

Opinion of the European Economic and Social Committee on the 'Green Paper on Services of General Interest'

(COM(2003) 270 final)

(2004/C 80/20)

On 22 May 2003 the Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the 'Green Paper on Services of General Interest'.

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 24 November 2003. The rapporteur was Mr Hernández Bataller and the co-rapporteur was Mr Hencks.

At its 404th plenary session of 10 and 11 December 2003 (meeting of 11 December), the European Economic and Social Committee adopted the following opinion by 72 votes to seven with six abstentions.

1. Introduction

1.1. The concept of services of general interest is understood differently across the European Union, with perceptions varying between the Germanic, Nordic, Latin and English-speaking countries. In some EU Member States the very concept of public service does not exist. There are, however, some quite similar ideas and closely corresponding situations, reflecting values shared by all European countries. (Examples include, 'beheer van diensten' in the Netherlands, 'gestione di pubblica utilità' in Italy, 'public utilities' in the United Kingdom, 'Daseinsvorsorge' in Germany, and 'service public' in France.)⁽¹⁾

1.2. The concept and characteristics of services of general interest have been defined in various Community documents, and this definition, although not yet consolidated, continues to be essentially valid today. Accordingly:

- service of general interest covers market and non-market services which the public authorities class as being of general interest and subject to specific public service obligations;
- service of general economic interest refers to market services which the Member States and the Union subject to specific public service obligations by virtue of general interest criteria ⁽²⁾, especially concerning universal service, in sectors such as electronic communications, energy and postal services.

1.2.1. In its communications issued in 1996⁽³⁾ and 2000⁽⁴⁾, the Commission emphasised the importance of services of general interest in Europe, stressing that they are a key element in the European model of society. This model is off-bounds, as is clearly shown by the fact that the European Union excluded education, health and culture from the WTO negotiations in Cancún (10 to 15 September 2003) with the specific aim of safeguarding the general interest.

1.2.2. The Commission takes account of four essential objectives in these communications:

- to ensure that services of general economic interest function efficiently;
- to ensure that services are correctly classed as being of general economic interest;
- to ensure that there are no adverse repercussions on markets open to competition outside the public service; and
- to ensure that all citizens have access to essential services.

1.3. Community law stipulates compliance with specific procedures and principles, in particular the principles of transparency, non-discrimination and proportionality, and permits the setting-up and smooth functioning of services of general economic interest. In the absence of specific regulations adopted by the Council, the Member States enjoy far-reaching authority to determine their services of general economic interest as well as how these are run, including any public funding that may be necessary.

⁽¹⁾ OJ C 368, 20.12.1999, point 1.1.

⁽²⁾ OJ C 241, 7.10.2002, point 1.1.

⁽³⁾ OJ C 281, 26.9.1996.

⁽⁴⁾ OJ C 17, 19.1.2001.

There is however a lack of symmetry in the Treaties between the provisions of competition law under which services of general economic interest are considered as derogations from Article 86(2) *et seq.*, and the positive recognition of services of general economic interest in Article 16, which does not constitute a legal basis.

Both state aid policy and social and territorial cohesion policy serve to cushion against market shortcomings, although the former is designed to prevent distortions of competition and the latter to actively promote social and territorial cohesion.

Article 36 of the Charter of Fundamental Rights ⁽¹⁾ recognises and respects access to services of general economic interest in order to promote social and territorial cohesion. In addition, access to these services normally implies strengthening another fundamental right, such as the right to free movement of persons in transport services or the right to privacy and secrecy of communication in postal services.

1.4. In response to the request of the Nice European Council of December 2000, the Commission presented a report on services of general interest ⁽²⁾ to the Laeken European Council in December 2001. In it, the Commission indicated its intention to establish a Community framework for state aid granted to undertakings entrusted with the provision of services of general economic interest, and for implementing evaluation of their performance, with the aim of enhancing the legal certainty surrounding public service compensation.

