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## 12. Services of general interest in Europe

A5-0361/2001

### European Parliament resolution on the Commission communication 'Services of General Interest in Europe' (COM(2000) 580 – C5-0399/2001 – 2001/2157(COS))

*The European Parliament,*

- having regard to the Commission communication (COM(2000) 580 – C5-0399/2001),
  - having regard to Article 36 of the European Union's Charter of Fundamental Rights concerning access to services of general economic interest,
  - having regard to Articles 2, 5, 16, 73, 81(3), 86, 87, 88 and 295 of the EC Treaty,
  - having regard to its previous resolutions on general interest services, in particular its resolution of 17 December 1997<sup>(1)</sup> on the communication from the Commission on services of general interest in Europe (COM(1996) 443 – C4-0507/96) and its resolution of 18 May 2000 on the draft directive amending Commission Directive 80/723/EEC on the transparency of financial relations between Member States and public undertakings<sup>(2)</sup> (SEC(1999) 404 – C5-0102/2000 – 2000/2065(COS)),
  - having regard to the conclusions of the Nice European Council concerning general interest services and the statement of 11 December 2000 on general interest services,
  - having regard to the hearing on this subject conducted by the Committee on Economic and Monetary Affairs on 6 March 2001,
  - having regard to Rule 47(1) of its Rules of Procedure,
  - having regard to the report of the Committee on Economic and Monetary Affairs and the opinions of the Committee on Culture, Youth, Education, the Media and Sport, the Committee on Employment and Social Affairs and of the Committee on Industry, External Trade, Research and Energy (A5-0361/2001),
- A. whereas general interest services are to be seen as part of the European Social Model,
- B. whereas the policy of liberalising various services of general interest may have both positive and negative effects on members of the public/users, and whereas therefore this policy requires a precise and comparative evaluation of the quality of the services provided before embarking upon further liberalisation,
- C. whereas, under Article 16 of the EC Treaty, general interest services in Europe occupy an important place in the Community and play an essential role in promoting social and territorial cohesion,
- D. whereas, pursuant to Article 36 of the Charter of Fundamental Rights of the European Union, 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,
- E. whereas, having regard to the principle of subsidiarity, pursuant to Article 5(2) of the EC Treaty, it will, in certain conditions strictly laid down by Community provisions, be for the Member States and their local authorities to decide which services are of general economic interest and the appropriate method of management,
- F. whereas the development of the single market has led to more intense competition between public and private undertakings, and it is therefore important and right for competition rules to be applied fairly and effectively,

<sup>(1)</sup> OJ C 14, 19.1.1998, p. 74.

<sup>(2)</sup> OJ C 59, 23.2.2001, p. 238.

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- G. whereas the judgments of the Court of Justice in the cases of Corbeau of 9 May 1993 and the municipality of Almelo of 17 April 1994 state the conditions subject to which certain exclusive rights assigned to a service of general interest may be exempted from competition rules,
- H. whereas, pursuant to Article 295 of the EC Treaty, the EU must be neutral with regard to systems of property ownership,
- I. whereas public undertakings and undertakings which have been granted special or exclusive rights, pursuant to Article 86(1) of the EC Treaty, or entrusted with services of general economic interest, pursuant to Article 86(2) of the EC Treaty, are an important economic factor in the Community and the Member States,
- J. whereas the introduction of the European single currency and increasing globalisation will mean in future that competition law in the EU must be applied uniformly to prevent or remove cross-border distortions of competition,
- K. whereas defining and structuring general interest services remains in principle the responsibility of the appropriate level of authority while at the same time complying with the law on state aid applied on a uniform basis, guaranteed through verification by the Commission under the supervision of the European Court of Justice,
- L. whereas development of general interest services on the basis of the social market economy model must be a key element of European economic, financial and social policy,
- M. whereas compliance with the provision of services of general interest in the countries applying for accession, and the process of their development, is an important aspect that must be taken into consideration in the course of accession negotiations,
- N. whereas compliance with the specific situation in rural areas (socially disadvantaged regions, remote locations, etc) must be given special consideration,

