

P5_TA(2004)0018

Services of general interest

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 (COM(2003) 270),
- 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'¹, and to its resolution of 17 December 1997 on the Commission Communication entitled 'Services of general interest in Europe'²,
- having regard to sectoral directives of the European Parliament and of the Council on postal, telecommunications, energy and transport services,
- having regard to proposals, presented by the Commission, 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)³ and coordinating the procurement procedures of entities operating in the water, energy and transport sectors (COM(2000) 276)⁴,
- having regard to the Presidency 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 Presidency 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 Presidency Conclusions of the Laeken European Council on services of general interest of 15 December 2001,

¹ OJ C 140 E, 13.6.2002, p. 153.

² OJ C 14, 19. 1. 1998, p. 74.

³ OJ C 29 E, 30.1.2001, p. 11.

⁴ OJ C 29 E, 30.1.2001, p. 112.

- having regard to Articles I.5, II.36 and III.6 of the draft Constitutional Treaty,
 - 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 in cases C-85/01 P, C-93/01 P and C-94/01 P, and the Altmark judgment of 24 July 2003 in case C-280/00,
 - having regard to its resolution of 12 March 2003¹ on the "General Agreement on Trade in Services (GATS) within the WTO, including cultural diversity", 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, the Committee on Employment and Social Affairs and the Committee on Regional Policy, Transport and Tourism (A5-0484/2003),
- A. whereas services of general interest constitute an integral part of the economic and social system in each Member State as well as 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 the 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 Constitutional Treaty draws attention to the significance of regional and local self-government,
 - D. whereas the success in establishing the single market and the priorities established by 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 rules of competition, and 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,

¹ P5_TA(2003)0087.

- G. whereas, in relation to the compatibility between the rules of the internal market and competition and the smooth operation of services of general interest, more legal certainty 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 provide benefits to citizens such as a 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 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 Presidency Conclusions of the Lisbon European Council, designed to make Europe the most competitive and dynamic knowledge economy in the world, also depends on them,
- J. 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,
- K. 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 the Court of Justice case-law have, as yet, ensured legal certainty or a sufficiently consistent operational framework,
- L. whereas the draft Constitutional treaty 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, and Article I.5, which refers to local and regional self-government in terms of respect by the Union for essential State functions,
- M. considers, however, that the wording of Article III.6 must specify that European law will be applied without prejudice to the rights of the Member States, within a constitutional framework, to furnish, execute and finance these services,
- N. whereas services of general economic interest have a direct effect on the operation of the internal market; whereas Article 95 should provide the legal basis for the formulation of Community action in this sphere,
- O. whereas under Article 16 of the EC Treaty, 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,

- P. whereas the distinction made in the Green Paper between, firstly, 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,
- Q. whereas, in many cases, public contracts for supply, services and public works are connected with the provision of services of general interest,
- R. 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,
- S. whereas the system of public broadcasting is directly related to the democratic, social and cultural needs of society in the Member States and is necessary in order to preserve media pluralism; whereas, in this connection, trading conditions and competition in the Community must not be affected to an extent which would be contrary to the common interest, while the realisation of the public service remit must be ensured,
- T. whereas the model of the eco-social market economy constitutes 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,
- U. whereas, in its most recent judgment on the issue of aid (Altmark judgment of 24 July 2003), 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,
- V. whereas sectoral EU directives on services of general interest in network industries and other sectors in which market opening has been achieved or has 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,
- W. 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, this right to regulate in the interest of public policy must be defended by the Commission in international trade negotiations;
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 is different in all Member States according to cultural traditions and geographical conditions;

3. Stresses that services of general interest must guarantee citizens equality of access and treatment, security of supply, continuity and high quality 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 rather that quality standards and an equitable social balance be maintained and that the criteria of provision be based on reliability of supply and continuity; 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. Calls for a legal framework to be drawn up under the codecision procedure and respecting the subsidiarity principle, when the internal market and competition rules are being implemented;
6. Calls on the Commission to present a follow-up, by April 2004 at the latest, in order to draw the lessons from the Green Paper consultations and to clearly define its position on a possible legal framework;
7. Considers it necessary, in the light of the problems encountered with liberalisation in certain sectors, taking as an example the rail transport sector in Great Britain, to assess, on the basis of a pluralist, open approach, the impact on employment, users' needs, safety, the environment, and social and territorial cohesion, before initiating new phases of liberalisation;
8. Notes that the liberalisation of key public services and the introduction of competition has, in some cases, delivered major benefits to consumers in terms of innovation, quality, choice and lower prices, in other cases the very existence of public services has been jeopardised by the rule of the market mechanism;
9. 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;
10. 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;
11. Strongly supports the provision of high-quality, value for money public services and the right of Member States to fund public services from taxation, where they consider this to be appropriate; notes, moreover, 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; Member States should not be expected to run public services merely on the basis that they fund such services; further notes that where Member States 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;
12. Considers that public radio and television broadcasters have a public service remit and play a major role in preserving cultural diversity and identity; stresses that the Member States must therefore continue to have the right to fund public radio and television broadcasters and to define their public service remit;

