

## **Preliminary draft for a European framework directive on Services of General Interest**

### **Preamble**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF MINISTERS

Having regard to the Treaty establishing the European Community, and in particular Articles 16, 86, 95, 295 and 308 thereof,

Having regard to the draft Treaty establishing a Constitution for Europe, and in particular Article III-122 thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Economic and Social Committee,

Having regard to the Opinion of the Committee of the Regions,

Acting in accordance with the procedure referred to in Article 251 of the Treaty establishing the European Community,

Whereas:

(1) Article 16 of the Treaty recognises the place occupied by services of general economic interest in the shared values of the Union as well as their role in promoting the social and territorial cohesion of the Union. These services contribute to the principal objectives of the Community's task, which are laid down in Article 2 of the Treaty: a harmonious, balanced and sustainable development of economic activities, a high level of employment and of social protection, a high degree of competitiveness and convergence of economic performance, a high level of protection and improvement of the quality of the environment, the raising of the standard of living and quality of life, and economic and social cohesion and solidarity among Member States

(2) Article 16 of the Treaty also clearly establishes a shared responsibility of the European Community and the Member States, each within their respective powers, to take care that services of general economic interest operate on the basis of principles and conditions that enable them to fulfil their missions.

(3) Declaration No 13 annexed to the Treaty of Amsterdam stipulates that Article 16 of the Treaty must be implemented '*with full respect for the jurisprudence of the Court of Justice, inter alia as regards the principles of equality of treatment, quality and continuity of such services*'.

(4) Therefore, in order to determine and complement this jurisprudence and thus comply with the requirements of Article 16 of the Treaty, and with a view to providing legal certainty for both the undertakings entrusted with operating services of general economic interest and the citizens who benefit from them, it is necessary to consolidate and clarify in this Directive the general principles and common conditions for the operation of these services.

(5) This consolidation and clarification is all the more necessary as it helps to reinforce each individual's right to access services of general economic interest, as provided for in Article 36 of the Charter of Fundamental Rights of the European Union, in line, in particular, with the principle of solidarity and, more generally, the constant desire to respect all of the rights and freedoms enshrined in the Charter.

(6) Adoption of this Directive is also necessary because of the increasing diversity of secondary legislation aimed at liberalising services of general economic interest and harmonising the legal framework for their intervention, without always referring to common concepts or concepts with a similar scope, which risks hindering the undertakings entrusted with the operation of these services in the performance of their tasks.

(7) This Directive seeks to complement the application of the rules of the internal market and the rules on competition to services of general economic interest through common rules that guarantee protection of the general interest and the satisfaction of the users and consumers of these services. This Directive will therefore respect both the spirit and the letter by fully applying Article 86(2) of the Treaty, which states that undertakings entrusted with the operation of services of general economic interest shall be subject to the rules contained in the Treaty, in particular to the rules on competition, in so far as the application of such rules *'does not obstruct the performance, in law or in fact, of the particular tasks assigned to them'*. In this respect, it is important to remember that the objective of this provision, as reiterated by the Court of Justice, is to *'reconcile the Member States' interest in using certain undertakings, in particular in the public sector, as an instrument of economic or fiscal policy with the Community's interest in ensuring compliance with the rules on competition and the preservation of the unity of the common market'*, and that its conditions of application seek to allow undertakings entrusted with the operation of services of general economic interest to perform the tasks assigned to them without obstruction, in law or in fact, resulting from the rules of the Treaty and without affecting the development of trade to such an extent as would be contrary to the interests of the Community

(8) Alternative 1 (see definition in Article 3): This Directive only applies to services of general economic interest, in so far as it covers only those services of an economic nature that the Member States subject to specific public service obligations by virtue of a general interest criterion. As a consequence, this Directive does not apply to non-economic services of general interest.

