TEN/106
SERVICES OF GENERAL INTEREST

Brussels, 17 July 2002

OPINION
of the
Economic and Social Committee
on
Services of general interest

On 10 January 2002, in a letter from **Mr Prodi**, the Commission asked the Economic and Social Committee to draw up an exploratory opinion, under Article 262 of the Treaty establishing the European Community, on

Services of general interest.

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 19 June 2002. The rapporteur was **Mr Hernández Bataller**.

At its 392nd plenary session of 17 and 18 July 2002 (meeting of 17 July 2002), the Economic and Social Committee adopted the following opinion by 58 votes to 11, with one abstention.

1. Introduction

1.1 The concept and characteristics of services of general interest have been defined in various Community documents[1], and this definition continues to be essentially valid today[2]. Accordingly:

– service *of general interest* covers market and non-market services which the public authorities class as being of general interest and subject to specific public service obligations;

– service *of general economic interest* refers to market services which the Member States subject to specific public service obligations by virtue of general interest criteria.

1.1.1 Services of general interest may also encompass the following categories, as an integral part of the "European social model":

– Services that involve the exercise of power by the public authorities and match the concept of "state obligations".
– Social services provided directly by the public authorities at local, regional and state level.
– Social services provided by non-profit-making organisations.
– Services of general economic interest, whether provided by public, private or mixed undertakings.

1.1.2 The concept of services of general interest is constantly evolving. It encompasses those services that are important in people's daily lives, such as transport, postal services, telecommunications, broadcasting, culture and heritage preservation, education, hospitals, health

1 Namely Communication from the Commission on Services of general interest in Europe (OJ C 281/3 of 26.9.1996); ESC Opinion 949/99, adopted at the Plenary Session of 20 and 21.10.1999 (Rapporteur: **Mr Hernández Bataller**).

2 See respectively Communication from the Commission of 29.9.2000 (COM(2000) 580 final) and the Commission's Report to the Laeken European Council of 17.10.2001 (COM(2001) 598 final).

services, social services, port services, refuse collection, and drinking water and energy supply, in particular electricity[3] and mains gas.

1.1.3 The main criteria characterising a service of general interest are: equal access, with no discrimination; continuity of service; and the ability to adapt to necessary changes. These services are based on the following principles and objectives: solidarity; universality; safety; fair pricing; quality of service, the level of which must be specified by the public authority responsible; efficiency, which must be verified objectively; democratic control, transparency and public responsibility for decisions relating to the management of technical and financial results; and consultation, in particular with workers and their trade unions, and users/consumers and their representative associations.

1.2 Court of Justice (CJEC) case law has also identified a wide range of economic activities that are covered by this concept[4], such as, the management of one of the traditional branches of social security[5] (insurance against accidents at work and occupational diseases), the organisation of trade fairs[6] (to guarantee their quality and safety), and the treatment of non-hazardous building waste[7].

1.3 It must also be pointed out that the Treaties did not initially assign the EU institutions the specific tasks of defining and safeguarding services of general interest in the process of European integration. Gradually, however, they took on this responsibility when they realised that action by the Member States could conflict with free competition and the fundamental economic freedoms of the internal market.

1.4 As part of the movement towards ever-closer European integration, consolidated in the political achievements of the Treaties of Maastricht and Amsterdam, Article 16 of the TEC stipulates that "the Community and the Member States shall take care that such services operate on the basis of principles and conditions which enable them to fulfil their missions". There is therefore a need to clarify the Community concept of services of general interest[8], as well as its objectives and tasks, and lay these down in supranational legal instruments[9].

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3 This document examines those services that correspond to the Section for Transport, Energy, Infrastructure and the Information Society.

4 Namely drinking water supply, maintenance of river navigability, continuous electricity supply, television emissions, basic postal services, management of the public telecommunications network, maintenance of loss-making air routes, etc.

5 Judgment of the Court of Justice of 22.1.2002 (Case C-218/00). Prior to this it passed a similar Judgment on 17 February 1993 concerning the joined cases C-159/91 and C-160/91.

6 Conclusions of Advocate General Alber submitted on 29.5.2001 concerning Case C- 439/99, points 67-69 and 147-148. Judgment of the Court of Justice of 15.1.2001 concerning Case C-439/99.

