

3rd European Forum on Services of General Interest

**Building the European General Interest
Services of General Interest everywhere and for everyone**

Brussels, November 19th and 20th, 2001

Economic and Social Committee

I. Clarify the strategy of the construction of the European general interest

The President

Claude Desama, former Member of the European Parliament (*summary*)

Besides the reform of the European institutions, the next European Council of Laeken will have to address also the issue of the Services of General Interest (SGI).

As a result of the European Council of Nice, the Commission was invited to present a report to the Council of Laeken, namely about how to guarantee a better predictability and an improved legal certainty for the application of EU-competitive law to the SGI, about the evaluation of the current or already accomplished liberalisation (Cardiff-process) and its added value in comparison with other sectoral directives and about the probable insertion of a reference in article 16 of the EU-Treaty.

Talking about the evaluation of SGI, the Commission is to present methods of evaluation in 2002, but what can be stated at present is the considerable vagueness in relation with the criteria of such an evaluation. In addition to the questions of SGI-financing also the social aspects of liberalisation need to be taken into account.

Unclearness also prevails in the definition of the universal service. Certain Member States and a group of members of the European Parliament tend to reduce it to a basic minimum service and to consider it as one step only on the way to the complete opening of the market to competition, pretending that the market will offer the right answers. Hence, existing definitions of the universal service are restrictive and minimal only, (e.g. for telecommunication, postal services), and wherever the universal service is not defined in a EU-directive, its concept varies from Member State to Member State (electricity, gas): strong services or minimal ones, sometimes even completely absent.

Furthermore, the exclusive sectoral approach does not establish legal, economic and social certainty for the services of general interest.

We must strive for the introduction of rules which are as binding for SGI as they already are in the field of competition. In a first step, a new directive needs to be drafted, then the relevant articles for SGI must be inserted in the EU-Treaties.

Welcome

John Simpson, Vice-President of the Economic and Social Committee (ESC) (*summary*)

The ESC wishes to express its keen interest for the issue of SGI and, in particular, the work CELSIG is carrying out.

There is a certain tension between the internal market and competition, on the one hand, and the SGI on the other. Even given the fact that basic principles are accepted by everybody (fairness, equity, continuity, etc.), the interpretation of these principles can be considerably divergent, if the SGI are not acknowledged as common values of the EU.

And finally, if SIG were produced and offered by the market, we wouldn't need this 3rd European Forum on Services of General Interest today.

Introductory report

Pierre Bauby, CELSIG-Secretariat (*full text*)

1. Retrospective

In order to examine present and future challenges of SGI in the European Union, one has to start with a short retrospective.

What was the situation like seven years ago at the 1st European Forum on SGI?

The logic of liberalisation by sectors and step by step, already carried out for public transports, communication and energy, seemed to be inexorable.

Like a steamroller, the Commission had submitted its project for liberalisation, provoking an intense debate, and then a compromise that was slightly less liberal than the original project and published as a directive. But as soon as this directive was adopted without a real assessment of its impact, a new liberalisation project was presented that triggered a similar process.

This logic provoked again new debates, opposition, critics, but most of the attitudes were more or less defensive requesting that Europe better should keep out of this.

2. Within the last seven years, things have changed a lot

The logic of liberalisation per sector is still on the way and predominant.

It is even going to conquer new sectors, health and education, for instance.

But at the same time, manifold action of involved actors, social movements etc. progressively led to giving a frame to liberalisation and to underline the importance of the missions and objectives of general interest.

Let us just quote article 16 of the EU-Treaty, article 36 of the EU Charter of Fundamental Rights, the concept of the universal service, various communications and reports of the EU-Commission, the European Parliament, the Economic and Social Committee, the Committee of the Regions, the judiciary of the European Court of Justice.

3. Understand and analyse

- a. The European integration, the Common Market and the European Economic and Monetary Union triggered, with compelling logic, the questioning of traditional, national forms of defining, organising and regulating services of general interest. Any retreat behind national forms and traditions in the name of subsidiarity was - and is still nowadays – doomed to failure.
- b. At the very same moment, liberalisation, the implementation of competition always was a means to urge the modernisation of services that did not always work so well: poor quality of certain services, imbalance of information and know-how in favour of providers, centralisation, ponderousness and an attitude of domination towards users, etc.

Especially because technological transformations and the development of the users' needs and demands as well as the research of more competition caused by globalisation pushed to change things.

- c. Finally, also strategies of economic and financial partners, who strove for a better profit share, as well as the dominating ideology of economic liberalism plaid an important role.

There was no way out of the status quo.

Therefore, since the 1st European Forum on SGI, the main objective of the CELSIG is to conceive and to develop an offensive strategy, definitely embedded in the process of European integration, with the goal to gather and to make converge the action of a maximum of actors and institutions within governments, administrations, the European Parliament and national parliaments, the ESC and the social partners (in particular operators and unions), the Committee of the Regions, local politicians, in the EU-Commission itself, etc., in order to balance out the European integration between competition and general interest and to build a European doctrine.

Nonetheless, there is still a clear imbalance between the prevailing concept of competition and the general interest. A severe legal uncertainty is still existing in relation with the hierarchy of Community standards, their interpretation and their implementation.

4. The great challenges

On the short run (European Council of Laeken) and on the long run (Intergovernmental Conference 2004, enlargement)

a. break down and implement articles 16, 36 ...

Not principles, but objectives must be the starting point for the Union when considering SGI that can actually respond to the needs and aspirations of consumers, the citizens and the society and the individual and collective fundamental rights:

- guarantee the access to essential goods and services for everybody, a requirement that implies to break down and implement article 36 EU Charter of Fundamental Rights;
- promote social and territorial cohesion as an expression of general interest in the EU, which requires the insertion of a reference in article 16 EU-Treaty;
- create conditions for a sustainable development and the satisfaction of the interests of future generations, which requires the definition and implementation of long-term policies.

b. clarify the fields of services of general economic interest and services of general non-economic interest as well as the set of rules to be applied to both

The Commission's report dated October 17th, 2001 reminds that those SGI which are non-economic activities, do not fall under the rules of the internal market and competition; but it is still ambiguous about the possible distinction between economic and non-economic activities and, thus, lessens the importance of the initial statement.

c. give a sense to subsidiarity

Erroneously, this principle is often presented as giving the priority under all circumstances to the local level, unless the latter delegate its competencies to the superior national or Community level. Therefore, certain people pretend that the definition and organisation of SGI in the EU is essentially the task of the EU Member States or their infra-national administrations. In fact, article 5 stipulates precisely that the decision which objective has to be dealt with on which level has to be taken on a case by case basis in order to obtain optimal efficiency.¹

As a consequence in order to determine, on a case by case basis and with utmost efficiency, which is the most appropriate level for a given service of general interest, the EU must define common general rules based on which the infra-national administrations, the Member States and, in certain cases where this is deemed to be the most efficient level, the EU itself define missions of general economic interest, their organisation and financing, respecting proportionality, a process of public auditing and regulation, evaluating procedures as well as temporal and spatial development criteria, in order to regularly adapt the contents of such services of general economic interest to the evolution of needs.

Thus, the EU clearly has to respect the principle of administrative autonomy of local authorities within the framework of existing Community law, the definition of general economic interest within their sphere of responsibility, the free choice of kind of management (direct management an publicly operated systems, delegation – with public tender and contract specification document – to public, mixed or private enterprises or associations) and their financing schemes (public subsidies, funds financed by the operators, personal subsidies to the most

¹ “The Community shall act within the limits of the powers conferred upon it by this Treaty and of the objectives assigned to it therein.

In areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community.

Any action by the Community shall not go beyond what is necessary to achieve the objectives of this Treaty.” Treaty establishing the European Community (undersigned in Rome on March 25th, 1957), consolidated version.

underprivileged, internal equalisation). This is not the orientation of the Commission's proposal for the regulation of the obligations of local authorities in the field of public urban and interurban passenger transports.

This should also lead to a proposal for the implementation of real European SGI in certain fields and in cooperation with national and infra-national services, in order to build up the European territory and to promote social and territorial cohesion on the EU-level and to develop trans-European networks (air traffic surveillance, post, railways and overland transport, etc.), and, for instance, also the equalisation of letter stamps all over Europe.

d. guarantee the long-term financing of SGI

The EU should act with the necessary flexibility in order to establish a balance between competition and general interest. Any proportional financing for the provision of particular missions is compatible with the EU-Treaty. The proposals contained in the Commission's report are insufficient, because they do not guarantee the long-term financing of SGI and their development.

e. protect consumers

The European Union must emphasize consumers' protection in all fields: guarantee of access, contractual clearness, absence of abusive clauses, complete and accessible information, means of redress and settlement of conflicts, compensation in cases of abuse, etc. The EU must strengthen the possibilities of expression for individual consumers and their associations.

f. fair social rules

The Union has to ensure that the organisation and regulation of services of general economic interest are based on fair social rules enabling the concerned staff to fulfil its social responsibility, to work in stable employment conditions and to reject any form of social dumping.

g. regulation

The Union has to promote political activities to regulate the relationship and interaction between rules of competition and missions of general economic interest that are based on the specific circumstances of the various sectors, and to foster participation of all actors involved (no monopolistic regulation, supervision, sanctions and evaluation through one entity only) as well as the principle of subsidiarity (the Union regulates only what is explicitly in its responsibility).

h. evaluation

The Union shall develop a culture of regular and comparative evaluation the efficiency and performance level of services of general economic interest as an independent and complementary function of regulation. This evaluation must be based on multiple criteria and involve all concerned actors (regulating bodies, operators, national and local politicians, representatives of the various categories of consumers, the staff and their unions, associations of the civil society, researchers and university lecturers, etc.). The Union should encourage the implementation of specific evaluating bodies per sector and in each of the Member States; on the EU-level, an independent Observatory should be created with the mission to carry out a dynamic and progressive evaluation, to define modalities of exchange, confrontation, comparison, coordination, indeed harmonisation between the Member States, and to develop the exchange of best practices, to draw lessons from previous experiences and to suggest new developments.

