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**REPORT ON THE PUBLIC CONSULTATION ON THE GREEN PAPER ON
SERVICES OF GENERAL INTEREST**

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1. INTRODUCTION

On 21 May 2003, the Commission adopted a Green Paper on services of general interest.¹ In publishing this Green Paper, the Commission's aim was to stimulate a discussion on the promotion of the provision of high-quality public services in the European Union. The Green Paper therefore launched a broad public consultation on the overall role of the Union in defining the objectives of general interest pursued by those services and on the way they are organised, financed and evaluated. Thus, for the first time, the Commission initiated a full open review of its policies relating to services of general interest.

In line with the Commission's general principles and standards for the consultation of interested parties,² this report describes the consultation procedure and analyses the 281 contributions received in the public consultation.

The objective of the report is to reflect the wide range and diversity of ideas, opinions and suggestions made in the contributions received. Without claiming to be exhaustive, the report tries to identify, as objectively as possible, the main trends, views and concerns arising from the contributions. In order to ensure full transparency, the report is complemented by the publication on the Internet of the full text of the contributions received. This allows interested parties to examine the responses to the consultation in full detail.³ Specific comments will also be taken into account in any Commission initiatives following from the Green Paper process.

The report is structured as follows: This introduction (1.) is followed by a short description of the consultation procedure (2.). A third section sets out some general observations on the contributions received. A fourth section summarises the positions set out in the comments. The structure of this section is based on the topics addressed by the questions put forward in the Green Paper. These questions are annexed to the report. A further Annex contains an alphabetic list of all contributors to the public consultation.

The document draws on a preliminary analysis of the contributions received which was prepared by a network of correspondents in all interested Directorates-General and Services of the Commission.

It should be noted that the purpose of this document is to report on the public consultation. It does not aim to draw political conclusions from the consultation process as such. Such conclusions are drawn in the follow-up to the Green Paper process, that the Commission will present in line with the request made by the European Parliament,⁴ for which this report provides background material.

¹ COM(2003) 270, 21.5.2003

² Towards a reinforced culture of consultation and dialogue - General principles and minimum standards for consultation of interested parties by the Commission, Communication from the Commission, COM(2002) 704, 11.12.2002

³ http://europa.eu.int/comm/secretariat_general/services_general_interest/comments/public_en.htm

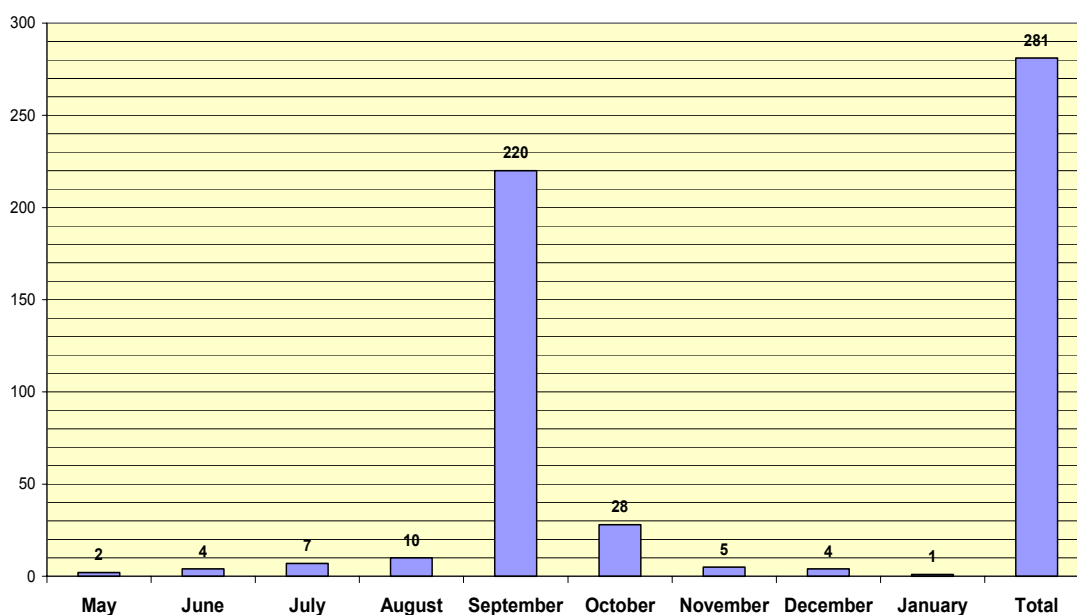
⁴ European Parliament Resolution on the Green Paper on services of general interest, 14.01.2004 (T5-0018/2004)

2. THE CONSULTATION PROCEDURE

In order to structure the debate, the Green Paper of 21 May 2003 submitted thirty questions for public consultation⁵ and invited all interested parties to submit any comments by 15 September 2003. This meant that the official consultation period was almost four months in length and considerably exceeded the minimum duration of eight weeks that the Commission established as a minimum standard for this type of consultation.⁶

Nevertheless, given the complexity of the issues addressed by the Green Paper, the Commission received a number of requests for an extension of the deadline for comments. Although the Commission did not agree to a formal extension of the consultation period, it informed interested parties that comments received after the deadline would also, as far as possible, be taken into account. In practice, the majority of comments received were sent towards the end of the consultation period or after the official consultation deadline. This report takes account of all comments received until the end of January 2004.

Monthly total of contributions to the Green Paper on Services of General Interest
May 2003 - January 2004



In order to facilitate the consultation, the Green Paper was made available, together with a number of relevant background documents, in eleven languages on a website created specifically for this purpose.⁷

Comments could be submitted in all Community languages, either by mail or e-mail to a dedicated mailbox. Respondents were invited to mention, where applicable, the numbers of the questions they were referring to in their responses.

⁵ Cf. Annex 1

⁶ Cf. COM(2002) 704, 11.12.2002

⁷ http://europa.eu.int/comm/secretariat_general/services_general_interest/index_en.htm

For the information of interested parties, the Commission has placed the contributions received on the Green Paper website, provided the senders concerned explicitly agreed to their publication.⁸ In practice, almost all contributors agreed to their responses being published on the Commission's website. Only 8 respondents did not agree to the publication of their comments. Most of them explicitly refused to give their agreement to a publication, while some did not reply to the Commission's repeated requests. In addition, one author of a contribution explicitly requested that his identity not be disclosed. This contribution was placed on the website as an anonymous comment.

In parallel to the public consultation, the Council had an exchange of views on the Green Paper in different Working Groups. The European Parliament,⁹ the European Economic and Social Committee¹⁰ and the Committee of the Regions¹¹ have also examined the Green Paper and given their views.

In addition, the Economic and Monetary Affairs Committee of the European Parliament held a public conference "A positive perspective for the future of services of general interest in Europe" on 11 June 2003.¹² The Belgian and French governments organised a seminar in Paris on 21 November 2003 with experts from current and new Member States on national experiences in the field of services of general interest.

The Commission has actively followed the work in these different forums. In addition, the Commission had numerous bilateral and multilateral meetings with interested parties on the issues covered by the Green Paper.

While all this work and all the information received is taken into account in the preparation of the follow-up, this report focuses only on the analysis of the written contributions received in response to the public consultation on the Green Paper.

3. SOME GENERAL OBSERVATIONS ON THE COMMENTS RECEIVED

3.1. A varied response reflecting a broad spectrum of interests and views

In total, 281 contributions were received in response to the Green Paper. They represent a broad spectrum of different organisations and views and reflect the diversity of structures, traditions and interests that characterise services of general interest in the European Union. However, while the Green Paper touches upon a wide number of issues, not all contributions address each issue raised in the Green Paper.