7 Judgment of the Court of Justice of 23.5.2000 concerning Case C-209/98.

8 Article 16 of the TEC includes services of general interest among the "shared values" of the Union and establishes their role in "promoting social and territorial cohesion".

9 If the Community can protect services of general interest with the same fervour as it does economic freedoms and the efficiency of the internal market, it will have reached a stage in the process of political integration which can only enhance its singular nature compared with other international organisations.

1.5 The Commission considers these services to be an essential component of European society and recognises the need for intervention by the public sector when market supply is insufficient. Furthermore, to fulfil their missions, these services require balanced funding. This can be achieved through compensatory State aid in line with the Treaty.

1.6 The Commission's strategy comprises two phases. Firstly, it proposes drawing up a Community framework for State aid for undertakings entrusted with the management of services of general interest. Secondly, having evaluated experience gained, the Commission may adopt a regulation exempting certain State aids for services of general interest. This is known as block exemption.

2. Sector-specific legislation

2.1 In the **transport sector**, the legislation and initiatives adopted at Community level meet different but complementary objectives.

2.1.1 With regard to **transport by rail, road and inland waterway,** Council Regulation (EEC) No 1191/1696 of 26 June 1969 grants authorities in the Member States the right to conclude public service contracts with transport undertakings to ensure minimum frequencies, capacity, routes, tariffs and timetables, and continuity of service.

2.1.2 The Commission has proposed a new Framework[10] designed to offer consumers better services, keep costs under control, and ensure the highest level of safety. This proposal introduces the concept of "regulated competition", based essentially on the regular renewal of exclusive rights in a market based on free access. The Committee approves[11] the most important regulatory instruments listed in the proposal, in particular, the obligation for the competent authorities to provide adequate public passenger services; the establishment of quality criteria; financial compensation that covers expenditure incurred in meeting the public service requirements; compensation for the cost of public services; the granting of exclusive rights, for a specified period; and the organisation of competition through tendering.

2.1.3 It is hoped that the approval of the proposed measures will increase consumer satisfaction regarding all types of urban transport and revitalise the use of rail, the mode of transport for which the Commission intends to present the most ambitious measures.

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10 Proposal for a Regulation of the European Parliament and of the Council on action by Member States concerning public service requirements and the award of public service contracts in passenger transport by rail, road and inland waterway. COM(2000) 7 final.

11 ESC Opinion on the Proposal for a Regulation of the European Parliament and of the Council on action by Member States concerning public service requirements and the award of public service contracts in passenger transport by rail, road and inland waterway. COM(2000) 7 final. OJ C 221 of 7.08.2001.

2.1.4 Therefore, while the package of directives on infrastructures is likely to improve users' satisfaction in the medium term, the European ESC[12] agrees that there is a need for Community action: for institutional, social, economic and transport policy reasons, the whole system needs a high level of interconnection and integration.

2.2.1 With regard to **air transport**, public service obligations imposed on scheduled air services[13] and, in particular, choice of route, have in general achieved satisfactory results by granting the service to the operator offering the best conditions[14]. However, despite the fact that the gradual opening of the air transport market was finalised on 1 July 1998, a transparent legal and economic regime regarding the obligation to provide regular services to peripheral, inland and less favoured regions has yet to be properly defined.

2.2.2 Furthermore, in its White Paper on transport policy[15], the Commission calls for a high-quality public service. It has also presented a proposal concerning the reinforcement of passenger rights, including compensation where travellers are delayed or denied boarding due to overbooking by airlines[16], as is already envisaged for certain rail routes.

2.3.1 With regard to **maritime cabotage**, the CJEC ruled that authorities are allowed to impose public service obligations on some shipping companies and, at the same time, to conclude so-called "public service contracts" with others[17]. With regard to the amendment of Regulation (EC) No. 3577/92, the European ESC[18] pointed out that in some Member States, island cabotage operators are bound by public service obligations which impose conditions of regularity, routing and frequency of stops, making it impossible for their ships to be used for other purposes.

