by investing in their skills and qualifications.

¹⁷ These experts constitute a network within the framework of the ASISP project (*Analytical Support on the Socio-Economic Impact of Social Protection Reforms*).

1.4. Conclusions

Generally, health and social services play a significant role in the economies and societies of the EU Member States. They meet essential social needs, generate employment on a large scale and contribute significantly to GDP. Yet, at the moment; their importance varies widely across the EU. Their economic, social and employment potentials are clearly underdeveloped in certain Member States. Public perceptions show that, as a result, social needs are insufficiently met and expectations are frustrated.

Yet, irrespective of the extent of their development, health and social services in all Member States have come under serious pressures as an effect of the economic and public budget crisis. The contracting economy has caused both the need and the demand for services to rise and, at the same time, significantly constrained the financing basis in public budgets.

When analysing the features of employment in the health and social services sector compared with the rest of the economy, it appears that workers in these services are generally better skilled than in the economy as a whole.

Despite the large proportion of highly-skilled workers, the bigger share of non-standard working hours and the difficult working conditions, wage levels have declined in relative terms, and are now below the average for the EU-27 economy. This is in line with the findings of many studies on the gender pay gap, showing that sectors with higher shares of female employment are characterised by low wages.

Possible consequences of these trends are that it will become more difficult in the future to attract qualified employees in this sector and this, coupled with the ageing of the health workforce, could lead to staff shortages or to a reduction in the quality of health and social services, at the very moment when these services are most needed, because of the current economic and financial crisis. Other challenges for this sector are the ageing of the population, as well as the changes in gender roles and household composition that will lead to an increasing demand for health and social services in all the EU Member States. Beyond these general trends, the impact of the crisis is particularly visible in terms of both reduction in social expenditure and increased demand.

Creating more secure, better skilled and better paid jobs and fulfilling the growing demand for services in a cost-effective way will require the development of comprehensive strategies in which EU-facilitated policy learning and transfer of best practices can play an important role. These strategies must be coordinated with sustained efforts to improve the working conditions and professional development of workers in the health and social services sector through a broad range of measures. Such measures include the development of more efficient learning schemes for acquiring, certifying and recognising qualifications in health and social services, better career prospects and job security, on-the-job training and opportunities for learning and personal improvement as well as more convenient salary packages and working conditions. These questions are closely related to the issue of social services quality which will be the subject of the next chapter, while Chapter 3 looks at how the EU legal framework can facilitate cost-efficiency in the provision of social services.

2. IMPROVING THE QUALITY OF SOCIAL SERVICES

The First Biennial Report, when describing the reform processes in the social services sector¹⁸, had highlighted on various occasions the increasing attention to the issue of social services quality. This increasing attention is related directly to the reform processes themselves and, in particular, to the increased outsourcing of social services provision to a variety of actors. Public authorities therefore need comprehensive frameworks which can guide them when defining the social services to be provided by these external service providers and the quality requirements that the service providers should meet.

Improving quality will help to better protect those users of social services who are more vulnerable and to better address a demand for social services which is growing and becoming more complex and diverse, due to various socio-economic factors such as the ageing of the population, the changes in gender roles and family structures, and more flexible labour markets¹⁹.

This increasingly complex and diverse demand requires greater comparability and complementarity of the social services available to all potential users, as well as a skilled workforce that is large enough and adequately trained to address it. The debate on social services quality can help to identify the skills and training requirements of the workers in this sector and can also lead to an improvement of the working environment, thus contributing to the further development of the sector.

Moreover, the debate on quality is also triggered by the growth in the cross-border provision of social services, which is currently very limited but is expected to increase, in particular in the area of long-term care: increasing cross-border provision will require a greater level of service comparability and transparency, as well as new forms of protecting both users and workers.

In the present context when public authorities in the Member States are exposed to growing financial constraints, developing a consensus on social services quality at EU level helps policy-makers to prioritise investments that promote continuous development of both the quality and the cost-effectiveness of social service provision.

This chapter highlights the growing interest among public authorities, service providers, social partners, users and other stakeholders in the debate on the quality of social services and offers an overview of the variety of approaches to this issue. It presents the quality frameworks and tools put in place by public authorities in the Member States (section 2.1), it describes initiatives on quality of social services developed by various stakeholders (section 2.2) and it highlights the action already undertaken by the European Commission in this area (section 2.3), providing in particular an overview of eight projects on social services quality that are financed via the PROGRESS programme (section 2.4). This chapter ends with a description of the work carried out within the Social Protection Committee in order to develop a Quality Framework for social

¹⁸ See chapters 3 and 4 of the report.

¹⁹ See Chapter 1, point 1.3.1 above.

services: all the other initiatives mentioned above have been reflected in many ways in the adopted framework (section 2.5).

2.1. Member States' initiatives towards improving the quality of social services

- *the variety in service provision across Europe is reflected by the way in which quality is regulated*
- *fragmentation in the organisation, funding and provision of services between national, regional and local public authorities and external providers can be a challenge to the development and implementation of quality measures*
- *quality frameworks and tools are not yet very common*

This section provides an overview of quality frameworks which have been developed by public authorities at national, regional and local level. It is based on a mapping study currently being carried out for the Commission in a selected number of EU and EFTA/EEA countries with respect to four specific types of social services (long-term care, child care, social housing and employment services)²⁰. A key challenge in this analysis is the vast range of experiences within sectors, not only across countries, but also across regions within countries.

²⁰ This mapping study has been commissioned following a call for tender No VT/2009/008: Study on Social Services of General Interest. Research work started at the end of 2009 and is at present concluded. The study is to be finalised in the first half of 2011. The aim of the mapping study is to provide a clear picture of how long-term care, child care, social housing and employment services are regulated, how service providers for these four services are operating, and what quality frameworks or tools exist and how they function. As for the section of the mapping study dealing with quality frameworks and tools, quality frameworks have been defined as any coherent regulation which regulates quality of a given social service in a consistent and comprehensive way. A quality tool is any initiative (regulatory or non-regulatory) which aims to ensure quality of certain aspects of the social service and therefore might co-exist with other quality tools which are targeted on different aspects of service delivery.

2.1.1. Long-term care²¹

Long-term care services for older people take different forms across Europe: they include services delivered in long-stay institutional facilities, (so-called "residential long-term care services"), services delivered within day centres and other community based facilities (so-called "community-based long-term care services") and services delivered within individual's homes (so-called "home-care services"). There is also a significant variation in the availability of services across Europe, ranging from countries in Scandinavia where there is a high reliance on formal care services to other parts of Europe, e.g. Portugal, Spain and Greece, where traditionally there has been a reliance on family members to provide care and where formal long term care service provision remains scarce.

The range of approaches to quality management in relation to long-term care services in Europe is wide. Although no country currently has a coherent quality framework for all types of long-term care, several countries have developed different tools to ensure quality in the provision of certain types of long-term care services, essentially residential long-term care services. At the same time in many countries quality tools focus on social care and/or health care services in general rather than dealing specifically with long-term care.

In most countries, some if not all of the quality tools, are formally underpinned by legislation. Most quality standards and frameworks have been defined at a national level, although in the case of **Denmark**, the municipal authorities are mandated by the national level to develop their own quality frameworks. In the case of federal countries or countries with a high level of autonomy at regional level, quality standards and quality assurance mechanisms may be developed at regional level. This can lead to a significant disparity in approach, as in the case of **Italy**. In the **United Kingdom**, where **Scotland** is completely autonomous from England in respect of health and social care, similar quality frameworks are being implemented, although a new formalised star rating system on monitoring and performance assessment has now been introduced in **England** alone.

It is possible to distinguish between two broad categories of quality frameworks and tools – those that are largely generic in focus and deal with long-term care as a whole regardless of the setting in which it is delivered and others that develop a more targeted approach focussing on a specific service or a group of services within long-term care. Very often, targeted quality frameworks and tools have tended to focus on residential care services, while far less attention has been paid to quality issues in respect of community-based care services (e.g. day care services) or home-care services.

²¹ For the purpose of the mapping study, long-term care services refer to a range of services for people who require help with basic activities of daily living over an extended period of time (OECD (2005) Long-term care for older people). While long-term care can be provided to people with physical or mental health problems disabilities, the mapping study focuses at services predominantly provided to the elderly.

Within the framework of the mapping study, the following 15 countries have been analysed as regards existing quality frameworks and tools for long-term care services: Austria, the Czech Republic, Denmark, Estonia, France, Germany, Ireland, Italy, the Netherlands, Norway, Poland, Romania, Spain, Sweden and the United Kingdom.

Particularly interesting examples of generic quality frameworks and tools include the *Standards of Quality of Social Services* in the **Czech Republic**; the *Quality Assurance Framework in Care Provision* in **Germany**; and the *National Strategy for Quality Improvement in Health and Social Services* in **Norway**.

Czech Republic - Standards of Quality for Social Services

In 2002, as a result of a consultation with academics, representatives of providers and support associations, the Czech Ministry of Labour and Social Affairs developed a set of social services quality standards. Initially, the standards were simple recommendations. Since 2007 the standards have become a part of the Czech Law on Social Services. Although the standards are intended for all kinds of services, they are used mainly in institutional care facilities. The legislation specifically sets out the quality conditions to which any social service provider has to conform, as well as a detailed set of standards of quality of social services covering 15 areas for quality assessment, including protection of users' rights, continuity of social service provision, professional development of workers and service availability.

Examples of targeted quality frameworks and tools are the *National Quality Certificate Scheme for Residential Care* (NQZ) which has recently begun to operate in **Austria**, the *National Quality Standards for Residential Care Settings for Older People* in **Ireland** launched in March 2009, the quality standards for home care services and residential care services for older people introduced in **Romania** in 2006, the '*Voluntary code of quality guidelines for home care support services for older people*' that has been developed in **Ireland** since 2009 and the '*Home visits and counselling programme*', an initiative developed in **Austria** to improve the quality of care for recipients of federal long-term care allowances.

Approaches to quality have always the role of service providers at their core and are often combined with accreditation and certification procedures specifying quality requirements, as in **Denmark** and **France** for examples, and with systems of routine inspections e.g. in **England** and **Germany**.

The scope of quality frameworks and tools across the countries that have been analysed within the mapping study varies considerably, which makes it sometimes difficult to compare quality systems. Several quality frameworks and tools across Europe encompass accessibility²² and sustainability and set clear standards and obligations, although this is not systematically the case in all countries. Other elements such as the skills and competencies of employees and the working conditions may be also included, although sometimes these issues are regulated in separate legislation.

In the **Czech Republic**, the *National Standards of Quality of Social Services* focus on a range of issues, including standards on accessibility of services, staff-client communication and information, sustainability, as well as working conditions and competences of staff, including their professional development. Much of the focus is also on dignity in service provision and the protection of human rights.

²² Accessibility encompasses in this context availability (including spatial and physical accessibility) and affordability.

In **Austria**, although the legislation on social services quality covers accessibility, there is little focus on sustainability other than a general commitment that provinces are obliged to offer social services in their local areas. Focus on staff competence is largely restricted to the definition of skills and training requirements of social workers.

In **France**, the scope of quality systems is restricted to the definition of professional skills and competences. There does not appear to be an emphasis on accessibility, sustainability or working conditions.

In **Ireland**, the *National Quality Standards for Residential Care Settings for Older People* state that there should be appropriately skilled and qualified care staff in order to ensure that services are delivered in accordance with the quality standards and the needs of the residents. Moreover, staff should receive induction courses, benefit from continued professional development and be appropriately supervised.

In **Norway**, the *National Strategy for Quality Improvement in Health and Social Services* focuses on fair access to and sustainability of services. Working conditions and staff training and qualifications are regulated separately under the Work Environment Act. The main focus of the strategy is on improving care services, care systems, and user empowerment.

As for the **United Kingdom**, in **Scotland** the Quality Framework set out in the Regulation of Care Act 2002 addresses accessibility, sustainability, working conditions and professional skills and competence. In **England**, accessibility and sustainability of services are covered by the quality frameworks relating to residential care and home-care.

As seen above, in most countries quality assurance systems are concerned with improving the accessibility of services; however, this term is understood and used in different ways in different countries. In some countries, it refers to the provision of information on services and to the interaction between services users and service providers; in others, it can also embrace defining minimum requirements on the availability and/or right to make use of long term care services. The same is true as regards the understanding of sustainability, ranging from very generic principles on ensuring continued access to services and continuity of care, as it is in **Norway**, to detailed specifications such as those set out in the National Quality Standards in **Ireland**.

Another important finding is that the fragmentation in responsibility for the organisation and funding of long term care has a direct impact on the content of quality frameworks and tools. Fragmentation in responsibility may result in a large number of quality tools which do not cover the whole range of long-term services provided. This raises the question of the extent to which health and social care regulatory bodies can work more closely together, and perhaps consider developing a harmonised approach to quality management in respect of long-term care.

Some quality frameworks, e.g. in **the Netherlands** and in **Estonia**, include quality principles such as respect for human dignity and fundamental rights, respect for the physical and mental integrity of service users, solidarity, non-discrimination, favouring social integration, respect for cultural differences, users' empowerment, respect for users'

preferences, accessibility, transparency, continuity, comprehensiveness, result orientation and good governance.

2.1.2. *Early Childhood Education and Care Services*²³

As seen for long-term care, the variety of ways in which Early Childhood Education and Care (ECEC) services are organised across European countries is reflected in the way in which quality is regulated. In most countries in Europe, early education services and childcare services are administered and legislated for separately, although in practice there is a considerable overlap between care and education services in most countries.

Very few countries in Europe have set up a comprehensive and coherent quality framework for ECEC services, although most have legal provisions for quality of ECEC. However, such provisions may be spread across a number of legislative acts or embedded in other more general legislation.

The distribution of competences within the country has an impact on the definition of quality frameworks and tools. In **Italy**, regions may issue their own laws on the quality of ECEC services.

An interesting example of a comprehensive quality framework is found in **Norway**. It encompasses high pedagogical standards, accessibility and sustainability, staff qualification and working conditions. The main quality principles of the Norwegian framework include “good opportunities for children’s development”, “democracy and tolerance” and “appreciation of sustainable development”.

In other countries there are no homogeneous quality frameworks, but instead the different aspects of quality are regulated by a range of different tools.

In the **United Kingdom**, Ofsted (the Office for Standards in Education) has developed an evaluation tool, which is used to assess service providers and which is legally enforceable. This tool combines with the very considerable amount of independent research commissioned by the Government to evaluate each of its initiatives. Local authorities may also run training or consultancy for providers, but there is no legal requirement for providers to use it:

United Kingdom – Ofsted’s regulatory framework to evaluate quality of ECEC services

The framework has been developed by the Department of Education and Ofsted. The methodological approach has been to try to incorporate the different forms of early years’ education and care, to try to ensure that each kind of provider, including childminders

²³ For the purpose of the mapping study, ECEC services refer to all services providing care and education for children up to school age (0-6), regardless of auspices, funding, delivery, program philosophy and content.

Within the framework of the mapping study, the following 15 countries have been analysed as regards existing quality frameworks and tools for ECEC services: Belgium, the Czech Republic, Denmark, France, Germany, Greece, Hungary, Italy, the Netherlands, Norway, Poland, Portugal, Romania, Slovakia and the United Kingdom.

(family day carers) offers similar curricula to children. Ofsted inspections offer a 4 level grading system – outstanding, good, satisfactory and inadequate. If an Ofsted inspection of a childcare provider deems the service to be unsatisfactory, the provider is asked to define a rectifying plan within a given time-scale.

The scope and content of the quality tools for ECEC services vary considerably across Europe. In some countries, quality tools apply to all service providers, whereas in other cases they apply only to certain kinds of providers.

Moreover, a key factor underpinning the scope and content of the quality frameworks and tools is the level and method of funding for ECEC services. Childcare services for children under the age of three are expensive to run, because of the high child-staff ratios that are usually deemed to be necessary to provide an adequate service.

In the **United Kingdom** or **the Netherlands**, quality frameworks and tools for childcare do not include service accessibility. Parents with low incomes receive tax credits, but the provider is free to set fees without any restrictions. As a result, fees may be very high and accessibility is de facto limited.

Sustainability related to public funding undeniably has an impact on the quality of services, particularly in the present recessionary climate²⁴. In countries with large private for-profit sectors, the reduction of public funding may lead to market volatility. In the current recession, in the **United Kingdom**, for example, 870 nurseries closed in 2009 and the number of childminders has fallen by about a third in the last few years. Market volatility and unevenness of quality is more likely to occur in poorer areas, presumably because income for producers derived from parent fees is more unreliable.

The method of funding also makes a difference. If services are directly funded (supply led funding), this is a guarantee of income and stability for the institution. If funding for childcare services comes through tax credits (demand led funding), income for service providers is more erratic. It is also more difficult to trace the relationship between expenditure and implementation.

Unlike childcare, early education services - where education tends to be seen as a universal entitlement and as a means of social inclusion and citizenship - are funded through supply-led funding.

²⁴ See Chapter 1, point 1.3.3 above, referring to the impact of the current economic and financial crisis on the provision of health and social services.

2.1.3. *Employment services*²⁵

Employment services across Europe have changed considerably during the past decade. There has been a shift away from the provision of passive employment services towards a more active model, where more is expected from the clients of these services as well as from the services themselves. Services have moved towards adopting a tailored, individualised approach, based on the 'personal pathways to work' mode, as well as towards more integration and comprehensiveness. In addition, the past decade has seen moves towards the mainstreaming of employment services for people with disabilities. Possibly the biggest change has been the increasing involvement of private service providers, at least for some employment services. In some countries, this concerned actors from the so-called "third sector". Lastly, in countries such as the **United Kingdom, the Netherlands, Norway and France**, Public Employment Services (PES) have been integrated with social security agencies. These mergers carry implications for quality management, not least because of the differing cultures involved.

All the countries analysed within the mapping study have put in place some forms of quality assurance systems for employment services. However there is a wide range of approaches to quality management. In many countries, these approaches were inspired from quality management systems that operate elsewhere in the Public Service or sometimes outside the Public Service, rather than having been specifically designed for employment services.

In **Spain**, quality assurance tools are not specific to employment services, but are defined nationally for all central government activities. However, sector specific quality assurance measures on employment services are taken at regional level and there is also a quality programme in place for temporary employment agencies.

In other countries (some of the new EU Member States, for instance) specific quality systems for employment services have been designed. In **Estonia**, the main quality tools that are used are part of a wider quality assurance procedure that is applied to the monitoring and assessment of the general labour market. These measures, backed by legislation, include a system for collecting feedback from users.

In **Sweden** a number of approaches are taken to managing quality. One method used involves undertaking an in-depth analysis of public employment services results on a regular basis. The so-called *Balanced Scorecard* approach is used as a methodology for

²⁵ For the purpose of the mapping study, the term 'employment services' refers to all employment services which have been entrusted by public authorities with an explicit or implicit 'mission of general interest' for different user groups such as: unemployed job-seekers, inactive persons, employed job-seekers and employers. The core focus are "individualised" intermediation services to support (or 'activate') unemployed or inactive jobseekers to find and maintain employment. 'Individualised' refers to a personal service dimension (e.g. career guidance, counselling, active placement and post placement support...) as opposed to more generic provisions such as standardised training programmes.

Within the framework of the mapping study, the following 15 countries have been analysed as regards existing quality frameworks and tools for employment services: the Czech Republic, Denmark, Estonia, France, Germany, Ireland, Italy, the Netherlands, Norway, Poland, Romania, Slovakia, Spain, Sweden and the United Kingdom.

measuring and reporting on quality with concrete targets which are then used in the evaluation process.

Sweden – Balanced Scorecard

The main aim of the Balanced Scorecard is to ensure that the Swedish Public Employment Service meets the goals set by government, including the strategic goals and success factors encompassing service accessibility, sustainability of services and skills/competences of employees.

The main quality principles of the Balanced Scorecard are built around concrete and measurable objectives.

The Balanced Scorecard is result oriented and provides for a regular feedback process, where the predetermined goals are used to check where the organisation stands, and to identify areas that require more attention. The four main areas of attention of the Balanced Scorecard are: Customer, Operations, Employees and Economy. The scorecard is updated annually and workers are involved in the implementation of the quality tool. Although users are not involved, many of the predetermined goals of the organisation are about the users and their opinion of the services provided.

The National Audit Office (Riksrevisionen) recently reviewed the Swedish Public Employment Service, including the Balanced Scorecard. Several proposals for improvements were put forward.

A number of countries also reported the influence of the quality management procedures of the European Social Fund (ESF). This is the case for **Italy** and **Slovakia**.

As for the scope and content of the quality frameworks and tools, a diversified picture emerges. Issues such as service accessibility and sustainability, working conditions and skills and competences of employees are dealt with differently across the countries that have been analysed within the mapping study.

In **Denmark** the main focus is on service accessibility and on the outcomes that employment services produce. There is apparently little emphasis on either service sustainability or the working conditions or the skills of employees.

The quality system applicable to all public sector services in **Ireland** emphasises service accessibility, staff qualifications and staff satisfaction.

The quality system in **the Netherlands** focuses on performance indicators, client satisfaction and norms and values, but does not appear to deal directly with accessibility or sustainability of services; nor does it deal with staff qualifications or working conditions.

In **France**, there is no single overall quality framework for employment services but rather a number of different tools that focus on various aspects of quality and performance. Working conditions and staff qualifications issues seem to be addressed in the wider human resources context rather than within the specific quality systems.

In **Poland** and in **Spain**, quality systems deal with service sustainability and accessibility, but not with staff working conditions or qualifications.