3.1.1. Contributions from all over Europe, many from Belgium, France, Germany, Austria

The Commission received responses from organisations from all current Member States except for Luxembourg. Contributions were also sent by organisations from

⁸ Cf. footnote 3

⁹ Cf. footnote 4

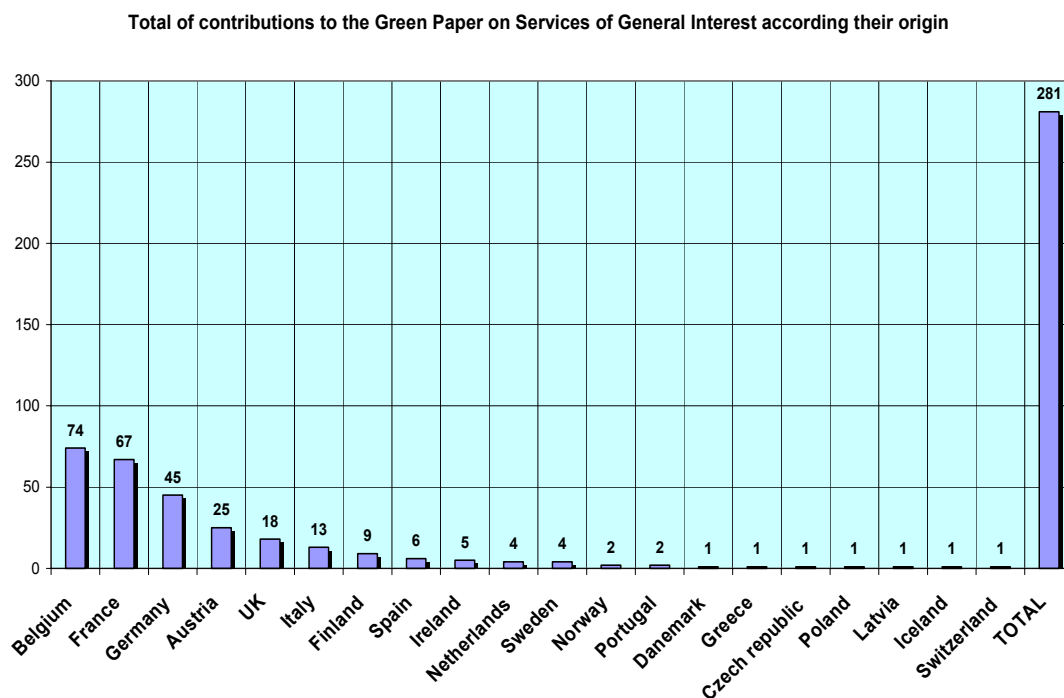
¹⁰ Opinion on the Green Paper on Services of General Interest, CESE 1607/2003, 11.12.2003

¹¹ Opinion of the Committee of the Regions of 20 November 2003 on the Green Paper on services of general interest, CdR 149/2003 final

¹² <http://www.europarl.eu.int/hearings/20030611/econ/default.htm>

three new Member States: Poland, Latvia and the Czech Republic. In addition, contributions were received from organisations in Switzerland, Norway and Iceland. The weak participation of organisations from the new Member States is regrettable. However, it should not be interpreted as an indication that services of general interest are not a highly important issue for these countries.

The distribution of the comments according to their geographical origin is as follows¹³:



The strong representation of organisations from Belgium, France, Germany and Austria is to be noted. It reflects the considerable interest taken in the subject in these countries. The high number of contributions of Belgian origin can in part be explained by the fact that many European organisations have their headquarters in Belgium.

3.1.2. Contributions from a broad range of categories of respondents

A broad variety of types of organisations have replied to the public consultation:

- national governments,
- a national Parliament,
- local and regional authorities and their associations,
- providers of local services,
- providers of social and health services, and social organisations,
- providers in network industries (transport, postal services, telecommunications, electricity, gas),

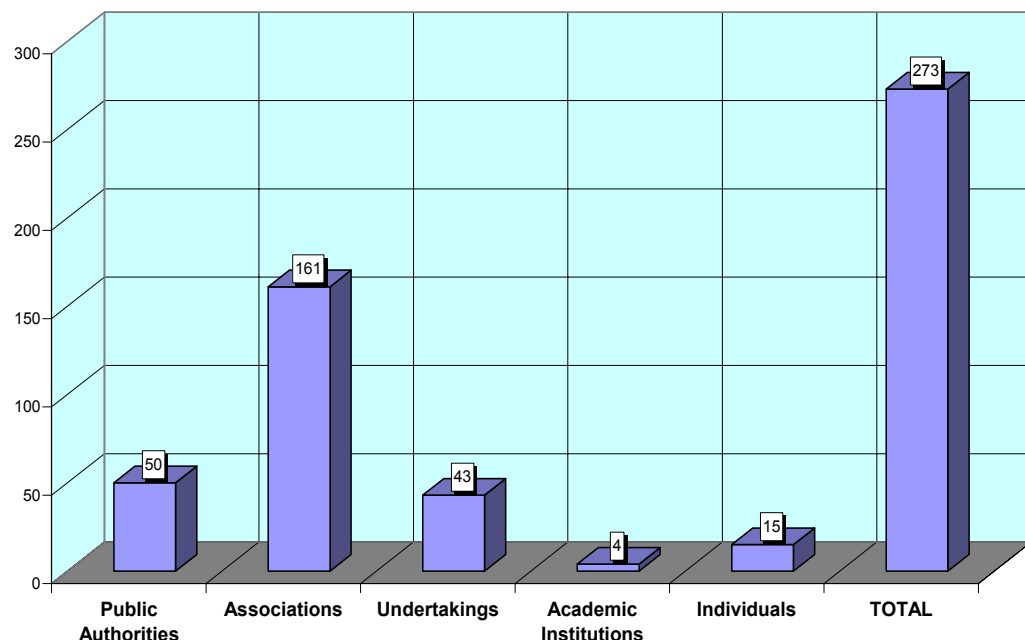
¹³ Seat or principal residence of the contributor. The high number of contributions of Belgian origin can in part be explained by the fact that many European organisations have their office in Belgium. However, it is sometimes difficult to distinguish between European organisations and organisations of a more limited scope.

- a provider of financial services,
- companies and organisations from the media sector,
- trade unions and associations of trade unions,
- user and consumer organisations and agencies,
- churches,
- industry associations,
- political parties,
- academic organisations.

Comments were also received from private individuals, one of them submitting a recent doctoral dissertation on public services as a contribution.

Many of the contributions are very substantial and some are accompanied by additional background material. The breadth and the depth of the contributions received lead the Commission to believe that the different aspects and arguments relevant to the debate are well covered by the responses.

Contributions to the Green Paper on Services of General Interest published on the Website



3.2. The Green Paper was well received in general, but some remain sceptical

The public debate launched by the Green Paper was welcomed in general. The issues raised and the questions submitted were found to be relevant. Only exceptionally was the Commission's intention to launch an open debate doubted, or the questions criticised. Some comments stated that the presentation by the Green Paper of the results of liberalisation in the network industries was too positive and did not sufficiently reflect the problems arising from market opening. A few comments claimed the Green Paper had too strong an internal market and competition focus.

The inclusion of economic as well as non-economic services of general interest in the scope of the Green Paper was widely approved. However, it was noted that the main focus of the document was on the big network industries. Also, the differences between economic and non-economic services, as well as between social services and health services, on the one hand, and network industries, on the other, are

highlighted. It is stressed that any Community policy has to take due account of these differences. One organisation notes with satisfaction that the private insurance sector is not dealt with in the Green Paper.

4. THE MAIN RESULTS OF THE PUBLIC CONSULTATION

4.1. Consensus on the importance of services of general interest, but from different perspectives

Many contributions started with a statement on the role of services of general interest in general or of specific services that contributors take a specific interest in. The contributions agree that services of general interest are of essential importance for citizens and businesses in Europe and that well-functioning services of general interest are crucial for Europe's societies and economies. Some contributions also stress the importance of these services for democracy. There is also a broad consensus that services of general interest should be provided in a way that best serves the interest of users.

However, while some contributions plead for a stronger protection of services of general interest against market mechanisms and for the recognition of a separate role for these services, others stress the beneficial impact that market opening can have on the delivery of services. It is pointed out that these services should be treated as an exception to market principles.

Table 1: Importance of Services of general interest

- **There is a broad consensus on the essential importance of services of general interest for European societies. It is also generally accepted that these services should be provided in a way that puts users first.**
- **No agreement exists concerning the relationship between services of general interest and market principles.**

4.2. The role of the Union in the area of services of general interest

4.2.1. Some calls for the inclusion of an objective in the Treaty, but no additional powers

There is no consensus on the need for an amendment of the Treaty. Some comments call for the inclusion of services of general interest in the objectives of the Treaty in order to clarify the role of these services. Some contributions also welcome the amendment of Article 16 of the EC Treaty in Article III-6 of the Convention text. In some comments it is suggested that Articles 16 or 86 should be amended so as to allow for wider exemptions for services of general interest from the application of competition and internal market rules. It is also proposed that a legal base be introduced in the Treaty that would allow the European Union to legislate in the area of non-economic services. One contribution proposes extending Article 86(3) to recommendations.