**I. *The concept of general interest services in the EU***

1. Notes the Commission's communication on general interest services and agrees with the statement therein that what 'is to be regarded as a service of general interest and how it should be operated are issues that are first and foremost decided locally'; notes also that European citizens should receive high-quality services at affordable prices and, where justified by the social situation, free of charge;
2. Calls on the Commission to perform without delay a precise and comparative evaluation of the real impact of the policy of liberalisation of services of general interest before embarking upon further liberalisation;
3. Approves the option chosen by the Commission, which regards the Cardiff process as a framework for regular evaluation of the functioning of services of general economic interest within the single market;
4. Points out that services of general economic interest must ensure equality of access, security of supply, continuity, high quality and democratic accountability;
5. Supports the common aim of the Heads of State and Government and the Commission to ensure that the application of competition law in connection with general interest services results in greater predictability and increased legal certainty;
6. Calls on the Laeken European Council to support vis-à-vis the Commission its proposal for a framework directive on the objectives and organisational arrangements of services of general interest based on Article 95 of the EC Treaty; this directive should create a legal framework which guarantees the availability of services of general interest to the public, particularly pursuant to Article 16 of the EC Treaty;

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7. Expects, therefore, the Commission to define in the framework directive the common principles on which services of general interest are based at an appropriate tier of subsidiarity, to specify and define the common principles of democratic and transparent regulation, to ensure active involvement of citizens and users in the process of definition, evaluation and contract appraisal and to institutionalise a common pluralist appraisal procedure;
8. Calls on the Commission to ensure consistency between the principles set out in its framework directive and the provisions governing specific industries already adopted;
9. Notes that, after an initial phase of implementing the internal market, by opening up national networks to competition, a phase which has not yet been completed, the Union is now entering a second phase in which the expansion of cross-border trade and the emergence of pan-European operators and networks makes it necessary to define powers and responsibilities at European Union level for services of general interest;
10. Is aware that the Lisbon European Council set the EU the goal of becoming the world's most dynamic economic area and notes that this presupposes rewarding all economic operators for innovation and ideas;
11. Points out that effective state control over subsidies, provided that it is tailored to the requirements and characteristics of services of general interest, is reasonable and necessary;
12. Notes that the European Union is entitled to control abusive practices only to determine whether there is a serious breach of fair competition, which is guaranteed to Union citizens, throughout EU territory with a cross-border impact at the same time;
13. Stresses the importance of non-profit organisations, as organisations springing from civil society (working with volunteers, non-commercial, form of organisation which is responsive to citizens, no owners), as a third pillar in addition to the market and the State, and points to their importance for citizens' ability to organise self-help;
14. Emphasises further that the decisive factor is not who performs the general interest services but that quality is improved, accountability, affordability and sustainable development are maintained, and efficiency, security of provision and continuity are used as criteria for the award of contracts; welcomes the Commission's announcement that it will not lay down any preconditions as to whether general interest services are to be provided by public or private undertakings;
15. Notes that the European Treaties serve both aims, as they commit both the EU and the Member States to a policy of fair competition, and they also emphasise the need to guarantee access to general interest services;
16. Notes that general interest services in general should be taken to mean services that are important for people's daily lives, including therefore transport, postal services, telecommunications, education, hospitals, social services, drains, refuse collection and water and energy supply, particularly electricity;
17. Assumes that the Commission's competition policy will comply with Article 151 of the EC Treaty, and that the European Union will do its utmost to make allowance for the cultural interests of the Member States and take the particularities of the cultural sector, and its diversity, into account, with due regard for the principle of subsidiarity;
18. Points out that, pursuant to Article 16 of the EC Treaty, the Community and the Member States have an obligation to define the tasks of services of general economic interest as well as the way they are carried out, and therefore must impose obligations to provide certain services on the service providers, whether public or private, on terms enabling them to carry out their tasks;
19. Stresses the importance of reliable conditions for the provision of general interest services (high quality, wide availability, optimum price, social balance and lasting security of provision);
20. 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;