Despite the diversity of quality systems and their state of development and innovation, two broad approaches to quality management can be detected in the field of employment services: on the one hand, systems that focus on managing processes and, on the other, those which focus on managing outcomes. However, despite differences in approaches to quality frameworks and tools across Europe, similar problems have been identified. These include the fragmented nature of many quality management systems (e.g. some quality systems apply only to public employment services, but not necessarily to private services, or vice versa), and the difficulty of managing quality of externalised services.

2.1.4. *Social housing*²⁶

Social housing provision in Europe encompasses development, renting/selling and maintenance of dwellings at affordable prices as well as their allocation and management, which may also include the management of housing estates and neighbourhoods. Ensuring that physical infrastructures are adequate and comply with health and safety standards and with environmental requirements is therefore a particularly important aspect of social housing quality. Most social housing providers perform the activities of landlords. Therefore the relation between landlord and tenant is another important aspect of the quality of the service, even if it does not fulfil the criteria of “social work” in the narrow sense.

On the other hand, compared to other social services, the continuous care/advice/empowerment activities towards individuals do not constitute the core aspects of social housing provision. Increasingly, management of social housing can encompass social aspects: for example, care services are involved in housing or re-housing programmes of specific groups or in debt-management of low-income households. But, in most cases, specific care institutions cover the care component and collaborate with social housing providers. As the aspect of “social management” at the estate level as well as at the neighbourhood level is gaining weight, direct employment of social workers, co-operation with social institutions and new training curricula for housing staff are becoming increasingly prevalent.

Across Europe, quality regulation for social housing is dispersed in different types of legislation: environmental legislation for building and construction, civil law for tenancy regulation, etc. Such rules are often applicable in both the social and non-social housing sectors.

²⁶ For the purpose of the mapping study social housing is defined as follows: the provision of housing at below market price to a target group of disadvantaged people or socially less advantaged groups as well as to certain categories of key workers. The target group as well as the exact modalities of application of the system are defined by the public authorities. Social housing providers can also provide other related services to the target group.

Within the framework of the mapping study, the following 15 countries have been analysed as regards existing quality tools and frameworks for social housing: Austria, the Czech Republic, Denmark, Finland, France, Germany, Hungary, Italy, Latvia, the Netherlands, Norway, Poland, Romania, Slovenia and the United Kingdom.

Quality regulation in social housing is fragmented depending on the different dimensions of the service concerned and it is hard to find an example of a regulation which deals exclusively with the quality aspect of social housing. The models which come closest are the Austrian and the British ones. Both countries share some similarities as regards social housing systems: there are public providers (councils, municipalities) as well as non-profit organizations (social landlords) and the systems are based on rental provision. In both systems there are fragmented regulations integrated in general legislation: building quality, tenancies, business conduct of providers are regulated in different legal acts.

In **Austria** the housing promotion schemes of the federal provinces set standards for the technical and energy quality of buildings, set allocation criteria (accessibility), regulate affordability and define quality standards for the buildings/dwellings.

In **England**, a regulating body for social housing (the Tenants' Services Authority, TSA) has been established by the Housing and Regeneration Act 2008, and is empowered to set a "Regulatory Framework" for the services and the conduct of providers. This new framework is developed as "co-regulation", which means that it relies on self-regulation by providers, who are expected to develop standards according to local demand, ensuring effective involvement of tenants, and to present reports to the tenants and the public, thus improving the service quality.

Self-regulation of service providers as regards quality is becoming increasingly important and has been introduced in many countries, alongside binding quality standards. In **Italy**, various quality requirements are derived from self-regulation by social housing providers. A *Charter of Services* has been set up and *Social Reports on Corporate Social Responsibility* are aimed at tenants and public authorities. In the Netherlands, a *Code of Conduct* has been developed with the involvement of an umbrella organisation of social housing providers.

In **France** quality standards for social housing are included in different laws and regulations, and also in voluntary commitments from service providers:

France – regulating quality through voluntary commitment

A voluntary commitment entitled '*Qualité 2010/2015*' increases quality in the management of social housing and in the relations with tenants. Adopted in 2008, this tool includes regular satisfaction surveys amongst tenants, mechanisms for dialogue between tenants and providers, and the Habitat Qualité Service certification (ISO certification).

As for the scope and contents of existing quality frameworks and tools, it has already been mentioned that the quality of social housing in comparison with other services has the peculiarity of being also related to aspects concerning infrastructure building and maintenance as well as infrastructure management. Standards on the quality of buildings are therefore very common in the countries covered in the mapping study: they exist mainly for new constructions and are often stricter than standards for housing which does not have a social character.

As the dominant form of social housing provision in Europe is social renting, the (social) landlord - tenant relation is the most important factor influencing the quality of service. It

is therefore subject to quality regulations. However, across Europe, there is a lack of clearly defined quality standards covering more specific issues such as promptness of reaction to users' complaints and of necessary steps to be taken in case of repairs, or problems of tenants with neighbours.

In some countries, such as for instance in **Denmark**, the high degree of tenants involvement and, *inter alia*, the introduction of compulsory or voluntary (regular) surveys of tenants' satisfaction are important elements of quality assurance strategies.

2.1.5. *Trends and challenges across the four sectors*

The following pages give an overview of trends and challenges identified in relation with quality tools and frameworks across the four selected services.

- **Conceptualisation of quality**

Whereas some quality frameworks and tools focus on the outcomes to be achieved, many countries apply a 'process' based approach to quality. As processes concern the interaction between service users, the workforce delivering services and those responsible for providing (or funding) services, in a process-based approach, quality frameworks and tools might cover issues such as the quality of the relationships, the enforcement of both the rights and responsibilities of the parties and the responsiveness of services to the needs or concerns of service users. This will add to more "structure-related" issues such as physical environment standards, health and safety concerns or the professional qualifications of the workforce.

- **Respect of fundamental human rights and users protection**

All four sectors are concerned with guaranteeing user rights. Quality frameworks might therefore encompass principles such as respect for human dignity and fundamental rights as well as non-discrimination. For example, in the long-term care sector, quality might be concerned with the prevention of the abuse of elderly people and in the ECEC services sector with the well-being and the development of the child. For social housing, the issue at stake might be the right to decent housing, while in the employment sector it might be the equitable treatment of job seekers with special needs, such as those with physical or mental health problems, or single parents with young children. In some countries, quality frameworks and tools refer explicitly to international conventions on human rights, such as the United Nations Convention on the Rights of the Child or the UN Convention on the Rights of Persons with Disabilities. In addition, the existence of international or European instruments might help in the development of a common language on quality.

- **Role of external service providers**

In contexts where, as mentioned above, public authorities are less than before direct providers of services and instead external providers are increasingly in charge of services provision, quality measures are concerned with regulating the activities of such external providers, whether they may be private long-term care or childcare service providers, or entities offering specialised training and support to long-term unemployed jobseekers or landlords of social housing. All sectors may make use of accreditation or licensing regulations and public regulators may play a direct role in monitoring/supervising the

activities and the quality of services of the external providers. In some countries and sectors, audit and inspection bodies may play a key role in ensuring the compliance with quality requirements. In some countries and sectors, however, there seem to be difficulties in ensuring the quality control of external actors.

- **Working conditions, professional skills and competences**

Across all four sectors, there has been relatively little emphasis on the working conditions of employees within quality frameworks and tools. In the case of social housing, ECEC services and employment services, quality frameworks and tools in nearly all countries did not look at this issue. In contrast, there was some explicit focus on working conditions in quality frameworks for long-term care services.

- **Fragmentation in service organisation and provision**

Fragmentation in the organisation, funding and provision of services between national, regional and local public authorities can present a challenge to the development and implementation of quality measures. A possible consequence of this fragmentation is that different quality frameworks or standards may apply, or different quality tools may be used, for the same social service in one country. This may also mean that a given framework does not cover all the aspects of the service provided or that users' rights on entitlement, as well as redress or complaint procedures, may differ significantly from one region to another within the same country. It can also happen that rules concerning inspection bodies and procedures do not cover all aspects of the services provided.

The fragmentation of social service provision may also have implications for the sustainability of the services when the transfer of adequate funding does not accompany transfer of competences in the organisation and provision of the services.

Moreover, in countries heavily relying on the for-profit sector, sustainability concerns may lead to market volatility. Where demand for services and profit margin decline, private sector providers may simply withdraw from the market. As mentioned above, in the current recessionary climate²⁷, the lack of adequate financial resources has led in the **United Kingdom**, to the reduction of the number of childminders by about a third over the last few years and to the closing of 870 nurseries in 2009.

- **The involvement of users, workers and other stakeholders in the definition, implementation, evaluation and development of quality frameworks and tools**

No single clear pattern emerges across the four sectors as to how different stakeholders, most notably service users, have been involved in the development, implementation and evaluation of quality frameworks. Some countries provide mechanisms for stakeholders' involvement but in others this approach is more sporadic. Community participation in services seems easier to ensure when services are locally based and organised (e.g.

²⁷ See Chapter 1, point 1.3.3 above, referring to the impact of the current economic and financial crisis on the provision of health and social services.

Northern Italy, Nordic countries) but it appears more difficult if services are centralised or, alternatively, very fragmented.

- **Independent evaluation of quality tools and frameworks**

Independent evaluation or monitoring of quality frameworks and standards in all four sectors is sporadic at best. In some countries there may be ad hoc activities or a reliance on (sometimes mandatory) self-evaluation by service providers. Countries with a consistent strong culture of performance assessment and evaluation across sectors include the **Netherlands, Norway** and the **United Kingdom**.

2.2. Stakeholders' initiatives towards improving the quality of social services

- *many European networks and the Council of Europe have recently undertaken various initiatives on social services quality: this shows that the debate on quality has already acquired a European dimension*
- *according to some stakeholders, initiatives at European level should aim to create consensus on quality principles instead of developing quality standards*
- *all initiatives put the user and his/her rights, needs and expectations at the centre of the reflection. Therefore, participation and empowerment often find a prominent place in the list of principles*

Several European networks of regional and local public authorities, of social service users and of social service providers have undertaken initiatives aimed at defining, assessing and improving social services quality. The Council of Europe has also worked on this issue. The list below offers an overview of these initiatives:

- in 2002, the European Platform for Rehabilitation²⁸, following a European-wide stakeholders' consultation, defined *Nine Principles of Excellence*²⁹ intended to provide a framework for the social service providers to evaluate their performance and to devise strategies for improvement. On the basis of these Principles of Excellence (namely Leadership, Rights, Ethics, Partnerships, Participation, Person-centeredness, Comprehensiveness, Result orientation and Continuous improvement), two labels of certification, the EQUASS Excellence and the EQUASS Assurance, were developed.

²⁸ EPR is a network of European providers of rehabilitation services to people with disabilities and other disadvantaged groups.

²⁹ See: <http://www.epr.eu/images/EPR/documents/equass/criteriaequassexcellence.pdf>.

- in 2003, the Council of Europe issued a Recommendation on improving access to social rights³⁰ in which it invited the Member States to set up a legal framework for social service provision addressing the users' needs and to allocate adequate human and financial resources for this purpose. Moreover, in November 2006, the European Committee for Social Cohesion within the Council of Europe issued Policy Guidelines for the design and implementation of integrated models of social services.³¹
- in 2006, the European Social Network (ESN)³² formulated a set of recommendations on the accessibility of social services to all the persons who might need them, especially to those with physical, sensory or other communication difficulties³³.
- in 2006, the European Association of Service Providers for persons with disabilities (EASPD)³⁴ issued a *Memorandum on a European Quality Principles Framework*³⁵ to encourage debate and develop a shared consensus among all key stakeholders on how to define, measure, implement and improve quality.
- in 2008, SOLIDAR³⁶ formulated Recommendations addressed notably to the European Commission and calling for the involvement of social NGOs in the elaboration of a European framework for the quality of social and health services³⁷.
- in 2008, EURO CITIES³⁸ published a position paper on the 2007 Communication³⁹ in which the organisation expressed its views on the development of a European Quality Framework.

³⁰ Council of Europe Recommendation Rec(2003)19 of the Committee of Ministers to Member States on improving access to social rights. See: [https://wcd.coe.int/ViewDoc.jsp?Ref=Rec\(2003\)19&Language=lanEnglish&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864](https://wcd.coe.int/ViewDoc.jsp?Ref=Rec(2003)19&Language=lanEnglish&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864).

³¹ Council of Europe, "Policy Guidelines for the design and implementation of integrated models of social services". See: http://www.coe.int/t/dg3/socialpolicies/socialrights/socservices_en.asp.

³² ESN is a network active in the fight against poverty and social exclusion.

³³ See: <http://www.esn-eu.org/publications-and-statements/index.htm>.

³⁴ EASPD is a non-for-profit organisation in the disability sector which covers almost 8000 social services providers and their umbrella associations.

³⁵ See: <http://www.easpd.eu/LinkClick.aspx?fileticket=hpuHVvczf%2Fw%3D&tabid=3531>.

³⁶ SOLIDAR is a European network of non-governmental organizations working in development and humanitarian aid, social policy and social service provision.

³⁷ See: <http://cms.horus.be/files/99931/MediaArchive/TSEN-CSV-SOLIDAR-Seminar-Report-Final.pdf>.

³⁸ EURO CITIES is the network of major European cities. Founded in 1986, the network brings together the local governments of 140 large cities in over 30 European countries.

³⁹ See: <http://www.euocities.eu/main.php>.

- in 2008, the Social Platform⁴⁰ published a paper entitled *Nine Principles to achieve quality social and health services*⁴¹. It highlights that a quality social and health service should: (i) respect human dignity and fundamental rights; (ii) achieve expected results; (iii) be tailored to each individual; (iv) ensure security to all users, including the most vulnerable; (v) be participative and empower users to take decisions on their own; (vi) be holistic and continuous; (vii) be provided in partnership with communities and other actors; (viii) be provided by skilled professionals working under good employment and working conditions; (ix) be managed in a transparent way and be accountable.
- in 2009, FEANTSA⁴² published *Quality in social services: The perspective of social services working with homeless people*⁴³. The document highlights the dimensions of quality relevant for homeless services as well as a certain number of key principles (*inter alia*, User participation, User rights and responsibilities, Transparency).
- in 2009, Eurodiaconia⁴⁴ issued its *Principles for Quality Diaconal Social Services*⁴⁵. The documents identifies a certain number of preconditions for quality as well as principles referring to (i) the characteristics of the services provided, (ii) the relationship of the provider and staff with the user, (ii) the relationship between the provider, staff and volunteers and (iv) the relationship between the provider and other stakeholders.
- in 2010, a large number of stakeholders developed within the PROMETHEUS project⁴⁶ the *Common Quality Framework for Social services of General Interest*. It defines preconditions for service delivery as well as principles and criteria for quality assurance. The quality principles are: (i) Good governance, (ii) Partnership, (iii) Rights, (iv) Participation, (v) Competence of staff, (vi)

⁴⁰ The Social Platform is a civil society alliance consisting of 43 pan-European networks of NGOs, which represent both non-profit service providers and service users. The Social Platform fights for social justice and participatory democracy in Europe and campaigns to ensure that EU policies are developed in partnership with the people they affect, respecting fundamental rights, promoting solidarity and improving lives.

⁴¹ See: <http://www.socialplatform.org/PolicyStatement.asp?DocID=18873>.

⁴² FEANTSA is the European federation of national non-governmental organisations working with homeless people. Its members provide a wide range of services including accommodation, social, health and employment support.

⁴³ See:
http://www.feantsa.org/files/freshstart/Working_Groups/Services/quality/statement/quality_social_services_feantsa.pdf.

⁴⁴ Eurodiaconia is a federation of organisations, institutions and churches providing social and health services and education on a Christian value base.

⁴⁵ See:
http://www.eurodiaconia.org/images/stories/Our_work/Eurodiaconia_Principles_for_Quality_Diaconal_Social_Services.pdf.

⁴⁶ For more details on the PROMETHEUS project, see point 2.4.5 below.

Ethics, (vii) Person-centeredness, (viii) Comprehensiveness, (ix) Result orientation.

A certain number of trends emerge from the analysis of these documents.

First of all, the initiatives above show that the debate on quality does not take place anymore only at local or national level. Many initiatives referred to the concept of subsidiarity or highlighted the importance of values that are socially and culturally relevant for the communities in which the services are provided. At the same time, these initiatives had in common the aim to **create common understanding and consensus at European level**. In particular, the 2006 EASPD Memorandum listed among its aims "supporting the European Commission in producing a European Union policy on quality" and other initiatives referred explicitly to the development of a European Quality Framework within the Social Protection Committee.

According to many stakeholders, the debate at European level should aim to create consensus on **quality principles instead of quality standards**. The latter are perceived by some stakeholders as expressing a too static vision of quality assurance, which should be considered instead as a continuous process. For various stakeholders, quality principles seem better adapted to reflect the diversities in terms of culture and organisation among Member States as well as the variety among different types of social services⁴⁷. Therefore the large majority of these initiatives defined quality principles for social services, accompanied in certain case by more operational quality criteria. Some stakeholders suggested moreover the development of quality standards at local level.

The initiatives developed within umbrella organisations of service providers often highlighted that the quality of social services is heavily influenced by contextual elements which are outside the direct influence of service providers and therefore have to be considered as **pre-conditions for social services quality**. These elements vary according to the different perceptions of the roles and responsibilities of the various actors involved (public authorities, providers, users). The pre-conditions which are often mentioned are an adequate and supportive legal or social policy framework, sustainable funding, cooperation among public authorities, service users and service providers, involvement of stakeholders in policy planning and in service evaluation, a well trained workforce and adequate working conditions, a specific strategy to promote quality jobs and develop a qualification system, recognition of the value of unpaid care and support for informal carers as well as, for certain stakeholders, ensuring affordability, accessibility and availability of the services in question.

These initiatives put the **service user and his/her rights, needs and expectations at the centre of the reflection**, often highlighting that the aim of social services is to improve the quality of life of the user. In this context, the principles which have often been defined refer to the values that should underpin the relation between the service user and the service provider (e.g. the respect for human dignity and fundamental rights, security to all users, including the most vulnerable, equal opportunities) as well as to certain characteristics of the service and of the process delivery which are essential for the user

⁴⁷ A few initiatives were however addressing a specific sector, notably services for people with disabilities and service for homeless persons.

(e.g. person-centeredness and comprehensiveness so as to respond to the multiple needs of user, continuity, outcome orientation).

These initiatives highlight that social services are expected to strengthen, or, at least maintain, the capacities of the users and to ensure that the users retain as much control as possible on their own lives. Moreover, the user's role in the planning, development, delivery and evaluation of the service is increasingly highlighted. Therefore, **participation and empowerment** often find a prominent place in the list of principles identified.

Other principles which have been identified in various initiatives concern additional dimensions of social services quality: the organisational aspects related to the **role and responsibility of the service providers** and to the **relations with the public authorities and with other relevant actors**, the **delivery process**, the **working conditions and the requirements for the staff** (e.g. good governance, partnership, good working conditions, training and development of skills and competences, ethical behaviour, confidentiality, safety and security).

Finally, some initiatives were related to the development of **specific certification or accreditation systems** which are considered useful to help service users in recognising high quality services. Other stakeholders consider this further step of developing formalised systems to be unnecessary and highlight the danger of not respecting national and cultural diversity.

2.3. The actions already undertaken by the European Commission in the field of social services quality

- *the European Commission announced in 2007 a threefold strategy to support social services quality*
- *the active inclusion initiative and the activities within the Disability High Level Group are initial examples of the Commission's commitment to social services quality*

Already in its **2006 Communication** the Commission referred to the "*intensive quest for quality and effectiveness*" ongoing in the sector and highlighted that the reform processes which the Member States had embarked upon were aimed at tackling "*the tensions between universality, quality and financial sustainability*". Among the trends of the reform processes, the 2006 Communication mentioned "*the introduction of benchmarking methods, quality assurance, and the involvement of users in administration*". The analysis of these trends was further developed in the **2008 Biennial Report**.

Moreover, in its **2007 Communication**, the Commission, following-up on the consultation process launched by the 2006 Communication, stated that "*promoting the development of high-quality, safe and affordable services of general economic interest is*

an essential objective of the action of the EU". More specifically on SSGI, the Commission announced a "*strategy for supporting the quality of social services across the EU*". This strategy encompasses three complementary actions:

- **financing bottom-up projects** having a transnational character and aiming at the development of mechanisms for the definition, measurement, assessment and improvement of social services quality. An overview of these projects is provided section 2.4 below.
- **financing training** for local public authorities in the Member States. The training should allow a better understanding of EU rules and the possibilities they already offer for the organisation and financing of quality social services. This initiative aims to address among others a concern, often expressed by the stakeholders, namely that the application of public procurement rules may lead to the selection of the provider who proposes the lowest price, at the expense of the quality of the service;
- **supporting the development, within the Social Protection Committee, of a quality framework for SSGI**. This initiative is presented in section 2.5 below.

Social services quality is also part of another Commission initiative: the one concerning the **active inclusion** of people furthest from the labour market. In its **Communication of 17 October 2007**⁴⁸, the Commission identified three strands of active inclusion, one of which is access to quality social services. The other two are adequate income support and access to an inclusive labour market. The Commission proposed to deepen the Open Method of Coordination through the adoption of common principles in these three strands. According to the Communication, the common principles on access to quality social services should have focused on two concepts identified as crucial in the Open Method of Coordination and through the ongoing dialogue with civil society organisations. They are (i) accessibility of services, comprising both availability (including spatial and physical accessibility) and affordability; and (ii) quality of services, comprising: user involvement; monitoring; performance evaluation and sharing of best practices; investment in human capital; working conditions; framework for equality both in recruitment policies and in service provision; coordination and integration of services; and adequate physical infrastructure, especially in relation to social housing.

