



GROUPE PARLEMENTAIRE DU PARTI SOCIALISTE EUROPEEN • PARLIAMENTARY GROUP OF THE PARTY OF EUROPEAN SOCIALISTS
FRAKTION DER SOZIALDEMOKRATISCHEN PARTEI EUROPAS • GRUPO PARLAMENTARIO DEL PARTIDO SOCIALISTA EUROPEO
GRUPPO PARLAMENTARE DEL PARTITO DEL SOCIALISMO EUROPEO • FRACTIE VAN DE PARTIJ VAN DE EUROPESE SOCIAALDEMOCRATEN
EUROOPAN SOSIALIDEMOKRAATTISEN PUOLUEEN PARLAMENTTIRYHMÄ • DE EUROPEISKA SOCIALDEMOKRATERNAS PARLAMENTSGRUPP
GRUPO PARLAMENTAR DO PARTIDO SOCIALISTA EUROPEU • DE EUROPEISKE SOCIALDEMOKRATERS GRUPPE
KOINOBOYAEYTIKH OMAΔA TOY EPHPHAIKOY ΣOZIAΛIΣTIKOY KOMMATOΣ

Brussels, 13 April 2005

**POSITION PAPER BY THE PES GROUP
'THE FUTURE OF SERVICES OF GENERAL INTEREST IN EUROPE'**

**A RESPONSE TO THE EUROPEAN COMMISSION'S WHITE PAPER ON SERVICES OF
GENERAL INTEREST AS WELL AS TO CURRENT EUROPEAN INITIATIVES TO THE
FUTURE OF PUBLIC AND PRIVATE SERVICES**

Adopted by the PES Group on April 13, 2005

I. INITIAL SITUATION:

There has been hardly any issue in European politics so widely debated in regions and communities across Europe in recent years as the services of general economic interest. With the step-by-step implementation of the so-called 'Lisbon Strategy' which consists of a package of measures involving economic, employment, environmental and social reforms to modernise the European model of society, including structural reforms (the opening and co-ordination of markets in the European internal market) together with investment in increased growth and employment by the year 2010, providers of services of general interest are quite often faced with legal issues and uncertainties.

The efficient and non-discriminatory provision of services of general interest is an essential condition for further economic, social and territorial integration in the European Union, for the smooth functioning of the internal market and for its external competitiveness. For the PES Group in the European Parliament the social goals of services of general interest, both economic and social, must also be respected and protected whilst implementing the internal market rules. The existence of Services of General Interest is not a matter of choice but a matter of human rights. Therefore, we cannot simply rely upon the interplay of market forces, but instead, secure the existence of minimum adequate pan-European standards for the provisions of Services of General Interest."

For this reason, millions of European citizens are concerned about their future and that of their children: will Europe contribute to more and better jobs, more social security and access to services of general interest for all? They want to know if Europe can help to protect and improve their economic and social environment in a context of globalisation.

Against this background 'Services of General Interest', their future provision and form are more than ever in the limelight both in political debate and also as regards the concerns of European citizens about access for all to public services of high quality. For the PES Group, they are an essential element in the European model of society and represent goals which are common to every society in Europe. They play a decisive role and are commonly regarded as essential in all Member States in improving the quality of life for every citizen and overcoming economic stagnation, social exclusion and isolation as well as improving economic, social and territorial cohesion. Since these services reflect rights which can be exercised by the citizens of Europe and which offer them an opportunity to participate democratically in responsible government in Europe, services of general interest therefore also represent a pillar of EU citizenship.

Thanks to the Socialist campaign within the European Convention on the Future of the Union, the Draft Constitutional treaty contains legal provisions which allow the specific character of SGI to be recognised:

- Article I-3 that makes economic, social and territorial cohesion a fundamental objective of the European Union,
- Article I.5 that imposes on the Union respect for local and regional autonomy
- and in particular Article III-122 which provides a clear legal basis to draw up a European legislative framework for services of general interest, concerning both operating principles and financing procedures¹.

