

P6_TA-PROV(2006)0380

Services of general interest

European Parliament resolution on the Commission White Paper on services of general interest (2006/2101(INI))

The European Parliament,

- having regard to the Commission communication entitled 'White Paper on services of general interest' (COM(2004)0374),
- having regard to the Commission communication entitled 'Implementing the Community Lisbon programme: Social services of general interest in the European Union' (COM(2006)0177),
- having regard to Commission Decision 2005/842/EC of 28 November 2005 on the application of Article 86(2) of the EC Treaty to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest¹,
- having regard to Article 36 of the Charter of Fundamental Rights of the European Union, which concerns access to services of general economic interest,
- having regard to Articles 2, 5, 16, 73, 86, 87, 88 and 295 of the EC Treaty,
- having regard to its resolutions on services of general interest, in particular its resolution of 13 November 2001 on the Commission communication 'Services of General Interest in Europe'², its resolution of 14 January 2004 on the Commission Green Paper on services of general interest³ and its resolution of 22 February 2005 on State aid in the form of public service compensation⁴,
- having regard to its position of 16 February 2006 on the proposal for a directive of the European Parliament and of the Council on services in the internal market⁵,
- having regard to the Conclusions of the Presidency of the Lisbon European Council of 15 and 16 March 2000, the Nice European Council of 7, 8 and 9 December 2000, the Laeken European Council of 14 and 15 December 2001 and the Barcelona European Council of 15 and 16 March 2002 on services of general interest,
- having regard to the case law of the Court of Justice of the European Communities in the field of services of general interest, in particular its judgments of 19 May 1993 in Case 320/91, *Corbeau*⁶, of 27 April 1994 in Case C-393/92, *Almelo*⁷, of 18 November

¹ OJ L 312, 29.11.2005, p. 67.

² OJ C 140 E, 13.6.2002, p. 153.

³ OJ C 92 E, 16.4.2004, p. 294.

⁴ OJ C 304 E, 1.12.2005, p. 117.

⁵ *Texts adopted*, P6_TA(2006)0061.

⁶ [1993] ECR I-2533.

⁷ [1994] ECR I-1477.

1999 in Case C-107/98 *Teckal*⁸, of 3 July 2003 in Joined Cases C-83/01 P, C-93/01 P and C-94/01 P, *Chronopost*⁹, of 24 July 2003 in Case C-280/00, *Altmark*¹⁰, of 27 November 2003 in Joined Cases C-34/01 to C-38/01, *Enirisorse*¹¹, and of 11 January 2005 in Case C-26/03, *Stadt Halle*¹²,

- having regard to Rule 45 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 Internal Market and Consumer Protection, the Committee on Culture and Education, the Committee on Legal Affairs, the Committee on Employment and Social Affairs, the Committee on Transport and Tourism, the Committee on International Trade, the Committee on Industry, Research and Energy, and Committee on Regional Development (A6-0275/2006),
- A. whereas the Treaties provide for an open social market economy and whereas the following principles, *inter alia*, constitute terms of reference and are important in this context:
- solidarity, bringing people together on the basis of the objectives of social, economic and territorial cohesion and sustainable development,
 - cooperation, enabling the realisation of transnational and European aspirations in the Treaties and programmes,
 - open borders and an internal market with the freedom of movement for persons, goods, services and capital, in order to integrate economies and societies and increase the wealth and social wellbeing of European citizens,
 - competition, enabling the completion of the internal market on the basis of social market economy rules and governed by competition law, which is an essential area of democratic law and, above all, to avoid the abuse of monopolies and economic power and to guarantee innovation, high quality at an affordable price, diversification of consumer choices and legal protection for consumers,
 - subsidiarity, based on Article 5 of the EC Treaty, ensuring the plurality of the Member States and the different traditions in the EU and that the EU acts as efficiently and closely as possible to the citizens, when, but only when, this will achieve a better result than actions on the national or sub-national level,
 - proportionality, according to which any action by the Community shall not go beyond what is necessary to achieve the objectives of the Treaty, and
 - democracy, according to which universal suffrage is the source of legitimacy for the national and regional public authorities which determine and organise the aims, service provision and funding of services of general interest (SGIs).

⁸ [1999] ECR I-8121.

⁹ [2003] ECR I-6993.

¹⁰ [2003] ECR I-7747.

¹¹ [2003] ECR I-14243.