Conversely, a number of comments argue that the current Treaty framework is appropriate, if properly implemented, and that there is no need for a Treaty amendment. It is argued that the recognition of services of general interest in Articles

16 and 86 is sufficient and delivers satisfactory results. It is stressed that a “social market economy” is already mentioned as an objective in Article I-3 of the Convention text and that any insertion of an additional objective on services of general interest is superfluous. It is also argued that the last sentence of Article III-6 of the Convention draft Constitutional Treaty providing a legal basis for legislation on services of general economic interest should be deleted. This provision is seen as unnecessary and as incompatible with the principle of subsidiarity.

Despite these differences, the contributions largely agree that there is no need to confer additional powers in the area of services of general interest to the Union. Many of the comments suggesting Treaty amendments stress that these amendments must not lead to an extension of the powers of the Community. It is highlighted that any amendments should strengthen subsidiarity and the freedom of Member States to define, organise and finance services of general interest at national, regional or local level. However, some contributions are not opposed or are even favourable to the idea of giving additional legal powers to the Community in the area of services of general interest.

4.2.2. An interest in clarification of Community rules

The contributions do not suggest that there is confusion about the responsibilities of Member State and Community levels. However, there is some interest in clarification of the application of Community rules to services of general interest in general, including the application of the concept of “effect on trade between Member States” and the distinction between economic and non-economic services. It is suggested that this clarification could be made in a framework directive or in a communication. Other contributions do not see the need for any clarification and fear that a clarification would be counter-productive.

In addition, there are strong calls from different categories of respondents to clarify the application of competition rules, and in particular state aid rules, to the provision of services of general interest. These are dealt with in section 4.8. below.

4.2.3. No need to extend sector-specific regulation in general, but debate on some cases

Many contributions state that the creation of specific regulatory frameworks for other sectors than the large network industries is not necessary. It is explicitly mentioned that no Community framework should be established for social services, for social protection and for public service television and radio. Moreover, specificities of sectors such as health should be recognised and taken into account in any wider discussion of services of general interest.

No agreement exists concerning water, waste and local public transport services. While some contributions call for the creation of a specific regulatory framework for these services, other comments, in particular from the local level, explicitly object to the establishment of a Community regulatory framework or call for an exemption of these services from the application of internal market and competition rules.

Health services, social assistance, education, banking and insurance services, and electronic commerce are also mentioned. One contribution from the financial services industry argues that “post-market” financial services should be regulated as services of general interest at Community level.

4.2.4. *No need for a European Regulator for now*

As regards the institutional framework, there is a broad consensus that it would not be appropriate to establish European regulatory authorities at this stage. It is stressed that services should be regulated as close as possible to the markets and that a European regulator could not take sufficient account of specific situations in the Member States. It is also highlighted that the creation of European regulators would not be in line with recent developments in Community law, such as the adoption of the electronic communications package and the modernisation of the application of competition rules. Only a few comments suggest that the establishment of a European regulator may be feasible in areas such as financial services or energy. Some contributions also suggest the creation of European observatories in areas such as the evaluation of services of general interest. It is also proposed that the subject merits further study.

A vast majority of contributions agree that for the network industries the creation and development of European networks of regulators is the most appropriate form of co-operation. A number of comments suggest that co-operation in the existing networks should be reinforced and that the Commission should be given a stronger co-ordination role. It is also proposed that the Council should regularly monitor the situation in different sectors.

The need to increase transparency requirements and to harmonise information obligations for regulated undertakings is mentioned.

The importance of respecting the principle of subsidiarity and the need to maintain the distinction between the big network industries and local services in any regulatory framework is also highlighted. It is also stressed that regulation should involve all parties concerned and that it has to be based on democratic decisions.

Furthermore, it is suggested that the principle established in the field of electronic communications according to which *ex ante* regulation is only necessary where competition law remedies are not sufficient should be extended to other services.

Table 2: *The role of the European Union*

- **While different views are taken on the need to amend the Treaty, there is broad agreement that the Community should not be given additional powers in the area of services of general interest.**
- **The responsibilities of the Community and Member States levels seem to be clear. However, there are calls for the clarification of Community rules in some areas.**
- **A broad agreement exists that sector-specific regulation must not be extended to all services. However, for some services (water, waste, local public transport) diverging views are expressed as to whether a specific regulatory framework is desirable at Community level. The need to take account of specificities of sectors such as health is highlighted.**
- **There is a large consensus that there is no need for the creation of European regulatory authorities at this stage. Networks of national regulators co-ordinated at European level seem to be the preferred option.**

4.3. Sector-specific legislation and general legal framework

4.3.1. The need for a framework instrument remains controversial

The views on the need for a general legal framework for services of general interest have not converged during the debate so far and remain divided. Both views, in favour and against, are strongly expressed by many contributors.

4.3.1.1 Comments in favour

Many comments are favourable to the introduction of a general legal framework. Some of the contributors supporting the establishment of a framework instrument see it as a tool to promote consistency and to clarify and consolidate the rules applicable to services of general interest and the respective responsibilities of the Community and the Member States. It is suggested that the framework should cover issues, such as the definition of general principles regarding the provision of services of general interest (access, universal service, transparency, affordability, non-discrimination, continuity, etc.), the funding of these services, their organisation and regulation, their evaluation, and the role of the Member States, including the regional and local levels, and the Community. It is also suggested that the framework should include provisions on cost calculation and rules on granting special or exclusive rights for the provision of a service of general interest. The added value of such a framework is seen in increasing consistency and legal certainty and in strengthening the principle of subsidiarity. Also the political and symbolic value of such an instrument is highlighted as a key element of the European social model. It is stressed that a framework instrument would give the European Union a pro-active role in the area of services of general interest.

Many contributors expect from a framework instrument that, in addition to clarification and consolidation of the current principles, it will restrict the application of competition and internal market rules to services of general interest and thus lead to a different balance between market and public service principles. It is proposed that a framework directive should lay down exemptions from internal market and competition law.

Some of the comments suggest that a framework instrument should cover only services of general economic interest, others are of the view that all services of general interest should be covered. It is also proposed that a framework directive should only apply to services that are not subject to a specific regulatory framework at Community level.

With regard to the instrument to be chosen, most contributions in favour of a framework instrument would support a legally binding instrument, in particular a directive. However, some contributions suggest the use of non-binding instruments (“soft law”), such as a Commission communication or a recommendation. It is also proposed that different instruments, binding and non-binding, could be used depending on the issue to be addressed. One organisation suggests establishing a “soft law” framework first and proposing legislation later.

Some comments suggest that a framework instrument should be based on Article III-6 of the draft Constitutional Treaty prepared by the Convention.

A number of comments stress that a framework directive must not lead to increased powers at Community level. One contribution states that it is broadly in favour of a framework instrument, provided consumer rights are protected.

No contribution suggests that a general framework could replace existing sector-specific legislation but a number of comments suggest that a framework directive must not affect the sector-specific legislation in place. One organisation, generally in favour of a framework instrument, states that following the decision of the Court in the “Altmark” case there is no longer any urgent need for a framework instrument.

4.3.1.2. Comments against

Many comments are opposed to the introduction of a general framework on the basis of a legislative instrument. It is argued that the current legislation based on a sector-specific approach has proven to be successful and that there is no need for a general framework. Articles 16 and 86(2) of the Treaty were sufficient. The different characteristics of the services covered would only allow for very general provisions that had to be complemented by sector-specific rules. A framework directive would be too abstract and too philosophical. The interaction between a framework instrument and the existing sector-specific regulation would be unclear and could lead to more legal uncertainty. The regulatory framework would become more complicated and less transparent. A framework directive could result in additional burdens and costs. It is pointed out that different sectors are at different stages of liberalisation, which will make it difficult to establish a general framework. There was a risk of conflict between the establishment of a framework directive and the sectoral legislative agendas. It is also feared that a framework directive would be tantamount to a step backward in the most liberalised sectors. Political compromises reached on sector-specific legislation could be put in danger. One comment argues that there is no legal base for a framework directive. It is also argued that a framework directive would deviate from the Lisbon strategy.

Some comments state that broadcasting should not be covered by a framework directive. For the electronic communications sector it is argued that a framework directive would undermine the flexibility provided by the current sectoral regulation which ensures a move towards the full application of general competition law. It is also argued that the electronic communications legislative framework is exhaustive, thus not leaving any room for the application of a framework directive. Comments from industry also cast doubts on the compatibility of the general considerations in the Green Paper on universal service, quality of service and evaluation with developments in the telecommunications sector.

