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EUROPEAN UNION

ECOS – 040

Committee of the Regions

Brussels, 15 March 2005

OPINION

of the Committee of the Regions

of 23 February 2005

on the

**Communication from the Commission to the European Parliament, the Council, the
European Economic and Social Committee and the Committee of the Regions on the**

White Paper on services of general interest

COM(2004) 374 final

THE COMMITTEE OF THE REGIONS,

Having regard to the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the White Paper on services of general interest (COM(2004) 374 final),

Having regard to the decision of the European Commission of 13 May 2004 to consult it on this subject, under the first paragraph of Article 265 of the Treaty establishing the European Community,

Having regard to the decision of its President of 5 April 2004 to instruct its Commission for Economic and Social Policy to draw up an opinion on this subject,

Having regard to Article 16 of the Treaty establishing the European Community, concerning services of general economic interest, as well as Articles 2, 5, 73, 81, 86, 87, 88 and 295 of the Treaty,

Having regard to Article 36 of the European Charter of Fundamental Rights, concerning access to services of general economic interest,

Having regard to Article III-122 of the Treaty establishing a Constitution for Europe, signed by the Heads of State and Government in Rome on 29 October 2004,

Having regard to its opinion on the Green Paper on services of general interest (CdR 149/2003 fin)¹,

Having regard to its opinion on the Communication from the European Commission on Services of General Interest in Europe (CdR 470/2000 fin)²,

Having regard to its opinion on the Draft Commission decision on the application of Article 86 of the Treaty to state aid in the form of public service compensation, the draft directive amending Commission Directive 80/723/EEC on the transparency of financial relations between Member States and public undertakings and the Community framework for state aid in the form of public service compensation (CdR 155/2004 fin)³,

Having regard to its opinion on the Proposal for a Directive of the European Parliament and of the Council on services in the internal market (CdR 154/2004 fin)⁴,

Having regard to its opinion on the European Commission's Green Paper on public-private partnerships and Community law on public contracts and concessions (CdR 239/2004 fin),

Having regard to the draft opinion (CdR 327/2004 rev. 1) adopted on 8 December 2004 by its Commission for Economic and Social Policy (Rapporteur: **Mr Claudio Martini**, President of the Tuscany Region (IT - PES)),

adopted the following opinion at its 58th plenary session, held on 23 and 24 February 2005 (meeting of 23 February):

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1. The Committee of the Regions' views

Introduction

1. The White Paper outlines the actions of the Commission up to 2006. The Committee of the Regions, in close coordination with regional and local authorities, made a substantial contribution to the broad public debate leading up to it.

The Committee of the Regions

2. **considers** that the White Paper provides an opportunity to continue the debate on the strategies, proposals and commitments it outlines. The public authorities and, in particular, the regional and local authorities and social partners, should contribute to the following points:
 - striking the right balance between the public interest inherent to services of general interest (SGI), and compliance with competition rules, not least in the light of the recognition granted to SGI in the Constitutional Treaty;
 - establishing a legal framework for SGI (in particular, with regard to the role of public authorities, the choice of management procedures, long-term funding guarantees, regulation and evaluation);
 - taking stock of the implementation and effects of the sectoral directives on liberalisation in the electronic communications, postal services, electricity and gas sectors in the light of the consultations on the Green and White Papers and, where necessary, preparing a revision of the directives;
 - developing general interest objectives according to the citizen's needs and thereby contributing to greater social and territorial cohesion and the competitiveness of the European economy (Lisbon process); in this context, the Committee of the Regions is disappointed that the European Commission has not prioritised the follow-up to the White Paper on Services of general interest within the context of the immediate objectives for implementing the Lisbon strategy in its Communication on *Working together for growth and jobs - A new start for the Lisbon Strategy*⁵;
 - ensuring a democratic, pluralist and open-minded assessment of the debate, involving all the interested parties;
 - undertaking to ensure that international regulations for trade in services safeguard the objective of providing all citizens with access to public services;
 - tailoring international cooperation programmes with developing countries to include the promotion of investment in basic general interest services and maximum public access to them.