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21. Considers that the co-responsibility of private and public operators for services of general interest will also have to be clarified within the framework of work on the social responsibility of businesses, which is on the European social agenda agreed at Nice;
22. Notes that general interest services can be provided most beneficially for the citizens if they are publicly and clearly defined and there are economic-efficiency criteria to be complied with; considers that where these services involve economic activities, as many providers as possible must, as a matter of principle, be given the opportunity to carry out these tasks competitively through a public invitation to tender;
23. Notes that if the public authorities in the Member States impose service obligations on undertakings and grant financial compensation from public funds for imposing these obligations, this does not constitute aid, as long as the compensation does not go beyond what is needed to even out the burden imposed by the public authorities;
24. Welcomes the fact that the Commission advocates a very comprehensive range of general interest services and in achieving this aim recognises the principle of subsidiarity and the Member States' freedom, subject to certain conditions, to define and control general interest services;
25. Points out that local authorities must remain free to choose the method of 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 use direct management or to delegate the management of those services; stresses, however, that where a local authority decides to delegate the management of the services of general interest for which it is responsible, it must be required to use systematic competitive tendering, in accordance with Community law; stresses also that the entities which manage services of general interest under a direct management arrangement should not be in a position to take over external markets, outside their territorial area of activity, but this must not prevent inter-communality;
26. Welcomes the Commission's statement that services of general economic, social and regional interest should be provided in the EU even when the market does not provide sufficient incentives;
27. Shares the Commission's view that to fulfil public service obligations, special or exclusive rights may be granted without infringing competition law, and special funding mechanisms for the additional obligations may be devised;
28. Agrees with the Commission that so-called 'non-economic activities', mainly prerogatives of the State and its local authorities, such as internal and external security, the administration of justice and the conduct of foreign relations, are not subject to EU competition rules;
29. Supports the Commission in its view that services in connection with national education, public health and compulsory basic social security schemes, activities that are a matter of government, such as air traffic control authorities or bodies responsible for preventing pollution at sea, and those provided by non-profit organisations, in particular social, charitable and cultural institutions, should be excluded from the application of competition and internal market rules;
30. Emphasises that apart from the issue of competitive neutrality in the provision of general interest services, important aspects of the provision of these services must be, in particular, whether they are economically, socially and environmentally beneficial for citizens, users and tax-payers, their quality, financing — including the transparency thereof — reliability and monitoring;
31. Assumes that in further consultations the Commission will use examples, guidelines, and communications, together with proposals for regulations on exemptions, to provide further clarification of the controversial questions with regard to legal clarity and the areas of application of European competition law;

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32. Considers that, within the framework of the WTO negotiations, the Commission should seek clarification of certain provisions of the General Agreement on Trade in Services (GATS) in order to make it clear that WTO rules do not affect the right of Member States to regulate services of general interest and to adopt measures in this field;

## **II. Need for action at European level**

33. Endorses the Commission's views with regard to the principles of neutrality, freedom of definition and proportionality and emphasises that by virtue thereof the Member States are free to determine the tasks and management of general interest services and that it is the Commission's task to ensure that the rules on the single market and competition are observed;

34. Supports the Nice European Council's calls for the rules on the single market and competition to be applied in such a way that general interest services are able to carry out their tasks economically and with legal certainty;

35. Considers it necessary, in view of the successes and problems to date in liberalising important service areas under the single market programme, to perform a better assessment of the impact on social and regional cohesion before deciding whether it would be appropriate to proceed further with the liberalisation which has been introduced in the areas of transport, electricity, gas and postal services;

36. Takes the view that progressive liberalisation of services sectors in the European Union must go hand in hand with maintenance of universal service;

37. Notes that public and private undertakings should always be given equivalent access to the provision of services of general interest where that is not specifically excluded by Member State regulations; stresses the importance of competition and economic-efficiency testing, particularly by way of benchmarking, for optimum service provision;

38. Points out that respect for the choice of and criteria applying to services of general interest requires more democratic governance, i.e. legislation adopted under the codecision procedure, applied by the Commission subject to scrutiny by the European Parliament;

39. Stresses, in the context of the subsidiarity principle, that Member States, regional and local authorities are free to define and choose the service provision they want;

40. Calls on the Commission, to ensure greater legal clarity, to make clear in which cases intra — Community trade is not affected (local application) and to improve the transparency of the decision-making process through a graduated examination process, and calls on the Commission to decide more rapidly on standard cases and simple complaints in the interests of transparency and greater legal certainty;

41. Welcomes warmly the fact that the Commission in recent months has issued regulations clarifying and further developing its former guidelines and has thus clarified the situation with regard to aid for SMEs, the 'de minimis' rule and aid for training and environmental protection, and emphasises that aids to private and public undertakings are admissible only under strict conditions;

42. Calls on the Commission to clarify how a distinction is to be made between economic and non-economic activities and what is meant by 'transparency monitoring' in conceptual terms in relation to 'proportionality testing' in operational terms; stresses that the competition rules do not in any circumstances apply to non-economic activities;