It is suggested that clarification may be necessary regarding health and social services, e.g. in the form of a communication. One contribution proposes the establishment of a specific directive for complementary health insurance.

4.3.2. *A few inconsistencies and diverging views on the impact of existing regulation*

As regards the existing sector-specific regulation, many contributions point out that no inconsistencies have been experienced. It is stressed that the existing differences between rules for individual sectors reflect different situations in different sectors. A point that is frequently made is that different degrees of market opening in Member States and uneven implementation of Community law create problems.

With regard to transport, the point is made that differences in the regulation of different transport sectors can create difficulties. The liberalisation of road transport led to problems in the railway sector. It is also suggested that the legislation for maritime transport does not take account of certain specific contexts.

It is also argued that various pieces of Community data protection legislation are not fully coherent.

It is mentioned that universal service obligations exist only for some services and that the objectives for different services of general interest are not identical.

As regards Directive 93/38/EEC, it is suggested that the impact of the directive on the sectors covered (energy, water, transport) is different due to the differences of these sectors.

It is stated that, in some cases, a more technology-neutral approach could have avoided inconsistencies. For example, the distance-selling directive applies to value added services provided via voice telephony and the e-commerce directive applies to value-added services offered on the Internet.

The positive impact of the Community's existing sectoral policies is stressed in a number of contributions. One contribution argues that sector-specific regulation has worked well but has created a feeling of legal uncertainty and confusion. Others point to remaining monopolistic structures, the creation of oligopolies and price increases and suggest that there are also other negative social and economic consequences of the Community's liberalisation policies. It is mentioned that for consumers comparisons of different service offerings are sometimes difficult because of a lack transparency. The uncertainty relating to the calculation of the cost of providing a universal service is stressed.

Table 3: Sector-specific legislation and general legal framework

- **The views on the need for a general legislative framework remain divided. However, there is an agreement on the continued need for sector-specific legislation.**
- **Many contributions highlight the benefits of existing sectoral policies. Others point out that liberalisation had negative social and economic consequences.**

4.4. The distinction between economic and non-economic services

4.4.1. The importance of the distinction and its dynamic character are widely recognised

In general, contributors consider the distinction made in Community law between economic and non-economic services to be important and relevant. Only a few contributions argue that this distinction is outdated or unnecessary and no longer appropriate. A number of comments stress that the distinction is not clear and call for greater legal certainty. It is highlighted that some sectors provide both economic and non-economic services. Some comments underline that the Member States should have a role in deciding on the nature of a service. Also, the importance of the nature of downstream activities for the qualification of upstream activities is highlighted.

The fact that the borderline between economic and non-economic activities is dynamic and evolving over time is widely accepted. Consequently, many contributors agree that a definitive list of activities that are to be considered non-economic cannot be established. However, some comments suggest that a list of examples could be useful to clarify the distinction. A number of comments call for the establishment of a list of abstract criteria that could be used to determine whether a service is of an economic or a non-economic nature. A communication is suggested as the appropriate instrument. It is also proposed that the distinction could be clarified in a framework directive. Others are of the view that the development of the distinction should be left to the Court.

A few comments propose the establishment of a negative list of all services that are not subject to competition and internal market rules. This list should include services such as public local transport, water supply, waste water, waste management, social services, health services, education, culture, and services provided by not-for-profit organisations. Other comments stress that services such as waste water and health are of an economic nature.

4.4.2. Calls for a wider definition of non-economic services

A number of comments, in particular from the social sector, from the local and regional levels and from trade unions, suggest that the market-based distinction between economic and non-economic services is too narrow. It is proposed that broader criteria, such as social and environmental objectives, participation of volunteers or lack of profit-orientation, should be used to establish whether a service is of an economic nature or not. Some comments argue that the activities of not-for-profit organisations or of organisations that re-invest all profits in public service activities should be considered to be non-economic. It is also suggested in comments from the local level that most universal public services are of a non-economic nature.

However, other comments, in particular from industry, stress that the current functional definition based on the nature of the activity is appropriate and should be maintained. The existence of a potential market for a given activity should be the sole criterion. The status of an organisation must not be taken into account.

4.4.3. An interest in clarification of the situation of organisations providing social services

A number of replies, including many from the social and health sector, suggest that it would be useful if the situation of non-for-profit organisations and of organisations performing largely social functions was further clarified. Reference is made to legislative as well as to non-legislative instruments. It is suggested that the specific role of providers of social services should be explicitly recognised. The importance is highlighted of ensuring that the provision of social services by not-for-profit organisations remains possible in the future. Other contributions however, also from the social sector, insist on the need to focus on the nature of the services and not on the nature of the provider.

One industry association opposes any further clarification of the status of these organisations, arguing that the status of an organisation is irrelevant under Community law and that it is only the nature of the service provided that was important.

4.4.4. *Non-economic services: broad rejection of additional Community powers, but also calls for their protection as part of the European social model*

There is a broad agreement among contributors that the Community should not be given additional powers in the area of non-economic services. The Member States should be responsible for these services, in line with the principle of subsidiarity. Many comments suggest that the role of the Community should be limited to facilitating the exchange of experience and good practices, and benchmarking. The method of open co-ordination is mentioned as an appropriate instrument.

However, some comments request that the Community should protect non-economic services of general interest as part of the European social model. A few comments refer to the establishment of common basic standards at Community level. Some contributions propose that non-economic services should be covered by a framework directive.¹⁴ It is stressed that consumer rights must be protected regarding non-economic services as well.

It is also suggested that the Community should take better account of non-economic services in its policies, e.g. regarding cohesion, social inclusion, and health.

Table 4: *Services of general economic interest and non-economic services*

- **Many contributors feel that the distinction is important. However, a number of contributions call for other criteria beyond the distinction economic – non-economic in order to create more legal certainty.**
- **While there is some interest in further clarification of the situation of organisations providing social services under Community law and in protecting non-economic services of general interest as part of the European social model, there is a broad agreement that the Community should not be given additional powers in the area of non-economic services.**

4.5. A Common Set of Obligations

4.5.1. *Diverging views on the utility of a common set of public service obligations*

The differences in the views regarding the need for a general Community framework are also reflected in the responses concerning a common set of public service obligations. A number of contributions explicitly contest the possibility or the need to establish a common set of obligations at Community level. Public service obligations should reflect the specific characteristics of the different sectors and should be established sector-by-sector. A common set of obligations would be too general and create an unnecessary administrative burden. It is argued that there is no convincing case for a common set of obligations and that the concepts of universal service and affordability, for instance, do not even fit all sectors of the network industries, such as the railways. The electronic communications reform package is cited as an example of successful sector-specific regulation. It is also stated that common elements exist but that these elements have to find a different expression for each sector and that for a common concept it is difficult to go beyond very general statements.

¹⁴ See 4.2.1.1. above

A number of other contributions argue that the definition of a common set of obligations is appropriate and necessary. Many of those contributions argue for an extension of the common set of obligations. They generally establish a link with their support for a framework directive where this common set of obligations could be promoted. One contribution focuses on the concept of universal service as being the most relevant from a consumer's perspective. It is also suggested that a common concept is only possible for the large network industries. One contribution suggests referring to public service "missions" rather than to public service "obligations", as the former is a more comprehensive and more positive term.

4.5.2. Some suggestions for the scope of public service obligations

A number of contributions state that in addition to the requirements mentioned in the Green Paper no further obligations should be introduced. It is argued that additional requirements would increase the costs of providing the service and that the importance of public service obligations for achieving cohesion objectives is overstated. The Community should allow for some degree of regulatory competition between Member States. The proper transposition and application of the existing requirements should be given priority.

Other contributions suggest additional elements. The principle of adaptability of services of general interest is mentioned as a separate item in several contributions. Also, the principles of sustainable development and environmental protection are mentioned repeatedly. Other elements that are suggested include access, transparency, democratic control and evaluation, social cohesion, solidarity, consumer participation, infrastructure provision, country planning, non-distortion of competition, employment, user and employee participation, gender aspects, data protection and privacy, payment options, redress and complaint mechanisms, incentives for investment and quality improvements, neutrality of ownership, fair pricing, efficiency, accountability, security and safety, pluralism, interconnectivity, competitive tendering, diversity and choice, territorial coverage, education and training, and subsidiarity. The principle of cost-recovery (for the water sector) and the "polluter pays"-principle are also mentioned.

