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# Services of General Economic Interest in Europe



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Evaluation Good Practices



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European Centre of Entreprises with Public Participation and of Entreprises of General Economic Interest



International Centre of Research and Information on the Public and Cooperative Economy

# Services of General Economic Interest in Europe Regulation, Financing, Evaluation, Good Practices

### CEEP

European Centre of Entreprises with Public Participation and of Entreprises of General Economic Interest

### CIRIEC

International Centre of Research and Information on the Public and Cooperative Economy

November 2000

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### Foreword

Even if services of general interest are more and more object of discourse, notably following recent EC initiatives (among which article 16 added in the Amsterdam Treaty and the Communication of services of general interest in Europe), relatively few analytical studies concerning them are published.

CEEP (European Centre of Entreprises with Public Participation and of Entreprises of General Economic Interest) and CIRIEC (International Centre of Research and Information on the Public and Cooperative Economy) therefore joined forces to prepare a Seminar - scheduled in May 2001 in Brussels - on recent issues encountered in the procurement and the provision of services of general economic interest. The present work - also available in French and German - gathers the preparatory reports for this Seminar, realised by some forty experts from the CEEP and CIRIEC networks. The findings assembled hereafter reflect the collective opinion of the working groups members under the joint responsibility of the copresidents and the members of the Coordination Committee.

Exchange of views were intense and fruitful, and issues are still open. Several schools of thoughts and trends do co-exist and the Seminar will offer the opportunity to present and discuss those works, while debating about proposals to improve the conditions to provide services of general economic interest.

This important work would not have been realised without the support of the European Commission - which is not liable for the content of this document -, nor of the secretariats and various instances of CEEP and CIRIEC that strove for the completion of this project. That all members of the Coordination Committee and of the four working groups be thanked for their active contribution to the dialogue between practitioners and scholars, between jurists and economists, between interests of operators and users/citizens; it is precisely that interdisciplinarity that constitutes the richness of this work. The rapporteurs of the four working groups as well as the European Broadcasting Union have to be particularly acknowledged, since they accepted the difficult task to synthesize the reflections and intense debates occurred during the 15 months of the project. Finally a great thank to Barbara Sak and Anne-Marie Tatin who co-ordinated the scientific work and to Carmela De Cicco and Eliane Evrard-Gree who checked the translations - with the help of several members of the working groups in particular for the German edition -, and ensured the final proof-reading as well as the lay-out of the publication you hold in your hands.

Helmut COX

Jacques FOURNIER

Marc GIRARDOT

I. CONTEXT

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### Origins and objectives of the project

In 1995, CEEP, with the scientific participation of CIRIEC, put forward proposals to ensure that services of general economic interest would be taken into account more:

- Amendment of the Treaty, notably the current Article 86-2, to take better account of the special features of these services
- Proposal concerning a Charter of general economic interest services containing the definitions and guiding principles that could be used as a reference in the various sectors concerned
- Establishment of an observatory of general economic interest services to conduct analyses and comparisons over time, space and between sectors, thus providing decision-makers with better bases for their future action.

The various proposals by the players concerned led to what has become Article 16 of the Treaty<sup>1</sup>, which confirms the shared value for the European Union of services of general economic interest, but without laying down general principles which characterise and differentiate "publics" services from other services.

Hence the idea, developed in conjunction with CIRIEC, of making some improvements five years later, by drawing on the great variety of actions and experiences in the various Member States and according to the sectors, notably because of the increase of the at least partial liberalisation of these services.

In order to compare the various efforts made in relation to services of general interest and to draw lessons for the future, it was considered that the most pertinent method would be to organise, together with representatives of the authorities and of the various sectors of activity, a scientific seminar based on preparatory work comprising an initial comparative analysis and recommendations. With a view to remaining within budgetary limits and acceptable deadlines, the scope of the project was deliberately limited to three domains in which the special nature of services of general economic interest is most evident, and which are also the domains of most importance for the future, namely regulation, financing and performance evaluation methods. In order to perhaps focus on other issues regarded as being particularly interesting, an open topic was added concerning the collection of good practices.

When analysing regulation procedures, the project will focus in particular on the Community legislative framework, the scope of regulation, the need to take

<sup>&</sup>lt;sup>1</sup> Article 16: "Without prejudice to Articles 73, 86 and 87, and given the place occupied by services of general economic interest in the shared values of the Union as well as their role in promoting social and territorial cohesion, 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".

CONTEXT

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account of the special features of the networks, the verification of public missions on the basis on operational criteria, and the various models for organisation and regulation mindful of the principle of subsidiarity.

The examination of the financing of services of general economic interest will provide an opportunity to compare the advantages and disadvantages of the various methods of financing possible depending on the sector.

