

CEEP.2006/AVIS.20

Orig. En.

September 2006

CEEP Opinion:

A European policy for services of general interest

**Presentation of CEEP's initiative towards a European
Framework on SGIs**



CEEP.06/AVIS.20

September 2006

CEEP POLICY ON SERVICES OF GENERAL INTEREST

Since years there has been an intensive discussion on services of general interest at European level. The so-called “Laeken-Declaration” of the Council from 15.12.2001, the Commission’s Green Paper on Services of General Economic Interest from 21.5.2003, their White Paper on Services of General Interest from 12.4.2004, the public consultation on both papers or the so called “Langen” and “Herzog” reports of the European Parliament have shown that.

Recently the European Parliament agreed in a first reading on a compromise in relation to the “Services Directive” in February this year followed by a political agreement and a common position of the Council in June 2006. This compromise excluded some public services such as Health from the scope of the proposed Directive. But there have subsequently been significant developments in relation to public services, including:

- Publication of a Commission communication on social services of general interest in April; this communication raises the possibility of a sectoral directive to cover these services
- Clear indications that the Commission are contemplating the publication of proposals for a sectoral directive relating to Health
- The so called “Rapkay report” on the Commissions’ White Paper on Services of General Interest
- The initiative of the socialist group within the European Parliament to propose a European framework directive on services of general economic interest.

It is in this context that CEEP has been considering launching proposals for a transversal framework for SGIs.

The text of this proposed transversal framework has undergone many changes. The latest version is in the Appendix

The current initiatives on getting more legal security concerning services of general interest are reasoned mainly by the following considerations:

- except Articles 16 and 86 of the Treaty – which are not strong and concrete enough to influence European legislation - there is no European legal frame on services of

general interest; therefore, any legal proposal affecting the spheres of services of general interest is based on the four freedoms (free movement of goods, services, capital and persons) and follows necessarily the internal market policies

- in absence of clear European legislation, the European Court of Justice has become the (final) decider in many cases; its decisions (important for instance in the fields of public procurement, PPPs or in-house organisation of services) are also necessarily based only on the Treaty principles; by doing so the Court is restricting more and more the freedom of authorities to organise services of general interest
- important areas, as e.g. the financing of services of general interest or the compensation for public service obligations, are not ruled by legislative acts but only by decisions of the European Commission (so they can change the rules if they think this is needful).

In short: There is not enough legal security for authorities in charge of and providers of services of general interest that would allow for sustainable planning and organisation of these services.



PROGRAMME FOR PUBLIC SERVICES IN THE MODERN WORLD

Services and enterprises of general interest (SGIs) provide the basic infrastructure on which Europe's societies and economies depend.

Health services, public transport, communication systems, education and energy and water supply are all examples of these SGIs.

They are a key element of the *European Social Model*, especially in relation to social and territorial cohesion.

They have a critical role to play in the *economic development* of Europe, including in the achievement of the *Lisbon objectives*.

They are major players in the development of sustainable solutions to the *environmental challenges* of today and tomorrow.

They will be key to resolving the *demographic problems* that are common throughout Europe.

CEEP is the organisation that represents all these services and enterprises at European level. Our priority objective is always the general interest. CEEP's experience is that this objective is often best achieved through the in-house application of techniques such as *benchmarking*. At the same time, competition can be useful and our members are willing to work in partnership with the private sector, where this benefits the public.

At the same time, a common European approach is needed to safeguard and nourish SGIs to ensure that they continue to serve the public while adapting to the changes generated by globalisation.

CEEP strongly believes that –

- Greater *legal clarity* for services and enterprises is urgently needed
- The principle of subsidiarity requires that the relevant authorities have *freedom of choice* over how public services are operated
- There is a need for a common understanding about the interface between the private sector and public services, including in relation to *competition* and *public/private partnerships*
- *Investment* in public services and enterprises on the Invest to Save principle is a growth factor.

Accordingly this Manifesto outlines: 1. a general European framework for Services of General Interest; 2. policies in relation to competition and to public/private partnerships; 3. the case for a targeted programme of public investment to get the Lisbon agenda back on track; and 4. a set of principles for the continuous improvement of public services.

CEEP now calls on the Commission, the Parliament and Member States, together with other social partners and stakeholders, to support this vision for Public Services in the Modern World.



CEEP Policy Objectives

1. *Freedom of choice* for SGI operators over methods of service delivery.
2. *Sufficient legal clarity* for authorities and providers and to avoid further interventions by the European Court of Justice.
3. *Respect for the principle of subsidiarity* to prevent encroachment by the EC on Member State competences and by Member States on sub-state competences, including those which are the responsibility of regional and local authorities.
4. *A voice at European level* for those authorities with responsibility for SGIs to ensure that future EU policy developments are formulated in consultation with the relevant authorities.
5. *Continuous improvement of SGIs* in a context that protects the public interest in the long term.