4.5.3. Scepticism as regards the extension of requirements to other services

Many contributions do not, at this stage, see any need for an extension of the requirements defined in Community sector-specific regulation and detailed in the Green Paper to other services of general interest. In this context, some contributions highlight the specific characteristics of broadcasting and of health and social services. A number of contributions stress that an extension could only be considered on a case-by-case basis and after careful assessment. The use of non-binding guidelines and the open method of co-operation is also considered.

However, some contributions are favourable to the extension of the common set of obligations to all or at least some other services of general interest. Banking and financial services, water and sewage services, town cleaning, Internet access, accommodation and social services are specifically mentioned. It is also argued that the requirements should be extended to all sectors that have been liberalised. It is also suggested that the public service obligations set out in the Green Paper should be extended to the distribution of medicines and to emergency services in general.

One contribution proposes including the provision of geographical information. It is also proposed that universal service should be introduced in the railways sector.

Conversely, some contributions stress that these requirements should not be extended to the water sector. With regard to gas, it is stressed that the concept of universal service cannot be applied to this sector. It is also highlighted that the concept of affordability is not suitable for the energy sector.

As regards non-economic services, the view prevails that the set of requirements applying to the network industries should not cover these services. It is stressed that these services should remain under the responsibility of local and regional authorities. However, there are also some contributions that promote an extension of such requirements or general principles to all or at least some non-economic services of general interest.

4.5.4. No detailed regulation at Community level

There is broad agreement that Community regulation should be confined to establishing principles and objectives and that Member States should have the power to implement these principles in line with the specific needs and characteristics that exist at national or regional level. The need to respect the principle of subsidiarity is highlighted in several contributions. In particular, it is argued that the organisation, financing and control of services of general interest should be left to the Member States. A number of contributions argue that a Community regulatory framework should be established only for sectors that are liberalised at Community level. Along the same lines, it is stated that Community regulation should remain limited to the network industries. The specific responsibility of the Community for the functioning of the internal market and for undistorted competition is underlined. It is stressed that, as a general rule, regulation should remain as closely as possible to the citizen. However, it is also recognised that with the completion of the internal market the need for regulation at Community level may increase.

Some contributions are in favour of an increase in regulation at Community level. The Community should facilitate the harmonisation of public service requirements in the Union. It should take on the responsibility for ensuring social and territorial cohesion. It is highlighted that the Community should strengthen the guarantees established at national level with regard to services of general interest. It is also argued that all aspects relating to human dignity should be regulated at Community level.

Several contributions also call for clarification of the respective roles of the Community and national levels.

4.5.5. Call for an assessment of implementation and impact on cohesion

There is no agreement regarding the effective implementation of public service requirements set out in Community law and their impact on social and territorial cohesion. A number of contributions argue that the requirements have not yet been effectively implemented and that cohesion goals have not yet been achieved. In particular, there is criticism that the existing requirements are too focused on the introduction of competition and have not improved access to services. Other respondents claim that requirements have been properly implemented and that the

cohesion objectives have been attained. However, a significant number of contributions considers that it is too early to form an opinion and that a more detailed assessment of the implementation of public service obligations and their implementation is necessary. It is suggested that Community regulation has had an uneven impact and that the actual record varies from one Member State to another.

Several contributions refer to specific problems. It is argued that the current requirements fail to address problems resulting from obscure tariff practices and from concentration and bankruptcy of providers in the telecommunications sector. It is stated that in the gas and electricity sectors problems of price increases and security of supply have occurred. It is claimed that energy liberalisation had a negative impact on employment, on the electricity grids, on the development of renewable energy sources, on energy savings measures and on a coherent Community energy policy. It is also stressed that post offices were closed. It is claimed that where Community law defines only minimum standards or Member States have a wide margin for the application of requirements, implementation has led to distortions of competition and to a “race to the bottom” in which operators facing high standards in their home market have a competitive disadvantage. With regard to universal service, it is maintained that the current Community provisions do not provide sufficient financial incentive for providers to ensure universal service. There is criticism that the concept of affordability is not specified at Community level and that the concept is translated into a mere cost-orientation of tariffs without taking other (social) parameters into account. It is argued that the Community provisions on sea transport security are not properly applied. Inconsistency in the regulation of data protection in different Community law instruments is also referred to. The importance of taking account of the specific needs of the outermost regions is highlighted.

Table 5: A common set of obligations

- **Views are divided on the need and feasibility of establishing a common set of obligations at Community level. While some contributions stress the need to establish public service obligations sector-by-sector, other comments argue that a common concept is appropriate and necessary.**
- **There seems to be a broad consensus that regulation at Community level should establish principles and objectives, while Member States should be able to implement and specify the rules in line with the specific situations and needs existing at national and regional level.**
- **There is no agreement on the effective implementation of requirements in Community legislation or on the impact of these requirements on social and territorial cohesion. It is suggested that it is too early to form an opinion and that a more detailed assessment is necessary.**
- **Different views exist regarding the need to introduce additional obligations at Community level and regarding the need to extend existing requirements to other services of general interest.**

4.6. Sector-specific obligations

4.6.1. In general, no need for additional sector-specific obligations, but some proposals

Many comments do not see a need at this stage for introducing additional sector-specific public service obligations.

As regards supply security the energy sector is identified as the sector for which the issue is most relevant. However, it is also argued that other network industries or all infrastructure-based services could raise security of supply concerns. Telecommunications, postal services, transport, water, heating, broadcasting services and the supply of medicines are specifically mentioned. It is suggested that in the future security of supply could also become relevant for health, education, social and cultural services. Conversely, it is argued that the concept of security of supply does not fit for health and social services. Some contributions express the concern that liberalisation could have a negative effect on the security of supply. The need to ensure long-term investment in infrastructure-based services is highlighted as a key issue. It is also argued that security of supply should become an integral part of the universal service concept. Also, the interdependency of the security of supply of different services of general interest is underlined. For the electricity sector, it is maintained that supply security must be complemented by the aspects of continuity of production and the smooth functioning of the grid. However, there is broad agreement that currently no additional initiatives are required at Community level. One contribution stresses that security of supply should best be ensured closest to the citizen. It is argued that Community measures must not lead to a centrally defined energy mix. The need to continuously assess the situation of different sectors with regard to supply security is mentioned. Some contributions call for additional Community measures in the field of supply security. One contribution mentions that the issue is not appropriately addressed in the Water Framework Directive.

As regards access and interconnectivity, the view also seems to prevail that no specific Community initiatives have to be taken at this stage. For the telecommunications sector, the debate focuses on clarifying some issues related to the implementation of the current framework and some expressed views in favour of the extension of universal service to broadband and mobile telephony. However, it is also argued that access needs to be improved in general. Trans-European networks should be developed. It is argued that border regions deserve particular attention. Some contributions stress the need to ensure and improve access and interconnectivity in the railway sector. The need to improve trans-border trade in gas and water and trans-border interconnectivity in the electricity sector is also highlighted. Measures should be taken to prevent conflicts in cases where a public operator from one Member State acquires control over a private operator from another Member State. The interoperability of transport networks and the integration of transport systems should be stimulated.

No agreement exists with regard to water. While the view is taken that access to water networks should be opened, other contributions argue that the concepts of access and interconnectivity cannot apply to the water sector.

Furthermore, one contribution suggests encouraging the harmonisation of tariffs across the Union. It is also suggested that obligations relating to crisis or emergency situations should be developed. One contribution proposes additional measures

ensuring user and employee safety, technical safety as well as sustainable development and environment protection. It is suggested that cost-covering prices be introduced for water supply and a specific framework for waste. The establishment of an annual minimum investment standard is also proposed.

4.6.2. *Little support for a Community initiative on media pluralism at this stage*

The crucial importance of protecting media pluralism is widely recognised and the inclusion of Article 11(2) of the Charter of Fundamental Rights in the draft Constitutional Treaty established by the Convention is welcomed in several contributions. Some comments stress the importance of public broadcasters, other contributions underline the importance of private broadcasting for pluralism. The link between cultural diversity and media pluralism is highlighted. Some contributors are of the view that it would be better not to place a debate on media pluralism in the context of a discussion on services of general interest. One comment suggests that the issue should be addressed in more detail in a separate consultation.

On the substance, there is broad agreement that at this stage measures should not be taken at Community level and that the protection of the pluralism of the media should be left to the Member States. It is argued that media markets are essentially national in nature and that the diversity of situations in the different Member States could best be addressed at national level. Several contributions suggest that the aspect of pluralism is more strongly taken into account in the application of Community competition and state aid rules.