Following a debate within the Social Protection Committee, the Commission presented the common principles on the three strands of active inclusion in a **Recommendation adopted in October 2008**⁴⁹. The common principles on access to quality services are:

⁴⁸ Communication of the European Commission "*Modernising social protection for greater social justice and economic cohesion: taking forward the active inclusion of people furthest from the labour market*", COM(2007) 620 final, 17.10.2007.

⁴⁹ Commission Recommendation of 3 October 2008 on the "*Active inclusion of people excluded from the labour market*", C(2008) 5737, 03.10.2008. See also the Council conclusions on "*Common active inclusion principles to combat poverty more effectively*" of 17.12.2008; and the European Parliament resolution of 6 May 2009 on the "*Active inclusion of people excluded from the labour market*" (2008/2335(INI)).

- Territorial availability, physical accessibility, affordability
- Solidarity, equal opportunities for service users and employees, and due account for diversity of users
- Investment in human capital, working conditions, and adequate physical infrastructure
- Comprehensive and coordinated services, conceived and delivered in an integrated manner
- Users' involvement and personalised approaches to meet the multiple needs of people as individuals
- Monitoring and performance evaluation and sharing of best practice

The Commission also dealt with the issue of social services quality as part of a more sector-specific approach, namely social services addressing the particular needs of people with disabilities. It did so within the **Disability High Level Group (DHLG)**⁵⁰. In 2007, the DHLG issued a position paper on *Quality of social services of general interest*.

This paper provides guidance on how to promote quality social services addressing the particular needs of people with disabilities. It is addressed in particular to actors active in the areas of social protection and social inclusion.

The paper identifies access to social services – interpreted as meaning that these services should be affordable, available and accessible – as a major pre-condition for quality. It also presents agreed basic principles (respect for human rights and freedoms; individual perspective, taking into account equality between women and men; choice, freedom of choice, informed choice and self determination) as well as common key features and corresponding criteria for the quality of social services to people with disabilities. These key features and criteria are presented below:

- **Rights:** Choice, freedom of choice (including personal choice on how services are individually delivered) self determination, non discrimination, including recognition of the position of women with disabilities within services planning and delivery. *Criteria: Systematic information of users, including on what are the services and what are good services; Availability of accessible services. Accessible complaints mechanisms; Promotion of full awareness of human rights of people with disabilities, including training and education of providers, professionals, caregivers and authorities.*

⁵⁰

The Disability High Level Group – chaired by the Commission and composed of representatives of all the EU Members States - was set up by the Commission to monitor the latest policies and priorities of governments concerning people with disabilities, to pool information and experience and to advise the institution on methods for reporting in future on the EU-wide situation with regard to disability. More information on the Disability High Level Group can be found on the following webpage:

<http://ec.europa.eu/social/main.jsp?catId=429&langId=en&moreDocuments=yes>

- **Person centred:** Social services of general interest to people with disabilities should tackle the needs of each individual with the aim to improve the quality of life and equality of opportunities of the persons concerned. In line with the social model of disability, the physical and social environment of the person served should be taken into account. *Criteria: Conformance to the requirements and needs of the users; Use of personal budgets to compose the package of SSGI to be delivered to persons with disabilities; Proximity between the provider of service and the beneficiary.*
- **Comprehensiveness and continuity:** The continuum of holistic services - from early interventions to support and follow up - involves multi-disciplinary actions and coordination. Furthermore, such a continuum is essential all along the life of persons with disabilities, therefore a life cycle approach is to be taken. The life cycle stages are: children with disabilities, people with disabilities of working age, older people with disabilities. *Criteria: Seamless coordination among the centres or establishments providing services as well as when it comes to the benefits and financial aids available to those organisations; Pro-active reduction of barriers to access services.*
- **Participation:** Users, first and foremost people with disabilities themselves, should be actively involved in the service team and engaged in self assessment and feedback. *Criteria: Participation, evidence-based forms of planning and definition of services, as well as of quality review; Continuous measurement of degree of satisfaction of use; Definition of models for users' programme review.*
- **Partnership:** All potential partners, including employers, the local community, social partners, funding authorities, policy makers are to be involved alongside service providers. *Criteria: Decentralisation of the organisation of services to local or regional level bringing the service providers closer to the service users; Delivery or set up of services in close cooperation with mainstream social services; Delivery and management of services by well trained and skilled staff having access to Life-Long Learning opportunities.*
- **Results oriented:** Quality is directly related to outcomes for the user, measuring satisfaction is crucial. Quality outcomes areas are to be identified by all stakeholders and used as reference to assess the success of the service in meeting individual needs. *Criteria: Personal responsibility of every stakeholder; Records on outcomes; Impact assessment of the quality of services on women and me; Regular independent assessment of systems and procedures; Flexibility and responsiveness to new challenges.*
- **Good Governance:** Openness, participation, transparency, efficiency and accountability are to be applied by all types of organisations delivering social services to people with disabilities. *Criteria: Definition of principles and values at stake in service delivery; Definition of the responsibilities and interrelations of the actors who manage, design, deliver, support and evaluate service provision; Annual planning and review process with participation of staff in the definition and evaluation of roles and responsibilities of the various functions at stake in service delivery; Cooperation with other agencies involved in the continuum of*

services to facilitate access to a comprehensive range of services; Records on outcomes of individual service plans and continuous evaluation of person served satisfaction; Accessible complaint procedures; Collection of feedback from purchases, funders and other stakeholders on performance; Formal periodic and independent review of the business results of service providers.

This position paper has been an important **source of inspiration** for many initiatives.

2.4. The eight PROGRESS-financed projects on social services quality

- *the eight projects – bottom-up and transnational - develop methods, standards, indicators for the definition, measurement, assessment and improvement of the quality of social services*
- *they cover a variety of social services, with a special attention paid to long-term care*

In 2008 the Commission launched a call for proposals to support initiatives aiming at developing mechanisms for the definition, measurement, assessment and improvement of social services quality. This call focussed on **bottom-up, transnational initiatives**. According to the call, particular attention was to be paid to the adaptability of the identified mechanisms to the local context and to the transferability of such mechanisms across countries. The **long-term care** sector was chosen as a priority. The quality mechanisms to be developed were expected to facilitate the **comparability** of the services provided, to enhance the ability of users to make informed choices of services and service providers, and to contribute to the protection of vulnerable users.

Following the call, eight projects were selected for financing via the PROGRESS programme⁵¹. They all started in the fourth quarter of 2008 and terminate by the end of 2010. The eight projects chosen for financing are presented below.

2.4.1. Social Quality of General Interest

Applicant: Associazione Nazionale Pubbliche Assistenza Comitato Regionale Toscana (IT)

Partners: Asociatia Psiterra (RO), Faculty of Psychology and Educational Sciences, Alexandru Ioan Cuza University (RO), Regione Toscana (IT), Auser Filo d'Argento Viareggio (IT), Università degli Studi di Firenze, Facoltà di Psicologia (IT), Cultureel Doir van Europa 1999 Wijk aan Zee (NL)

⁵¹ PROGRESS is the EU programme for employment and social solidarity managed by the Directorate General for Employment, Social Affairs and Equal Opportunities of the European Commission. This programme was established to financially support the implementation of the objectives of the European Union in the employment and social affairs area, as set out in the Social Agenda.

Objective: This project aimed to define standards of excellence for social services targeting the elderly, on the basis of an analysis of the live conditions of elderly people in three partner countries (Italy, the Netherlands and Romania) and of their expectations and needs. Starting from this list of standards, the project partners attempted to build a common model for planning and providing social services for the elderly.

Approach: The project was developed in different steps. First, indicators were drafted to evaluate the quality of service providers which are partners in the project and to identify improvement potential. At community level, the indicators identified included planning, processing and the creation of accessible, sustainable and high-quality health and social services for the elderly. On this basis, the partners defined standards of excellence applicable to social services for the elderly. The project activities involved social actors, professionals (health and long-term carers, social service providers' staff) as well as users.

During the first phase of the project, the partners drafted an analysis of best practices in the social services for the elderly through a series of local focus groups. The second phase was dedicated to the identification of crucial factors for the success of programmes targeting self-sufficient and non-self-sufficient elderly persons via questionnaire-based interviews. Moreover a model was developed to enable the screening of excellence standards and the formulation of an enhancement route. In the third phase, this model was applied to programmes for self-sufficient and for non-self-sufficient elderly people such as socialisation and social inclusion activities. This model was tested in several municipalities in the Netherlands and Romania on programmes targeting self-sufficient people, while the Italian partner was in charge of testing the model for programmes covering non-self-sufficient people.

Results: The end result of the project consists in the development of a quality model based on the defined standards of excellence that can be used to identify gaps in the delivery of high-quality social services for the elderly and to provide support to strategic decisions regarding the improvement of these services.

2.4.2. *BEST Quality – Benchmarking European Standards in Social Services Transnationally*

Applicant: Josefsheim GmbH (DE)

Partners: The Cedar Foundation (UK), Bugenhagen Berufsbildungswerk Timmendorfer Strand (DE), Valakupiai Rehabilitation Centre (LT), Stiftung Liebenau (DE), Ergastiri Panagia Eleousa (EL), Technische Universität Dortmund (DE)

Objective: The objective of this project was to assess national and European Quality Management systems in terms of effectiveness, and to analyse how such systems can improve the quality of social services provided to elderly and disabled persons. The project results are meant to help social service providers to optimise their organisational procedures and the efficiency of their services. The project also aimed to contribute toward a common European understanding of quality issues by decision makers, politicians, social partners and involved parties. The project partners endeavoured to promote a transversal exchange of strategies amongst the social service providers, in an attempt to improve interactive learning and mutual support.

Approach: The project focused on services for the elderly and people with disabilities.

Seven partners from four countries compared and evaluated the most established Quality Management systems (e.g. EFQM, E-Qalin, EQUASS and ISO) identifying the strengths, weaknesses and potential for improvement in the use of Quality Management systems. They also analysed the special requirements of social service providers.

The seven partners participating in the project were already involved in national and European networks. Therefore, the use of existing networks was the central element of the transfer strategy.

Results: The main output of the projects was an analysis of national and European Quality Management systems covering the promotion of efficiency and effectiveness of quality on the basis of significant criteria (rights, ethics, co-determination, service user orientation, holistic approach and self-determination). The project produced a list of policy recommendations that could be of use to policy makers and social partners, as well as to social service users and providers in optimising procedures and improving the quality of social services delivered to the elderly and to people with disabilities.

2.4.3. Improving and assessing quality, a Step-by-Step process in integration programmes

Applicant: Diputación Foral de Bizkaia (ES)

Partners: ACIDI - Alto Comissariado para a Imigração e Diálogo Intercultural (PT), ANCI - Associazione Nazionale Comuni Italiani (IT)

Objective: This project aimed to define a system for measuring, assuring, evaluating and improving the quality of programmes for the integration into society and the labour market of migrant minors and young adults with immigrant backgrounds.

Approach: The project started with the definition of a common framework of quality indicators based on the analysis of the programmes being developed in the partner countries / regions.

The project also involved the practical training of people responsible for implementing the framework of quality indicators in the associated programmes.

Results: The main results of this project were the development of a common basic model for the assurance, improvement, measurement and evaluation of quality in the associated programmes, which was subsequently tested by all partners and adapted to the local needs and context. A computer application was also developed as a tool for benchmarking integration models.

2.4.4. TQS - Territorial Quality Standards in Social Services of General Interest

Applicant: REVES (European Network of Cities and Regions for the Social Economy) (BE)

Partners: Hellenic Republic Prefectural Administration of Piraeus (EL), Coompanion Kooperativ Utveckling Jämtlands län (SE), Kommunförbundet Jämtlands län (SE), Parsec Consortium Soc. Coop. a.r.l. (IT), Comune di Faenza (IT), Zerocento Società Cooperativa Sociale ONLUS (IT), Cooperativa Educativa Famiglie Faentine C.E.F.F. (IT), ETHOS Social Cooperative (IT), Consortium Sol.Co. Piacenza (IT), Municipality of Pordenone (IT), RicercAzione Società Cooperativa Sociale a.r.l. (IT), Conferenza dei Sindaci Zona Livornese (IT), Arci Solidarietà ONLUS (IT), SERUS Ek. För. (SE), Cooperatives Europe (BE), CECOP asbl (BE), Provincia of Piacenza (IT), City of Gdynia (PL), Regional Council of Provence – Alpes - Côte d’Azur (FR), Deutscher Gewerkschaftsbund Bezirk Berlin-Brandenburg (DE), Pfefferwerk Foundation (DE)

Objective: The TQS project aimed to develop and test mechanisms for a participatory definition and measurement of local quality standards, applicable to any social service at local and regional level, mainly in the field of long-term care and related health services.

Approach: The project started with an analysis of the existing European guidelines/obligations regarding quality assessment and standards, followed by a more specific analysis on quality standards in the performance of social economy organisations. Subsequently, new methods for the definition of quality standards were developed and tested. Local analysis and tests were conducted by local partnerships and project groups composed of a local authority and at least one social economy partner.

The minimum requirement for quality assurance was defined as territorial, comparable and inclusive, implying coherence with local heritages and local contexts, requiring compatibility with the needs and expectations expressed by local communities.

Results: This project's main result was the conception and first test of a methodology which would facilitate the definition, by different stakeholders and groups of the local community, of local quality standards for social services. It led to a Vademecum addressed to local and regional authorities, policy-makers, and to social economy and other social service providers. The Vademecum will serve as a ready-to-use tool for the establishment of mechanisms defining and assessing local quality standards. It also includes examples of good practices identified in the course of the project.

Moreover, the project partners proposed a set of policy recommendations to European, national and local public bodies, and to social economy stakeholders in order to raise awareness on potential strategies to improve the quality of social services through the application of appropriate mechanisms defining quality standards at local level.

2.4.5. *PROMETHEUS*

Applicant: European Platform for Rehabilitation (BE)

Partners: Mental Health Europe, FEANTSA - European Federation of National Organisations Working with the Homeless (BE), Regione Veneto (IT) on behalf of the European Network of Social Authorities (ENSA), EURAG - European Federation of Older Persons (AT), CEN - European Committee for Standardization (BE), CRPG - Centro de Reabilitação Profissional de Gaia (PT), CAKU - Centre of Accreditation and Quality Development (DK), Casa Ioana (RO), Municipality of Alimos in Athens (EL)

Objectives: The main objective of the project was to develop, validate and pilot the cross-sectoral and trans-national application of a quality assurance system for social services. The system was based on the European Quality in Social Services (EQUASS) system that was initially developed for the disability sector.

Approach: The project addressed different aspects of quality: definition (a Common Quality Framework for SSGI), measurement (indicators), assessment (processes, procedures for (self)-assessment and external assessment) and improvement.

In the first phase, a Common Quality Framework was developed among the project partners and other 52 national and international stakeholders representing service users, service providers, social partners, funders and policy makers in the social services sector: in this context, the core criteria of the EQUASS approach were validated and the operational quality indicators were redefined.

During the second phase of the project, processes, procedures and instruments for self-evaluation, measuring quality and an implementation strategy were tested on pilot sites in six EU Member States in various social sectors: services for people with disabilities (Portugal), long term care for elderly and dependent people (Denmark), child care services (Greece and Norway) and services for homeless people (Romania and Luxembourg).

Subsequently, information and training seminars were organised in order to promote the Common Quality Framework among social service providers and stakeholders and to build up capacity to operate the EQUASS approach in the pilot sites.

Finally, an implementation programme was organised in the pilot sites, in order to implement the Common Quality Framework and the core criteria for Quality Assurance.

Results: The concrete outputs of this project consisted of: (i) a Common Quality Framework for Social Services of General Interest; (ii) operational performance indicators for measuring and benchmarking performance on quality criteria in social services; (iii) an evidence-based and validated system of (self-) assessment; (iv) standardised programmes for national information and training seminars as well as for the establishment of a network of trained consultants.

2.4.6. *UNIQ - Users Network to improve Quality*

Applicant: Atempo Betriebsgesellschaft mbH. (AT)

Partners: Inclusion Europe (BE), EASPD - European Association of Service Providers for People with Disabilities (BE), SPMP - Spolecnost pro podporu lidí s mentálním postícením (CZ), Deutscher Paritätischer Wohlfahrtsverband LV Berlin e.V. (DE), Berliner Senat. Senatsverwaltung für Integration, Arbeit und Soziales (DE), Katholische Hochschule für Sozialwesen Berlin (DE), NFU - Norwegian Association for Persons with Developmental Disabilities (NO). In addition, 6 partner organisations participated as observers: Inclusion Ireland (IR), Associazione Provinciale Assistenza (IT), Poraka Republic Center for Support of Persons with Intellectual Disability (MK), VILTIS - Lithuanian Welfare Society for People with intellectual Disability (LT), Soncek Cerebral Palsy Association of Slovenia (SI), FEAPS Confederación Española de Organizaciones a favor de las personas con discapacidad intelectual (ES).

Objectives: The aim of the project was to promote the idea of user involvement in all stages of quality improvement, by offering a practical approach in which strategies to transfer an innovative model of user involvement were tested in several European countries.

Approach: The project started with an analysis of already existing models of user involvement. The Nueva model was identified as the most appropriate instrument of user involvement, as it is based on a participatory cooperation between authorities, service providers and service users.

Within the subsequent stages of the project, a test evaluation was carried out in three partner countries, building a concrete and practical basis for the exchange of strategies and best practice models and mutual learning exercises (e.g. Austrian Nueva-evaluators trained and supported self-advocates with learning difficulties).

Local quality circles representing public authorities, academic researchers, service providers and users in the partner countries discussed the usability of the model and its transferability to their own country or across the EU. Representatives of six organisations from Ireland, Spain, Macedonia, Slovenia, Italy and Lithuania (two representatives for each test country) followed these test evaluations, discussed their observations with the test partners and disseminated the information and experiences they gathered during these test evaluations in their countries and organisations.

Results: The main results of the project were the analysis of existing models of user involvement and the test evaluation for the Nueva model. This project resulted also in a set of guidelines and in a DVD supporting the concrete action of implementing the Nueva model among all key stakeholders and decision-makers. The project partners ensured dissemination activities in their respective countries, not only in the field of services for people with disabilities but also in the field of services for elderly people. In addition, workshops were organised to exchange best practices.

2.4.7. *Quality management by result-oriented indicators: towards benchmarking in residential care for older people*

Applicant: European Centre for Social Welfare Policy and Research (AT)

Partners: Ministry of Employment, Health and Social Affairs of the State of North-Rhine/Westphalia (DE), University of Dortmund (DE), Vilans - Centre of expertise for long-term care (NL), City University, Institute of Health Science (UK), E-Qalin gemeinnutzige GmbH (AT)

Objective: The main objective of this project was the design of a European framework of standards based on which a set of result-oriented indicators to define, measure and assess quality in residential care for elderly people was built. The project aimed also at the development of guidelines to assist mainly care home managers on how to apply this validated framework of indicators in order to ensure quality improvement and benchmarking. Within these Guidelines the conceptual framework for quality of life was described at greater length.

Approach: The first phase of the project consisted in identifying, exchanging and discussing existing concepts of quality of life/quality of care, result-oriented indicators and other means and methods to assess and measure quality. This analysis served as a basis for devising a framework of standards used at national, regional or local level in the partner countries that was then applied to and compared with an existing quality management system for the residential care of older people, namely E-Qalin.

The second phase of the project consisted in applying and validating this framework of standards in two ways: by consensus-building among European experts using the Delphi method, and by applying the framework of standards to an existing quality management system for residential care of older people, E-Qalin. This resulted in a partial reformulation of possible indicators and further recommendations for their application.

During the third phase, the results of the validation phase as well as the observed cross-national differences were summarised and analysed. The results of this analysis were discussed by the team during an evaluation workshop, in which also four experts and stakeholders who participated in the Delphi study and three experts who participated in the validation workshop were present.

Results: This project resulted in several end products: (i) a framework of standards developed and validated at European level, (ii) a set of result-oriented indicators to define, measure and assess quality in residential care for older people, (iii) a list of guidelines targeted mainly for key stakeholders (management, staff, regulators, residents and relatives) on how to apply this validated framework of indicators in order to ensure quality improvement and benchmarking, (iv) a policy brief on the benefits and opportunities of result-oriented governance of long-term care systems in the EU Member States.

2.4.8. *Quality Care for Quality Aging: European Indicators for Home Health Care*

Applicant: Regione Veneto. Segreteria Sanità e Sociale (IT)

Partners: Regione Basilicata - Dipartimento Salute, Sicurezza e Solidarietà Sociale, Servizi alla Persona e Comunità (IT), Synergia Srl (IT), Centro di Iniziativa Europea soc. coop. (IT), Centre Public d'Action Sociale (CPAS) de la Ville de Bruxelles (BE), City of Helsinki - Social Services Department (FI), National Union of Social Action Community Centres (UNCCAS) (FR), Technologie-Netzwerk Berlin e.V. (DE), Municipality of Halandri (EL), Institut Municipal de Salut i Benestar Social (IMSABS) (ES), Secretaria autonómica inmigración y ciudadanía. Generalitat valenciana (ES), Fundación Comunidad Valenciana - Región Europea (FCVRE) (ES)

Objective: The project aimed to develop a flexible and internationally validated set of monitoring, assessment and performance indicators on quality delivered in home health care across the EU and to promote the creation of transnational networks of stakeholders through exchanges of best practices on quality assessment and monitoring.