(8) Alternative 2 (see definition in Article 3): This Directive applies to all public authorities or entities delegated by a public authority where the latter seeks to lay down public service obligations for the performance of specific tasks likely to be entrusted to undertakings operating services of general economic interest within the meaning of Articles 16 and 86(2) of the Treaty.

(9) This Directive applies without prejudice to the sector-specific Community legislation that already sets out the rules applicable to services of general economic interest in order to take account of the specific characteristics of the sectors concerned. Nonetheless, this Directive requires a prior analysis of the impact of its provisions on the operation of

services of general economic interest in respect of each of the Commission's proposals to amend one of these sectoral instruments or to establish a new instrument in the area of services of general economic interest.

(10) This Directive does not in any way prejudice the regulation of services of general economic interest in accordance with the division of competences between the Member States and the European Community and the principles of subsidiarity and proportionality provided for in Article 5 of the Treaty. In this respect, and as reiterated by the Court of Justice, 'the Member States have broad discretion in defining what they consider to be services of general economic interest'. Their definition may only be called into question by Community law in cases of obvious error. This power of discretion must apply to both the definition of services of general economic interest by the Member States and the method of allocation of these services. To this effect, it is important to recall the Community case-law that stipulates that 'neither the wording of Article 86(2) of the EC Treaty nor European jurisprudence concerning this provision imply that a task of general interest can only be assigned to an operator following a tender procedure'.

(11) This Directive shall be implemented in accordance with Article 295 of the Treaty without prejudice to the public or private nature of the operation of services of general economic interest and does not encourage the Member States to liberalise such services. In this respect, this Directive seeks to encourage diverse forms of management and partnership between public authorities, at both national and local level, service operators, social partners, and user and consumers, in accordance with the Member States' competence for furnishing, and ensuring execution of, these services.

(12) To ensure the economic viability of the operators of services of general economic interest, this Directive shall establish the minimum, common requirements for financing these services in accordance with the principle of transparency, the rules on State aid and the competence of the Member States in terms of financing these services.

(13) This Directive contributes to the implementation of the priorities for Community action with a view to 'better lawmaking' and seeks to make the economies of the Member States even more competitive. It aims to improve the mechanisms for evaluating and supervising the performance of services of general economic interest, with regard, in particular, to the shared principles and operating conditions set out in the Directive, always with a view to improving the quality of the service provided to citizens and users as a whole. The evaluation procedure set out for this purpose may be used as a basis for drawing up Community quality standards for services of general economic interest whose activities have an impact on the development of trade between Member States.

(...?....)

HAVE ADOPTED THIS DIRECTIVE:

## **CHAPTER I – GENERAL PROVISIONS**

### **Article 1 – Subject**

1. This Directive lays down the general principles and appropriate conditions for the smooth operation of services of general economic interest in the internal market, thus contributing to fair, high-quality access for all service users and greater legal certainty for the undertakings entrusted with operating these services.

2. The principles and conditions set out in paragraph 1 of this article cover, in particular, the rules governing the operation, management, supervision, evaluation and financing of services of general economic interest.

## **Article 2 – Scope**

1. Alternative 1: This Directive shall apply to services of general economic interest that are economic activities carried out under market conditions and for which the Member States or the European Community have defined public service obligations to satisfy general interest objectives.

Alternative 2: This Directive shall apply to services of general economic interest that are economic services that the Member States or the Community subject to specific public service obligations by virtue of a general interest criterion.

2. Alternative 1: This Directive shall not apply to services of general interest that are non-economic activities, in so far as they entail typically public authority prerogatives or exclusively social functions that cannot be implemented under market conditions.

Alternative 2: This Directive shall not apply to non-economic services of general interest including, in particular, public authority prerogatives, social protection and national health systems.