Moreover, the Charter of Fundamental Rights, integrated into the Constitution, stipulates that the Union recognises a right of access to services of general interest as provided for in national laws and practices, in accordance with the Constitution, in order to promote the social and territorial cohesion of the Union. This right needs to be respected in all policy areas of the Union.

Finally, the draft Constitutional treaty strengthens measures relating to subsidiarity and its control by national parliaments (Protocol no. 2), which can prove particularly useful in preserving the operating procedures of certain services of general interest which vary considerably from one Member State to another.

There remains a lack of a clear legal base vis-à-vis the organisation and granting of benefits and financing of services of general interest. The opening of public services networks (telecoms, postal services, energy, railways) which the EU launched several years ago is based on different rules. The effect of these openings needs to be sufficiently assessed.

In addition, the strict implementation of European competition law is subject to the arbitrary interpretation of judges and imposes an excessive burden on public authorities in the absence of clear rules, notably in relation to the financing and the management procedures of SGI.

In reply both to the request by the European Parliament in November 2001 (EP Report LANGEN, A5-361/2001) and in January 2004 (EP Report HERZOG, A5-484/2004)², as well as for a proposal for a European legal framework and to the conclusions drawn up by the Barcelona European Council (March 2002)³ and in view of the Commission's task of examining the future of services of general interest in Europe, the Commission only published a 'Green Paper on Services of Public Interest'⁴ on 21 May 2003 and on 12 May 2004 a 'White Paper on Services of General Interest'. Apart from these, on behalf

¹ This includes a more far-reaching version of the existing Article 16 of the Treaty of Nice, which gives the European Union the legal authority to regulate the principles and conditions, in particular economic and financial, for the operation of services of general economic interest by means of European Law: *'Without prejudice to Articles 73, 86 and 87, and given the place occupied by services of general economic interest in the shared values of the Union as well as their role in promoting social and territorial cohesion, 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'*

²See EP Report LANGEN (A5-361/2001: http://www2.europarl.eu.int/omk/sipade2?PROG=REPORT&SORT_ORDER=D&REF_A=A5-2001-0361&L=EN), and EP Report HERZOG (A5-484/2003: http://www2.europarl.eu.int/omk/sipade2?PROG=REPORT&SORT_ORDER=D&REF_A=A5-2003-0484&L=EN), which were adopted in the European Parliament by a large majority and the active involvement of the PSE Group.

³ See Conclusions of the European Barcelona Council (March 2002), section 42: *'The integration of European networks and the integration of utility markets should take full account of the quality of public services. In this regard, the European Council underlines the importance for citizens, and for territorial and social cohesion, of access to services of general economic interest. In this context the European Council asks the Commission (...) to continue its examination with a view to consolidating and specifying the principles on services of general economic interest, which underlie Article 16 of the Treaty, in a proposal for a framework objective while respecting the specificities of the different sectors involved and taking into account the provisions of Article 86 of the Treaty. The Commission will present a report by the end of the year.'*

⁴ COM (2003) 270 final: http://europa.eu.int/eur-lex/en/com/gpr/2003/com2003_0270en01.pdf and COM (2004) 374 final.: http://europa.eu.int/eur-lex/en/com/gpr/2004/com2004_0374en01.pdf

of the Commission there exists a legislative initiative concerning on services in the internal market, of 13 January 2004⁵ and the implementation of the ECJ Ruling "Altmark-Trans"⁶ dated 8 September 2004.

To the regret of the PES Group, the Green Paper and the White Paper on the Services of General Interest deal only briefly and in general terms with the central question of a European legal framework on services of general interest, without examining the possible substance of regulation of this kind in a convincing way. Still missing, however, an authoritative distinction between services of general "economic" and "non-economic" interest, a pivotal precondition under which the application of especially new European legislation remains unclear for providers of services of general interest.

The international dimension must not be ignored when examining the legal situation of services of general interest, either. In the context of the current negotiations on the liberalisation of international trade in services in the framework of GATS, a complex system of obligations and rules which are imposed on the Community and national legal order is in the process of being set up. In this respect, the insufficient protection of public services is worrying, because of the much too restrictive definition under article 1, paragraph 3, c) of GATS. In order to ward off this possible threat "from above" to the protection of services of general interest, the Commission must be invested with a new negotiating mandate which explicitly includes revision of article 1, paragraph 3, c) of GATS, in order to give a definition of criteria allowing a clear determination of what is included under general interest and must therefore be excluded from the market area.

