



**Comité européen de liaison
sur les Services d'intérêt général
European Liaison Committee
on Services of General Interest
Europäisches Verbindungskomitee
"Dienstleistungen von allgemeinem Interesse"**

Secrétariat / Secretariat / Sekretariat : RESEAUX SERVICES PUBLICS

16, avenue Boileau

E-mail : celsig@celsig.org

B-1040 BRUXELLES

BELGIQUE

Site Web: www.celsig.org

Tél : + 32 2 739 15 30

Fax : + 32 2 739 15 39

DRAFT OF PROPOSED LAW ON SERVICES OF GENERAL ECONOMIC INTEREST

Notice

I. We have chosen to use the word LAW to describe this text, with reference to the Constitutional Treaty – Article III-122 – as this offers a clear legal basis on which to draw up positive law on Services of General Economic interest (SGEI). This article results from a long process of reflection and the long and intensive debates over fifteen years as well as during the work of the Convention which developed the draft Constitutional Treaty signed by all the Member States on October 29, 2004.

Whatever the future of this text, Article III-122 must be part of the constitutional body of the Union due to the debates which led to its adoption and to the political contribution it represents. In this way we want to underline symbolically the political importance of Article III-122.

The present draft also aims at demonstrating to Community authorities and Member States that legislating on SGEI is first and foremost a political issue.

Moreover, we are convinced that if political will exists, the technical issue of legal basis for one or more draft texts can be easily resolved. Articles 16, 86, 95 and 295 of the EC Treaty are excellent bases. As is Article 36 of the Charter of Fundamental Rights of the European Union.

II. Our text is presented under the form of a single law. However, if it proves that certain parts do not ask basic questions while others block the debate because politically highly sensitive, the text can be split into several laws and thus come into an "SGEI package".

What we consider as important is to develop positive law on SGEI in the EU, law which is today indispensable in order to build the economic, social and territorial cohesion of the Union and a balanced internal market, to make the Lisbon Strategy successful, and to interest citizens in the European construction.

Explanatory memorandum (.....)

Having regard to the conclusions of the Presidency of the Council

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF MINISTERS

Having regard

Having regard to the Constitutional Treaty signed by the Heads of State and Government on 29 October 2004

Having regard to Article I-2 (The Union's values) which states that:

"The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail".

Having regard to Article I-3 (The Union's objectives)) which states that

"1 The Union's aim is to promote peace, its values and the well-being of its peoples.

2. The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, and an internal market where competition is free and undistorted.

3. The Union shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance.

It shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child..

It shall promote economic, social and territorial cohesion, and solidarity among Member States".

Having regard to Article I-5 (Relations between the Union and the Member States) which states that:

"The Union shall respect the equality of Member States before the Constitution as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government."

Having regard to Article III-122 (The Policies and Functioning of the Union – Provisions of general application) which states that:

"Without prejudice to Articles I-5, III-166, III-167 and III-238, and given the place occupied by services of general economic interest as services to which all in the Union attribute value as well as their role in promoting its social and territorial cohesion, the Union and the Member States, each within their respective competences and within the scope of application of the Constitution, shall take care that such services operate on the basis of principles and conditions, in particular economic and financial conditions, which enable them to fulfil their missions. European laws shall establish these principles and set these conditions without prejudice to the competence of Member States, in compliance with the Constitution, to provide, to commission and to fund such services".

Having regard to the EC Treaty :

Having regard to Article 3 - 1.t which stipulates, for the purposes expressed in article 2:

"a contribution to the strengthening of consumer protection"

Having regard to Article 5 , which stipulates in particular that:

"In areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community".

Having regard to Article 16 which requires in particular that:

"the Community and the Member States, each within their respective powers and within the scope of application of this Treaty, shall take care that such services operate on the basis of principles and conditions which enable them to fulfil their missions".

Having regard to Article 86-2 which emphasises that:

the “particular task” assigned to “*undertakings entrusted with the operation of services of general economic interest*” are subject to the “*rules contained in this Treaty, in particular ... the rules on competition*”, but that “*the development of trade must not be affected to such an extent as would be contrary to the interests of the Community*”.

Having regard to Article 95, especially its point 3 which stipulates that:

about the bringing together of legislations: “*The Commission in its proposals envisaged in paragraph 1 concerning health, safety, environmental protection and consumer protection, will take as a base a high level of protection*”

Having regard to Title XII (Articles 129 B, C and D) ‘Trans-European networks’ which provides for their development, interconnection and interoperability, and highlights a collective European interest.