## **Article 3 – Clarification of concepts on services of general interest and services of general economic interest**

### Alternative 1:

1. For the purposes of this Framework directive, the term service of general economic interest shall apply to any service which meets the following definition and conditions.
2. A service of general economic interest is a service of a dominantly commercial or industrial character, which is provided in the general public interest to the citizens, or a relevant section of them, by
  - (a) an undertaking forming part of a governmental authority, or
  - (b) an undertaking owned or controlled by a governmental authority,
  - (c) another legal entity,on which public service obligations are imposed, by legislation, contract, or other official act by the relevant governmental authority.
3. It shall be the responsibility of the relevant governmental authority at national, regional or local level, as the case may be, to determine whether a particular service is a service of general economic interest, in accordance with the above criteria.
4. Services which are not of a dominantly industrial or commercial character, but which otherwise meet the above definition of an service of general economic interest, do not fall within the scope of this Framework directive, save as set out in

(7) and (8) below. The term Non-Market Services (NMS) shall apply to such services.

5. The issue whether a service is of a dominantly industrial or commercial character shall be dealt with as a matter of fact, in accordance with the meaning of the term in Article 49 of the Treaty Establishing the European Community. Subject to this, it shall be for the relevant governmental authority to determine whether a service is a service of general economic interest or a NMS.
6. The term 'public service obligations' means specific requirements that are imposed by governmental authorities on the provider of the service in order to ensure that the required public interest objectives are met.
7. A legal entity providing a Non-Market Service which, however, might be construed to be of an economic nature, shall be deemed to comply with the rules of the Treaty on competition and state aids, and to be compatible with the common market, unless on the proven facts of a particular instance, the contrary is clearly established. Such services shall also be regarded as not adversely affecting the development of trade.
8. A NMS shall, in any event, not be treated less favourably, in applying the rules of the Treaty, than if it were a service of general economic interest under this Framework. If in any instance less favourable treatment would result, the NMS shall be deemed to be a service of general economic interest under this Framework Law, so far as is required for this purpose.

Alternative 2:

1. Services of general economic interest: services expressly defined as such by the Member States and subject to a contract, upon which the public authorities impose specific public service obligations.
2. Services of general interest: services expressly defined as such by the Member States and that correspond to activities that are typically carried out by local authorities, are non-profit-making or are exclusively social in nature, or that, as a result of their very nature or their specific object, cannot be carried out under normal market conditions and are therefore classed as being subject to public service obligations by the Member States.

Alternative 3:

1. Services of general economic interest: services of an economic nature that the Member States or the Community subject to specific public service obligations by virtue of a general interest criterion.
2. Services of general interest: market and non-market services that the public authorities class as being of general interest and subject to specific public service obligations.

## **Article 4 – Relationship with other provisions of Community law**

1. Application of this Directive shall not prevent the application of provisions of other Community instruments as regards the services of general economic interest governed by those provisions.
2. The horizontal nature of the provisions of this Directive shall not prejudice the adoption of other more specific Community provisions adapted to certain sectors or to certain services of general economic interest.

## **Article 5 – Definitions and principles**

### **1. Universality**

#### Alternative 1:

The service shall be accessible to all consumers, irrespective of their situation, especially their geographical situation.

The responsible public authorities shall lay down the precise conditions for the implementation of this principle – subsidiarity requirement – and establish the mechanisms to ensure that they are respected.

Where the service cannot be provided due to physical constraints, the public authorities shall find alternative solutions to satisfy as far as possible the users' needs.

#### Alternative 2:

A service shall be considered to be universal if it is accessible to everyone irrespective of their situation, particularly their geographical situation;

### **2. Continuity**

#### Alternative 1:

The service shall be provided without interruption.

Continuity means allowing users to use the services when they so desire, as long as the cost of ensuring this is not excessive in comparison to the average cost of the service.

The continuity rules shall be laid down by the public entity responsible for the service in accordance with the principle of subsidiarity. This entity shall be responsible for taking measures to guarantee respect of this principle.