Approach: In the first phase of the project, the partners defined common ground on operational objectives and tools and assessed available quantitative data about the target population. The first result was a preliminary study of the long-term care systems and of

existing best practices in monitoring home care in the national and local context in each of the partner countries.

The second phase of the project concerned the collection of national and regional legislation on long-term care systems, in particular home health care services.

In the third project phase, the project partners selected case studies and agreed on a list of quality indicators. The final phases led to a practical test of the tool, to the evaluation of its reliability and to the analysis of the results. The project ended with different national communication strategies to ensure dissemination of the scientific outputs.

Results: The main results of this project were the development of a comparative analysis of socio-demographic trends and of elderly health conditions in all the partner countries and fields of activity. This analysis was complemented by a review of the European, national and regional legislations applicable to long-term care policies, in particular regarding home health care, which resulted in the drafting of a transnational review of best practices and of guidelines for monitoring and assessing the quality of home health care services. Based on this review, a set of 140 quality indicators for home health care services was proposed. These indicators refer to the following dimensions of quality: access, input, process, output, outcome, satisfaction. A user-friendly tool was developed in order to permit an easy selection of the indicators according to concepts and dimensions of interest.

As all the projects had a trans-national partnership, they all developed an interesting experience of **exchange of good practices** among public authorities, service providers and other actors having different cultural backgrounds and dealing with a different legal and administrative context and different socio-economic conditions. Dealing with such **diversity is a challenge** reported by many project managers.

Practically all projects highlighted the importance of **involving users** in the definition and evaluation of social services quality.

It is also interesting to note that various projects built on **existing certification or accreditations systems**.

2.5. The development of a voluntary European Quality Framework for social services within the Social Protection Committee

- *the European Quality Framework adopted by the Social Protection Committee in October 2010 builds on the various initiatives undertaken across Europe*
- *it is voluntary and reflects the consensus reached within the Social Protection Committee*

- *it identifies several overarching principles (Person centeredness, Comprehensiveness, Continuity, Orientation towards outcomes, Availability, Accessibility and Affordability) as well as principles for specific dimensions of service provision (Respect for users' rights, Participation and empowerment, Partnership, Good governance, Good working conditions and working environment/Investment in human capital, Adequate physical infrastructure)*

In October 2010, the Social Protection Committee (SPC) adopted a voluntary European Quality Framework for social services (see Annex 1). Its purpose is to serve as a reference for defining, assuring, evaluating and improving the quality of social services.

The Commission had already announced in its 2007 Communication that it would "*support the development, within the SPC, of a voluntary EU quality framework providing guidelines on the methodology to set, monitor and evaluate quality standards*".

The Council had also expressed its support for a quality framework for social services in the **Conclusions of 8 June 2009**⁵² which emphasise that a "*voluntary Quality Framework for social services [...] may subsequently support the development of high quality standards for social services determined at the appropriate level*". The Council thus invited the Member States and the Commission to "*continue the work within the Social Protection Committee [...] on a voluntary Quality Framework for social services which aims at providing guidance on the methodology to set up, monitor and evaluate quality standards for social services, in line with the subsidiarity principle*".

The SPC had therefore mandated an **informal working group** to discuss the needs that a voluntary quality framework should address and the contents of such a framework, and to propose a draft document.

To collect information and experiences, the working group met various EU **stakeholders** (social partners active in the sector, civil society organisations representing the interests of users and providers of social services as well as European umbrella organisations representing local public authorities) which had already launched different initiatives⁵³ in this field.

In its debate on the Quality Framework, the working group was also inspired by other initiatives such as the frameworks and tools put in place by public authorities in the Member States⁵⁴; the Active Inclusion initiative⁵⁵; the results of the eight projects financed by PROGRESS on the quality of social services⁵⁶ and the position paper issued

⁵² Council Conclusions on "Social services as a tool for active inclusion, strengthening social cohesion and an area for job opportunities", 2947th Employment, Social Policy, Health and Consumer Affairs Council meeting, Luxembourg, 8 June 2009.

⁵³ See section 2.2 above.

⁵⁴ See section 2.1 above.

⁵⁵ See section 2.3 above.

⁵⁶ See section 2.4 above.

in 2007 by the DHLG on how to promote quality social services addressing the particular needs of people with disabilities⁵⁷.

In line with the approach followed by many stakeholders, the Quality Framework adopted encompasses a set of **quality principles** covering various aspects of service provision and aiming to develop a common understanding on the quality of these services within the EU.

The Framework first identifies a few overarching principles. These principles refer to the characteristics that a social service should have in order to address the multiple needs and expectations of the service user (**Person-centeredness, Comprehensiveness, Continuity and Orientation towards outcomes**). Moreover, **Availability, Accessibility and Affordability** are also listed among these overarching principles. This is logic because the European Quality Framework was drafted by the SPC, i.e. by the Member States and by the Commission. In many service providers' initiatives, Availability, Accessibility and Affordability appeared among the preconditions for quality because their fulfilment lies mainly within the remit of the public authorities.

Following the examples of various stakeholders' initiative, the SPC also highlighted principles related to three dimensions of service provision: the relationships between service providers and users (**Respect for users' rights, Participation and empowerment**), the relationships between service providers, public authorities and other stakeholders (**Partnership, Good governance**) and human and physical capital (**Good working conditions and working environment/Investment in human capital, Adequate physical infrastructure**).

For each of the quality principles concerning these three dimensions of service provision, **operational criteria** were suggested which might be of help for the monitoring and evaluation of social services quality. The "**Nine golden principles**" of the Social Platform, the "*Common Quality Framework*" developed within the PROMETHEUS project and the DHLG position paper were particular sources of inspiration in drafting those criteria.

The European Quality Framework also encompasses some elements for a **methodology to develop quality tools** (standards or indicators) at national or local level, in line with the indications of various stakeholders. The methodological elements presented cover six aspects of quality tools: (i) definition; (ii) scope; (iii) validity; (iv) cross-country comparability; (v) data availability and (vi) responsiveness. By proposing these elements, the Framework should help public authorities in charge of organising and financing social services to develop at the appropriate level specific tools for the definition, measurement and evaluation of social services quality.

The Quality Framework has a voluntary nature and reflects the consensus within the SPC.

The SPC expects the Framework to be flexible enough to be applied to a variety of social services in the national, regional and local context in all the EU Member States. The

⁵⁷ See section 2.3 above.

Framework should also be compatible and complementary with existing national quality approaches in the sector.

According to the SPC, adhering to the quality principles identified in the Framework and monitoring compliance with these principles notably by using the proposed quality criteria should greatly enhance the capacity to organise and provide high quality social services.

2.6. Conclusions

This chapter shows that the debate on social services quality does not take place anymore only at local or national level: public authorities and stakeholders are committed to **create common understanding and consensus at European level**.

This debate is undoubtedly confronted with **a major challenge: dealing with the diversity** in cultural backgrounds, legal and administrative contexts and socio-economic conditions, which adds to the challenge related to the variety among various types of social services.

However, the initiatives described in sections 2.2 and 2.3 and the SPC European Quality Framework show that a **common understanding** on social services quality is already possible across European actors of various types.

Consensus on quality principles is certainly easier to find than consensus on standards as, according to some stakeholders, quality principles are better adapted to reflect the diversity among Member States in terms of culture and organisation and the wide range of social services.

When a quality initiative is developed by service providers, **Availability, Accessibility and Affordability** are often listed among the pre-conditions for quality, i.e. those contextual elements which are not under the direct influence of the service providers but must be guaranteed by the public authorities. Public authorities developing a quality framework might look at this issue from a broader perspective. For this reason, in the SPC Quality Framework adopted by the Member States, Availability, Accessibility and Affordability appear among the overarching quality principles.

Service user and his/her rights, needs and expectations are always at the centre of the reflection, and principles such as respect for human dignity and fundamental rights, the security of all users, equal opportunities, person-centeredness and comprehensiveness, continuity, outcome orientation and, above all, participation and empowerment find a general consensus. They reflect an approach to quality measured in terms of responsiveness to needs which are becoming more and more complex and have to be treated in a comprehensive way. Quality is also closely connected to offering users as much control as possible over their own lives.

Moreover, the link between quality on one side, and the **skills and training requirements and working conditions of staff** on the other, is common to many initiatives, since staff qualification is fundamental for the quality of the service provided.

The role of **non-profit service providers**, of **voluntary workers** and of **informal carers** has also been recognised in various stakeholders' initiatives, in the SPC Quality Framework and in some PROGRESS-financed projects.

Cross-country comparability is an important issue in the PROGRESS-financed projects and in the SPC Quality Framework, thus confirming that the growing attention to quality at European level is also related to the **increasing cross-border relevance** of certain types of social services and, in particular, of long-term care services.

Finally, in the present context where public authorities in the Member States are exposed to growing financial constraints⁵⁸, a consensus on quality at EU level should help policy-makers to **prioritise investments** that promote continuous development of both quality and cost-effectiveness.

The Commission's active role in this debate is part and parcel of its commitment to support Member States in organising and financing high quality, cost-effective and affordable social services. Chapter 3 focuses on another aspect of this commitment: the clarification and, if need be, further adaptation of EU rules applying to these services.

⁵⁸ See Chapter 1, point 1.3.4, referring to the impact of the current economic and financial crisis on the provision of health and social services.

3. THE APPLICATION OF EU RULES TO SSGI – THE LATEST DEVELOPMENTS

3.1. Introductory overview of the issue

- *in the 2007 Communication, the Commission launched a strategy to provide guidance on the application of the rules.*
- *public authorities and stakeholders have reported difficulties when applying EU rules. These difficulties appear to be mainly due to a lack of awareness or misinterpretation of the rules rather than to the rules themselves*
- *EU rules on State aid and public procurement can help organise and finance good quality, cost-effective social services. They already largely take into account the specific nature of social services*
- *the Commission is continuing its dialogue with local public authorities, associations representing users and service providers and civil society*

The Commission's commitment to promote social services quality is complemented by its work aiming at clarifying the application of EU rules to SSGI.

Several public authorities – mainly local authorities - which are most often in charge of social services - and service providers active in the social field have reported difficulties in understanding and applying the relevant EU rules. They often perceive them as an obstacle to organising and financing high-quality social services or misinterpret them. For instance, it is sometimes wrongly assumed that EU rules entail liberalisation, privatisation or deregulation of the social services sector, that they oblige public authorities to select the cheapest provider at the expense of the quality of the service or that they do not allow public authorities to finance service provision adequately⁵⁹.

Where public authorities correctly apply EU rules on State aid and public procurement, these rules can help them organising and financing good quality, cost-effective social services. State aid rules can help to ensure that public money is well used to meet public policy objectives and is not diverted to cross-subsidise other activities. Similarly, public procurement rules can guarantee, in the interests of users, that public authorities choose the service providers in charge of a given social service in a transparent and non discriminatory way. These rules can facilitate the emergence of new service providers who might propose new, innovative, better quality services, responding to changing needs. Public procurement rules also allow the selection of the most cost-effective service provider, all the more important in times of budgetary constraints.

Moreover, **EU rules already largely take into account the specific nature of social services.**

⁵⁹ The 2006 and the 2007 Communications as well as Section 4.3 of the 1st Biennial Report explain thoroughly why such assumptions are inaccurate. Specific questions on these issues appear also in the two Frequently Asked Questions documents published in 2007 (see below).

In particular, **Article 106(2) of the Treaty on the Functioning of the European Union (TFEU)** (formerly Article 86(2) of the Treaty establishing the European Community), which applies not only to SSGI that are economic in nature but also to other services of general economic interest (SGEI), provides that "undertakings entrusted with the operation of services of general economic interest [...] shall be subject to the rules contained in this Treaty, in particular to the rules on competition, insofar as the application of such rules does not obstruct the performance [...] of the particular tasks assigned to them". This Article thus ensures that the specific mission of general interest is taken into account when applying the Treaty rules.

As regards **State aid** rules, in 2005, under what is now Article 106(2) of the TFEU, the Commission adopted a package of measures (known as the **SGEI, Altmark or Monti-Kroes Package**) clarifying and simplifying the circumstances in which a grant of aid for the financing of SGEI by public authorities in the Member States⁶⁰ could be compatible with the Treaty. This package is currently under evaluation and the Commission has conducted a **public consultation** on its application.

Member States can also grant **exclusive or special rights** to certain service providers (limiting, by doing so, the number of service providers to one or a few), as long as these rights are justified and proportionate and granted through a transparent and non-discriminatory procedure.

As for the application of **internal market rules** (freedom to provide services, right of establishment), the **achievement of social policy objectives** has been considered by the European Court of Justice to be an admissible justification for measures regulating the sector (e.g., imposing quality requirements or ensuring universal access/affordability) as long as these measures are also proportionate. The **Services directive**⁶¹, which in any event only applies to certain social services⁶², has not changed this approach. For those

⁶⁰ The SGEI package is composed notably by the Commission Decision of 28 November 2005 on the application of Article 86(2) of the EC Treaty to State aid in the form of public service compensation granted to undertakings entrusted with the operation of services of general economic interest (OJ L 312, 29.11.2005), and by the Community Framework for State aid in the form of public service compensation (OJ C 397, 29.11.2005). The package sets the conditions under which State aid in the form of public service compensation is to be regarded as compatible with the common market. These conditions are: (i) the existence of an act of entrustment; specifying, *inter alia*, the nature and duration of the public service obligations and the parameters for calculating, controlling and reviewing the compensation; (ii) the limitation of the compensation to the amount necessary to cover the costs incurred in discharging the public service obligation, taking into account the relevant receipts and a reasonable profit; (iii) the control, and when relevant, repayment of the compensation. Aid below certain thresholds defined in the Decision is exempt from the requirement of notification to the Commission laid down in Article 108(3) TFEU, provided these requirements are met. Public service compensations above the thresholds defined in the Decision have to be notified to the Commission which will analyse it on the basis of the Framework. The thresholds do not apply to public service compensation granted to hospitals and social housing, which are therefore exempt from notification irrespective of the amounts involved, but subject to the above requirements.

⁶¹ Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, OJ L 376/36 of 27.12.2006.

⁶² It is worth noting that those social services to which the Services directive does not apply still fall in the field of application of the internal market rules.

services that fall within the scope of application of the Directive, the latter contains a number of provisions which allow Member States to take fully into account the specificities of SSGI⁶³ and in particular to guarantee the quality of these services.

Similarly, **public procurement rules** do not require public authorities to outsource the provision of social services: they can continue to provide the services themselves. When these rules apply (i.e. when public authorities outsource the service provision against remuneration), public authorities enjoy **considerable latitude** in the social services sector as only certain provisions of the Public Procurement directive⁶⁴ - plus the Treaty principles of transparency and non discrimination - apply to contracts on social services⁶⁵. At present, an ex-post evaluation of public procurement rules is ongoing: it shall examine the scope for improvement in view of a more efficient use of public funds and of better taking into account the Europe 2020 objectives in public procurement, amongst them the objective of social inclusion. In this context, the Commission is also currently considering to launch a public consultation aiming at modernising and simplifying the existing EU public procurement framework. It should address, *inter alia*, the possible use of public procurement rules in effectively achieving other policy objectives.

⁶³ E.g. the screening set out in Article 15 of the Services Directive shall apply to legislation in the field of services of general economic interest only insofar as such screening does not obstruct the performance, in law or in fact, of the particular task assigned to them.

⁶⁴ Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ L 134, 30.4.2004, p. 114–240).

⁶⁵ On EU public procurement rules, it is worth mentioning that the Commission services will soon publish the Guide "*Buying Social: A guide to taking account of the social considerations in public procurement*". The purpose of this Guide is (a) to raise contracting authorities' awareness of the potential benefits of socially responsible public procurement and (b) to explain in a practical way the opportunities offered by the existing EU legal framework for public authorities to take into account social considerations in their public procurement, thus paying attention not only to price but also to the best value for money. This Guide refers to public procurement concerning various types of works and services and does not specifically address the legal issues related to procurement of social services.

To further address the concerns of public authorities and other stakeholders on the application of EU rules to SSGI, in the 2007 Communication the Commission launched a **strategy to provide guidance on the application of the rules**, consisting of:

- two "**Frequently Asked Questions**" documents (FAQs) on the application of State aid⁶⁶ and public procurement rules⁶⁷, published online in November 2007;
- an **Interactive Information Service (IIS)** put in place in January 2008 to provide answers to questions from citizens, public authorities, service users, service providers and other stakeholders on the application of EU rules to SGEI;
- a **training initiative for local public authorities** launched in 2009 to familiarise local public authorities with the EU rules⁶⁸.

This strategy marks a significant progress⁶⁹: the Member States have stated that "*the FAQs are generally welcomed and considered useful*"⁷⁰ and that the IIS "*provides useful information and guidance*"⁷¹.

In July 2008, in the **1st Biennial Report**, the Commission provided an overview of the contents of the FAQs⁷² and information on the launch of the IIS⁷³. It also described how the SPC had reacted to the Commission strategy on the EU rules⁷⁴.

In addition, the Commission is continuing its **dialogue with the local public authorities, the associations representing users and service providers and civil society in general**, notably through the SSGI Forums⁷⁵ and the SPC. Several organisations have

⁶⁶ Commission Staff Working Document "*Frequently asked questions in relation with Commission Decision of 28 November 2005 on the application of Article 86(2) of the EC Treaty to State aid in the form of public service compensation granted to undertakings entrusted with the operation of services of general economic interest, and of the Community Framework for State aid in the form of public service compensation*", SEC(2007) 1516 of 20 November 2007.

⁶⁷ Commission Staff Working Document "*Frequently asked questions concerning the application of public procurement rules to social services of general interest*", SEC(2007) 1514 of 20 November 2007.

⁶⁸ First pilot trainings were organised in 2009 and 2010 to test the needs and decide on the most appropriate format. A more systematic organisation of trainings should start in 2011.

⁶⁹ See point 9 of Council Conclusions on social services as a tool for active inclusion, strengthening social cohesion and an area for job opportunities, of 8 June 2009.

⁷⁰ See the operational conclusions of the SPC on the application of Community rules to SSGI (SP 2008/17 – final or 16062/08) approved by the Council in its meeting of 16 and 17 December 2008.

⁷¹ See Council Conclusions on social services as a tool for active inclusion, strengthening social cohesion and an area for job opportunities, of 8 June 2009.

⁷² See section 4.4 of the report.

⁷³ See point 4.3.1 of the report.

⁷⁴ See point 4.3.2 of the report.

⁷⁵ Following-up to the first and second Forums, organised respectively under Portuguese and French Presidency in Lisbon, in September 2007, and in Paris, in October 2008, the 3rd SSGI Forum will

called for the **adoption of a legal framework specific to the SSGI**, but its content and value added compared to the existing rules have yet to be made clear.

In its **resolution of 2009** on the active inclusion of people excluded from the labour market⁷⁶, the **European Parliament**, touches upon the issue of SSGI as a key tool for active inclusion. It calls on the Commission to "*examine without delay all possible means of clarifying the legal context in which social services of general interest operate and providing them with a legal framework to serve as a point of reference, in particular by adopting legislative instruments including a framework directive*". To highlight the interest of Members of the European Parliament in this issue, a **Public Services Intergroup** has been set up. Moreover, the European Parliament has planned a report on SSGI.

The debate on a specific legal framework has been revived by the entry into force of the Lisbon Treaty which has created a specific legal basis (Article 14 TFEU) for the adoption of regulations on services of general economic interest (section 3.2). Furthermore, the IIS has raised a number of issues in its first 19 months of functioning (section 3.3), some of them relating to subjects identified by the SPC as deserving further investigation (section 3.4).

An important contribution to the ongoing debate was made by Professor Mario Monti in his report on a new single market of May 2010⁷⁷ (hereafter, the 'Monti report' - section 3.5).

In the meantime, the Commission has recently published an update of the FAQs, which will provide an answer to many issues raised during the debate (section 3.6).

The ongoing dialogue indicates that a certain number of issues call for further reflection. Analysis of the submissions to the recently concluded public consultation on State aid will provide further input to the reflection as will the similar exercise to be conducted on EU public procurement rules.

3.2. The new provisions on SSGI introduced by the Lisbon Treaty

- *the new Article 14 and the Protocol on SGI revive the debate on a specific quality framework for SSGI*

The Lisbon Treaty has amended Article 14 TFEU (see box 1 below with amendments marked in bold) **creating a specific legal basis for the adoption of regulations on**

take place in Brussels, on 26 and 27 October 2010. The organisation of the Forums was a suggestion of the European Parliament in a resolution of 2007 (2006/2134(INI)).

⁷⁶ (2008/2335(INI)).

⁷⁷ "A new strategy for the single market at the service of Europe's economy and society", report to the President of the European Commission José Manuel Barroso, by Mario Monti, 9 May 2010.

services of general economic interest. This Article⁷⁸ acknowledges the place occupied by SGEI in the shared values of the Union and their role in promoting social and territorial cohesion. It also states that such services must operate on the basis of principles and conditions which enable them to fulfil their missions. As amended by the Lisbon Treaty, it provides a **new legal basis** for EU regulations establishing these principles and setting these conditions.

Box 1

Article 14 TFEU

*Without prejudice to Article 4 of the Treaty on European Union or to Articles 93, 106 and 107 of this Treaty, and given the place occupied by services of general economic interest in the shared values of the Union as well as their role in promoting social and territorial cohesion, the **Union** and the Member States, each within their respective powers and within the scope of application of the Treaties, shall take care that such services operate on the basis of principles and conditions, **particularly economic and financial conditions**, which enable them to fulfil their missions. **The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall establish these principles and set these conditions without prejudice to the competence of Member States, in compliance with the Treaties, to provide, to commission and to fund such services.***

The second novelty introduced by the Lisbon Treaty is **Protocol 26 on Services of General Interest** (see box 2 below). It stresses their diversity and the essential role and wide discretion Member States (at the relevant level) have in providing and organising them. It also specifies that non economic services of general interest are not affected by the Treaties. The contents of the Protocol were analysed in detail in the 2007 Communication⁷⁹.