Having regard to Title XIII which aims at ensuring the “*conditions necessary to the competitiveness of industry*”, largely based on the existence of efficient infrastructures.

Having regard to Title XIV Economic and social cohesion, which sets as an objective “*reducing disparities between the levels of development of the various regions*”.

Having regard to Title XVI which enlarges the responsibilities of the European Union with regard to environmental protection and concerns services of general interest, one of whose characteristics is to generate important externalities.

Having regard to Article 153, or Article III-235 of the Constitutional Treaty, according to which:

1 “*In order to promote the interests of consumers and to ensure a high level of consumer protection, the Union shall contribute to protecting the health, safety and economic interests of consumers, as well as to promoting their right to information, education and to organise themselves in order to safeguard their interests.*”

“2. *Consumer protection requirements shall be taken into account in defining and implementing other Community policies and activities.*”

“3. *The Community shall contribute to the attainment of the objectives referred to in paragraph 1 through:*

a) *measures adopted pursuant to Article 95 in the context of the completion of the internal market;*

b) *measures which support, supplement and monitor the policy pursued by the Member States.*

“4. *The Council, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee, shall adopt the measures referred to in paragraph 3, point b)*

“5. *Measures adopted pursuant to paragraph 4 shall not prevent any Member State from maintaining or introducing more stringent protective measures. Such measures must be compatible with this Treaty. The Commission shall be notified of them.*”

Having regard to Article 158 which stipulates that

“*In order to promote its overall harmonious development, the Community shall develop and pursue its actions leading to the strengthening of its economic and social cohesion.*”

Having regard to Article 295, which guarantees the neutrality of the Union with regard to the forms of ownership of undertakings.

Having regard to Article 21, which states that

“*Every citizen of the Union may write to any institution or bodies referred to in this Article or in Article 7, in one of the languages mentioned in Article 314 and have an answer in the same language*”

Having regard to the Charter of Fundamental Rights of the Union or Part II of the Constitutional Treaty:

Having regard to Article 36 of the Charter of Fundamental Rights, or Article II-96 of the Constitutional Treaty, which stipulates that:

“*The Union recognises and respects access to services of general economic interest as provided for in national laws and practices*”.

Having regard to Article 38 of the Charter of Fundamental Rights, or Article II-98, which stipulates that:

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"Union policies shall ensure a high level of consumer protection."

Having regard to the Protocol of Amsterdam :

"The provisions of the EC Treaty are without prejudice to the competence of the Member States to provide for the funding of public broadcasting services, to the extent that this funding is granted to broadcasting bodies for the purposes of accomplishing the mission of public service as conferred, defined and organised by each Member State, and to the extent that this funding does not alter the trading and competitive conditions in the Community to a degree which would be contrary to the common interest, it being understood that the execution of this public service mandate must be taken into account."

Having regard to the Directives:

Having regard to directive 97/33/CE of 30 June 1997 on interconnection in Telecommunications and its preambles which stipulates that:

the development of the notion of universal service is justified by the fact this notion *"contributes to the Community objective of economic and social cohesion and territorial equity"*

Having regard to directive 98/10/CE of 26 February 1998 on telecommunications and its preambles which confirms:

the notion of universal service and indicates in its preambles that: *"the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions have all recognised that liberalisation goes hand in hand with parallel action to create a harmonised regulatory framework which secures the delivery of universal service"*.

Having regard to Directive 97/67/EC which defines universal postal service

Having regard to directive 2002/22/CE of 7 March 2002 concerning the common rules relating to telecommunications and article 3 §1

which gives content to the notion of universal service and defines the obligations that Member States must respect, the first obligation being availability, defined by Article 3 §1 which states that

"Member States shall ensure that the services set out in this Chapter are made available at the quality specified to all end-users in their territory, independently of geographical locations, and, in the light of specific national conditions, at an affordable price."

Having regard to directive 2003/54/CE of 26 June 2003 concerning common rules for the internal market in electricity, which emphasises the importance of public service obligations and states that

"it is important that common minimum standards, respected by all Member States, are specified in this Directive, which take into account the objectives of common protection, security of supply, environmental protection and equivalent levels of competition in all Member States."

Having regard to the Green Papers:

Having regard to the Green paper on consumer protection in the European Union, presented by the Commission on 2 January 2001, and in particular its Chapter 3 on "The future direction of consumer protection in the Union."