In this point, the report of the Commission reiterates without solid arguments that the introduction of competition has helped improving the performance level of a certain number of SGI. The achievements of the Commission until now are praised, although they are not really pluralistic, neither for the utilized criteria nor for the participation of all concerned actors. The Commission suggests to carry on evaluation on its own, although this is clearly a function that needs to be separated from law and regulation: The Commission cannot really want to be judge and party at the same time, have the monopoly for proposals, implement decisions and assess their impact.

These orientations should be fully embodied in common EU-law with equal rights compared with competition. For this purpose, two complementary tools exist that must, in no case, be put in opposition to each other: a framework Directive and a corresponding reference in the EU-Treaty or the future Constitution.

Follow up on the development of the ESC-CEEP² 2001 - Charter

Erik Carslund, Deputy General Secretary of the European Trade Union Confederation (ETUC) (*summary*)

Unfortunately, the joint ETUC-CEEP-Charter on SGI has not been adopted in Nice. We now have to work for the amendment of article 16 and to draft a framework Directive in order to progress with our positions. Although we have already had some progress, a lot of work is still to do, and SGI must play an important role for the defence and consolidation of the European social model, notably when taking into account the process of enlargement.

The common meeting of ETUC and CEEP in October 2001 offered the opportunity to distinguish between SGI and the services of general economic interest. That meeting also underlined the great importance of the relation between citizens and public authorities or states. A charter about SGI could be the framework for a definition of the relations between the various actors and contribute to identify services that have priority and to define the desirable or necessary level of their quality.

For ETUC, one has to be vigilant, so that these positions will be inserted in the future framework Directive and taken into account in the process of the European consultation of social partners and European institutions.

Rainer Plasmann, General Secretary of the European Centre of Enterprises with Public Participation and of Enterprises of General Economic Interest (CEEP) (*summary*)

CEEP regularly carries out activities on the services of general interest : the draft charter together with ETUC, a project for a framework Directive. They regularly analyse the situation of SGI, their regulation, evaluation etc., in cooperation with CIRIEC³.

The social function of SGI is relegated to the second rank by the policies of competition in the EU. We have faith in the usefulness of competition, but on terms of equality with SGI; the latter can, in no case, be treated like the poor relatives of the family. They need a definition and sustainability, private oligopolies have to be avoided, they must be accessible for all citizens, services of general economic interest must be distinguished from those of non-economic interest. And the local level must be free to determine the form how to provide for these services, "clients" and workers need to be listened to.

It is necessary to implement the continuous evaluation of SGI and to establish a European Observatory in order to assess the impact of introduced competition. A framework Directive would be the appropriate tool to rectify the tension between competition and SGI. It should stipulate the principles, give definitions and describe the concepts precisely.

CEEP suggests for all future initiatives concerning SGI that all social partners are involved in the continuous evaluation of the probable impact prior to any implementation.

Debate with the audience (Summary)

The questions addressed the impact of competition on SGI, the distinction between services of general economic and those of non-economic interest (certain participants reject such a distinction pretending that one would run into the risk to see all SGI considered as economic at the end), the participation of the various actors in the definition of missions and the evaluation of SGI, the position and role of the universal service, banking SGI (German saving and public banks), the paradoxical situation of certain public enterprises which urge to privatisation, the development of the Commission's position regarding the question of general interest and the SGI.

It was reminded several times that the implementation of continuous evaluation of services of general economic interest, targeting the assessment of the real impact of the introduction of competition, is one of the major challenges in the current debate. It was also stated that there is a change in the Commission's set of tone between the communications of 1996 and 2000. In 1996, the Commission

² ESC : European Social Committee ; CEEP : Enterprises with Public Participation and Enterprises of General Economic Interest

³ Centre International de Recherches et d'Information sur l'Economie Publique, Sociale et Coopérative (International Research and Information Centre on the Public, Social and Cooperative Economy).

talked about ensuring and guaranteeing minimum services, in 2000, these services shall be guaranteed as an interim solution until competition will be introduced completely.

II. Local services of general interest and the local dimension of the various services

Introductory report

Erik Helleryd, President of the “Municipal Enterprises’ Commission” and the Swedish section of CEEP (*full text*)

Introduction

Thank you Ms Chairwoman for giving me the possibility to address this conference with my viewpoints on local public enterprises and services of general interest in Europe. It also gives me the opportunity to present to you the work of the committee of which I am the Chairman, the CEEP Local Enterprises Committee.

I also want to thank The European Liason Committee on Services of General Interest for organising this very successful conference on services of general interest with a most important task to clarify the strategy of the construction of the European general interest and - in this afternoon session - in particular the local dimension and the significance of local public enterprises as providers of local services of general interest.

12.000 Local public enterprises in Europe

In Europe –in the Member States - there are approximately 12,000 local public enterprises all engaged in providing services of general interest. They employ roughly 1 million employees.

The legal frameworks and organisational structures of local public enterprises are different in European countries. But they all have the same purpose - namely to provide competitive services for customers and to establish an attractive infrastructure for local governments and regions.

Local public enterprises in Europe operate in various fields, for instance: economic development, electricity, gas, water, heat distribution, harbour infrastructure and services, housing, public banking, public transport, social and medical services, tourism, waste treatment.

So these 12.000 local public enterprises have an important impact on European economy. But this is not what has been mostly heard from the European Institutions in Brussels. What is often expressed is more likely the definition that “A local public enterprises is an enterprise that with the help of taxpayers money compete with private companies”. That definition is obsolete and has to be confronted with new realities. The crucial role of local public enterprises as providers of local services of general interest will be ever more recognised. Therefore it is natural to carefully examine the effects of deregulation and liberalisation and – as the theme of the 4th European Conference of Local Public Enterprises did in Sevilla - focus the need for evaluation and regulation. This in order to avoid the negative effects of an uncontrolled liberalisation as well as to increase the efficiency in providing services of general interest to the consumers. The overall risk is otherwise evident: Huge monopolies and oligopolies replace well-functioning small and medium-sized local enterprises, either public or private.

Trends in Europe – liberalisation, competition and privatisation

Liberalisation and privatisation in Europe have since the early 1980s increasingly affected not only public ownership and state-owned companies in competitive sectors, but also local public services, in terms of both administration and local enterprises.

Councillor John Stocks, Chairman of the British Section of CEEP, began his speech in Sevilla as follows: “Four legs good, two legs bad” was the slogan of the animals in George Orwell’s satire on communism, Animal Farm. At times in the 1980s and 1990s in Britain it felt as though public policy had been reduced to a similarly simplistic slogan – “Private good, public bad”.

Of course it is not as simple as that. Life is not black or white.

The mission of services of general interest

I believe that before we can say whether this trend of privatisation and internationalisation in Europe – at national and local level - is positive or negative, we must ask ourselves what the aim of our work is in terms of public services. What is the mission of services of general interest?

The answer is simple to me: Obtaining optimal value for money for users, i.e. citizens. Customers demand is the challenge for everybody working in the field of public services and it is, I believe, the principal dimension of our work, together with – of course – social and territorial cohesion.

I believe that everyone would give the same answer regarding the mission of services of general interest. But when we discuss the means of achieving the goal of our mission, our opinions differ.

Let us start with the European Commission. What is their opinion?

In the Communication from the Commission, “Services of General Interest in Europe dated 20 September last year, it is stated that services of general interest are a key element in the European model of society. The new Article 16 of the EC Treaty confirms their place among the shared values of the Union and their role in promoting social and territorial cohesion.

It is above all the responsibility of public authorities to define the missions of services of general interest and the way they are to be fulfilled. The Community will ensure in the application of the Treaty rules and with the instruments at its disposal that the performance of such services, in terms of quality and prices, responds best to the needs of their users and of citizens at large. It is a difficult task, I believe, to find the proper balance between EU-rules and the principle of subsidiarity for the Member States.

We must always remember that liberalisation, competition and privatisation are only tools to achieve the best services of general interest. And that is why I cannot understand why so many talks about competition versus services of general interest. As it is a boxing fight where we in one corner have, in blue trousers, competition and in the other corner have, in red trousers, services of general interest. Once again, competition is one of many tools to achieve the best services of general interest.

It is also important that the Communication clarifies – and that the Commission follows – as well as national governments, the opinion, that there must be neutrality with regard to the public or private ownership of companies producing services of general interest.

The platform of CEEP Local Enterprises Committee

And now for the question, how do we choose the best way to fulfil the mission of services of general interest? I will give you, in a summary, the renewed platform of the CEEP Local Enterprises Committee.

First; The local governments of Europe must have the democratic right to choose the best way in which they fulfil local services of general economic interest either through in-house services, or by contracting private companies to do it, or through local public enterprises.