Box 2

Protocol on services of general interest

The High Contracting Parties,

Wishing to emphasise the importance of services of general interest

⁷⁸ Ex article 16 TEC.

⁷⁹ See chapter 3 of the Communication.

Have agreed upon the following interpretative provisions, which shall be annexed to the Treaty on European Union and to the Treaty on the Functioning of the Union:

Article 1

The shared values of the Union in respect of services of general economic interest within the meaning of Article 14 of the Treaty include in particular:

- the essential role and the wide discretion of national, regional and local authorities in providing, commissioning and organizing services of general economic interest as closely as possible to the needs of the users;*
- the diversity between various services of general economic interest and the differences in the needs and preferences of users that may result from different geographical, social or cultural situations;*
- a high level of quality, safety and affordability, equal treatment and the promotion of universal access and of user rights;*

Article 2

The provisions of the Treaties do not affect in any way the competence of Member States to provide, commission and organise non-economic services of general interest.

3.3. The activities of the Interactive Information Service

- *the ISS has received 148 questions mainly from France, Germany and Belgium***
- *most of the questions (63, i.e. 42%) were sent by either national or European umbrella organisations of service providers***
- *almost 70% of the questions came from the social services sector: this confirms the Commission's expectation that the IIS would help to address questions and doubts in particular in the social services field***

The IIS was announced by the 2007 Communication as "*a dedicated and interactive on-line service ... put in place at the disposal of citizens, service providers, public authorities and all stakeholders to provide information and allow them to raise questions concerning the application of EU law*".

The Commission expected that this tool could assist actors at local and regional level "*in particular in the field of social services*" where - the 2007 Communication noted – "*a number of stakeholders ... have difficulty in understanding and applying the rules*" and "*local authorities and small providers in particular may lack awareness and information about EU rules, which can lead to misunderstanding and misapplication of rules on the ground*".

Questions to the Commission staff can be posted using a form on the following webpage:

http://ec.europa.eu/services_general_interest/registration/form_en.html.

Replies are provided by the Commission on the basis of the interpretation of EU rules in Court judgments and in Commission decisions. As specified on the webpage, the replies cannot analyse the facts of an individual case or provide a formal interpretation of EU law in relation to a specific situation. Neither can they provide legal advice on issues of national law, advice on how to frame calls for tender or contracts or on how to devise compensation mechanisms. In the 2007 Communication, the Commission stated that all relevant questions arising would be "*covered in a hands-on, user friendly way*".

From its launching at the end of January 2008 until the end of August 2010, i.e. in its first 19 months of existence, the ISS received **148 questions**, most of which (135) fall within its remit, i.e. they concern the application of EU rules.

Three Member States account for more than 80% of the questions asked: France, from which 85 questions have been sent, representing almost 60% of the total, Germany (12%) and Belgium (11%)⁸⁰.

Only 21% of the questions (32) have been sent by public authorities, i.e. by those applying EU rules when organising and financing SSGI. Out of the **32 questions sent by public authorities**, 9 came from their umbrella organisations, 9 from local public authorities, 8 from national and 6 from regional authorities.

Those that have sent most of the questions (63, i.e. 42%) are the, either national or European, umbrella organisations of service providers, which are also particularly active in the debate taking place at the European level on the application of EU rules to SSGI. 17 questions (11%) come from the academic world (professors, researchers or students) while the remaining 36 (24%) have been sent by private citizens or by private entities such as law firms or consultancy companies.

While less than 1/3 of the questions referred explicitly to a specific sector, almost **70%** were sent **by public authorities, networks of service providers, representatives of the academic world active in the social services sector**. Among the questions which referred to one or more specific sectors, ten concerned social assistance services, eight training, and five employment services, childcare, social housing or health services. As for the other services of general interest, water was referred to in four questions and energy in three. **This confirms the Commission expectation mentioned above that the IIS would address questions and doubts in particular in the social services field.**

Many questions raise very general issues⁸¹. Of the 135 questions within the remit of the IIS, around 15% referred to the very notion of general interest and of service of general interest, 5% to the notion of economic activity and 15% in general terms to the

⁸⁰ The figure concerning Belgium also reflects the fact that various umbrella organisations of service providers sending questions to the IIS have their headquarters in Brussels.

⁸¹ It is worth noting when reading the percentages in this section that the same question may refer to different issues.

conditions for the application of the EU rules and the way in which these EU rules influence the organisation and financing of social services.

Almost 40% concerned State aid rules and more than 20% referred to public procurement/concessions rules.

Among the questions which dealt with the application of State aid rules, the issues which raised most interest were the conditions for the application of the SGEI package⁸², the act of entrustment, the compensation of costs incurred by the services providers and the Altmark judgment⁸³.

The questions which referred to public procurement/concessions rules often focussed on the conditions for applying these rules (and in particular the notions of "remuneration" and "risk") and on the implications and impact of these rules for social services.

Approximately 10% of the questions received dealt with the concomitant application of and interaction between State aid and public procurement/concessions rules.

A dozen questions (8%) related to the rules on the freedom of establishment and the freedom to provide services; most of them dealt more specifically with the Services Directive and in particular with the scope of the exclusion for certain social services from the Directive.

The IIS activity also reflected the recent Court rulings and Commission decisions as witnessed by questions on the application of public procurement rules to cooperation between public authorities⁸⁴, and on the notions of "in-house"⁸⁵ and of "manifest error"⁸⁶.

Commission staff is currently working on adapting the IIS to make it operative in all official languages.

3.4. The follow-up by the Social Protection Committee

- *the SPC recognised the value and usefulness of the FAQs*

⁸² See footnote 60 above.

⁸³ Case C-280/00 Altmark Trans [2003] ECR I-7747. In this judgement the Court held that a public service compensation does not constitute State aid if four cumulative criteria are met. These criteria with the exception of the fourth one (which refers to the selection of the service provider pursuant to a public procurement procedure) have been reflected in the SGEI package (see footnote 60 above).

⁸⁴ This refers to the Hamburg case mentioned below (see point 3.4 and footnote 94).

⁸⁵ This refers to the Coditel case mentioned below (see point 3.4 and footnote 93).

⁸⁶ This refers to a State aid case concerning social housing in the Netherlands which led to a Commission decision of 15 December 2009.

- *the SPC identified some subjects to be further investigated: (i) the application of public procurement rules to the cooperation among public authorities; (ii) the role of non-profit providers; (iii) possible alternatives to the application of public procurement procedures*

As mentioned above, in July 2008 the first Biennial Report⁸⁷ presented the work carried out by the SPC in the first half of the year. As the SPC intended to contribute to the work undertaken by the Commission on the application of EU rules to SSGI, it had mandated an **informal working group** to analyse the answers provided in the FAQs.

This work led in **November 2008** to a **SPC report whose operational conclusions were approved by the Council in December 2008**⁸⁸. In the report (see Annex 2), the SPC noted that while Member States and stakeholders were increasingly aware of the impact that EU rules might have in the field of SSGI, there was also some **remaining reluctance to apply these rules systematically** to all aspects of the organisation, financing and provision of SSGI. **The SPC recognised the value and usefulness of the FAQs** and suggested a few questions that might be added when updating them: these questions relate in particular to the criterion of "affectation of trade between Member States", to the scope of public procurement rules and to the application of the SGEI package.

The SPC also referred to the possibility of **extending the scope of the FAQs to other EU rules**. The SPC noted however that the FAQs cannot solve all legal issues arising in the social field. Nevertheless, the SPC urged the Commission and the Member States to increase public authorities' and stakeholders' awareness of the FAQs and the IIS. It also urged the Commission to regularly update the FAQs and to make both the FAQs and the IIS available in all official languages.

Finally, **the SPC identified a few subjects to be investigated further in the FAQs: (i) the application of public procurement rules to the cooperation between public authorities; (ii) the role of non-profit providers; (iii) possible alternatives to the application of public procurement procedures**. It also advocated the exchange of information and mutual learning between the Member States on the latter issue. Moreover, the SPC suggested that, if the Commission comes to the conclusion that the existing legal framework should be amended, it should take the appropriate steps, as part of its commitment "*to continue to consolidate the EU framework applicable to SGI, including social and health services, providing concrete solutions to concrete problems where they exist*"⁸⁹.

As a follow-up to these operational conclusions, **in 2009 the informal working group focused its debate on three issues: (i) the criterion of "affectation of trade between Member States"**⁹⁰; **(ii) the application of public procurement rules to the**

⁸⁷ See point 4.3.2 of the report.

⁸⁸ See footnote 70 above.

⁸⁹ The operational conclusions quote on this point the 2007 Communication.

⁹⁰ "Affectation of trade between Member States" is one of the conditions under which a measure can be classified as State aid.

cooperation among public authorities; and (iii) possible alternatives to the application of public procurement procedures.

The analysis carried out on the "affectation of trade between Member States" by the SPC informal working group came to the conclusion that this condition is easily met in the field of State aid and that consequently, for aid which is above the *de minimis* thresholds⁹¹, the main source of legal certainty remains the SGEI package⁹², the application of which should be encouraged, according to the working group.

As for the application of public procurement rules to the cooperation among public authorities, the SPC working group discussed two recent and very important Court rulings: *Coditel*⁹³ and *Hamburg*⁹⁴. The first one develops the concept of "in-house" contract awards⁹⁵ and, by accepting joint control, facilitates the use of an "in-house entity" in the context of inter-municipal cooperation. The second specifies that, for public-public cooperation not to fall under public procurement rules, the creation of jointly controlled entities is not required. Such cooperation can also be based on a not-for-profit collaboration aimed at jointly ensuring the execution of public tasks and solely governed by considerations and requirements relating to the achievement of objectives in the public interest. This matter is particularly complex and discussions on the scope and interpretation of the case-law, are still ongoing, notably with Member States within the Advisory Committee for Public Contracts.

Finally, the SPC informal working group attended the presentation of a new act on free choice which entered into force in Sweden in January 2009. This model is not based on the award of public service contracts or concessions in the sense of the EU public procurement rules, but on a system of non-exclusive authorisations. This new system can be implemented by local authorities wanting to empower users and to improve the quality of the services provided. There is no competition on price as the compensation is established by the public authority on the basis of the cost of the in-house provision. All providers meeting the conditions defined by the competent public authority are authorised to operate and must provide the service upon request from a beneficiary.

⁹¹ These thresholds are defined in the Commission Regulation n° 1998/2006 of 15 December 2006 on the application of articles 87 and 88 of the Treaty to *de minimis* aid (OJ L 379/5 of 28.12.2006) which establishes that financial support granted to an undertaking and inferior to €200.000 over a three years' period does not constitute State aid.

⁹² See footnote 60 above.

⁹³ Judgement of 13 November 2008 in case C-324/07 *Coditel Brabant* [2009] ECR I-0000 (reference for a preliminary ruling from the Belgian Conseil d'État).

⁹⁴ Judgment of 9 June 2009 in case C-480/06 *Commission v Germany* [2009] ECR I-0000.

⁹⁵ The "in-house" exception refers to a situation where a public authority (or various public authorities together) decides to provide a service itself, albeit acting through a legally independent entity. This entity is however so closely connected to the public authority that the two are effectively regarded as one. Such a relation is not covered by the EU Public Procurement rules. Two conditions must be met for the application of the "in-house" exception: (i) the public authority/ies exercise over the legally independent entity a control which is similar to that which it exercises over its own departments; and (ii) the legally independent entity carries out the essential part of its activities with the controlling public authority/ies.

For the period 2010-2011, the SPC working group is planning to carry on debating on the application of public procurement rules to the cooperation among public authorities and on the possible alternatives to the application of these rules. It is also planning to discuss the Member States' feedback on the implementation of the Services Directive in the social field. The SPC working group furthermore intends to give the appropriate follow-up to Commission initiatives such as the evaluation of the SGEI Package, the updating of the FAQs and the training initiative.

3.5. The Monti Report

- *the Monti Report suggests that safeguarding and further deepening market integration in Europe requires targeted action to remove possible sources of frictions arising from the interaction between the rules needed for the operation of a single market and the needs of social and local contexts*
- *on social services Professor Monti suggests to increase the predictability and flexibility of state aid and public procurement rules*

The report "*A new strategy for the single market at the service of Europe's economy and society*" was presented on 9 May 2010 to the President of the European Commission José Manuel Barroso by Mario Monti, former Commissioner and President of Bocconi University. The report outlines a comprehensive strategy to relaunch the single market as Europe most powerful driver for growth and competitiveness. It argues that in order to safeguard and further expand market integration in Europe it is necessary to remove the sources of frictions arising from the interaction between the rules needed for the operation of a single market and the needs of social and local contexts.

A specific section of the report deals with "*social services and the single market*"⁹⁶. This section states that "*the fundamental challenge for the provision of social services is to maintain their quality and scope in the context of increasing pressure on public finances*".

After recalling that SSGI fall primarily within the competence of Member States, the report states that "*the ongoing discussions and a number of consultations have shown that the predictability and proportionality of the EU framework, in particular as regards the application of state aid rules and the rules related to the selection of the provider, are key concerns of many stakeholders*". It then acknowledges "*the effort [made by the Commission] to clarify the implications of the applicable EU rules in order to ensure that services of general interest can fulfil their missions and contribute to a better quality of life for European citizens*" and suggests that "*the Commission can contribute to ensuring that where EU rules apply to social services, the rules are **predictable and proportionate***".

⁹⁶ See section 3.3 of the Monti report.

Thus the report argues for increasing the predictability and flexibility of state aid rules, in line with the approach followed in the 2005 package. It encourages the Commission to examine adjustments to the rules applicable to financial compensation, either by increasing the relevant thresholds or by expanding the list of activities for which compensation does not require notification, irrespective of the amounts involved.

As for the application of public procurement rules to SSGI, the Monti report states that "*more flexibility should be sought*" to address the concerns expressed on "*the lack of legal certainty and flexibility and the administrative burden created by EU public procurement rules*". The report suggests therefore that the Commission reviews these rules "*with a view to aligning them*" to the rules on State aid and notably to the SGEI package "*in order to ensure a consistent approach concerning small services of general economic interest*".

The specific section on public procurement rules⁹⁷ calls for a better integration in the public procurement policy of broader policy goals, notably gender equality, employment and social inclusion and proposes to assess the possibility to impose mandatory requirements *inter alia* on social inclusion.

Following up to the Monti report, the Commission is preparing a **communication** presenting a strategy to relaunch the single market so that it delivers for all.

3.6. The updating of the "*Frequently Asked Questions*" documents

- *clarify the rules on State aid, on public procurement and internal market to help public authorities to better understand them and to facilitate their application*
- *pay attention to the concomitant application and the interaction between State aid and public procurement/concessions rules.*

In line with the invitation from the Council⁹⁸, Commission services have up-dated the FAQs published in November 2007⁹⁹. This up-date¹⁰⁰ is largely based on questions received by the IIS and on recent court judgments. The activities of the SPC and the ongoing dialogue with public authorities, MEPs, organisations representing service

⁹⁷ Section 3.1 of the Monti report: "*Harnessing public procurement for Europe's policy goals*". See more specifically the point on "*Better integrating horizontal policy concerns*".

⁹⁸ See Council Conclusions on social services as a tool for active inclusion, strengthening social cohesion and an area for job opportunities, of 8 June 2009.

⁹⁹ See, for reference, footnotes 66 and 67 above.

¹⁰⁰ At the moment in which the present report is drafted, the up-dating of the FAQ is not yet finalised. Therefore, this section describes in detail the up-dating of the document but cannot provide the reference and the date of publication of the final document, nor indications on the new numbering of the questions.

providers and service users and other stakeholders have also helped identifying pertinent questions.

To ensure more coherence and user-friendliness, the Commission services will publish only one document covering both the application of State aid and public procurement rules. Moreover, following a Council invitation¹⁰¹, the new document, now entitled "***Guide on the application to services of general economic interest, and in particular to social services of general interest, of the EU rules on State aid, public procurement and internal market***"¹⁰², also includes questions on the application to SSGI of the Treaty rules on the internal market (right of establishment, freedom to provide services) and of the Services Directive.

Guidance on general issues

As various questions received by the IIS referred to very general issues, a section on key concepts (service of general interest, service of general economic interest, social service of general interest, general interest, manifest error) has been added to the new Guide. This section further explains that it is the task of the Member States to define the general interest addressed by a given service, according to specific geographic, social and cultural circumstances. It also points out that the terms of "Member State" in this context might refer to public authorities at national, regional or local level depending on the distribution of powers in each Member State.

Finally, the document stresses that EU rules and, in particular, State aid rules do not impose a specific model of organisation of SGEI.

Guidance on the application of State aid rules

The Guide takes on board various IIS questions on the Altmark judgment¹⁰³ notably on meeting the "fourth criterion", and a series of questions on the application of the SGEI package¹⁰⁴, relating to:

- the calculation of turnover for service providers which belong to a larger group;
- retroactive application of the package;
- the absence of a right for service providers to receive State aid;
- the calculation of compensation in cases where the public authority wishes to finance the service provision only partially;

¹⁰¹ See the operational conclusions of the SPC on the application of Community rules to SSGI (SP 2008/17 – final or 16062/08) approved by the Council in its meeting of 16 and 17 December 2008.

¹⁰² This Guide should not be mixed up with the guide on how to take into account social considerations referred to in footnote above 65.

¹⁰³ See footnote 83 above.

¹⁰⁴ See footnote 60 above.

- the calculation of the compensation where the service provider is also granted special or exclusive rights;
- the possibility for a public authority to compensate a deficit due for instance to a shortfall in fee payments by users;
- the concepts of "reasonable profit" and of "overcompensation", especially where a service provider is financed by various public authorities, or where a service has been entrusted to various providers.

The document also answers one question concerning the act of entrustment which was much debated during the second SSGI Forum: whether the notion of entrustment within the meaning of Article 106(2) TFEU and of the SGEI package corresponds to the notion of "provider mandated by the State" within Article 2.2 (j) of the Services directive.

Finally, the document provides further clarification of the application of the *de minimis* regulation¹⁰⁵, of the General Block Exemption regulation, and of the application of State aid rules to ESF and ERDF funding.

Guidance on the application of public procurement/concessions rules

As in the 2007 document, the questions on public procurement/concession rules only relate to social services and not to other SGEI.

Further guidance is provided on two issues that have been particularly prominent in the debate on the application of EU rules to SSGI: "in-house provision"¹⁰⁶ and cooperation between public authorities. These two issues, as reported above, were the object of the Coditel and Hamburg rulings¹⁰⁷ respectively, were discussed thoroughly by the SPC and are mentioned in the Monti report as areas of "friction". Both the SPC and the Monti report asked for clarification. These two issues have also been touched upon within the IIS.

The updated document, addressing concerns expressed by various stakeholders in their dialogue with the Commission and reflected in some IIS question, also provides further guidance on inserting quality requirements into public procurement procedures and on an alternative way to organise SSGI without awarding public service contracts or concessions in the sense of the EU public procurement rules.

Guidance on the application of internal market rules (right of establishment/freedom to provide services)

This new section explains when and how the Treaty rules on the freedom of establishment and the freedom to provide services apply to SSGI. It also includes questions relating to the Services Directive.

¹⁰⁵ See footnote 91 above.

¹⁰⁶ On this concept, see footnote 95 above.

¹⁰⁷ See section 3.4 and footnotes 93 and 94 above.

The scope of application of the Directive is further clarified, in particular Article 2.2(j) which excludes from the scope of the Directive certain social services, i.e. those social services relating to social housing, childcare and support of families and persons permanently or temporarily in need, which are provided either by the State, by providers mandated by the State or by charities recognised as such by the State. Guidance on these terms is provided.

Guidance on the concomitant application of State aid and public procurement/concessions rules

The Guide has now a specific section on the concomitant application and the interaction between State aid and public procurement/concessions rules, an issue particularly relevant for SSGI, which has often been raised in the IIS.

Both types of rules – State aid and public procurement/concessions rules – are in principle completely independent of each other: State aid rules prevent the distortion of competition through the financing of a service provider while public procurement rules come into play at an earlier stage, when the provider is selected and aim to ensure that the provider offering the best value for money is selected.

The Guide indicates situations in which a public authority which is financing the provision of social services in line with State aid rules also has to apply public procurement rules when selecting the provider.

This section also provides guidance on the application of State aid rules to the financing of "in-house" providers¹⁰⁸ and to the financing of a service provider which has been granted a service concession.

3.7. Conclusions

The clarification exercise through the IIS and the new Guide aims at ensuring a better understanding of the rules by the public authorities, the users, the service providers and other stakeholders and should facilitate their application. The training initiative, the work in the SPC and the ongoing dialogue with local public authorities, MEPs and civil society also help to remove existing misunderstandings and misconceptions about the rules.

A better knowledge about the rules should also increase awareness that their correct application helps organising and financing good quality, cost-effective social services.

This is why the Commission's commitment to clarify the application of EU rules goes hand in hand with its commitment to promoting the development of a Quality Framework and is particularly important in times of budgetary constraints.

¹⁰⁸ On this concept, see footnote 95 above.

