

## **Draft European framework to Guarantee and Develop services of general economic interest<sup>1</sup>**

*Adopted by the ETUC Steering Committee in their meeting held in Brussels on 20 September 2006*

CD 107

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### **Chapter I**

#### **General provisions**

##### **Article 1 Object**

Services of general economic interest and services of general interest are essential for the economic, social and territorial cohesion in the European Union. The present directive establishes general measures guaranteeing and developing the fulfilment of the particular missions and objectives and the provision of services of general economic interest in the framework of the establishment of the European community and the values that it embodies<sup>2</sup>.

##### **Article 2 Field of application**

1. The present directive applies to services of general economic interest. Services of general economic interest are services of an economic nature which the Community, the Member States or responsible authorities within the Member States, each within their respective powers and within the scope of application of the treaty, subject to specific public service obligations by virtue of a general interest criterion and for environmental, economic and social sustainability purposes.
2. This directive does not deal with non-economic services of general interest. The distinction concerning whether a service of general interest is of an economic or a non-economic nature has to be determined by the respective public authorities.

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<sup>1</sup> This annex is based on the ETUC Resolution on Services of General Interest adopted at the Executive Committee meeting on 6-7 June 2006. The annex makes key content proposals for the ETUC in order to illustrate the technical feasibility of a European framework for SGI/SGEI.

<sup>2</sup> In particular in Articles 2 and 16 of the Treaty

**Article 3**  
**Relationship with other provisions of Community law**

1. The Member States shall implement the present directive in order to safeguard the particular missions assigned to services of general economic interest. These measures are necessary to ensure that, in case of tension between competition law and general interest objectives, the general interest shall prevail.
2. The implementation of the present directive shall complement and facilitate the implementation of sector specific provisions or of other Community instruments regarding services of general economic interest. The implementation of the present directive shall respect the Charter of Fundamental Rights.
3. Future legislation on services of general economic interest shall at least apply the provisions of the present directive.
4. The implementation of this directive shall not constitute valid grounds for reducing the general level of already existing standards in each Member State and in relation to the general level of protection afforded to the workers in the areas to which it applies.

**Chapter II**

**Shared responsibility between Member States and the Community**

**Article 4**  
**Responsibility of Member States and Community**

The definition of public service obligations and missions as well as the organization, the financing and the monitoring of services of general economic interest are a task for the relevant European, national, regional and local authorities each within their respective powers and within the scope of application of the EC Treaty.

**Article 5**  
**Responsibility of the Community**

1. The Community shall, on basis of Articles 16 and 86 §2 of the Treaty, support the national, regional and local authorities to fulfil their missions and take care that the services of general economic interest are operated on the basis of the principles and conditions laid down in this directive. Thereby the Community shall respect the diversity of traditions, structures and situations that exist in the Member States as well as the responsibilities of the national, regional and local authorities.

2. The Community shall ensure that rules on competition and the internal market respect and do not obstruct, in law or in fact, the accomplishment of the missions and tasks assigned to services of general economic interest.

3. The establishment of European services of general economic interest is a task for the Community in order to ensure that they contribute to EU objectives, in particular to sustainable development and high employment.

## **Article 6** **Ensuring subsidiarity**

The European Commission when drafting European legislation in the field of services of general economic interest shall strictly apply the principle of subsidiarity. The Commission shall consult, besides the Member States, the national parliaments, the European social partners as well as the Committee of the Regions and the Economic and Social Committee and shall take the results of that consultation into account.

## **Chapter III** **General principles**

### **Article 7** **Principles**

1. With a view to ensuring a high level of quality, security and safety, consumer and user rights, adaptability to change and improvement of efficiency, the responsible authorities and the service providers in charge of services of general economic interest shall take into account the following fundamental principles,

- accessibility ;
- availability ;
- continuity;
- solidarity;
- affordability;
- universality ;
- sustainability;
- transparency;
- accountability;
- democratic control,
- non-discrimination and equality of treatment.

2. Public authorities shall adapt and/or supplement the above principles with other provisions aimed at

taking better into account the specificities of certain services of general economic interest.<sup>3</sup>

3. The service providers and responsible authorities shall apply the fundamental principles to these services as well as the provisions of the European Charter of Fundamental Rights.

## **Chapter IV**

### **Organization and internal market**

#### **Article 8**

##### **Free choice of service provider**

The Community, Member States as well as regional and local authorities, if given such rights according to the respective legislation, are responsible and competent to determine the modes of provision of services of general economic interest, be it “régie”, in-house, PPP, inter-municipal co-operation or the delegation to a third party.