Having regard to the White Papers:

Having regard to the White Paper on services of general interest in Europe which says that

"The access of all citizens and enterprises to affordable high-quality services of general interest throughout the territory of the Member States is essential for the promotion of social and territorial cohesion in the European Union, including the reduction of handicaps caused by the lack of accessibility of the outermost regions." (3.3) and that "there is broad agreement that the provision of services of general interest must be organised in such a way that a high level of consumer and user rights is ensured" (3.5) and that the implementation of these principles "should include provisions for the representation and active participation of consumers and users in the definition and the evaluation of services, the availability of appropriate redress and compensation mechanisms and the existence of an evolutionary clause allowing requirements to be adapted in accordance with changing user and consumer needs and concerns, and with changes in the economic and technological environment. (3.5)"

Having regard to the Council Resolutions:

Having regard to the Council Resolution of 17 December 1998, on operating instructions for consumer goods (OJ C 411/2 of 31.12.98)

Having regard to the Conventions:

Having regard to Convention 80/934/EC on the law applicable to contractual obligations (Rome)

Having regard to the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters

Having regard to the Communications:

Having regard to the communication of the Commission on Compliance with the Charter of Fundamental Rights in Commission legislative proposals [COM(2005) 172 final]

Having regard to the communication on the Annual Policy Strategy for 2005 relating to information to the citizens of the ten new Member States [COM(2004)0133 final]

Having regard to the Communication of the Commission on the application to public broadcasting services of the rules on State Aids (2001/C 320/04).

Whereas

A) Scope of application and definition

B) Distribution of competences and level of regulation

1- Considering that the Constitutional Treaty establishes new procedures for implementing the subsidiarity principle (Protocol on the application of the principles of subsidiarity and proportionality) and that its Article III-122 guarantees the competence that according to the Constitution, the Member States have to supply, have executed and financed services of general economic interest.

C) Common operating Principles

2- Considering that Services of general economic interest contribute to exercising the fundamental rights.

3- Considering that SGEIs participate in the common values of the Union.

4- Considering that the organisation of services of general economic interest varies depending on the cultural traditions, history, institutions and geographical conditions of each Member State, as well as on the activity's characteristics and its technological development. This variety of concepts must be taken into account in the development of a common European definition.

5- Considering moreover, that services of general economic interest are subject to evolution over time. Because of technological, economic and social changes, some services can become services of general economic interest, and others can stop being. Drawing up a list of Services of general economic interest therefore cannot be envisaged.

6- Considering that the Member States approaches all aim at guaranteeing every person access to essential goods and services, at establishing solidarity relationships at local, regional and national level, as well as promoting sustainable development on the long term.

7- Considering that Member States legislations meet on a number of elements concerning Services of general economic interest, such as equality of treatment of the users, protection of the interests of people and consumers, access to service, adaptability, right of access to SGEIs and universal service, social, territorial and rate accessibility, continuity of service, security in implementing the service, affordable prices, quality of service supplied (setting of reference standards), transparency of relations between operator and public authority,

accounting separation of the activities taken on by an integrated operator, obligatory performance of analytical accounting, by activity or by mission, for undertakings in charge of managing a SGEI.

8- Considering that putting into practice the principle of geographical and rate accessibility of Services of general economic interest contributes to the economic, social and territorial cohesion in the Member States promoted in Article 36 of the Charter of Fundamental Rights.

9- Considering that protection of the fundamental rights, solidarity between the Member States and equality of treatment between people and consumers, as well as economic, social and territorial cohesion, are at the core of the orientations defined by the European Union for Services of general economic interest.

10- Considering that SGEIs participate in cultural diversity.

11- Considering that citizens and consumers of the European Union value services of high quality and affordable prices.

12- Considering that Services of general economic interest are an essential component of the European model of society, because they participate in implementing the values and objectives of the European Union by contributing to the promotion of well-being and economic, social and territorial cohesion as well as to fight against social exclusion and discrimination. Consequently, in order to ensure the European Union's internal cohesion, Community action is necessary.

13- Considering that many services cannot be supplied solely on the basis of market mechanisms, specific provisions are therefore necessary.

14- Considering that security and quality of services are major criteria identifying SGEIs, employees of undertakings providing SGEIs must have collective and individual guarantees appropriate for the operating of the service.

D) Protection of the users

15- Considering that there is a Community dimension to consumer protection.

16- Considering that rules at the Union level do not prevent Member States from adopting more detailed or stricter measures.

17- Considering that all directives, whatever their objective, have a direct effect on consumer protection.

18- Considering that it is essential in the interest of the users of SGEIs and for the correct operation of the internal market to define at Community level the characteristics of rights and protection that users have throughout the European territory.

19- Considering that within the internal market users are confronted with a fragmented system, both at sectoral level and execution level, and that consequently it is necessary to guarantee them effective and efficient legal security, in particular in cross-border areas.