27/09/2006

**FRAMEWORK to
Guarantee and Develop
Services of General Economic Interest¹**

Chapter 1

General provisions

**Article 1
Object**

Objective: On the basis of the current Treaties, to be more precise on the application of Community law on services of general economic interest, taking into account their special missions which demand that these services be a matter not only for the internal market and competition rules.

Services of general economic interest and services of general interest are essential for the economic, social and territorial cohesion in the European Union. The present framework aims at guaranteeing and developing the provision of services of general economic interest and the fulfilment of the particular tasks assigned to them in the framework of the ECT and its values.

¹ This framework does not affect the position of public broadcasting services as long as their specific missions are concerned as expressed in the “protocol on the system of public broadcasting the Member States”, annexed to the Treaty “establishing the European Community”.

Article 2
Field of application

Objective: To guarantee

- *that the non-economic services of general interest do not come within the European but only within the Member States' competence*
- *that the public authorities at each level define what they regard as services of general interest (therefore no definition in the present framework)*
- *that it is up to the public authorities at each level to determine, according to their competence, whether or not these services are of an economic or a non-economic nature*

1. The present framework only applies to services of general economic interest. Services of general economic interest are services of an economic nature which the Community, the Member States or responsible authorities within the Member States, each within their respective powers and within the scope of application of the Treaty, subject to specific public service obligations by virtue of a general interest criterion.
2. The relevant public authorities have the right and the competence to distinguish whether a service of general interest is of an economic or a non-economic nature.

Article 3
Relations with other provisions of Community law

Objective: To guarantee

- *that sectoral rules prevail over transversal rules*
- *that in the case of a revision of sectoral rules transversal provisions will be taken into account*
- *that the Charter of Fundamental Rights be taken into account.*

1. The relevant authority (the Member States, regional and local authorities) or the Community, each within its specific competences and respecting the principle of subsidiarity shall implement the present framework in order to ensure the performance, in law or in fact, of the particular tasks assigned to services of general economic interest. These measures are necessary to ensure that, in case of tension between competition law and general interest objectives, the general interest shall prevail.
2. The implementation of the present framework shall not prevail the implementation of sector specific provisions or of other Community instruments regarding services of general economic interest.
3. The implementation of the present framework should take into account the Charter of Fundamental Rights.

Chapter 2

Shared responsibility between Member States and the Community

Article 4 Subsidiarity

Objective: To guarantee

- *a strict respect for the principle of subsidiarity including at the sub-State level*
- *systematic consultation of the social partners and all stakeholders*

(1) The European Commission, when preparing initiatives which could affect SGEI's, shall strictly apply the principle of subsidiarity. Services of general economic interest fall under the shared competences of the Community, Member States and sub-State authorities. Insofar, the principle of subsidiarity has to be applied.

(2) The Commission shall, when preparing such initiatives, consult, besides the Member States, the national and regional parliaments and the European social partners, and shall take the results of that consultation into account. These consultations should also be submitted to the European Parliament, the Council, as well as to the Committee of the Regions and the European Economic and Social Committee.

Article 5 Responsibility of the Member States and the Community

Objective: To guarantee

- *the freedom of the public authorities at each level to decide on services of general economic interest within their respective competences; the Community is only competent if the Treaty grants the respective rights to it*
- *that transversal rules (such as the present framework) do not lead to any new competence for the European institutions*

According to the principle of subsidiarity the definition of public service obligations and missions as well as the organisation, the financing and the monitoring of SGEI's are, with the exception of European SGEI's, tasks for the relevant national, regional and local authorities each within their respective powers and within the scope of application of the Treaty. The Community is only competent if the Treaty grants the respective rights to it.

The present frame work does not lead to any new competence for the European institutions.

Article 6 Responsibility of the Community

Objective: While respecting the current allocation of competences, to guarantee

- *that the Community respects national traditions and structures*
- *the primacy of general interest objectives in case of conflict with the rules of competition or of the internal market*
- *the possibility to set up European services which fall within the sole competence of the Community (already existing examples : GALILEO and EUROCONTROL)*

1. The Community shall, on the basis of Articles 16 and 86 paragraph 2 of the Treaty, uphold the national, regional and local authorities in fulfilling their missions and make sure that services of general economic interest are operated on the basis of the principles and conditions laid down by the present framework. Thereby the Community shall respect the diversity of traditions, structures and national contexts that exist in the Member States as well as the responsibilities and competences of the national, regional and local authorities.
2. The Community shall ensure that services of general economic interest are provided according to the Community rules on competition and the internal market, as long as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to the providers of services of general economic interest.
3. The establishment of European services of general economic interest is a task for the Community within the limits of its competence and according to the Community decision-making procedures.