2.3.2 With regard to the regulation of market access to port services and the public financing of seaports as proposed by the Commission[19], the European ESC[20] supports extending the

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12 ESC Opinion on the Proposal for a Directive of the European Parliament and of the Council on the interoperability of the trans-European conventional rail system. COM(1999) 617 final. OJ C 204 of 18.07.2000.

13 Minimum frequency, timetables, types of equipment used and capacity offered: Council Regulation (EEC) No 2408/92, of 23.7.1992.

14 COM(1999) 182 final, of 20.5.1999.

15 White Paper on European transport policy for 2010: time to decide. COM (2001) 370 final.

16 Proposal for a Regulation of the European Parliament and of the Council establishing common rules on compensation and assistance to air passengers in the event of denied boarding and of cancellation or long delay of flights. COM(2001) 784 final.

17 Judgment of 20 February 2001, Analir and others, C- 205/99.

18 ESC Opinion on the Proposal for a Council Regulation (EC) amending Council Regulation (EEC) N° 3577/92 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage) and the Proposal for a Council Directive on manning conditions for regular passenger and ferry services operating between Member States. COM(1998) 251 final. OJ C 40 of 15.02.1999.

19 Proposal for a Directive of the European Parliament and of the Council on market access to port services. COM(2001) 35 final.

20 ESC Opinion on the Proposal for a Directive of the European Parliament and of the Council on market access to port services. COM(2001) 35 final. OJ C 48 of 21.02.2002.

obligation of transparency and separate accounts to all ports in the Trans-European Network, although it does have some reservations about other aspects of the proposal.

2.3.3 The Commission plans to develop the infrastructures needed to achieve genuine "motorways of the sea", by linking the various modes of transport and ensuring connections between sea, inland waterways and rail, and developing single ticket systems.

2.4.1 The directives concerning the completion of the single **energy** market, i.e. Directives 96/92/EC on electricity and 98/30/EC on gas, allowed different operators to use the transmission network and gave certain consumers the right to choose a supplier[21]. An important step in the right direction was the Court of Justice's Judgment of 23 October 1997[22].

2.4.2 However, incumbent operators still enjoy considerable market shares and third party access to the transmission network continues to be hindered by inadequately justified refusals or shortcomings in infrastructures, namely lack of means of interconnection. As a result, while there is a high degree of satisfaction as regards quality of service, prices are sometimes excessive (except for industrial consumers) and always vary between Member States[23].

2.4.3 The Commission has presented some new proposals for the sector[24]. The Committee supported these proposals in general, but highlighted certain problems that may arise in the market opening process, in particular relating to the unbundling of activities, public service obligations, territorial and social cohesion, and the effects on the environment and employment[25].

2.5.1 The **telecommunications sector** has adopted a precise definition of universal service, which operators are obliged to respect, but which does not necessarily grant exclusive rights. This definition must be revised regularly, so it can be adapted in the light of the rapid evolution of technology in the sector[26]. The current definition does not, however, cover broadband access to the

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21 The Directives establish market opening, access to the network, unbundling of accounts, calculation of tariffs, supply obligation, and the possibility for Member States to define public service obligations, in five specific areas: environmental protection, safety, regularity and quality of supply, and pricing policy.

22 Cases C-158/94, C- 159/94 and C-160/94, respectively.

23 SEC(2001) 1998, p. 4, 7 and 34.

24 Proposal for a Directive of the European Parliament and of the Council amending Directives 96/92/EC and 98/30/EC concerning common rules for the internal market in electricity and natural gas and the Proposal for a Regulation of the European Parliament and of the Council on conditions for access to the network for cross-border exchanges in electricity. COM(2001) 125 final.

25 ESC Opinion on the Proposal for a Directive of the European Parliament and of the Council amending Directives 96/92/EC and 98/30/EC concerning common rules for the internal market in electricity and natural gas and the Proposal for a Regulation of the European Parliament and of the Council on conditions for access to the network for cross-border exchanges in electricity. COM(2001) 125 final. OJ C 36 of 8.02.2002.

26 Directives 97/33/CE, 97/13/CE and 98/10/CE.

Internet or mobile telephony, which for substantial numbers of low-income consumers constitutes an acceptable alternative to fixed telephony[27].