¹² [2005] ECR I-1.

- B. whereas, SGIs are not only an important element of social and economic cohesion, but also contribute considerably to the competitiveness of the European economy,
- C. whereas competition, which is intended to facilitate the completion of the single market based on social market economy rules and which is regulated by antitrust rules, is a substantive democratic right, which limits not only state power but also, and above all, abuses of dominant market positions and protects consumer rights,
- D. whereas the case law of the Court of Justice of the European Communities is now extensive, is continually developing and concerns various aspects of SGIs, including State aids, equal treatment and/or the distortion of competition,
- E. having regard to the development in the cases brought before the Court of Justice relating to the compatibility of SGIs with the internal market rules and European competition rules, and having regard to the need to respond to this by clarifying positive European law in this area,
- F. whereas because the evolution of markets and the way in which societies organise themselves is subject to dynamic development, which is different in each Member State, the application of rigid rules and definitions would constitute an obstacle to achieving optimal economic and social results,
- G. whereas it is impossible to define SGIs uniformly, in a social and economic environment as diverse as that of the EU,
- H. whereas the availability of efficient SGIs is an integral part of the economic, societal and social systems of all Member States; whereas this availability varies considerably from Member State to Member State and whereas the objective of successfully completing the internal market should enable Member States to introduce effective and efficient SGIs that fully respect the interest of the citizen in his dual role of consumer of services and taxpayer as well as the Member States' responsibilities, without unduly interfering in the freedom of local and regional authorities to establish and ensure the high quality, frequency, affordability and accessibility of those services,
- I. whereas SGIs and services of general economic interest (SGEIs) should be provided uniformly throughout the EU; whereas economic and social cohesion has as its objective the reduction of disparities between the levels of development of the various regions and the promotion of the overall harmonious development of the EU, especially in the new Member States,
- J. whereas, taking into account the principle of subsidiarity pursuant to Article 5(2) of the EC Treaty, it is for the Member States and their regional and/or local authorities to define their SGIs and to decide which services should be covered and how they should be organised, financed, delivered, evaluated and controlled, and this should be fully respected when drafting further legislation,
- K. whereas, in the matter of compatibility between internal market and competition rules, and the smooth operation of SGIs, legal certainty must be established in order to give the relevant national, regional and local authorities the necessary room for manoeuvre, to take decisions, and to avoid conflicts and legal proceedings, with due respect for the

internal market and the Parliament's above-mentioned position on services in the internal market as well as clear implementation of internal market and competition rules,

- L. whereas sectoral EC directives on SGEIs in network industries and other sectors in which market opening has been achieved or begun have been successful in providing better services at lower prices and provide a reliable framework,
- M. whereas the multitude of sector-specific initiatives relating to the opening of the internal market in the area of services and the Parliament's above-mentioned position on services in the internal market enlarges the opportunities for competition and better operation also in the areas of SGEIs, which underlines the need for legal clarity regarding SGIs,
- N. whereas SGEIs have a direct effect on the internal market for services, and a number of sectors which provide SGEIs have been successfully modernised and integrated into their respective service markets; whereas this integration was achieved in a controlled way and accompanied by measures to protect the general interest, in particular the concept of universal services,
- O. whereas Article 16 of the EC Treaty recognises the importance of SGEIs; whereas Articles 43 to 49 of the EC Treaty provide a legal basis for the formulation of Community action with regard to the free provision of services; whereas Articles 86 and 87 of the EC Treaty and the case law of the Court of Justice provide a clear framework for dealing with State aid as well as the modalities and levels of funding of SGEIs; whereas Article 95 of the EC Treaty is the appropriate legal basis for dealing with issues related to public procurement procedures and related matters;
- P. whereas, while Articles 16 and 86(2) of the EC Treaty refer to SGEIs, they are not defined in the EC Treaty; whereas SGIs are not referred to in the EC Treaty but were introduced as a concept in a Commission communication; and whereas, pursuant to the Parliament's above-mentioned position on services in the internal market, SGEIs should be exempt from the scope of Article 16 of the proposed services directive and SGIs should be wholly exempt from the directive,
- Q. whereas different forms of administration and partnership between economic operators carrying out SGIs and SGEIs are being encouraged , and whereas this should occur in compliance with the responsibilities of the Member States regarding the provision and procurement of those services in the interests of effectiveness and high quality,
- R. whereas the Community objective of a high level of consumer protection together with strict compliance with the principle of subsidiarity should be brought into sharper focus,
- S. whereas the Charter of Fundamental Rights of the European Union recognises and respects access to SGEIs with a view to promoting social and territorial cohesion in the Union,
- 1. Considers that its resolutions on SGIs of 13 November 2001, 14 January 2004 and 22 February 2005 remain pertinent, particularly in view of
 - the principle of subsidiarity,