There are also some comments that call for an initiative at Community level. It is argued that pluralism is not always ensured by Member States. Several comments are in favour of a legislative measure such as a Directive. In particular, it is suggested that the issue of pluralism be addressed in the forthcoming revision of the Television without Frontiers Directive. It is proposed that a legal base should be created to implement Article 11(2) of the Charter. It is also suggested that an independent observatory be created for media pluralism.

Table 6: *Sector-specific obligations*

- **There seems to be little support for the introduction at Community level of additional sector-specific obligations at this stage. However, it is suggested that the situation should be closely monitored with regard to the different sectors, in particular with regard to security of supply. There are also some calls for an improvement of access and interconnectivity in some sectors.**
- **No agreement exists with regard to the opening of the water sector at Community level.**
- **There is broad agreement that no specific Community measures should be taken on media pluralism at this stage and that the protection of pluralism should be left to the Member States.**

4.7. Definition of Obligations and Choice of Organisation

4.7.1. Some concerns, in particular with regard to procurement and state aid

A number of comments stress that the application of Community law has led to problems with regard to the organisation of services of general interest and the definition of public service obligations. In this context, some contributions refer to negative consequences of Community liberalisation policies. It is suggested that the Member States' freedom to organise services of general interest should be explicitly recognised. However, the main concerns appear to result from the application, as perceived by respondents, of the Community rules with regard to public procurement, concessions and state aid. It is argued that the rules on tendering and state aid for services of general interest are unclear. Some contributions, coming in particular from the public sector mention that public procurement rules are too rigid and may impose an excessive burden on administration. Other contributions, in particular from the private sector, argue that award procedures for public services are not yet fully competitive and transparent, and that this creates an obstacle to the internal market. Many contributions ask for clarification, in particular as regards the "in-house" concept or the rules on concessions and public-private-partnerships. It is proposed that the procurement directives be revised so as to allow public authorities to take better account of issues such as environmental and social concerns. One contribution claims that in practice all cases requiring state notification cause problems because they prolong procedures. In addition, a number of specific issues and cases are mentioned. These include:

- the ECJ judgment in case C-519/99 of March 2002 concerning second homes in Austria,
- the prohibition by the ECJ of reduced entrance fees for museums in favour of the local population,
- the suspension of a system of aid to social housing in Sweden pending a state aid decision by the Commission,
- the refusal of an authorisation by a regional administration for a subsidy in favour of a local abattoir because of concerns with regard to its compatibility with Community state aid rules,
- the restrictions on the freedom of choice of organisation contained in the Commission proposal for a regulation on public services obligations in local public transport,
- the degradation of international rail services as a consequence of Community legislation,
- the obstruction to efficient provision of services through the envisaged reform of Regulation 1191/69,
- the restrictions resulting from the energy directives of the freedom of the Member States to organise their electricity sectors,
- the use of volunteers by social organisations, which could be considered a problem under the competition rules,
- the abolition in Austria of tax advantages for the purchase of goods manufactured by handicapped persons for reasons of distortion of competition,
- Community pre-accession funding which in practice was not available for projects involving private companies,
- the absence of Community legislation defining a level playing field for private and public companies.

Conversely, there are also many comments that stress that the application of Community law has not led to undue restriction of the organisation of services of general interest and the definition of public service obligations at national level.

4.7.2. Some examples for obstacles to the internal market created at national level

Some comments also mention situations where an obstacle to the completion of the internal market is created at national level. These examples include:

- contract award procedures that are not competitive and transparent,
- concerns of private broadcasters regarding a possible non-compliance by Member States with their obligation to define precisely the public service mission of public service broadcasters,
- tax discrimination in favour of public undertakings in a Member State,
- the obstacle to the export of waste from private households,
- the restrictive interpretation by national authorities of the concept of recovery in the area of waste management,
- access to the insurance and credit sectors,
- the distortion of competition through national compensation schemes for public service obligations,
- the limitation of the scope of economic activities of local authorities in national legislation,
- the bottlenecks created in the transport of goods by the priority given to passenger rail transport in one Member State,
- the distortion of competition through differences in the taxation systems of the different Member States,
- the implications of the introduction of environmental requirements for the transmission and transport of electricity.

4.7.3. No support for further harmonisation of public service obligations

There is broad agreement among contributors that in general any further harmonisation of public service obligations is not desirable. The importance of the principle of subsidiarity is frequently stressed in this context.

Only a few comments argue in favour of further harmonisation. One contribution supports progressive further harmonisation on the basis of regular evaluation reports. The areas of emergency services and geographical information are specifically mentioned. One contribution argues that the Community should establish maximum levels for public service obligations in order to prevent distortions of competition. Furthermore, it is proposed that the taxation of services of general interest in the Member States should be harmonised. Private broadcasters also suggested that the Commission should publish a list of definitions of public service missions for broadcasters in the Member States.

4.7.4. A broad interest in a flexible exchange of best practice regarding the organisation of services

There is a strong interest in an exchange of best practice and in benchmarking concerning the organisation of services. It is stressed that the diverse forms of organisation to be found in the Member States suggest that much can be gained from comparisons. However, it is underlined that the creation of an additional burden and

the duplication of processes must be avoided. Many contributions stress that new processes should not be institutionalised and refer to the possibility of using existing forums and procedures. Several contributions mention the application of the Open Method of Co-ordination. It is also suggested that the place for an exchange of best practice would be an observatory for the evaluation of services of general interest. Many contributions call for the involvement of all interested parties in the process. Some comments highlight the need to take due account of regional and sectoral differences. It is stressed that the process must not lead to the establishment of standards.

Only a few comments oppose an enhanced exchange of practice on the basis that additional comparisons are not necessary. Some contributions are reluctant in particular to support benchmarking in the area.

Table 7: Definition of obligations and choice of organisation

- **Some contributions highlight problems resulting from the application, as perceived by respondents, of Community law, in particular in the areas of procurement and state aid. There is a call for clarification of the rules on concessions and public-private-partnerships. Some comments also refer to situations where an obstacle to the completion of the internal market is created at national level.**
- **The comments largely agree that further harmonisation of public service obligations at Community level is not desirable.**
- **Many contributions express an interest in a flexible and non-bureaucratic exchange of best practice and benchmarking as regards the organisation of services of general interest.**

4.8. Financing

4.8.1. A widespread request to clarify the rules on financing

A perceived legal uncertainty regarding the rules applying to the financing of services of general interest, and in particular the application of state aid rules, is a key issue in the comments received. Many contributions from all categories of respondents request clarification of these rules. The need for clarification is highlighted by a range of different categories of respondents. The call for more legal certainty is made for services of general interest in general but it is particularly strong at the local level and concerning local services. Some contributions also refer to the burden of state aid procedures and call for simplification. Many contributions explicitly comment on the ECJ judgment in the Altmark case, which is seen as positive but not as sufficient to ensure legal clarity. It is expected that the conditions set out by the Court will be clarified and specified. Clarification of the methods of cost calculation (transparency, parameters) and of the nature of public service obligations that are compensated is referred to specifically.

Whilst the call for more legal certainty is widespread, no specific views seem to prevail on the instrument to be chosen. Some comments propose the adoption of a block exemption or advocate the approach proposed by the Commission in its Report to the Laeken European Council. Others are in favour of different instruments, such as an amendment of the Treaty, “a legal framework”, “guidelines”, “derogations”, or “a negative list”. There are also a number of comments that explicitly call for a non-

legislative clarification of the state aid rules. A number of contributions seem to confuse the issue of a framework directive with the issue of clarifying the state aid rules. Many organisations in favour of a framework directive expect the directive to set out the conditions under which services of general interest can be financed. A number of them refer explicitly to state aid and competition and possible exemptions as issues that should be covered in a framework directive.

Some comments, in particular from industry associations, stress the need for continued strict application of competition and state aid rules. According to these comments, the existing framework is sufficient and no additional clarification is necessary. These contributions seem to suggest that clarification would imply more lenient application of the rules. As regards the broadcasting sector, several contributions call for full application of the transparency directive. One contribution calls on the Commission to ensure equal, non-discriminatory and transparent discounts for airport fees.

While some contributions state that problems regarding the application of state aid rules have not occurred, other contributions mention cases where the application of state aid rules as perceived by respondents has led to problems. In addition to the examples mentioned under 4.7.1, these cases include:

- the creation of a municipal funding association in a Member State,
- the operation of a public ferry service in a sparsely populated region,
- the envisaged revision of Regulation 1107/70, which could lead to an additional administrative burden,
- territorial coverage in the areas of mobile telephony and broadband services,
- restrictions resulting from structural separation (unbundling) and obligations to tender.

