

EUROPEAN PARLIAMENT

1999



2004

Session document

FINAL
A5-0484/2003

17 December 2003

REPORT

on the Green Paper on services of general interest
(COM(2003) 270 – 2003/2152(INI))

Committee on Economic and Monetary Affairs

Rapporteur: Philippe A.R. Herzog

Draftsman(*): Ioannis Koukiadis, Committee on Legal Affairs and the Internal
Market

(*) Enhanced cooperation between committees - Rule 162a

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(*) Enhanced cooperation between committees - Rule 162a

PROCEDURAL PAGE

By letter of 22 May 2003 the Commission forwarded to Parliament its Green Paper on services of general interest (COM(2003) 270), which had been referred for information to the Committee on Economic and Monetary Affairs.

At the sitting of 4 September 2003, the President of Parliament announced that the Committee on Economic and Monetary Affairs had been authorised to draw up an own-initiative report under Rules 47(2) and 163 and the Committee on Legal Affairs and the Internal Market, Committee on Industry, External Trade, Research and Energy, Committee on Employment and Social Affairs and the Committee on Regional Policy, Transport and Tourism had been asked for their opinions (C5-0376/2003).

At the sitting of 4 September 2003 the President of Parliament announced that the Committee on Legal Affairs and the Internal Market, which had been asked for its opinion, would be involved in drawing up the report under Rule 162a.

The Committee on Economic and Monetary Affairs had appointed Philippe A.R. Herzog rapporteur at its meeting of 15 January 2003.

The committee considered the draft report at its meeting(s) of 11 June 2003, 1 October 2003, 7 October 2003, 4 November 2003, 24 November 2003, 1 December 2003 and 15 December 2003.

At the latter meeting it adopted the motion for a resolution by 30 votes to 5, with 1 abstention.

The following were present for the vote: Christa Randzio-Plath, chairwoman; Philippe A.R. Herzog, vice-chairman and rapporteur, John Purvis, vice-chairman; Pervenche Berès, Hans Blokland, Hans Udo Bullmann, Benedetto Della Vedova, Bert Doorn (for Renato Brunetta), Harald Ettl (for David W. Martin), Jonathan Evans, Michael Gahler (for José Manuel García-Margallo y Marfil pursuant to Rule 153(2)), Robert Goebbels, Lisbeth Grönfeldt Bergman, Mary Honeyball, Christopher Huhne, Anne Elisabet Jensen (for Olle Schmidt pursuant to Rule 153(2)), Othmar Karas, Giorgos Katiforis, Christa Kläß (for Ingo Friedrich pursuant to Rule 153(2)), Christoph Werner Konrad, Hans-Peter Mayer, Werner Langen (for Brice Hortefeux), Alain Lipietz, Helmuth Markov (for Armonia Bordes), Miquel Mayol i Raynal, Winfried Menrad (for Astrid Lulling), Fernando Pérez Royo, Alexander Radwan, Bernhard Rapkay, Karin Riis-Jørgensen, Peter William Skinner, Bruno Trentin, Ieke van den Burg (for Helena Torres Marques), Theresa Villiers, Olga Zrihen Zaari (for a member to be nominated pursuant to Rule 153(2)) and Joachim Wuermeling (for Piia-Noora Kauppi pursuant to Rule 153(2)).

The opinions of the Committee on Legal Affairs and the Internal Market, of the Committee on Industry, External Trade, Research and Energy, of the Committee on Employment and Social Affairs and of the Committee on Regional Policy, Transport and Tourism are attached; the Committee on Culture, Youth, Education, the Media and Sport decided on 11 September 2003 not to deliver an opinion.

The report was tabled on 17 December 2003.

MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on the Green Paper on services of general interest (COM(2003) 270 – 2003/2152(INI))

The European Parliament,

- having regard to the Commission Green Paper on services of general interest (COM(2003) 270)¹,
- having regard to Article 36 of the Charter of Fundamental Rights of the European Union concerning access to services of general economic interest,
- having regard to Articles 2, 5, 16, 73, 86, 87, 88 and 295 of the EC Treaty,
- having regard to Article 16 of the EC-Treaty, as strengthened by the Treaty of Amsterdam,
- having regard to its previous resolutions on services of general interest (SGI), in particular its resolution of 13 November 2001 on the Commission communication on 'Services of general interest in Europe'², and to its resolution of 17 December 1997 on the Commission communication 'Services of general interest in Europe'³,
- having regard to sectoral directives of the European Parliament and of the Council on postal, telecommunications, energy and transport services,
- having regard to proposals for directives of the European Parliament and of the Council on the coordination of procedures for the award of public supply contracts, public service contracts and public works contracts presented by the Commission (COM(2000) 275)⁴ and coordinating the procurement procedures of entities operating in the water, energy and transport sectors presented by the Commission (COM(2000) 276)⁵,
- having regard to the conclusions of the Lisbon Council of 23 and 24 March 2000, and in particular paragraphs 17 and 19 thereof, and to the requirements submitted to the Commission, the Council and Member States therein,
- having regard to the conclusions of the Nice European Council on services of general interest and the statement on services of general economic interest of 11 December 2000,
- having regard to the conclusions of the Laeken European Council on services of general interest of 15 December 2001,
- having regard to Articles I.5, II.36 and III.6 of the draft Constitutional Treaty,

¹ Not yet published in OJ.

² OJ C 140(E), 13.6.2002, p. 153.

³ OJ C 14, 19. 1. 1998, pp 53 and 74.

⁴ OJ C 29(E), 30.1.2001, p. 11.

⁵ OJ C 29(E), 30.1.2001, p. 112.

- having regard to the case law of the European Court of Justice relating to services of general interest, and in particular to the Chronopost judgment of 3 July 2003 and the Altmark judgment of 24 July 2003,
 - having regard to its resolution of 12 March 2003¹ on the General Agreement on Trade in Services (GATS), which concerns inter alia the protection of services of general interest in the EU in the context of negotiations within the WTO,
 - having regard to the public conference held on this subject on 11 June 2003 by the Committee on Economic and Monetary Affairs,
 - having regard to Rules 47(2) and 163 of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs, and to the opinions of the Committee on Legal Affairs and the Internal Market, the Committee on Industry, External Trade, Research and Energy, Committee on Employment and Social Affairs and the Committee on Regional Policy, Transport and Tourism (A5-0484/2003),
- A. whereas services of general interest are an integral part of the economic and social system in each Member State and of the European social model as a whole; whereas, - in particular in the area of services of general economic interest - they display very different characteristics from one Member State to another,
 - B. whereas availability of efficient services of general interest, including those supported by network infrastructure, represents a key objective in Member States economic and social policies,
 - C. whereas in accordance with Article 295 of the EC Treaty the European Union is neutral in relation to forms of property; whereas Article I-5 (1) of the draft Constitution draws attention to the significance of regional and local self-government,
 - D. whereas the success in establishing the single market and the priorities of the authors of the Treaty of Rome (opening-up of markets and growth in trade in response to competition) should lead the Union to concern itself with introducing efficient, high-performance services of general interest for all,
 - E. whereas economic union is based on the internal market and the Union has exclusive competence in drawing up the rules of competition necessary to its operation, while Member States have competence for providing and executing services of general interest,
 - F. whereas recognition of the specific situation in rural areas (socially disadvantaged areas, marginal conditions, etc) merits special consideration,
 - G. whereas, in the matter of compatibility between the rules of the internal market and competition and the smooth operation of services of general interest, more legal certainty

¹ P5_TA(2003)0087

must be created in order to guarantee Member State competence for the provision of services of general interest,