20- Considering that the existing Community directives concerning consumer protection do not constitute a complete regulatory framework for commercial practices between the providers of SGEIs and the users.

21- Considering that the European Union must provide a coherent and complete framework in the area of SGEIs, that sectoral directives do not allow this construction, and that users must be involved in establishing regulatory decisions concerning them on the matter of SGEI.

22- Considering that the European Court of Justice, because only specific cases are referred to it, takes decisions of a kind that does not provide sufficiently homogeneous provisions

23- Considering that everyone has the right to be informed, consulted and involved in decisions concerning them, directly or through their representative organisations.

24- Considering that everyone has the right to ask and receive information in the language of his/her country, clear and comprehensible, and that there is a need for Community documents (working documents, studies, evaluation reports etc.) to be accessible to all.

25- Considering that everyone has right to ask and receive information in the language of his/her country, clear and comprehensible, and that there is a need for Community documents (working documents, studies, evaluation reports etc.) to be readable by in their language of origin.

26- Considering that with regard to users, undertakings providing SGEIs must avoid any abusive practice or any behaviour that restrains their freedom of choice.

27- Considering that according to the Charter of Fundamental Rights everyone has right to a good administration.

28- Considering that, according to the general principles common to the Member States, everyone have right to compensation for damage caused to them.

E) Economic and financial conditions

29- Considering that Article 86 paragraph 2 of the EC Treaty provides that SGEIs shall be subject to the application of the rules of the Treaty to the extent that this does not hinder them from fulfilling their mission of general interest. From which it results that, under of the EC Treaty and subject to the conditions set in Article 86 paragraph 2, the effective accomplishment of a mission of general interest must prevail, in the event of tension, over the application of the Treaty.

30- Considering that many services cannot be supplied on the basis of market mechanisms alone, specific provisions are necessary to ensure financial equilibrium of the supplier under various forms (state Aid, taxes, cross financing and subsidies).

31- Considering that in terms of financing through compensation, the amount of compensation cannot exceed what is necessary to cover the costs brought about by the provision of public service obligations, taking into account the income relating to it as well as a reasonable profit on the equity capital necessary for executing these obligations.

This compensation must actually be used to ensure the operation of the concerned Service of general economic interest, without prejudice to the possibility for the undertaking to benefit normally from its reasonable profit.

The amount of compensation includes all advantages granted by the State or by means of State resources, in whatever form. Reasonable profit must take into account all or part of the increases in productivity realised by the undertaking in the course of an agreed and limited period, without changing the qualitative level of services set by the State.

F) Evaluation

32- Considering that SGEIs are an integral part of the social market economy model of the European Union and each Member State, and that they display specificities that vary significantly from one Member State to the other, or even from one local authority to the other, and that consequently their evaluation shall be carried out, first of all, in application of the principle of subsidiarity at the level where they are defined, organised and provided.

33- Considering that evaluation must be an exercise of concrete participatory democracy in which all the "stakeholders" must participate, users/citizens and consumers' organisations, employees -and their trade unions- and management of the undertaking in charge of supplying the service, public authority responsible for the organisation and implementation of the service supplying, regulator.

34- Considering that transparency is an essential factor in democracy, evaluation must be based on complete and accurate information supplied by the public authority responsible for the organisation of the service and by the undertaking providing the service.

35 Considering that evaluation will proceed from an approach of shared responsibility amongst citizens, debates shall be public, accessible to everyone and contradictory.

36 Considering that to be complete and contradictory, information may require counter-expertise and that therefore it is essential that citizens/consumers are able to initiate counter-expertises and that means, especially financial, must be supplied to them to this end

37 Considering that evaluation must be independent, it is necessary to create flexible and non-bureaucratic evaluation bodies, especially at the Union level.

38 Considering that evaluation is an iterative process that makes it possible to cause quality of service and content of specifications, or definition of public service obligations to evolve, depending on the changes in needs and technologies.

39 Considering that European citizens must benefit, at every point in the Union territory, from high-quality Services of general interest at affordable prices or free of charge when the social situation requires this.

40 Considering that verifying quality and cost of services is under the jurisdiction of the citizens/users, the democratic evaluation is an exercise of responsible active citizenship.

THE PRESENT LAW IS ADOPTED

CHAPTER 1

Scope and definitions

Article 1: Subject

The present law establishes the principles and sets the general provisions allowing services of general economic interest to achieve their missions, with regards to the principle of subsidiarity without prejudice to the competence that the Member States have to supply, have executed and financed these services.