- deregulation, and
- the achievement of the internal market and the need to provide services of high quality;

recalls it is not important who provides SGIs, but rather that high-quality standards and an equitable social balance be maintained in their provision and that the criteria be based on reliability and continuity of supply; recalls that the Parliament considers that SGEIs cover a very broad range of industries;

2. Notes that it is particularly important, so as to exploit fully the opportunities offered by the internal market, for the conditions and provisions regulating the modernisation of markets to guarantee fair, transparent and efficient competition, while maintaining social cohesion and universal service accessibility, and avoid abuses of dominant position and the formation of new monopolies, which hamper access to the market by new participants;
3. Stresses that SGIs should be of high quality, should encompass comprehensive coverage, should be provided at optimum cost, should respect social balance and should be provided on the basis of lasting security of supply; and emphasises that the majority of SGIs can be provided under conditions of fair competition, according to the principle that private and public undertakings must receive equal treatment;
4. Requests that the Commission submit to Parliament a comprehensive analysis of the effects of liberalisation to date, in particular on the situation of the consumers and employees concerned;
5. Emphasises that most SGEIs are supplied in the internal market and are therefore, as a matter of principle, subject to internal market, public procurement, competition and State aid rules and Commission supervision as regards any abuses, without prejudice to the fact that the application of the rules must not obstruct the performance, in law or in fact, of the particular tasks assigned to the SGEIs, as provided in Article 86(2) of the EC Treaty; emphasises that, in accordance with Article 16 of the EC Treaty, which concerns SGEIs, the Community and Member States are responsible, within their respective competence, for ensuring that they operate on the basis of principles and conditions that enable them to fulfil their missions;
6. Considers that the legitimate requirements of the general interest must not be used as a pretext for the improper closure of services markets as regards international providers who undertake to respect the legitimate requirements and are capable of so doing;
7. Underlines that especially after the enlargement of the European Union, cohesion must be ensured in the field of SGEIs and that, in the framework of structural policy, Member States' infrastructures for network-based SGEIs must be interlinked and cross-border cooperation enhanced in order to create a real internal market and to facilitate standardisation;
8. Takes into consideration the economic weight of these services and their importance for the production of other goods and the provision of other services; underlines that the way in which SGEIs are organised can affect the internal market, for example by prohibiting establishment in the country in which the service is provided;

9. Considers that the objective of competition rules should be to improve the quality of service provision, consumer choice and affordable prices and to realise other public-interest objectives, including sustainable development;
10. Calls on the Commission to clarify the distinction between SGIs and SGEIs by developing operational criteria, taking into account Member States' national traditions, based on the nature of collective goods and public funding or by solidarity mechanisms of SGIs; underlines that for many SGIs making the distinction between economic and non-economic aspects is extremely difficult due to the dynamic character of these services and their rapid development; welcomes, therefore, the fact that, in its White Paper on SGIs, the Commission indicates that "the effective performance of a general interest task prevails, in case of tension, over the application of Treaty rules"; recognises that broad areas of SGIs must not be withdrawn from the scope of the rules of the internal market and competition through an attempt to define SGIs; notes that a precise definition of SGIs and SGEIs would run counter to the freedom of Member States to define their SGIs;
11. Considers that Article 86(2) of the EC Treaty provides guarantees for the Member States to ensure that SGEIs are provided in accordance with the universal service obligations established by Community law or by the Member States; follows the interpretation of the Court of Justice that there is a parallel between this evaluation and the examination of proportionality in the framework of Article 49 of the EC Treaty;
12. Recalls the fact that the rules in force in this area are defined by the case law of the Court of Justice and by the Commission's interpretation of individual cases, and that, thus, neither the necessary legal certainty nor adequate transparency has yet been achieved;
13. Requests furthermore clarification from the Commission in particular on two major questions: consequences of the jurisprudence of the Court of Justice based on a sectoral approach and application of competition law to SGIs and SGEIs, especially with regard to the financing of these services;
14. Notes that local and regional authorities have proved to be the appropriate level, close to the citizen, for providing SGIs, and that they remain the appropriate level for guaranteeing the right of involvement, consumer protection and public welfare in respect of such services; notes that the European level of government must help ensure that the capacity of the local and regional level of government to provide such services is not jeopardised;
15. Is of the opinion, therefore, that, in the interests of:
 - local, regional and national authorities, in order that, where necessary, they might provide and guarantee appropriate services in the interests of all citizens with due respect for the internal market and Parliament's above-mentioned position on services in the internal market,
 - the companies that provide or offer these services, whether public, profit-making, or non-profit-making, in order that they might be aware what conditions and obligations can be imposed on them by the authorities under the internal market