The work done in the SPC and the Monti report have contributed to identifying pertinent questions for the updating of the FAQs. At the same time, they have highlighted issues that may require further attention: the role of non profit providers, alternative ways to organise SSGI, the cooperation between public authorities, the concomitant application of and interaction between State aid and public procurement rules can certainly be listed among these issues.

The dialogue with local public authorities and stakeholders also provides the Commission with a better knowledge of the way in which the rules are applied on the ground and contributes to the ongoing reflection.

ANNEX 1



The Social Protection Committee

SPC/2010/10/8 final

A VOLUNTARY EUROPEAN QUALITY FRAMEWORK FOR SOCIAL SERVICES

1. INTRODUCTION

This voluntary European Quality Framework aims to develop a common understanding on the quality of social services within the EU by identifying quality principles that these services should fulfil. Moreover, by proposing a set of methodological guidelines, the Quality Framework will also help public authorities in charge of organising and financing social services, to develop at the appropriate level, specific tools for the definition, measurement and evaluation of social services' quality. Thus, it will serve as a reference for defining, assuring, evaluating and improving the quality of these services.

The implementation of this Quality Framework is voluntary. This framework reflects the consensus within the Social Protection Committee following the Council conclusions of 8 June 2009¹ which invited the Member States and the European Commission to “*continue the work within the Social Protection Committee on a voluntary Quality Framework for social services*”.

This Framework is flexible enough to be applied in the national, regional and local context in all the EU Member States and to a variety of social services. It aims to be compatible and complementary with existing national quality approaches in the sector.

The Social Protection Committee believes that public authorities that adhere to the quality principles identified in this voluntary Framework and monitor the compliance with these principles notably by using the proposed quality criteria can greatly enhance their capacity to organise and provide high quality social services.

As most social services are highly dependent on public funding², a consensus on the quality of social services in the present context when public authorities in the Member States are exposed to growing financial constraints will help policy-makers to prioritise

¹ See Council Conclusions on social services as a tool for active inclusion, strengthening social cohesion and an area for job opportunities, of 8 June 2009

² See *Biennial report on social services of general interest*, SEC(2008) 2179 final of 2 July 2008, section 2.2.1.

investments that promote continuous development of both quality and cost-effectiveness of social service provision.

Developing such a Framework will also respond to a growing interest among public authorities, service providers, social partners, users and other stakeholders in the debate on the quality of social services. This interest is directly related to the reform processes in which Member States have engaged in this area in the last decades and in particular to the increased outsourcing of the social services' provision to a variety of actors. This calls for a better definition by the public authorities of the service at stake and of the expected quality requirements as well as for a greater accountability for public spending.

Better defining social services' quality also responds to the need to address a demand for social services that is becoming more complex and diverse, as well as to the need to protect those among social services' users who are more vulnerable and to improve the outcomes of social services for users and other stakeholders. Users are increasingly demanding more control over their own lives and the services they benefit from.

Moreover, as the quality of the service is closely related to the skills and working conditions of workers in this sector³, the debate on social services' quality can help to identify skills, training requirements and the improvement of the working environment, thus contributing to the further development of the "white-jobs" sector⁴.

Finally, the cross-border provision of social services, presently very limited but expected to grow, in particular in the area of long-term care, will call for a greater level of service comparability and transparency, as well as for new forms of protecting both users and workers.

The voluntary European Quality Framework has been inspired by various initiatives concerning social services' quality: (i) the frameworks and tools which have been put in place by public authorities in the Member States; (ii) the initiatives already launched by the EU stakeholders; (iii) the Active Inclusion initiative⁵; (iv) the results of eight projects financed by PROGRESS on the quality of social service; (v) the position paper issued

³ In addition to workers in public and private service providers (the latter being either for profit or not-for-profit entities), a number of volunteers (i.e. unpaid staff, generally contributing to the services) and informal carers (i.e. persons who provide unpaid care to an ill, frail or disabled family member, friend or partner outside a professional or formal framework) are active in this sector. While these three categories of persons active in the social services sector cannot be mixed up, they all contribute in various ways to the delivery of high-quality social services.

⁴ It is worth noting that social services account for a significant share of employment and represent an important source of job creation in the EU. The share of employment in health and social services grew from 8.7% to 10% between 2000 and 2009, which means that almost 4.2 million new jobs in the health and social services sector were created in this period (EUROSTAT data analysed by the European Commission in preparation of the 2nd *Biennial report on social services of general interest*. This analysis is based on data which cover in a consolidated way both health and social services, as information on the different sub-sectors is scarce).

⁵ See Commission Recommendation of 3 October 2008 on the "Active inclusion of people excluded from the labour market", (2008/867/EC) published in the O.J. of 18.11.2008 L. 307/11; Council conclusions on common active inclusion principles to combat poverty more effectively of 17.12.2008; and the European Parliament resolution of 6 May 2009 on the active inclusion of people excluded from the labour market (2008/2335(INI).

in November 2007 by the Disability High Level Group providing guidance on how to promote quality social services addressing the particular needs of people with disabilities.

Moreover, when drafting this Framework, the experts nominated by the Member States have benefitted from the experience and have taken into account the expectations of various stakeholders (social partners acting in the sector, organisations from the civil society representing and advocating the interests of users and providers of social services as well as European umbrella organisations representing local public authorities).

The document consists of three parts: (i) an introduction to the concept of social services (**Chapter 2**); (ii) a set of quality principles covering various aspects of service provision (**Chapter 3**); (iii) elements for a methodology to develop quality tools (**Chapter 4**).

2. THE CONCEPT OF SOCIAL SERVICES

There is no general definition of "social services" in EU documents. However, the Commission Communication on social services of general interest of April 2006⁶ provides the following definition of social services:

We find two main categories of social services:

- statutory and complementary social security schemes, organised in various ways (mutual or occupational organisations), covering the main risks of life, such as those linked to health, ageing, occupational accidents, unemployment, retirement and disability;
- other essential services provided directly to the person. These services that play a preventive and social cohesion role consist of customised assistance to facilitate social inclusion and safeguard fundamental rights. They comprise, first of all, assistance for persons faced by personal challenges or crises (such as debt, unemployment, drug addiction or family breakdown). Secondly, they include activities to ensure that the persons concerned are able to completely reintegrate into society (rehabilitation, language training for immigrants) and, in particular, the labour market (occupational training and reintegration). These services complement and support the role of families in caring for the youngest and oldest members of society in particular. Thirdly, these services include activities to integrate persons with long-term health or disability problems. Fourthly, they also include social housing, providing housing for disadvantaged citizens or socially less advantaged groups.

This voluntary EU Quality Framework refers in particular to essential services provided directly to the person. Very often, these services, which are embedded in the social welfare systems of the Member States, are considered by the public authorities in the Member States as being of general interest and subject to specific public service

⁶ *Implementing the Community Lisbon programme: Social services of general interest in the European Union*, COM(2006) 177 final.

requirements. Examples of social services are social assistance services, long-term care, childcare, employment and training services, personal assistants and social housing.

Although their scope and organisation vary significantly according to historical, geographical, social and cultural specificities, these social services are essential for the fulfilment of basic EU objectives, such as the achievement of social, economic and territorial cohesion, social inclusion, a high level of employment and economic growth. They are key instruments for the safeguard of fundamental human rights and human dignity and contribute to ensuring the creation of equal opportunities for all, therefore enhancing the capacity of individuals to fully participate in the society. Available data show that social services play an essential role in combating poverty and social exclusion⁷.

Third sector social service providers constitute a value for this sector as they express citizenship capacity and contribute to social inclusion and to the social cohesion of communities.

In its Communication of November 2007 on services of general interest and on social services of general interest⁸, the Commission identified a set of objectives and principles of organisation concerning social services (see box below).

Objectives and principles of organisation of social services

Social services are often meant to achieve a number of specific aims:

- they are person-oriented services, designed to respond to vital human needs, in particular the needs of users in vulnerable position;
- they provide protection from general as well as specific risks of life and assist in personal challenges or crises;
- they are also provided to families in a context of changing family patterns, support their role in caring for both young and old family members, as well as for people with disabilities, and compensate possible failings within the families;
- they are key instruments for the safeguard of fundamental human rights and human dignity;
- they play a preventive and socially cohesive role, which is addressed to the

⁷ See "How Social Services Help Mobilising the Workforce and Strengthening Social Cohesion. Background information", paper presented at the Ministerial Conference on "Social Services – A Tool for Mobilising the Workforce and Strengthening Social Cohesion" organised by the Czech EU Presidency, Prague, 22-23 April 2009.

⁸ *Services of general interest, including social services of general interest: a new European commitment*, COM(2007) 725 final.

whole population, independently of wealth or income;

- they contribute to non-discrimination, to gender equality, to human health protection, to improving living standards and quality of life and to ensuring the creation of equal opportunities for all, therefore enhancing the capacity of individuals to fully participate in the society.

These aims are reflected in the ways in which these services are organised, delivered and financed:

- in order to address the multiple needs of people as individuals, social services must be comprehensive and personalised, conceived and delivered in an integrated manner;
- they often involve a personal relationship between the recipient and the service provider;
- the definition and delivery of a service must take into account the diversity of users;
- when responding to the needs of vulnerable users, social services are often characterised by an asymmetric relationship between providers and beneficiaries which is different from a commercial supplier / consumer relationship;
- as these services are often rooted in (local) cultural traditions, tailor-made solutions taking into account the particularities of the local situation are chosen, guaranteeing proximity between the service provider and the user while ensuring equal access to services across the territory;
- service providers often need a large autonomy to address the variety and the evolving nature of social needs;
- these services are generally driven by the principle of solidarity and are highly dependent on public financing, so as to ensure equality of access, independent of wealth or income;
- non-profit providers as well as voluntary workers often play an important role in the delivery of social services, thereby expressing citizenship capacity and contributing to social inclusion, the social cohesion of local communities and to intergenerational solidarity.

3. QUALITY PRINCIPLES FOR SOCIAL SERVICES

The present chapter presents overarching quality principles for social service provision (**section 3.1**) as well as quality principles on the following dimensions of service provision: (i) the relationships between service providers and users (**section 3.2**); (ii) the relationships between service providers, public authorities and other stakeholders (**section 3.3**); and (iii) human and physical capital (**section 3.4**). For each of the quality principles concerning the dimensions of service provision, operational criteria which might be of help for the monitoring and evaluation of social services' quality have been identified.

These quality principles express commonly shared values and aim to develop a common understanding of social services' quality, as well as to facilitate the exchange of experiences and good practices. They are addressed to public authorities in charge, often at regional or local level, of developing, organising, financing and providing social services. They are also addressed to service providers in so far as they concern the delivery of social services and to users, for whom they represent an important source of information about the quality of social services they can expect. These principles are also directly relevant for workers and employers of the sector.

3.1. Overarching quality principles for social service provision:

- **Available:** Access to a wide range of social services should be offered so as to provide users with an appropriate response to their needs as well as, when possible, with freedom of choice among services within the community, at a location which is most beneficial to the users and, where appropriate, to their families.
- **Accessible:** Social services should be easy to access by all those who may require them. Information and impartial advice about the range of available services and providers should be accessible to all users. People with disabilities should be ensured access to the physical environment in which the service provision takes place, to adequate transport from and to the place of service provision, as well as to information and communication (including information and communication technologies).
- **Affordable:** Social services should be provided to all the persons who need them (universal access) either free of charge or at a price which is affordable to the individual.
- **Person-centred:** Social services should address in a timely and flexible manner the changing needs of each individual with the aim of improving their quality of life as well as of ensuring equal opportunities. Social services should take into account the physical, intellectual and social environment of the users and should be respectful of their cultural specificities. Furthermore, they should be driven by the needs of the users and, when appropriate, of the related beneficiaries of the service provided.
- **Comprehensive:** Social services should be conceived and delivered in an integrated manner which reflects the multiple needs, capacities and preferences of the users and, when appropriate, their families and carers, and which aims to improve their well-being.

- **Continuous:** Social services should be organised so as to ensure continuity of service delivery for the duration of the need and, particularly when responding to developmental and long-term needs, according to a life-cycle approach that enables the users to rely on a continuous, uninterrupted range of services, from early interventions to support and follow up, while avoiding the negative impact of disruption of service.
- **Outcome-oriented:** Social services should be focused primarily on the benefits for the users, taking into account, when appropriate, the benefits for their families, informal carers and the community. Service delivery should be optimised on the basis of periodic evaluations which should *inter alia* channel into the organisation feedback from users and stakeholders.

3.2. Quality principles for the relationships between service providers and users:

- **Respect for users' rights:** Service providers should respect the fundamental rights and freedoms as outlined in national, European⁹ and international human rights instruments¹⁰, as well as the dignity of the users. Moreover, they should promote and implement the users' rights in terms of equal opportunities, equal treatment, freedom of choice, self-determination, control of their own lives and respect for their private lives. Appropriate services should be provided without discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. Physical, mental and financial abuse of vulnerable users should be prevented and adequately sanctioned.

Quality criteria

- ❖ *providing potential and actual users of social services and, when appropriate, their families, with clear, accurate and accessible information, adapted to the specificities of each target group, notably about the types, availability, extent and limitations of the service provided. Information should also include independent evaluation and quality assessment reports;*
- ❖ *ensuring access of people with disabilities to means of information and communication adapted to their needs;*
- ❖ *implementing transparent, accessible and user-friendly advice and complaint procedures for users;*
- ❖ *setting up regulatory frameworks and control mechanisms to avoid physical, psychological or financial abuse and to ensure compliance with health and safety rules;*

⁹ See the *Charter of Fundamental Rights of the European Union*.

¹⁰ See notably the UN Convention on the Rights of Persons with Disabilities and the UN Convention on the Rights of the Child.

- ❖ *providing workers and volunteers involved in service delivery with adequate training in rights-based, person-centred service provision of everyday care, in avoidance of discrimination and in awareness of the specificities of the groups of people they provide services to;*
 - ❖ *promoting users' inclusion in the community;*
 - ❖ *ensuring confidentiality and security of data regarding users and services provided to them, within a system which allows data to be shared, when appropriate, between different service providers involved while fully complying with the data protection legislation.*
- **Participation and empowerment:** Service providers should encourage the active involvement of the users, and, when appropriate, of their families or trusted persons and of their informal carers in the decisions regarding the planning, delivery and evaluation of services. The service provision should empower users to define their personal needs and should aim to strengthen or maintain their capacities while retaining as much control as possible over their own lives.

Quality criteria

- ❖ *ensuring involvement of the users and when appropriate, of their representatives¹¹, their families or trusted persons and their informal carers in the planning, development, delivery, monitoring and evaluation of service, when necessary by providing adequate means, including supported decision-making and advocacy;*
- ❖ *engaging in dialogue with organisations representing the users and involving them in the decision making system;*
- ❖ *establishing periodical review of users' satisfaction with the services provided.*

3.3. Quality principles for the relationships between service providers, public authorities, social partners and other stakeholders:

- **Partnership:** The development of social service provision requires the active involvement and cooperation of all stakeholders from both the public and the private sectors: local authorities, service users, their families and informal carers, users' organisations, service providers and their representative organisations, social partners and civil society organisations operating in the local community. This partnership is essential for the creation of a continuum of social services that respond to local needs, for the effective use of resources and expertise, as well as for achieving social cohesion.

¹¹ For example, parents in case of minors or those persons that support people with disabilities in exercising their legal capacity.

Quality criteria

- ❖ *establishing synergies between all stakeholders in the community, concerning policymaking, needs identification, planning, development, delivery, monitoring and evaluation of services so as to ensure the continuity of social service provision for the duration of the need, to facilitate users' access to a comprehensive range of social services and to ensure that the service contributes to an inclusive society;*
 - ❖ *promoting proximity of service needed to the users;*
 - ❖ *supporting coordination among service providers so as to achieve a comprehensive and integrated delivery of social services.*
- **Good governance:** Social services should operate on the basis of openness and transparency, respect for the European, national, regional and local legislation, efficiency, effectiveness, and accountability in relation to organisational, social and financial performance of service delivery. Service provision should be based on the coordination of the relevant public authorities, social partners and stakeholders in the design, proper financing (including resources prioritisation within the available budget) and delivery of the service.

Quality criteria

- ❖ *clearly defining roles, responsibilities and interrelations between the actors involved in planning, development, financing, delivery, support, monitoring and evaluation of service;*
- ❖ *ensuring regular planning and review processes and putting in place mechanisms for systematic continuous improvement;*
- ❖ *collecting periodic feedback on the efficiency and effectiveness of service provision from users, funders and other stakeholders as well as from potential users who might be excluded from the service;*
- ❖ *establishing regular independent review of procedures, outcomes and users' satisfaction, and publishing their results;*
- ❖ *implementing transparent, accessible and user-friendly advice and complaint procedures for users;*
- ❖ *organising participatory forums involving service users and their networks, public authorities, social partners, civil society organisations and other stakeholders in the assessment of the service providers' performance within the given policy context.*

3.4. Quality principles for human and physical capital:

Good working conditions and working environment/Investment in human capital:

Social services should be provided by skilled and competent workers under decent and stable working conditions¹² and according to a manageable workload. Workers' rights should be respected in particular with regard to the principles of confidentiality, deontology and professional autonomy inherent to social services relations. Adequate skills and a supporting environment should also be ensured to volunteers and informal carers.

Quality criteria

- ❖ *ensuring full respect of decent work principles in the sector, including non-discrimination, social protection, health and safety protection, social dialogue, decent wages as well as gender equality and, in particular, equal pay for work of equal value;*
- ❖ *identifying skills needs and defining career profiles;*
- ❖ *promoting recruitment and retention policies that enable the selection of qualified workers with required knowledge, skills and competence;*
- ❖ *establishing partnerships between education systems and service providers to include traineeships during studies and mentoring schemes by experienced workers;*
- ❖ *establishing training programmes, life-long learning schemes, mentoring by experienced workers and competences certification for workers as well as, where appropriate, for volunteers and informal carers, on the necessary professional and inter-personal skills, as well as on accessibility and on assistive technology;*
- ❖ *involving users and social partners in the development of training programmes;*
- ❖ *promoting social dialogue at all levels with a view to encourage workers and trade unions to actively participate in the development, delivery and evaluation of services, involving volunteers as appropriate.*

Adequate physical infrastructure: Social services should be provided within adequate physical infrastructures respecting health and safety standards for users, workers and volunteers, accessibility standards following "Design for All" approaches as well as environmental requirements.

¹²

See the *Council Conclusions on Decent work for all*, Brussels, 30 November-1 December 2006.

Quality criteria

- ❖ *ensuring that physical infrastructures are adequate and comply with health and safety standards for users, workers and volunteers and with environmental requirements;*
- ❖ *promoting accessibility standards following "Design for All" approaches;*
- ❖ *ensuring that all users, including people with disabilities, have easy access to the physical infrastructures in which the service provision takes place and to adequate means of transportation to and from them.*

4. ELEMENTS FOR A METHODOLOGY TO DEVELOP QUALITY TOOLS

The aim of the present chapter is to provide methodological elements that public authorities and all relevant actors in the social services sector in the Member States might use for the development, at the appropriate level, of quality tools (standards, indicators, operational criteria ...) for the definition, measurement and evaluation of social services' quality. These quality tools might notably help fulfilling the quality principles identified in the previous section.

While these methodological elements can be of use for the public authorities and all relevant actors in the social services sector in the Member States, it will be mainly for them to develop and employ the quality tools, in line with their needs and specific circumstances, national regulations and established quality systems.

These methodological elements build notably on the reflection on indicators and statistics conducted within the OMC¹³. In line with the approach used in that context¹⁴, the following methodological criteria are highlighted:

- a quality tool should capture the essence of what the service aims to achieve and have a clear and accepted normative interpretation;
- a quality tool should be robust and statistically validated;
- a quality tool should provide a sufficient level of cross-countries comparability, as far as practicable with the use of internationally applied definitions and data collection standards;
- a quality tool should be built on available underlying data, and be timely and susceptible to revision;

¹³ See the *Portfolio of Overarching Indicators and Streamlined Social Inclusion, Pensions and Health Portfolios*, adopted by the Social Protection Committee in June 2006, and the *Portfolio of Indicators for the Monitoring of the European Strategy for Social Protection and Social Inclusion – 2009 Update*, adopted by the Social Protection Committee in September 2009.

¹⁴ It is worth noting that the indicators developed within the OMC aim at the evaluation of Member States policy. While the present exercise concerns methodological elements for the development of tools to be used for defining and measuring the quality of social services, the approach developed within the OMC provides useful inspiration also in this context.

- a quality tool should be responsive to policy interventions but not subject to manipulation.

Moreover, methodological elements are suggested along the following six dimensions: (i) definition; (ii) scope; (iii) validity; (iv) cross-country comparability; (v) data availability and (vi) responsiveness.

4.1. Definition

- The quality tools should address the aims of service provision in a given context and reflect accurately the specificities of that context.
- Providing a clear and accepted operational definition of quality tools requires an in-depth analysis of the specific issues regarding service provision.
- Depending on their nature, quality tools defined by public authorities and other stakeholders can be objective or subjective, quantitative or qualitative.
- The definition of a quality tool should be clear in order to avoid ambiguities that might arise especially in the case of qualitative or subjective tools and should be commonly accepted in order to allow for the consistent collection and for the cross-country comparability of the data.