- H. whereas liberalisation in leading sectors in the internal market is a factor in technological progress and economic efficiency and can bring benefits to the citizens such as wider choice of services and better value for money, but an in-depth assessment of its impact remains to be accomplished; whereas legal uncertainty, dominant positions and market abuses can nullify both the freedom of the market and the smooth functioning of services of general interest,
- I. whereas the impact of market opening on net employment has been largely positive, and the liberalisation of the network industries has led to the creation of almost a million jobs throughout the EU,
- J. whereas in an increasingly integrated European market, citizens and enterprises need efficient services of general interest and trans-European networks; whereas the success of the Union's competitiveness and growth strategy (as laid down in the conclusions of the Lisbon Summit intended to turn Europe into the most competitive and dynamic knowledge economic in the world) also depends on them,
- K. whereas Article 16 of the EC-Treaty, as strengthened by the Treaty of Amsterdam, calls on the Community and on Member States to ensure, within the framework of their powers, the supply of services of general economic interest; whereas that commitment is enshrined in the Charter of Fundamental Rights,
- L. whereas in the interpretation of the specific provisions of the Treaties concerning services of general economic interest (such as Article 86(2) of the EC Treaty), neither the Commission nor Court of Justice case law have as yet ensured legal certainty or a sufficiently consistent operational framework,
- M. whereas the draft Treaty establishing a Constitution for Europe includes important provisions concerning services of general economic interest, in particular: Article I.3, which makes economic, social and territorial cohesion one of the objectives of the Union; Article III.6, which serves to strengthen Article 16, with legislative powers for the Union aimed at clarifying the principles and conditions enabling the missions of services of general economic interest to be discharged; and Article I.5, which refers to local and regional self-government in terms of respect by the Union for essential State functions,
- N. considers however that the wording of Article III.6 must precise that the European Law will be applied without prejudice of the rights of the Member States, within Constitution framework, to furnish, execute and finance these services,
- O. whereas services of general economic interest have a direct effect on the operation of the internal market; whereas Article 95 provides the legal basis for the formulation of Community action in this sphere; whereas, following the entry into force of the European Union Constitution, the proposal for a relevant instrument must be based on Article III-6,
- P. whereas under Article 16 TEC, added by the Treaty of Amsterdam, services of general economic interest are already called upon to play an essential role in the promotion of social and territorial cohesion and, consequently, the guaranteeing of certain basic

principles in their operation, such as the universality of the services, continuity, affordability and quality, is a fundamental element in the shaping of European general interest,

- Q. whereas the existence of sectoral directives is not inconsistent with the adoption of a framework directive
- R. whereas the distinction made in the Green Paper between, in the first place, network industries, secondly, other services of general economic interest and, thirdly, services of general interest of a non-economic nature is an appropriate one, and whereas sector-specific Community legislation applies more or less automatically only in the second case, and whereas projects going beyond this must be discussed individually and must be compatible with the principle of subsidiarity,
- S. whereas in many cases public contracts for supply, services and public works are connected with the provision of general interest services,
- T. whereas care must be taken to ensure conditions for fair competition between publicly funded and other broadcasters without undermining the right of Member States to fund public service broadcasters and to define their public service remit,
- U. whereas the model of the eco-social market economy is the European model for the future which in turn incorporates the fundamental principles of the Lisbon objectives and is embodied in Article I-3 (3) of the draft Constitution,
- V. whereas, in its most recent judgment on the issue of aid (Altmark judgment of 24 July 2003 - case C-280/00), the European Court of Justice precisely defined the conditions for the financing of general interest services through state aid, and whereas those conditions as defined constitute a reliable criterion for all involved,
- W. whereas sectoral EU directives on services of general interest in network industries and other sectors in which market opening has been achieved or begun provide a reliable framework for greater competition and compliance with the conditions of equality of access, security of supply, continuity, high quality and legal certainty as well as of democratic accountability, by defining universal service and setting up independent regulatory authorities,
- X. whereas, as regards the choice of the form of organisation, it should be stressed that Article 295 of the TEC requires a neutral approach by the Community in relation to Member States' choice of public or private ownership of companies,
- Y. whereas the gradual opening up of monopolised markets within the framework of the internal market programme has been a complete success and whereas this represents the only effective contribution to the Lisbon strategy thanks to which Europe's competitiveness is able to be sustainably improved,
- Z. whereas, in the preamble to the GATS, it is left to the Members of the WTO to regulate the supply of services within their territories in order to meet national policy objectives, and whereas the GATS does not prescribe privatisation or deregulation of services of general interest,

1. Welcomes the appearance of the Green Paper on services of general interest as a Commission initiative, and the intensive consultation that followed; supports this commitment to debate and work on a better understanding of the variety of services of general interest;
2. Underlines that services of general interest are complex and constantly evolving, and that the organisation of these services are different in all Member States according to cultural traditions and geographical conditions
3. Confirms that European citizens should receive comprehensive high-quality services of general interest at affordable prices or, where the social situation makes it necessary, free of charge;
4. Points out, moreover, that the decisive factor is not who provides services of general interest, but that quality standards and an equitable social balance must be maintained, with reliability of supply and continuity being fixed as the criteria of provision; welcomes the Commission's statement to the effect that it remains neutral as to whether services of general interest are provided by public-sector or private undertakings;
5. Considers it necessary, on the strength of successes hitherto with the liberalisation of important areas of services under the internal market programme, that the liberalisation already initiated in the areas of transport, electricity and gas should be implemented promptly; points out that moves to liberalisation hitherto have resulted in to better quality at more reasonable prices, improved the availability of the most advanced technologies, and boosted the competitiveness of European undertakings and efforts to safeguard jobs;
6. Believes that the process of progressive market liberalisation that has been undertaken by the EU has provided the major component in the improvements in services of general economic interest over the last decade. Recalls that one of the motivations for liberalisation was the generally poor services prevailing prior to market opening, and is concerned not to return to monopoly provision;
7. Notes that the liberalisation of key public services and the introduction of competition has been shown to deliver major benefits to consumers in terms of innovation, quality, choice and lower prices;
8. Believes therefore that the review being undertaken in the context of the Green Paper should not lead to changes in the approach taken at sectoral level;
9. Notes the success of sector-specific regulations, notably in the field of energy and communications, and considers that this approach should be expanded into other sectors;
10. Remains sceptical of the value of a general framework directive which does not appear to offer any demonstrated benefits over a sector-specific approach;
11. Believes that the services of general economic interests cover such a broad range of industries – and includes among them sectors where monopoly rights have been fully abolished, such as telecoms – that a framework Directive could not adequately embrace these differences; fears in practice that such a Directive might undermine and confuse the sectoral liberalisation Directives previously adopted by Parliament and Council;

12. Strongly supports the provision of high quality, value for money public services. Strongly supports the right of Member States to fund public services out of taxation where they consider this to be appropriate. Notes also that Member States may often choose to fund public services from taxation, while at the same time leaving the organisation and provision of those services to the private or voluntary sector – just because Member States fund public services does not mean they have to run public services. Further notes that where Member States do choose to make use of the private and voluntary sector in this way, there is significant potential to improve the quality and efficiency of service provision by opening up cross border competition;
13. Welcomes the liberalisation in the fields of telecommunications, postal services, transport and energy, which has led to modernisation, interconnection and integration of the sectors, has led to price reductions through increased competition, and has led to the creation of nearly one million jobs across the European Union;
14. Highlights the fact that liberalisation has not been to the detriment of the provision of universal service;
15. Stresses that the EU's internal market policy has led to better quality, lower prices and better availability at a high level of technology;
16. Acknowledges the existence of laws in some sectors and observes that the liberalisation of telecommunication services is an example of the supply of services in a competitive context;

Objectives and legal framework

17. Considers that any rules intended to be applied more widely must be based exclusively on the legal basis of the European Treaties in force, and that the Constitution cannot and must not be invoked until after it has been ratified;
18. Reiterates the fundamental importance of the subsidiarity principle, in accordance with which the competent authorities of the Member State are free to make their choice of missions, organisation and financing arrangements for services of general interest and services of general economic interest; stresses that no directive can lay down a uniform European definition of services of general interest, since their definition and structuring must continue to fall exclusively within the competence of Member States and their constitutionally established subdivisions;
19. Points out that the task at Community level for Services of General Interest in general consists in verifying that initiatives for provision of SGI on national, regional or local level are compatible with the internal market and the rules on competition;
20. Considers that it is neither possible nor relevant for common definitions of services of general interest, or of the public-service obligations resulting from them, to be drawn up, and that an eventual framework instrument would be much too general in nature to provide added value, and may risk jeopardising the continuous development of services of general interest

