



European Economic and Social Committee

TEN/223
The future of services
of general interest

Brussels, 6 July 2006

OPINION
of the
European Economic and Social Committee
on
The future of services of general interest
(Own-initiative opinion)

On 14 July 2005 the European Economic and Social Committee, acting under Rule 29(2) of its Rules of Procedure, decided to draw up an own-initiative opinion on:

The future of 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 30 May 2006. The rapporteur was Mr Hencks.

At its 428th plenary session, held on 5 and 6 July 2006 (meeting of 6 July), the European Economic and Social Committee adopted the following opinion by 46 to nine, with seven abstentions.

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1. Conclusions

1.1 Services of general interest defined as such by the public authorities on the basis of and in reference to social and civic action, meet basic needs and play a key role in promoting social and territorial cohesion in the EU and in the success of the Lisbon Strategy.

1.2 In response to the European Council's call for a period of reflection on the major issues facing Europe, civil society must become a resolute and challenging actor, in order to guarantee efficient services of general interest and to make them an essential component of the Union.

1.3 The EESC reiterates its call for the common basic principles to which all SGIs must adhere to be defined at Community level. These should be set out in a framework directive and, if necessary, in individual sector-specific directives.

1.4 In accordance with the principle of subsidiarity, each Member State must be able to define, by means of an official instrument to be notified, the types of sovereign service or services of national, regional or local interest not covered by SGEI and to which the rules on competition and State aid do not apply.

1.5 Where other services of general interest are concerned, both the framework directive and sector-specific laws must clearly uphold Member States' or local authorities' freedom to define management and funding methods, the principles and limits of Community action, evaluation of their performance, consumers and users' rights and a basic platform for public service missions and obligations.

1.6 To ensure that the measures adopted are acceptable to all those affected by services of general economic and non-economic interest, stakeholders from all levels – national, regional and local

authorities, the social partners, consumers' and environmental protection organisations, social economy bodies and those combating exclusion, etc. – must play their part alongside regulators and operators at national, regional or local level in making services of general interest work and be involved at every stage, in other words in organising, drawing up, monitoring and implementing quality standards.

1.7 At European level, wherever sectoral directives governing services of general interest have a social impact on employees' working conditions and terms and conditions of employment, organisations representing the two sides of industry must be consulted via the new sectoral committees for structured European social dialogue.

1.8 The changing nature of services of general interest and their importance in achieving the Lisbon strategy mean that regular evaluation is imperative, not only of the services of general economic interest already covered by Community rules, but also of services of general interest in keeping with the Union's aims. The EESC proposes that a monitoring centre be set up to evaluate services of economic and non-economic general interest, with a membership consisting of political representatives from the European Parliament and the Committee of the Regions and representatives of organised civil society from the European Economic and Social Committee.

1.9 The EESC emphasises that the principles set out above also determine the Union's stance in trade negotiations, in particular at the WTO and in the GATS process. In the context of international trade negotiations, it would be unacceptable for the European Union to give commitments to liberalise sectors or areas of business that have not been decided in line with internal market rules specifically governing services of general interest. The need to maintain Member States' power to regulate services of general economic and non-economic interest in order to achieve the social and development aims that the Union has set for itself means that services of general interest must be excluded from the scope of the negotiations referred to above.

2. Subject of the own-initiative opinion

2.1 Services of general interest are at the heart of the European model of society and play a defining role in promoting the EU's social and territorial cohesion. They complement and go beyond the single market, and are an essential component of the social and economic well-being of citizens and businesses.

2.2 Services of general interest, whether economic or non-economic, meet basic needs, give the public a sense of belonging to a community and, being such a part of everyone's daily life, embody one aspect of all European countries' cultural identity.

2.3 The focus of all of these considerations is thus the public interest, the pursuit of which requires guaranteed access to services deemed to be essential and the ability to pursue priority aims.

2.4 Despite this community of values, services of general interest are organised differently from one country to another, from one region to another and from one sector to another. National authorities may define what are services of general interest, with reference to a given social or civic activity.