#### Alternative 2:

Continuity means enabling a user to use the service when he so desires;

### **3. Equality**

#### Alternative 1:

Users shall be treated fairly and equally, which means that operators must ensure equal treatment of users of the same service, irrespective of their geographical

situation, their social, family or personal situation, or their need to access the service, as captive users must not be disadvantaged in comparison to non-captive users.

The responsible public authority shall lay down the conditions for implementing and respecting this principle.

Alternative 2:

Equality means that users are treated fairly and equally;

4. **Quality**

Alternative 1:

The service shall be provided to users in accordance with the generally agreed standards for optimum service provision. These standards shall be in line with the European standard of living.

Depending on the case, the national, regional or local authorities shall adapt the standards to their specific situation.

Alternative 2:

Quality relates to the generally agreed standards for optimum service provision;

5. **Affordability**

Alternative 1:

The service shall be provided to users at a cost that the vast majority of them can afford. This financial capacity shall be facilitated, where necessary, through equalisation mechanisms or financial support.

These mechanisms shall be established for essential services to ensure that everyone has access to a minimum number of these services.

Each public authority shall establish the equalisation mechanisms or financial support needed to guarantee the provision of affordable essential services.

If establishment of equalisation mechanisms requires the involvement of undertakings, the corresponding rights shall be allocated in accordance with the principles and rules of the Treaty.

The Union shall establish and update a charter of essential services.

Alternative 2:

The economic conditions enable all users to access the service;

6. **Efficiency**

Alternative 1:

The service shall be provided as efficiently as possible through use of the most up-to-date technologies, techniques, treatments and care. The responsible public entity shall guarantee the mutability required by technological development. It shall be entitled to replace a pre-existing service with a more efficient technology or service

as long as the users' needs continue to be met, it is more economically sound and the quality of the service is not significantly affected.

Efficient provision of services of general interest is one aspect of the revitalisation of the European services industry and contributes to the realisation of the Union's objectives as regards economic development and employment.

Alternative 2:

Maximum possible efficiency requires the use of the most up-to-date technologies;

7. **Public service obligations**

Alternative 1:

The operator of a service of general interest shall be subject to public service obligations:

Equal access and treatment

Universality

Continuity

Quality

Affordability

Efficiency

which are imposed upon it by the competent authority. These public service obligations shall be set out in the charter or operator's contract.

The operator shall be required to respect them. It shall report to the responsible public entity, and through the latter to the users, on these obligations.

Alternative 2:

A public service obligation is defined by a public authority and imposed upon operators:

Equal access and treatment

Universality

Continuity

Quality

Affordability

Efficiency;

8. **Public procurement**

Alternative 1:

Public procurement means any acquisition of goods, services or supplies by an institution of public law or entity working for an institution of public law, without this public procurement conferring on the supplier any responsibility in the execution of the service of general interest.

The methods by which institutions of public law and entities working for institutions of public law proceed with these acquisitions are laid down in the general directive on procurement.



Alternative 2:

Public procurement means any acquisition of goods, services or supplies by an institution of public law or entity working for an institution of public law;

9. **Public service contract**

Alternative 1:

A public service contract is any contract under which an entity responsible for a service of general interest entrusts to a third party the execution of all or part of the public service task for which he is responsible, this execution resulting in a direct relationship between the user and the operator.

Public service delegations, certain public contracts, certain State contracts and certain public-private partnerships are public service contracts.

Public service contracts shall be concluded in accordance with the Community principles of free access, competition and non-discrimination. Specific rules may be laid down at Community level to guarantee compliance with these principles.

Alternative 2:

A public service contract is any contract under which an entity responsible for a service of general economic interest entrusts to a third party the execution of all or part of the public service task;

10. **'In-house' structure**

Alternative 1:

An 'in-house' structure is one where a public entity takes responsibility for services of general interest, using its own resources, or has control over another, different body to the extent that no undertaking or partner, even if they provide capital, can impose a decision without the full and complete agreement of the main public authority shareholder.