Article 2: Scope

1. The present law shall apply:

a) to services of general economic interest as defined by the Member States, their local authorities, or the European Union.

b) in the field of transport, without prejudice to other Community instruments based on Article 71 or Article 80, paragraph 2, of the EC Treaty.

2. The present law shall not apply to the following activities:

Services of general interest of non-economic nature coming under the power of the Member States and their local authorities, or of the European Union.

Article 3: Relationship with other provisions of Community law

Member States and the Union shall apply the provisions of the present law to services of general economic interest respecting the rules of the Treaty governing the freedom of establishment and the free movement of services. Undertakings in charge of obligations of Services of general economic interest are subject to the rules of the Treaty, in particular competition rules, within the limits where the application of these rules does not prejudice, in law or in fact, the specific mission assigned to them.

The actual implementation of the Services of general economic interest prevails over the application of the rules of competition and internal market in the event of conflict, insofar as the development of exchanges is not affected to an extent contrary to the interest of the European Union.

The present law shall apply without prejudice to other sectoral Community instruments concerning Services of general economic interest that they govern. Any modification of these instruments shall take into account the present law.

Article 4: Objectives

The present law identifies the means to fulfil the objectives set by the Treaty, in particular economic, social and territorial cohesion and solidarity between Member States, guaranteeing the fundamental rights, consideration to the Community general interest.

For the purposes of the present law, the following definitions shall apply:

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1) "Objectives of general interest" :

Objectives set down by the Member States or the European Union with respect to what they consider as coming under general interest, except obvious error.

In particular, this covers the implementation of the fundamental rights, satisfaction of essential needs, security of supply, sustainable development, organisation of solidarity and social or territorial cohesion, preparation of the long-term future.

2) "Service of general economic interest":

Services of an economic nature that Member States or the European Union submit to specific obligations of public service under the criterion of general interest. The same applies to Social Services which shall include, in particular, Health Services;

3) "economic activity" :

An activity consisting in offering services on a given market, by an undertaking or institution, in particular charity institution, independently of the legal status of the latter or its way of funding.

4) "Obligations of public service" :

Obligations resulting from law, regulation or provisions, established by public authorities of Member States or by the European Union, put on the provider of services so as to guarantee the achievement of certain objectives of general interest.

Article 5: Other definitions

5) "Service provider":

Any individual or legal entity, under the jurisdiction of a Member State, that offers or supplies a service;

6) "Recipient":

Any individual or legal entity who, for professional purpose or not, using, or wishing to use, a service;

7) "Establishment":

Actual providing of an economic activity, as mentioned in Article 43 of the EC Treaty, through a stable setting up of a service supplier for an indeterminate period of time;

8) "Authorisation regime as means to impose a public service obligation":

Any defined procedure which results in obliging a service provider to perform a procedure with a public authority in order to obtain a formal act or an implicit decision allowing it to supply a Service of general economic interest;

9) "Public authority":

Any body or authority that has, in a Member State or at European Union level, a role in defining missions of general economic interest, commissioning, monitoring or regulating activities of Services of general economic interest;

10) "Public service award":

Legally constraining act by which a public authority entrusts one or more undertakings with the management of a Service of general economic interest;

11) "Compensation for public service":

Any financial support granted by the Member States or the European Union to an undertaking entrusted with the management of a Service of general economic interest, and aiming at covering, in whole or in part, the exceeding costs resulting from specific obligations imposed on the undertaking;

12) "Exclusive right":

Right granted to a one or several undertakings to manage a Service of general economic interest in a geographically determined area for a fixed duration of time ;

13) "Special rights":

Applies to undertakings in charge of managing a Service of general economic interest under an authorisation regime;

14) "Undertaking":

Any entity exercising an economic activity, independently from its legal status or financing mode;

15) "Universal service":

All requirements of general interest to which activities must be subject in the whole European Union, for example telecommunications or postal services. The resulting obligations aim at ensuring access for everyone everywhere to some essential services, of high quality and at affordable price.

16) "User":

Any individual or legal entity that uses a Service of General Economic Interest.

17) "Stakeholders"

in particular, the following organisations :

- public authorities
- SGEI providers
- regulators
- users and their organisations
- employees of the SGIE provider (any employee, whatever his/her position in the undertaking) and their trade unions.