2.5 This variety of situations poses a challenge for European integration. Nevertheless, far from being an insurmountable obstacle, it provides an opportunity to create - by establishing a set of principles that can be applied to all services of general interest - a suitable framework for promoting the general good in a constantly changing economic and social climate.

2.6 Achieving a healthy balance between the single European market on the one hand, with its requirements for freedom of movement, free competition, efficiency, competitiveness and economic dynamism, and on the other the need to take account of public interest objectives, has proven to be a long and complex process. Efforts to this end have met with a large measure of success, but some problems remain and they need to be remedied.

3. Background

3.1 The only articles in the Treaty of Rome that refer to public services are Article 77 (now Article 73 of the current Treaty), which addresses public service in the transport sector and Article 90(2) (now Article 86(2) of the current Treaty), which accepts that services of general interest can be exempt from the competition rules under certain circumstances.

3.2 Article 86(2) of the EC Treaty allows Member States to establish legal arrangements that derogate from ordinary law, in particular the rules on competition, for companies providing a service of general economic interest: *"Undertakings entrusted with the operation of services of general economic interest or having the character of an income-producing monopoly shall be subject to the provisions of the Constitution, in particular to the rules on competition, insofar as the application of such provisions does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the Union's interests"*¹.

3.3 On the basis of this Article, the Court of Justice of the European Communities has (since 1993) recognised that, in order to fulfil the particular task entrusted to it, the operator entrusted with public service missions may take liberties with the competition rules set out in the Treaty, and can even exclude all competition, where such restrictions are necessary to enable the undertaking to perform its task of general economic interest in economically acceptable conditions².

¹ Article III-166(2) of the Treaty establishing a Constitution for Europe, reproduced almost word for word in Article 86(2) of the EC Treaty.

² See judgments: "Poste Italiane", "Corbeau", "Commune d'Almelo", "Glöckner" and "Altmark".

3.4 The Court has furthermore stated that allowing competitive advantages in profit-making activities, to offset losses suffered by the undertaking in activities that are non-profit-making but which are in the general interest, is compatible with the Treaty³.

3.5 Similarly, the Court has ruled that where a State measure must be regarded as compensation for the services provided by the recipient undertakings in order to discharge public service obligations, such a measure is not caught, in certain circumstances, by the Treaty's provisions on State aid⁴. At the same time, the Court states that services of general interest – whether economic or non-economic – must comply with the general principles set out in the Treaty, i.e. transparency, proportionality, non-discrimination and equal treatment.

3.6 Following the Single European Act of 1986, which created a single market, European integration started to have an impact on services of general economic interest, in particular by challenging the special rights granted to Member State service operators (both public and private) and by launching a far-reaching process of opening up the major public service networks.

3.7 Article 16 of the 1997 Treaty of Amsterdam highlights the place occupied by services of general economic interest in the shared values of the Union as well as their role in promoting social and territorial cohesion. It calls on national and European institutions to take care that such services operate *"on the basis of principles and conditions which enable them to fulfil their missions"* whilst remaining broadly subject to the principles of competition.

3.8 The aforementioned Article 16 has no operational bearing on the Commission policy on public service operators. Nonetheless, in March 2000, the Lisbon European Council decided to *"achieve a fully operational internal market"*, advocating that the liberalisation of public network services be speeded up and that competition be extended in national markets to encompass railways and postal, energy and telecommunications services.

3.9 The Charter of Fundamental Rights, unveiled in Nice in 2000, for the first time established a link between services of general interest and fundamental rights. Thus access to SGEI and the rights relating to the specific components of services of general interest (social security and social assistance, health protection, environmental protection, etc.) are laid down in Articles II-34 to II-36 of the Charter of Fundamental Rights.

3.10 The Barcelona European Council of 15-16 March 2002 explicitly planned to *"specify the principles on services of general economic interest, which underlie Article 16 of the Treaty, in a proposal for a framework directive, while respecting the specificities of the different sectors involved and taking into account the provisions of Article 86 of the Treaty"*.

³ See the "Glöckner" judgment of 25.10.2001.

⁴ "Altmark" judgment of 24.7.2003.