Second; Local governments and authorities pilot and control the fulfilment of local services of general economic interest. When they choose local public enterprises to fulfil those services it is because they consider it a more efficient method.

And third; A developed, fair and well functioning competition is an incentive and a guaranty for an efficient and effective performance of local public services.

In article 16 EC Treaty is said about services of general economic interest that "the Community and the Member States, each within their respective powers and within the scope of application of this Treaty, shall take care that such services operate on the basis of principles and conditions which enable them to fulfil their missions“.

The functions of local public enterprises

Local public enterprises everywhere in Europe are very important partners for local and regional development and their worth for local and regional bodies is based on several reasons, several functions: The tool function, the competitive function and the employment function of local public enterprises.

Local public enterprises are instruments of the municipalities. That is the tool function. Their ambition is to guarantee the safe, reliable, sustainable and efficient function of those services on the highest possible quality level in their respective area.

Those local public enterprises acting in deregulated markets with a strong penetration of competition compete in their fields with many private and state owned companies which partly are working on national and international level. That is the competitive function.

The employment function of local public enterprises means that they support the local or regional authorities to maintain existing economic structures and to attract new private investors providing new jobs. So they contribute indirectly to a better employment in their respective area.

Now I will end my introductory report and I hope we will have a fruitful discussion regarding the local dimension of services of general interest. Thank you for your attention.

Intervention from the panel (*Summary*)

Serge Maucq, The European Consumers' Organisation (BEUC⁴)

SGI play a major role in society. Nonetheless, leaving them in the hands of public monopolies tends to be considered, by the consumers, as a lack of dynamism and an option which is not really in their favour. As consumers, they tend to put an end to public monopolies. All the more the initiatives of private operators are not synonymous with catastrophe.

The BEUC has always supported the opening of markets, but also believes that competition must be limited, and state authorities are even better positioned for the guarantee of access to services of good quality and their regulation, if they are not themselves simultaneously the providers of such services.

Irrespective of the nature of the service, may it be public, private or in public-private partnerships, too important concentrations and abuse of dominant market positions need to be avoided.

Holger Tschense, Deputy Mayor of Leipzig and representative of EUROCITIES

In Germany, where the territorial level is fairly strong and where some big oligopolistic enterprises exist, the users are quite satisfied with the offered SGI. Who will have to take the decisions related with the opening of SGI to competition under these given circumstances?

According to the Treaty, public and private enterprises must have equal chances to access this market segment and equal taxation. Eurocities favours a framework Directive.

The 3rd Forum on Services of General Interest must play an important role for the development of the appropriate evaluation in a more sophisticated form.

Jan Willem Goudriaan, European Federation of the Unions of Public Services (FESSP)

It is necessary to guarantee quality services at affordable prices for all consumers, professionals and private individuals. Earnings in productivity and efficiency are actually achieved through privatisation, but this is to the detriment of workers and their status as well as to their social achievements.

The local dimension guarantees adapted public services, and municipal enterprises need to be defended, because they create the conditions for quality and proximity of employment as well as for the participation of the citizens. Do municipalities actually have the choice to refuse the privatisation of their public enterprises, as for instance electricity in California?

The privatisation does not necessarily guarantee social and environmental standards. Drafting a framework Directive would guarantee the implementation of such a regulation.

Ralph von Ameln, Director general of "Eurocommunale"

⁴ Bureau Européen des Unions des Consommateurs

Eurocommunale represents 13.000 German municipalities, 3.500 municipal enterprises and 535.000 employees. German municipalities derive their right to organise themselves from the German constitution (Fundamental Law⁵). For Eurocommunale, decisions in relation with SGI must be taken on the local level.

A framework Directive could help to define the missions of SGI and the responsibilities of the Member States (subsidiarity), provide for more legal certainty, for municipal and inter-municipal enterprises, namely on the freedom to provide for those SGI, and for the distinction between services of general economic and those of non-economic interest.

The evaluation of SGI must be comparative and independent, and the method currently used by the Commission is insufficient.

It is necessary to reach a balance between competition and SGI and to resist in a certain way to current trends towards even more competition with the aim to deregulate SGI. At the local level, costs must not be socialized, when, on the other, profits remain in the operators' hands.

Debate with the audience (Summary)

Addressing SGI means addressing local democracy.

One idea was often reiterated: that the delegation of public services should be made reversible: A municipality must have the possibility to take back services in order to provide for them directly. But the project for regulation submitted by the Commission for obligations in relation with public passenger transport, even if it does not explicitly prohibit direct municipal operation, it jeopardizes it. With the proposal to pass those contracts exclusively on the basis of public tenders and with short durations of such contracts, the disappearance of SGI in this field is inevitable.

The question of subsidiarity was intensely discussed. For some it means delegating missions to the next higher level, when it cannot be dealt with on the local level. Others estimate that SGI should not be considered as falling exclusively in the local and/or national field of responsibility and that a framework Directive is of primordial importance, because it would enable to define standards on the European level and responsibilities on each of the involved levels. Others insisted on the fact that all territorial levels should be involved in the decisions. Furthermore, it was stressed that at present there is no harmonisation between the various Member States and that this question will become even more urgent with the enlargement of the Community.

Offered services may not just be minimal ones, but universal services with equal access and the same quality for everybody. And all users should be involved in their definition.

Certain underlined that the provision of services through municipalities also is an opportunity for local politicians and the citizens to express themselves. Several speakers insisted on the importance of coordinating SGI with the citizens and to take their opinion into account whether or not to privatise SGI.

The general attention was also attracted by the risk that the EU gets even more committed to liberalisation in the negotiations with the World Trade Organization (WTO), namely in highly sensitive fields such as health, education, etc.

⁵ Grundgesetz

III. Strengthen the legal framework for the existence of services of general interest

Introductory Report

Gabriel Obermann, Institute for Financing and Financial Markets at the Faculty of Business Management of the Vienna University of Economics and Business Administration (*full text*)

Consolidating the legal framework for the existence of services of general interest

1. Introduction: Guarantee the provision of SGI in the Internal Market

What are the conditions and perspectives for the guarantee of the provision of SGI in the EU-policy? After the overview of the EU-policy currently in force for SGI, examples will be presented how the individual Member States (MS) act in view of current EU-law. Certain reflections upon the EU-policy will conclude this report.

The present report about services of general economic interest (SGEI) is essentially in line with an economic and institutional perspective and deals with practical aspects of their provision. Let us remember that current EU-law grants the opportunity to the MS to offer a large variety of SGI, under the condition that the clauses of the EU-Treaty in relation with competition and the corresponding conditions of the Internal Market are respected. These clauses have a considerable impact on how the MS and their public authorities act as economic and political actor.

2. Overview of the Community policy currently in force for SGI

In October 2001, the EU-Commission published a report about “The Services of General Interest”, addressed to the European Council of Laeken in December (COM(2001) 598 final), a report that had been requested by the European Council of Nice (December 2000). With this report, the Commission intended to make clear that it is willing to maintain and to develop high-quality services of general interest in Europe and the financial means for this purpose. The fundamental EU-position has not changed. It is still based on the hypothesis that the present stipulations of the Treaty are flexible enough to take into account the specificities of SGEI.

“The Commission has set out the principles of its policies and its objectives in the area in two complementary communications on “Services of General Interest in Europe” of 1996 and 2000⁶. In its Communication of 1996 the Commission clarified in particular that the provision and development of high-quality services of general interest is fully compatible with the Treaty rules and that the Treaty allows to take full account of the specificities of such services. Recognising the need to increase legal certainty for MS and operators concerned, the 2000 Communication explains the scope and criteria of application of internal market and competition rules of the Treaty.”⁷

In December 2001, the European Council of Nice expressed its concerns about the content of those two Communications inviting the Commission to submit a report for the Laeken-summit in December 2001. This report should also include “ways of ensuring greater predictability and increased legal certainty in the application of competition rules relating to services of general interest”⁸. This report is now available.

In its conclusion, the report announces a certain number of “concrete actions:

- in a two-phased approach first establish a Community framework for State aid,
- add a section on SGI to the annual competition report;
- identify cases concerning SGI in the State aid register,
- examine additional measures for further clarify the Community rules and principles applicable to the selection of the provider of services of general interest.”⁹

⁶ OJ C 281, 26.9.1996, p. 3 and OJ C 17, 19.1.2001, p. 4.

⁷ COM(2001) 598 final, chap. 4.

⁸ *ibid.*, chap. 5

⁹ *ibid.* chap. 53.

In order to guarantee the efficient evaluation of SGI on the Community level, “the Commission will therefore:

- reinforce its sectoral reporting, and
- introduce an annual horizontal evaluation in the framework of the Cardiff process,
- where appropriate, assist in benchmarking the effectiveness of measures taken in the MS to attain adequate performance of SGI in areas not covered by sectoral reporting or the annual evaluation.”¹⁰

Furthermore, the Commission will study the proposal to consolidate and specify, in a framework Directive, the principles of SGI underlying the provisions of article 16 EU-Treaty.