Principles and criteria for defining services of general interest and services of general economic interest

21. Calls on the Legislator to clarify the distinction between services of general interest and services of general economic interest; notes that for many services of general interest, the "economic/non-economic" distinction is extremely difficult, because - due to the dynamic character of these services - its borderline is rapidly evolving; proposes in that connection that the following criteria could be used to distinguish between economic and non-economic services : purpose of provision and supply (commercial or non-commercial); percentage of public-sector funding; level of investment; profit-motive, as distinct from covering costs; benefits as between local supply provision and a Europe-wide tendering requirement; commitment to guaranteeing social rights; furtherance of social inclusion and integration; these criteria can also be used to set up exemptions to the general competition rules in the case of economic services of general interest;
22. Considers that services of general interest provided as essential functions by the public authorities, in the areas of basic education, and social services of general interest assuming functions of social security and social inclusion, should be excluded from the scope of competition rules if they have no economic impact and cannot be rendered in a competitive market; so also should services of general interest provided as a matter of pluralism of information and cultural diversity; wishes, moreover, to see objectives and tools put in place that will enable more active common policies to be pursued in those areas; notes that, in the area of higher education and even more in the area of health, private entities play a significant role, and that it is not possible categorically to exempt SGI provided in these areas from the scope of competition;
23. Points out that in the case of services of general interest and services of general economic interest provided on the responsibility of local and regional public authorities, the conditions for exercising freedom of administration are fundamental, subject to the requirements of transparency, the proper functioning of the internal market and the rules on state aid and competition;
24. Points out that in general, a good many services of general interest can be provided under fair competition, and stresses that private and public-sector undertakings must be dealt with essentially on equal terms in that connection;

Financing and organisation

25. Welcomes the effect of the Altmark judgment in confirming by way of European case law that financial compensation on the basis of obligations to provide a public service is not governed by the rules of State aid as soon as it begins to meet four inter-related conditions, viz. clarity of obligations, transparency of calculation parameters, proportionality, public-service tendering procedure or comparison with a reference enterprise's costs;
26. Notes, nevertheless, the persistence of uncertainties relating to the problem of the method of calculating relevant costs, and to the fact that other transparent and non-discriminatory public procedures are not referred to in the judgment; calls on the Commission, acting in

close coordination with the European Parliament and Member States, to draw up a Community legal framework for aid in order to remove those legal uncertainties;

27. Points out that at present in Member States different forms of financing and organisation exist; draws attention to the principle that the internal market and competition must not be restricted any more than necessary, and considers an examination of the different financing arrangements as appropriate in order to determine which of them comes closest to meeting those conditions;
28. Hopes that the Community legal framework for aid will guarantee diversity of financing arrangements - grant of exclusive rights, subsidies, tariff averaging, operator-financed funds;
29. Stresses that calculating the actual costs of services of general economic interest is a problem, and calls for clear rules that will create transparency in determining the costs of providing services of general economic interest and ensure that any form of competition-distorting subsidy over and above the actual costs of provision will be excluded;
30. Points out that it is not important that services of general, general economic or even public interest be carried out by the public sector, but rather that it may be freely decided whether services of this kind are to be performed by the public sector itself or by self-employed or private businesses;
31. Considers any privileging of public-sector undertakings, whether by way of aid or of fiscal-policy measures affecting economic activities that are brought into competition with private undertakings, as, for example, in house-building and the transport sector, as unjustifiable in terms of competition policy;
32. Highlights the fact that services are provided by the private sector and especially by those in the professions, which is appropriate in the interests of ensuring a high level of service and economic efficiency in conjunction with appropriate use of market mechanisms whilst fully protecting public interests through supervision and self-regulation according to the particular circumstances;
33. Points out that the fundamental obligation on the public sector to apply fair and appropriate tendering procedures in accordance with legislative requirements at European and Member-State level can be an effective mechanism for preventing inappropriate restrictions on competition that at the same time enables the public authorities themselves to lay down and monitor conditions for ensuring quality, availability, social standards and compliance with environmental requirements;
34. Notes the importance of transparency in the arrangements made for funding publicly funded broadcasters as an important means of ensuring fair competition between publicly-funded and other broadcasters;
35. Notes the importance in ensuring competition in the banking sector and of eliminating state aids for banks;
36. Calls, to ensure compliance with the subsidiarity principle, to recognise the right of local and regional authorities to 'self-produce' services of general interest independently;

37. Considers also that operators active on a competitive market, whatever their legal status, must be treated equally under fiscal legislation; considers, in particular, that the fact that public-sector undertakings are exempted from turnover tax on certain activities violates the principle of competition-neutrality;
38. Underlines the importance of always providing citizens with a free choice as regards services of general interest, and to secure high quality services at competitive prices;

Sectoral regulations

39. Welcomes the sectoral liberalisation so far achieved and appreciates the fact that especially consumers with low income has benefited from the liberalisation in particular in the telecommunication and energy sectors;
40. States that even if existing sectoral directives have not always achieved all their objectives for creation of a large internal market in the case of energy or for establishment of a level playing field in the case of telecommunications, however, that these deficiencies are often due to either the non-application or incorrect application of Community rules by Member States; or the unsatisfactory compromises reached by Member States on some provisions of the relevant directives;
41. Is of the opinion that such deficiencies should be repaired by modifying these instruments, not by putting in place a one-size-fits-all European framework directive;
42. Emphasises that this successful outcome has only been possible thanks to the activities of national regulatory authorities during the transitional phase, and that this applies equally to other sectors; stresses that experience to date in the various industry sectors shows, however, that greater cooperation and integration of national regulatory practice at the European level is needed;
43. Rejects, at this time, the option of European regulators at sectoral level, but calls for the strengthening of coordination and cooperation between the authorities responsible for national regulations in order to make the latter more consistent;
44. Calls on the Member States, in connection with the liberalisation of electricity markets, to implement the EU directive in a consistent manner in terms of timing and substance, in order to prevent new distortion of competition;
45. Is convinced that the liberalisation that has taken place to date in the gas market is insufficient, and that it is only through the legal unbundling of gas transportation and sales by 2007 that genuine competition can be achieved;
46. Stresses that further, gradual liberalisation of postal services is appropriate on the basis of the EU concept of universal service, with a view to enabling customers to benefit from reliable services at reasonable prices throughout the respective territory;
47. Reminds the Commission that in its resolution of 13 November 2001 it called on it to submit expert opinions and proposals with regard to waste management to ensure that

waste is disposed of safely and recycled ecologically even without obligations for tendering and permits by establishing a market economy framework;

48. considers that liberalisation of water supply (including wastewater disposal) should not be carried out in view of the distinctive regional characteristics of the sector and local responsibility for provision of drinking water as well as various other conditions relating to drinking water; calls, however, without going as far as liberalisation, for water supply to be 'modernised' and for the principle of equal treatment of public and private companies to be enforced by means of a variety of individual measures involving limited market opening and the removal of restrictions on competition;
49. Takes the view that benchmarking, economic-efficiency testing, cooperation and efficiently structured undertakings should also be sought in water management, and that a good many specific measures providing limited openings to the market short of full liberalisation will impact favourably on security of supply, price structures and the protection of ground water and the environment;
50. Points out that in the case of network industries providing services of general economic interest, where the Legislator has decided to establish a single market, specific sectoral directives are necessary; whereas Member States, in accordance with their traditions, can, if they so wish, lay down public-service obligations, in particular for universal service, safety and security; points out that specific public-service obligations for interconnection and security of supply, and to ensure social and territorial cohesion also fall within the competence of Member States;

Assessment

51. Considers that regular evaluation needs to be carried out of services of general economic interest, with the objectives of effectively achieving a higher quality of life, greater environmental protection and greater social cohesion for Union citizens at Community and national level, in which the European Parliament will play a decisive role;
52. Calls on the Commission to draw up a communication on the criteria for consistency between European Union trade policy and the options for services of general interest, supports further negotiations in the areas of liberalisation of trade in services;
53. Takes the view that any changes that may be introduced within the context of the WTO negotiations - the further outcome of which is, however, currently unclear - and in particular those affecting the GATS area must be discussed in good time and in detail with the European Parliament and the competent committee;
54. Instructs its President to forward this resolution to the Council and the Commission, the Economic and Social Committee, the Committee of the Regions, the Parliaments of the Member States, social partners and concerned associations.