Chapter 3

General principles

Article 7 The rules of the Treaty

Objective: To define how and to what extent the services of general economic interest and the operators are submitted to the Treaty rules

1. Services of general economic interest are subject to the general principles of the Treaty: transparency, proportionality, non-discrimination and equality of treatment.
2. The responsible authorities and the operators of services of general economic interest are subject to the rules of the Treaty, as long as those rules do not prevent the satisfactory accomplishment of the particular tasks assigned to them.

Article 8 Principles

Objective: To guarantee fundamental principles which should be taken into account when it comes to specific rules on services of general economic interest

The responsible authorities and the operators of services of general economic interest should take into account the following fundamental principles if they are relevant to the service concerned and appropriate:

- economic, territorial and social cohesion as well as sustainable development
- universal and equal access
- continuity
- affordability
- solidarity
- a high level of quality, security and safety
- adaptability to change and constant improvement of efficiency
- operation close to citizens
- respect for consumers' and users' rights
- monitoring and evaluation of the performance
- transparency and democratic control.

Chapter 4

Organisation and internal market

Article 9

Free choice of service provider (modes of provision)

Objective: To guarantee public authorities freedom of choice in relation to how they provide the services they are responsible for, including in cases of co-operation and shared services between public authorities.

The Community, Member States as well as regional or local authorities, groups of authorities and inter-authority consortia, if the latter are given such rights according to national legislation, are free to define and determine each within its respective competences and respecting the principle of subsidiarity modes of provision of services of general economic interest.

Article 10 Authorisation schemes

Objective: To guarantee that the responsible public authorities can define and set up authorization regimes, also in cases of co-operation between them

1. The Community, Member States, and regional and local authorities, groups of authorities and inter-authority consortia, are free to set up, at their respective level and each within its respective competences and respecting the principle of subsidiarity, authorisation schemes regarding the access to and organisation of services of general economic interest, insofar as this is an efficient and useful means to guarantee the satisfactory accomplishment of missions of services of general economic interest and to impose public service obligations.
2. Authorisation regimes must respect the principle of non-discrimination and be justified by a public service mission and proportionate to that mission.

Article 11 Exclusive and special rights

Objective: To guarantee the possibility of the responsible public authorities to define and to impose exclusive and special rights, also in cases of co-operation between them

The Community, Member States, and regional and local authorities, groups of authorities and inter-authority consortia can submit the fulfilment of missions of services of general economic interest to exclusive or special rights on a non-discriminatory, justified and proportionate basis.

Article 12 In-house

Objective: To guarantee the right of the responsible public authorities to provide services of general economic interest themselves or through entities controlled by them, including in cases of co-operation between them
To allow private partners within the Teckal criteria on the basis of the latest jurisdiction

1. Member States and regional and local authorities, groups of authorities and inter-authorities consortia, have the right to provide services of general economic interest in-house through an own department or a legal entity different from the respective authority or authorities, as long as they have effective control of the service provider and as long as the dominant part of these services is provided to the competent authority or authorities or to consumers and users in their respective territories. In such cases, the award of the services will be deemed to be an internal act, not subject to public procurement rules.
2. An effective control exists, among others, when the entity is controlled by one or several public contractors according to Article I Paragraph 9 Phrase 2 lit.c directive

2004/18/EC. In case of an association of several local authorities, a control similar to that exercised over own departments exists irrespective of the influence of every single local authority. In such cases, an overall control of the associated local authorities is sufficient and the award of the services will be deemed to be an internal act, not subject to public procurement law.

Chapter 5

Financing and rules of competition

Article 13 Financing

Objective: To guarantee

- *the right of the responsible public authorities to finance services of general economic interest within the scope of their domain, including in cases of co-operation between them*
- *that compensations for public service obligations are not subject to Community rules on State aid*

1. On condition that the provisions of articles 14-16 are fulfilled, the Community, Member States and regional and local authorities, groups of authorities and inter-authority consortia, are free to financially support a service of general economic interest.
2. Compensation for public service obligations does not come under the rules of article 87 ff of the Treaty.

Article 14 Rules on compensation

Objective: To guarantee

- *the compensation for clearly defined public service obligations*
- *the drawing-up of rules on compensation in a more binding way than achieved by the “Monti-Kroes package”*

Financial compensation granted to providers of services of general economic interest is compatible with competition rules if

- this is a compensation for a clearly defined and entrusted public service obligation and
- the compensation does not exceed the costs of the obligation
- and allows an appropriate return of investment.