1.4.1. Historically, the Commission has tended to consider that compensation paid by a state to undertakings entrusted with the provision of a service of general economic interest does not constitute state aid in that it is limited to the actual costs incurred in fulfilling public service obligations.

1.4.2. The Court of First Instance in its judgments in the cases FFSA ⁽³⁾ of 27 February 1997 and *Televisión portuguesa* of 10 May 2000 ⁽⁴⁾, ruled that compensation for the actual costs incurred in fulfilling public service obligations does constitute state aid in accordance with the provisions of Article 87(1) of the Treaty.

⁽¹⁾ Article 36 of the Charter states that 'The Union recognises and respects access to services of general economic interest as provided for in national laws and practices, in accordance with the Treaty establishing the European Community, in order to promote the social and territorial cohesion of the Union'.

⁽²⁾ COM(2001) 598 final.

⁽³⁾ Case T-106/95; judgment confirmed by a ruling of the Court of Justice on 25 March 1998 (case C-174/97).

⁽⁴⁾ Case T-46/97.

1.4.3. Nonetheless, the Court of Justice in its *Ferring* judgment ⁽⁵⁾ of 22 November 2001 ruled that compensation granted by a Member State and which did not exceed the amount needed in order to fulfil a public service obligation was not an advantage for the undertaking receiving the compensation and as such did not constitute state aid. The Court stressed that any compensation amounts over and above costs necessary in order to fulfil a public service obligation could be considered to be state aid, and thus be in breach of Article 86 of the Treaty.

1.4.4. The Court of Justice, meeting in plenary session, delivered a judgment on 24 July 2003 ⁽⁶⁾, revising its earlier case-law ⁽⁷⁾ and stipulating that certain conditions must be fully satisfied in order to exclude such public subsidies (compensation) from the scope of Article 87(1) of the EC Treaty:

- the recipient undertaking must actually have public service obligations to discharge, and the obligations must be clearly defined;
- the parameters on the basis of which the compensation is calculated must be established in advance in an objective and transparent manner;
- the compensation cannot exceed what is necessary to cover all or part of the costs incurred in the discharge of public service obligations, taking into account the relevant receipts and a reasonable profit for discharging those obligations;
- where the undertaking which is to discharge public service obligations is not chosen pursuant to public procurement procedures, the level of compensation needed must be determined on the basis of an analysis of the costs which a typical undertaking, well run and suitably equipped to meet the necessary public service requirements, would have incurred in discharging those obligations, taking into account the relevant receipts and a reason profit for discharging the obligations.

⁽⁵⁾ Case C-53/00.

⁽⁶⁾ Case C-280/00, *Altmark Trans GmbH*, Opinion of Advocate General Léger delivered on 19 March 2002.

⁽⁷⁾ Case C-53/00, judgment of 22 November 2001. Advocate General Léger discussed the content of this judgment in particularly critical terms in his Opinion on Case C-280/00, specifically in points 58-61, 76-82 and 87-89.

2. The Green Paper on Services of General Interest

2.1. The green paper consists of five main parts plus an introduction and an operational conclusion. The first part outlines the background; the second part discusses the scope of Community action in the area of services of general interest; the third part provides a number of elements for a possible common concept of services of general economic interest, on the basis of existing sector-specific legislation; the fourth part looks at issues related to the way services of general interest are organised, financed and evaluated, and the fifth part addresses the international dimension of services of general interest. The Green Paper is accompanied by an annex which sets out public service obligations in more detail, as derived from existing sector-specific legislation, and the policy instruments available to ensure compliance with these obligations ⁽¹⁾.

2.2. Services of general interest, which include services of both general economic and non-economic interest, are complex and constantly evolving. They cover a broad range of different types of activity of differing scale and nature. The organisation of these services varies according to the cultural traditions, history and geographical conditions of each Member State and the characteristics of the activity concerned, in particular technological development ⁽²⁾.