EXPLANATORY STATEMENT

The Treaties, from Rome to Maastricht, have established a framework under which we are building a large market, but the Member States retain competence for services of general interest. This is a reasonable position given the great diversity of national policies in this area - and it posed no major problems until the early 1990s.

But since the Maastricht Treaty and the decision to make the transition from Common Market to Single Market, integration has moved forward considerably. Divergences in definitions, policies and interests are generating conflicts. Liberalisation and competition have led to price falls and technological innovation, but neither can it be denied that there have been market failures (security problems on networks, insufficient interconnection and investment). The Lisbon strategy for competitiveness and growth with an economy based on knowledge does not at present have at its disposal the networks of services of general interest necessary.

On the basis of the Langen report, the European Parliament adopted, on 13 November 2001, a resolution to improve the predictability and legal certainty on services of general interest in the framework of the competitive European market. The consensus that enabled that result must be maintained, and continues to provide the basis for my report.

The Commission Green Paper published at the end of May 2003 is intended to improve the consideration given to services of general interest in Europe by way of efforts to share common principles and conditions. It has aroused lively interest. Responses to the consultation process have flowed in. Even if they are not always consistent, they are rich and constructive. A number of events during this period have provided food for such thought. The draft Constitutional Treaty proposed an improved legal basis for enacting Community law. The Altmark judgment confirms the Ferring judgment and specifies the conditions under which compensation on the basis of public-service obligations can avoid classification as State aid. Trans-European network projects have been relaunched. Crises in the electricity sector raise questions about the implementation and quality of regulation.

In those circumstances, the call for a framework directive made in the Langen report is all the more justified. Your rapporteur reiterates that call and proposes a structure and overall guidelines for giving substance to it.

After stating his preference for the new basis included in the draft Constitutional Treaty, he draws attention to the paramount importance of the subsidiarity principle and adopts a general approach aimed at strengthening freedom of choice for the public Authorities responsible for services of general interest, in particular in the case of local and regional authorities - subject, of course, to compliance with the principles of transparency. The European Union, for its part, must ensure compliance with the rules of the market and competition - and do so specifically so as to ensure compatibility with services of general interest. It will also be expected to ensure respect for fundamental rights and achievement of the Lisbon objectives. In that connection your rapporteur would have preferred to go further, with an approach based on establishing European public resources with specific missions and regulations that would promote consistency with those of Member States; but he had to take into account the clear majority of opinion, both in the European Parliament and in companies, against increased powers being given to the Union at this stage.

The framework directive will, firstly, lay down common principles and criteria for defining services of general interest by the competent public authorities, but it will not be expected to go further, i.e. to harmonise public-service obligations (except under sectoral directives where the Union decides to create a single market). Secondly, the framework directive will have to clarify the concept of services of general economic interest, as used in the Treaties without providing definitions of either services of general interest or services of general economic interest. The Commission and the Court of Justice interpret the concept controversially, prioritising market criteria or the presumption of a potential market. The report distinguishes between services clearly to be excluded from internal market rules and from competition (services discharged as essential functions of Member States, and social security and social inclusion), and other services. The latter are often 'mixed', both social and economic or, indeed, environmental, and are often those for which towns and regions claim enhanced administrative freedom. In that connection the report proposes specific provisions, and not the implementation, pure and simple, of the rules of the market and competition. Lastly, in the case of services of general interest provided in single-market network industries, the report firmly asserts the primacy of sectoral directives. Thirdly, the framework directive must next deal with organisation and financing. The report touches on such very sensitive subjects as the right to independent service-production, the statute of non-profit-making enterprises, public-private concessions and partnerships, criteria for impact on trade, and services of general interest in cross-border areas. It welcomes the Altmark judgment, but questions its conditions of application, and specifies in particular the conditions in which responsibility must be taken for the crucial problem of calculating costs. It questions also the implementation of the neutrality principle and the fact that public enterprises providing services of general interest are too often automatically treated as suspect, and calls for the scope of Commission activities to be bound by appropriate criteria.

The Green Paper is not confined to the framework directive, and the report therefore extends also to other dimensions of Community activity. It calls for a pluralist public-service assessment method to be introduced without further delay, and draws up specific proposals to that end. It deals with certain aspects of the sectoral directives that entail questionable structural choices, warning against excesses of industrial 'separation'. It calls for improved coordination for the sake of consistency with national regulations, and for a genuine capacity for economic analysis and scientific debate to be created at Community level.

The debate on the Green Paper and this report has been animated, but that is consistent with the subject's importance. We are convinced that the Union is now becoming conscious of how much is at stake, and hope it will succeed in adjusting its perspectives accordingly.

6 November 2003

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS AND THE INTERNAL MARKET

for the Committee on Economic and Monetary Affairs

on the Green Paper on services of general interest
(COM(2003) 270 – 2003/2152(INI))

Draftsman (*): Ioannis Koukiadis

(*): Enhanced cooperation between committees - Rule 162a **PROCEDURE**

The Committee on Legal Affairs and the Internal Market appointed Ioannis Koukiadis draftsman at its meeting of 7 July 2003.

It considered the draft opinion at its meetings of 6 October and 4 November 2003 .

At the last meeting it adopted the following suggestions by 15 votes to 11.

The following were present for the vote: Giuseppe Gargani (chairman), Willi Rothley (vice-chairman), Ioannis Koukiadis (vice-chairman and draftsman), Paolo Bartolozzi, Maria Luisa Bergaz Conesa (for Alain Krivine pursuant to Rule 153(2)), Maria Berger, Bert Doorn, Janelly Fourtou, Marie-Françoise Garaud, Fiorella Ghilardotti, Malcolm Harbour, Philippe A.R. Herzog (for Michel J.M. Dary pursuant to Rule 153(2)), Hans Karlsson (for Evelyne Gebhardt), Giorgos Katiforis, Carlos Lage (for Carlos Candal pursuant to Rule 153(2)), Kurt Lechner, Klaus-Heiner Lehne, Sir Neil MacCormick, Hans-Peter Mayer (for Lord Inglewood), Arlene McCarthy, Manuel Medina Ortega, Angelika Niebler (for Marianne L.P. Thyssen), Marcelino Oreja Arburúa (for Joachim Wuermeling), Barbara O'Toole (for Bill Miller), Imelda Mary Read (for François Zimeray), Diana Wallis, Stefano Zappalà and Olga Zrihen Zaari.

SUGGESTIONS

The Committee on Legal Affairs and the Internal Market calls on the Committee on Economic and Monetary Affairs, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

- A. whereas services of general economic interest in a free society are called upon to play a dual role, namely to contribute to the smooth operation of the market and to protect a general interest; whereas the rules of the market cannot be allowed to operate in conflict with the goal of meeting citizens' fundamental needs,
- B. whereas, when evaluating services of general interest, the different cultural and historical traditions, the geographical situation and the particular characteristics of the respective activity must be emphasised and taken into account,
- C. whereas, therefore, with due regard to the national identities of the Member States, including the aspect of local autonomy, inclusion of services of general interest in the list of objectives of the European Union does not seem appropriate,
- D. whereas services of general economic interest have a direct effect on the operation of the internal market; whereas Article 95 provides the legal basis for the formulation of Community action in this sphere; whereas, following the entry into force of the European Union Constitution, the proposal for a relevant instrument must be based on Article III-6,
- E. whereas under Article 16 TEC, added by the Treaty of Amsterdam, services of general economic interest are already called upon to play an essential role in the promotion of social and territorial cohesion and, consequently, the guaranteeing of certain basic principles in their operation, such as the universality of the services, continuity, affordability and quality, is a fundamental element in the shaping of European general interest,
- F. whereas the Court of Justice's case law to date has clarified some of the problems that have arisen with regard to the concept of State aid and permitted levels of funding of services of general economic interest (Articles 86 and 87, TEC); whereas much still remains to be resolved in order to accurately define at EU level the EU's responsibilities for the general interest sectors and to guarantee legal certainty with regard to competition law,
- G. whereas with the imminent adoption of the Constitutional Treaty the EU is going beyond the simple single market stage and entering into a phase of political integration; whereas the Treaty strengthens the above-mentioned dual role that the services of general economic interest are called on to play,
- H. whereas Article 36 of the Charter of Fundamental Rights of the European Union, which in the European Convention's draft Constitutional Treaty acquired binding force, recognises the right of citizens to access to services of general economic interest and holds that the guaranteeing of this right promotes the social and territorial cohesion of the Union,