4. The current situation

4.1 Although some progress has been made, many representatives of civil society consider this to be insufficient, given the importance of services of general interest to the lives of the European public. As part of the process of drawing up the future European constitution, they put forward numerous initiatives aimed at placing the principles of services of general interest firmly amongst the common aims of the Union, in order to promote and guarantee security and social justice through high-quality services founded on the principles of universality, equal access, neutrality of ownership and affordable pricing.

4.2 Article III-122 of the draft constitutional Treaty was to enact the bases of secondary law on services of general economic interest, stating that, without prejudice to the competence of Member States, European law shall establish the principles and set the conditions, *"in particular the economic and financial conditions, which enable them [SGEI] to fulfil their missions"*.

4.3 Article III-122 was also intended to recognise the principle of administrative freedom for local authorities and raise to the level of a constitutional principle the possibility of local authorities providing services of general economic interest themselves, thereby giving effect to the subsidiarity principle as regards the respective competences of the Union and the Member States in relation to services of general economic interest.

4.4 Because the ratification of the constitutional Treaty has been postponed, the EESC considers that the process of drafting the framework directive on services of general interest (economic and non-economic), for which it has been calling for years in its opinions⁵, should be started without further delay, on the basis of the current treaties.

4.5 The only possible legal basis today is the completion of the internal market, although this basis must be complemented by taking account of other provisions in the Treaty, specifying the type of internal market involved – which must be one in services of general economic interest:

- Article 16, which entrusts the Union with the task of ensuring that SGEI are able to fulfil their missions;
- Article 36 of the Charter of Fundamental Rights, which calls on the Union to respect universal access to SGEI;
- Article 86, which states that in the event of conflict between the rules on competition and the general interest of the Community, the latter shall prevail;
- Article 5, concerning respect for the subsidiarity principle;
- Article 295, which states the Union's neutrality with regard to the ownership of undertakings;
- Title VIII on employment, given the number of jobs directly or indirectly concerned by SGEI;

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EESC own-initiative opinion on Services of general interest, OJ C 241, 7.10.2002 pp. 119-127; EESC opinion on the Green Paper on Services of General Interest COM(2003) 270 final, OJ C 80, 30.3.2004 pp. 66-76; EESC opinion on the White Paper on services of general interest COM(2004) 374 final, OJ C 221, 8.9.2005 pp. 17-21.

- Title XIV on consumer protection, which sets out specific rules for SGEI;
- Title XV on Trans-European networks, which gives powers to the Union;
- Title XVI on industrial competitiveness, which requires SGEI that are modern, efficient and of high quality;
- Title XVII on economic and social cohesion, which calls for existing imbalances to be redressed;
- Title XIX on environmental protection, which is of particular importance to SGEI, given their externalities.

4.6 Combining these articles will help to establish a specific law for SGEI, as an integral part of a framework directive on all services of general interest, that takes account of the completion of the internal market and of SGEI's specific characteristics whilst meeting the aims of the Treaty.

5. The distinction between services of general interest and services of general economic interest

5.1 Unlike services of general economic interest, services of general interest are not grouped together and referred to as such in the Treaties.

5.2 Services of general interest of a non-economic nature are not governed by specific Community regulations and are not subject to the rules covering the internal market, competition or State aid. They do, however, form part of a set of EU objectives (respect for fundamental rights, promoting people's well-being, social justice, social cohesion, etc.) that are crucial to society. The result is that the Union, which has responsibilities for promoting the standard of living and quality of life throughout Europe, therefore also has some responsibility for the instruments whereby fundamental rights and social cohesion are implemented, in other words services of general interest. It must, therefore, at least ensure that these SGI are universally accessible, affordable and of high quality.

5.3 The distinction between economic and non-economic services remains vague and unclear. Almost any service of general interest, even a service provided on a not-for-profit or charitable basis, entails some economic value, although this does not automatically bring it within the scope of competition law. Furthermore, a service can be both commercial and non-commercial. Similarly, a service can be commercial without the market necessarily being in a position to provide that service in a manner which is consistent with the principles governing services of general interest.