4.2. Scope

- Analysing the collected data in a comparative perspective leads to the identification of dynamic aspects such as trends, strong and weak points, thresholds reached, gaps in continuity (input), making it thus possible to set objectives, determine priorities and draft a strategy for regulatory or remedial action (process), as well as to monitor and evaluate the efficiency and effectiveness of the implemented actions (outcome). The following types of quality tools might capture the interaction between various factors affecting social service provision:
 - ❖ **input-related quality tools** assess the characteristics of social service provision. They represent necessary conditions for the delivery of high-quality social services but they do not ensure that appropriate processes are carried out or that satisfactory outcomes are achieved;
 - ❖ **process-related quality tools** measure the delivery of social services and offer an evidence-based assessment of their quality. Thus, they represent the closest approximation of the actual service provision;
 - ❖ **outcome-related quality tools** assess the degree to which the social service provision addresses users' needs and influences their well-being. However, output tools may be influenced by other factors than the quality of social service provision, factors which should be accounted for by risk adjustment.

4.3. Validity

- Quality tools should be robust and statistically validated and should be devised in compliance with the best methodological practices.
- Data collection methods should minimise errors arising from ambiguous questions, misleading definitions, bias resulting from non-response and interviewer or coder mistakes.
- Quality tools should be statistically reliable over time and should avoid fluctuations due to unpredictable factors or to arbitrary adjustment.
- Quality tools should be subject to a validation procedure that assesses their reliability in the light of all available sources of information.

4.4. Cross-country comparability

- Quality tools should be measurable in a comparable perspective in order to allow for peer reviews and for voluntary exchanges of good practices concerning social service provision within and among the Member States, while respecting their social and institutional diversity. In order to allow for an adequate level of cross-country comparability, quality tools should be expressed in a consistent manner. This would enable statistical calculations that may improve the relevance of the tools and the reliability of the data.
- Given the social and institutional diversity among Member States, quality tools that are over-sensitive to structural variation or raise specific problems of data collection and interpretation should be avoided.

4.5. Data availability

- The availability of sources and data is crucial, since the development of certain tools depends on establishing comparisons over time, while the collection of data for tools that are not routinely measured in all Member States can be time and resource-consuming. The development of quality tools should, wherever possible, make use of information already supplied by the national, European and international institutions and organisations, including social partners' organisations. In case new information is needed, it should be obtained as far as possible by using existing data collection instruments and at the level that is closest to the service users.
- Useful sources of data include: official statistics carried out by national statistical institutes, international organisations, social partners' organisations and Eurostat; compilations of administrative data at local, regional, national and European level, studies, reports and evaluations financed by the Commission and/or produced by advocacy groups, users' organisations, social partners' organisations, think tanks, NGOs and expert networks; peer reviews and regular exchanges of information on best practices; surveys conducted by national statistical institutes, by opinion polls institutes, by social partners' organisations or by the Eurobarometer.

- The collection of data from sample surveys should comply with the best practices of survey research methodology and should minimise errors arising from ambiguous questions, misleading definitions, bias resulting from non-response and interviewer/coder mistakes.

4.6. Responsiveness

- The quality tools should accurately measure the relevance and effectiveness of the implemented actions with respect to the objectives pursued by the quality principles, the extent to which they address the users' needs and their vulnerability to risks, liabilities and threats that might affect the duration of service provision. At the same time, the quality tools should not be easily subject to manipulation by artificial policy interventions.

4.7. Conclusions

Following this methodological approach should result in developing a set of quality tools that respect a common identification pattern in order to ensure cross-country comparability:

- Name and definition
- Scale (numerical, logical or categorical, for which the units of measurements and range of responses have been previously agreed upon)
- Scope (capturing input, process or outcome-related aspects of social service provision)
- Data sources

ANNEX 2



The Social Protection Committee

SPC 2008/17 -final

REPORT OF THE SOCIAL PROTECTION COMMITTEE ON THE APPLICATION OF COMMUNITY RULES TO SSGI

1. INTRODUCTION

Over recent years, the Social Protection Committee (SPC) has played an active role in analysing the impact that EC rules on internal market and competition have on social services of general interest (SSGI).

In November 2007, the Commission adopted a Communication on "Services of general interest, including social services of general interest: a new European commitment"¹. This Communication builds on a large consultation process, to which the SPC's contribution was significant. It acknowledges the difficulties experienced by public authorities and service providers, in particular at the local level, in understanding and applying Community rules and the need to provide better explanations and practical guidance on how to apply these rules. In this context, two Staff Working Documents, dealing respectively with public procurement² and state aid rules³, have been issued. These documents provide answers to frequently asked questions (FAQs) relating to the application of State aid and public procurement rules (PP rules), most of which were

¹ COM(2007) 725 final of 20 November 2007.

² Commission Staff Working Document "Frequently asked questions concerning the application of public procurement rules to social services of general interest", SEC(2007) 1514 of 20 November 2007.

³ Commission Staff Working Document "Frequently asked questions in relation with Commission Decision of 28 November 2005 on the application of Article 86(2) of the EC Treaty to State aid in the form of public service compensation granted to undertaking entrusted with the operation of services of general economic interest, and of the Community Framework for State aid in the form of public service compensation", SEC(2007) 1516 of 20 November 2007.

collected during the consultation process in the area of social services. They are complemented by an 'interactive information service' (IIS), which is a web service aimed at providing concrete guidance to citizens, public authorities and service providers in the area of services of general interest (SGI).

In January 2008, the SPC mandated an informal working group on SSGI with the following tasks: (i) analyse the answers provided in the two Staff Working Documents on public procurement and State aid, in light of Member States' experience concerning the application of such rules; (ii) identify more examples derived from the SSGI area which could be added to these documents; (iii) review whether further questions arise or specific problems have to be reported concerning the application of public procurement and State aid rules and (iv) discuss questions concerning the application of Community rules other than public procurement and State aid rules.

On 6 and 7 March 2008, a general exchange of views on the two Commission Staff Working Documents took place within the working group. Drawing on the results of this meeting, the working group identified a series of questions deserving further examination and prepared a questionnaire. After adoption by the SPC, the questionnaire was sent to Member States and stakeholders active at European level on 7 July 2008. Member States were also asked to envisage, in the preparation of their reply, an involvement of social partners and NGOs, as these actors play an important role in this field.

The present SPC report summarizes and analyses the answers received to the questionnaire⁴. The following section 2 concerns the two Staff Working Documents in general: how they are perceived by stakeholders and how they could be completed, through the addition of concrete examples or additional questions. The main thrust of the report is the analysis, in sections 3 and 4, of the answers to the questionnaire concerning the application of public procurement and state aid rules. The comments made regarding other Community rules than State aid and public procurement are addressed in section 5.

2. FEEDBACK ON THE TWO FAQs DOCUMENTS

2.1. General feedback

The feedback on the FAQs is generally positive: most Member States and stakeholders consider that they provide helpful information and contribute to clarifying the legal framework applicable to SSGI. When the IIS is referred to, it is considered a useful tool to provide guidance and to gather real world examples for further evaluation. Some stakeholders point out that the questions and answers should be made available (at least to Member States). One Member State underlines that, in order to make this tool a success, it should be possible to ask questions and receive answers in all official languages. It also suggests that in each reply, a contact person is identified to facilitate the follow-up.

⁴ It also takes into account comments made by Member States in the preparatory phase of the questionnaire.

Some Member States and stakeholders inform that the documents and/or other relevant information concerning the application of Community rules have been brought to the attention of their local authorities/members/other relevant actors. However, they generally underline that the documents are not always known by those for which they are most relevant, i.e. local public authorities.

Several Member States and stakeholders also underline that:

- the FAQs are Staff Working Documents, thereby not legally binding. They cannot constitute an adequate answer to the level of legal uncertainty in the social sector;
- they leave aside topical issues⁵ (e.g. definitions of relevant notions such as economic/non economic activities or SGI, internal market issues);
- they do not take sufficiently account of the specificities of SSGI. One Member State also takes the view that the message given by the Commission in the 2007 Communication and in the FAQs is biased as the application of Community rules in the social sector should be the exception and not the rule.

2.2. New questions

The present section gathers the main new questions that according to Member States and stakeholders could be added to the FAQs documents. These questions concern the application of public procurement rules and state aid rules, as well as the interaction between the two sets of rules.

2.2.1. *New questions on PP rules*

Scope of PP rules

There are situations where PP rules do not apply, e.g. when there is no cross-border interest, when service provision is not externalised and when no remuneration is paid to the service provider.

In this area, many Member States express a clear request for more detailed guidance.

For instance, regarding the issue of cross-border interest, it is stressed that the examples should not be limited to situations where the value of the contract is very low. It is also asked to clarify who has the burden of proof in this matter⁶.

⁵ Other Member States do not share this view.

⁶ In this regard, one should analyse the implications of recent judgements of the ECJ. For example, in *An Post*, the Court clarifies that contracts for certain services – identified in an Annex to the Directive, which cover social services - are not, "*in the light of their specific nature, of cross-border interest such as to justify their award being subject to the conclusion of a tendering procedure intended to enable undertakings from other Member States to examine the contract notice and submit a tender*". The Court also states that a mere statement by the Commission that a complaint was made to it in relation to the contract in question is not sufficient to establish that the contract was of certain cross-border interest. Judgement of the Court of 13 November 2007 in case C-507/03, *Commission v. Ireland (An post)*. See in particular paragraphs 25, 32 and 34.

The comments made regarding externalisation and remuneration are often made by Member States when referring to public-public cooperation:

- the meaning of the concept of "remuneration" is sometimes uncertain⁷;
- there are several ways in which public authorities can cooperate in the different Member States and it is not always clear whether and under which conditions cooperation frameworks between public authorities are likely to fall under the scope of PP rules. Several Member States consider that the examples of public-public cooperation given in the answer to question 2.9 of the PP FAQs are too restrictive and that the interpretation of the Commission unduly limits public authorities' autonomy.

Example:

Two communes decide to create a limited company to run together a home for elderly people. If one reads the reply to question 2.9 of the PP FAQs, it seems that they are not able to entrust this task to the company without applying PP rules. The second example given in 2.9 indeed seems to require the complete transfer of a public task to be performed by the transferee in full independence and under its own responsibility, while the communes may wish to maintain a certain control/overview on the entrusted company and on the performed task.

Concerning the award of contracts falling below the thresholds of the PP Directive, one Member State in particular stresses that it does not share the views of the Commission on the application of the principles of transparency and non-discrimination⁸. It also disagrees with the fact that in the FAQs the same approach concerning the application of these principles is taken regarding the grant of concessions.

Public-public cooperation is further discussed under section 3.2.

Other issues

- Mixed contracts: a few Member States and stakeholders ask for more guidance regarding the concept of "mixed contracts". For example, how to assess a call for tender which covers at the same time the establishment of an infrastructure and the provision of a social service?
- Possibility to negotiate with potential providers during a PP procedure: this issue is already addressed in the reply to question 2.8 of the relevant "FAQs" but in a succinct

⁷ See for example judgement of the Court of 18 December 2007 in case C-532/03, Commission v. Ireland (Dublin City Council) – the mere fact that there is a funding arrangement between two public authorities does not mean that there has been an award of a public contract (see in particular paragraph 37).

⁸ This position of the Commission is notably expressed in an interpretative communication on the Community law applicable to contract awards not or not fully subject to the provisions of the Public Procurement Directives, OJ C 179 of 01.08.2006. This Communication is contested by Germany and several other Member States before the ECJ.

way. One Member State points out that, under the PP Directive⁹, negotiation is only allowed if the public authority has opted for a negotiated procedure. This is only possible under certain limited circumstances and conditions. As these procedural provisions do not apply to social services¹⁰, the room for manoeuvre public authorities enjoy in this regard is not entirely clear.

- *Award criteria*: one Member State asks to which extent the already existing relationship between the provider and the user, as well as a deep understanding of specific local circumstances, can be taken into account.

2.2.2. *New questions on state aid rules*

2.2.2.1. *Scope of state aid rules*

The relevant FAQs contain some examples of situations where an activity is not considered economic or where there is no affectation of trade. Several Member States ask for:

- more examples of the distinction between economic and non-economic activities. Some Member States stress in particular that the existing case-law concerning social services and social security systems should be described in more detail. A few Member States consider that the decision as to whether an activity is economic or not should not be left to the ECJ but to the Member States.
- more information on the criteria to be taken into account when assessing the "affectation of trade" criteria (e.g. geographic location, use by citizens of other Member States, amount of the aid, economic size and strategic position of the company that receives it).

2.2.2.2. *SGEI Package*¹¹

Act of entrustment

In order to benefit from the SGEI package, a provider must be entrusted with a mission of general interest. This "act of entrustment" implies an "obligation to provide" the service. According to the Commission, such "obligation to provide" is also one of the

⁹ Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ L 134, 30.4.2004, p. 114–240).

¹⁰ Except if the Member State concerned decided not to avail itself from the flexibility provided for in the Directive when implementing it.

¹¹ The objective of the SGEI package is to facilitate the grant of state aid aimed at compensating service providers for the costs incurred in carrying out a mission of general interest. The package encompasses notably the Commission Decision of 28 November 2005 on the application of Article 86(2) of the EC Treaty to State aid in the form of public service compensation granted to undertaking entrusted with the operation of services of general economic interest, and the Community Framework for State aid in the form of public service compensation, OJ C 397, 29.11.2005.

conditions imposed on certain social services to be excluded from the scope of the Services Directive¹².

For some Member States and stakeholders, the links and possible differences between the concept of "obligation" under the SGEI package and under the Services Directive should be clarified. For example, if a Member State decides to keep certain social services under the scope of application of the Directive because of the absence of entrustment, does it imply that it can no longer fulfill the conditions to benefit from Article 86(2) ECT to justify state aids granted for the provision of these services? Can the "economic necessity", i.e. when the existence of an undertaking completely depends on public financing, be considered as equivalent to an obligation to provide?

One Member State would consider useful to have more examples of the Commission practice and legal reasoning in concrete cases of application of the SGEI package. One stakeholder would like to understand better the limits that the concept of "act of entrustment" puts on the autonomy of the actors. It refers to situations where an organization is entrusted by law with a general mission but its local branches are very autonomous in determining their priorities.

Compensation of cost and prohibition to overcompensate

One Member State wonders whether it is sufficient to have a mechanism in place aimed at preventing overcompensation or whether a public authority should be able to prove that there is no overcompensation. It stresses that the complexity of e.g. health care services often makes it impossible to prove the absence of overcompensation.

Some stakeholders raise the following questions:

how to assess that there is no overcompensation when a SGEI is financed by different public authorities? If a single provider is entrusted with several SGEIs, should this criterion be assessed globally or for each SGEI?

does the concept of "annual compensation" make sense for SGEIs dependent on real estate/infrastructures? If the public service obligation imposed on service providers is not limited in time, how should the control of the cost compensation take place?

Several Member States point out the importance of the recent Bupa case¹³, the conclusions of which should be reflected in the FAQs documents.

Account separation

A few Member States underline that the obligation to keep separate accounts for an undertaking providing a SGEI while carrying out other activities is a heavy burden, in

¹² See Article 2 (2) (j) of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, OJ L 376/36 of 27.12.2006. See also Handbook on the implementation of the Services Directive: http://ec.europa.eu/internal_market/services/docs/services-dir/guides/handbook_en.pdf.

¹³ Judgement of the Court of First Instance of 12 February 2008 in case T-289/03, OJ C 79 of 29.03.2008, p.25.

particular for SMEs. One of them also asked whether separate accounting is also required in a situation where the two types of services are so closely linked that it is difficult to distinguish the commercial services from the task of general economic interest (reference is made to the Corbeau¹⁴ and Glöckner¹⁵ case-law).

2.2.2.3. Other state aid issues

- *Article 87(2a) - aid of a social nature to individual users*: the FAQs document clarifies in the reply to question 2.6 that financial support granted to individual service users does not create problems under state aid rules if it is granted without discrimination related to the origin of the service concerned. One Member State takes the view that more examples should be added in the light of the fact that vouchers are increasingly used to finance social services in certain Member States (e.g. aid granted to associations of parents to support the organisation of activities for children).
- *Article 87(3) ECT*: one Member State asks whether an aid can still be declared compatible on the basis of Article 87 (3) ECT, if the conditions of the Decision or the Framework are not met. This Member State also informs about an ongoing discussion in the health care sector concerning the grant of "transitional" aid to a sector ("is it allowed that the government gives temporary financial allowances to some care companies/organisations in order to facilitate changes in the system of financing of the care concerned? Financial compensation during a transitional period for those companies/organisations which are negatively affected by a new system of financing could help to get support for change and prevent serious financial disruption of certain companies/organisations").

2.2.3. *New questions on the interaction between PP rules and state aid rules*

The interaction between the two set of rules¹⁶ remain a topical issue for a few Member States and stakeholders.

- One Member State asks for more explanations concerning the fourth criterion of the Altmark ruling¹⁷, and in particular the type of PP procedure which is required.
- Another Member State asks whether the grant of financial support to certain providers (on a "de minimis" basis) for the establishment of an infrastructure, followed by a procedure to grant a contract/concession to the already equipped operators is compatible with internal market rules.

¹⁴ Case C-320/91, Corbeau [1993] ECR I-2533.

¹⁵ Case C-475/99 Ambulanz Glöckner [2001] ECR I-8089, I-8094.

¹⁶ This issue is dealt with in the reply to question 2.11 of the FAQs on PP rules.

¹⁷ See case C-280/00 Altmark Trans [2003] ECR I-7747. In this judgement, the Court held that a public service compensation does not constitute state aid if four cumulative criteria are met. The fourth criterion notably refers to the selection of the bidder pursuant to a public procurement procedure.

- One stakeholder asks for more guidance concerning the possibilities to grant financial support to SSGI providers without selecting them via PP procedures.
- One Member State refers to situations where a public authority grants financial support to a project considered as being of general interest (i.e. this activity is in line with public policy objectives). This project is however initiated and carried out by the provider on its own initiative and no particular service is directly provided to the public authority. This example of a situation where PP rules do not apply could be used to complement the reply to question 2.11 of the FAQs on PP rules.

3. EXPERIENCES WITH PUBLIC PROCUREMENT RULES

In this area of Community law, the questionnaire focused on four different issues: (i) concessions and Institutionalised Public-Private Partnerships (IPPPs) in the social sector; (ii) public-public cooperation; (iii) the treatment of non-profit organisations and (iv) the public procurement procedures used in the field of SSGI.

3.1. Concessions and IPPPs

In light of the answers received, and even if there are exceptions, it appears that concessions and IPPPs are not often used in the social sector. This is in particular true for IPPPs.

3.1.1. Concessions

It is the transfer of the responsibility of exploitation/operating risk which distinguishes a concession from a public contract. In the case of concessions, the source of revenue for the economic operator consists either solely in the right of exploitation or in this right together with payment¹⁸. The PP Directive does not apply to service concessions that are nevertheless subject to the rules and principles of the EC Treaty (in particular the principles of equal treatment and transparency)¹⁹.

Although it is not the most common instrument in the social field, concessions are referred to by several Member States. When examples are given, they concern the following sectors: residential homes for the elderly, occupational activity centres, kindergartens, transportation by ambulance, specific specialised medical care, social housing, child-care and home services. From the answers received, it seems that the distinction between concessions and PP is sometimes blurred.

There is not necessarily a common understanding of this concept and two Member States make interesting comments in this regard.

¹⁸ See the interpretative Communication on concessions adopted by the Commission in 2000, OJ C 121 of 29.04.2000. It identifies concessions' main characteristics and specifies the rules applicable to them under the Treaty and secondary legislation, as well as the ECJ case-law.

¹⁹ See footnote 7.

The first Member State explains that, on its territory, social services are provided on the basis of a "triangular relationship" between the State, the user and the provider. Under this model, all providers meeting the requirements fixed by the State are allowed to operate (licensing model). The users can then choose between these providers, which carry the operating risks as they have no guarantee as to the number of users they will attract. According to this Member State, this model presents the advantage to continuously stimulate competition between service providers and to promote users' choice. This Member State, as well as some stakeholders active on its territory, emphasizes that in order to avoid impacting on this model, any possible EC instrument on concessions will have to clarify that it does not apply to licensing procedures.

The second Member State refers to a new legislation that should soon enter into force. This new legislation is presented as an alternative to the application of PP rules that will offer new possibilities to organise the provision of health care and social services. The main features of this new procedure are the following:

- the public authority must decide whether to apply the new legislative framework and for which services. This new framework is suitable when the authority's purpose is to increase the choice and influence of users and to promote a diversity of providers;
- the public authority must then define the requirements that prospective providers of services must meet before agreements can be made. These requirements are specified in the contract documents. The public authority also has to state the payment that the supplier will receive for providing a particular service. The price is set in advance and there is no price competition between suppliers. This price also applies to the "in-house" service provider in case there is one;
- suppliers interested in providing services then submit their application to the authority, which assesses whether they meet the specified requirements in the contract documents. If so, the supplier is entitled to sign an agreement under civil law. All providers that meet the requirements in the contract documents are admitted to the system and the users have the choice between these providers. This Member State explains that the selection is therefore not based on the criteria applicable in the context of a PP procedure²⁰;
- regular monitoring will ensure that the requirements are met and that the service functions well. The issue of quality requirements is currently discussed (with a possibility to set up some national quality criteria for social services to older people and people with disabilities).

3.1.2. IPPPs

There is no legal definition of IPPPs in Community law. In a Communication adopted in February 2008, the Commission describes IPPPs as a co-operation between public and private parties involving the establishment of a mixed capital entity which performs

²⁰ In the context of a PP procedure, contracts are awarded to the tender "most economically advantageous" from the point of view of the contracted authority (i.e. based on various criteria linked to the subject matter of the contract, such as quality, price, etc) or to the tender presenting the "lowest price". See Article 53 (1) of the PP Directive.

public contracts or concessions. The private input to the IPPP consists – apart from the contribution of capital or other assets – in the active participation in the operation of the contracts awarded to the public-private entity and/or the management of the public-private entity²¹.