- I. whereas the ownership arrangements in force, in view of new developments, are not always the critical element in guaranteeing services of general economic interest; whereas the critical element is to ensure, successfully, that the above-mentioned basic principles which should govern the operation of services of general interest are applied,
- J. whereas the existence of sectoral directives is not inconsistent with the adoption of a framework directive
- K. whereas the degree of intervention by Community law and the means of intervention vary according to whether an undertaking comes under the category of network services of general economic interest or non-network services of general economic interest and the remaining services of general interest; whereas this distinction is, however, not based on clear criteria,
- L. whereas in many cases public contracts for supply, services and public works are connected with the provision of general interest services,
- M. whereas within the framework of EU policy for the development of the regions the regions can play a significant role in the promotion of local services of general interest,
1. Considers that the principles of universality, continuity, affordability, social responsibility, competitiveness and quality form part of the European acquis and that it is vital to guarantee these principles, so that services of general economic interest can operate under conditions that enable them to fulfil their missions, regardless of whether they are publicly or privately owned;
 2. Stresses that the application of EU rules and Treaty provisions on competition to services of general interest should never be allowed to interfere with the freedom of local and regional authorities to establish and implement their own priorities as regards the quality, frequency, affordability and accessibility of those services;
 3. Notes the success of sector-specific regulations, notably in the field of energy and communications, and considers that this approach should be expanded into other sectors;
 4. Notes that there is significant potential for the cross-border delivery of public interest services, notably in health, to improve welfare for citizens; welcomes the Commission's work in this area with Member States and looks forward to the forthcoming proposals on an Internal Market for Services and the incorporation of services of general interest within this framework;
 5. Considers that the rules of competition and the workings of the internal market ought to go hand in hand with that protection of the general interest with which services of general economic interest are linked; considers that they should be evaluated according to the degree to which they help to meet citizens' basic needs;

6. Agrees that it is basically for the Member States to define, organise, monitor and finance the relevant services, and that rules on services of general or general and economic interest must respect these rights on the part of the Member States;
7. Calls on the Commission to propose a framework directive in which the principles set out in Article 16 TEC for services of general economic interest are given concrete form, specifically the principles of universality, continuity, affordability social responsibility and quality; considers that Article 95 TEC, in combination with Article 16 TEC, is for the time being the correct legal basis for this purpose; considers it desirable, however, that Article III-6 of the Constitutional Treaty provide the legal basis as soon as possible;
8. Considers that economic and non-economic services need to be defined, whilst recognising that a detailed distinction is not possible as services are subject to technical, economic and social change; stresses that, in order to reliably differentiate between economic and non-economic services, a concrete definition based on general, abstract criteria is needed, such as, for example, the absence of intent to realise a profit, financing mainly from public funds and the exercise of activities associated with looking after direct public interests;
9. Believes that the adoption of a framework directive on services of general economic interest would improve the coordination of existing sectoral regulation and would make it possible to create a single overall legal framework for these services;
10. Stresses the high importance attached to the rights of autonomy of regional and local authorities according to the system of competences in the Member States, through which local democracy and the rights of citizens are particularly expressed and which should be taken into account in legislation on services of general interest;
11. Points out that it is not important that services of general, general economic or even public interest be carried out by the public sector, but rather that it may be freely decided whether services of this kind are to be performed by the public sector itself or by self-employed or private businesses;
12. Highlights the fact that services are provided by the private sector and especially by those in the professions, which is appropriate in the interests of ensuring a high level of service and economic efficiency in conjunction with appropriate use of market mechanisms whilst fully protecting public interests through supervision and self-regulation according to the particular circumstances;
13. Welcomes the criteria recently established by the European Court of Justice, specifically the form in which the criteria for evaluating aid are presented;
14. Considers that an exact definition of competences and responsibilities at the EU level for the general interest sectors is particularly necessary today in view of the enlargement of the single market, the further development of cross-border trade and the formation of bodies with pan-European networks;

15. Emphasises the importance of local and regional services of general economic interest, and services offered by non profit-making organisations working within the social economy; considers, therefore, that special attention ought to be paid to such services;
16. Considers, given that the above-mentioned services of general economic interest are assigned in public supply contracts, that such contracts should clearly state that the contractors are taking on specific public commitments; believes for this reason that the directives on public contracts ought to take into account the social objectives of services of general interest;
17. Considers that regular evaluation needs to be carried out of (deleted) services of general economic interest, with the objectives of effectively achieving a higher quality of life, greater environmental protection and greater social cohesion for Union citizens at Community and national level, in which the European Parliament will play a decisive role.
18. Considers that this evaluation should be based on a horizontal and integrated approach, with the participation of consumers, companies and trade unions as well as the 'third sector', and conducted within the framework of the annual requirement to report on the economic and employment situation in the EU and the implementation of the economic and employment guidelines.

EXPLANATORY STATEMENT

The need to guarantee certain services which meet basic individual rights, such as the right to education, health, information and transport, has resulted in a set of services being considered as public services or services of general interest, the main aim being to provide citizens with universal access to these services at an affordable cost.

The sector of services of general interest, which has seen significant development in the past, is rightly considered to be one of the pillars of the European social model. This model was also identified with a specific ownership paradigm, that of public ownership of such bodies; however, when it was implemented a significant number of malfunctions were apparent. Such problems, of course, differ from country to country, as well as from sector to sector. Nevertheless, certain common evaluations or findings seem to have set even ardent supporters of the system of public agencies for services of general interest thinking.

The completion of the internal market, with the formulation of specific competition rules and, in the second stage, the development of cross-border trade in a large number of the traditional services of general interest, i.e. services of general economic interest, has placed the issue of services of general interest on a new footing. The Treaty of Amsterdam represented the first basic text attempting to reconcile the demands of an open market and competition with the traditionally dominant position which services of general economic interest occupy among the Union's general values. This is fully reflected in Article 16, is referred to in Articles 86 and 87 in relation to funding, is confirmed in Article 36 of the Charter of Fundamental Rights and is endorsed by the proposed Draft Constitution.

In its previous resolution, Parliament also attempted to reconcile the demands of a market with open borders with the provision of services of general interest of a high quality and at an affordable cost. Further, it acknowledged the need to guarantee equal access, security of supply and continuity, and proposed that the Commission should put forward a proposal for a framework directive.

From all these developments it is obvious that the EU is attempting to combine the purely economic issues of the internal market and competition with the broader issues relating to the European social model, its starting-point being that services of general economic interest form part of the European Union's values. The reconciliation in fact focuses on the legitimacy of recognising special obligations in the name of the public interest.

Meanwhile, the liberalisation of services of general economic interest, with the development of cross-border trade, is a very valuable experience, since it enables us to assess the positive and negative effects of such liberalisation. However, there is as yet no complete assessment which would enable us to draw reliable conclusions for the laying down a European strategy with regard to these services.

Instead of following up the 2001 initiative, with the additions proposed by Parliament, the European Commission decided to issue this Green Paper on services of general interest. It considered it preferable to start again from the beginning in considering all the outstanding issues, initiating a wide public debate and setting out, perhaps for the first time, a complete list of questions on all the issues involved directly or indirectly with the functioning of services of general interest as a whole, which include, according to the three-part distinction which has prevailed, network services of general economic interest, non-network services of

general economic interest and the remaining services of general interest of a non-economic nature.