The Commission is also open to the suggestion to insert a reference to the promotion of services of general interest in the Treaty by adding a new subparagraph to its Article 3 (“*a contribution to the promotion of services of general interest*”¹¹), stressing that “however, the insertion of a new subparagraph to Article 3 would also place the good performance of these services clearly among the objectives of the Community”.¹²

In general, the developments outlined in this report as well as the concrete actions suggested can be interpreted, from an economic point of view, as an additional step in the direction chosen by the EU since long time. The foundations of EU-policies regarding SGI are developed, precisely clarified in various places, and the legal certainty for the MS has been improved here and there in certain cases. The report presents, nonetheless, a certain number of insufficiencies and lacks that have been indicated and made evident by various parties and different institutions. Criticism mainly arises for the following points:

- the distinction between economic and non-economic activities is not yet clear enough, but this distinction is important for the application of the competition rules;
- competition-oriented solutions and tendering are *a priori* recommended;
- in opposite to the Treaties, public enterprises suffer from discrimination compared with private enterprises (the obligation to tender, prohibition of cross-subsidies);
- the Commission is evaluating the results of its own policy of liberalisation and deregulation.

It is impossible to deepen these questions here (cf., besides others, *Nouvelles News-Europe*, CEEP, report A5-0361/2001 of the European Parliament, Langen-Report).

The future developments are characterized by the lack of determination in the definitions. We, therefore, use services of general interest, public service obligations, etc. as synonyms. The clarification of these various concepts with, as a goal, the corresponding linguistic law, would be desirable.

The Commission still continues to stick to the principle that any offer of SGI should be in strict compliance with the competition rules of the Treaty. Thus, the equal treatment of competition and SGI requested by several institutions, interest groups and numerous participants of the 3rd Forum on Services of General Interest cannot be put in concrete terms. For this purpose, the corresponding amendments of the Treaty have already been requested.

3. EU-policy and experiences in the EU-Member States in relation with article 16 EU-Treaty

3.1 Principles for the provision of services of general interest

Public service obligations and universal service

The State’s responsibility for the implementation of certain concrete or material objectives, i. e. for the satisfaction of needs such as the provision of services of general interest is not questioned. Even if it is true that numerous fundamental needs of the citizens can exclusively or mainly be coped with by corresponding offers of the market, there is still a certain number of important economic and social services that the market provides only insufficiently. In this case, it must be possible, for the MS, to define their concrete requirements for those services in order to guarantee that the needs of those people are satisfied who depend on public services. The principles of the Internal Market and the

¹⁰ *ibid.* chap. 42.

¹¹ *ibid.* chap. 52.

¹² *ibid.*

competition rules (generally) do neither apply to non-economic services of general interest nor to those which do not affect EU-trade.

The decision to shape or to organise the provision of SGI in a certain way and the conformity with the general philosophy of the EU-Treaties have to be conciliated with the following principles:

- neutrality concerning public or private property of involved enterprises ;
- freedom of the MS to define their SGI with the only condition to supervise that there are no manifest errors ;
- proportionality requiring that the restrictions of competition and the limits of the Internal Market do not go beyond of what is necessary for the efficient fulfilment of the concerned mission.

It is up to the national political body to clearly define the public service missions in such a way that they can be verified as well as their financing and who is responsible for their provision. The allocation of corresponding service contracts has to be carried out in compliance with a loyal, transparent and non-discriminating process.

Imposing public service obligations by the European Community and the Member States – Universal Service and other services of general interest

The concept of the universal service in Community law is to guarantee that certain specific (minimum) services will continue to be offered for the citizens during the transition of SGI from their provision through monopolies to that through markets open for competition. The principles of universality, equality of treatment and continuity must strictly be respected. According to the Commission, the universal service could become obsolete in fully liberalised markets, because those services would then spontaneously be offered by service providers (according to the example of the postal services in Sweden).

Public service obligations are indirectly imposed to the MS by means of the universal service. Those universal services are foreseen, at present, only in two distinct sectors of infrastructure : telecommunication and postal services. Besides these basic services defined with a very narrow view of the matter, there is no further restricting EU-rule for the provision of services of general economic interest. The MS are free to impose obligations to the public service in certain cases and accordance with their concepts and traditions, hence must respect the provisions of the Community legislation. Thus, the entire offer of services in certain sectors can be considered as a public mission, as it is the case in certain MS for the supply of drinking water and the waste water management. In those sectors, the specific national rules for public missions, the guarantee of provision of such services and their financing remain necessary and admissible.

For a great number of SGI, namely on the local and regional level, the current EU-rules do not (yet) apply. Actually the corresponding financing modalities, more or less proven over years, can therefore be maintained till further orders. Nonetheless, there is reason to expect that other important socio-economic fields of general interest will be included in the Treaties and Community provisions in the near future (as, for instance, water or waste).

Leaving it largely up to the MS to decide how to organise the provision and also the financing of their SGI can be justified with various arguments :

- in acknowledgement of the principle of subsidiarity, anchored in article 5 EU-Treaty the MS are entitled to take all necessary measures in accordance with their tradition and their identity in order to fulfil public missions which they are responsible of ;
- MS can react autonomously, relatively simply, quickly and efficiently to the economic and social requirements for such basic services ;
- these reflections are also in line with the statements of the economic theory of federalism; where decisions to allocate have to be taken on the local, regional or national level, anyway on the level that is the closest to the citizens.

3.2 Experiences of the Member States – CEEP-CIRIEC-Study

Recently, CEEP and CIRIEC have, in the same project, studied possible applications and consequences of article 16 EU-Treaty on the organisation how to produce and provide for services of

general economic interest (SGEI)¹³. The results of this work were presented on the occasion of a seminar in Brussels in May 2001.

Four working groups focussed, each of them, on the regulation of SGEI, their financing, the evaluation of their performance and best practices worthwhile to be spread in each Member State. Forty experts of CEEP and CIRIEC from various MS had participated in this study. The results of this work that was based on the experiences of the MS in various sectors show that the provisions of Community policy and the practice of the MS lead to satisfying service offers and in which fields problems were detected.

One important result of this study is the statement that there is no such practice in Europe that follows a unique model for the provision of SGEI. Considerable differences exist in the application of concepts, the forms of organisation and financing which even differ from one sector to another, political preferences and legal provisions in the various MS. This is valid for both, services covering the entire territory such as telecommunication and energy supply as well as SGI concentrated on the local or regional level. SGEI are still considered to be of great importance in all MS.

In the following, the findings and evaluations of this study will be evidenced on the basis of the regulation and financing of SGEI.

3.3 Regulation and services of general interest

The comparison of the structures of the regulating systems in the different MS and various sectors show that in reality there is no unique model of regulation. None of the forms of regulation can be considered as being optimal. The adequacy of a given model always depends on sectoral and geographical characteristics as well as on the technological developments in the considered sector. It follows that the very “best” form of regulation does not exist for Europe.

In the view of a modern and efficient offer of SGEI, regulation of competition does not matter so much, but the regulation and guarantee of the provision of precise and requested services. Nor from this perspective is there any “best” model of regulation. The choice and adequacy of a regulating concept always depend on the types of deficits observed in the various markets, on relations between politics and administration, on relations of public authorities with and their independence from certain interest groups, on public service obligations to be respected, etc. And then, one has to take into account that regulation is a dynamic process. Technological and social changes may trigger different requirements. Finally, SGEI constitute a social and societal compromise of the various interests of all involved parties and concerned actors.

On the European level, it seems, after all experiences in the field, that the Community rules for the regulation of public service obligations (PSO) are of only limited importance. Regarding the relation between the national regulating authorities and the European regulation, one can only state the lack of a developed and mature institutional framework on the European level. In certain sectors, for instance telecommunication, the implementation of a European regulation was excluded right from the beginning on. But in the energy sector, the Forum of regulators is an interest starting point for an auto-regulation under the condition, however, that the principle of subsidiarity is respected. But the detailed functions to be delegated to a Forum of regulators still need to be clarified. Our today’s debate could contribute to this clarification.

3.4 Financing of services of general interest

The CEEP-CIRIEC study also had the objective to analyse the various types of financing of public service missions in the view of European legislation, in particular of sectoral directives, and the modalities actually applied in the MS. The goal was to evidence the advantages and inconveniences of the different types of financing. It seems that the possibility of financing public service missions crucially depends on the privileged organisation of the provision of SGI.

The main financial tools enabling service providers to also fulfil public service obligations are the following:

- competition for the service market,
- “pay or play”-system (financing or providing service) for the PSO-part of such a service;
- increased access charges, destined to finance the cost of the PSO-part,

¹³ CEEP-CIRIEC, *Les services d’intérêt économique général en Europe*, CEEP-CIRIEC, Brussels-Liège, November 2000.

- internal cross-subsidies for profitable services and PSO.

These different financing schemes are applied in a differentiated manner in the five analysed sectors (telecommunications, electricity, public passenger transport, water and financial services). This illustrates the diversity of the various approaches the MS usually choose for the financing of their public service obligations.

This diversity of the financing schemes as well as the diversity of contents of public service obligations are, without any doubt, the major reason for the non-existence of a (uniform) European directive about related definitions, the organisation and financing of PSO. One can conclude that this absence reflects the large array of subsidiarity.

4. Perspectives in relation with the future EU-policy

The increasing concretisation of the Internal Market is linked to a change of paradigm regarding the provision of SGI. In the past, those services were nearly exclusively provided for by public enterprises in protected niches and were, as a consequence, submitted to a set of internal rules of public services. At present, competitive markets are established, and those public service missions are now transferred to private and public enterprises. These enterprises are submitted to an external regulation. The transition from internal to external (public) rules for enterprises and socially desirable services generates new challenges for the policy of the MS and the EU.