2.5.2 The Commission has presented a number of new proposals for the telecommunications sector, relating in particular to universal service and users' rights[28]. The Committee, however, considers[29] that rapid public access to the Internet should be included in the universal service, as it is essential if people on low incomes, voluntary sectors, non profit-making organisations and users from less populated regions are to have access to advanced services and if an information society that meets the European Union's democratic and social objectives is to be created.

2.6.1 With regard to the **postal service**, the current regulatory framework[30] establishing the universal service and, more specifically, defining the "minimum universal service" has improved the efficiency of operators and the quality of service, by increasing the range of services in general and speeding up the delivery of cross-border post in particular.

2.6.2 On 30 May 2000, the Commission adopted a new proposal for a Directive[31], in which it called for further market opening and more extensive consumer rights, by ensuring that complaints and out-of-court settlement procedures apply to all users of postal services. While the ESC recognised the inevitability of further liberalisation of these services[32], it was concerned that the process should be managed on a controlled basis with full regard for the interests of the various stakeholders, in particular the co-lateral social impacts of the process.

2.6.3 It is likely that medium-term changes in the sector as a result of new technologies, e.g. electronic mail, will enable all users to access these services.

2.6.4 In the amended proposal[33], although the terms of the Commission's proposal are essentially unchanged, it is difficult to define the concept of "special services" in the supranational regulatory framework.

2.7.1 With regard to the **audiovisual sector,** the Commission has identified its principles and guidelines for the new digital age[34]. The European ESC[35] is of the view, however, that the digital

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27 COM(2000) 580 final, pp. 19-20.

28 Proposal for a Directive of the European Parliament and of the Council on universal service and users' rights relating to electronic communications networks and services. COM(2000) 392 final.

29 ESC Opinion on the Proposal for a Directive of the European Parliament and of the Council on universal service and users' rights relating to electronic communications networks and services. COM(2000) 392 final. OJ C 139 of 11.05.2001.

30 Directive 97/67/CE.

31 Proposal for a European Parliament and Council Directive amending Directive 97/67/EC with regard to the further opening to competition of Community postal services. COM (2000) 319 final.

32 ESC Opinion on the Proposal for a European Parliament and Council Directive amending Directive 97/67/EC with regard to the further opening to competition of Community postal services. COM(2000) 319 final. OJ C 116 of 20.04.2001.

33 Amended proposal of 21.3.2001 COM(2001) 109 final (OJ C 180 of 26.6.2001).

age must not be accompanied by a failure to apply public interest objectives such as freedom of expression and opinion, pluralism, cultural and linguistic diversity, safeguarding of minors and human dignity and consumer protection, since it is convinced that their protection and reinforcement fulfils a key function for democracy.

2.7.2 The Committee[36] also considers that public service broadcasting fulfils a number of cultural, social and democratic functions from which all benefit, and is therefore of crucial importance in guaranteeing democracy, pluralism, social cohesion and cultural and linguistic diversity. It therefore regrets that it was not consulted prior to the Communication from the Commission on the application of State aid rules to public service broadcasting[37].

2.8 The Committee has set out its standpoint[38] on the role of private not-for-profit social services in the context of services of general interest in Europe, highlighting their key role in tackling social exclusion and promoting social cohesion, while recognising how hard it is to reconcile respect for competition with the specific characteristics of the economic activities of social services.

3. The situation following the Nice European Council (7-11 December 2000) and the Barcelona European Council (15-16 March 2002):

3.1 The Committee's comments on the situation of services of general interest[39] following the Treaty of Amsterdam gain in significance in the light of the official proclamation by the European Council of Nice of the Charter of Fundamental Rights of the EU[40], Article 36 of which recognises access to services of general economic interest[41].

3.2 Although provisionally the Charter has a non-binding status – despite which it has already been mentioned in the Conclusions of several Advocates General of the CJEC and in

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34 Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions - Principles and guidelines for the Community's audiovisual policy in the digital age. COM(1999) 657 final.

35 ESC Opinion on the Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions - Principles and guidelines for the community's audiovisual policy in the digital age. COM(1999) 657 final. OJ C 14 of 16.01.2001.

36 See footnote 35.

37 OJ C 320, of 15.11.2001, p. 5.

38 ESC Opinion on Private not-for-profit social services in the context of services of general interest in Europe. OJ C 311 of 7.11.2001.