Specific comments on the White Paper

The Committee of the Regions

3. **welcomes** the following aspects of the White Paper:

- acknowledgement of the fact that the Commission, regional and local authorities, and Member States share responsibility;
- the Commission's endorsement of Article III-122 of the Constitutional Treaty as the legal basis for services of general economic interest;
- the desire to provide greater legal certainty for financing SGI whilst recognising the right of local and regional authorities to choose the management and financing method (these developments are scheduled for July 2005, as is a precise definition of the distinction between SGI and services of general economic interest (SGEI));
- the fact that SGI objectives and considerations are to take precedence over competition rules in case of conflict between them (sectoral directives are scheduled for review in 2006);
- the commitment to draft a specific Communication on social and health services of general interest in the course of 2005;
- the commitment to review procedures for assessing the impact of liberalisation;

notes, however, that despite the predominantly positive aspects of the White Paper, service undertakings and providers are still left with a high level of uncertainty and insecurity:

- of a legal nature, regarding the hierarchy of legislation and its interpretation and application;
- of an economic nature, in the absence of a reliable framework that guarantees long-term funding for investments and compensation for SGI obligations;

- regarding compliance with the subsidiarity principle, and consequently with the powers and responsibilities of all tiers of authority (local, regional and national);
- of a political nature, regarding the role of SGI in the European integration process.

SGI in the European institutional framework

The Committee of the Regions

4. **emphasises** that SGI are a part of the value system that underpins life in the EU and its Member States, where the close interaction between economic and social progress results in a social market economy and helps to maximise citizen participation in Europe's economy and society;

1.5 **points out** that the organisation of SGI contributes towards: economic, social and territorial cohesion; solidarity and a sense of belonging to a community; the general interest of citizens; and sustainable development, including for generations to come;

1.6 **is pleased** that the Commission is adopting a stance on the status of services of general interest at European level. This builds a bridge between the current situation which, based on the Treaties and the case law of the European Court of Justice, places competition policy centre-stage, and the new scene presented by the Constitutional Treaty;

1.7 **is satisfied** that the principle of subsidiarity has been upheld in the statement that "it is primarily for the relevant national, regional and local authorities to define, organise, finance and monitor services of general interest". The Committee of the Regions would also highlight the fact that national, regional and local authorities are able to develop and implement systems to enhance citizens' ability to decide for themselves who is to provide a specific service;

1.8 **welcomes** the Commission's appreciation of the amendment to current Article 16 (now III-122) of the new Constitutional Treaty, which provides for a European law by co-decision "within the limits of the Union's competences", to give SGI a clear legal basis. The persistence of arguments against a general legal framework does not justify prolonging the current situation, where lack of legislation compels the European Court of Justice to establish law rather than apply it. The White Paper foresees further consideration of the possibility of drafting a framework law following the ratification of the Constitutional Treaty. In view of this, the Commission has undertaken to publish an evaluation report on possible proposals;

1.9 **emphasises** that there is broad consensus regarding the need to make the EU's role clearer and more transparent, without bestowing upon it further competences. The White Paper appears to accept this fact by acknowledging the competences of Member States and local authorities in relation to services of general interest, including the right to select the legal framework or the public or private character of undertakings with general interest obligations.

SGI and cohesion policy

The Committee of the Regions

1.10 **is convinced** that universal access to high-quality services of general interest at reasonable prices calculated on the basis of production costs is a fundamental aspect of economic, social and territorial cohesion throughout the EU, and that local authorities are best situated to assess their citizens' needs and identify the most appropriate form and structures for providing SGI in their areas;

1.11 **underlines** that, as a result, the objective of territorial cohesion brings a need to develop local public services and pan-European service networks. The Structural Funds - an indispensable instrument for European cohesion policy - should be reformed to promote SGI in relation to cohesion objectives, with particular reference to cross-border cooperation and the promotion of SGI in central and eastern European countries.

SGI and competition

The Committee of the Regions

1.12 **emphasises** the sensitive interconnections between the principles of a single market and SGI;

1.13 **thinks** that, as a consequence, securing long-term funding for investments and for fulfilling public service obligations remains central to ensuring universal access to quality SGI throughout the EU;

1.14 **considers** that the Green Paper was responsible for highlighting the advantages of sectoral liberalisation policies, but did not paid enough attention to the right balance between a fair competition and SGI;

1.15 **welcomes** the Commission's explicit acknowledgment, in the White Paper, that there are incompatibilities between the rules of the internal market and competition on the one hand, and SGI operations, on the other. Nevertheless, the imbalance between general interest considerations and competition rules has yet to be fully addressed;

1.16 **confirms** that the use of a public procurement procedure to select the company which will be given the task of fulfilling a public service obligation is optional, and is not a requirement for fulfilling the conditions for the legality of state aid in the form of public service compensation; **feels** that, in the light of recent case law which considerably restricts the concept of direct management of public services by a local or regional authority, the European Commission should propose an amendment to the legislation on public procurement to establish a definition of direct management geared to what local autonomy really entails;