2.3. The European Union respects this diversity and the roles of national, regional and local authorities in ensuring the well-being of their citizens and in guaranteeing democratic choices regarding, among other things, the level of service quality. This diversity explains the various degrees of Community action and the use of different instruments. The Union also has its own role to play in those areas where it has exclusive powers. Moreover, throughout the European Union services of general interest raise a number of questions and issues that are common to different services and different competent authorities ⁽³⁾.

2.4. The debate that this Green Paper intends to launch raises questions with regard to:

- the scope of possible Community action in accordance with the Treaty in full respect of the principle of subsidiarity and the possible granting of additional legal powers to the Community;
- the principles that could be included in a possible framework directive or other general instrument concerning services of general interest and the added value of such an instrument;
- the definition of good governance in the area of organisation, regulation, financing and evaluation of services of general interest in order to ensure greater economic competitiveness and efficient and equitable access for all to high-quality services meeting their needs;
- any measures that could help increase legal certainty and ensure a coherent and harmonious interaction between the objective of maintaining high-quality services of general interest and rigorous application of competition and internal market rules ⁽⁴⁾.

3. General comments

3.1. The Committee has already stated its view on most of the issues raised by the Commission in the Green Paper in Opinions CES 949/99 and CES 860/2002. In the latter in particular ⁽⁵⁾ it stated that:

‘... there is a need for the Commission to present a proposal for a framework Directive consolidating the political principles governing services of general economic interest and giving Member States the flexibility they need in this area. This legal instrument should highlight the importance placed by the European Union on services of general interest and European citizens’ inherent right to access these services, and — in order to provide greater legal security — should clarify some concepts relating to Community law, while fully respecting the principle of subsidiarity’.

The EESC emphasises that this framework directive ⁽⁶⁾ needs to be adopted in particular in order to define the concepts used by the Treaties and sectoral directives, as well as the conditions for intervention by the various operators, especially those responsible for providing services of general interest at regional or local level.

⁽¹⁾ Point 13 of the Green Paper.

⁽²⁾ Point 10 of the Green Paper.

⁽³⁾ Point 11 of the Green Paper.

⁽⁴⁾ Point 12 of the Green Paper.

⁽⁵⁾ OJ C 241, 7.10.2002, point 4.4.

⁽⁶⁾ ‘Framework law’ in the terminology used in the draft Constitution for Europe.

3.1.1. As regards the scope of Community action, in addition to its suggestion that a framework Directive, accompanied by other, sector-specific proposals, be drawn up, the Committee⁽¹⁾ feels that '... Article 3 of the EC Treaty should include a reference to the provision of services of general interest in the list of activities to be undertaken by the Community to achieve its objectives'. The EESC is pleased to note that the draft constitution produced by the Convention on the Future of Europe strengthens and amplifies the present Article 16, with a view to providing an adequate legal basis for legislation.

3.1.2. As the EESC has argued elsewhere⁽²⁾, the Commission should, for example by means of a communication, establish criteria which would enable bodies providing services for non-profit purposes in this field to continue doing so, in order to secure the necessary clarity and transparency. The common aim of these criteria would in any case be to ensure efficient provision of services.

3.1.3. The EESC considers it important for the public authorities to apply the principle of participatory democracy, in order to promote a culture of dialogue and participation⁽³⁾, especially among organisations providing social services on a non-profit basis. Such organisations must continue providing these services, since they protect the most vulnerable individuals, create or maintain the social fabric and promote solidarity among citizens. The EESC therefore repeats that social services need to be treated differently from the vast number of actors responsible for services of general interest⁽⁴⁾.

3.1.4. The requirements of subsidiarity and proportionality, and the issues of relevance and scale, are closely interlinked and should be taken fully into account. The Committee feels that⁽⁵⁾ '... the future Community framework should establish a mechanism allowing subsidiarity to be applied according to functional as well as territorial criteria'.

The EESC therefore stresses that by virtue of the principle of subsidiarity, it is up to the relevant national, regional and local authorities to define, organise, finance and monitor services of general interest.