At present, important institutions, which are concerned by this issue, mainly support two initiatives¹⁴:

1. the request to adopt a framework Directive aiming at better legal certainty for the basis of SGEI and the actors involved;
2. the creation of a European Observatory or on observing and evaluating body in the view of the analysis of the situation and development of SGEI in the various MS and sectors with the implementation of clear objective criteria supporting the MS in the fulfilment of their public missions. Such an Observatory could also be the responsibility of the European Parliament.

4.1. A framework Directive for services of general interest

The proposal to consolidate and to specify the principles of general interest in a unique framework Directive in order to also concretise the provisions of article 16 EU-Treaty received a fairly reserved comment of the Commission in its report to the European Council of Laeken. According to the Commission, “a framework would necessarily be very general in substance and could not take account of the specificities that characterise each service of general interest. Such a Directive could therefore not replace sector-specific regulation (...) and could in general only set out minimum standards. Its added value in respect of sector-specific regulation would have to be examined.”¹⁵ By the way, “it would not be feasible”, for the Commission, “to deliver a list (...) of all services of general interest”¹⁶.

The final evaluation of all possible approaches to clarify the position of SGI in the Internal Market by means of a framework Directive does not seem feasible at present. The aspirations in connection with such a tool and the legal possibilities still have to be studied more thoroughly.

4.2. Creation of an observing and evaluating body

In its report, the Commission announced its wish to contribute even more to the development of a culture of evaluation and feed-back in the field of SGI. The evaluation would also offer the opportunity to verify that the public objectives are actually achieved.

First of all, it has been confirmed that the evaluation of performances is the task of appropriate bodies on the appropriate level. For most of the cases, those are national, regional or local authorities which are responsible of the supervision and the evaluation. Nonetheless, where a specific Community framework exists, the institutions of the EU have to evaluate the performances, too.¹⁷

As answer to the request formulated by the European Council, the Commission shall focus on the elaboration of sector-specific reports, implement a method of horizontal evaluation in the framework of the Cardiff-process and contribute to the comparative evaluation (“benchmarking”) in other fields of SGI.

Especially this procedure provokes certain criticism.

¹⁴ cf. Langen-Report of the European Parliament, CEEP, ETUC and others.

¹⁵ COM(2001) 598 final, chap. 51.

¹⁶ *ibid.*, chap. 30.

¹⁷ *ibid.* chap. 42.

The creation of an observing and evaluating body (Observatory) on the European level, that was suggested by several organisations, seems, *a priori*, very attractive: but after a critical study of the issue, the lack of preciseness and problems arise: important conceptual questions have not been addressed yet and, except some isolated cases, there is a general lack of practical experiences :

- What are exactly the requirements in relation with such an observing and analysing body on the European level ?
- How does such a body work ?
- Is there already a first or sufficient experience of such an institution in the MS ?
- How to determine the representatives of the associations of consumers, users and enterprises concerned by SGI ?
- Who will determine the criteria for evaluation ?
- To which body will such an institution report?

Furthermore, from the economic and societal point of view, one can wonder whether the expectations towards such an observing and analysing body are not too great; notably when you consider the sometimes enormous differences in the way how the MS fulfil their public missions in relation with SGI. These differences result from the diversity of national traditions, mentalities and experiences made in the tide of history. In this context, the CEEP-CIRIEC study offers some elements about the different approaches in the MS.

One should not forget the tensions and oppositions between the national autonomy in the field of SGI (concept of subsidiarity) and the desire to compare and evaluate those services in the entire EU and on EU-level. And then, the rapprochement or harmonisation of the methods and standards related with SGI seems to be a long-term objective, especially when you look at it in the context of the enlargement of the EU. Thus, such an objective deserves an even more thorough analysis in economic and social terms.

Furthermore, it astonishes to recognize that there is nearly no example or model in the MS for such an observing and analysing body, although public service missions have a long tradition in almost all MS. And the involvement of all actors, consumers and providers, that is requested, does not seem to be the rule in practice, but more an exception to the rule.

On the whole, numerous practical experiences and empirical studies encourage to believe that in a lot of fields, the SGI offered and financed in the traditional way by public authorities do actually fulfil the criteria requested by the EU, i. e. equality of treatment, quality, continuity and affordable prices. So, it would suffice to verify whether or not these services can be offered at lower prices or the same prices with a better quality under the provisions of Community law.

Finally, from the economic point of view, another very important question arises : Why there is neither a comparative analysis nor a study according to the envisaged criteria of the traditional ways of the provision of SGI as actually practiced at present, notably on the local, urban and regional level (cf. for instance water supply, urban sewerage systems, local public transport, waste removal) before imposing new conditions or new forms of organisation (as, for instance, compulsory allocation of competitive contracts by invitation to tenders, implementation of new regulating bodies) ?

5. Conclusions

This overview of certain recent evolutions of Community policy related with SGI clearly shows that there are differences of common knowledge between the MS, justifiable in relation with :

- the interpretation of their responsibility for the provision of SGI ;
- their organisation ;
- their financing ;
- the supervision of the offer of SGI.

All this confirms the point of view that there nearly are no news, except the fact that SGI have their own national traditions and will have to (should) be looked at from the citizens' and consumers' point of view according to national criteria. In the view of a performing and modern offer of SGI, it is advisable to leave largely it to the responsible institutions of each MS to define and organise their public service obligations and missions. The comparison and evaluation on the international level would enable the MS to learn from each other and to adapt their national practice accordingly. The

overall unification or harmonisation through European regulation seems, nonetheless, to provoke problems in certain sectors, which means that it could be counterproductive. Given the importance of SGI and the large field where Community law has an impact, the economic advantages and inconveniences of the standardisation of the conditions for the provision and contents of SGI must be thoroughly studied, and the social and societal consequences need to be discussed profoundly.

The debate of our Forum today should contribute to this.

Interventions from the panel, (Summary)

Ian Reay, Representative of Consignia (British postal service)

At present, a process of liberalisation is *en route* in the sector of British postal service, which is a joint stock company since march 2001, the stock capital is hold by the State. The Member States have different opinions about how to improve postal services. In Sweden, the postal service is liberalised since 1993. The Netherlands have a very active competition, but the government, finally, has not completely liberalised the sector. The same is valid for the universal service, that is or is not financially supported, depending on the country.

In general, a framework Directive could reflect a good interpretation of article 16, so that harmonisation could be carried out at a high level and not only with a set of minimum standards.

David Voidies, EU-Commission, General Directorate (GD) Health – Consumers

Paragraphs 10 and 11.a of the Commission’s Communication “Services of General Interest in Europe” of September 2000 enable to derive general principles in favour of the consumers: quality of services, physical safety, transparency of tariffs and the setting of tariffs, contractual terms, competition between operators, deregulation tools, universal coverage, choice of operators, persons in specific situations, environment, etc.

The GD Health – Consumers does not oppose competition, pluralistic offer, if certain precautions are taken, namely the guarantee of the independence of the regulating authorities.

Martin Ficht, University of Leicester (Great Britain)

How to implement the concept of affordable, non-prohibitive and reasonable pricing?

In the United Kingdom, the liberalisation of the water supply sector resulted in heavy discriminations of the poorest customers “*pure poverty, water poverty, information poverty*”.

The gas and electricity markets were liberalised already in the Eighties, so that users could choose between about twenty providers. The prices generally went down, but the consequence was a real segmentation of the market according to individual types of customers, rich or poor ones. Few things have been done so far in order to limit the impact of liberalisation, and social protection that should have accompanied this process exists only in form of subsidies to the very poorest paid by charity organisations.

Sandra Coppieters, Flemish Radio and Television

Radio and television can be considered as SGI, even if the objectives defined by their public operators are specific.

On the legal level, these public radio and television services are the only ones which are addressed in a protocol as attached to the Amsterdam Treaty, that explicitly acknowledges that these services respond to the democratic and cultural needs of society.

The Amsterdam Protocol also states that the Member States are responsible for the definition and organisation of their public radio and television. The related financing may not disproportionately interfere with the competition rules of the Internal Market, these services must be proportional.

A communication dated November 2001 examines the rules of public subsidies for radio and television services, the implementation of supervising bodies in accordance with the particularities of each Member State and the improvement of legal certainty (exemption from articles 78.3 and 68.2).

More and more even larger programs can now be part of the public missions, but there is no absolute guarantee, because the Commission analyses each case individually.

Daniel Peppers, European Head Federation of Family Welfare Organisations in the European Community (COFACE)

SGI are important elements for the social cohesion and constitute an efficient support for the development of territories and the reduction of inequalities between them. The liberalisation triggered by the EU may not necessarily guarantee the better access to goods and services for everybody, even if the consumer is supposed to choose between a multitude of operators.

The concept itself of public service (based on the principle of equality) should exclude any kind of discrimination amongst consumers, namely when it comes to tariffs.

Privatisation of certain services may have a tremendous impact, for instance postal services or public passenger transport, namely in rural areas.

It is necessary to safeguard the possibility of equalisation of tariffs, with all its advantages for solidarity and equality, which would disappear when applying a purely economic logic.

Liberalisation must preserve the universal service and the access to SGI for everybody.

John Hontelez, European Environment Office (BEE)

As a citizen I wish to have a public service, but a service that respects environment standards. Concerning water and energy, BEE can contribute a lot to the definition public service missions.