The chapter on performance assessment is aimed at comparing the methods and evaluation criteria and not the results obtained. The main objective is to assess the suitability of the measurement criteria with regard to the objectives to be achieved, to question the relevance of universal service obligations, and to identify the conditions ensuring efficient evaluation.

Lastly, the analysis of good practices should permit the identification of several elements that can be transferred to other sectors and other undertakings, by highlighting the conditions for achieving this.

### Organisation and progress

It should be remembered that the results of this project are to be used as a basis for reflection at the discussion seminar scheduled in Brussels in May 2001.

Four different themes were selected in the preparatory phase concerning regulation, financing, performance assessment and good practices. These will be used as the themes for the four workshops to be held during the seminar. Taking into account the budget and the deadlines, the aim was to have a discussion as exhaustive as possible in order to cover as many sectors of activity and Member States as possible. The necessarily limited size of the working groups influenced the definition of the sectors and States covered. Germany, France, the United Kingdom and, depending on the groups and sectors considered, Austria, Belgium, Denmark, Spain, Finland, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Sweden and Norway were concerned by this study. As regards the sectors covered, energy, telecommunications, transport, water, banking services and postal services were analysed by all or some of the working groups.

### General organisation

Four working groups were set up with members of CEEP and CIRIEC in an endeavour to vary the origins (countries and sectors). The offices of coordinator and rapporteur of the groups were shared between CEEP and CIRIEC.

A Coordination Committee was then set up with the chairman and the rapporteur of the CEEP and CIRIEC standing committees concerned by this study (the Public Service Steering Committee for CEEP and the Scientific Commission on "Public Enterprises" for CIRIEC), with the coordinator and the rapporteur of each working group and a representative of the secretariat of each organisation providing mainly scientific and logistic support.

In accordance with the terms of reference, the work was spread over 15 months (between September 1999 and November 2000) during which the Coordination Committee met 3 times and each working group 4 times. The composition of each group and of the Coordination Committee is set out below along with the calendar of meetings.

As regards the working groups, each of their meetings was a unique opportunity for exchanges and debates on the concepts (principally the first time) and on the lessons drawn from the national sectoral reports (the second time), on the notions and situations covered and the so very different facets of the conditions and arrangements governing the provision of services of general economic interest within the different sectors covered and the 15 Member States of the Union (at the third series of meetings). The fourth and final meeting of each group was devoted to a discussion on the final summary report that will be presented and discussed critically during the corresponding workshop scheduled for the dissemination seminar that will take place in Brussels in May 2001.

### Coordination

The general coordination among the four working groups was scientific, but also technical and administrative to ensure a regular exchange of the interim results of the work of the four thematic groups on the different themes discussed (regulation, financing, evaluation and good practices as regards the conditions governing the provision of services of general economic interest).

The four groups met separately four times, with (in-between times) meetings of the Coordination Committee involving the coordinators and rapporteurs of each of the four groups to ensure overall coherence. In this way, the Coordination Committee was able to monitor the work and if necessary correct and adjust the general direction of the proceedings (for example, as regards the sectors and countries to be covered).

By definition, the main task of this team was to guide, coordinate and monitor the work of the partners. The evaluation, reorientation or "relaunch" of the work of the experts within the groups and the management of the agenda to ensure maximum coherence for the final summary reports were therefore concerns very much at the heart of the Coordination Committee.

The reports and/or correspondence that followed these various working and coordination meetings were quickly sent out to all the persons concerned after each meeting to ensure proper coordination of the project as a whole and, more especially, to meet the deadlines.

### Overall supervision

It should be remembered that the overall supervision of the project was the responsibility of the Coordination Committee, with appreciable assistance from the general rapporteur and the two persons (from the secretariats of the two organisations involved in the project, CEEP and CIRIEC) who were responsible for providing scientific support to the project, in particular in terms of organisation, monitoring and follow-up of the work of the four groups. Each of these two persons assumed responsibility for two working groups.

As the project progressed, research by particular experts, additional information and details were requested by the coordinating team. This feedback was monitored by the two secretariats in order to meet the requirements of the Coordination Committee as promptly as possible.

Finally, administrative and financial information was communicated to the partners and to the experts throughout the project, and vigilance was exercised as regards the supervision of the actual refund of costs connected with attendance at the working meetings. The administrative and financial management and control of this project were on the whole rather laborious and fastidious.

### **Evaluation and control**

The work achieved by all the partners was regularly evaluated, and a critical discussion of the contributions of each expert was the main item on the agenda of each meeting of the working groups.

