



FEANTSA Policy Statement

The draft Services Directive: Quality of Services for the Homeless under threat

INTRODUCTION

In January 2004, the Commission presented a proposal for a Directive on services in the internal market^{1[1]}. The objective of the proposal is to provide a legal framework to eliminate the barriers to freedom of establishment for service providers and to the free movement of services between Member States. The proposal covers all services that constitute activities of an economic nature.

FEANTSA has strong concerns about the impact of the horizontal approach of the draft Directive, which clearly does not take into account the specificities of the not-for-profit sector, which is an important provider of social services. We are afraid that the draft Directive will complicate the establishment and/or maintenance of adequate quality standards and jeopardise the protection of homeless people as services users.

Mainly because of their financial dependence, homeless people are in a weak position as homeless services users. Other factors, such as a feeling of shame about their situation and a reduced ability to assess and prioritise their needs, could further weaken their position. Unlike the average consumer, homeless people are not in a strong enough position to command high quality services. There are numerous examples of the consequences of this throughout Europe. In several Member States, homeless people frequently stay in large shelters that do not provide the most basic

^{1[1]} COM (2004)2

comfort or privacy. The fact that some homeless people live on the streets in preference to staying in these low-quality services is illustrative of their situation. The quality of service provision for homeless people must be guaranteed through laws and regulations, imposing high standards and norms on service providers. A requirement for public authorisation (i.e. licences, permits, etc.) for the provision of services has proven to be an effective way of controlling and monitoring the quality of service provision.

However, the measures proposed by the draft Directive under Chapter IV to ensure the quality of the services are obviously not suitable for vulnerable clients of non-profit social services, such as homeless people. References to insurances, guarantees, commercial communications, after-sales guarantees, and settlement of disputes, leave no doubt that the principle target of the draft Directive is commercial services for the average consumer.

SCOPE OF THE DIRECTIVE

We believe that the **scope of the Directive**, which is a central and heavily debated problem arising from the draft Directive, is not **formulated precisely enough**.

The criterion of economic nature, used by the European Commission to determine whether services fall within the scope of the Directive, is unclear and ambiguous and as a consequence creates legal uncertainty. We would like the Commission to include in the text of the draft Directive an exhaustive list of the services excluded from the scope of the Directive.

The draft Directive is too broad and fails to take account of the specific nature, way of working, and aims of the not-for-profit social service sector. We believe that the diversity of services clearly justifies and makes necessary a sectorial approach.

In this regard, we would like to refer to the position of the European Commission concerning the pros and cons of a single European legal framework for the operation of Services of General Interest (SGI). The Commission argued that the SGI, which include a substantial part of the social services, are too diverse to be covered by a single framework Directive. The same argument should apply to the draft service Directive. The Commission argues, however, that a horizontal approach is necessary, because of the common characteristics of the obstacles identified in the European report on “the state of the internal market for services” (July 2002). But this report focused mainly

on commercial services, for which the above argument is probably valid. Although within the social sector both commercial and not-for-profit services have their place, services for very vulnerable consumers should not, as a rule, be opened to commercial for-profit service providers.

UNCLEAR CONCEPTS

FEANTSA believes that further clarification and elaboration of terms, such as “establishment” of service providers, is needed in the Directive. It is also unclear under what conditions temporary services, for which the rules proposed in the draft Directive are much more drastic, can be provided.

The concept of ‘overriding reason relating to the public interest’, which Member States need to respect when they establish and develop authorization schemes, remains undefined. Every selection criterion included in an authorization scheme needs to be of ‘public interest’. We are very concerned that this strong requirement could prevent public authorities from introducing requirements that ensure the quality and accessibility of the services. The vagueness of the concept of public interest could be abused to favour competition on the basis of price rather than competition on the basis of quality. Quality criteria might easily be regarded as unjustified and as not constituting an overriding reason of public interest.

We support the inclusion of recital 27 b, proposed by the Council, which stipulates that public health and social policy objectives constitute overriding reasons relating to the public interest, which could justify the application of authorization schemes.

ESTABLISHMENT OF SERVICE PROVIDERS

According to the draft Directive, one single authorisation enables the service provider to provide services across the national territory. Such a rule fails to take account of the federal structure of several EU Member States, such as Germany, Spain, Austria, UK and Belgium, where the power to legislate in some of the areas covered by the draft Directive has been decentralised to the regional level.

- o THE AUTHORISATIONS SCHEMES

Article 10 of the draft Directive states that the criteria used to grant or refuse authorisation cannot be discriminatory. We believe that the text should specify the scope of the anti-discrimination reference. Are the anti-discrimination grounds limited to nationality and location of the service provider, or are other anti-discrimination grounds, for instance those listed in article 13 of the Treaty of Amsterdam or those listed in the draft Constitution of the EU, also included. In the latter case, a comprehensive impact assessment would be required.

The draft Directive clearly prohibits any discrimination based directly or indirectly on nationality or location of the registered office. In this regard, we would like to stress that homelessness is primarily a local problem for which local solutions are often required. The local connection of service providers usually guarantees the quality and effectiveness of the service. We are afraid that the discrimination clause might complicate the granting of authorisation to organisations established locally.

FEANTSA is aware of only a few examples of transnational service provision in the homeless sector. We believe that the draft services Directive could indeed encourage organisations to provide homeless services in other European countries and we are afraid that the draft Directive will not prevent a negative impact on the quality of the services offered to homeless people.

