



Seminar Report on “Roles and Reality for Non-Profit Social and Health Care Providers Understanding and Applying EU Initiatives”, Stockholm, November 24, 2009



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Background and introduction

On November 24, 2009 Famna, the Swedish platform for non-profit social service providers, together with CEDAG, the European Council for Non-profit Organizations and the European Think Tank Pour la Solidarité, organized a seminar on the topic of Social Services of General Interest. The seminar was organized under the Swedish EU Presidency.

The impact of EU policies and regulations on the provision of social and health services has increased over the last years. In addition social services of general interest are often regarded as economic activities and therefore fall under EU competition and internal market regulations. The Famna seminar aimed to share experiences on this development in various member states. The seminar explored topics such as; non-profit service providers’ role and experiences in the area of social and health care in member states; how various countries apply EU initiatives relating to these services and how these initiatives affect non-profit service provision at national and local level. The seminar consisted of several key presentations, each followed by a series of questions and answers. Each presentation is available in the annex section of this report.

Opening presentation, Lars Pettersson, Famna, Secretary General

The seminar was opened by Lars Pettersson Secretary General for Famna who posed some key Questions on the seminar topic; what is the relation between non-profit and for-profit actors in the EU? Is there a vision for non-profit providers in Europe so their role can be improved and strengthened? How do various countries (such as UK, Germany, France, Slovenia and Sweden) apply EU initiatives for these services and how these initiatives affect non-profit service provision at national and local level? How can we as non-profit actors build capacity and knowledge on EU work in the area of SGI and SSGI? Mr. Pettersson concluded his opening speech by mentioning the constant struggle to understand EU norms and rules as regards the provision of social services in the national context of EU Swedish Presidency and that the aim of the seminar was to focus on the application of EU initiatives at member state level and the opportunities and challenges this entails for non-profit providers in order to bridge the gap between EU and national law. (See annex 1)

Opportunities of EU initiatives and application at member state level, Ms Concetta Cultrera, European Commission, DG EMPL

The next presentation was by Ms. Concetta Cultrera from the European Commission. Ms. Cultrera presented the background and most recent work of the European Commission on SSGI (see annex 2).

The presentation was followed by a debate. A few remarks from the debate:

On the question of further European Commission initiatives in the area of SSGI, Ms. Cultrera answered that at this point the European Commission policy line is clarification. The tools, which provide clarification, are already put in place, namely the Interactive Information Service (IIS) and the Frequently Asked Question document, which will be updated on basis of the Social Protection Committee work.

On the questions regarding the Q&A documents and their status, Ms. Cultrera mentioned that the documents are not legally binding; however they were attached to the Internal Market package, which went through the College of Commissioners. Moreover, they were written by European Commission official staff, which applies community rules on an everyday basis. Which means both the IIS and the FAQ document have both the political and legal weights to be used as guidance, as confirmed by 2007 Communication.

On the question of limiting public procurement to the third sector organization and if governments similarly could exclude third sector organizations in a procurement process, Ms. Cultrera's answer was relative to the FAQ document, which sets out public procurement rules and shows that under very strict circumstances, it is possible to do it through a piece of European legislation. This legislation will have to be screened under articles 43 and 49. In the SODEMAR precedent, this type of restriction is compatible with 43 and 49. She also mentioned that Public Authorities are not obliged to externalize the provision of social services.

In reply to the question of lowest cost suppliers and the public procurement directives Ms. Cultrera mentioned that the public procurement directive has an annex, which lists certain services, among these social services. The terms of the directive specify that only some provisions of the directive do apply to social services, which is clearly explained in questions 2.1 and 2.2 of the FAQ document.

Ms. Cultrera also answered some questions on the Social Protection Committee's work and mentioned that the group is continuing to work on three specific areas, namely: the cooperation between public authorities, the role of non-profit providers and public procurement procedures and alternatives to these procedures. From now on, it will also focus on the ALTMARKT package and the FAQ document update. During 2010 Belgian Presidency, the third Social Protection Committee forum will eventually be hosted on October 26th and 27th.

Application at member state level, presentations of country cases

The first country case which was presented was **United Kingdom**. Ms. Lesley-Anne Alexander, RNIB/ UK Blindness organizations & ACEVO/ Umbrella organization for Charity presented the situation in the UK relative non-profit service provision, (see annex 3).

