



CECOP – CICOPA EUROPE

European Confederation of Worker  
Cooperatives,  
Social cooperatives and  
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TO ALL CECOP MEMBERS

### Observations on the new version of the Service Directive as amended by the Competitiveness Council on 29 May 2006.

The text of the Service Directive as amended on 16 February 2006 by the European Parliament has gone back to the Commission. Less than two months later, on 4 April 2006, the Commission publishes a new proposal, to be submitted to the Council, proposing amendments to the amendments made by the Parliament. On 29 May 2006, The Competitiveness Council proposes a third version meant to be a compromise between the Parliament version and the Commission one. Therefore, it does not come challenge the common points between the two earlier versions, in particular the principle of the country of origin.

The latter version adds something in the preamble on services of general economic interest :

*(33c) Services of a general economic interest are entrusted with important tasks relating to social and territorial cohesion. The performance of these tasks should not be obstructed as a result of the evaluation process provided in this Directive. Requirements which are necessary for the fulfilment of such tasks should not be affected by this process while, at the same time, unjustified restrictions to the freedom of establishment need to be addressed.*

This is an important recital for the services of general economic interest. However, there are important changes to the parliament version in the field of services of general interest **in general**. Let us compare two significant changes in the three successive versions

A) First change under Article 2. 2. This Directive shall not apply to the following activities:

[in the text amended by the Parliament]

*(-a) services of general interest as defined by the Member States;*

[in the new proposal by the Commission]

*(-a) services of general interest;*

[In the Competitiveness Council text]

*(-a) **Non-economic** services of General Interest;*

In other words, the Commission proposal attempts to withdraw from the Member States the competence in defining the services of general interest (SGI) which could then be included within the scope of the directive without possibility of control on their part. However, since the SGI have not yet received a definition at the EU level, they can only be defined at the national level at this stage.

The subsequent Competitiveness Council version, at first sight, appears to clearly scope out the social SGI by mentioning the “non-economic” ones. However, it may be useful to refer to the Commission Communication of 26 April 2006 “*Implementing the Community Lisbon programme: Social services of general interest in the European Union*” {SEC(2006) 516} where it is explained (on page 6) that “*any activity consisting of supplying goods and services in a given market by an undertaking constitutes an economic activity, regardless of the legal status of the undertaking and the way in which it is financed*”, and thus “*almost all services offered in the social field can be considered “economic activities” within the meaning of Articles 43 and 49 of the EC Treaty*”. Thus, with this new version, most social services of general interest are now meant to be included in the scope of the Service Directive.

B) This becomes even clearer in a second change under Art 2. 2. This Directive shall not apply to the following activities:

[in the text amended by the Parliament]

*(ch) social services such as social housing services, childcare and family services;*

[in the new proposal by the Commission]

*(cg) social services relating to social housing, childcare and support of families and persons in need;*

[In the Competitiveness Council text]

*(cg) social services relating to social housing, childcare and support of families and persons permanently or temporarily in need which are provided by the State, by providers mandated by the State or by charities recognised as such by the State;*

The semantic change is substantial. In the Parliament's version, **all** the social services are to be excluded from the scope of the directive, and examples are given ("such as ...") for the sake of clarification. By replacing "such as" by "relating to", the Commission's text attempts to limit the scope exclusion to **a few** social services, one of which, "family services" is even further limited to "support to families and persons in need". As the next step, the Competitiveness Council version limits the service providers to the State, providers mandated by the state or recognized "charities". This appears to leave aside entrepreneurial actors (that can thus not be recognized as "charities") involved in the provision of social services that would not be explicitly "mandated by the state", such as social cooperatives.

The attempt appears to include as many activities as possible belonging to the services of general interest within the scope of the Service directive. Until services of general interest (SGI) are not clearly defined at the EU level, the definition of economic and social SGI, and the boundary between both, will also remain blurr: indeed the mother definition must come before the daughter definition. With no common definition of SGI, there can be no harmonization, and without harmonization there can be no common regulation.

Thus, it is important to **request the exclusion of all SGI**, namely both social and economic SGI from the scope of the Service Directive, until they are properly defined, harmonized and regulated at the Community level.