CHAPTER 2

Role of public authorities, levels of regulation

Article 6: the Member States and their local authorities as public authority have the responsibility for

a) defining and adapting, in a transparent and non-discriminatory way, in an appropriate legal act, the missions and objectives of services of general economic interest of their fields of competence, with respect to the principle of proportionality.

b) defining the rules and specific provisions under which Services of general economic interest achieve their missions and obligations.

c) deciding, in a transparent and non-discriminatory way, according to Article 12 of the present law, the modes of organisation to allow implementation of these missions.

d) deciding on the mode of management, especially providing service alone or in cooperation with other partners, or outsourcing it.

e) deciding on the financing modes, according to Chapter 6 of the present law.

Article 7: The role of the European Union as a public authority consists in:

a) setting up the common rules in order to implement the objectives and rules of the Treaty in the area of services of general economic interest.

b) defining and setting up at Community level European Services of general economic interest, according to the competences assigned by the EC Treaty, and on an added value brought by the European Union in cross-border and trans-European areas.

c) guaranteeing each public authority the free choice of management modes of services of general economic interest, in accordance with the procedures defined in Article 6 of the present law

d) defining the methodology of evaluation of services of general economic interest, as organised in Articles 31 and 32, after consultation with the SGEI Evaluation Agency as defined in Article 33 of the present law

Article 8: Regulation and level of regulation:

Competent public authorities shall define modes of regulation of the services of general economic interest on the basis of their respective competences.

CHAPTER 3

European Services of General Economic Interest

Article 9:

The Union may decide to define European services of general economic interest that it shall implement following the principles in Chapter 2 Article 6-b, as well as in Chapters 4, 5 and 6 of the present law.

Article 10:

The procedures for implementing these European services of general economic interest shall be governed by a specific law.

CHAPTER 4

Common Operating Principles

The principles below can constitute criteria which makes it possible to characterize Services of general economic interest.

1) Accessibility of the service

a) Article 11: Right of access to services of general economic interest and universal service

Every person has a right of access to services of general economic interest defined by the Union and the Member States, each within their respective competences.

The European Union and the Member States, each within their respective competences, shall guarantee the respect for the right of each person to have access to services of general economic interest, to essential services as well as to universal services, at an affordable price and with a guaranteed quality of service.

b) Article 12 Non-discrimination

According to Article 13 of the EC Treaty, any form of discrimination is prohibited concerning access to services of general economic interest. The Union and the Member States, each within their respective competences, shall take measures to prevent any discriminatory practice.

c) Article 13: Geographical accessibility:

The Union and the Member States, each within their respective competences, shall take care that access to services of general economic interest is guaranteed to every person at a reasonable cost independently of their geographical location. This principle does not imply the prohibition of any difference in treatment in order to take into account the regional or local context, as well as the specific geographical features (in particular distances and population density) that could influence the content and conditions of service providing.

d) Article 14: Rate accessibility:

The Union and the Member States, each within their respective competences, shall guarantee a price affordable for every user of services of general economic interest, in particular through cross financing.

2) Protection of the users

Article 15:

Every user of a service of general economic interest must be correctly informed and have access to means of redress according to Chapter 5 of the present law

3) Continuity of the service:

Article 16:

The Union and the Member States, each within the limits of their respective competences, shall take all measures to ensure that service providers respect the principle of continuity of service.

4) Security in the implementation of the service:

Article 17:

The Union and the Member States, each within their respective competences, shall provide the financial and material conditions to ensure continuity of supply and long-term providing of the service.

Provisions shall respect the principles of sustainable development.

5) Quality of service provided:

Article 18:

In order to guarantee the quality of services of general economic interest, the Union and the Member States, each within their respective competences, shall determine, with respect to the Community law, the obligations and rights assigned to service providers. According to Chapter 5, each Member State shall define and adapt the content of the minimum service provisions that the supplier must fulfil, as well as the requirements the service provision must meet.

The Union and the Member States, each within their respective competences, shall guarantee the right of the users to participate in the monitoring of the service quality.

Quality of service implies taking into account requirements linked to security of provision, health of the users, protection of the environment.

Quality is defined in a transparent, non-discriminatory and proportionate way.

All requirements, in particular concerning continuity, security and quality, imposed on employees necessitate the existence of collective and individual guarantees adapted to the services conditions.

6) Guarantee of implementation

Article 19:

The Union and the Member States, each within the limits of their respective competences, shall guarantee, through all appropriate provisions, the missions of services of general economic interest that they shall define according to the principles stated in the present Chapter.

7) European Services of General Economic Interest:

Article 20:

The common principles apply to the European services of general economic interest.

CHAPTER 5

Rights and Protection of the users

Article 21: Definition, implementation, evaluation of services of general economic interest:

a) The users of services of general economic interest shall be involved in the definition, implementation and evaluation of policies concerning services of general economic interest, including standardisation, whether this be through direct public consultations, or through their representative organisations.