4.8.2. A call in support of the freedom of Member States to determine the mode of financing

There is broad agreement that the Member States freedom to determine the mode of financing of a service of general interest must be preserved. It appears from a number of contributions that in practice there is no single ideal financing mode that would suit all situations and services. It is argued that Member States are in the best position to choose the appropriate mode of financing taking into account the diversity of situations and services. The flexibility of Member States must be preserved. However, it is stressed that the choices made must not distort competition. The need for a Community legislative instrument on concessions and public-private partnerships should be examined.

It is also highlighted that Community rules must not impede tariff averaging for services in the Member States. There is also mention that the direct financing of public broadcasting through the state budget would be unconstitutional in one Member State. It is noted that an obligation to tender restricts the freedom of choice of public authorities and it is requested not to impose at Community level public tendering for all services that require financial support. However, the view is also taken that compensation should in general be based on a tendering procedure. Furthermore, it is stressed that the Community should not introduce a general principle of affordability for all services. Several contributions call for the principle of cost recovery to be fully applied in the water sector.

With regard to solidarity-based financing, there is broad agreement that clarification at Community level is not required at this stage. Most contributions argue that this area should be left to the Member States for reasons of subsidiarity. However, it is also stressed that solidarity-based financing schemes in the Member States must not prevent the opening of insurance markets as set out in Community directives. Only a few comments suggest that further clarification at Community level is desirable, in particular with a view to increasing the possibilities of solidarity-based financing. The possibility of an evaluation of good practices at Community level is also mentioned.

Furthermore, it is suggested that the Community should develop co-financing instruments.

4.8.3. *Different views on cream-skimming*

There are different views expressed in the comments on cream-skimming. A number of comments argue that the problem is widespread, especially in liberalised sectors. It is stressed that cream-skimming always leads to results that are inefficient and against the general interest. The transport sector is specifically mentioned in a number of contributions. However, other comments, in particular from industry, take the view that cream-skimming is essentially not a problem in practice. It is argued that the problem cannot occur in fully liberalised sectors. One contribution states that cream-skimming cannot per se be seen as negative.

Other comments argue that cream-skimming can have negative effects in particular in cases of tariff averaging and internal cross-subsidisation between profitable and loss-making services. Problems that can arise in less populated regions are also referred to. It is argued that where selective market entry occurs, the provision of universal service must be carefully monitored.

Table 8: *Financing of services of general interest*

- **There is a firm call for clarification and simplification of the rules applying to the financing of services of general interest, in particular as regards state aid. The recent judgment of the ECJ in the Altmark case is seen as positive but not as sufficient.**
- **There is also a broad consensus that Member States must remain free to determine the most appropriate way of financing a service of general interest, provided competition is not unduly distorted.**

4.9. **Evaluation**

Regarding the evaluation of services of general interest, it is to be noted that different contributions attach a different degree of importance to the subject. Whilst for some contributors evaluation is a very important or even an essential issue, others seem to attach little or no importance to the question.

4.9.1. *Diverging views on the scope of evaluation at Community level*

A number of comments state that the evaluation currently performed at Community level, on a sectoral basis for different network industries and horizontally in the framework of the Cardiff process, is sufficient. Some comments argue that

evaluation at Community level should be limited to services for which a specific Community legislative framework exists, which have a trans-border dimension or to which the Method of Open Co-ordination is applied. Other comments, however, suggest that all services of general interest or all services of general economic interest should be evaluated at Community level.

A number of contributors stress that the evaluation is primarily a task for the authority that has defined and organised a service of general interest. Evaluation should be performed in general by national, regional and local authorities. In particular, local services should be evaluated by local administrations. Broadcasters underline that broadcasting should not be evaluated at Community level. It is stressed that an evaluation at Community level is only meaningful if the situations in the Member States are sufficiently similar.

It is also suggested that the performance of a service of general interest in the Member States is evaluated before proposals for market opening are made at Community level.

4.9.2. Diverging views on procedural and institutional arrangements

Some comments suggest that common principles or criteria should be established at Community level but that the evaluation should be left to the relevant authorities in the Member States. Other contributors are of the opinion that the Commission should perform evaluations at Community level. A number of comments, however, doubt that the Commission is in a position to evaluate the performance of services of general interest objectively and support the idea of the creation of an independent European observatory for the evaluation of services of general interest. There are some proposals for this observatory to be attached to the European Parliament. The idea of a European network of evaluation bodies is also suggested.

While many contributions suggest that a horizontal evaluation of services of general interest is desirable, it is also argued that only a sectoral evaluation is useful.

It is proposed that Community provisions on evaluation should be set out in a framework directive.

4.9.3. Evaluation should be multi-dimensional

There is broad agreement among contributors that, where services of general interest are evaluated, this evaluation should not only be based on criteria of short-term economic efficiency and competition but also on broader political, social, economic and environmental criteria. The Commission Communication of 2002 on an evaluation methodology¹⁵ is seen as appropriate in some contributions, whereas other comments suggest that a broader and more comprehensive approach is required.

A number of contributions suggest that the performance of services of general interest should be evaluated in particular against the public service obligations imposed on the provider.

¹⁵ COM(2002) 321

4.9.4. *Other comments*

As regards user involvement, user surveys and the involvement of consumer organisations are frequently referred to as the most appropriate instruments. Appropriate complaint mechanisms are also mentioned. Various cases of users and citizens committees involved in evaluation processes are highlighted as good practice. Eurobarometers are referred to as useful instruments by some, while others believe that they are not an appropriate tool.

Several comments stress the need for a pluralistic evaluation. It is proposed that social partners should also be involved in the evaluation process.

The need to discuss the results of the evaluation with all stakeholders is also mentioned.

A number of comments suggest that the relevant data are already largely available. Others stress the need to impose information obligations on the providers of services of general interest. Some contributors, in particular from the industry, are opposed to binding obligations. It is stressed that the burden for operators should not be increased. It is also suggested that EUROSTAT could have a role in providing the necessary data.

The need to create common data standards or common indicators at Community level is stressed in some comments. However, the difficulty of establishing useful indicator systems is also mentioned.

For health and social services, it is argued that evaluation standards do not yet exist and that the criteria applied for the evaluation of the network industries cannot be applied in the health and social sectors. Any standards established would need to respect the values of the European social model, such as health objectives of universality, equity and solidarity.

Table 9: <i>The evaluation of services of general interest</i>
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| <ul style="list-style-type: none">• While there are different views on the overall importance of evaluation, there is a broad consensus that evaluation should be comprehensive and take account of political, social, economic and environmental criteria.• No agreement exists as to the range of services to be subject to an evaluation or as regards the necessary procedural and institutional arrangements. |
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4.10. **The international dimension**

4.10.1. *Trade Policy: a call for consistency and more transparency*

Concerning trade policy, the need to ensure the consistency between the internal EU regulatory framework and any international obligations is forcefully highlighted. International trade agreements should not go beyond what has been discussed and agreed within the European Union. Conversely, it is also stressed that the internal framework must comply with WTO obligations.

As regards negotiations in the WTO framework, a number of organisations call for an improvement of the information flow and for more transparency regarding the development of the negotiations.

Some comments from industry underline that EU industries expect the Community to negotiate further market opening in the framework of the WTO negotiations in order to create new business opportunities for EU companies. Other comments suggest that the Community should not accept any further market opening within the WTO framework before the effects of the liberalisation processes already underway have been evaluated. It is also proposed that additional commitments should be made conditional upon an effective liberalisation in third countries.

A number of comments highlight the need to protect public services in international trade negotiations and to guarantee that the EU and the Member States maintain the capacity to define a regulatory and institutional framework ensuring that providers of services of general interest effectively fulfil the public service missions entrusted to them. The non-discriminatory regulation of services of general interest and the imposition of public service obligations should remain possible. Some comments go further and suggest reviewing the GATS agreement in order to improve the protection of services of general interest.

More specifically, representatives of the local and regional levels argue that international trade agreements must not interfere with decisions of local and regional authorities regarding services of general interest. International trade negotiations should strengthen local democracy and local self-administration. They must not lead to the liberalisation of public services provided by local authorities.

Several comments suggest that an exception for all services of general interest should be negotiated within the WTO framework. It is also proposed that non-economic services should not be covered. Other contributions maintain that certain services, such as water, waste water, health, education and social services should be exempted from WTO obligations. However, it is also argued that the inclusion of water supply and distribution in the scope of the GATS would have little impact, as governments remained free to decide how to organise water supply and distribution under their jurisdiction.

