

I attach the response of the European Health Management Association to the Green Paper on Services of General Interest.

I explicitly agree that our response may be published.

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## **THE EUROPEAN HEALTH MANAGEMENT ASSOCIATION'S RESPONSE TO COMMISSION'S GREEN PAPER ON SERVICES OF GENERAL INTEREST**

The European Health Management Association (EHMA) welcomes the invitation of the European Commission in its Green Paper on Services on Services of General Interest (COM (2003) 270) to discuss the role played by Services of General Interest within the European Union.

The European Health Management Association (EHMA) is a European membership organisation, with 240 corporate members in 27 countries (Universities, research institutes, health service providers, Ministries of Health) committed to raising standards of managerial performance in the health sector. EHMA's purpose is to enhance knowledge and understanding of health care management in Europe by building bridges between countries; between managers, doctors and nurses; and between managers, academics and researchers. EHMA is a registered charity, financed by membership fees and revenue-generating activities such as conferences and project work. EHMA's Head Office is based in Dublin, Ireland, and there is also an office in Brussels.

### **1. The role of Services of General interest in the European Union**

Services of General Interest (SGIs) cover a very wide range of services, which include not only the networked utilities such electricity, telecommunication, transport and postal services but also wider social services such as health, education and welfare. As such SGIs, are a central element of the Community's objective of promoting a high quality of life for all European citizens and form a pillar of the European social model.

Article 36 of the Charter of Fundamental Rights, Article 16 of the current EC Treaty (Article III-3 of the draft constitution) and Article I-3 of the draft constitution acknowledge the place of services of general *economic* interest amongst the common values of the Union. In the practice of competition policy those services which have been classified as SGIs have

to date include predominantly the networked services sector which provides key infrastructure services.

The question therefore now arises if it is indeed feasible to develop a definition of SGIs which is wide enough to include services other than the network services and which ranges across the whole spectrum economic and non-economic services.

EHMA stresses that any debate on SGIs at European level must take into account the totality of SGIs to which any future European framework legislation could apply. It is crucial that the potential impact of any framework legislation covering all services of general economic and non-economic interest is explored as widely as possible in preparation for any such legislation. Such an exploration would necessarily include a careful examination of the definition of services of general economic and non-economic interest. The unintended and problematic impact of the Single European Market on healthcare demonstrates the need to explore with great care the impact that a European framework directive on SGIs might have on healthcare.<sup>1</sup>

## **2. Services of General Interest and Health Services**

On the basis of Article 152 of the Treaty Community action in the field of public health must fully respect the responsibilities of the Member States for the organisation and delivery of health services and medical care. The Community has only a limited role to play in the specific sector of public health. Nevertheless, the legislation relating to the internal market has a considerable impact on health systems.

A preliminary exploration of the impact of the internal market on health care has already been undertaken by the Commission, notably with the assistance of the HIGH LEVEL COMMITTEE ON HEALTH in its report on the internal market and health services, and is continuing to be examined within the context of the HIGH LEVEL PROCESS OF REFLECTION ON PATIENT MOBILITY AND HEALTHCARE DEVELOPMENTS IN THE EUROPEAN UNION.

The reflection process has noted in particular that while the judgments<sup>2</sup> of the Court of Justice have established that medical services are of an *economic* nature, falling within the scope of freedom to provide services

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<sup>1</sup> Relevant to question 1: Should the development of high-quality services of general interest be included in the objectives of the Community? Should the Community be given additional legal powers in the area of services of general economic and non-economic interest?

<sup>2</sup> Kohll, C-158/96 [1998] ECR. I-1931, and Decker, C-120/95 [1998] ECR. I-1831; Smits-Peerbooms, C-157/99, [2001] ECR. I-05473, and Müller-Fauré/van Riet (C-385/99)[2003] ECR.

throughout the European Union, the Court of Justice has also recognised that Member States must be able to plan health services to ensure access to a balanced range of high-quality health services.

The Green Paper on Services of General Interest offers an ideal opportunity to develop further the analyses of the provision of health services in Europe both within and across borders, and to explore the extent to which framework legislation could help achieve a balance between the freedom to provide services across the union, and the special nature of health services financing and delivery which requires careful national planning and control. Accordingly EHMA welcomes the Green paper and calls for a further Communication from the Commission on the potential application of SGI regulations to the health sector.<sup>3</sup>

EHMA argues that such a Communication should be based on a careful study of nature of health services currently offered in Member States. Such a study must address whether and how European citizens might ultimately benefit from an extension of the regulatory framework on services of general interest to such health services. While both quantitative and qualitative assessments are required in health services, the qualitative assessments of services are perhaps more complex than quantitative assessments (more readily used in the networked services sector) and therefore should be carefully examined. Furthermore, the vulnerability of consumer groups, which will often not be in a position to undertake a careful assessment of the market before making a health care provider choice, must be weighed in the arguments.

Furthermore EHMA urges the Commission to consult widely amongst health services stakeholders in the process of drafting such a Communication, in line with the commitment to consultation and dialogue set out in the White Paper on Governance (COM/2001/428).

### **3 Obligations in the supply of Services of General Interest**

The Green Paper focuses in particular on the current distinction between services of economic and non-economic interest. Within the current framework, this distinction is of central importance since it determines whether EU competition rules apply or not. While the Green Paper makes some reference to health and social services which suggest that they might be of a non-economic nature (see paragraph 47) it is clear that within the current definitions most health services would be classified as economic, and indeed the Court of Justice rulings in the cross-border health services

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<sup>3</sup> Relevant to question 2: Is there a need for clarifying how responsibilities are shared between the Community level and administrations in the Member States? Is there a need for clarifying the concept of services without effect on trade between Member States? If so, how should this be done?

cases noted above would suggest the same.<sup>4</sup> EHMA questions therefore the usefulness of the distinction between services of economic and non-economic general interest, which will become even more complex in the context of a European Union with 25 different health services.

The Green paper asks further if new standards should be developed for clarification of the obligations which fall upon providers of SGIs. EHMA argues that any further elaboration of obligations set out in the September 2000 Communication on Services of General Interest takes account of the need for transparency so that services users can make informed choices, and so that consumers and users can be actively involved in the definition and evaluation of services.<sup>5</sup> In order to address adequately the need of healthcare within the context of the European social model, standards would need to have measurable targets for universality, equity and solidarity in the provision of health services that are delivered in a culturally appropriate manner.

In essence EHMA argues that health and healthcare have unique features which are significantly different from industries such as water supply and telecommunications, and which should be addressed openly, transparently and specifically. In order to avoid the danger that healthcare delivery might be adversely affected by generic framework legislation, it is essential that the input of an expert grouping such as the High Level Reflection Process on Patient Mobility or a similar body is sought and acted upon.

Finally, EHMA notes that the Green Paper raises many issues of great importance to its members and remains committed to continued contribution to this debate as it evolves.

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<sup>4</sup> Relevant to questions 7 and 8: (7) Is it necessary to further specify the criteria used to determine whether a service is of an economic or a non-economic nature? Should the situation of non-for-profit organisations and of organisations performing largely social functions be further clarified? (8) What should be the Community's role regarding non-economic services of general interest?

<sup>5</sup> Relevant to question 9: Are there other requirements that should be included in a common concept of services of general interest? How effective are the existing requirements effective in terms of achieving the objectives of social and territorial cohesion?