3.1.5. The EESC draws attention to the fact that the primary objective of services of general interest is access for all citizens, consumers and businesses to public services; when such services are provided by a publicly or privately-owned enterprise operating in the commercial sector, the profit- or competitiveness-seeking criterion must under no circumstances be allowed to result in the disappearance of services for some citizens. Services must be uninterrupted and equally accessible to all even where, due to geographical or technical circumstances in particular, service provision is not economically profitable. In such cases, the administrative, tax-related, legal and technical derogation measures necessary for service provision, including State aid by way of exception from the Community system, must be authorised and encouraged.

3.2. As regards those principles that could be included in a framework Directive or other general instrument concerning services of general interest, the Committee has already expressed the following view⁽⁶⁾:

'As a citizens' right, services of general economic interest should operate according to the following guidelines:

Equality: all citizens are entitled to equal access to services of general interest. The term equality is to be understood not as an obligation of uniformity, rather as prevention of any unjustified discrimination based on social or personal status in relation to service provision.

Universality: for services supplied, basic services should be universally provided.

Reliability: the provision of services of general interest should be continuous, regular and uninterrupted. Irregular operation or suspension of services will be restricted to specific cases laid down in the regulation governing the sector.

Participation: users should participate actively in the development of services of general interest. The purpose of such participation is to protect citizens' rights with regard to the adequate provision of services and to promote the cooperation of the service-providers.

Transparency: service-providers will ensure that users receive full information on the service provision, especially on the public service obligations and tariffs.

(1) OJ C 241, 7.10.2002, point 4.1.2.

(2) EESC opinion on private not-for-profit services in the context of services of general interest in Europe, OJ C 311, 7.11.2001.

(3) Communication from the Commission on European governance: better lawmaking, COM(2002) 275 final, p. 3.

(4) EESC opinion on private not-for-profit services in the context of services of general interest in Europe, OJ C 311, 7.11.2001, point 4.1.d) of the opinion.

(5) OJ C 241, 7.10.2002, point 4.3.

(6) OJ C 368, 20.12.1999, point 5.3 (in full).

To this end, service-providers will inform the users of the financial and technical arrangements for the provision of services and of any changes affecting the service, publishing the texts containing the relevant regulation.

Simplification of procedures: as far as possible service-providers will simplify the procedures to be followed by users and will supply the appropriate explanations.

Moreover, where possible they will use standard forms, striving to simplify and explain the methods of subscribing to and paying for the services.

In all cases, service-providers will introduce internal procedures for addressing complaints made by users. These procedures will be accessible, easy to understand and implement, ultimately ensuring that the service-providers take account of the complaints made by users and consumers' associations, and will facilitate the right to bring a complaint before the regulator and, generally speaking, access to the legal system.

Profitability and efficiency: services of general economic interest will be supplied efficiently and profitably. Providers will adopt the measures necessary to achieve these objectives.

Quality of services: service-providers will identify the factors influencing the quality of services and, on this basis, publish quality and quantity standards which they will pledge to.

Compliance with these standards will not be negotiable. Exceptions to these standards will only be granted if it is advantageous to users and will be monitored by users in periodic meetings.

Adequate provision of services: services of general economic interest will be adapted to changes in the needs of the community and to technical and economic progress.

Evaluation of results: the arrangements for providing public services will be periodically reviewed by the service-provider. To do so, service-providers will collect information on, inter alia, user-satisfaction.

Cooperation between service-providers: even if the service is provided in a competitive environment, service-providers will strive to cooperate to ensure compliance with these principles.

Affordable price: the conditions for access to these services should be at a price citizens can afford. The guiding principle should be "reasonable cost".

Environmental protection: the definition and operation of services of general economic interest should take account of environmental protection requirements as a key component of social and territorial cohesion.'