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, price reductions through increased competition, and the creation of almost 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 technological level;
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 is to guarantee their exercise within the internal market and, notably, to ensure that competition rules are compatible with public service obligations; underlines that the EU can also act in support of Member States and promote projects of general European interest;
20. Considers that it is neither possible nor relevant to draw up common definitions of services of general interest, or of the public-service obligations resulting from them, but that the European Union must lay down common principles, including the following: universality and equality of access, continuity, security and adaptability; quality, efficiency and affordability, transparency, protection of less well-off social groups, protection of users, consumers and the environment, and citizen participation, taking into account circumstances which are specific to each sector;

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

21. Notes that for many services of general interest, the economic/non-economic distinction is extremely difficult to make on account of the fact that, due to the dynamic character of these services, its borderline is rapidly evolving; proposes, in that connection, that the following criteria 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; considers that 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. Points out, in accordance with all its previous resolutions, that services of general interest provided as essential functions by public authorities, such as education, public health, public and social housing and social services of general interest assuming functions of social security and social inclusion, do not fall within the scope of EU competition law and should only be subject to supervision by the Commission as to any apparent abuse of discretionary power in defining such services; considers that the same should apply to services of general interest aiming at maintaining or increasing pluralism of information and cultural diversity; urges the Commission to defend this position in WTO and GATS negotiations;
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, 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 once it begins to meet four inter-related conditions, namely, 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 not to use Article 86(3) of the Treaty in order to draft a directive to ensure compatibility with Article 86(2) of the Treaty; prefers a tentative waiver ruling, so that a procedure of codecision can, thereafter, specify the general validation conditions;
27. Points out that, at present, different forms of financing and organisation exist in the Member States; 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 constitutes a problem, and calls for clear rules that will allow for transparency in determining the costs of providing services of general economic interest; calls, furthermore, for the financing mechanisms introduced by Member States and the Community to comply, in particular, with the following criteria: the least possible distortion of competition, the highest possible efficiency in the use of funds, attractive prices, high contribution to long-term investment, social and territorial cohesion, continuity and the greatest possible security of supply;
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. 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;
32. 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 by enabling, at the same time, the public authorities themselves to lay down and monitor conditions for ensuring quality, availability, social standards and compliance with environmental requirements;
33. 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;
34. Notes the importance in ensuring competition in the banking sector and the elimination of state aids for banks;
35. Calls, in order to ensure compliance with the subsidiarity principle, for the right of local and regional authorities to 'self-produce' services of general interest independently to be recognised, provided that the direct-management operator does not compete outside the territory concerned; calls, in accordance with its position on the public service contract directives, for local authorities to be authorised to entrust services to distinct entities without tenders if their supervision is analogous to that exercised over their own services and they conduct their main activities by that means;
36. Calls, similarly, for recognition of other forms of choice of services of general economic interest by public authorities, such as concessions and public-private partnerships, with common principles for transparency of contracts, stability, duration and equitable risk-sharing;

37. Considers, in addition, that operators active on a competitive market, whatever their legal status, must be treated equally under fiscal legislation; considers, in particular, that the turnover tax exemption which public-sector undertakings enjoy in relation to 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 achieved hitherto and appreciates the fact that consumers with a low income, in particular, have benefited from the liberalisation, notable in the telecommunication and energy sectors;
40. States that, notwithstanding the fact that existing sectoral directives have not always achieved all their objectives for the creation of a large internal market in the case of energy or for establishment of a level playing field in the case of telecommunications, these deficiencies are often due to either the non-application or incorrect application of Community rules by Member States, or to the unsatisfactory compromises reached by Member States on some provisions of the relevant directives;
41. 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 European level is needed;
42. Currently rejects 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;
43. Calls on the Member States, in connection with the liberalisation of electricity markets, to implement the Community Directive in a consistent manner in terms of timing and substance, in order to prevent new distortion of competition;
44. 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;
45. 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;
46. Reminds the Commission that in the aforementioned 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;

47. Rejects efforts to make water and waste-disposal services subject to single market sectoral directives, 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' with economic principles in accordance with quality and environment standards and the needs of efficiency;
48. Takes the view that water and waste services should not be subject to Community sectoral directives, but emphasises the fact that the Union should keep its full responsibility for these sectors as regards quality and environment protection standards;
49. 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 the task of ensuring social and territorial cohesion also fall within the competence of Member States;

Assessment

50. Considers that a regular evaluation needs to be carried out on services of general economic interest, with the objective of effectively achieving a higher quality of life, greater environmental protection and greater social cohesion for Union citizens at Community and national level; underlines that it will play a decisive role in this field;
51. Calls for assessments not to result in additional reporting requirements and statistics for the Community, Member States, undertakings and/or citizens, but to be conducted horizontally in an integrated manner, in particular, qualitatively-oriented and in close cooperation with the European Economic and Social Committee, the Committee of the Regions, the social partners and civil society, as part of the annual requirement to report on the economic and employment situation in the EU and the implementation of economic and employment policy guidelines, including the respective national action plans; considers that using Eurobarometer for assessing consumer satisfaction is, moreover, entirely superficial in this respect;
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 European Economic and Social Committee, the Committee of the Regions, the parliaments of the Member States, the social partners and the associations concerned.