The rapporteur considers that, as stated in Parliament's previous resolution, it is both possible and advisable to adopt a framework directive. Such a directive ought, specifically, to clarify the concept of services of general economic interest, to lay down criteria for distinguishing between the separate categories of services of general interest, to define the basic characteristics and the basic rules governing their duties, and also to define the principles which will govern the content of the separate sectoral directives, including the basic principles for the operation and funding of services of general economic interest.

27 November 2003

OPINION OF THE COMMITTEE ON INDUSTRY, EXTERNAL TRADE, RESEARCH AND ENERGY

for the Committee on Economic and Monetary Affairs

on the Green Paper on Services of General Interest
(COM(2003) 270 – 2003/2152(INI))

Draftsman: Werner Langen

PROCEDURE

The Committee on Industry, External Trade, Research and Energy appointed Werner Langen draftsman at its meeting of 22 September 2003.

It considered the draft opinion at its meetings of 7 October, 3 November, 4 November and 27 November 2003.

At the last meeting it adopted the following suggestions by 26 votes to 18, with 0 abstentions.

The following were present for the vote: Luis Berenguer Fuster (chairman), Werner Langen (draftsman); Gordon J. Adam (for Gary Titley), Konstantinos Alyssandrakis, Per-Arne Arvidsson (for Guido Bodrato), Sir Robert Atkins, Hiltrud Breyer (for Caroline Lucas), Gérard Caudron, Chantal Cauquil (for Roseline Vachetta), Giles Bryan Chichester, Marie-Hélène Descamps (for Dominique Vlasto), Harlem Désir, Concepció Ferrer, Norbert Glante, Michel Hansenne, Roger Helmer (for Bashir Khanbhai), Elisabeth Jeggle (for W.G. van Velzen), Hans Karlsson, Karsten Knolle (for Peter Michael Mombaur), Paul A.A.J.G. Lannoye (for Nuala Ahern), Rolf Linkohr, Astrid Lulling (for Jaime Valdivielso de Cué), Erika Mann, Hans-Peter Martin (for Massimo Carraro), Marjo Matikainen-Kallström, Eryl Margaret McNally, Ana Miranda de Lage, Elizabeth Montfort, Paolo Pastorelli, Elly Plooij-van Gorsel, Samuli Pohjamo (for Willy C.E.H. De Clercq), John Purvis, Godelieve Quisthoudt-Rowohl, Imelda Mary Read, Christian Foldberg Rovsing, Paul Rübig, Umberto Scapagnini, Konrad K. Schwaiger, Esko Olavi Seppänen, Claude Turmes, Alejo Vidal-Quadras Roca, Sabine Zissener (for Angelika Niebler), Myrsini Zorba and Olga Zrihen Zaari.

SUGGESTIONS

The Committee on Industry, External Trade, Research and Energy calls on the Committee on Economic and Monetary Affairs, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

- A. whereas Parliament's resolution of 13 November 2001¹ on 'Services of General Interest in Europe' represents a comprehensive and absolutely valid framework for evaluation of the Green Paper of 21 May 2003,
- B. whereas, in its most recent judgment on the issue of aid (Altmark judgment of 23 July 2003 - case C-280/00), the European Court of Justice precisely defined the conditions for the financing of general interest services through state aid, and whereas those conditions as defined constitute a reliable criterion for all involved,
- C. having regard to the European Parliament resolution of 12 March 2003² on the General Agreement on Trade in Services (GATS), which concerns inter alia the protection of services of general interest in the EU in the context of negotiations within the WTO,
- D. whereas sectoral EU directives on services of general interest in network industries and other sectors in which market opening has been achieved or begun provide a reliable framework for greater competition and compliance with the conditions of equality of access, security of supply, continuity, high quality and legal certainty as well as of democratic accountability, by defining universal service and setting up independent regulatory authorities, and whereas they may not therefore be affected or covered by the framework directive under discussion,
- E. whereas the distinction made in the Green Paper between, in the first place, network industries, secondly, other services of general economic interest and, thirdly, services of general interest of a non-economic nature is an appropriate one, and whereas sector-specific Community legislation applies more or less automatically only in the second case, and whereas projects going beyond this must be discussed individually and must be compatible with the principle of subsidiarity,
- F. whereas services of general economic interest have a direct impact on the operation of the internal market and whereas Article 95 provides the legal basis for the publication of a Community act relating to this matter; whereas the proposal must be based on Article III-6 of the European Union Constitution following the entry into force thereof,
- G. whereas, in the preamble to the GATS, it is left to the Members of the WTO to regulate the supply of services within their territories in order to meet national policy objectives, and whereas the GATS does not prescribe privatisation or deregulation of services of general interest,
- H. whereas a framework directive, in whatever form, must not provide a uniform European definition of services of general interest, but whereas the defining and structuring of such services will continue in future to fall within the exclusive competence of the Member

¹ OJ C 140 E, 13.6.2002, p. 153.

² P5_TA(2003)0087.

States and their sub-levels as laid down under their constitutions,

- I. whereas, as regards the choice of the form of organisation, it should be stressed that Article 295 of the TEC requires a neutral approach by the Community in relation to Member States' choice of public or private ownership of companies,
- J. whereas, after years of internal and public discussion, the Commission should now, following the latest Court of Justice ruling and the latest Internet consultation exercise, submit a White Paper containing concrete proposals as soon as possible, in order to enable legal uncertainties to be resolved by the end of the legislative term,
- K. whereas the gradual opening up of monopolised markets within the framework of the internal market programme has been a complete success and whereas this represents the only effective contribution to the Lisbon strategy thanks to which Europe's competitiveness is able to be sustainably improved,
 1. Calls on the Commission and the Member States to press ahead with the opening up of markets that have not yet been liberalised, or not yet sufficiently liberalised, and to counter all attempts, through a policy of restricting market access, to call into question the successes of the internal market or to open the door to a new 'economic nationalism';
 2. Stresses the importance of reliable conditions for the provision of general interest services (high quality, availability throughout the respective territory, optimum price, social balance and sustainable security of supply), and emphasises that the decisive factor is not who performs such services but that the conditions laid down for citizens and consumers are complied with and that continuous updating of such conditions is ensured within the legislative process, for example in connection with the concept of universal service in the area of telecommunications;
 3. Notes that if the public authorities in the Member States impose service obligations on undertakings and grant financial compensation from tax revenues for imposing these obligations, this does not constitute competition-distorting aid as long as the compensation does not go beyond what is needed to even out the burden imposed by the public authorities;
 4. Points out that local authorities remain free to choose the method of providing and managing the services of general interest for which they are responsible pursuant to the provisions of their respective Member States, and that such discretion includes the right to perform the services directly themselves or to delegate them; where services are to be commissioned from a third party, calls for a public invitation to tender to be held, in accordance with Community law in force;
 5. Emphasises that a good many general interest services can be provided on the basis of fair competition, and stresses that private and public undertakings must, as a matter of principle, be treated equally in that connection;
 6. Considers it basically incompatible with the principle of competitive neutrality for public undertakings to be exempted from turnover tax for certain activities in areas where both private and public undertakings operate, e.g. the supply of water, gas, electricity, thermal energy or refuse disposal, and takes the view that unilateral preferential tax treatment of

public undertakings is not compatible with EC law and therefore there should be a principle that public and private undertakings are treated equally with regard to tax legislation;