The EESC again calls for these principles to be included. The principle of reversibility of services of general interest should be added to them. In this regard, the EESC calls for the introduction of a principle of 'reversibility' of services of general interest, meaning, in the light of the principle of subsidiarity and Treaty Article 295, firstly, a guarantee for service users that any *de facto* or *de jure* situation is periodically scrutinised by the Member State authorities and secondly, that the Member States and their regional and local authorities are left free to decide how they wish to organise the supply of services of general interest. Amongst other things, this entails the possibility that, following an objective assessment in the interests of the users and employees concerned, ownership of such services may be returned from the private to the public sector.

3.3. As regards the organisation⁽¹⁾, regulation⁽²⁾, financing⁽³⁾ and assessment of these services, the Committee has laid down the following guidelines:

- regarding organisation, in accordance with the principle of the freedom to choose the method of management, either direct or indirect; in the latter case, each public authority will choose the operators for the various services of general interest for which it is responsible;
- regarding regulation, regulators — either individuals or bodies — will perform tasks related to assessment, monitoring and intervention;
- regarding financing, the relationship between the operators of these services and the authorities responsible must be laid down in a contract defining, in particular, the pricing principles and main methods of financing.

The EESC repeats that the principle of free administration by the territorial public authorities should be applied, and calls for the criteria used in assessing services of general interest to be diversified and to take special account of quality of service. From the financial point of view, the concept of compensation for the costs incurred by public service obligations should be defined.

⁽¹⁾ OJ C 241, 7.10.2002, point 4.12.

⁽²⁾ OJ C 241, 7.10.2002, point 4.11.

⁽³⁾ OJ C 241, 7.10.2002, point 4.13.

3.4. With respect to measures that could be used to reinforce legal certainty, the Committee has already suggested the following:

- Services of general interest must be defined at the most appropriate level and with due respect for the various European, national and territorial levels. Furthermore, it is the responsibility of public authorities to take account of new social needs and technological changes, in particular those in the information society, in order to define the aims and obligations of public service ⁽¹⁾ and of universal service content.
- When public authorities decide to assign service management to a third party, and when special and/or exclusive rights are granted, the management of these services must be entrusted with due respect for public tendering rules ⁽²⁾.
- In order to improve democratic participation and the participation of citizens, the users must be consulted ⁽³⁾.
- The access to information, consultation and participation of workers and their representatives is essential ⁽⁴⁾.
- In order to distinguish between economic and non-economic activities, services associated with national education systems and the mandatory membership of a basic social security scheme, and services provided by not-for-profit social, charitable and cultural entities, must be exempt from competition rules and provisions relating to the internal market, but not from the principles of Community law ⁽⁵⁾.

3.5. The Committee agrees that the Union should promote a high level of consumer protection at every stage of service provision:

- at the pre-contractual stage, with accessible, sufficient and relevant information and truthful advertising;
- at the contractual stage, with clear contracts containing no unfair terms, with affordable prices and pre-established conditions of quality;
- at the post-contractual stage, through the introduction of flexible, straightforward and effective out-of-court complaints procedures, where possible with standard forms and automatic compensation for service shortcomings, except in cases of *force majeure* or under unforeseeable circumstances.

⁽¹⁾ OJ C 241, 7.10.2002, point 4.8.2.

⁽²⁾ OJ C 241, 7.10.2002, point 4.12.1.

⁽³⁾ OJ C 241, 7.10.2002, point 4.14.

⁽⁴⁾ OJ C 241, 7.10.2002, point 4.15.

⁽⁵⁾ OJ C 241, 7.10.2002, point 4.17.

4. Responses to the Green Paper

The Green Paper on services of general interest, published by the Commission on 21 May 2003, sets out to launch a wide-ranging consultation exercise on the four areas listed in point 2.4 above. The EESC would emphasise the importance of this debate at a time when the European Union is reshaping its approaches and its institutions for the future, and is preparing to receive ten new Member States.