43. Hopes that the Commission will coordinate a regular and pluralist evaluation of the way in which the tasks of general interest service provision are fulfilled, particularly with regard to the contribution to the social and territorial cohesion of the Union, quality of services, accessibility on a equal footing and a balanced and transparent pricing system;

44. Considers it vital to devise pluralist assessment procedures involving all parties; suggests that the European Parliament should organise the debate within the various existing forums (Economic and Social Committee, Committee of the Regions, consultative bodies, associations involved in services of general interest initiatives and consumer associations); calls for this process to result in consultation before any decisions are taken;

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45. Asks the Commission to produce a report assessing the present state and the requirements of SGIs in the candidate countries;

## ***II. Need for action at Member State level***

46. Considers that the Member States and their subsidiary levels (regions, provinces and local authorities) should in future have greater freedom to draw up their own definitions of general interest services within the terms of the EU competition rules;

47. Affirms the EU's competence in relation to competition policy, which, in view of the challenges of the single currency, the European single market, globalisation of the economy and technological development has assumed all the greater importance, but considers necessary a broad political debate on the limits of competition policy when it collides with other core policy areas of the EU or on national, regional or local level;

48. Takes the view that it is necessary for the Commission to exercise supplementary control over abuses;

49. Takes the view that in a parliamentary democracy the structures and a cost/benefit analysis of modes of service provision must be presented transparently and clearly to citizens and taxpayers together with competitive alternatives, including the long-term implications for the quality of life of citizens;

50. Takes the view that there is a fundamental problem with generalised subsidies to all providers of services in the general interest, as this prevents the services provided from being presented correctly, in line with demand and need;

51. Considers therefore that it is legally possible and politically sensible that the additional cost of services which are to be offered to the public on particularly favourable terms can be offset if necessary from tax revenue but that the transparency of such financing must be guaranteed;

52. Considers that the EU transparency directive which was adopted in 2000 and is soon to be implemented is the appropriate instrument to assist public understanding of the problem of generalised subsidies in undertakings which perform services in the free market as well as in the public service and thus to create more clarity and honesty with regard to the use of tax revenues and other aid;

53. Endorses the Commission's position to the extent that awarding contracts to private-sector third parties even in areas of enterprise which have not yet been liberalised is subject to the principle of an invitation to tender being issued beforehand by the public sector;

54. Takes the view that wherever services of general interest can be provided competitively, access should always be open to public and private undertakings on equal terms; draws attention in that connection to the local-economy subsidiarity principle;

55. Considers it basically incompatible with the principle of competitive neutrality for public undertakings to be exempted from turnover tax 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 EU law and therefore there should be a principle that public and private undertakings are treated equally with regard to tax legislation;

56. Recalls that in line with the Copenhagen criteria the candidate countries too may not deliberately favour their industries and should take advantage of the transitional provisions to reform the status of the enterprises concerned, reconstruct efficient and fair services of general interest and develop the capacity to withstand the general pressure of competition;

57. Stresses that the basic obligation on the public authorities to issue fair and correct invitations to tender pursuant to European and Member States' laws can be an effective instrument to prevent distortions of competition, at the same time allowing the state to define and monitor conditions with regard to quality, availability and environmental compatibility;

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58. Takes the view that the abolition of state monopolies should not lead to the establishment of private monopolies;

59. Takes the view that with regard to the right to define general interest services, both the Member States and subsidiary levels must have sufficient rights of democratic participation and powers to ensure an optimum supply for the public even in competitive circumstances, in particular with regard to description of services, procedure for invitations to tender and control of service provision;

#### **IV. With regard to particular sectoral cases**

60. Stresses that the EU's internal market policy has basically led to better quality, lower prices and better availability at a high level of technology, as is demonstrably the case, for example, in telecommunications;

61. Regrets that the Commission and the Member States were incapable of anticipating and managing the award of UMTS licences as a service of general interest;

62. Notes that the Commission has clearly set out in its proposal for a directive amending the directive on the internal market in electricity and gas that the Member States have complete legal freedom to determine important services in the general interest and that this includes, for example, protecting socially weaker customers from unjustifiable exclusion from provision, transparency of contract conditions for consumers, reasonably-priced and transparent settlement mechanisms, supply to remote areas at reasonable prices to promote social and territorial cohesion, regard for environmental protection and maintaining and developing infrastructure;

63. Calls for the Member States to be obliged to use the transparent award procedure laid down by the Commission for new provision capacities, when this need develops as a result of supply and demand with a view to guaranteeing security of supply;