7. Reminds the Commission that in its resolution of 13 November 2001 it called on it to submit expert opinions and proposals with regard to waste management to ensure that waste is disposed of safely and recycled ecologically even without obligations for tendering and permits by establishing a market economy framework;
8. Reiterates that, in order to fulfil public service obligations, special or exclusive rights may be granted without infringing competition and Community law, and special funding mechanisms for the additional obligations may be devised;
9. Considers that evaluation of services of general interest must also include the aspect of services to be provided to all in each sector, for example universal service in the telecommunications sector;
10. Regrets the fact that the Commission has not to date presented concrete proposals with a view to ensuring greater legal certainty, and calls on the Commission to follow up the Green Paper without delay with a White Paper, as well as to finally submit the long-announced concessions directive;
11. Calls for regular evaluation of services of general interest, particularly in relation to their impact on quality of life, competitiveness, protection of the environment and social cohesion;
12. Takes the view that any changes that may be introduced within the context of the WTO negotiations - the further outcome of which is, however, currently unclear - and in particular those affecting the GATS area must be discussed in good time and in detail with the European Parliament and the competent committee; reiterates that no new obligations should be entered into in the area of education and health services and that cultural services should continue to be excluded;
13. Notes that the liberalisation of telecommunications services represents a thoroughly successful example of the provision of services of general interest within a competitive environment, and stresses in particular the very sharp cuts in prices and the significant improvement in quality enjoyed by consumers;
14. Emphasises that this successful outcome has only been possible thanks to the activities of national regulatory authorities during the transitional phase, and that this applies equally to other sectors; stresses that experience to date in the various industry sectors shows, however, that greater cooperation and integration of national regulatory practice at the European level is needed;
15. Calls on the Member States, in connection with the liberalisation of electricity markets, to implement the EU directive in a consistent manner in terms of timing and substance, in order to prevent new distortion of competition;
16. Is convinced that the liberalisation that has taken place to date in the gas market is insufficient, and that it is only through the legal unbundling of gas transportation and sales

by 2007 that genuine competition can be achieved;

17. Stresses that further, gradual liberalisation of postal services is appropriate on the basis of the EU concept of universal service, with a view to enabling customers to benefit from reliable services at reasonable prices throughout the respective territory;
18. Calls for reliable financial conditions to be established for the (overdue) liberalisation of rail transport, and in particular of short-distance public passenger services, on the basis of the latest Court of Justice judgment (in the Altmark case), and calls for the concessions directive to finally be presented for this sector;
19. Considers it necessary to push ahead with further liberalisation of the waste industry, and calls on the Commission to take appropriate steps as soon as possible;
20. Considers that liberalisation of water supply (including wastewater disposal) should not be carried out in view of the distinctive regional characteristics of the sector and local responsibility for provision of drinking water as well as various other conditions relating to drinking water; calls, however, without going as far as liberalisation, for water supply to be 'modernised' and for the principle of equal treatment of public and private companies to be enforced by means of a variety of individual measures involving limited market opening and the removal of restrictions on competition;
21. Considers that a European model for uniform services of general interest is not provided for or allowed under the Treaties, but that in principle the Member States and their sub-levels are solely responsible for deciding which services they wish to provide in the general interest and who is to be entrusted with performing such services; notes that the EU is responsible in particular for preventing, in this connection, restriction of competition in cross-border trade and situations involving discrimination.

4 November 2003

OPINION OF THE COMMITTEE ON EMPLOYMENT AND SOCIAL AFFAIRS

for the Committee on Economic and Monetary Affairs

on the Green Paper on services of general interest
(COM(2003) 270 – 2003/2152(INI))

Draftswoman: H el ene Flautre

PROCEDURE

The Committee on Employment and Social Affairs appointed H el ene Flautre draftswoman at its meeting of 2 July 2003.

It considered the draft opinion at its meetings of 2 October and 3/4 November 2003.

At the latter meeting it adopted the following suggestions by 23 votes with 5 abstentions.

The following were present for the vote: Theodorus J.J. Bouwman (chairman), Marie-H el ene Gillig (vice-chairwoman), Winfried Menrad (vice-chairman), Marie-Th er ese Hermange (vice-chairwoman), H el ene Flautre (draftswoman), Jan Andersson, Sir Robert Atkins (for Luigi Cocilovo), Elspeth Attwooll, Regina Bastos, Johanna L.A. Boogerd-Quaak (for Anne Andr e-L eonard, Philip Bushill-Matthews, Proinsias De Rossa, Carlo Fatuzzo, Fiorella Ghilardotti (for Enrico Boselli), Lisbeth Gr onfeldt Bergman (for Enrico Ferri), Anne Elisabet Jensen (for Marco Formentini), Anna Karamanou, Rodi Kratsa-Tsagaropoulou, Jean Lambert, Mario Mantovani, Claude Moraes, Manuel P erez  lvarez, Bartho Pronk, Lennart Sacr edeus, Miet Smet, Ieke van den Burg, Anne E.M. Van Lancker and Barbara Weiler.

SUGGESTIONS

The Committee on Employment and Social Affairs suggests that the Committee on Economic and Monetary Affairs, as the committee responsible, incorporate the following points in its motion for a resolution:

1. Considers that services of general interest (SGIs) are of a piece with the values shared by all European societies and form an essential element of the European model of society; the efficiency and quality of these services is a factor for competitiveness and social cohesion;
2. Underlines the progress made in drafting the European Union's draft new Constitution of which Article III-6 provides a more certain legal base for a Framework Directive on SGI and Part II recognises the citizen's social rights which include the right to quality social SGI ; reiterates the importance of the role of SGI being fully recognised and proposes that any revision of the Union's Objectives in Part I of the draft Constitution, by the IGC, fully recognise that role as essential;
3. Calls for the formulation of a Community legal framework specifying, in particular, the principles and characteristic features of SIGs (subsidiarity, universality, equal access, neutrality, fair pricing, quality of work, safety, social justice, etc.) and the way in which they are operated, funded, regulated and assessed; regards the prospective Article III-6 of the Treaty establishing a constitution for Europe as the appropriate legal basis;
4. Hopes that the role of public services will be expressly enshrined in existing sectoral or horizontal directives on SGIs, and in those yet to be adopted; calls on the Commission, on the basis of the framework directive, to investigate the directives on SGIs and, if they include incomplete or insufficient provisions concerning public services, to forward amendments to the Council and the European Parliament;
5. Requests that the Commission clarify the implications of the recent ECJ ruling in case C-280/00, Altmark Trans GmbH, for the provision of SGIs;
6. Stresses the need to uphold the freedom of public authorities at all relevant decentralised levels to define the scope of general interest services on their territory and decide on the best means of delivering them, regardless of whether they are operated directly or by public, private or joint undertakings; also stresses the need to uphold the variety of ways in which such activities are organised, whether on a commercial or a non-commercial basis; in this context, full account must be taken of the special features of social economy (third-sector) undertakings;
7. Notes that it is important not to favour one method of financing to the detriment of another (as in the case of the Green Paper, which refers only to fiscal measures and state aid as possible financing mechanisms) and to allow the continuation of existing solidarity-based systems; notes that a long-term approach is required when it comes to the investment of public funds and that the SGIs must be financed in a way that guarantees their quality, accessibility and durability;
8. Considers that as the market alone cannot ensure universal access to quality SGI the

role of local and regional authorities must not be restricted to provision of such services in the event of market failure; they are in the best position to decide how such services should be delivered, taking the needs of citizens and consumers into account, and must remain able to do so free from unnecessary restraint in terms of internal market and competition rules;