The EESC believes that the questions raised by the European Commission in the Green Paper provide a realistic basis for developing the social and civil dialogue announced by the Commission President, Romano Prodi, in October 2002 with a view to defining a strategy on services of general interest, in which all the relevant players must be involved. The EESC is ready to make its contribution.

The list of areas concerned by the questions contained in the Green Paper should not however be considered exhaustive: additional areas should include a chapter on citizens' rights regarding services of general interest.

Similarly, the Green Paper barely mentions social services. Although these are dealt with separately in the Charter of Fundamental Rights, they are part of services of general interest and represent a key element in the European social model. There is currently a growing trend to subject them to competition law.

The Green Paper contains thirty questions across ten chapters, to which the Commission invites replies and contributions.

In addition to the replies to the questions raised provided by the EESC in earlier opinions, and which are set out above, the EESC wishes to make the following specific points.

4.1. What kind of subsidiarity?

4.1.1. Services of general interest, whose essential role is to help enhance all citizens' quality of life, come under an area where there is a need for particularly active implementation of the principles of subsidiarity, proportionality and proximity.

4.1.2. The aim should be to reconcile respect for the diversity of organisational and regulatory methods, arising from historical, traditional and institutional factors, and from the different kinds of service, with the process of European integration. The result should be differentiated responses according to the type of service concerned — trans-European, cross-border, national, regional or local — in order to promote maximum efficacy.

4.1.3. The responsibilities of the European Union, the Member States and sub-national bodies, together with methods for cooperation between them, should be clarified in line with these factors. Each public authority should be recognised as being free to choose how to organise and run the services of general interest for which it is responsible, the purpose being to ensure the level of quality required to meet the fundamental and essential needs of users and the general public.

4.1.4. The Union's responsibilities regarding services of general interest cannot be restricted to completing the internal market and careful implementation of competition law. The Union must guarantee the fundamental rights, and contribute to the Union's economic, social and territorial cohesion, to social inclusion and to encouragement for balanced and sustainable development by promoting high-quality, effective services of general interest, and must guarantee the possibility of legal redress for individuals.

4.1.5. The Union should also consider developing common services of general interest at European level such as Galileo, the single European sky, etc.

4.1.6. In this regard, while recalling that it would like promotion of services of general interest to be included as one of the objectives of the EU in Article 3 of the future Constitution, the EESC welcomes the relative progress represented by the Convention's draft, which amplifies and strengthens the present Article 16 concerning services of general interest, converts it into a legal basis ('European laws shall define these principles and conditions' Article III-6), and includes services of general economic interest under the 'clauses of general application'.

4.2. *Sector-specific legislation and general legal framework*

4.2.1. The EESC calls for a directive or framework law to consolidate:

- the principles governing services of general interest,
- the main thrust of Community law,
- the ways of financing public service or universal service obligations,
- the choice of organisation and regulation methods,
- performance assessment procedures, and
- users' rights,

in order to ensure greater legal and economic certainty for all those concerned, while giving the Member States the flexibility they need in this area.

4.2.2. The EESC would like to see a dynamic approach to social services, exploring this issue in depth. All those concerned must be involved in the process, on the basis of a civil dialogue.

4.2.3. The EESC also calls for the point of view of businesses, in their capacity as users of services of general interest, to be taken into account. Wherever they are located — and especially in rural or inaccessible areas, such as island and upland regions — businesses must have access to services under the same conditions of availability and cost as businesses in areas, such as urban ones, where access to services is easier. The Member States must be permitted and encouraged to adopt special derogation measures, including in the field of taxation, and to create forms of positive legal or economic discrimination enabling these services to be maintained in inaccessible areas, as well as to introduce special measures to assist businesses established in such areas. The EESC calls for this provision to be included in the framework directive.

4.2.4. The EESC does not see a 'general legal framework' and 'sector-specific legislation' as opposed, suggesting rather that their mutual advantages be combined.

4.3. *Economic and non-economic services*

4.3.1. The line between economic and non-economic is blurred, risky and uncertain, and is today generating forms of growing legal uncertainty. There is a need for clarification.