1.17 **agrees** with the Commission that the objective of creating an open internal market is compatible with the development of SGI, but feels that there is a need to clarify the concept of "impact on trade", which, on the basis of Articles 12 and 81 to 89 of the EC Treaty, provides a framework for the application of competition rules to SGI. As matters stand at present, the CJEC's broad interpretation of the concept of potential impact on intra-Community trade means that even those undertakings entrusted with discharging a public service at a strictly delimited local level may be subject to the provisions of Article 87(1) of the Treaty;

Distinction between SGI and SGEI:

1.18 **urges** the Commission to take rapid steps to draw up, on the basis of the Constitutional Treaty, a proposal for a legal framework which should make possible a definition of positive principles, including, for instance:

- criteria for distinguishing between economic SGI and non-economic SGI;
- principles and general obligations of SGI, such as universal service, continuity, quality, efficiency, accessibility and user and consumer protection;
- criteria for curbing trade distortions;
- the right of local and regional authorities to provide services of general economic interest themselves, and guiding principles for financing;
- evaluation mechanisms.

A common language would have horizontal value for sectors under Community legislation, whilst serving as a useful reference point for other sectors.

1.19 **stresses** that this legal framework is all the more important in view of the fact that, as far as public service compensation is concerned, the first two criteria outlined in the Altmark Trans judgment - i.e. the need to clearly define the public service obligation with which the recipient undertaking is entrusted and to establish the parameters on the basis of which the compensation is calculated beforehand in an objective and transparent manner - already entail a requirement for local authorities to define their public service contracts better. This in turn will lead to greater transparency and democratic accountability in the management of services of general economic interest;

The Committee of the Regions

1.20 considers that unless a clear distinction is made between services of general economic interest and non-economic interest, and unless SGI are more clearly defined in the Treaties, the unequal automatic application of competition rules will persist;

1.21 **reiterates** in this context the demand it made in its opinion on the proposal for a directive on services in the internal market that "*services of general interest be excluded as a matter of principle from the directive's scope (and not only in part from the application of the country of origin principle), in order to avert any discussion when the time comes to implement the directive and so as to avoid the need to have to harmonise this sector in the short term with the aid of Community-wide provisions*"; **welcomes** the European Commission's recognition, in its Communication on *Working together for growth and jobs - A new start for the Lisbon Strategy*⁶, of concerns about the application of the country of origin principle in that directive;

1.22 **welcomes** the serious approach to solving problems concerning SGEI, on the one hand, and public service obligations, on the other; is surprised, however, that the European Commission's three-month work programme provides for the publication in December 2004 of a revised proposal for a Regulation of the Council and of the European Parliament relating

to public service obligations in the land passenger transport sector, even though the consultations on the White Paper on SGI are far from being completed;

1.23 points out, however, that the White Paper fails to provide a precise definition of SGI, restricting itself to noting that the delivery of goods and services of general interest gives rise to public service obligations. The White Paper mentions nine guiding principles for identifying SGI. These provide a framework for *a posteriori* evaluation without, however, calling into question the principle of competition. The White Paper therefore underscores the difficulties involved in finding a balance between SGI and competition rules;

1.24 is concerned that the tendency to apply internal market rules should not prevail over the rightful protection of SGI. In reality, with the exception of services provided free of charge by the public authorities in performance of their duties, all SGI may have an economic aspect;

1.25 notes that this has a considerable impact on the responsibility of regional and local authorities to manage SGI through self-administration;

1.26 considers that SGI and SGEI can only be accurately distinguished from each other if they are assessed according to criteria that guarantee fundamental rights, universal access, solidarity and sustainable development.

SGI within the social and health sectors

The Committee of the Regions

1.27 welcomes the Commission's commitment to draft a specific Communication on social and health services of general interest during the course of 2005 in order to identify the specific characteristics together with necessary modernisation measures and overcome the current legal uncertainty. In the absence of clear legislation, social and health services tend to become unduly subject to competition rules, to the detriment of their specific vocations. At the same time, mobility within the EU requires that steps be taken towards obtaining the right of access to social and health services throughout the EU. The specificities of this sector should therefore be evaluated, common definitions should be found, mixed situations dealt with, and the specific roles of the relevant operators should be properly coordinated;

1.28 emphasises that the Commission, in framing its proposals, must develop an effective level of cooperation with national, regional and local authorities, as well as all interested parties, since social and health services in most European countries are founded on the principles of solidarity and collective funding.