and the legislation in force, given the general interest missions that are entrusted to them, and

- service users, in order that they can be certain that the services defined and developed by Member States and their local authorities in accordance with local conditions can be provided subject to proper conditions on competition, where possible, accessibility, quality, affordability, innovation, adaptability, continuity, durability, equality of treatment, long-term planning, safety, universality, etc.,

the Commission should formulate legal clarifications, guidelines and principles on a number of problematic topics, in particular including the application of internal market and competition rules in the field of SGIs and SGEIs while ensuring democratic accountability for the application of rules to SGIs and SGEIs to the Member States, regional, and local authorities; notes that there is a need to clarify how responsibilities are shared between the EU and Member States and considers that the sectoral approach which takes into account the specific situation in the relevant sectors should be an important element in this respect; underlines in this context, that after a due evaluation of the Treaty and the jurisprudence of the Court of Justice SGIs, remain to be defined by the Member States; notes, moreover, that there is no legal basis for a proposal seeking the non-application of the relevant EC Treaty provisions to particular services;

16. Emphasises the need for existing or future sector-specific regulations based on internal market rules and respect for the principle of subsidiarity and stresses that sector-specific rules should not be called into question; recalls the success of these sector-specific regulations and recommends that the sectoral approach be expanded into other sectors;
17. Calls on the Commission to create more legal certainty in the area of social and health-care SGIs and to formulate a proposal for a sector-specific directive of the Council and the Parliament in those fields in which it is appropriate to do so;
18. Urges the Council, therefore, to adopt a common position as soon as possible on the revision of Regulation (EEC) No 1191/69 of 26 June 1969 on action by Member States concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterway¹³;
19. Recommends that when a competent authority identifies the supply of a service as an SGEI, the public service obligation should be assigned either by way of a fair and transparent tendering procedure, based on equal conditions for all competitors, or by way of a suitable legal act which must satisfy the transparency criteria;
20. Welcomes the proposed Community legal framework for State aid in the form of compensation for public service obligations and the Commission's plan to revise its Directive 80/723/EEC of 25 June 1980 on the transparency of financial relations between Member States and public undertakings¹⁴;
21. Recommends that when a competent authority intends to finance SGEIs other than through direct funding from its general budget, the authority in question should choose

¹³ OJ L 156, 28.6.1969, p. 1.

¹⁴ OJ L 195, 29.7.1980, p. 35. Directive as last amended by Directive 2005/81/EC (OJ L 312, 29.11.2005, p. 47).

a form of funding that is in compliance with the provisions of the EC Treaty, in particular Article 86(2), especially when granting exclusive and special rights or compensation for the supply of public services or when setting up a fund for the supply of public services; notes that in all cases this will require a transparent tariff system as well as appropriate and transparent financing;

22. Recommends that when a competent authority intends to grant compensation for the supply of public services in order to ensure the funding of an SGI, such compensation should not be considered to constitute State aid in the meaning of Article 87 of the EC Treaty, provided that:

- the beneficiary is entrusted with a clearly defined public service mission;
- the parameters for calculating the compensation payments are established in advance in an objective and transparent manner;
- the level of compensation does not exceed the costs incurred in the discharge of the public service obligations, allowing a reasonable profit;
- the beneficiary is chosen in a public tender procedure or is compensated to an amount not exceeding the costs of a well-run undertaking that is adequately equipped with the means to provide the public service; and
- a transparent procedure has been followed;

stresses, however, that the amount of compensation may not exceed what is necessary for the operation of the service and must not be used to finance activities outside the scope of the service in question, in the form of cross-subsidies; points out that compensation must be available to all operators entrusted with providing SGIs, irrespective of their legal status;