For its part, the Coordination Committee assumed responsibility for ensuring compliance with the schedule of specifications and the deadlines, and handled the direct contacts with the teams according to their different responsibilities and their particular knowledge of the different countries, sectors and languages. In addition, each group coordinator to some extent acted as a "specific referee" on the particular theme under his responsibility.

### Quality

Quality control was based on the quantity of information received and the content value of the summary report submitted by each group. The rapporteurs were regularly reminded at central level (CEEP and CIRIEC) to send their reports with the required elements within the deadlines and in the desired form.

Nonetheless, it must be said that the quantity and quality of the work submitted by the different experts within the groups were not homogeneous, which undermined in different ways the work of the rapporteurs of each group who found themselves having to summarise disparate and incomplete information to provide a transversal explanatory outline as complete as possible in terms of sectors and countries of the European Union. Certain sectors and countries were thus studied in more detail and in more depth than others.

### Agenda of the meetings of the CEEP/CIRIEC Study

### **Coordination Committee**

- 4 October 1999, Brussels 3 April 2000, Brussels
- 9 October 2000, Brussels

### Group 1

3 December 1999, Brussels 10 March 2000, Brussels 28 April 2000, Madrid

19 September 2000, Cologne

### Group 2

5 November 1999, Brussels 17 March 2000, Brussels 12 May 2000, Paris

28 September 2000, Brussels

#### Group 3

18 November 1999, Brussels 21 February 2000, Brussels 19 June 2000. Brussels 4 October 2000, Brussels

### Group 4

16 November 1999, Brussels 11 February 2000, Brussels 30 May 2000, Brussels 26 September 2000, Brussels

### Composition of the Coordination Committee and the Working Groups

Co-Presidents

CEEP Mr Fournier (F) (until June 2000)

CIRIEC Mr Cox (D)

Members of the groups (presidents and rapporteurs of the groups included)

Group 1: Regulation

Coordinator Rapporteur Members

Mrs Schulte-Beckhausen (D)

Mr Bognetti (I) Mr Barea (E) (telecom)

Mr Fawkner (UK) (transport) Mr Lehman (F) (transport)

Mrs Ruiz Cañete (E) (telecom)

Mrs Escolar Polo (E) Mr Weening (NL) (energy) Miss Robin (F) (energy)

Mr Gerard/Mrs Frank (CH) (radio-TV)

\* (until April 2000)

Group 2: Financing

Coordinator Rapporteur Members

Mrs Cartelier (F)

Mr Ruys (NL) Mrs Diaz Cremades (E) (bank)

Mr Cox (D)

Mr Bertran (F) (telecom) Mrs Detchart (F) (transport) Mr Debande (L) (transport) Mr Obermann (A)

Mr Metz (D) (transport)

Mr Gerard/Mrs Frank (CH) (radio-TV)

Group 3: Evaluation

Coordinator

Mr De Block (B) (energy)

Rapporteur Members

Mr Bauby (F)\* (energy) Mr Decker (D)

Mrs Greiling (D)

Mrs Waddams Price (UK) Mrs Gonzalez (E) \* assisted by Mr Grousset and Mrs Pflieger

Group 4: Good practices

Coordinator Rapporteur Members

Mr Glachant (F) (energy) Mr Plassmann (D)

Mr Helleryd (S) (loc. author.)

Mr Durrieu (F) Mr Loff (P)

Mr Bance (F)

Mr Visco Comandini (I) (post)

Mr Damas Rico (E) (transport) Mrs Frank (CH) (radio-TV)

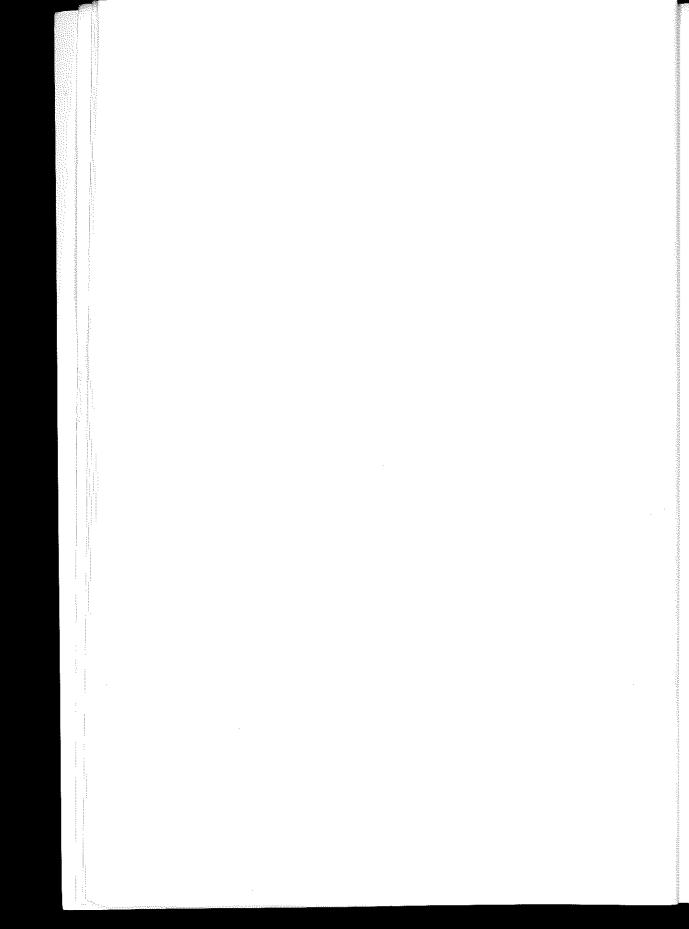
The "Coordination Committee" was set up with both co-presidents, the coordinators and rapporteurs of the four working groups, and