39 ESC Opinion on Services of general interest. OJ C 368 of 20.12.1999.

40 OJ C 364 of 18.12.2000.

41 Article 36 of the Charter of Fundamental Rights stipulates the following: " The Union recognises and respects access to services of general economic interest as provided for in national laws and practices, in accordance with the Treaty establishing the European Community, in order to promote the social and territorial cohesion of the Union."

judgments of the Court of First Instance – it nonetheless provides a strong enough legal basis to justify the actions of the political authorities at national and supranational level[42].

3.3 Likewise, the European Council of Nice's Statement of 11 December on services of general economic interest stresses their "important" place and "irreplaceable" part in increasing European competitiveness. With this in mind, the Statement lays down various purposes served by services of general interest in Europe, such as protection of consumer interests, user safety, social cohesion and regional planning and, sustainable development.

3.4 The Conclusions of the European Council of Barcelona coincide with the statement in calling for public services and network companies to be opened up to competition, "taking into account the requirement to satisfy user needs and the need for transparency in the market through appropriate regulatory instruments" (point 17), in order to increase efficiency, ensure a high level of quality, and enhance sustainability (point 36).

4. General comments

4.1.1 Services of general interest play a vital role in the daily lives of citizens and are one of the values underlying the European social model, as is generally recognised in the constitutional traditions of the Member States. Social protection systems, health systems and the many initiatives by not-for-profit associations in the health and social sector, for example, still therefore constitute the backbone of the European social model.

4.1.2 Accordingly, if the process of political and economic integration within the European Union is to move forward, a series of measures is needed. Now would be a good time to present these measures against the background of the revision of the Treaties by 2004. To this end, the Committee believes that Article 3 of the EC Treaty should include a reference to the provision of services of general interest in the list of activities to be undertaken by the Community to achieve its objectives.

4.2 One option would be the legal definition of services of general interest, including a non-exhaustive list of the social values that underpin these services, for whose promotion and protection the public authorities and supranational powers must be equally responsible. At the same time the link between access to such services and European citizenship must be acknowledged.

4.3 As well as common principles, the future Community framework should establish a mechanism allowing subsidiarity to be applied according to functional[43] as well as territorial criteria. This would affect, in particular, the role played by network infrastructure operators who, as a result of the system of decentralised regulation encouraged by the Directives on market opening, have

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42 Moreiro González, C: "La optimización de la acción institucional a favor de los DF y del Estatuto de Ciudadanía de la Unión" in Tratado de Niza (análisis y comentarios), Ed. Colex, 2002, pp.113-133.

43 Put forward by the Commission in its White Paper on European Governance. COM(2001) 428 final.

increased the authorisation and monitoring procedures, thus hindering the exchange of goods and services between the Member States[44].

4.4 The Committee believes there is a need for the Commission to present a proposal for a framework Directive consolidating the political principles governing services of general economic interest and giving Member States the flexibility they need in this area. This legal instrument should highlight the importance placed by the European Union on services of general interest and European citizens' inherent right to access these services, and – in order to provide greater legal security – should clarify some concepts relating to Community law, while fully respecting the principle of subsidiarity.

4.5 With regard to the legal basis of the aforementioned framework Directive, the Commission should take account of various provisions of the EC Treaty, such as Article 2, according to which the Community's task is to promote, inter alia, a high level of employment and of social protection, equality between men and women, sustainable growth, the raising of the standard of living and quality of life, and economic and social cohesion and solidarity; Article 3, which lists the various objectives of the Community; Article 16 of the Treaty; the principles of subsidiarity, proportionality and neutrality; Article 36, of the EU Charter of Fundamental Rights; and Articles 86 and 87 of the Treaty.

4.6 The proposal for a Directive should consider the reasons for setting up a service of general interest, which can be both economic and social. Economic reasons include: the excessive cost of essential investment; shortages of goods or components needed to produce the service; and sustainable development. Social reasons include: social cohesion to reduce regional imbalances, and social and economic inequality, to ensure that everyone can participate fully in society; equality for all as regards access to these services and the fulfilment of their fundamental rights; combating social discrimination; economic equity by adjusting tariffs or applying social tariffs; maintaining citizens' demand, in particular through the introduction of tax measures; and defining rules allowing citizens to be involved through their organisations in assessing the accessibility and quality of services managed through the award of contracts or concessions.