64. Calls on the Commission 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;

65. Calls on the Member States to consider, in conjunction with local and regional authorities, whether the opening up of water supply and waste-water services to private enterprise would contribute to an improvement in the functioning of these services;

66. 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;

67. Takes the view that despite the special circumstances, water supply and waste-water services need to be operated on the basis of economic criteria, and calls on the Member States to stimulate this and to investigate — where applicable — whether the privatisations carried out so far have contributed to adequate improvements in the functioning of the water services concerned;

68. Stresses the need for public banks which contribute to the provision of services of general interest by making accounts available to all, providing a comprehensive range of financial services to the community, facilitating loans for small businesses and promoting a wide range of other public-spirited activities;

69. Takes the view that the transparency directive must be implemented in the area of public banks as well, so that the public obligation and actual costs of carrying out this public obligation can be more clearly delimited, assessed from the point of view of competition and if necessary financially compensated;

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70. Takes the view that the Commission communication on services of general interest in Europe does not give sufficient recognition to the significance of independent welfare associations and independent agencies which offer a range of services in some Member States on the basis of solidarity, ethics, religion, charity or cultural diversity;
71. Therefore stresses the need to grant a block exemption for social and cultural facilities which are important for the community to allow citizens in future to take advantage of such facilities under special conditions and at competitive prices, and thus it must be permissible also for public funding to be provided openly and transparently for that purpose so long as competition is not massively distorted;
72. Calls for non-commercial activities, e.g. of a social, cultural or charitable nature, like sovereign activities in general to be exempted from control of subsidies and in principle from the application of EU competition law and for relevant guidelines to be developed;
73. Considers that a list of criteria should be drawn up with regard to the Commission's definitions of economic and non-economic activities, when decisions must be made in doubtful cases;
74. Takes the view that public broadcasting institutions under the public service obligations are not covered by the European Treaties' competition rules;
75. Considers that, in the context of services in the general interest, a specific approach should be taken to audiovisual services — irrespective of the type of audiovisual broadcast, whether public service television, private television, video streaming, etc. — and culture in order to achieve objectives such as the protection of fundamental rights and democratic principles, pluralism, access for all to culture and technological progress, the right of reply, cultural and linguistic diversity and the protection of users and, in particular, of minors;
76. Looks favourably on the conclusions of the Lille Colloquy of 19/20 July 2000 on the public service function of broadcasting, and calls on the Commission to cooperate with the Member States with a view to considering possible ways of applying the principles of Protocol 32 to the Treaty of Amsterdam;
77. Confirms that within a Community framework to regulate services of general interest and ensure their capacity to achieve their objectives, the Member States have a duty, in accordance with the above-mentioned Protocol, to define the tasks of public service broadcasting organisations and to specify their financial structure;
78. Calls on the Commission, the Council and the Member States to create legal certainty for public service broadcasting and the cultural industries in the implementation of the right of competition;
79. Calls on the Commission, the Council and the Member States to coordinate their efforts to guarantee users and operators of audiovisual services and the media, by means of a clear and predictable regulatory framework, fair and non-discriminatory access to infrastructures and contents;
80. Affirms the need, in connection with media markets and audiovisual content, for an objective definition of a dominant position which takes account of the rapid development of these markets and of the accompanying dangers of denying access;
81. Stresses the need to maintain services of general interest, even where providers are operating in a liberalised market on the basis of general authorisations rather than individual licences alone;
82. Considers that the assessment of general interest in the field of audiovisual and cultural content should be subject, at European level, to a high-level, thorough and regular political debate;
83. Stresses that opening the markets in former state monopoly areas, which is favoured by all the EU institutions including the Commission, the Council and the European Parliament, should in principle satisfy the model of fair and socially-responsible competition which serves the interests of citizens and takes account of their changing needs;

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84. Is convinced that the model of the social market economy is the European model of the future and the most likely to prove itself strong and sustainable in international competition;

85. Takes the view that an amendment of Article 16 of the Treaty is not necessary to achieve greater legal certainty and clarity in the area of general interest service provision and in this connection endorses the conclusion of the Nice summit that the area of general interest services should not be closely defined; stresses that in such a dynamic area as general interest services, over-regulation would result in robbing operators of opportunities and development possibilities which would primarily benefit citizens and taxpayers;

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86. Instructs its President to forward this resolution to the Council, the Commission, the Economic and Social Committee and the parliaments of the Member States.

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