Mrs Sak - secretariat CIRIEC Mrs Tatin - general secretary CEEP Mr Girardot - CEEP France Mrs Kip - CEEP Benelux

Mr Thiry - Director of CIRIEC (until December 1999)

The general and scientific secretariat was ensured by CEEP and CIRIEC jointly.

### II. EXECUTIVE SUMMARY



### Introduction and EC framework

The preparatory work for the seminar to be held in May 2001 led in the four working groups of the CIRIEC-CEEP project aims at studying the possible applications and consequences of the new Article 16 of the EC Treaty on the procurement and provision of services of general economic interest. More precisely, the four groups looked into the regulation of these services, their financing, the assessment of their performance and possible good practices to be implemented in each Member State.

Article 16 "recognises the fundamental character of the values underpinning [services of general economic interest] and the need for the Community to take into account their function in devising and implementing all its policies, placing it among the Principles of the Treaty", as stated in the updated Communication from the Commission on Services of General Interest in Europe<sup>1</sup>. The latter are thus a "key element in the European model of society" and Article 16 "now confirms their place among the shared values of the Union and their role in promoting social and territorial cohesion<sup>2</sup>. These services also contribute to the overall competitiveness of the European economy and are provided in the context of continuously evolving markets and technologies."

Without constituting a right for citizens to claim for services of general economic interest of a certain standard at European level, Article 16 puts on institutions and Member States the positive obligation to promote general interest, and the negative obligation to abstain from any type of behaviour that may endanger general interest<sup>3</sup>.

The work presented hereafter is basing on the European legislation and terminology, more precisely on the latter recently synthesized in the updated Communication.

As defined by the European Commission, a service of general interest (SGI) "covers market and non-market services that the public authorities class as being of general interest and subject to specific public service obligations". The concept of a service of general economic interest (SGEI) "is used in Article 86 of the EU Treaty and refers to market services which the Member States subject to specific public service obligations by virtue of a general interest criterion". Of course, according to the subsidiarity principle, Member States keep the freedom to define and structure the missions of general interest.

"At the heart of Community policy on services of general interest lies the interest of citizens. ... As users of these services, European citizens have come to expect high quality services at affordable prices. It is thus users and their requirements

<sup>&</sup>lt;sup>1</sup> COMMUNICATION FROM THE COMMISSION - Services of general interest in Europe, COM(2000) 580 final, September 20, 2000.

Unless otherwise precised, the citations under quotations marks in this section are all referring to this Communication.

<sup>&</sup>lt;sup>2</sup> "The existence of a network of services of general interest is an essential element of social cohesion; conversely, the disappearance of such services is a telling sign of the desertification of a rural area or the degradation of a town."

<sup>&</sup>lt;sup>3</sup> Cf. PÜTTNER Günter, "Die Aufwertung der Daseinsvorsorge in Europa", Zeitschrift für öffentliche und gemeinwirtschaftliche Wirtschaft, Band 23, Heft 3, 2000, pp. 373-376.

that are the main focus of public action in this domain. The Community protects the objectives of general interest and the mission of serving the public."

"In order to fulfil their mission, it is necessary for the relevant public authorities to act in full transparency, by stipulating with some precision the needs of users for which services of general interest are being established, who is in charge of setting up and enforcing the relevant obligations and how these obligations are going to be fulfilled. Action at appropriate level, Community, national, regional or local level needs to be taken to establish criteria for services of general interest. Such action must be mutually supportive and coherent."