4.3.2. All services of general interest provided, even if on a non-profit or voluntary basis, represent a given economic value without, however, falling within the scope of competition law. Moreover, a service may simultaneously be commercial and non-commercial. By the same token, a service may be of a commercial nature without the market necessarily being in a position to provide a service matching the general approach and principles governing services of general interest.

4.3.3. The purpose is not to distinguish between 'economic' and 'non-economic' services, but to ensure active implementation of the principle of subsidiarity. The Union should recall the types of service to which common competition law does not apply (services of sovereign or national, regional or local interest, the compulsory education system, health care and social protection, or cultural, charitable, social, solidarity/donation-based activities, etc.).

4.3.4. Framework law and sector-specific legislation must clearly define the principles and regulatory arrangements for other services, complementing common competition law; this legislative definition enables further developments to be undertaken when necessary.

4.4. *A common set of obligations*

4.4.1. The public service obligations listed in the Green Paper are still all too often referred back to the Member States and whatever action they may take, while the Union's responsibilities are under-developed (except with regard to universal service, which is defined at Community level).

4.4.2. The Union must assume its own responsibilities where promotion of its economic, social and territorial cohesion is concerned; the same should apply to the creation of trans-European networks, environmental protection, health, safety and security.

4.4.3. The EESC believes that the Union should take greater account of the changing way in which universal service is defined. In those sectors where it has been defined, the original content has remained static although technological and economic change has been widespread and rapid.

4.4.4. In addition, the Union should carefully consider for which other sectors it might envisage guaranteeing access for all citizens to basic services of general interest (water and sewage, basic banking service, housing, etc.).

4.5. *Sector-specific obligations*

4.5.1. Safety, security of supply and environmental protection clearly have a sector-specific dimension, but they also often possess a broader dimension. Some could be included within the common set of obligations.

4.5.2. Similarly, issues of access to networks, interoperability and interconnection, like aspects specific to cross-border zones, are not restricted to single sectors, but should be covered by more developed Community policies.

4.6. *Definition of obligations and choice of organisation*

4.6.1. As part of the active implementation of the subsidiarity principle, each relevant authority makes a transparent definition of the objectives of the services of general interest

for which it is responsible, and of the ensuing public service or universal service obligations. It decides either to manage these obligations in-house, or to entrust them to an outside operator, entailing open tendering procedures. In both cases, the relevant authority separates regulatory responsibilities and activities from the operating function.

4.7. *Financing*

4.7.1. The relevant authority decides how to finance public service or universal service obligations, with complete transparency and in accordance with the principle of proportionality. European rules must provide long-term security for the financing of these obligations.

4.7.2. In the EESC's view, the possible options for financing obligations should not be restricted, or preference given only to direct public funding from the budget: this would contradict the principles of subsidiarity and proportionality. Each method has its own features which may be best suited to a particular sector or objective, so that those responsible for ensuring compliance with service of general interest obligations must be able to choose their management and funding methods and combine their respective advantages.

4.7.3. In view of the limited funding capacity of some of the new Member States, the Union should make the necessary means available to them to promote the development of effective services of general interest.

4.8. *Evaluation*

4.8.1. The definition of services of general interest, the objectives assigned to them, the way they are organised and regulated, and the way they are financed change over time and from place to place. At the same time, Community regulations seek the best on-going balance between application of common competition law and these objectives.

4.8.2. For these two reasons, in addition to exchanges of best practice and benchmarking, evaluation of the performance of services of general interest is a vital objective if the European Union is to make progress in enhancing their quality and efficacy. Due consideration should be given to defining the needs of users and the general public, and to service quality and practical arrangements for provision, as well as to economic aspects, when establishing evaluation criteria. This entails users and the general public having the means to voice their needs.

4.8.3. Since the objectives of the various actors involved in services of general interest are not the same, they should all be involved in shaping evaluation methods and assessing their results. Evaluation must not be the exclusive preserve of any of the actors.