9. Recognises that SGIs are provided not only by the market and the government but also by organised civil society; calls on the Commission and Council and the Member States to acknowledge and support the distinctive nature and contribution of social organisations by whose efforts SGIs are provided; looks to the relevant authorities of Member States to monitor how and to what extent public services are given shape by social organisations;
10. Calls on the Commission and Council to investigate the desirability and sustainability of applying the cooperation and coordination method to SGIs, so as to ascertain whether it is useful and necessary in due course to encourage the Member States to greater cooperation and streamlining of public services;
11. Regards public discussion and assessment of SGIs, at all levels, as a necessary means of ensuring efficiency, quality, democracy and adaptability; also calls on the Commission to draw up regular quantitative and qualitative assessments of the implementation of existing sectoral directives with the involvement of the relevant interested parties at European level; also calls on the Commission to investigate the possibility of developing the open coordination method in this area;
12. Stresses the importance of the horizontal and sectoral assessments carried out by the Commission on the operation of SGIs, and the importance of looking into consumer satisfaction with SGIs;
13. Calls for these supervisory bodies to have sufficient powers to ensure the delivery of high-quality services;
14. Calls, to counter the risk of oligopolies being created, for regulators' powers and authority to be reinforced in order to ensure effective competition that also fulfils public service requirements;
15. Calls on the Commission to submit a proposal seeking to expand not only monitoring by regulators, but also monitoring of these regulators, for example by means of advisory or consultative bodies, with representation by the social partners in particular and organised civil society in general;
16. Regards the distinction between services of general interest and services of general economic interest as irrelevant for the purpose of striking a balance between general interest activities and competition law: for example, this distinction is often difficult to apply in the social services sector which requires special treatment, as a large number of social services, or some of the activities of service providers may be regarded as being economic in nature and stresses the great diversity of the various methods of organising SGIs (for example, the co-existence of direct public management and private management in the public-service broadcasting sector helps safeguard media pluralism, democracy and cultural diversity; by the same token, the legislation should

take account of the specific characteristics of non-profit making charitable, cultural or social associations); urges the Commission, therefore, not to base its policy on SIGs on that distinction, and to give further thought to a classification taking particular account of the nature of the activities and the geographical area in which they are carried out, including the European area;

17. Considers it of major importance that in specific sectors, such as education, health care and welfare, the role of non-profit-making organisations should be recognised, valued, protected and encouraged;
18. Considers it of great importance that the relevant authorities should be able to impose on the provision by private profit-making parties of SGIs, in fields such as health care, education and social security, conditions reflecting the general features and principles of SGIs which need to be defined at European level, so that these cannot be overruled by competition rules; considers that, in its relations with third countries, the European Union should give priority to meeting the needs of their inhabitants, conserving resources and reducing inequality, and insists that the European Union must secure full recognition of essential goods and services in trade negotiations; considers that the Community, in the context of its development cooperation policy, must support investment in essential services in the developing countries, including by using Community funding to attract private sector investors, increasing the aid allocated to emerging countries and promoting, by financial incentives and transfers of know-how, the rules of good government which are essential for fair and high-quality services.

26 November 2003

OPINION OF THE COMMITTEE ON REGIONAL POLICY, TRANSPORT AND TOURISM

for the Committee on Economic and Monetary Affairs

on the Green paper on services of general interest
(COM(2003) 270 – 2003/2152(INI))

Draftsman: Hannes Swoboda

PROCEDURE

The Committee on Regional Policy, Transport and Tourism appointed Hannes Swoboda draftsman at its meeting of 10 September 2003.

It considered the draft opinion at its meetings of 4 November and 25 November 2003.

At the last meeting it adopted the following suggestions by 45 votes to 1, with 4 abstentions.

The following were present for the vote: Paolo Costa (chairman), Helmuth Markov, Gilles Savary (vice-chairmen), Hannes Swoboda (draftman), Sylviane H. Ainardi, Emmanouil Bakopoulos, Rolf Berend, Graham H. Booth (for Rijk van Dam), Philip Charles Bradbourn, Luigi Cocilovo, Christine de Veyrac, Jan Dhaene, Den Dover (for Felipe Camisón Asensio), Garrelt Duin, Giovanni Claudio Fava, Jacqueline Foster, Mathieu J.H. Grosch, Konstantinos Hatzidakis, Ewa Hedkvist Petersen, Roger Helmer (for Dana Rosemary Scallon), Juan de Dios Izquierdo Collado, Georg Jarzembowski, Karsten Knolle (for José Javier Pomés Ruiz), Dieter-Lebrecht Koch, Giorgio Lisi, Nelly Maes, Sérgio Marques, Emmanouil Mastorakis, Erik Meijer, Rosa Miguélez Ramos, Bill Miller (for Danielle Darras), Enrique Monsonís Domingo, Francesco Musotto, Josu Ortuondo Larrea, Peter Pex, Wilhelm Ernst Piecyk, Samuli Pohjamo, Bernard Poignant, Alonso José Puerta, Reinhard Rack, Carlos Ripoll y Martínez de Bedoya, Ingo Schmitt, Elisabeth Schroedter (for Camilo Nogueira Román), Renate Sommer, Dirk Sterckx, Margie Sudre, Ari Vatanen, Herman Vermeer, Dominique Vlasto (for James Nicholson) and Mark Francis Watts.

SUGGESTIONS

The Committee on Regional Policy, Transport and Tourism calls on the Committee on Economic and Monetary Affairs, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

- A. whereas the draft Constitution defines the European Union as a single market where competition is free and undistorted, and whereas a highly competitive social market economy is the guiding principle behind the economic system laid out in the draft Constitution,
- B. whereas in European transport policy, SGIs are relevant only in the area of public local and regional passenger transport, and whereas in the case of postal services the provision of a basic service to the public needs to be guaranteed,
- C. whereas under Article 295 of the Treaty the European Union is required to be neutral as regards the system of property ownership,
- D. whereas there is a very wide variety of operational models for the provision of SGIs in Europe, whose existence and differing objectives must be respected,
- E. whereas state aid must be transparent and must be consistent with the relevant provisions of the Treaty concerning competition policy,
 1. Welcomes the relative progress made by the draft Constitution, which purports to complete and strengthen Article 16 of the European Community Treaty by creating a legal basis for common actions in the field of Services of General Economist Interest (SGEI);
 2. Calls on the Intergovernmental Conference to adopt unamended Article III-6 of the draft Constitution concerning services of general economic interest;
 3. Requests the preparation of a European framework law, which establishes the principles and characteristics of services of general interest (universal coverage, equal access, neutrality, fair pricing, quality of services, safety and social justice etc.) and the rules for supply, financing, regulation and evaluation; considers that the future article III/6 of the draft Constitution is the adequate legal basis; is of the opinion that sufficient scope for sector-specific regulations must be left in order to take into account the variety and differences of SGI in various sectors;
 4. Considers that the capacity for innovation, customer-friendliness and performance should be promoted in public local and regional passenger transport by means of an appropriate allocation of tasks between the state and business, with the relevant state authorities taking political responsibility for SGIs and (state or private) businesses making the best possible use of market forces in order to supply high-quality transport services at local level;
 5. Stresses that state authorities' obligation in principle to carry out tendering procedures fairly and in an appropriate manner is an effective instrument for preventing restrictions

of competition, while at the same time permitting state authorities themselves to define and monitor the conditions regarding quality, availability and environmental requirements;

6. Stresses that tendering procedures carried out in an appropriate manner can be an effective instrument for avoiding restrictions of competition and that state authorities must also be permitted to define and monitor the conditions regarding quality, availability and environmental requirements;
7. Notes the disappearance of the historic, integrated national monopolies in the transport and postal service fields, as a result of efforts to develop an internal market in these areas;
8. Believes that the responsibilities for the provision of services aimed at ensuring the social, economic and territorial cohesion of the European Union, be clearly defined between the European bodies, Member States and the sub-national bodies concerned;
9. Stresses that the role of nationally elected regional and local authorities as regional developers is essential in the provision of SGIs, and that this role must not be regarded as a less important consideration than that of the market;
10. Emphasises that special attention should be given to the principle of subsidiarity and to the participation and influence of consumers and citizens in regard to the quality of services. Consumers must have the possibility to react quickly and directly in cases of deficiencies in quality;
11. Stresses that local and sub-national authorities of the Member States of the EU in many cases provide SGI of high quality. In the long-term interests of consumers, regional and local authorities must be able to strike the right balance between public responsibility and commitment on the one hand and competition on the other. In any case clarity and complete transparency of public involvement is necessary to allow a fair evaluation as well as democratic decisions by the citizens and the elected bodies.
12. Calls therefore for the legal recognition of local private production making it possible to reconcile respect for the principle of local authorities' freedom of administration (subsidiarity principle and principles of Article I-5 of the future Constitution) with respect for the principle of the construction of the internal market;
13. Maintains that where, as a result of purely economic market-driven approaches, the supply of services falls short of existing user demand, local authorities must continue to perform the task of providing Services of General Interest for users.