"Services of general economic interest are different from ordinary services in that public authorities consider that they need to be provided even where the market may not have sufficient incentives to do so. [...], if the public authorities consider that certain services are in the general interest and market forces may not result in a satisfactory provision, they can lay down a number of specific service provisions to meet these needs in the form of service of general interest obligations. The fulfilment of these obligations may trigger, albeit not necessarily, the granting of special or exclusive rights, or the provision for specific funding mechanisms. The definition of a specific mission of general interest and the attendant service required to fulfil that mission need not imply any specific method of service provision. The classical case is the universal service obligation<sup>4</sup>, i.e., the obligation to provide a certain service throughout the territory at affordable tariffs and on similar quality conditions, irrespective of the profitability of individual operations."

When giving "perspectives on how, building upon Article 16, the Community in partnership with local, regional and national authorities can develop a proactive policy at European level to ensure that all the citizens of Europe have access to the best services", the Communication also envisages to strengthen European coordination and solidarity. The following is stated in this respect: "In order to facilitate the evaluation of services of general economic interest the Commission could envisage an examination of the results achieved overall in the Member States in the operation of these services and the effectiveness of the regulatory frameworks. Such an examination should take into particular account the interactions between different infrastructure networks, and the objectives of both economic efficiency, consumer protection and economic, social and territorial cohesion."

Within the above mentioned framework, it is thus the procurement and the provision of services of general economic interest – and universal service obligations when relevant - that are going to be investigated in this work, without neglecting the processes to assess their performances as well as good practices that could be implemented in various sectors and Member States. It appeared that the four treated themes are closely correlated and the evoked issues do largely interpenetrate each other. This state of things should clearly come out in the debates of the discussion seminar. While presenting the situation of different

sectors in various Member States – without aspiring exhaustiveness –, the groups also sought to place their analysis in a dynamic perspective that can take account of the inevitable evolutions as much in the definition of general interest missions as in the organisational and provision processes of the services under consideration.

Hereafter are the summaries of the four main reports to which a separate report on public broadcasting is added in part III. This particular case was integrated in the Treaties since the Protocol No. 32 (Amsterdam, 1997). Indeed, the general interest or public service character of this sector primarily concerns programme content and not the networks allowing broadcasting; moreover rather than economic, its general interest objectives are of political, democratic, cultural and social nature. Only universal coverage of the service brings broadcasting closer to the other traditional public utilities, as water (supply and waste-water treatment), energy, telecommunications and postal services, transport, banking services or waste (treatment and disposal). These are used as examples in the four reports dealing respectively with regulation, financing, evaluation and good practices of services of general economic interest.

The preparatory work realised by CEEP and CIRIEC experts will be submitted to discussion during a seminar scheduled in Brussels on May 10-11, 2001. Several questions do indeed remain open (see part IV) and will be subject of exchanges and debates at that occasion.

<sup>&</sup>lt;sup>4</sup> The notion of universal service and that of public service obligation have been acknowledged by the case law of the Court (Case C-320/91 *Corbeau* [1993]; Case C-393/92 *Almelo* [1994]) and developed in Community legislation for those services, for which a common regulatory framework has been put in place to achieve a single European market.

This concerns noticeably the telecommunications sector.

### Regulation

### Preamble

It will be recalled that with the introduction of Article 16, representing a synthesis of two opposite views advanced by different Member States at the Intergovernmental Conference, Services of General Economic Interest (SGEI) are now recognised as a principle of the European Union, even if they are not defined. Article 16 puts on institutions and Member States the positive obligation to promote the general interest, and the negative obligation to abstain from any type of behaviour that may compromise the general interest.

The purpose of Group I was to examine the regulation of public service obligations (PSO) (as well as universal service (US) in some specific sectors) through European legislation (sectoral directives), and the extent to which these directives have been implemented by individual Member States. The structure of regulatory systems, their control mechanisms, and certain specific characteristics (e.g. access prices, quality, security) were analysed. The ultimate aim was to show the respective weak and strong points of different regulatory models and their advantages and drawbacks, and to consider the possibility of transposing them to other situations.

### Introduction

After several months of research, it is striking to note how liberalisation and privatisation (and thus regulation) differ strongly from sector to sector and from country to country. We think that these differences can be mainly explained by past history, different political choices, different technological situations and different market failures (the characteristics of infrastructure needed to supply the service can explain the variations in the extent to which competition can be introduced into a sector). Thus, we think that there is no single model of regulation that can be judged a priori as the best suited for all situations. It should be noted however that, even in sectors where competition is quite strong, regulation and/or price control have often been maintained at least for the present. The need to take care of public service obligations prevents total neglect by the State. There is strong resistance on the part of incumbents to the introduction of full competition. It is thus important to look into the sectoral realities and practices.

