

Initial EPSU Position - Final

Green Paper on Services of General Interest COM (2003) 270 final

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1. COM (2003) 270 final represents a welcome opportunity to continue the discussion on the values and objectives the European Union has set itself beyond the actual work of the Convention. This discussion to agree adequate measures to develop services of general interest (SGI) and services of general economic interest (SGEI) as indispensable tools for the EU's social and economic cohesion and for equal opportunities of its citizens is bound to continue after the deadline fixed for the consultation period by the European Commission. The discussion of the Green Paper therefore needs to take account of the outcomes of the work of the Convention to be endorsed by the Intergovernmental Conference. This is true in particular of Article 36 of the Charter of Fundamental Rights and Article III, 6 of the Draft Treaty establishing a Constitution for Europe (hereafter referred to as 'Constitution'). The discussion on the Green Paper cannot be dissociated either from the proposed policies in the *Internal Market Strategy Priorities 2003 – 2006* published by the European Commission in May 2003, in other words literally in parallel to the publication of the Green Paper. It is completely unacceptable that the Commission on the one hand, declares to launch a broad debate throughout the European Union on SGI / SGEI and on the other hand, seems to have already established an agenda for further liberalisation policies as part of the Internal Market Strategy.
2. In its introduction, the Green Paper emphasises the increasing role of SGI. It affirms them as *'part of the values shared by all European societies'* and as *'essential element of the European model of society'*, and emphasises their role for *'increasing quality of life for all citizens and for overcoming social exclusion and isolation'*. These notions have to be given their due value, also against the background of Article I, 3 of the Constitution. It is therefore disappointing that the main body of the Green Paper does not echo these promising opening statements. On the contrary, SGI are reduced to a repair shop in cases of market failure. The document does not reflect the values and objectives underpinning SGI, remaining at best ambiguous. Democratic control and accountability, responsible use of scarce resources, the prevention of abuses of market power, long-term service delivery and security of supply of many services require public intervention and cannot be left to market forces. Moreover, mergers and acquisitions in the area of SGI should be judged with regard to their effect on the public interest. The notion of 'controlled' liberalisation has to be questioned with regard to its effects on market concentration and dangerous possible dependencies on private oligopolies.
The Green Paper asserts that liberalisation policies did not have negative effects on employment. The paper fails, however, to provide evidence for its claim that *'the liberalisation of network industries has created nearly 1 million new jobs in the EU.'* EPSU's own studies, but also studies of other institutions, on the contrary reveal massive job losses resulting from liberalisation, for example 300.000 jobs have been lost in the electricity sector in the last ten years.