5.4 It is thus to be expected that there are ambiguities and contradictions between competition and SGI, the economic or non-economic nature of which remains subject to the legal interpretations and re-interpretations of the Court of Justice of the European Communities. This:

- weakens the position of many public service operators, in particular those working in the social sphere or in non-commercial sectors or which operate at local level;
- exposes operators to the risk of sanction by the Commission or the European Court of Justice;
- is a source of concern to citizens/consumers, who fear that public services will disappear.

5.5 There are also ambiguities in the terminology used by the different European institutions. The Commission takes the view that the concept of services of general interest covers all services of general interest, whether commercial or otherwise, whereas the European Parliament only considers non-economic services to be services of general interest. The EESC therefore calls for the different institutions to work on finding a common language.

6. Guidelines for the future

6.1 In response to the European Council's call, following the referendums on the Constitutional Treaty, for a period of reflection on the major issues facing Europe, civil society must become a resolute and challenging actor, in order to guarantee efficient services of general interest and to make them an essential component of the Union.

6.2 In this connection, the question must be asked as to what initiatives should be taken in Europe in order to achieve a balanced combination of market mechanisms and public service missions in areas in which such complementarity a) is compatible with the objectives of services of general interest and b) can offer added value for improving the quality of life of Europe's citizens, as part of a European social model approach based on economic growth, job creation and sustainable well-being.

6.3 One of the most striking features of the social model is social dialogue. Informing, consulting and involving the social partners and civil society stakeholders are prerequisites for upholding and successfully modernising the European social model. The aim is to achieve a social Europe, founded on constructive interaction between regulation and social dialogue.

6.4 Stakeholders from all levels – national, regional and local authorities, the social partners, consumers' and environmental protection organisations, social economy bodies and those combating exclusion, etc. – have a place alongside regulators and operators in making services of general interest work.

6.5 It should thus be guaranteed that when it comes to regulating services of general interest at the national, regional and local level, the stakeholders referred to above are involved at every stage, in other words in organising, drawing up, monitoring and implementing quality standards and also in ensuring that they are cost-effective.

6.6 At European level, wherever sectoral directives have a social impact on employees' working conditions and terms and conditions of employment, structured European social dialogue must take place before the European Commission draws up its legislative initiatives.

6.7 In other words, the approach of Article 139 of the EC Treaty, giving the Commission the task of ensuring that workers' and employers' organisations are consulted on the social dimension of the policies it puts forward, must also be implemented at sectoral level, wherever services of general economic interest are regulated.

6.8 Structured sectoral social dialogue committees will thus be responsible for ensuring that sectoral or inter-sectoral social dialogue takes place, leading to the conclusion of the European collective bargaining agreements which can be applied in order to protect employees' rights and their jobs against social dumping and the use of unskilled labour.

6.9 This should not exempt the Commission from having to carry out an impact study of the workings of services of general economic interest for each of its proposals aimed at amending an instrument of Community law concerning a particular sector or at establishing a new instrument for services of general economic interest.

7. Establishing a European concept of services of general interest

7.1 The Europe that the citizens wish to see is a common living space, committed to a high quality of life, solidarity, employment and the creation of wealth that is not merely material. SGIs are a crucial means of achieving this.

7.2 There is now a need for the common basic principles to which all SGIs must adhere to be defined at Community level. These should be set out in a framework directive and, if necessary, in individual sector-specific directives.

7.3 It is crucial that a horizontal framework directive be adopted in order to give all the necessary legal certainty to undertakings entrusted with the operation of services of general economic and non-economic interest and to the public authorities, and also to provide the necessary guarantees for users and consumers.

8. Objectives for services of general interest

8.1 In keeping with their role as a pillar of the European social model and of a social market economy, SGIs should, through the interaction and integration of economic and social progress:

- guarantee the right of every individual to basic goods or services, such as education, health, security, employment, energy and water, transport, communications, etc.);
- ensure economic, social and cultural cohesion;
- ensure justice and social inclusion, build up solidarity and promote the general interest of the community;
- create conditions for sustainable development.

9. Definition of the general interest

9.1 The first task will be to establish an institutional framework forming a solid base for creating legal stability as to the distinction, in line with the Treaty, between services of general economic interest and non-economic services of general interest, it being understood that the Charter does not require that the rules on competition and State aid be applied to the latter.