'In-house' means that a single public body has a majority share of the capital, totalling at least 67%, that the minority shareholders have no particular rights, and that the public entity has majority control over the decision-making bodies and appointment of the executive or governing body of the in-house structure.

Public entities shall be free to choose to entrust an in-house structure with performance of a general interest task without being obliged to initiate a procurement procedure. All contracts concluded by the in-house structure shall respect the Community rules on advertising and procurement, in particular the general directive on procurement and the Community provisions on public service contracts.

Alternative 2:

An 'in-house' structure is one where a public entity has control over an operator to the extent that no undertaking or partner, even if they provide capital, can impose a decision without the full and complete agreement of the main public authority shareholder. 'In-house' means a majority share of the capital, totalling at least 67%;

## 11. **Public-private partnership**

### Alternative 1:

A public-private partnership is any formula whereby an institution under public law entrusts an undertaking with building or establishing equipment or an intangible asset, financing it and ensuring a number of functions in return for regular payments by the public authority. The authority's partner may, with the equipment in question, generate incidental revenue.

A public-private partnership may also be any type of formula that involves private undertakings in the operation of public structures. In this respect, it encompasses public service contracts.

### Alternative 2:

A public-private partnership is any type of formula that combines private and public capital;

## 12. **Threshold values**

The Union shall lay down threshold values for advertising and procurement obligations for all types of contracts for public bodies as regards the provision of services of general interest.

The threshold value for Community competition is calculated in accordance with the impact of the corresponding contract on the internal market.

They determine the application of Community rules.

They do not exempt the structure in question, even below these thresholds, from respecting the essential principles regarding competition laid down in the Treaty.

## 13. **Evaluation**

Evaluation of services of general economic interest relates to the assigned objectives and tasks of an economic, social, territorial and temporal nature.

## **CHAPTER II – OPERATIONAL PROVISIONS**

### **Article 6 – Relationship with internal market rules**

Implementation of the provisions of this chapter seeks to enable undertakings responsible for the operation of a service of general economic interest to fulfil the tasks assigned to them in accordance with the rules of the Treaty, especially the rules on the internal market and competition, where the latter do not obstruct, in law or in fact, these tasks and do not affect or risk affecting the development of trade to such an extent as would be contrary to the interests of the Community

### **Article 7 - Compensation for public service obligations and State aid**

1. Where a governmental authority provides compensation to an undertaking delivering a service of general economic interest, that compensation shall not constitute state aid provided that the following conditions are met:

- (a) the recipient undertaking has public service obligations which a governmental authority has imposed upon it by legislation, contract or other official act;
  - (b) the basis or formula on which the compensation is calculated has been established in advance;
  - (c) the compensation does not exceed what is necessary to cover part or all of the costs of providing the public service obligations for which the service of general economic interest is responsible, taking into account the relevant income, and allowing for a reasonable profit;
2. Every services of general economic interest which receives public service compensation under this Article shall comply with the relevant European or national legislative and professional requirements for accountability and transparency in relation to their accounts.

### **Article 8 - Common principles of management**

1. The competent public authorities may in accordance with European law decide to organise the supply of services of general economic interest either in house or through contracting out to a public or private undertaking. Services of general economic interest may also be provided by a public-private partnership. Contracts with undertakings and contracts or concessions establishing a public private partnership should be temporary and only cover an adequate period of time.
2. When undertakings or public private partnerships are chosen pursuant to a public procurement procedure the criteria for selection must be clear and objective. Priority may be given to quality-based selection criteria including social, environmental and territorial criteria.
3. Public tender and public contracts on services of general economic interest shall respect the European Charter of Fundamental rights and the ILO Convention No 94 and include labour clauses ensuring the workers concerned conditions of labour which are not less favourable than those established for work of the same character in the district where the work is carried on.
4. Where a public authority assigns a task endowed with public service obligations, by way of contract or otherwise, for the provision of services, to a legal entity which it owns or controls, and which meets the conditions set out below, this shall not be considered to constitute a market offer or transaction for the purpose of public procurement legislation, and the authority shall accordingly not be required to advertise or tender the service prior to this assignment.
5. A public authority is deemed to own a legal entity where it, or another entity which it owns, enjoys 67% of the legal rights of ownership.
6. Where the legal entity is not wholly owned by a public authority, that authority is deemed to control a legal entity if it, through its own rights of ownership, and taking into account the rights of any co-owner which it owns or controls, has in law and reality the ultimate power to effectively control that entity and thereby to determine all necessary strategic and practical decisions.