3. Paragraph 12 of the Green Paper talks of *'ensuring a harmonious link between the objectives of maintaining high-quality SGI and the rigorous application of competition and internal market rules.'* It is indeed doubtful whether such a 'harmonious link' can be achieved. The rigorous application of EU competition rules certainly cannot be the yardstick applied to SGI, thus narrowing the scope of other policy objectives to be pursued by the EU. The EU is more than the Internal Market, the enlarged EU is more than an enlarged internal market. This needs to be stressed time and again. SGI should therefore not be seen as a mere component of the Internal Market but rather as a necessary counterweight in a *social market economy*. Sustainable economic development, social justice, equal opportunities, the protection of the environment are at least equally important as the achievement of a highly competitive economy. A highly competitive economy does not in itself ensure a fairer distribution of wealth and opportunities. Market mechanisms quite simply fail to deliver these types of policy objectives. EPSU challenges the implication in the Green Paper that the remit of public authorities is primarily to provide services should markets fail. The role of local and regional government needs to be more clearly asserted in providing services to communities ensuring social, economic and territorial cohesion and to prevent the development of a 'two-tier' society.
4. The issue of *subsidiarity* is referenced in section 2.1. of the Green Paper. However the reference does not make clear how the concept of local democracy and particularly the right of 'self-administration' can be protected. The European Commission has consistently stretched the concept of the internal market beyond the idea of removing obstacles to free movement by regulating trade. Instead there has been a race to apply internal market rules to every conceivable area, which has impacted on the capability of local and regional authorities to execute self-administration. Paragraph 80 of the paper makes reference to *'in-house service providers'* being subject to competition provisions of the Treaty. This is not only a major attempt to extend the reach of competition law, but is a direct attack on how democratically elected public authorities wish to provide services. Moreover, the negative consequences of the compulsive tendering practice in the United Kingdom for the quality of services and working conditions cannot be ignored. It is not without reason that the current British government had to correct the main features of this policy. EPSU reiterates that the powers of local and regional communities and their representatives to select the best way of providing public services and services of general interest must not be eroded. The internal market rules are ensured through the public procurement rules, applicable in cases where a local or regional government authority do indeed decide to contract certain services out.
5. Paragraph 83 of the Green Paper states that public authorities have a lot of freedom to organise services themselves, but that sometimes *'the absence of specific legislation can lead to legal uncertainty and market distortions.'* Reference is made to the study made by DG Competition on the Application of the Competition Rules to the Water Sector in the European Community. *'For instance, in the water sector the absence of specific, relevant regulation has led to very different industry structures across Member States.'* Why this should be perceived as a problem remains an enigma, considering political and cultural diversity within the EU. The statement makes more sense if read in conjunction with the Internal Market Strategy of the European Commission, which announces a review of the legal and administrative situation in the water and waste sectors. The review will include an analysis of the competition aspects. EPSU is vigorously opposed to any attempts to open water services to liberalisation, a point of view shared by many local authorities, associations of local authorities and non-governmental organisations. The Water Framework Directive, adopted in December 2000, asserts that water is not a tradable commodity but part of our common heritage

that needs to be protected. Empirical evidence with water concession models proves that this leads to a lack of competition, and only a very small number of transnational companies would benefit from water liberalisation, to the detriment of the users of the water supply. In France, where the concession model for water is wide spread, this has caused massive rises in prices, lack of transparency, corruption and an unbalanced power relationship between the local authorities and the giant water companies. It is for this reason that the city of Grenoble decided to take water supply services back into municipal ownership. These experiences are also confirmed by other European and international experience. It is therefore imperative that political decisions on privatisation and liberalisation can be reversed.

The Green Paper claims that the concept of '*public services*' is less precise than the notions of SGI and SGEI. It is true that even before measures for privatisation and liberalisation were introduced in a major way, public services were provided in many European countries by a mix of public and private (mostly) non-profit organisations. This however does not imply that the concept of *public service* is not precise. EPSU acknowledges that the notion of public services has evolved over time, but it cannot be denied that national, regional and local government authorities are and will remain responsible directly for service delivery. It is a different matter to say that also private operators of public services have to comply with clearly defined public service obligations. The prime objective of public services is to ensure universal and equal access of all citizens to quality services. Moreover, public service delivery has been proved in many instances to be a viable and even competitive policy option.

6. *Neutrality* is an important principle for the EU when it comes to the choice of operator by public authorities. Neutrality with regard to ownership is intrinsically linked with the principle of subsidiarity. It is regrettable that the Green Paper does not explore the problems arising with its application. The internal market philosophy assumes a model of competing businesses. Publicly owned companies are given equal status with privately owned ones when they are doing the same thing as private companies: pursuing profit maximation through competition for customers. Successful competition for business is however, rarely, if ever, the main purpose of public enterprises that guarantee the provision of public services and goods, sharing the benefits of efficiency and productivity gains with all instead of increasing shareholders' value. These core features conflict with the principle of maximising the opening of the internal market and on this, the European Commission is not neutral. DG Markt quite openly prefers an EU-wide market in water services to locally accountable municipal provision. It wants to actively facilitate private sector participation through softening rules on state aid and competition. The ruling of the European Court of Justice in the Altmark Trans affair is to be welcomed as a move in the right direction as it confirms that financial intervention in favour of public services is not state aid under Community law. Municipal companies can continue to exist on the basis of this ruling and a compulsory tendering regime has therefore been warded off. This is an important clarification.
7. The capacity to deliver high quality public services and services of general interest has come under pressure by the desire to make EU enterprises more competitive. This is mirrored at international level. The European Commission, in its role as negotiating partner for the EU has formulated a pro-liberalisation agenda regarding world trade. Paragraph 101 of the Green Paper states that in the GATS negotiations the "*European Community has freely decided to undertake binding commitments in respect of certain services of general interest already open to competition within the internal market. Through these commitments, foreign services suppliers are granted market access to the European Community.*" It does not specify which these services are, but it claims that the commitments "*have so far had no impact on the way in which services of general interest are regulated in Community law. They have had no impact on the way*