9.2 Given the difficulties in providing an exhaustive definition of this concept on the one hand, and the danger entailed by a restrictive approach on the other, this definition must focus on the specific mission of the services in question and on the requirements (public service obligations) imposed on them in order to achieve their purpose, and which must be clearly set out.

9.3 In line with Article 86(2) of the EC Treaty, in cases of conflict, the duty to serve the general interest will prevail over applying the rules of competition, in accordance with Community case-law.

10. The role of national public authorities

10.1 In accordance with the principle of subsidiarity, each Member State must remain free to make its own distinction between economic services of general interest and non-economic services of general interest. Where there has clearly been a misinterpretation, the Commission must nevertheless be able to take action.

10.2 Member States must therefore be able to define by means of an official instrument, to be notified to the European institutions, the types of sovereign service covered by overriding public interest requirements, and services of national, regional or local interest which are not SGEI and to which the rules on competition and State aid do not apply.

10.3 Without prejudice to national authorities' freedom of choice, the EESC considers that these services of national, regional or local interest should include services relating to mandatory education, health and social protection systems, cultural activities and charitable work, whether this be of a social nature or operating on the basis of solidarity or donations, as well as audiovisual services and water supply and sewage disposal services.

10.4 Where other services are concerned, both the framework directive on services of general interest and sector-specific laws must clearly define the principles and arrangements for regulation, which will supplement ordinary competition law; this definition in law should help to bring requirements into line with users and consumers' changing needs and concerns and with changes in the economic and technological climate.

10.5 The EESC considers that the special status of water, the continuity and sustainability of the services linked to its supply, along with pricing and investment policy, mean that the water sector is covered by the general interest and does not lend itself to being systematically liberalised in Europe.

10.6 This regulatory framework must therefore safeguard the existence of services of general interest, Member States' or local authorities' freedom to define and organise, the freedom to choose management and funding methods⁶, the principles and limits of Community action, evaluation of their performance, consumers and users' rights and a basic platform for public service missions and obligations.

⁶ Article 295 TEC enshrines the principle of neutrality as regards public or private ownership of an undertaking (COM(2004) 374 final of 12.5.2004).

10.7 These public service obligations, which are the obligations that Member States impose on themselves or on providers, consist mainly of equal and universal access, the absence of any discrimination, continuity of service, quality, transparency, security and the ability to adapt to necessary changes.

10.8 Whilst wishing to ensure compliance with Article 295 of the Treaty, which makes no prior judgment as to the public or private nature of the management of services of general economic interest and does not encourage Member States to liberalise services, the EESC wishes to promote the broadest range of forms of management and partnership between the public authorities, the operators running these services, the social partners and users and consumers.

11.Regulation

11.1 Regulation is a dynamic process, which evolves in line with developments in the market and industrial change.

11.2 The way in which competition should work in a liberalised market depends on the particular characteristics of the sector; it can take the form of tenders, public/private partnerships, price controls, preventing discriminatory treatment in access to networks or of creating competition between networks.

11.3 A comparison of the different regulatory systems operating in the Member States demonstrates that no model can be used as a blueprint, because it is always tied to a country's history, institutions and traditions, to a particular sectoral or geographical situation and to technological developments in a specific sector.

11.4 What is needed, therefore, is to combine respect for the diversity of regulatory methods tied to history, traditions, institutions and types of service, with clear Community-wide aims and limited common rules, designed to elicit differentiated responses in order to promote maximum effectiveness at the trans-European, cross-border, national, regional or local levels.

11.5 Whilst attaching priority to trade and coordination at Community level, no one solution should be imposed at European level and it is up to Member States to define the most suitable method for regulating services of general economic interest in keeping with the principles of subsidiarity and neutrality, regarding the public or private nature of the management method for a particular service.

12.Evaluation

12.1 The changing nature of services of general interest, the aims assigned to them and their importance in achieving the Lisbon strategy mean that regular evaluation is imperative, not only of the services of general economic interest already covered by Community rules, but also of services of general interest in keeping with the Union's aims (respect for fundamental rights, promoting public wellbeing, social justice, social cohesion, etc.).