### Regulation in the European scenario

Among the main regulation features, it seems worthwhile to point out the following two:

#### • A two-tier regulation

The general juridical framework derives from two sources: on the one hand the Treaties and the European Directives (which at least in principle should be transposed into norms by each of the Member States), and the pronouncements of the Court of Justice; on the other, the laws and statutes of Member States, which, provided they do not contradict the Directives, can be very different from country to country.

• Conflicts of interest between the competition principle (introduced by European Directives) and general interest obligations

This potential conflict should be settled through a trade-off. This must bear in mind the principle of subsidiarity, reflected in judicial pronouncements and

practice indicating that defining public service objectives is a matter for Member States. It still depends however on a political decision, which needs to take account of the requirement of proportionality – i.e. in this case that any departure from the general principle of competition should be clearly justified by the benefits.

### Main aspects to consider for SGEI regulation

In practice, the control exercised on SGEI is an outcome of legislation, governance and social control. Thus all the constraints imposed on anyone operating in the sector have to be considered, i.e. the laws and statutes specific of that sector: general rules that have to be observed in any case; the decisions of specific and/or general regulatory authorities; and, finally, relevant judicial decisions.

While traditionally the problem was to control the behaviour of a public or of a private monopoly to avoid the abuse of monopolistic power to raise prices (regulation of conduct), the aim of regulation now is usually to build a market framework where competition can survive (structural regulation), which is a much more complex task.

Models of **conduct regulation** tend in practice to regulate the management choices of the individual enterprises concerned, instead of being general and applying to an undifferentiated set of suppliers. Their degree of specificity and detail increases with the complexity of the individual activities to be regulated.

**Structural regulation** tries in practice to define a minimal set of general rules, chosen because they are thought to be essential for full and efficient access to networks or markets, allowing different competitors to seek to supply effective services in line with users' demand. It is not a question of regulating behaviours and choices, but of avoiding all discrimination among suppliers, who should have equal rights to operate and to access infrastructures which function as common carriers for public services supply in Europe.

### Sectoral regulation

Each utility displays different kinds of market failures, and regulation of public utilities must therefore be considered case by case. The choice between different ways of bringing about competition depends on the characteristics of the sector: it can be introduced by way of tendering, by controlling the level of prices and preventing discriminatory treatment in the use of network, by introducing substitute services, or by creating competition between networks.

### Assessment of SGEI regulation

With the introduction of liberalisation, an enlarged market was expected that should probably bring additional advantages. However, regulation appeared even more necessary in order to create and control the overall framework. The aim of normative output of the EU policy maker was to give priority to the interoperability of national networks (especially to problems of interconnection and technical harmonisation) and to separating network management and trading, the main goal being to extend opportunities of non-discriminatory access to national networks. Of course, changing technologies modify the picture and make it possible to exploit the potential of alternative networks or of larger cross-border networks. This allows to spread the supply risk and maybe to reduce total capacity, while eliminating some rigidities of the former fixed and high cost infrastructure.

Concerning the various models of regulation and aiming at a fairly simple classification, the group has considered three different models:

- The first can be identified by the presence of an independent sector regulator with rather extensive decisional powers consisting in a general supervision of the regulated sector: this usually means the power to fix tariffs (for non eligible consumers) according to some general rules set by legislator or eventually by the executive power; the possibility to act and give orders ex ante and control ex post operating units to prevent unwanted behaviour. The strength of the sector regulator varies in the single models depending on the power of the competent minister. This model is frequently characterised by the presence of a plurality of operating units often of private nature.
- In the second model, the regulator has less power (in some cases, a national regulator is completely absent as for instance in Germany in the electric sector). Tariffs are not fixed by regulators but by contracts; sometimes regulators have an ex post control on tariffs to avoid the exercise of monopolistic power. This type of regulation is frequently adopted when a plurality of subjects was already present in the market, before the regulatory process started. No vertically integrated monopoly was present, and the role of local authorities was very important. Ownership is now public, private or mixed. In any case, what is involved is the local or regional public ownership only.
- A third model is characterised by the presence of a fairly public and fairly integrated industry and where regulation has been until recently controlled by the executive, namely the Minister; the recent changes have brought some degree of autonomy to the regulator.

Although there is no unique solution, there has been a tendency to create regulators (e.g. Scandinavian, Spanish, Belgian Authorities). In what sense may they be more effective than competition authorities, which have been suggested as an alternative and in some countries (for instance, Germany) adopted? Generally speaking the application of competition law is more appropriate where market failures are not of first importance and where the sector is working with a reasonable level of competition. But we all know that competition law procedures are very slow, act only ex-post and usually on a negative basis (i.e. to prohibit some types of conduct). Besides, unless structured and staffed by sector speciality, some competition authorities do not have expert personnel able to master the intricacies of the specific sectors. Sectoral authorities on the other hand have specialised knowledge, power to act ex-ante, flexibility of intervention. Their weakness is that they may be more influenced by the parties being regulated, to whom they have more proximity.