Compared with the private sector, public service sometimes can be inefficient. The Swedish example is proverbial, where the privatisation of the energy supply was a great advance for new technologies (so-called green energies, namely). Even so BEE is not strictly in favour of privatisation, we opt for a good and transparent management.

When calculating the prices of SGI, all environmental damages also need to be considered (externalities) in order to get a realistic price. Not everybody will necessarily support this pricing concept, but it needs to be the starting point for any pricing.

Public resources must be managed in a transparent manner, with consulting, regulating and supervising bodies, independently whether the operators are private or public enterprises or public-private partnerships.

Maurice Duranton, European Standing Conference of Cooperatives, Mutual Societies, Associations and Foundations (CEP-CMAF)

CEP acts in the field of social services of general interest. Those non-profit social services are more and more exposed to the competition of private enterprises and find themselves in great legal uncertainty.

The specificity of this sector is not yet acknowledged in spite of its important role for the social and territorial cohesion, the guarantee of the efficiency of fundamental rights and the education to citizenship.

More than only the less solvent fields must be left over for this sector. And the public subsidies, this sector gets, must, in no case, be considered as State's aids in the sense of the Treaties. The non-profit orientation of the operators of social services of general interest needs to be acknowledged. This question will become a crucial one for the pre-ins in the context of the EU-enlargement.

Debate with the audience (*Summary*)

To start with the debate, the Chairwoman of the meeting reminds that it is indispensable to define precisely some rules that guarantee to establish legal certainty and to shape a general interest on the European level, and that this is to be done by revising the treaties, so that SGI are put on equal terms with competition.

For many in the audience, acknowledging SGI is first of all a question of political will.

What is to be done on the European level in order to obtain the acknowledgement of general interest? How must decisions and decision-taking processes be shared between the Community and its Member States? These questions illustrate that this issue is eminently political, in particular when it comes to decision-taking and the junction of its various levels.

For most of the speakers, a framework Directive would establish a maximum of legal certainty. Some of them stressed that it would be necessary to define to which extent legal certainty is actually desirable, and what law would be required in order to achieve it. Others said they were afraid of too rigid texts that could probably speed down future developments.

For all speakers the transparent and permanent evaluation, based on multiple criteria, through all the various concerned actors could help to create the basis for a positive development of SGI in the future. Prior to any further liberalisation through the Commission, an evaluation should be carried out of the currently already accomplished liberalisations and their impact on social, economic and territorial cohesion. Thus, a framework Directive would not only define a set of minimum standards.

For the creation of the European territory, the main approach of the Commission is competition and the creation of the Internal Market.

Other questions arose: the fact that the universal service must, in no case, become only an interim objective on the way to the complete liberalisation of SGI ; the equalisation of prices all over Europe (e. g. a unique price for stamps); positive incentives for certain evolutions (e. g. energy saving equipment) ; the necessary accounting of all costs (e. g. the impact on the environment) that should not, however, exclude the poorest ; the necessity to acknowledge a universal banking service of general interest, too.

Further precise information was given about the Mutual Societies in France.

Introductory Report

Jean-Claude Boual, CELSIG-Secretariat - *Full text*

Let me start with a formulation used quite often by the CELSIG: "The European Union needs the services of general interest, and the services of general interest need the European Union." This formulation is particularly appropriate because of the enlargement and because the issues of SGI became a structural element of the proposals forwarded by the European institutions. It also evidences the role to be played by the European Union in the discussions about the General Agreement on Trade in Services (GATS) with the World Trade Organization (WTO).

The European Union needs services of general interest (SGI) for its harmonious integration and to transcend the mere establishment of the Internal Market based exclusively on competition as a tool for integration, given the fact that poverty and exclusion still exist in its territory and that the market is far from responding to all needs of EU-residents, from guaranteeing the economic, social and territorial cohesion and from enabling the balanced constitution of the European territory. This will be even more valid tomorrow, taking into account the disparities between the EU-Member States and the candidates for the enlargement of the Community as well as the solidarity required for the development of the latter. The Union needs SGI in order to achieve the Internal Market and ensure that it actually becomes a real element of cohesion in the Union.

The services of general interest need Europe, because, without their European definition, without European SGI, under the pressure of neo-liberal ideologies and dogmas, with competition as exclusive tool for the European integration, SGI will be slowly eroded with the dissolution of their structure, and their current activities will become a source of new inequality. As they are based on the principles of territorial and cross-generation solidarity, SGI are an element of the guarantee of fundamental rights for every and each person individually and collectively. They are both at a time : an element of the European social model an, a guarantee for the exercise of the fundamental rights and a tool that ensures the respect of the fundamental values of the European civilisation. The legal texts of the Union, the Treaty, notably its article 16, the Charter of Fundamental Rights of the European Union with its article 36, as well as the communications of the EU-Commission, acknowledge and confirm this.

What has to be done on the European level to ensure that the declarations which acknowledge the importance of SGI for the social, territorial and economic cohesion of the EU becomes a fact without being impeded by the reality of the political decisions of the European Council, the simple logic of the Treaties and the policy of competition that is, till now, the main instrument for integration ?

The debate about SGI has developed considerably. When somebody talked about public service ten years ago in Brussels, he or she ran into the risk of being taken for an UPO, an unidentified political object, or somebody who had not yet understood in which era he or she was living. Today, the debate passes through all European institutions and the majority of texts drafted on that level. The European Court of Justice is also solicited to judge more and more affiliated files concerning the financing, the operation and even the definition of SGI.

Furthermore, the social and political impact of a liberalisation that goes to its extreme, i. e. privatisation, is so important in certain fields that the public authority cannot simply continue with that liberalisation, without aggravating the social, economic, cultural and even political inequalities in the EU. Pure and ideal competition simply does not exist. The market needs rules for its proper functioning. This is particularly valid for those fields of activities which are essential for the concrete life of citizens and residents, notably because the exercise of their fundamental rights is in danger.

Article 36 of the Charter of Fundamental Rights of the European Union states precisely:

"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."

So, if services of general economic interest contribute to the exercise of the fundamental rights, although they have a commercial character, this is even more valid for the service of general non-

economic interest. Thus, it is legitimate that the claims towards the Union grow in this field, because the policy till now, which was mainly based on competition, turned out to be insufficient. So, it is normal that requests for more legal precision, a clearer endorsement in the fundamental texts of the Union come up in the Member States, the European institutions such as the Parliament, the Economic and Social Committee, the Committee of the Regions and in the civil society, claiming for guarantees for the proper functioning of public services on the European level.

The European integration has reached a stage, now, on the eve of the Euro in our wallets and the Internal Market, that still is not yet fully achieved, where we went far enough to ask now the question of the European territory. And you do not build a territory solely on the market with, as unique tool of integration, the competition. You need economic policies, policies of stronger solidarity. It is true that this already exists for the policies of the structural funds and regional aids, but we need to do more. We need a political vision for the European Union. This is why the accomplishment of the Internal Market nowadays needs services of general interest, so that its further development will be well balanced. This is, by the way, also stipulated in article 16 EU-Treaty, that stresses the role of SGI for the social and territorial cohesion.

Thus, we are confronted with two questions:

1. How to fully implement article 16 EU-Treaty and to respect article 36 of the Charter of Fundamental Rights of the European Union?
2. In their present version : Do both articles suffice for the creation of the European territory, namely in the view of its enlargement, to guarantee the fundamental rights of European citizens and residents in this given territory and to ensure a dynamic economy that generates wealth in order to respond to the needs of all those who live in this territory ?

Various proposals have been made, and I will concentrate on the most recent ones, those forwarded during the last months. The aim of my presentation is actually not to quote them in detail, but to distil their coherence in the view of the Intergovernmental Conference in 2004.

In its resolution of October 2001, the Economic and Social Committee requests an “adequate balance” between “liberalisation and accessibility, for all citizens, to the entirety of services and benefits, whatever may be their social condition or their place of residence, for these services aim to achieve and preserve the social and territorial cohesion”.

End of July 2001, France delivered a memorandum to its European partners and the institutions of the Community, limiting it deliberately to the services of general economic interest (SGEI), because, legally, the Treaty quotes only them and not the services of general interest. This memorandum suggests a framework text defining the objectives and principles (equality of access, universality in order to guarantee the territorial coverage, continuity, quality and regularity, safety and health for users respecting the rules of prevention and precaution, adaptation, qualification of the operators’ staff, transparency, evaluation, guarantee of administrative appeal and recours for users), the operation and the obligations and charges for the Member States (proportionality, transparency, participation), the financing, regulation and regular, pluralistic and public evaluation as an element of the modernisation of SGEI.

End of August 2001, the German Federal Government and the German Federal States (*Länder*) made precise proposals related to : compulsory interpretative rules for public aids granted for public services, which must not exceed the simple compensation of the actual costs of public service missions ; the distinction between economic and non-economic services ; the requirement “for a public authority”, to delegate “the provision of SGI to a provider in a precise and clear manner” ; the reiterated endorsement that “the definition of what is actually a service of general economic interest lies in the responsibility of the concerned Member State”. Germany does not wish, in this text, to go beyond the mandate the EU-Commission got in Nice, and considers that this mandate “does not concern future activities towards the opening and the liberalisation of the market, which are necessary for the continuation of the strategy that aims at strengthening the creation and competitiveness of the Internal Market and that was formulated at Lisbon”.