The users shall be consulted regularly on the evaluation of performance of services of general economic interest on the basis of criteria set in advance in consultation with the users.

The users shall be consulted regularly on the changes and needs concerning services of general economic interest..

b) When these provisions are implemented at Community level, this is done in the official languages of the European Union.

c) Evaluation is conducted by an independent SGEI Evaluation Agency.

d) Cross-border areas are subject to particular attention especially with regard to consistency and harmonisation of services.

Article 22: Information and training of users

a) In order to ensure protection of people and users, they must be informed in their language, in a way that is clear, complete, precise and comprehensible to everyone:

- of the conditions of access to the services of general economic interest

- of the conditions of rates, subscription and cancellation

- of the conditions of claim, redress and settlement of disputes (national and European)

- of the procedures for compensation in the event of market failure on the part of the service provider

This information shall be updated regularly.

b) The Union and the Member States, each within their respective competences, shall take measures so that the provider(s) of the service regularly supply users with sufficiently precise, transparent and updated information, in particular with respect to the general conditions of access to this service, as well as prices and rates used and the level of quality standards. This information shall be expressly determined in a contract.

General conditions must be formulated in clear and comprehensible language and must be equitable and transparent.

Moreover, The Union and the Member States, each within their respective competences, shall ensure that users are warned in time of any intention to modify the contractual conditions and are informed that they have the right to terminate the contract without penalty at the time when they are advised of the intention to modify it.

c) To allow participation of the users in the definition of services of general economic interest, evaluation of the policies and expression of new needs, a training fund sufficiently endowed shall be planned, within the framework of each sectoral policy. This fund is intended to allow training of users, themselves and/or their representatives, who hope to participate in an advanced and more technical way (including training in price making, standardisation, etc.) into definition, implementation and evaluation of services of general economic interest.

Article 23: Protection of the most vulnerable users

a) Protection of the most vulnerable users (people who are handicapped, unemployed, homeless, etc.) shall be taken into consideration in all policies relating to services of general economic interest.

b) The most vulnerable users shall be included in all consultations, evaluations and expression of needs, for the same reasons and under the same conditions as other users, by all appropriate means.

Article 24: Obligations of the service providers

a) Undertakings shall inform each user, in a clear and comprehensible way, of conditions concerning rates, subscription and cancellation, of the conditions for claims, redress and settlement of disputes (national and European), of the procedures for compensation in the event of market failure.

b) Undertakings have an obligation of transparency towards the users. Each year they must publish an annual report that is accessible to everyone (web site, printed document on simple request).

This report shall include, in particular, the elements necessary for understanding the price making. It will be sent to the SGEI Evaluation Agency mentioned at Article 21.

Article 25: Community obligations

To ensure a high level of protection of the users, including the most vulnerable, the Union and the Member States, each within their respective competences, shall take care to incorporate issues concerning their interests and their protection into all policies relating to services of general economic interest.

Cross-border areas shall be the subject to special attention so as to ensure geographical continuity of services in the European Union. Community authorities promote cooperation between providers, especially to strengthen interconnection and interoperability of networks.

Any person can appeal to the European institutions in one of the languages of the Union and receive an answer in the same language.

Article 26: Redress and access to justice:

The Union and the Member States, each within their respective competences, shall take care also that for each service, citizens or users have access to simple, efficient and inexpensive claim procedures, and that they benefit from any indemnities and compensations.

CHAPTER 6

Economic and financial provisions

Article 27

The Union and the Member States, each within their respective competences, shall guarantee the financing of services of general economic interest by ensuring that undertakings in charge of the management of services of general economic interest have the necessary financial resources and equipment for the proper fulfilment of the missions they have been entrusted.

The Union and the Member States, each within their respective competences, shall guarantee the financing of the infrastructures necessary to providing services of general economic interest and shall take care of the security of supply and continuity of these services.

Article 28

The Union and the Member States, each within their respective competences, shall define the instruments and modes for financing services of general economic interest.

Each public authority freely defines, with respect to the principles of transparency and proportionality, the methods of funding the costs inherent in the implementation of obligations of public service. Choice shall be between several methods of funding :

- public subsidies ;
- cross financing at the level of local, national or Community territory according to sector;
- cross financing between non profitable and profitable activities ;
- increasing access charges;
- recourse to reserved sectors;
- compensation or mutualisation funds between operators;
- tax or other exemptions ;
- recourse to financing in the form of public-private partnerships ;
- or any other suitable method.