### Public service obligation (PSO) versus universal service obligation (USO)

There is no official definition at the European level of Public Service Obligation (PSO). The fact that there is no general definition does not prevent public service obligations from being implemented in a fairly uniform way. We find that in a specific sector the same "core" of obligations is established in different countries. The terminology varies from one sector to another and also depends on the characteristics of the sector and the European regulation framework.

The main remaining issue is to evaluate the true cost of USOs with all the problems of asymmetrical information between the incumbent and the regulator.

The air transportation sector will be a special illustration in this matter, since a public service obligation can be imposed by a Member State according to the rules of the European Regulation. In case of divergence between the Member State and the Commission, the final decision is taken by the ad hoc "Public Service Council".

In the telecommunication sector, each Member State may impose additional requirement to the universal service, but it may not impose constraints on the universal service costs and the additional service may not be financed by mandatory contributions by the market players. Other financing methods have therefore to be found.

It has to be recalled that a public service obligation cannot hinder competition. However the introduction of Article 16 in the Treaty will bring new questions concerning the co-existence of the competition principle of the Treaty, the sector directives, and the fact that Member States "shall take care that such services (of general economic interest) operate on the basis of principles and conditions which enable them to fulfil their missions". No one knows at present how the European Court of Justice is going to interpret new Article 16.

### What model of regulation?

As we can see, methods of regulation and regulators are chosen according to overall complex considerations, where history plays an important role. There is an interaction between the model of regulation and two main factors: the structure of the industry before reform and political preferences.

In the present situation, it is difficult to say which is the "best" regulation model in Europe. Models of regulation depend on the type of market failure, on the type of relationships between politicians and bureaucracy, on the quality and independence of public administration from vested interest. Besides, the principle of subsidiarity has to be applied, being justified by the fact that national regulators probably have better knowledge of their countries' sectors. Finally, the actual mode of regulation of national SGEI reflects also the distributive policies that strike a compromise among different interests, articulated in the specific social contract.

Should one look to some sort of European Regulator, whose role should be limited to evident market failures at European level, concerning mainly interoperability, cross-border transactions and resolving conflicts of interest? This might be either a Regulator emanating from and in some way dependent on the Commission, or an Autonomous Agency with regulatory power, or else a Regulator whose members should be national regulators (there is obviously a problem when there is no national regulator)? This last solution gives regulators the opportunity to sort out problems, to exchange information, to create a professional community with its own standards, but also a place where national and possibly divergent national public interests might be represented.

#### Conclusions

No regulation mode can be stated as optimal, because it always depends on the sectorial and geographical situation, as well as on the technological development of a specific sector. According to times and sectors, some modes of regulation (and their variants) have proved their efficiency under specific conditions, which are not necessarily reproducible from one sector or country to another. Let us remind that the better a market functions, the less conduct regulation may be necessary, but the

regulation of public service obligations remains one of the priorities of regulation. The political input is thus still of utter importance to organise and support the action of regulators. However, the government's action potential should be maintained through the large implementation of the principle of subsidiarity and proportionality.

### National Regulation

No model of regulation can be defined as the "best": models of regulation depend on the type of market failure, on the type of relationship between politicians and bureaucracy, on the quality and independence of public administration from vested interest, on public service obligations etc. Besides, regulation is a dynamic process; it changes over time according to the evolution of the industry and to the technological evolution that may lead to various types of monopolistic behaviours and bottlenecks. Finally, the actual mode of regulation of national SGEI reflects the distributive policies that strike a compromise among different interests, articulated in a specific social contract. At the present moment, no unified solution should be imposed. Thus, a large space should be left to the principle of subsidiarity, being justified also by the fact that national regulators probably have better knowledge of their countries' sectors. Obviously this does not mean that a comparison of the advantages and disadvantages of different European regulation is not very useful but such a comparison is feasible only with in-depth analysis of each different sector.

### The European Scenario

Divergences among national regulations are limited in any case by the necessity to comply with European directives and judicial decisions. As it is very well known, European directives focused initially on liberalising SGEI sectors in Europe to introduce competition and reap efficiency gains. But SGEI are there to foster also some general interest, which might however clash with the practice of competition. The recent introduction of Article 16 in the Amsterdam Treaty indicates that SGEI represent a value for the EU and that competition cannot be the only object of regulation.