7. The conditions referred to in (4) above are:

Alternative 1:

- a) that the legal entity in question to which the task is to be assigned, carries out the essential part of its activities with the authority or authorities which own or control the entity, and as appropriate with other such authorities that have a formal arrangement for inter-communal or similar co-operation with the owning or controlling authority or authorities;
- b) that the assignment in question is for a fixed term that is reasonable in all the circumstances, having regard to the nature of the task, the interests of the users, the nature and extent of any investment and its amortisation timescale.
- c) In the case of an authority which controls but does not own the legal entity, that any private sector co-owner shall have been selected following a transparent process for that purpose.
- d) The provisions of this Article shall apply, mutatis mutandis, to the assignment of a relevant task, in the framework of formalised inter-communal or other equivalent inter-authority arrangements, by a group of relevant authorities (including any legal entity they establish and own for the purpose of the arrangements) to a legal entity which, taken together, they own or control.

Alternative 2:

- a) The provider of the service of general economic interest should guarantee general and specific standards of quality and quantity of the service predetermined by the public authorities. General standards represent objectives of quality that refer to the service provided generally. Specific standards refer to the quality of each performance rendered to the user who can check its compliance. Compliance of general and specific standards cannot be subject to conditions. General and specific standards can only be derogated if the quality of the service is held to be better by the user of the service. The provider of the service must adopt a plan setting forth measures to be implemented in order to progressively improve the standards of supply;
- b) The provider of the service of general economic interest must comply with the principle of equality of the rights of all the users. The rules that regulate the relationship between the user and provider of the service must be equal for all the users. Different conditions of supply of the service cannot be based on sex, race, language, religion and political opinions of the user;
- c) The provider of the service of economic general interest should guarantee equality of treatment of the users under equal conditions of the service provided, either in different geographic areas of the relevant market, also in the case that such areas are difficult to be reached by the provider, or between different categories and groups of users;
- d) The provider of the service of general economic interest is bound to guarantee the supply of the service without any interruptions. The supply of the service cannot be interrupted for any reason whatsoever, not even if the user is in arrears. The obligation of continuity of the supply of the service must be compatible with the workers' right to strike and with other Member States' provisions protecting workers' rights. Provisions can be made for particular conditions for the supply of the service in the case where there might be a threat

to public order or the safety of the citizens. The provider of the service of general economic interest must set up specific measures to guarantee the necessary supplies of production factors so to provide the service without interruptions;