12.2 The EESC does not, therefore, share the Commission's opinion⁷ to the effect that services of non-economic general interest must remain outside the scope of the horizontal evaluation of SGI performances.

12.3 This type of evaluation should help to make services of general interest more efficient, to enable them to adapt to the changing needs of individuals and businesses and to provide the public authorities with the information they need to make the best choices.

12.4 The European Parliament asked the Commission⁸ to 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). The results of this debate should be taken into account and provide guidance for the annual horizontal evaluation, and the evaluation should itself be the subject of debate.

12.5 This means that the commitment given by the Commission in its communication COM(2002) 331 to involve civil society in the horizontal evaluation of the performance of SIG by establishing a *"permanent mechanism for the monitoring of citizens' opinion and their evolution"* must now be put into practice and that – still in the Commission's words, *"Stakeholders, including the social partners, will also be consulted on an ad-hoc basis for specific issues"*.

12.6 The Union will then have the task of boosting the evaluation's dynamic, in keeping with the principle of subsidiarity by drawing up, in dialogue with the representatives of the stakeholders concerned, an evaluation method that is harmonised at EU level on the basis of common indicators.

12.7 This method of evaluation must take account not only of purely economic results but also of the social and environmental impact and must seek to uphold the general interest in the long term.

12.8 The users for whom services of general economic and non-economic interest are intended will thus have the means to express their needs and aspirations, in particular by participating, through their representatives, in drawing up evaluation methods and in assessing the results.

12.9 Against this background, the EESC proposes that a monitoring centre be set up to evaluate services of general economic and non-economic interest, with a membership consisting of political representatives from the European Parliament, the Committee of the Regions and representatives of organised civil society from the European Economic and Social Committee.

12.10 The monitoring centre should have a steering committee, which will define the aims and the terms of reference of the evaluations, select the bodies entrusted with the task of carrying out the studies and examine and deliver an opinion on the reports. The committee will be able to call on the services of a scientific advisory group, which will study the methodology used and make recommendations on the matter, as and when required. The steering committee will ensure that

⁷ COM(2002) 331 point 3.2.

⁸ EP report A5/0361/2001: rapporteur, Werner Langen; 17 October 2001.

presentations are given and public discussions held on the evaluation reports in all Member States, with the involvement of all stakeholders. The evaluation reports must consequently be available in all of the Union's working languages.

13.Funding

13.1 Long-term funding security for investments and public service obligations remains key to guaranteeing universal access, throughout the Union, to high-quality and affordable services of general interest.

13.2 The general interest and public service obligations imposed by public authorities on one or more providers of services of general economic interest, with set conditions and specifications, require appropriate methods of funding.

13.3 It is therefore up to the Member States to guarantee the long-term funding of firstly, the investment needed to ensure the continuity and sustainability of services, and secondly, the appropriate compensation for public service or universal service obligations; Community rules must facilitate rather than restrict such security of funding.

13.4 The lack of a European directive on the definition, organisation and funding of public service obligations gives Member States total discretion in choosing their methods of funding, in accordance with the principles of subsidiarity and proportionality.

13.5 Member States must be able to use a wide variety of methods for funding public service missions and obligations, such as direct compensation from the national, regional or local budget, social or territorial donation-based funding between uses or users, contributions from operators and users, tax credits and exclusive rights, etc. Member States can also use combined public and private financing initiatives (public/private partnerships), especially for income-generating public infrastructures.

13.6 Given that methods of funding vary considerably according to the State or sector concerned and that these change continually in line with technological developments, the EESC considers that it would not be appropriate at Community level to restrict potential sources of funding or to favour any one source over another. Instead, Member States should be given the flexibility, at national, regional or local level, to decide, on the basis of their own political priorities and of their assessment of the economic returns, how to fund the services for which they are responsible.

13.7 In the light of the limited funding capacity of some of the new Member States, however, the Union should provide them with the means necessary to promote the development of efficient services of general economic and non-economic interest.

Brussels, 6 July 2006.

The President
of the

The Secretary-General
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European Economic and Social Committee

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European Economic and Social Committee, Brussels, 6 July 2006



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