#### **Article 9**

##### **Authorization regimes**

The Community, Member States and regional and local authorities are free to set up authorization schemes regarding the access to organization of services of general economic interest insofar as this is an efficient and useful means to guarantee the good accomplishment of services of general economic interest missions and to impose public service obligations.

Authorization regimes must respect the principle of non-discrimination and be justified by a public service mission appropriate to that mission.

#### **Article 10**

##### **Exclusive and special rights**

The Community, Member States and regional and local authorities can delegate the fulfilment of missions of services of general economic interest to an undertaking as exclusive or special rights insofar as this is non-discriminatory, justified and proportional.

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<sup>3</sup> The audiovisual sector is bound by the Amsterdam Protocol.

**Article 11**  
**In-house**

The Community, Member States and regional and local authorities have the right to provide services of general economic interest in-house with a legal entity different from the respective authority, as long as the authority has effective control of the service provider.

**Chapter V**

**Financing and rules of competition**

**Article 12**  
**Financing**

1. The Community, Member States and regional and local authorities are – on condition that the provisions of articles 13 – 14 of the present directive are fulfilled – free to choose the way to support a service of general economic interest financially.
2. Compensations for public service obligations do not come under the rules of article 87 of the Treaty.

**Article 13**  
**Rules on compensation**

Financial compensation granted to providers of services of general economic interest is compatible with competition rules if :

- this is compensation for a defined and entrusted public service obligation ;
- the compensation does not exceed the costs of the obligation;
- and allows an appropriate return of investment.

**Article 14**  
**Types of compensation**

The Community, Member States and regional and local authorities are competent to define the modes of compensation, such as cross-subsidization, direct compensation, loans specific to services of general economic interest, tax relief.

## **Chapter VI**

### **Regulation**

#### **Article 15**

##### **Regulation of services of General economic interest**

1. The Community, Member States and regional and local authorities, each within their respective powers, may decide to set up a regulatory body in sectors of services of general economic interest.
2. The right of major stakeholders, such as users, trade unions, consumer associations, environmental bodies to information and prior consultation at the appropriate level must be ensured.

#### **Article 16**

##### **Good governance**

1. Member States shall ensure that the implementation of this directive takes into account the rules of good governance and social dialogue.
2. Member States shall ensure full transparency of information concerning public contracts.

#### **Article 17**

##### **Corporate social responsibility and principles of employee participation**

1. The information, consultation and participation of employees and their representatives are essential for a negotiated modernisation of the organisation of services. In this context, the promotion of the social dialogue and the involvement of trade unions must enable methods to be developed for their representation on boards of directors or equivalent bodies.
2. As an element of corporate social responsibility, providers of services of general economic interest should produce an annual social report, which must be the subject of consultation with employees and their representatives, and be transmitted to the public authority concerned.
3. When necessary, there must also be a dialogue between employer and employee representatives at European level, between the cross-sectoral and sectoral social partners concerned.

## **Chapter VII**

### **Evaluation**

#### **Article 18**

#### **Evaluation of services of general economic interest**

1. The Community shall :

- define a common methodology on an evaluation on services of general economic interest in order to implement a coherent policy to promote quality services ;
- give impetus to the evaluation mechanism in line with the principle of subsidiarity ;
- develop a gradual mechanism for the assessment of the performances of services of general economic interest for which Community rules exist in order to support the responsible authorities and providers to increase efficiency and to adapt the services to the changing needs of public authorities, consumers, citizens and society for example through the open method of coordination;
- undertake the implementation of a general consistent policy for evaluation in order to promote the quality of services of general economic interest and the values that they embody.

2. If the respective authorities decide to implement evaluation processes, the management of the evaluation bodies at each level, European, national, regional or local, must be transparent, participatory and pluralist.

3. The evaluation shall involve a broad range of parties and different stakeholders concerned, e.g. public authorities at Community, national, regional and local level, operators of service providers, consumers (households and industrial users), citizens, the employees and their trade unions. This evaluation process as well as the task of monitoring the conditions in which services of general interest are provided in the different Member States and of exchange of comparative information between the Member States could be co-ordinated by a consultative body, with the task of assisting the Community in monitoring of changes and research, exchanging best practices, elaboration of indicators, benchmarking.

#### **Article. 19**

#### **Evaluation report**

An evaluation report shall be published on the implementation of the principles of the framework directive in the different sectors concerned by the provision of services of general interest.