Article 15
Types of compensation

Objective: To guarantee a diversity of types of compensation amongst which the responsible public authorities can choose, also in cases of co-operation between them.

The Community, Member States and regional and local authorities, groups of authorities and inter-authority consortia, are competent concerning the services they are in charge of defining the modes of compensation, such as cross-subsidisation, direct compensation, loans specific to services of general economic interest, and tax relief, as long as competition is not distorted in other fields.

Article 16
Transparency

Objective: To guarantee the full application of the transparency directive.

The present framework is without prejudice to the implementation of the transparency directive².

Chapter 6
Regulation

Article 17

Objective: To guarantee the right of the responsible public authorities to define modes of regulation for services of general economic interest within the scope of their domain.

The present framework does not affect the right of the relevant authorities within the scope of their competences to set up a framework of regulation for particular sectors of services of general economic interest.

² 2005/81/EC

Chapter 7

Evaluation

Article 18

Evaluation of services of general economic interest

Objective: To guarantee

- that any evaluation, used at the discretion of the authorities as a tool to improve the performance of services of general economic interest that they are responsible for, is transparent, pluralistic and independent*
- that any evaluation at Community level respects the principle of subsidiarity*

- 1. The Community, Member States as well as regional or local authorities, groups of authorities and inter-authority consortia, each within their competence and respecting the principle of subsidiarity, are welcomed to implement procedures to evaluate the performance of the services of general economic interest that they are responsible for on a voluntary basis. When the relevant authorities decide to implement such evaluation procedures, the management of the evaluation bodies at each level, European, national, regional or local, must be transparent, pluralist and independent.**
- 2. The evaluation shall involve a broad range of parties concerned, e.g. public authorities at Community, national, regional and local level, operators or service providers, consumers (households and industrial users), citizens, the employees and their representatives.**
- 3. When the Community sets up an evaluation procedure within its existing competences, it has to respect the subsidiarity principle based on a bottom-up process according to Article 4.**

ANNEX 1 Definition of Terms (extract from the White Paper on Services of general interest – COM (2004) 374 final)
Terminological differences, semantic confusion and different traditions in the Member States have led to many misunderstandings in the discussion at European level. In the Member States different terms and definitions are used in the context of services of general interest, thus reflecting different historical, economic, cultural and political developments. Community terminology tries to take account of these differences.

Services of general interest

The term «*services of general interest*» cannot be found in the Treaty itself. It is derived in Community practice from the term «services of general economic interest», which is used in the Treaty. It is broader than the term «services of general economic interest» and covers both market and non-market services which the public authorities class as being of general interest and subject to specific public service obligations.

Services of general economic interest

The term «*services of general economic interest*» is used in Articles 16 and 86(2) of the Treaty. It is not defined in the Treaty or in secondary legislation. However, in Community practice there is broad agreement that the term refers to services of an economic nature which the Member States or the Community subject to specific public service obligations by virtue of a general interest criterion. The concept of services of general economic interest thus covers in particular certain services provided by the big network industries such as transport, postal services, energy and communications. However, the term also extends to any other economic activity subject to public service obligations. Like the Green Paper, the White Paper focuses mainly, but not exclusively, on issues related to «services of general economic interest», as the Treaty itself focuses mainly on economic activities.

The term «services of general interest» is used in the White Paper only where the text also refers to non-economic services or where it is not necessary to specify the economic or non-economic nature of the services concerned.

Public service

The terms «service of general interest» and «service of general economic interest» must not be confused with the term «*public service*». This term is less precise. It can have different meanings and can therefore lead to confusion. The term sometimes refers to the fact that a service is offered to the general public, it sometimes highlights that a service has been assigned a specific role in the public interest, and it sometimes refers to the ownership or status of the entity providing the service⁴². Therefore, this term will not be used in the White Paper. These definitions are based on the definitions used in the Green Paper on services of general interest, COM(2003)270, 21.5.2003

There is often confusion between the term «public service» and the term «public sector». The term «public sector» covers all public administrations together with all enterprises controlled by public authorities

Public undertaking

The term «*public undertaking*» is normally also used to define the ownership of the service provider.

The Treaty provides for strict neutrality. It is irrelevant under Community law whether providers of services of general interest are public or private; they are subject to the same rights and obligations.

Public service obligations

Specific obligations, imposed by the public authorities of Member States or the Community, on a service provider, in order to guarantee the achievement of defined general interest objectives