23. Points to the importance of applying clearly the provisions of the above-mentioned Decision 2005/842/EC; emphasises, however, that the payment of pure compensation for public service obligations should not be deemed to be State aid, and that the law should be amended accordingly;

24. Emphasises that it is for the competent authority to decide whether to supply an SGI directly or to entrust supply to external profit or non-profit service providers, while exercising the same control as that provided for directly supplied services; in the event that the competent authority decides to outsource the provision of SGIs, a call for tenders must be issued; moreover the principle of local and regional self-government should be respected, which gives the competent authority the right to choose, taking into account the public interest, how best each service should be delivered;

25. Is of the opinion that outsourcing the supply of SGIs normally imposes on the authority in question the obligation to assign the service on the basis of a public service contract, following a public tender procedure; notes that the principle of awarding a public service contract should allow the competent authority the opportunity to transfer a public service contract in emergencies; calls on the Commission, together with the

Member States and the Parliament, to clarify the relevant criteria in the procurement directives or in the form of a regulation; in this context, affirms that local authorities should be able to assign service tasks directly to inter-communal companies or similar forms of joint arrangements, or to companies that they own or control, provided that such bodies carry out the essential part of their activities for the controlling authority or authorities, and do not compete on external markets but constitute only a domestic organisational practice and an arrangement must be found which does not categorically exclude private participation from the outset;

26. Calls in this connection, and in the interests of possible improvements in efficiency through the involvement of new operators and ways of providing SGIs, for more legal certainty as a matter of urgency as regards the different forms of inter-authority organisations (cooperation between local authorities, public-private partnership, awarding concessions) and the clarification of European law on competition the award of contracts and State aid and of the general criteria applicable throughout Europe; stresses that there should be legal clarification concerning the outsourcing of public services, which is distinct from the award of public contracts; calls on the Commission to spell out the rules for awarding such outsourced services and to make a clear distinction between those rules and the rules governing public contracts;
27. Is of the opinion that the competent authority should ensure that in the sectors in which it has laid down rules for public universal service obligations or particular objectives, the types of regulation and instruments appropriate to each sector should be applied on the basis of transparent rules;
28. Is also of the opinion that guidelines at national and local level are necessary in the following areas, in the interests of transparency and consumer protection:
 - to define the procedures for access to existing networks where access is necessary for the provision of a service;
 - to define the price and/or tariff conditions for the supply of services;
 - to secure competition and opportunities for new entrepreneurs where possible ;
 - to establish rules on out-of-court settlements between suppliers and users of services, regardless of the possibility of legal action; and
 - to consult and, as appropriate, make referrals to the competition authorities regarding any element that might point to a breach of the national competition rules or of those laid down in the EC Treaty;
29. Recommends, in the interests of high-quality and efficient SGIs, encouraging voluntary benchmarking and quality measurement mechanisms at national and European level; also recommends the exchange of experience and the promotion of best practices be supported and involve all stakeholders concerned; suggests that such measures address the following aspects :
 - the development of comprehensive evaluation methods, including economic, social and environmental criteria;
 - the protection and safety of service users;
 - the appropriateness and proportionality of the standard in relation to the cost of the service;
 - the widest possible dissemination and publication of the standard; and

- simple and effective monitoring of adherence to the standard, which could be laid down on the basis of a charter or of a code of conduct;
30. Stresses the importance of strengthening Member States' supervisory capacities in order to ensure that public policy objectives, including affordability and quality standards, are effectively achieved; stresses further that it is necessary for the relevant public authorities to have adequate instruments and expertise at their disposal to be able to enforce competition and to ensure consumer protection;
 31. Calls on the Commission, on the basis of the present resolution as well as its above-mentioned resolution of 14 January 2004 and its resolution of 9 March 2005 on the mid-review of the Lisbon Strategy¹⁵ to propose appropriate legal initiatives, as referred to in this resolution, and recalls that codecision rights, where foreseen by the Treaty, should be fully exercised by all parties involved in the field of SGIs and SGEIs;
 32. Points out that international agreements concluded by the Community and the obligations attaching thereto must be compatible with internal Community policies and rules;
 33. Instructs its President to forward this resolution to the Council and the Commission.

¹⁵ OJ C 320 E, 15.12.2005, p. 164.