With a view to the debates already advanced on the future of the public and private services on the European single market, the PES Group should -- based on its response to the Green Paper on the Services of General Interest⁷ -- welcome the opportunity to assert a strong position in favour of the promotion and defence of services of general interest, as a fundamental aspect of our shared values and our model of society.

II. CONCLUSIONS:

1. The current initiatives of the European Commission on the future of the services sector as well as the initiatives of the Commission on the future of public services, and delegated public services should take into consideration the fact that services of general interest in the internal market are currently subject to very different de facto and de jure conditions and practices at both a European and a national and/or local level.

In the interests of greater legal certainty for those services and their operation the PES Group reiterates its demand that the Commission submit a proposal for a framework-directive and link it with the development of a European services directive. Existing sector-specific provisions of Community law must not be called into question.

Consequently, the PES Group would strongly advocate in this respect to

⁵COM (2004) 2 final: http://europa.eu.int/eur-lex/lex/LexUriServ/site/en/com/2004/com2004_0002en03.pdf

⁶See ECJ judgement C-280/00 on EC Aid Law of 23.7.2003 (Altmark Trans): http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=en&numdoc=62000J0280. Through this judgement, the ECJ has formulated four criteria on the fulfilment of which compensation granted by the Member State does not constitute aid. These are: intervention by the State with clearly defined obligations of the service provider, objective parameters for compensation, commensurability between compensation payment and actual costs, allocation of the compensation payment through open tendering process. With three drafts, "Monti package" on state interventions for services of general economic interest, the European Commission attempts to partially implement this ECJ judgement: http://europa.eu.int/comm/competition/state_aid/others/

⁷ Cf the PES Group position paper "Future of Services of General Interest in Europe: Responses to the Green Paper of the European Commission on the Services of General Interest, dated 11 December 2003: http://www.socialistgroup.org/gpes/servlet/Main/Position~2?_wcs=true&id_position=92&lg=en

1. implement the new provisions of the European draft Constitution
2. to lay special emphasis on the principles and values of the European Union and the European draft Constitution, principally transparency, openness, solidarity and partnership with the civil society concerned,
3. clarify the main principles of services of general interest, including principles for financial instruments in order to provide a safeguard basis for public authorities, providers of SGI and consumers
4. to respect the need for sector-specific provisions of Community law
5. make public the planned communications to the social services which represent an important basis for existing initiatives concerning the future of public services
6. to establish as a matter of urgency, complementary and in parallel to the work on the service Directive, a European legal framework on services of general interest to ensure adequate standards and legal certainty for the provision of services of general interest. Adoption of a general framework for market services will make it necessary for the Commission to propose such a legal framework.

For the PES Group the field of application for a legal framework on services of general interest should be as wide as possible, in keeping with the aim of creating a general legal framework.

2. In the opinion of the PES Group a supplementary general Community legal framework – in accordance with existing sector-specific and national provisions – should be enacted on the basis of Community law. This should permit a meaningful delimitation of the responsibilities of Community and Member States in all branches of services of general interest activities as well as the most far-reaching Parliamentary legislative process (joint decision-making with the European Parliament).
3. The principle of free administration of local authorities must be respected. Local authorities must remain sovereign in the management of the public services for which they are responsible. In future citizens should have a local input – allowing for the principle of subsidiarity – ensuring that their needs, claims and problems can be examined promptly and directly, and that the interests of consumers and civil rights are pursued efficiently and effectively protected. As a consequence the PES Group is in no doubt that the actual definition, formulation, organisation and funding of services of general interest remains a task for the Member States and their regional and local authorities. In any case, the European Union must ensure that community regulation does not hinder national, regional or local authorities in their responsibilities and tasks.
4. Together with an urgent request to start work on a European legal framework without delay, the PES Group would like to remind of its tabled and approved proposals for the structure and possible substance of such a legal framework (see ANNEX). These proposals represent a base which will give impetus to an actively created European policy on the future of services of general interest, in a European society which is modernising:

In conclusion it should be stressed that the debate on the future of services of general interest would be fruitless if we only highlighted objectives without presenting our proposals for the instruments which are needed for the purpose. We do not have the right to ignore the legitimate expectations of millions of European citizens who are concerned about the future of public services. Subject to the express proviso that a high level of employment, its quality and legal security in the context of a modern European model of society will be guaranteed, we can envisage the widest variety of solutions for the effective provision of services of general interest at a local level. We must guarantee universality and territorial and social equality of access to essential public services for all the peoples of Europe.

**PROPOSALS FOR THE STRUCTURE AND POSSIBLE SUBSTANCE
OF A EUROPEAN FRAMEWORK DIRECTIVE ON SERVICES OF GENERAL INTEREST**

(PES Group -- approved on 11 December 2003)

- **Object of a Framework Directive**

To ensure adequate standards for the provision of services of general interest, with an eye in particular to cross-border services which are not subject to regulation at a solely national level. With the object of giving those involved legal certainty when they apply current Community law to their activities and guaranteeing the fundamental right of access for all to services of general interest which are of high quality and organised on the basis of solidarity. However, services of general interest such as health care, public housing, education and training as well as social services and their specific structure, role and provisions should be recognised and the principle of proportionality should be very much taken into account in the interest of legal certainty. This list of sectors, which by definition is subjective, non-exhaustive and variable in time, of services that on account of their very nature should be considered as "non-market" and thus should have special conditions to the rules on competition and the internal market.

The PES Group supports the creation of a regulatory base, via framework measures, the implementation of which would be left to the Member States so as to take account of national, regional and cultural differences. This base would set the minimum requirements which must be satisfied by services of general economic interest and would have the aim of ensuring the legal security of the providers and giving the necessary guarantees to the consumer.

In other words, a positive law needs to be drawn up which both protects services of general interest and at the same time guarantees the correct operation of the internal market.

- **Application of the principle of subsidiarity and proportionality**

Under the terms of the Treaty, the actual definition, formulation, organisation and funding of services of general interest is a task for Member States and their regions, which must be responsible for the development of new needs and technologies. At the same time, therefore, the Community's tasks have to be recognised, including ensuring that everyone has access to quality services of general interest at affordable prices as well as promoting co-ordination and co-operation between Member States in this dynamic area.

- **General requirements of services of general interest**

It is neither desirable nor possible to develop a uniform, comprehensive European definition of services of general interest without acknowledging that these are the complicated and constantly developing services with their broad spectrum of activities and traditions. The existing European model of society, however, contains a number of common principles which should be applied to ensure an adequate standard for the provision of services of general interest. Those principles and/or requirements include: universality, continuity, quality, efficiency, equal opportunity for access, proportionality, affordability and user and consumer protection, including the involvement of the user and the democratic control of the producer.

- **Criteria for the delimitation of economic and non-economic services of general interest**

The whole spectrum of services of general interest is subject to technical, economic and social change and therefore has a dynamic character as regards the nature and manner of their provision. The differences between services of an economic and a non-economic nature (market and non-market) are important because they are not subject to the same provisions of Community law, and because until now they have been the subject of some latitude in interpretation on the part of the various administrative entities at both a Community and a national level. The following general criteria for the delimitation of

economic and non-economic services should accordingly be especially applicable: nature and purpose of production and provision (commercial or non-commercial), proportion of public funds, level of investments, profit generation as opposed to covering costs, cost-benefits between local provision/production and Europe-wide obligation to invite tenders, obligation to secure social rights, contribution to social involvement and integration.

However, it is absolutely essential that the authorities concerned should be able to subject the execution of services of general interest, in particular in the areas of health care, educational facilities and social security, by private, profit-making undertakings to conditions that are compatible with the general characteristics and principles of services of general interest, which must be laid down at European level to prevent them from being rendered inoperative by competition rules.