4.7 The Committee is in favour of achieving a balance between the general interest and competition. Public authorities at all levels are responsible for finding the best possible balance between optimising short- and long-term cost-effectiveness, and the general interest objectives of the service concerned and of other services that may be affected, to ensure that priority is given to criteria based on sustainable economic, social and environmental development.

4.8 Pursuant to the principles of subsidiarity and proportionality, the public authorities must establish public service obligations to ensure that undertakings entrusted with the operation of these services perform the particular tasks assigned to them, providing that the development of trade is not affected to such an extent as would be contrary to the interests of the Community.

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44 A recent example of the legal uncertainty caused by the current system can be found in the Judgment of the CJEC of 13.12.2001 in Case C-79/00.

4.8.1 The Committee is in favour of maintaining the financial and economic balance in service provision and believes that public authority funding to compensate undertakings entrusted with the operation of these services for costs incurred under public service obligations must be compatible with Community legislation in the proposal for a framework Directive. It must also include the establishment of special funding mechanisms for additional public service obligations. Finally, it must stress the difference between the principle of public funding, according to which citizens bear the cost of the obligations imposed, and the principle of granting exclusive rights to undertakings that provide general interest services, whereby the desired balance is achieved by adjusting tariffs to offset the cost of deficit activities. In the second scenario, it is the user of the service who finances solidarity, not the taxpayer. Other methods also exist, such as cross-subsidisation and social support.

4.8.2 Services of general interest must be defined at the most appropriate level and with due respect for the various European, national and territorial levels. Furthermore, it is the responsibility of public authorities to take account of new social needs and technological changes, in particular those in the information society, in order to define the aims and obligations of public service.

4.9 With regard to the operation of these services, consideration must also be given to the following principles, while allowing for the specific characteristics of each service,:

– *equal access*, based on the elimination of discrimination and special consideration of the most vulnerable consumers to prevent social exclusion. Services must be provided at an affordable, fair, justified and transparent price;

– *continuity of service*, i.e. service provision must be continuous, regular and uninterrupted, without prejudice to possible instances of *force majeur* and possible exemptions under sector-specific regulations;

– *universality of service*, even when, for commercial or profit-related reasons, this is not advisable, e.g. in rural areas, island or outermost regions, or regions lagging behind in development;

– *quality*, i.e. service provision must meet the quantitative and qualitative criteria laid down in its basic regulations, and be assessed on a regular basis. The public authority responsible in each sector must safeguard the quality of these services;

– *adaptability*, i.e. the provision of these services must regularly adapt to the political priorities of the Community, the current needs of society and local and regional authorities, technical and economic progress, and essential general interest requirements;

– these general principles will be complemented by the specific principles found in each sector and – in some cases – there will be a need for sector-specific Directives in addition to the framework Directive.

4.10 A protection system must be established to safeguard consumers' rights and give effect to their rights quickly and effectively. There is a particular need to establish simple, transparent, quick and impartial complaints procedures. In some services, there is a need for a general system of automatic and limited compensation and refunds for some eventualities, as is already the case for overbooking by airlines.

4.11 The system for regulating the various services must be defined. Regulators – which may be an individual authority or a group of authorities - will perform the following tasks:

– assessment, i.e. assess the service provided for users;

– monitoring, i.e. the organising authority may monitor the operator chosen to provide the service, in particular to carry out inspections and impose penalties for improper conduct in the provision of public service obligations;

– regulation, i.e. the competent authorities may intervene, in accordance with clear legal limits, when the general interest would not be met by the market alone.

4.11.1 In particular, when a service is provided by various operators, the regulator is responsible for monitoring the activity of these operators and safeguarding respect for general interest objectives, competition rules, tariffs, quality of service and consumer protection. Where necessary, it must also ensure that undertakings are given public funding to help them meet general interest objectives, in accordance with Community legislation, in particular that relating to the functioning of the single market, which must be supervised and monitored by the Commission.

4.11.2 Users, consumer associations, trade unions, environmental associations and all relevant social groups must be granted the right to information. This must also be laid down in the regulations governing the regulators.