8. Each competent national, regional or local authority may decide to provide the services of general economic interest itself or to give directly the contracts for the provision of public services in that sector to an internal supplier as long as the internal supplier and every other supplier that the internal supplier controls even slightly provide these services essentially within the authority's area of competence and do not participate in any tender procedure outside the authority's area of competence.
9. Each competent national, regional or local authority may give authorisation for the provision of services of general economic interest through the transfer of exclusive rights as long as the supplier assumes the economic risk for provision of the service.
10. On the basis of public service obligations and of the other conditions for the supply as predetermined by the public authorities, the provider of the service of general economic interest will prepare an economic-financial management plan, that will then be submitted to the public authorities. In the economic-financial management plan, the overall and unit cost of the supply of the service are to be clearly and analytically highlighted as well as its overall and unit revenues, on the basis of a proposed table of tariffs and prices to be prepared by the provider of the service of general economic interest, also taking into account a fair return on equity.
11. The provider of the service of general economic interest must submit a report on how the general and specific quality standards will be achieved. This report must show the indexes to be used to measure and assess the results that have been achieved and to compare the achieved results with the foreseen objectives.
12. If the public authority requires that the service of general economic interest is to be offered at a reasonable price so as to make it universally accessible, the public authority can require a review of the proposed table of tariffs and prices prepared by the provider of the service, clearly identifying the sources financing the overall management costs as well as the subsidies to be granted by the public authority.
13. The price of the service of general economic interest must be uniform for each category of users as identified by the public authority. However, differentiated prices can be set in order to make the service accessible to groups of disadvantaged users or users in state of need. The economic-financial management plan prepared by the provider of the service of general economic interest must clearly identify the special supply conditions for the disadvantaged users or the users in state of need.
14. If the management activity of the networks or assets for the supply of a service of general economic interest is separate from the supply of the service, the public authority must make provisions for adequate measures that will guarantee all the suppliers of the service of general economic interest shall have access to these networks and assets.

## **CHAPTER III – DISTRIBUTION OF POWER**

### **Article 9 – Allocation of powers and level of regulation**

1. The European Union and Member States, each within their respective competences, take care that services of general economic interest operate on the basis of principles and conditions, in particular economic and financial conditions, which enable them to fulfil their missions.
2. European Union and Member States each within their respective competences should ensure
  - that the competent public authorities take due account of this directive, when they define and organise their services of general economic interest
  - that the services of general economic interest are adequately financed and monitored
  - that the quality and well functioning of services of general economic interest are evaluated in consultation with national representatives from the provider, users and the social partners
  - that the powers of monitoring and supervision provided for in national law in respect of the provider and the activities concerned are also exercised where a service is provided in another Member State.
  - that providers supply their competent authorities with all the information necessary for monitoring their activities.
  - that reports on the evaluation are forwarded to the European Commission and to the European Observatory mentioned in article 12 on request.
3. The European Commission shall in accordance with the Treaty ensure the application of this directive and shall, where necessary, adopt appropriate European guidelines and necessary implementing measures.

### **Article 10 - Policy on quality of services**

1. Member States shall, in cooperation with the Commission, take accompanying measures to encourage providers to take action on a voluntary basis in order to ensure the quality of service provision, in particular through use of one of the following methods:
  - (a) by having their activities certified or assessed by independent bodies;
  - (b) by drawing up their own quality charter or participating in quality charters or labels drawn up by professional bodies at Community level.
2. Member States shall ensure that information on the significance of certain labels and the criteria for applying labels and other quality marks relating to services can be easily accessed by recipients and providers.
3. Member States shall, in cooperation with the Commission, take accompanying measures to encourage professional bodies, as well as chambers of commerce and craft associations, within Member States to cooperate at Community level in order to promote the quality of service provision, especially by making it easier to assess a provider's competence.

4. Member States shall, in cooperation with the Commission, take accompanying measures to encourage the development of independent assessments in relation to the quality and defects of service provision, and in particular the development at Community level of comparative trials or testing and the communication of the results.
5. Member States and the Commission shall encourage the development of voluntary European standards with the aim of facilitating compatibility between services supplied by providers in different Member States, information to the recipient and the quality of service provision.

### **Article 11 – Evaluation**

1. By the [date of transposition] at the latest, Member States shall present a report to the Commission, containing the information specified in the following provisions:
  - (a) Article 3, on concept on services of general interest and services of general economic interest;
  - (b) Article 8, on management;
2. The Commission shall forward the reports to the Member States, which shall submit their observations on each of the reports. Within the same period, the Commission shall consult interested parties on those reports.
3. The Commission shall present the reports and the Member States' observations to the European Observatory referred to in Article 12(1), which may make observations.
4. In the light of the observations, the Commission shall, by ... at the latest, present a summary report to the European Parliament and to the Council, accompanied where appropriate by proposals for additional initiatives.