On September 20th, 2001, the Committee of the Regions adopted its statement upon the Commission’s communication of September 2000, in which it pleads for a guarantee of universal access, for the revision of the financing conditions for SGI, insists on the necessity to ensure complete territorial coverage, stresses that the local and regional level are the most appropriate for the definition of how they want to provide for and organise SGI.

After a long debate, the European Parliament recently (Langen-Report) opted for a framework Directive which would, amongst other things, re-establish a balance with competition ; to make sure that services such as health, education, non-profit activities and public service missions “shall be exempted from the application of the rules of competition and those of the Internal Market”. It also requests that the framework Directive “guarantees the active participation of the citizens and users in the process of definition, evaluation and appraisal of missions and that it institutionalises a common and pluralistic procedure of evaluation”. Let us also say that, last week, the Parliament adopted, on first reading, its position on the project of regulation of public service obligations in the field of passenger transport by land, rail and by water and that this position is perceptibly distinct from the Commission’s position. Anyway, it suggests that, also in future, it should be left up to the municipal authorities to choose between direct publicly operated services and the delegation of management for their urban passenger transport systems ; the prolongation of contracts and the increase of amounts from which on public tenders are required ; this regulation does not apply to overland transport.

On October 5th, 2001, the European Trade Union Confederation (ETUC) and the European Centre of Enterprises with Public Participation and of Enterprises of General Economic Interest (CEEP) presented their common proposal for a framework Directive on services of general interest, that has been presented to you during this Forum. They namely suggest the creation of a European Observatory for SGI.

The European Liaison-Committee on Services of General Interest (CELSIG) suggests the adoption of transversal texts (directives or framework regulations defining the principles, financing, regulation and evaluation) as well as, for certain fields, (rail freight on particularly frequented railway lines; food security, maritime and air safety, ...) the establishment of **European services of general interest** ; furthermore it suggests, for instance, that the price for stamps should be the same all over Europe in the context of territorial solidarity and the strive for a European territory.

On the other hand, the Commission’s report written upon the request of the European Council of Nice considers that the rules of the Treaty are sufficiently flexible to take the specificities of SGI into account, and stresses that the accomplishment of the Internal Market and the liberalisation of network-based industries contributed considerably to the improvement of the performance of certain SGI. At the same time, the Commission suggests a two-stage approach for the issue of public aids : in a first run, the publication of guidelines and then, insofar experience justifies it, the adoption of a regulation that exempts certain public aids for services of general interest from the obligation of prior notification. Nonetheless, the report continues privileging competition and tenders as ideal means to allocate missions of general interest. It is, indeed, pointed out again that current Community law leaves it up to the Member States to decide whether they wish to provide for these services themselves, directly or indirectly (through public enterprises) or to entrust thirds with this mission. But the report also mentions a project to regulate the public service obligations in the field of public passenger transport by land, rail and by water, that is in strict opposite to that endorsement. Because this project for regulation would make tenders compulsory in all cases, so that the provision of this service and third enterprises would be ruled by competition. The Commission also suggests a so-called horizontal system of evaluation in the context of the Cardiff-process, and will publish a communication in 2002, defining this method of evaluation. In its report finally, the Commission reiterates its proposal already forwarded in its communication of 1996 to amend the Treaty, adding a chapter to article 3 in order to define SGI as an objective of the European integration, thus acknowledging that the Treaty actually has to be amended again.

The main interest of both proposals that are of different importance and extent is to find an issue out of the purely formal debate and to envisage a positive right concerning SGI. This is important, it is urgent, because liberalisation is going on as seen with the compromise of October 15th on the post. It must be avoided that, at the end, the EU-legislation acknowledges SGI with corresponding specific provisions in the legal texts, when the services of general interest will already be liberalised entirely.

Furthermore, it seems useful to remind that :

- in his speech of October 21st, 2001, the French Prime Minister Lionel Jospin launched an appeal in favour of a “future European Constitution” that also acknowledges the “right of access to public services”.
- the Belgian presidency that considers services of general interest as one of its most important issues suggests for the Council of Laeken :
 - a regulation of exemptions per category for the financing of SGI
 - the qualitative evaluation of the performance of SGI

- the strengthening of the role of SGI in Community law by means of a Directive and the modification of article 3 in the sense already proposed by the Commission.

All this brings us to several questions that we could discuss this afternoon :

- the interest of one or several Directives : the excellent work carried out by ETUC and CEEP has proven the usefulness of such a proposal and that it is actually possible. We could build up on that work without starting at the very beginning. It is an excellent basis for discussions and proposals. The same is valid for the French memorandum and the project of the Belgian presidency for the Internal Market Council on November 26th, 2001 and the Summit of Laeken. Those proposals are helpful for the debate. We need a framework Directive as soon as possible, to continue our work in that perspective, namely thinking about the junction of a framework Directive and sectoral Directives.
- clarifying the concepts of services of general interest and those of economic interest (SGEI) : is the distinction between both the right approach ? The question arose in many discussions, these two days, in relation with the question of the European service of general interest and that of subsidiarity. In its report dated October 17th, 2001, the Commission states that it is very difficult to draft a list of all services, because there are so many differences between the Member States, but in practice, it is easy to find one's way and that is not really a problem. In addition to that, as already indicated during the debate, the texts of WTO and GATS add an additional uncertainty, because they do not make this distinction. For its memorandum, France tried to distinguish and to draft such a list, without success. It is impossible to draft such a list, when you consider that each territorial level (local, regional, national) plays its own role in the definition of the missions of SGI according to the considered fields. It has to be added that, if France chose to consider only services of non-economic general interest, it is for legal reasons. The Treaty acknowledges, at present, only these SGEI. Thus, in order to have a legal impact, they had to concentrate on SGEI. For all those reasons, it is not sure whether or not such a complete list actually must be drafted on the European level.

It is more advisable to define the European principles that would allow the different concerned sectors (public authorities, enterprises, users) to take decisions which are adapted to the needs public services have to respond to, with flexibility and the possibility to develop. These principles could namely address the financial commitments of public authorities and the cost of public service, the response to the market by the considered services, sustainable development, the freedom of choice for public authorities whether they provide for the services themselves directly or through the delegation of their management, etc. These criteria are not strictly technical ones, because the issue of SGI is also political. It needs to be discussed on all levels and embedded in the democratic process by the institutions, the citizens and residents on each concerned territorial level. These principles could also try to determine precisely the sectors in which it would be advisable to shape a European service of general interest : rail freight, post, security, Galileo. And it should be checked whether it is useful or not to create a public-private or public European enterprise for certain cases such as Galileo.

So it is in our interest to think in terms of SGI including SGEI. The will to differentiate on the theoretical level between economic and non-economic services (with the exception of very clear cases such as the registry office as a non-economic and water supply as an economic service) pushes in practice towards the economic character of almost all SGI. The classification according to economic criteria is not useful, because the decisions behind are political and depend on societal requirements, on needs and concrete situations.

The creation of European services of general interest addresses again the question of subsidiarity which is difficult to answer, because definitions of subsidiarity also vary enormously due to different cultures in the Member States. Between top-to-bottom subsidiarity like in centralised France, where the State delegates responsibilities to the territorial levels, and Germany, where it is just the opposite, the approaches can hardly be conciliated. In both cases, the foundations of political, administrative and democratic organisation is questioned. Therefore, each and every approach that is not based on subsidiarity is considered as an alteration of the own national identity.

Therefore, if we start with the idea of subsidiarity, we shall run into failure, and on the long run, competition rules in the Internal Market will sweep away all decisions on SGI taken on the local or national level. It is much more useful to take another perspective for this work : define what subsidiarity is good for. Why is it so important in the European Union ? Is it for the creation of the best possible conditions for social, economic and territorial cohesion, which are the fundamental objectives of European integration ? One has to start with these missions, objectives and then define the responsibilities of each territorial level and the related junctions, ensuring a maximum of freedom

and choice for the local and national levels. But if there are no clear rules on the European level, there is no subsidiarity either.

Proposals of the CELSIG-Secretariat to the participants of the 3rd Forum

They are threefold:

= create a **working group** that represents all the different cultures on this complicated and difficult issue of **subsidiarity**, and have specific seminars organised by CELSIG, in order to get on with the mutual understanding of this principle and its application. That would be one of the main activities of CELSIG in 2002, but the working group should be named "Social, economic and territorial Cohesion", and not "Subsidiarity".

= write a **letter to the heads of State and Government present at Laeken** in order to state explicitly what we wish for SGI and the future of Europe, incorporating the elements and proposals of our previous work. This letter would be published in the information-bulletin of CELSIG, "Nouvelles News Europe".

= work on a **proposal to be addressed to the Convention**, which will be in charge of drafting a European Constitution, or suggest amendments of the Treaties to the IGC in 2004 with the three following points of departure:

first : examine the Commission's proposal to amend article 3 EU-Treaty that defines the means of the Community in relation with article 2, where SGI also need to be inserted as a mission, a common action and an objective of the Union.

second : in case the Intergovernmental Conference opts for a simple amendment of the Treaties, what could be the right stipulation in the Treaty ?

If one sticks to the level of the Treaties, one could at least go quite far with the content : subsidiarity and definition of the missions ; guarantee of the financing ; consumer's position ; social rules ; regulation ; evaluation ; European Observatory on SGI.

third : if the decision is take to elaborate a European Constitution, what we would wish, how to incorporate SGI as a right for everybody and an element of guaranteeing the fundamental rights ?