There are, however, one fact which must be borne in mind if we are to appreciate the difficulty of making this delimitation. The EU Court of Justice in its ruling on the joint cases C-180 - 184/98 considered that "any activity which consists of offering goods and services in a given market constitutes an economic activity". It is therefore not possible to make a priori a definitive list of all services of general interest which must be considered as non-economic.

- **Criteria for funding**

It is in principle a task for Member States, outside the areas which are the subject of sector-specific Community requirements, to take care of funding for services of general interest in accordance with Articles 86 and 87 of the Treaty. The Community can – with the consent of the Member States – share in the provision of funds by co-financing specific projects. The funding mechanisms employed by Member States and the Community should observe the following criteria in particular: maximum efficiency in the employment of funds which distorts competition to the least possible extent, a favourable price, a significant proportion of long-term investments, maximum security of supply and achievement of employment, social and environmental objectives.

However, due to the historical, cultural, and geographical diversity in the Union, Member States have specific reasons for choosing a specific funding method (direct compensation from the national budget, funding on the basis of solidarity, contribution from users and operators, tax credits, tariff perequation, etc.). Moreover, with respect to proportionality and the subsidiarity principle, Member States need to be free in their choice of funding methods. This means recognising that local administrations (regions, municipalities, landers, etc.) should have a certain flexibility to decide on the basis of their political priorities and in-put/out-put assessment in which way they will finance the services for which they are responsible, either by producing these services in-house (“self-production”), or by delegating these services to a private undertaking through procedures of invitation to tender.

In any case, it seems necessary to clarify the following in the context of working towards a European Framework Directive:

1. The role of “cross financing methods”, especially as regards public infrastructure and equipment aimed at limiting the expenditure of the public authorities
2. The present different “tariff systems”
3. The system of “public spending” used to compensate for fulfilling public-service obligations.

- **Participation by the workforce and the ‘third sector’**

The information, consultation and involvement of employees’ representatives and those involved from the ‘third sector’ are pre-conditions for the successful modernisation of the European Union model. It should therefore be guaranteed when regulating services of general interest, i.e. in particular during the organisation and definition, monitoring and implementation of standards and quality requirements, that the specified parties involved participate in all stages.

Whenever sector-specific directives have social consequences for the qualification and working conditions of employees, hygiene and health, and employment conditions, sectoral social dialogue should precede the legislative initiatives of the European Commission. In other words, the logic of Article 139 of the EC Treaty should be implemented when it comes to regulation of services of general interest, in order to promote sectoral social dialogue which could lead to the conclusion of enforceable European collective agreements, protecting employees' rights and their jobs, faced with social dumping or the use of unqualified staff.

- **Relationship between the Framework Directive and sector-specific provisions**

For the purposes of the legal principle of 'specific law before general law' (*lex specialis derogat legi generali*), the sector-specific provisions of Community law should stand in relationship to the Framework Directive. In individual cases the need for and prospective form of additional sector-specific provisions of Community Law must be discussed with reference to the special nature of each sector and a Community competence. It therefore seems necessary to define a kind of "common" set of specifications for services of general interest, of such a nature as to be able to take on a different form in each sector-specific directive. Thus a Framework Directive could usefully clarify a number of major principles where we have no legal certainty.

- **Evaluation**

The dynamic character of services of general interest and the 'Lisbon objectives' agreed at Community level render a fundamental and regular assessment of those services indispensable at both Community and national level. They should make it possible to assess, in addition to the commercial efficiency of a service, the actual attainment of a superior quality of life, a greater degree of environmental protection and a greater sense of community for every citizen of the Community. An evaluation involving consumers, businesses and trade unions, as well as the 'third sector', should permit the actual impact of a potential change in (the opening of) the market to be established in order to identify potential abortive developments. Harmonised evaluation methods should be introduced, on the basis of common indicators enabling comparison between Member States, which would be defined on a European scale and would take into account the economic, but also the social, environmental and territorial results of the services of general interest. The evaluation should not result in additional reporting requirements and statistics for the Community, Member States, businesses and/or citizens, but take place horizontally and as an integral part of the annual reporting requirement on the economic and employment situation in the EU, and the implementation of guidelines on economic and employment policy.