Article 29

Financing obligations of services of general economic interest shall be limited to a fair compensation of the costs inherent to the implementation of these obligations by the undertaking in charge of managing the service of general economic interest. Provisions for the definition of the fair compensation shall be set according to Annex 1.

CHAPTER 7

Quality and evaluation

Article 30

Regular evaluation shall be performed with a frequency appropriate to the operation of the services of general economic interest. This evaluation shall be carried out at the territorial level where the service is determined and where public authority is responsible for defining the public service obligations.

Article 31

Evaluation shall cover the quality of the service provided, its cost and price. It shall also take into account the social and societal conditions for supplying the service, the guarantee of fundamental rights as defined by the texts of the Union, the social and territorial cohesion, the level of investment, the conditions of employment, training, research and development. These criteria shall be part of the evaluation criteria.

Article 32

Evaluation criteria shall be developed according to the service considered, the social conditions, specifications, definition of the public service obligations, by the monitoring body, hearing of all the "stakeholders". They can change and be modified in line with changes in social and economic conditions, and with evolution in technologies and innovation.

Article 33

A SGEI Evaluation Agency shall be created by the European institutions. All the stakeholders shall participate in this Agency (through their European organisations).

The SGEI Evaluation Agency conducts evaluations on services of general economic interest coming under the Community responsibility. It provides a comparison of good practices and debates on services of general economic interest. Evaluation reports shall be published at the territorial level as defined in Article 30 of the present chapter.

CHAPTER 8 External trade

Article 34

In the framework of the competences of the Union and the Member States, policies pursued by the European Union within the World Trade Organisation (WTO) are based on the present law.

CHAPTER 9 Final provisions

Article 35

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this law no later than twenty four months after its official publication.

When Members States adopt these measures, they shall contain a reference to this law.
The present law shall be reexamin after five years.

Annex 1 on fair compensation

Compensation cannot exceed what is necessary to cover the costs resulting from the operation of public service obligations, taking into account the income related to them as well as a reasonable profit on the equity capital necessary for operating these obligations. This compensation must actually be used to ensure operation of the concerned service of general economic interest, without prejudice to the possibility for undertaking to benefit normally from its reasonable profit.

Compensation shall include all advantages granted by state or by means of state resources, in whatever form. A reasonable profit shall take into account all or part of the increases in productivity realised by the concerned undertakings in the course of an agreed and limited period, without altering the qualitative level of service set by state.

Costs to be taken into consideration shall encompass all costs resulting from the management of the service of general economic interest. They shall be calculated as follows on the basis of generally accepted analytical accounting principles:

- a) when activities of the concerned undertaking are limited to the service of general economic interest, all costs can be taken into consideration;
- b) when the undertaking also operates activities outside the service of general economic interest, only costs related to this service can be taken into consideration ;
- c) costs attributed to the service of general economic interest can cover all variable costs brought about by the service provision, a contribution proportionate to fixed costs common to the concerned service and to other activities, as well as an appropriate remuneration of capital necessary to executing the service, in accordance with a return on investment normal for the sector;
- d) costs related to investment, in particular infrastructures, can be taken into consideration when they prove necessary to operating the service of general economic interest.

Incomes to be taken into consideration include at least the total income gained from the service of general economic interest. If the concerned undertaking has special or exclusive rights related to another service of general economic interest, which generate profits exceeding the reasonable profit, or benefits from other advantages granted by state, these must be included in the income, independently of their qualification with regard to Article 87. Concerned Member State may decide that profits gained from other activities, outside the service of general economic interest, shall be allocated in whole or in part to financing the service of general economic interest.

For the purposes of the present law, it is proper to understand by “reasonable profit” a rate of remuneration of the equity capital that takes account of the risk, or absence of risk, incurred by undertaking because of the intervention of Member State, in particular if exclusive or special rights are granted. Normally, this rate must not exceed the average rate noted in the concerned sector over the last few years. In sectors where no comparable undertaking exists, a comparison can be carried out with undertakings established in other Member States, or if need be, operating in other sectors, provided that specific characteristics of each undertaking are taken into consideration. To determine reasonable profit, Member States can introduce incentive criteria, related in particular to the quality of service supplied and to increases in productivity.

When an undertaking carries out activities both within the framework of the service of general economic interest and outside of it, its internal accounts must indicate the costs and profits related to this service and to others, as well as the parameters for distributing costs and profits.

Costs linked with any activities outside the service of general economic interest must cover all their variable costs, an appropriate contribution to fixed costs, as well as an appropriate remuneration for the capital. No compensation can be granted for these costs.