This work would be slightly different, because we would need to determine what exactly should be part of the constitution and what should be regulated by derived legislation. That could be done at the beginning of next year and be subject of the 4th Forum on SGI or of a colloquium to organised as soon as possible.

Interventions of the panel (Summary)

Henri Malosse, Economic and Social Committee (ESC)

The ESC closely follows the issue of SGI and has already made a couple of proposals related to transport and energy. The aim is to have quality services which are accessible to everybody. They can be provided for by private enterprises on the basis of well defined specifications.

Economic, social and territorial cohesion is not, itself, the goal, but a means to an end, one of the components of the European social policy. In the same way, SGI must not be considered as an end in itself, but be part of the process of deepening the economic, social and territorial cohesion of the European Union.

The decisions taken for SGI are of utmost importance not only for the Member States but also for the candidates for enlargement of the EU.

The elaboration of specific directives for each sector might seem to be more efficient rather than a transversal framework Directive.

CELSIG's future strategy should not be limited to SGI, but also integrate the notion of economic, social and territorial cohesion which is much more intelligible in most of the Member States.

CELSIG acts with a real lobbying strategy that it should maintain over the following months with all the various issues on the agenda. And I wish to plead for an enlargement of the basis of its composition.

Pervenche Beres, Member of the European Parliament

Article 36 of the Charter of Fundamental Rights of the EU is not as good as our proposal, but it is important to have it. For us, the next important date is the European Council of Laeken and the mandate it will give to the Convention.

The Economic and Monetary Commission of the European Parliament just recently adopted the Langen-Report on the Commission's Communication of SGI (September 2000). This report is not sufficient for us regarding the essential point of alternative financing modalities of SGI, namely regarding cross-subsidising and maintaining the system of equalisation of prices that ensures the proper function of SGI, irrespectively of the economic conditions. The economic tools of financing SGI need to be preserved, it does not suffice at all to just win legal battles. It is also stated that several amendments of the Langen-Report have already been requested in relation with the necessary evaluation of liberalisations which are already accomplished, before any new stage of liberalisation.

The Socialist group in the European Parliament challenged the EU-Commission (oral question) on the necessity to promote the framework Directive before 2004.

The pre-ins are invited to integrated the competition rules of the Union. It would also be important that they modernise their SGI, in order to develop real economic and social cohesion in the EU and to absorb the shock of integration. But present negotiations still neglect the social issues and privilege the economic and monetary ones.

And then, the pre-ins should also be represented in the Convention, even if the enlargement is not yet accomplished, and progress must be made immediately with the Constitution.

The junction of the principle of subsidiarity and the European policy regarding SGI must be established on the appropriate level, and this absolutely requires the acknowledgement of European SGI.

Given the reform of the institutions in the context of the next IGC and the Commission's trend to more legitimacy (its President elected) and more independence, allocations of the GD Competition should be transferred to another independent body.

Debate with the audience (*Summary*)

It was stressed that, in the context of enlargement, policies do not need to be implemented only by the institutions, but also by the entire civil society. It is important to start working immediately with the civil society in all the countries of the candidates for enlargement, in order to be able to shape the adequate legal framework for a European policy on SGI.

The issue of subsidiarity was again debated, particularly in order to see how the junction between the various territorial levels could be organised and to find out which level is the most preferable for decision-taking. In certain cases, the principle of subsidiarity cannot be managed only vertically, policy is to be defined on each and every level, local, national, European, even global, and the EU must establish the conditions for a better efficiency. Thus, subsidiarity does not mean less but more Europe, because it requires objectives, ends and common rules which will have to be broken down on the territorial level.

A definition of SGI has already been suggested that integrates all activities of general interest in the field of responsibility of a public authority for the entire EU. It allows to determine that public authorities do not necessarily need to be involved from the beginning to the end of the SGI, but that the citizens would have a public body to address in case of failure of such SGI.

It was stated, by the way, that competition, if it is loyal and equitable, could be an incentive for innovation and efficiency, whereas liberalisation as carried out by the Commission ends up in the creation of enormous European oligopolies which can be found later in the sectors of SGI.

It was reminded that the concept of equalisation covers three notions: financing through advantageous competitive modalities (financing railway by road which does not account for the actual external costs, for instance); financing of non profitable segments through profitable ones (internal financing) ; equalisation of prices that consists in paying the same price, irrespectively of the destination and/or geographical zone (e. g. stamps, km of railway).

Conclusions of the 3rd Forum

Katherine Varin, CELSIG-Secretariat (*full text*)

The rich exchange stimulated all four sessions of the Forum (clarification of how to shape the European general interest ; local services of general interest and the local dimension of the various services ; consolidating the legal framework for the existence of SGI ; proposals for the European Council of Laeken, the Intergovernmental Conference 2004 and the EU-enlargement), due to the high quality of all speakers and participants.

A lot of questions were discussed, and these conclusions will record those which seem to be the essential ones :

First of all let us remind what is evident today, but was not evident a couple of years ago : SGI are a key-element of the European social model, they play an important role for the exercise of democracy and of the fundamental rights of the individual and for the promotion of the general interest ; competition must not be the only regulating tool for the response to the needs covered by SGI. In spite of a certain progress (article 16 EU-Treaty, article 36 Charter of Fundamental Rights of the EU), their economic, social and legal certainty is not yet consolidated.

Probably most of the debates dealt with the issue of **subsidiarity**. According to national traditions, it is mainly understood as bottom-top, for instance in Germany, or as top-bottom like in France. Certain speakers requested that it should be left up to those territorial levels to choose and take appropriate decisions which are the closest to the users. Others estimated that without a strong legal framework (framework Directive and/or major amendment of the Treaty), competition which is a responsibility of the Community, will sooner or later erode the SGI and their profitable parts. The only thing that would be left over for public authorities and welfare organisations would be the non profitable segments, the responsibility for the social and territorial cohesion, thus the concrete implementation of the fundamental rights. Others finally estimated that for further progress one cannot lock oneself up in the term of subsidiarity, but has to address the issue in a concrete manner considering also its aspect of the economic, social and territorial cohesion on all territorial levels, including the European one, and the junction between the various levels.

The interpretation of the notion of **universal service** as presented in the Commission's Communication of September 2000, consisting in considering it as an intermediate step only on the way to the complete liberalisation of the services, was unanimously judged as unacceptable. The content of the universal service must offer potentials for development, so that new needs can be integrated.

The question of **evaluation** was reiterated several times during the debate.

According to the general opinion, it cannot be left exclusively up to the Commission nor a couple of polling institutes. In order to make sense, evaluation must be independent, associate all actors of SGI, be carried out continuously in order to take all needs and requests of users and technological developments into account. It also has to promote transparency and, evidently, assess qualitative impacts of already accomplished liberalisations. All participants of the Forum were deeply concerned by the example of the privatisation of the water supply industry in England and Wales the consequence of which is that welfare organisations now have to solve the problems of the most fragile groups of the population.

The question of the distinction between the **economic and non-economic character of SGI** was also addressed, and it seemed that one should not get locked up in this debate, because it would end up in believing that all activities finally belong to the economic sector.

Other issues were debated, too :

- **the regulator(s)** : what is their appropriate level, which should be the junctions between them, how to overcome the lack of balance regarding information between regulator and operator ?
- **the framework Directive** : Do we need one or several or none ? How to ensure that it actually also frames the sectoral Directives ?
- the definition of **European services of general interest** in certain fields that would confirm the building of the European territory already triggered in the fields of rail freight, satellite navigation (Galileo), various European safety agencies (maritime safety, food quality). Do we not need, for instance, one unique tariff for stamps all over Europe ? This issue brings us to the following one :

- financing by **equalisation** and any other form of financing : reserved sector, subsidies, etc. Enterprises should be entitled, in future too, to finance the non profitable activities by income they generate with profitable activities (after all, haven't large international private enterprises financed television, telecommunication with water ?). Also the cost for the delivery of post in remote areas needs to be financed by benefits generated in more profitable areas.
- the interest of usefulness of substitute public national **monopolies** by oligopolies on the European level with, mostly, private, but sometimes also public enterprises.
- the contribution of SGI to **sustainable development**.
- the new solidarities that need to be developed for the **future Member States of the European Union**.
- the GATS-negotiations with the WTO.

At the end of these two working days, CELSIG made
Proposals for shaping the European general interest
to the Council of Laeken in December 2001

requesting that the Council shall commit itself, so that

- the framework Directive will be adopted as soon as possible and that the junction between the various sectoral Directives will be defined precisely
- an independent European Observatory for SGI will be established as soon as possible.

(in enclosure the corresponding letter dt. November 23rd, 2001 that CELSIG sent to the Belgian Presidency of the EU).

to the Convention in the view of the Intergovernmental Conference in 2004

to be elaborated on the basis of the work already accomplished in the following three directions :

1st direction : examine the best place in the Treaty where to insert a reference to SGI: article 2 that defines the missions of the Union, article 3 that describes the actions of the Union (as suggested by the Commission).

2nd direction: the content of the reference to SGI to be inserted into the Treaty.

3rd direction : in case a decision is taken in favour of a European Constitution, how to insert SGI.

It is understood for the last two directions that SIG need to be considered as both : a guarantee for the fundamental rights and as element of the economic, social and territorial cohesion.

CELSIG will start working in these three directions from the beginning of 2002 on, in order to able to present its results and proposals on the occasion of the next event (4th Forum, colloquium?) as soon as possible to the Convention who will start its work in 2002.