4.8.4. Users to whom services of general interest are directed in accordance with their needs and aspirations should be involved in evaluation, through their representatives.

4.8.5. In this regard, the EESC — which represents the key actors involved in services of general interest — could play a role in evaluation procedures.

4.9. *Trade policy*

4.9.1. The exemptions applying to services of general economic interest must be clearly advocated and upheld by

the European Union in the negotiations on the General Agreement on Trade in Services (GATS).

4.9.2. More generally, within these negotiations, the European Union must not allow the methods it has defined for organising and regulating services of general economic interest to be called into question, and it must promote its fundamental values, especially in its relations with developing nations.

4.10. *Development cooperation*

4.10.1. Creation of infrastructure in many areas of services of general interest requires heavy investment, with low short-term returns. This factor weighs heavily upon indebted developing countries with major development needs (e.g. in the water sector). The Community should therefore focus particularly on cooperation in creating such infrastructure.

Brussels, 11 December 2003.

The President

of the European Economic and Social Committee

Roger BRIESCH

APPENDIX

to the opinion of the European Economic and Social Committee

The following amendments, which received at least one quarter of the votes cast, were rejected in the course of the discussion (Rule 54(3) of the Rules of Procedure).

Point 3.1

Delete and replace by following text:

'3.1. The Committee has stated its view on most of the issues raised by the Commission in the Green Paper in Opinions CES 949/99 and CES 860/2002. In the latter it supported the need for a framework Directive consolidating the political principles governing services of general economic interest and giving Member States the flexibility they need in this area.'

Point 3.1.1

Delete and replace by following text:

'3.1.1. After studying the Green Paper and relevant Court rulings (paragraphs 1.4.2-1.4.4) the Committee has come to a different conclusion. The primary goal must be to ensure the autonomous rights and obligations of Member States and regional and local authorities to ensure and arrange for the provision of services of general interest. As noted in more detail elsewhere in this Opinion, the services themselves are diverse and continually developing, making it impossible to give clear definitions. In addition, the Court rulings have clarified the problems concerning compatibility with State aid rules. Under these circumstances, a framework Directive or other general instrument at the EU level would only lead to confusion, lack of clarity and difficulties of interpretation between the different levels of legislation.'

Insert a new point 3.1.2

'3.1.2. New legislation at the Union level should only be developed for specific sectors in order to open and harmonise markets, when seen beneficial for European consumers and other actors, as is the case for telecommunications, energy and some others. In these cases strict rules on provision of universal and public service are and must be included in respective sectorial Directives.'

Reason

Self-explanatory.

Point 3.2 (present version)

Change wording of first sentence:

'3.2. As regards those principles that should be respected by relevant authorities and actors, ~~could be included in a framework Directive or other general instrument concerning services of general interest,~~ the Committee has already expressed the following view...'

Reason

See the amendment to point 3.1.

Point 4.1.6

Delete last part:

'4.1.6. "In this regard, while recalling that it would like promotion of services of general interest to be included as one of the objectives of the EU in Article 3 of the future Constitution, the EESC welcomes the relative progress represented by the Convention's draft." ~~which amplifies and strengthens the present Article 16 concerning services of general interest, converts it into a legal basis ("European laws shall define these principles and conditions" Article III-6), and includes services of general economic interest under the "clauses of general application".~~

Reason

See the amendment to point 3.1. (All-embracing) European law is not desirable.

Point 4.2

Delete the whole point.

Reason

See the amendment to point 3.1. The major issue of social services is examined elsewhere in the section opinion and the text contained in point 4.2 could be included there.

Point 4.3.4

Delete the first three words.

'4.3.4. ~~Framework law and~~ Sector-specific legislation must clearly define the principles and regulatory arrangements for other services, complementing common competition law; this legislative definition enables further developments to be undertaken when necessary.'

Reason

See the amendment to point 3.1.

Result of the vote

For: 28, against: 52, abstentions: 5.