in which they are financed.” EPSU calls on the European Commission to recognise the limits of its negotiating mandate. EPSU demands a coherent EU policy to be applied to both internal and external trade. The exclusion of health, education, research, culture, social services and water from any trade obligations must be made unequivocal. EPSU demands the right of governments in Europe and throughout the world to regulate such sectors without challenge under the GATS negotiations. Participation and consultation of the European and national parliaments, of the social partners and civil society organisations must be guaranteed. EPSU supports the demand for a moratorium to the GATS negotiations if these demands are not matched before further negotiations get underway, as agreed by the ETUC Congress, Prague, May 2003.

8. The main purpose of the Green Paper is to assess through consultation whether secondary legislation, in particular whether a framework instrument, should be developed on SGI and / or SGEI. EPSU supports the line taken by the rapporteur of the European Parliament Economic and Monetary Committee in points 6 and 13 of his draft report to the Green Paper. The draft report advocates the elaboration of a framework directive on services of general economic interest to provide the basis for obligations, regulation, funding and evaluation of SGEI provided by networks and to strengthen the operational scope of the sectoral activities. EPSU recalls the joint ETUC – CEEP declaration to the Laeken European Council asking the Commission to elaborate a proposal for a regulatory framework. EPSU subscribes to the ETUC position that a framework directive can further add to ensuring coherence and increasing the certainty of the provision of quality services by setting horizontal principles and rules to be applied in all sectors concerned. This approach in no way excludes further action at sectoral levels as a way forward to design adequate regulation, fitting to the specific needs of a sector.

As CEEP, EPSU also has an ongoing discussion on the type of policy that the EU needs to develop and the most appropriate manner of intervention. EPSU would be opposed to

- extend the powers of the EU at the detriment of Member States or territorial authorities;
 - widen the scope of competition at the disadvantage of SGI or SGEI;
 - putting further restrictions on the rights and powers of Member States or territorial authorities;
 - reducing their right of choice as to the organisation and management of SGI and SGEI.
9. The organisation and management of SGI and SGEI must take into account the following principles and objectives, in the manner most appropriate to the specific characteristics of each service:
 - High quality,
 - Equality of access, avoiding discrimination,
 - Continuity of service,
 - Universality,
 - Neutrality of ownership,
 - Safety,
 - A good work environment,
 - Sustainable development,
 - Fair pricing securing affordability and where appropriate access free of charge,
 - Efficiency, which can be objectively verified,
 - Democratic control, transparency and accountability,

- Concertation, particularly with workers and their unions, and with users and their representative associations,
- Adaptation to necessary change.

The Union, Member States and their territorial authorities have the responsibility to seek the optimal balance between achieving the best short term and long term cost / effectiveness ratio ensuring that SGI / SGEI create the conditions for sustainable economic, social and environmental development.

10. EPSU supports the strengthened recognition of SGI and SGEI in the future Constitution of the European Union as proposed by the Convention of the Future of Europe. This could provide a suitable basis to lay down a set of principles in the form of a framework law to consolidate and reinforce SGEI and public service obligations in liberalised sectors. Such an approach would have to achieve a balance between SGI considerations and the rules of competition. The principle of subsidiarity must be applied to give the most suitable level of territorial authority (local, regional, national, European) the responsibility to determine the provision of quality services within their respective area of responsibility. This includes decisions on how services should be funded and organised, i.e. in-house delivery, exclusive or special rights, other possibilities, including intermunicipal co-operation and suitable SGI / SGEI partnership models. A horizontal framework could also be a suitable instrument to define the methods of regulation, supervision and evaluation.