Sectoral directives

The Committee of the Regions

1.29 notes that the White Paper foresees an evaluation report on the effects of sectoral directives in 2005 and efforts to achieve greater horizontal coherence in anticipation of their review in 2006. Pan-European SGEI are subject to the internal market's sectoral directives: telecommunications, postal services, electricity, gas, and air, maritime and road transport. These directives entail both competition obligations and public service obligations. They must undergo periodic evaluations to facilitate their review. The reviews must flesh out the public service obligations, make public service obligations in different sectors more consistent, and improve the regulatory framework. Discussions are still ongoing as to whether other SGEI, including water supply and distribution, waste treatment, urban transport and public television, should be covered by a Community framework and, if so, what legal basis should be adopted (environment, cultural diversity, freedom of information, etc.).

SGI, trade and international cooperation

The Committee of the Regions

1.30 appreciates the fact that the White Paper also addresses the matter of cooperating with developing countries to help them establish quality SGI. Access to basic services is an essential tool for supporting development. Unfortunately, there are no shared principles for SGI at international level, nor equitable funding procedures. In order to contribute to the development of SGI in developing countries, the EU should formulate a regional cooperation policy that facilitates the creation of public assets on an international scale by establishing a sound institutional and regulatory framework that encourages investment in basic SGI;

1.31 nevertheless believes that a thorough public debate is required to clarify SGI-related choices in international negotiations on trade in services. By applying the principle that the internal regulatory framework should be consistent with international trade agreements, EU policy has hitherto led to the exclusion of publicly funded essential SGI (health, education, culture) and placed numerous restrictions on those sectors that the EU has chosen to liberalise, without providing the necessary guarantees.

2. Recommendations for future developments

The Committee of the Regions

- 1. considers** that, with regard to the legal aspects, although the White Paper proposes an intensive work programme for the next two years and takes into consideration many of the concerns expressed by local authorities, the Commission has not provided sufficient information regarding future legal instruments and amendments to existing internal market and competition law;
- 2. notes** that the Commission has undertaken to present proposals by July 2005 for guaranteeing SGI funding conditions in application of the Altmark Trans ruling;
- 3. asks** the Commission to continue to involve all interested parties in matters such as competition, on which, for the first time, informal consultations were

held, thus enabling the CoR to put forward the views of regional and local authorities on matters that affect them closely (see opinion CdR 155/2004 fin, unanimously adopted at the plenary session of 29 September 2004);

4. **reasserts** that Community legislation should be drafted in strict compliance with the principle of subsidiarity in order to ensure that the local authorities remain free to choose their organisational modalities and to exercise their prerogatives, in accordance with national legislation;
5. **underlines** that the obligation arising from compliance with these principles rules out any possibility of calling into question the decisions that local authorities have already taken regarding the manner in which they are to fulfil their commitments to ensure that citizens have access to services throughout urban, rural and less populated areas;
6. **considers** that, given the urgency of securing funding conditions for SGI, the onerous two-year work programme (reports, decisions, draft legislative acts, studies, communications, etc.) must be completed within the stipulated deadlines if concrete operational measures are to be attained;
7. **appreciates** the Commission's commitment to reviewing evaluation procedures for liberalisation in 2005, in the light of opinions expressed by all interested parties as well as the social and environmental impact;
8. **agrees** that the Commission should strive to guarantee local and regional authorities' freedom to choose the appropriate procedures for managing services and should exclude binding EU legislative initiatives which would restrict that freedom. It is important to develop a system that guarantees quality and comparability of national data. The existing evaluation of the quality and efficiency of SGEI that are subject to sectoral directives should be improved, whereas evaluation obligations for SGEI that are not subject to sectoral directives should be developed according to principles of independence, pluralism and quality. Under no circumstance should liberalisation be pursued without careful and constant evaluation of its economic, social, territorial and environmental impact.

Brussels, 23 February 2005

The President
of the
Committee of the Regions

Peter Straub

The Secretary-General
of the
Committee of the Regions

Gerhard Stahl

¹ OJ C 73 of 23.3.2004, p. 7.

² OJ C 19 of 22.1.2002, p. 8.

³ OJ C 43 of 18.2.2005, p. 13

⁴ OJ C 43 of 18.2.2005, p.18

⁵ COM(2005) 24, p.17

⁶ COM(2005) 24, p.17

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