### **Article 12 – European Observatory**

1. The Commission shall be assisted by a European Observatory for Services of General Economic Interest.
2. The European Observatory is independent and led by a board of an adequate number of representatives appointed by the European Commission, the Member States, the Committee of the Regions, the European Economic and Social Committee, the social partners at European level and the civil society. The Observatory is accountable to the European Commission and European Parliament.
3. The European Observatory elaborates criteria and methods for monitoring and for evaluation of services of general economic interest based on inputs from relevant stakeholders at European and national level, including the Member States, the Committee of the Regions, the European Economic and Social Committee, Social partners and civil society.

4. The European Observatory monitors the quality and the performance of services of general economic interest and assesses the real impact of liberalisation based on comparative analysis taking account of the full economic and social contribution of services of general economic interest by using the process of open method of coordination.
5. The Observatory publishes with adequate intervals European evaluations of particular services of general economic interest benchmarking the best practice using relevant indicators and peer review as well as on policy of quality of services.

## **CHAPTER IV – PROVISIONS ON CONSULTATION/PARTICIPATION**

### **Article 13 – Protection of users**

1. The participation of citizens in the supplying of a service of general economic interest must always be guaranteed, in order to protect the right to the lawful supply of the service and to favour forms of cooperation with the providers.
2. The providers of the services of general economic interest guarantee that the users are fully informed about the different provisions regulating the supply of the services. The user has the right to access the information possessed by the provider concerning his personal situation and must be able to make observations concerning the supply of the service; the provider of the service should then reply within a reasonable time frame.
3. The users should be immediately and individually informed of the decisions that concern them, the reasons underlying such decisions, as well as the possibility to appeal and the instruments of legal defence against these decisions.
4. The providers of the services of general economic interest must set out specific procedures accessible to users so to effectively claim infringements or violations of the terms and conditions of the supply of the service. These procedures must be accessible, easy to understand and use, be settled expeditely in a time frame predetermined by the provider.
5. In order to rationalise and render publicly available their conduct, the providers of the service make provisions for the rationalisation, simplification and reduction of their internal procedures. The providers of the service must especially reduce as much as possible any requirements and performances to be carried out and discharged by the users and must simplify and computerize the booking and payment systems for the supply of the service.
6. The providers of the services of general economic interest set up appropriate offices organized on a territorial level in order to take care of external relations with the public of users and where all the useful information for the user can be found. The internal procedures of these offices cannot limit nor make more difficult the conditions under which the users can exercise their rights.
7. In order to assess the quality of the service provided the providers of the services of general economic interest carry out appropriate periodic evaluations of the quality of the service, also acquiring assessments directly from the users. In order to carry out these evaluations the providers endow themselves with appropriate internal structures.



8. Within a certain yearly deadline the providers of the service must prepare a report on the achievement of the quality standards foreseen and must render publicly available the contents of this report. The report should, among other things, compare the results achieved with the specific and general standards, explain the reasons of any failing to comply with the standards and the proposed remedies. In an appropriate section of the report are to be included the overall results of the assessments and interviews conducted directly with users.

#### **Article 14 – Participation by the workforce**

Social partners at the adequate European level should be consulted when the European Commission is preparing initiatives which could have a significant impact on services of general economic interest. The European sectoral social dialogue should be consulted, when the European Commission is preparing sector-specific proposals which could have an impact on employees' rights or jobs. Undertakings subject to public service obligations should inform and consult its employees whenever relevant.

#### **Article 15 – Report**

The Commission shall, every three years, present to the European Parliament and to the Council a report on the application of this Directive, accompanied, where appropriate, by proposals for its amendment.

### **CHAPTER V – FINAL PROVISIONS**

#### **Article 16 – Translation into national law**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [2 years after the entry into force] at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

#### **Article 17 – Entry into force**

This Directive shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Directive is addressed to the Member States.....