4.12 In accordance with the principle of the freedom to choose the method of management, each public authority will choose the type of operator for the various services of general interest for which it is responsible. Of course, operators may elect to manage services in different ways: either directly through their own administration, or indirectly through a public, private, social economy or semi-public undertaking.

4.12.1 When special and/or exclusive rights are granted to private undertakings, the management of these services must be entrusted with due respect for Community tendering rules and the principles of publicity, competition and transparency.

4.13 The relationship between the operators of these services and the authorities responsible must be laid down in a contract defining, in particular:

– the aims, pricing principles and main methods of financing the undertaking concerned;

– special or, where appropriate, exclusive rights that may be granted to these operators to help them meet the objective of the service;

– the costs relating to the exercise of deficit activities, which cannot be rewarded on a normal commercial basis but have been imposed on undertakings for the purposes of the general interest, and for which they must therefore receive fair compensation. In accordance with the principle of transparency, separate accounts must be drawn up for costs relating to activities of general interest, which must be clearly distinguished from other activities.

4.14 In order to improve democratic participation and the participation of citizens, general interest service operators must consult users, in particular consumer associations, and involve them in assessing the performance of services. These associations, which are part of organised civil society, must be involved in defining and assessing services in the manner most appropriate to the sector concerned and the nature of the services. This is vital to safeguarding the cooperation of service providers and the protection of citizens' rights in the proper provision of these services, so that such associations can be represented on the regulatory bodies.

4.15 The access to information, consultation and participation of workers and their representatives is essential to a negotiated modernisation of the way in which these services are organised. In this context, the promotion of social dialogue, and of the involvement of workers' representatives and their trade unions, must help to ensure that arrangements for representation or equivalent bodies are set up. For the Committee, the concept of general interest must go hand in hand with a system of exemplary industrial relations, as is characteristic of the EU's social model.

4.16 The Committee believes it is a good idea to set up an observatory for services of general interest to assess the conditions under which services are provided in the Member States. It could also gather information on these services, promote the exchange of information between the various Member States, and encourage inter-institutional discussions on how these services work at Community level.

4.17 The European ESC believes that, in order to distinguish between economic and non-economic activities, services associated with national education systems and the mandatory membership of a basic social security scheme, and services provided by not-for-profit social, charitable and cultural entities, must be exempt from competition rules and provisions relating to the internal market.

4.17.1 Public authorities must promote the protection of citizens' cultural interests as a service of general interest, namely:

– a right to constant and protected access to certain cultural goods, such as books and the audiovisual sector;

– a right to high-quality access to the public broadcasting service; and

– a right to the general protection of the cultural environment of services in the information society, from an intellectual, aesthetic, moral as well as economic point of view.

4.18 The Committee believes that a specific focus needs to be given to the provision and financing of public broadcasting services in order to safeguard the protection of fundamental rights (in particular the right to receive and communicate information), democratic principles and pluralism, which may be affected by certain processes of concentration.

Brussels, 17 July 2002

The President of the Economic and Social Committee	The Secretary-General of the Economic and Social Committee
Göke Frerichs	**Patrick Venturini**

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N.B. Appendix overleaf.

A P P E N D I X
to the
Committee Opinion

The following amendment, which was supported by at least a quarter of the votes cast, was rejected when put to the vote.

Point 4.4.:

Add the following sentence to the end of the paragraph:

"The Directive should also include effective safeguards against distortions of the internal market. The framework Directive states the principles, but does not infringe with the implementation of sector specific Directives, present or future, which regulate public or universal service obligations in the sector, like telecommunications and energy."

Reason:

Respecting the principle of subsidiarity is important and necessary, and probably there would mostly be little effect on the functioning of the internal market. However, it should be clearly stated that possible distortions must be avoided while respecting citizens' right to services. In service areas with obvious internal market and cross border effects, like telecommunications and energy, this has already been taken into account by including provisions for universal or public service obligations in the present and draft Directives regulating these sectors, following largely the same principles that should be included in a future framework Directive.

These Sectoral Directives should naturally be fully implemented and respected as such.

Voting

For:	22
Against:	43
Abstentions:	1.