As regards broadcasting and audio-visual services, the view is expressed that these services should remain excluded from the scope of the GATS and could better be dealt with in a separate international convention on cultural diversity. Conversely, it is argued that cultural services should not be isolated from other services.

A number of contributions make the point that the Community approach on services of general interest in the context of international trade negotiations should be further clarified. It is also pointed out that the WTO terminology and the terminology used in Community internal legislation are not identical. It is proposed that a definition of public services be included in a framework directive that could also be used in the WTO context.

Further comments refer to the need to ensure that in international trade negotiations investors in newly privatised undertakings are protected against sudden shifts of government policies and the specific requirements of certain services of general

interest sectors, such as postal services, electronic communications, public transport or public health, are taken into account.

4.10.2. Development Co-operation Policy: basic public services are essential

The comments widely recognise the essential importance of basic services of general interest for the development of the poorest countries. However, while several contributions welcome the inclusion of development co-operation in the scope of the Green Paper, there is also the view that the Green Paper should not have covered this matter since it would have been better to deal with it in a separate debate.

A number of comments point out that the needs of the citizens of the poorest countries and their specific living conditions should serve as the starting point for defining a development strategy. Some contributions refer to the need for close co-operation with the local decision-makers in the developing countries and for the involvement of users in the management of services. The possibility of transferring know-how from EU industries to developing countries is highlighted. Some contributions however warn that solutions from EU Member States may not be adapted to the specific situations in developing countries. Europe should promote its model of society and the same principles should apply to services of general interest in the European Union and in developing countries. However, it is also suggested that standards cannot always be the same and must be adjusted to the specific requirements of these countries.

Access to finance and the attraction of private foreign investment are identified as the main problem. In this context, the importance of market opening, the creation of a stable political, economic and regulatory environment, regional integration and the need to protect investment are mentioned. The need to strengthen the private sector in developing countries is highlighted but a number of comments warn that privatisation should not be forced as it may not always be the most appropriate solution. EU trade policy should not counteract the development of services of general interest in developing countries. Many contributions stress that Public-Private Partnerships are a particularly useful instrument and should be facilitated and encouraged. The support of multi-donor initiatives, such as the Public Private Infrastructure Advisory Facility (PPIAF), are mentioned as a means to encourage private sector investment.

The particular importance of some sectors, such as water, energy, public transport, and geographical data is highlighted. Contributions from the broadcasting sector suggest that an international instrument could assist in supporting pluralism in developing countries.

A number of comments mention that co-ordination and co-operation within the European Union should be improved. Some suggest that more financial support should be given or that the provision of services of general interest should be improved in the developing countries. It is also suggested that financing should be better targeted. Several comments mention the need to review the relevant procedures of the European Union. There is also reference to the need for a reform of the Common Agricultural Policy in order to allow the developing countries to compete.

Several contributions suggest including provisions on development co-operation in a framework directive.

The Commission Communication of 3 June 2003 on the reform of public utilities in developing countries is mentioned as providing a good basis for further discussion.¹⁶

Table 10: *The international dimension*

- **There is a clear request to ensure that the positions taken by the Community in international trade negotiations are fully consistent with the EU's internal regulatory framework.**
- **A number of comments also call for more information and transparency as regards international trade negotiations.**
- **The crucial importance of basic essential services for the development of the poorest countries is widely recognised. Access to finance and the attraction of foreign investment are identified as the main problem.**

¹⁶ The Reform of State-Owned Enterprises in Developing Countries with focus on public utilities: The Need to Assess All the Options, Communication from the Commission, COM(2003) 326, 3.6.2003

ANNEX 1: SUMMARY TABLE OF ALL QUESTIONS SUBMITTED FOR DISCUSSION

What kind of subsidiarity?

- (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?
- (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?
- (3) Are there services (other than the large network industries) for which a Community regulatory framework should be established?
- (4) Should the institutional framework be improved? How could this be done? What should be the respective roles of competition and regulatory authorities? Is there a case for a European regulator for each regulated industry or for Europe-wide structured networks of national regulators?

Sector-specific legislation and general legal framework

- (5) Is a general Community framework for services of general interest desirable? What would be its added value compared to existing sectoral legislation? Which sectors and which issues and rights should be covered? Which instrument should be used (e.g. directive, regulation, recommendation, communication, guidelines, inter-institutional agreement)?
- (6) What has been the impact of sector-specific regulation so far? Has it led to any incoherence?

Economic and non-economic services

- (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?

A common set of obligations

- (9) Are there other requirements that should be included in a common concept of services of general interest? How effective are the existing requirements in terms of achieving the objectives of social and territorial cohesion?
- (10) Should all or some of these requirements be extended to services to which they currently do not apply?

- (11) What aspects of the regulation of these requirements should be dealt with at Community level and which aspects left to the Member States?
- (12) Have these requirements been effectively implemented in the areas where they apply?
- (13) Should some or all of these requirements also be applied to services of general interest of a non-economic nature?

Sector-specific Obligations

- (14) Which types of services of general interest could give rise to security of supply concerns? Should the Community take additional measures?
- (15) Should additional measures be taken at Community level to improve network access and interconnectivity? In which areas? What measures should be envisaged, in particular with regard to cross-border services?
- (16) Which other sector-specific public service obligations should be taken into consideration?
- (17) Should the possibility to take concrete measures in order to protect pluralism be re-considered at Community level? What measures could be envisaged?

Definition of Obligations and Choice of Organisation

- (18) Are you aware of any cases in which Community rules have unduly restricted the way services of general interest are organised or public service obligations are defined at national, regional or local level? Are you aware of any cases in which the way services of general interest are organised or public service obligations are defined at national, regional or local level constitutes a disproportionate obstacle to the completion of the internal market?
- (19) Should service-specific public service obligations be harmonised further at Community level? For which services?
- (20) Should there be an enhanced exchange of best practice and benchmarking on questions concerning the organisation of services of general interest across the Union? Who should be involved and which sectors should be addressed?

Financing

- (21) Are you aware of any cases in which Community law, and in particular the application of State aid rules, has impeded the financing of services of general interest or led to inefficient choices?
- (22) Should a specific way of financing be preferred from the point of view of transparency, accountability, efficiency, redistributive effects or competition? If so, should the Community take appropriate measures?
- (23) Are there sectors and/or circumstances in which market entry in the form of «cream-skimming» may be inefficient and contrary to the public interest?

- (24) Should the consequences and criteria of solidarity-based financing be clarified at Community level?

Evaluation

- (25) How should the evaluation of the performance of services of general interest be organised at Community level? Which institutional arrangements should be chosen?
- (26) Which aspects should be covered by Community evaluation processes? What should be the criteria for Community evaluations? Which services of general interest should be included in an evaluation at Community level?
- (27) How could citizens be involved in the evaluation? Are there examples of good practice?
- (28) How can we improve the quality of data for evaluations? In particular, to what extent should operators be compelled to release data?

Trade Policy

- (29) Is there any specific development at European Community internal level that deserves particular attention when dealing with services of general interest in international trade negotiations? Please specify.

Development Co-operation

- (30) How can the Community best support and promote investment in the essential services needed in developing countries in the framework of its development co-operation policy?

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- 6 AMT DER WIENER LANDESREGIERUNG
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- 75 CONSUMERS' ASSOCIATION
- 76 CONVENTION OF SCOTTISH LOCAL AUTHORITIES - COSLA
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- 197 ÖSTERREICHISCHER GEMEINDEBUND
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- 207 PORTS DE FRANCE
- 208 PORTUGESE ENERGY REGULATOR

209 POSTEUROP HEADQUARTERS

210 PUBLIC UTILITIES COMMISSION OF LATVIA

211 RED CROSS/ EU OFFICE

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- 267 VERTRETUNG DES DEUTSCHEN INDUSTRIE- UND HANDELSKAMMERTAGES BEI DER E.U.
- 268 VLAAMSE CONFEDERATIE VAN SOCIAL PROFIT ONDERNEMINGEN (VCSP0)
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- 270 WATERVOICE
- 271 WIENER DACHVERBAND FÜR SOZIAL-ÖKONOMISCHE EINRICHTUNGEN
- 272 WIRTSCHAFTSKAMMER ÖSTERREICH
- 273 ZENTRALVERBAND DES DEUTSCHEN HANDWERKS