We are afraid that the European Commission has neither the expertise nor the capacity to judge the legality of new requirements for the establishment of service providers as stipulated in Article 15.6. Moreover, we believe that this heavy responsibility on the Commission is problematic, because the draft Directive leaves ample scope for the Commission to interpret the many undefined key concepts. We would be very sceptical if DG Internal Market, which has a very specific and rather narrow mandate, was to be responsible for analysing the legality of authorisation systems.

We are also concerned that the administrative burden involved in defining and amending authorisation procedures, would dissuade public authorities from further strengthening the protection of vulnerable consumers of the services that fall under the scope of the Directive.

o **REQUIREMENTS SUBJECT TO EVALUATION**

We are concerned about the long list of requirements which remain to be evaluated on a case-by-case basis, especially given that several of these requirements directly relate to the quality and accessibility of the services.

States would, according to the draft Directive, have to justify the necessity of setting minimum numbers of employees for the provision of a certain service. We would like to point out that homeless service provision is very labour-intensive and that the quality of the service is in direct proportion to the number of employees. Thus, for homeless services the possible prohibition of such a requirement makes no sense.

The same argument applies to the requirement of a maximum fee for the provision of a service. Next to quality, access is of key importance for homeless services. It is clear that access is determined to a large extent by the price of the service. In several countries, homeless services are provided free of charge or legislation defines maximum client fee. Changing such a rule could have a dramatic effect on the nature and scope of homelessness.

FREE MOVEMENT OF SERVICES: THE COUNTRY OF ORIGIN PRINCIPLE

FEANTSA believes the Commission has not taken account of the specificity of certain services and is clearly not aware of the possible negative impact of its proposals on the quality of service provision for the homeless and other very vulnerable clients.

Although we are aware that most services provided to homeless people would fall under the rules of the draft Directive related to the establishment of service providers and the related authorization schemes, we fear that some essential services for homeless people would classify as temporary services for which the country-of-origin-principle applies.

We want to stress that homelessness is still very much a debated problem, for which conflicting policy approaches exist. Some public authorities believe the criminalization of the homeless is the most effective approach to address and prevent homelessness. Fortunately, others have opted for a comprehensive policy approach aiming at the full integration of homeless people by offering a wide spectrum of support services.

We fear the draft Directive provides the opportunity for public authorities to find organizations to provide inadequate services that would discourage homeless people to stay and look for help on the territory of the public authority.

Other authorities might be tempted to look for temporary services across the border purely for cost reasons. These services might not be available in their country because of the strict regulations that exist - often thanks to the hard work of the voluntary homeless sector. We believe that, in general, cheaper services are often less effective, of lower quality, and address the least *problematic* clients. As argued previously, homeless people are often not in a position to complain and to be heard concerning the low quality of service provision.

Because of the country-of-origin-principle, Member States might be discouraged from defending and further developing certain key services for homeless people. The principle clearly stipulates that the criteria related to the quality and content of service and the liability and behaviour of the service providers are defined in the country of origin.

The country of origin would be responsible for ensuring and monitoring the quality of the temporary service provided in another country. We are sceptical as to whether there would be any motivation for the authorities to supervise service provision that does not concern their nationals. We are afraid it could direct public support for trans-border service provision for economic or employment reasons only. The danger is that the quality of the temporary service will cease to be a concern anymore, given that higher quality will normally make the service more costly and therefore less attractive from an economic point of view. In such a situation, the quality can only be ensured through the service users, which seldom is the case with homeless people.

There is a risk that draft Directive will promote competition for temporary service contracts based on price, which could put pressure on Member States to reduce statutory quality requirements with severe consequences for the users of the services.

We therefore want national rules, which ensure the quality and accessibility of services, to apply also for temporary cross-border service provision, in order to prevent unfair competition between service providers established in different countries.

- COMPLIANCE WITH PRINCIPLES OF EU POLICY MAKING

- o **PRINCIPLE OF SUBSIDIARITY**

Both the broad range of activities covered by the draft Services Directive and the far-reaching measures to eliminate obstacles to cross-border service activities, raise serious doubts about whether the proposal respects the principle of subsidiarity that, according to Article 5 EC, is one of the guiding principles of all community action in areas that do not fall within its exclusive competence of the EU.

- o **PRINCIPLE OF PROPORTIONALITY**

Also according to Article 5, paragraph 3 of the EC Treaty, Community action will not go beyond what is necessary to achieve the objectives of the EC Treaty (principle of proportionality). The measures included in the Draft Services Directive will definitely have significant effects on national regulations on establishment and provision of services. Some of the measures in the draft directive, especially if we consider their effect on service provision for the homeless, do not meet the proportionality test.

- TIMING

Finally, we believe that the timing of the draft directive is unfortunate. A directive with such impact requires mutual trust and it will therefore be difficult for it to find acceptance in the immediate aftermath of the biggest enlargement of the EU. Several related initiatives on SGI and social SGI are being discussed at the moment and it is totally unclear how these initiatives will relate to the draft directive.

CONCLUSION

FEANTSA believes that the draft Directive fails to take proper account of the specific nature, way of working, and aims of the not-for-profit social service sector. Therefore we call on the Commission to include in the draft Directive an exhaustive list of the services that are excluded from its scope of application. We would like this list to make explicit mention of homeless services.

We also urge the Commission to carry out a detailed impact assessment of the draft Directive, in particular in relation to the quality and accessibility of service provision in areas where the

Directive could have negative effects for the users of the services. The Commission should focus on not-for-profit social services for very vulnerable people. As a matter of course, FEANTSA is willing to contribute to such an assessment with an open mind and without preconceptions.

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