A few remarks from the debate:

On the question of competition from different private actors Ms. Alexander answered that there is private competition in the sight loss sector for rehabilitation care on a daily basis. Third sector is indeed providing good competition in this arena. Secondly, the UK probably over-procures services at levels lower than the financial threshold and in an unnecessary complex way. But this needs to be balanced with the issue of accessibility, which must be imbedded in contracting, and for which public procurement is fundamental. Thirdly, public procurement appears to be very differently interpreted in regulations between national and local levels.

The second country case, **Germany**, which was presented by Dr. Stephanie Scholz, Diakonisches Werk der EKD illustrated a very clear picture of the German situation for non-profit service providers and the specificities in Germany (see annex 4). Specifically interesting was the German "triangular relation".

A few remarks from the debate:

On the question on how EU initiatives are applied at local level in Germany Dr. Scholz explained the German federal system with sixteen Länder and that in every county, there is a different way to apply public procurement. Law is general for the whole State of Germany but there is some leeway to interpret general federal law on public procurement in a different way in each land. In reply to the question of profit actors in Germany Dr. Scholz answered that private commercial interests have been growing since the 1990's when elderly care became private and commercial, which made third sector ratio decrease a little bit. On the contrary, for other sectors, such as kindergarten, health care, services such as debt-counseling or care for homeless people, here there are no ratio differences because the lack of market interest by private providers. Dr. Scholz suggested that quality principles should be compulsory in the public procurement directive. Even though this is a difficult question politically and it is not very realistic. But from a legal point of view, it could be introduced in a directive based on the freedom of services, because in the internal market law, the EU has sole regulation responsibility.

The next country case, **France**, was presented by Romain Guerry, Conseiller technique Pôle Emploi-RH UNIOPPS (see annex 5).

A few remarks from the debate:

Mr. Guerry was asked to clarify the French problem with entrustment and whether France has an exemption for non-profit providers. In France there are two sectors concerned by the services directive; childcare service where there is an increase of for-profit sectors; and on the other hand “*services à la personne*”, where lower for-profit operators have been encouraged to enter market by the French government in order to create new jobs from the 1990's onwards. “*Services à la personne*” should remain out of the scope of the services directive but in France it is complicated since for “*services à la personne*” there are two different types of agreement, and where operators can choose whether they want to be under public procurements rules or not; “authorization agreement”, strictly designed by Public Authorities for operators managing elderly people-oriented structures, and which is excluded from the scope of the services directive and “simple” or quality agreement, designed for quality and for-profit operators, which want to manage a structure, but without fulfilling all the “authorization criteria” system. This type of agreement falls under the services directive. Just as in Germany, France created a system which gives money directly to the people. They can choose whether they want to go to public, private, for-profit or non-for-profit structures. And the competition is made by this system, which is good and fair in a way since you can see non-profit organizations willing to improve their systems.

The next country case presented was **Slovenia**. Ms. Mateja Kramberger, Secretary General Ozara Association presented the current situation relative social services (see annex 6). Ms. Mateja presented the current situation in Slovenia relative EU initiatives in the area of SSGI.

The final country case was presented by Mr. Lars Ettarp from Psoriasisföreningen in **Sweden** (see annex 7). Mr. Ettarp presented the unique service offer his organization delivers and the issues with public procurement regulation relative this.

Conclusions

The seminar brought up diversity of issues facing non-profit social service providers but also the opportunities relative EU initiatives on SSGIs. The country cases illustrated the various challenges non-profit actors are facing well and the innovative measures that are being developed at national level. The main issue continues to be the lack of knowledge among public authorities in applying EU initiatives related to SSGI which has resulted in a great diversity of solutions and lack of consistency for providers at local level.

A few recommendations and follow-ups to highlight:

National law can lead to situations which can be favorable to nonprofit actors referring to the opportunity to exempt service for non-profit providers only; situations of political uncertainty in the different countries, such as Sweden with unprecedented changes towards public procurement, France and *services à la personne*, UK and forthcoming general elections etc.; inventive ways and alternatives to public procurement do exist; training program for local authorities should be set up but also include non-profit actors and the idea of a European agency for non-profit social services was raised and should be developed further, along with enhanced European dialogue to define common principles and guidelines.