The answers to the questionnaire confirm that IPPPs are not very common in the social sector or at least that no information/assessment is yet available. In some Member States, this can be explained by the fact that relevant legislative frameworks are relatively recent or in discussion. Generally speaking, it seems that in the social sector, public and private operators (generally non-profit operators) rather cooperate through partnerships/cooperation agreements.

According to the respondents, IPPPs as such are used in the following sectors: maintenance and operations of hospitals and health care centres, social housing, residential homes for the elderly, dedicated schools and preschool education institutions.

3.2. Public-public cooperation

PP rules apply when a public authority intends to conclude a contract against remuneration with a third party and in theory it does not matter whether this third party is a private or a public operator. The FAQs on PP rules gives examples of situations where public-public cooperation does not fall under the scope of PP rules²².

The objective of the questionnaire was to obtain more information on public-public cooperation in the field of social services. The following elements emerge from the comments received:

- in several Member States, public authorities cooperate between themselves for the provision of SSGI;
- this cooperation can take different forms and Member States use different terms to describe it: (mutual) contracts between public authorities, intermunicipal associations, confederations of municipalities, joint municipalities entrusted with specific tasks, institutional or "multipurpose" partnerships, "communautés d'agglomérations ou de communes", "établissements publics de coopération intercommunale" (EPCI) and "centres intercommunaux d'action sociale", agreements between municipalities. One Member State distinguishes between three types of cooperation agreements which are provided for by regional legislations: (i) when a public authority delegates to another authority the responsibility to execute a specific task; (ii) when a public authority mandates another public authority to carry out a task but remains responsible for its execution and (iii) when two public authorities establish together a joint venture with a specific purpose, which is a public law entity to which the specific task is transferred. This Member State explains that, under applicable regional legislations, only the second situation is subject to PP rules.

²¹ See Communication on institutionalised public-private partnerships C(2007) 6661 of 5 February 2008.

²² See reply to question 2.9.

- even if in most cases it is not imposed on public authorities to cooperate, legislative frameworks describing the forms this cooperation can take seem very frequent. This might be done at different levels (national - even constitutional - or regional level) and through different legal instruments. Sometimes these cooperation frameworks are task-specific and sometimes they are not.
- these cooperation frameworks are particularly precious where municipalities are small and it is too costly for a single municipality to organise the provision of social services on its own. One Member State specifies that cooperation between two or more municipalities increases efficiency and quality, while guaranteeing the continuity of service provision and the possibility of directly steering the services offered. It adds that the cross-border effect of these services is generally very limited or completely absent.

As mentioned earlier in this report, it is not always clear whether and under which conditions cooperation frameworks between public authorities fall under the scope of PP rules. Several Member States take the view that the Commission's current position on public-public cooperation unduly restricts their autonomy in organising and providing social services. Some Member States also point out that a model according to which municipalities organize their statutory services together with other municipalities, e.g. by mutual contracts, cannot be compared to the procurement of services from the market. They therefore consider that mere inter-municipal cooperation should be excluded from the scope of PP rules.

Even if not all Member States make such clear statements, the description most of them give of the way their public authorities cooperate seems to imply that they do not necessarily apply PP rules in all situations.

3.3. Non-profit organisations

The FAQs on PP rules clarifies that, under certain circumstances, public authorities may limit the participation in tender procedures for the provision of social services to non-profit providers (i.e. the existence of a national law providing for a restricted access to certain services for the benefit of non-profit operators)²³. One Member State takes the view that this interpretation is too strict.

The questionnaire's objective was to determine whether, at national level, certain activities in the social field are reserved to non-profit providers or where stakeholders believe that it should be the case.

From the answers received, it seems that in general, activities in the social field are not reserved to non-profit operators. Only one Member State explains that its Social Assistance Act provides that social assistance is a non-profit activity which means that providers are prohibited to make profit and that all revenues in excess of expenses should be allocated to the activity which is carried out.

This general statement should however be nuanced:

²³ See reply to question 2.7.

- there are a few exceptions, limited to specific activities. For example, one Member State explains that as blood service is based on voluntary donation, no remuneration can be perceived and only municipalities, joint municipal boards, associations or other comparable corporations can create a blood service establishment. In another Member State, the legislation on health centres (centres de santé) specifies that the provider has to be a “collectivité territoriale” or a non-profit organisation. In another Member State, there is an exception in the field of care institutions but it is currently called into question.
- in certain Member States, even if no activities are as such reserved to non-profit operators, their skills and expertise in the provision of social welfare services are legally recognised. This recognition can then translate into partnership agreements between the public and the voluntary sector. In one Member State, different legal frameworks apply for the selection of non-profit and profit making providers in certain areas of social services. NGOs act on behalf of the State, under a specific legislative framework. One Member State informs that it is currently examining how to reinforce the NGO status.
- finally, one Member State explains that in practice non-profit operators are predominant in certain sectors because e.g.
 - there is no profit to make (e.g. assistance to homeless people);
 - non-profit operators participating in a call for tender often win over for profit operator due to their ability to develop service quality aspects.

Some non-profit stakeholders regret that in general the important role they play in the social field is not sufficiently recognised at EU level.

3.4. Public procurement procedures in the social field

Social services are listed in Annex II B of the PP Directive and therefore only some principles of the Directive and general principles of the EC Treaty apply to them. The questionnaire aimed at better understanding possible specificities in the way PP rules are applied to SSGI in the different Member States.

The following emerges from the replies received:

- some Member States apply lighter procedures for the procurement of social services or are planning to implement simplified procedures;
- in several Member States, however, the applicable legal frameworks do not seem to provide for specific and lighter procedures for the procurement of social services;
- as mentioned earlier in this report, some Member States have introduced or are planning to introduce specific procedures which could apply in the social field and constitute alternatives to the application of PP rules;
- one Member State explains that most social services are performed in-house and that PP rules generally do not apply;

- in some Member States, the impact of new PP legislation on social and health services, in particular on the quality of these services, is currently assessed.

Different views are expressed on the application of PP rules in the area of social services. Some Member States and stakeholders consider such application as problematic and they refer to bad experiences. The most frequent criticisms are the following:

- contracts are often awarded to the tender which proposes the lowest price, to the detriment of quality;
- PP rules create an additional administrative burden, particularly detrimental to small, non-profit service providers. They can favour larger service providers, which can create risks in terms of territorial coverage and capacity to develop tailor-made solutions taking into account the particularities of the local situation;
- competitive tendering generates additional costs (supervision costs and costs incurred through the procurement procedure). The necessity to develop quality control methods also has an impact on cost;
- PP procedures can lead to short-term contracts and to discontinuity in service provision;
- PP procedures might hamper preventive work or the development of certain social services. Non-profit operators active in the social field often play a vital role in detecting evolving social needs. The PP logic trivializes the role and specificities of these actors. One stakeholder points out that there is a need to develop more flexible and adapted procedures in the field of social services (e.g. call for proposals).

Other Member States and stakeholders are more neutral or report good experiences. One stakeholder explains that if there is a tendency to award contracts to the cheapest bid, it is rather due to existing financial constraints than to the application of PP rules. It also points out that PP procedures are rather flexible and that the alleged disadvantages of these procedures (e.g. short-term contracts, focus on price) often result from the way they are put into practice.

4. EXPERIENCES WITH STATE AID RULES

In the area of State aid, the questionnaire focused on two main issues: the application of the "de minimis" Regulation²⁴ and the application of the SGEI package on services of general economic interest.

²⁴ Commission Regulation n° 1998/2006 of 15 December 2006 on the application of articles 87 and 88 of the Treaty to de minimis aid, OJ L 379/5 of 28.12.2006.

4.1. The application of the "de minimis" Regulation

The "de minimis" Commission Regulation provides that financial support granted to an undertaking and inferior to €200.000 over a three years' period does not constitute State aid.

Some stakeholders consider that the "de minimis" Regulation can be a useful tool for subsidies granted at local level. In one Member State, the responsible administration systematically checks whether the criteria of the "de minimis" Regulation and or the SGEI Decision are met. In another Member State, it is used for certain fee exemptions.

However, for most Member States and some stakeholders which replied to this question, the "de minimis" Regulation is not very much used in the social sector, for manifold reasons:

- the amount is too low;
- public authorities rather use exemption Regulations (notably that dealing with aid to employment²⁵);
- they apply PP rules for the selection of the service provider to which financial support is given. Therefore, such financial support does not constitute State aid;
- the only subsidies granted are defined by the law and, according to the respondent, do not constitute state aid;
- other instruments (Altmark judgement, SGEI package, exemption regulations) are easier to apply. One stakeholder points out that the provision on guarantee schemes can create problems when e.g. implementing an ESF project²⁶.
- local actors do not know this instrument very well. One Member State explains that a guide on SGEI and state aid has been issued to raise the awareness of the central government and of local authorities regarding these different instruments.

4.2. The application of the SGEI package

The SGEI package, also known as the "Monti-Kroes" or "Altmark" package, encompasses two main instruments, a Commission Decision and a Community Framework, aimed at facilitating the grant of public service compensations.

The Decision exempts from notification to the Commission annual compensation inferior to 30 million € for beneficiaries with an annual turnover inferior to 100 million € For hospitals and social housing, the exemption applies without ceilings.

²⁵ State aid for employment is now covered by the general block exemption Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty, OJ L 214 of 9.8.2008, p.3.

²⁶ The general block exemption Regulation creates a safe harbour covering guarantee schemes as long as the total amount of the guaranteed part of a loan is not higher than €1.5 million (or €750,000 in the road transport sector).

The Framework applies to public service compensations exceeding the thresholds set in the Decision and specifies the conditions under which such compensations can be declared compatible with Article 86(2) ECT. These compensations must however be notified to the Commission.

The questionnaire focused mainly on the Decision and sought in particular to obtain more information on (i) the **form(s)** under which SSGI are generally entrusted to service providers and (ii) the **type of providers** concerned; (iii) the arrangements made to avoid **overcompensation**, i.e. to make sure that the aid granted does not overcompensate the costs incurred by the service provider; (iv) whether the **thresholds** of the Decision are insufficient in certain areas. Finally, the questionnaire also encouraged Member States and stakeholders to report on any problems encountered in the application of the Decision or of the Framework.

4.2.1. *Forms of entrustment*

The comments made by Member States and stakeholders in this context do not necessarily strictly relate to the concept of "act of entrustment" in the context of the application of state aid rules. They rather provide information on the various frameworks and acts which regulate the provision of SSGI.

For the sake of simplification, the following models can be distinguished:

- the service is provided internally by a public authority or in cooperation with another public authority (see section 3.2. for the issues raised regarding public-public cooperation). It is frequent that local authorities operate under a legal framework which regulates their activity while giving them some autonomy in the implementation of the objectives pursued.

Example

In the field of sheltered employment, a national legislation specifies how the government and municipalities are jointly responsible for making work available to the persons concerned. Municipalities enjoy some room for manoeuvre in implementing this legislation: they can cooperate with each other and create regional *sheltered employment offices*. They can also implement it independently and found *separate legal entities* for this purpose (private law entities, generally owned by the municipalities).

- service provision is externalised via tender/similar procedures. Public contracts/concessions (in the traditional meaning) between the provider(s) selected constitute the act of entrustment.
- service provision is externalised to licensed/authorised operators. These authorisation schemes can take different forms and are sometimes also referred to as "concessions" (see section 3.1.1). Sometimes, contracts are then signed between the public authority and the authorised/licensed providers and could easily be considered as "acts of entrustment under state aid rules. However, this is not always so clear.
- a public authority grants direct financial support to a service provider for the provision of a social service. The agreement(s)/act(s) which put this financing contribution into effect can under certain circumstances constitute the act of entrustment.

These models can take different forms, across the EU but also within each Member State. They are not exclusive and can be combined, as the organisation of service provision can be a complex operation.

Example:

In one Member State, municipalities are entrusted by the law with the mission to reintegrate unemployed and occupationally disabled persons. They have the choice of (a) implementing reintegration themselves, (b) arranging for an organisation affiliated with the municipality to implement reintegration or (c) outsourcing reintegration to a private organisation. The Member State concerned explains that reintegration activities are implemented in large measure by for-profit providers.

These models are generally accompanied by specific mechanisms aimed at financing service providers. In this context, one Member State refers to vouchers, which are a financing tool aimed at increasing users' choices by allowing them to select their service provider. They presuppose that several providers are present on the market (in general providers that have been authorised to operate on the market).

4.2.2. Providers

A non-profit stakeholder active in the social field in various Member States gives the following overview of the situation:

- non-profit providers play an important role in the provision of social services but their importance differs from one Member State to the other, ranging from 50 % to sometimes even 90 %;
- this percentage is lower for health services, where the commercial sector has a higher share.

This information seems corroborated by comments made by Member States:

- in certain Member States, the provision of social services is traditionally dominated by non-profit operators and the share of commercial providers is very limited;
- some Member States however confirm that the role of commercial providers has increased over the last few years in certain segments of social services, e.g. residential and family care of children and young people, home services, employment services, long-term care and health services, adult care and homes/services for the elderly, services aimed at promoting safety and health at the work place. One Member State explains that NGOs are generally dominant in the following sectors: services for drug addicts, homes for pregnant women/mothers with young children and shelters for battered family members;
- one Member State informs that the nature of provision is changing quickly. The division between non-profit and other provision is less clear, and the boundary between types of service exists less, especially where services are integrated. It also explains that, in social care, informal carers (family members and volunteers not working through organisations) make a significant contribution alongside the formal care services.

4.2.3. *Arrangements aimed at preventing overcompensation*

Very few comments were made on this point specifically, and they generally take the form of new questions that could be introduced in the FAQs documents (see section 2.2.2).

4.2.4. *Thresholds*

The question on the thresholds of the SGEI Decision did not trigger many reactions. Two Member States seem to consider that the thresholds are sufficient, particularly for services provided at local/municipal level.

One Member State in which non-profit operators play an important role in the provision of social services considers however that the thresholds might not be sufficient if applied to the association as a whole and not to each of its local branches. The same remarks are made by the stakeholders which are active in this Member State.

This Member State also made two other remarks:

- in terms of costs, long-term care services for the elderly and for disabled people present similar features to those of social housing and hospitals. One should consider whether they should not benefit from the same treatment;
- due to the interaction between the two different thresholds referred to in the SGEI Decision (i.e. amount of the subsidy and turnover of the beneficiary of the aid), there can be differences in treatment which is not always justified.

4.2.5. *Other problems of application*

A few Member States explicitly indicate that they will provide more information in their national report on the SGEI package which is due for the end of 2008. This might also explain why relatively few comments were made in the context of the questionnaire.

Some Member States suggest that the SPC should closely follow the evaluation exercise carried by the Commission.

Some of these comments take the form of questions and have been gathered in section 2.2.2 (e.g. the difficulty to concretely control the absence of overcompensation, the fact that SSGI are highly dependent on public funding and, often, on different sources of public funding). In particular, some Member States stress that the implementation of the SGEI package could be burdensome for small local authorities.

One concrete problem of application is raised by a Member State and the NGOs active on its territory. It concerns the tax advantages linked to the non-profit status of service providers. According to the SGEI Decision (see question 6.8 of the FAQs on state aid, tax advantages have to be taken into account when determining the amount of the compensation necessary to provide the SGEI. This Member State and the stakeholders concerned however point out that the specific constraints linked to this status are not taken into account (e.g. restrictions on investments, prohibition to distribute profits).

They therefore propose that the tax advantages resulting from the non-profit status of some providers are not taken into account when determining the compensation.

5. OTHER COMMUNITY RULES

The aim of this part of the questionnaire was to gather possible comments on the application of other Community rules to SSGI.

Most of these comments concern internal market rules, i.e. Articles 43 and 49 ECT and the implementation of the Services Directive in the area of social services. Recurrent issues for which some Member States and stakeholders (see section 2.2.2) consider that further clarification is needed are for example:

- the scope of the exclusion of some social services from the Directive²⁷;
- the links and possible differences between the "obligation to provide" the service under the SGEI package and under the Services Directive;
- the concept of "overriding reasons of general interest";
- the impact of Articles 43 and 49 on services excluded from the Services Directive.

Some non-profit stakeholders regret that in general the important role they play in the social field is not sufficiently recognised at EU level. They also express their concerns regarding the case-by-case approach of the ECJ and the impact recent rulings could have in the social field (Viking Line²⁸, Laval²⁹ and Rüffert³⁰).

6. OPERATIONAL CONCLUSIONS

The seminar held in March 2008 and the replies to the questionnaire have shown that Member States and stakeholders are increasingly aware of the impact that Community rules might have in the field of SSGI. There is however also some remaining reluctance to a systematic application of Community rules to all aspects of the organisation, financing and provision of SSGI.

The SPC notes that the FAQs are generally welcomed and considered useful by most Member States and stakeholders. There are however remaining questions regarding the application of PP and state aid rules that the FAQs should address, with a view to reduce legal uncertainty in the social field. These questions relate in particular to the criterion of "affectation of trade between Member States", to the scope of PP rules and to

²⁷ For example, the concept of "person in need" according to Article 2 (2) (j) of the Directive should be clarified.

²⁸ Judgement of the Court of 11 December 2007 in case C-438/05, JO C 51 of 23.02.2008 p.11.

²⁹ Judgement of the Court of 18 December 2007 in case C-341/05, OJ C 51 of 23.02.2008, p. 9.

³⁰ Judgement of the Court of 3 April 2008 in case C-346/06, OJ C 128 of 24.05.2008, p.9.

the application of the SGEI package. They are identified in section 2.2 of the present report. The SPC proposes that these questions are taken into account when the Commission updates the FAQs. New relevant case-law - for example the Bupa³¹ and the Coditel³² cases - should also be referred to in the revised version of the FAQs documents. Furthermore, one should explore whether the FAQs should cover other Community rules. The SPC however notes that the FAQs cannot be the answer to all legal issues arising in the social field.

The SPC also observes that the FAQs and the IIS are not always known by those most concerned. The SPC believes that disseminating information on these guidance tools is crucial to increase legal certainty in the social field and that both the Commission and the Member States should take the necessary steps to increase public authorities and stakeholders' awareness. In particular, the FAQs should be available in all official languages and regularly updated. The IIS should also be accessible in all official languages. Member States should ensure that these documents and other relevant information are brought to the attention of their local authorities and other relevant actors.

Finally, the SPC has identified a few themes which are likely to deserve specific attention:

- **public-public cooperation**: public-public cooperation is a way for Member States to organise the provision of social services and it is not always clear whether and under which conditions these cooperation frameworks fall under the scope of PP rules. Several Member States take the view that the Commission's current position on public-public cooperation unduly restricts their autonomy in organising and providing social services.
- **the role of non-profit providers**: in general, activities in the social field are not reserved to non-profit providers. However, in the light of the important role they play in the social field, their skills and expertise are legally recognised in several Member States and this recognition could have consequences in terms of the application of Community rules.
- **PP procedures and possible alternatives**: some Member States have opted for lighter or simplified regimes for the procurement of social services, as allowed under the PP Directive, but this is not the case everywhere. Moreover, in some Member States, there are specific procedures which can constitute alternatives to the application of PP rules in the social field (licensing models, calls for proposal, grants to projects initiated and carried out by a service provider on its own initiative).

The SPC proposes that these themes are explored more fully by the Commission when revising the FAQs. Moreover, if it results from such analysis that the existing legal framework should be adapted, for example concerning the cooperation between public authorities, the SPC suggests that the Commission takes the appropriate steps, as part of

³¹ Judgement of the Court of First Instance of 12 February 2008 in case T-289/03, OJ C 79 of 29.03.2008, p.25.

³² Judgement of the Court of 13 November 2008 in case C 324/07.

its commitment "to continue to consolidate the EU framework applicable to SGI, including social and health services, providing concrete solutions to concrete problems where they exist"³³.

The SPC also considers that there is scope for exchange of information and mutual learning between the Member States regarding the PP procedures applicable to SSGI and possible alternatives to these procedures.

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³³ See the Communication referred to in footnote 1, first paragraph of section 4.

Annex: list of respondents

The report is based on the answers provided by Member States and stakeholders in response to the SPC questionnaire which was sent to them on 7 July.

Member States

	Member State	Date
1	PL	15/09/08
2	FI	15/09/08 + rev 18/09/08
3	UK	15/09/08
4	CY	15/09/08
5	CZ	16/09/08
6	MT	16/09/08 - final 18/09/08
7	HU	16/09/08
8	NL	17/09/08 EN version 18/09/08
9	LU	24/09/08 + social housing 06/10/08
10	DK	25/09/08
11	DE	25/09/08 EN version on 23/10/08
12	AT	01/10/08
13	SE	09/10/08
14	FR	21/10/08
15	LV	22/10/08
16	ES	03/11/08
17	RO	07/11/08

Some Member States (DE, ES, SI, LT, CZ, IT and NL) also provided comments in the preparatory phase of the questionnaire. These comments were also taken into account.

Stakeholders

	Organisation	Date
1	UEAPME + AT member	02/09/08
2	Fédération de la formation professionnelle (FFF) – FR	08/09/08
3	Business Europe	12/09/08
4	Union pour l'habitat (FR)	15/09/08

5	Eurodiaconia	17/09/08
6	Caritas Europe (Caritas CZ le 27/08)	17/09/08
7	Collectif SSIG	19/09/08
8	Mutualités FR	25/09/08
9	BAG FW (DE)	26/09/08
10	AIM	30/09/08
11	CES	03/10/08