Judicial pronouncement and practice indicate that defining public service obligations is a matter for Member States; but Community laws oblige States to the principle of proportionality, meaning by this that measures taken to pursue public service obligations must not restrict intercommunity trade more than it is strictly necessary to reach the objectives desired. On the whole, specific European regulation concerning public service obligations regulation is rather weak. The new Article 16 may lead to more specific regulation in this field both on the European as well as on the national level.

### The Integrated Market and Regulation

One of the aim of the EU was and is to create an integrated market. This goal has not yet been achieved. One way to improve the situation is to create better and more developed transeuropean networks in the sectors of transport, energy and telecommunication infrastructures as it is contemplated in the treaties.

Another possible line of action is to have some sort of regulation at the European level from the viewpoint of an integrated market. Its role should be limited to evident European market failures, concerning mainly interoperability, cross border transactions and conflict of interests.

We feel that the possibility to create a regulatory body for each sector whose members could be the national regulators should be explored. This solution would give regulators the opportunity to have a place where to sort out (transnational) problems and where possibly divergent national public interests might be represented.

On the European level, a developed institutional framework is clearly missing. In some sectors, a European regulator was refused from the beginning, for example in the telecommunications sector. In the energy sector, the Regulators' Forums is an interesting approach in terms of self-regulation, respecting the subsidiary principle. The exact power of a Regulators' Forum still needs to be defined. As a platform for regulatory issues, the composition of a European Regulator Forum should be restricted to the national regulators. The various stakeholders (government, incumbent and new operators, providers of related services, clients/users, unions etc.) should not be part of such a Forum, even though they might be consulted both on the national and on the European level. Further, it should be mentioned that in relation to antitrust authorities, sectorial regulators are able to act faster and to intervene ex ante. Another advantage is that they dispose of expert personnel for the specific sectors.

Regulation leads to more transparency and to more information about sector specific issues. This contributes to the goal of implementing an integrated market. However, any regulation should keep in mind the ultimate goal: providing better services and choices at reduced costs, with a certain quality level and in a socially coherent framework.

### **Financing**

### Introduction

The objective of group II is to analyse the **financing modes of public service obligations** (universal service in some specific sectors) by considering the European legislation (sectoral directives), but also to look into the reality in the Member States. The aim is among others to show the advantages and disadvantages of each financing mode.

In the process of gathering information about the various modes of financing services of general economic interest (GEI), the working group encountered a great variety of instruments. One reason of this variety is the complexity of the GEI notion; another reason is its dynamic aspect since a service considered of GEI may change in content as the technology or the tastes of the citizens develop.

Securing the financial means and mechanisms to provide the networks and to cover their maintenance, their security, their lasting existence and durability, without forgetting their extension when needed, this is the goal public authorities should pursue.

### Public service obligation and universal service

In economics, the term *public service* relates to a service rendered equally to all members of society, without connotation to its governance. A public service obligation (PSO) is an obligation imposed on one or more providers of a specific market service by a public authority to render a service of general economic interest on that market, with specifications and under conditions that are defined by the public authority. Public service obligations can be understood and defined by each individual Member State according to the principle of subsidiarity – the historical and cultural background will have a great deal of influence in this respect –, but a public service obligation cannot hinder competition.

Similarly, a *universal service* (US) is a service rendered throughout a territory, while a universal service obligation (USO) imposes to provide a certain service throughout the territory at affordable tariffs and on similar quality conditions, irrespective of the profitability of individual operations. The concept of universal service (encountered as such in the postal and telecom sectors) is thus based on the three public interest principles of universality, equity and continuity.<sup>1</sup>

Usually, a PSO cannot be sufficiently provided by the market mechanism. If a public authority considers that certain services need to be provided, that public authority can provide it either directly by giving this task or mission to an own public firm, or indirectly by outsourcing this task to other (private or public) firms. The fulfilment of this PSO mission requires resources that are obtained by specific funding mechanisms, by the granting of special or exclusive rights or privileges, which can be valued in terms of money, or by imposing the PSO on firms by means of regulation. It may be noticed that a PSO mission can also be accepted voluntary by private firms if the benefits of their reputation and of their response to social pressure outweigh the cost of the PSO. But in cases of low profitability or if

<sup>&</sup>lt;sup>1</sup> Communication from the Commission - Services of general interest in Europe, DOC/00/25, September 20, 2000.

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prices fail to cover costs, such public services will only be provided if the enterprises on which a PSO is imposed receive adequate financial compensation.

To understand the new structure of delivering public services, it is important to note that instead of the former monopoly, we now have a procurer of the service (i.e. the authority organising the means to buy a service of general economic interest) and a provider of this service according to the regulatory framework.

### Possible methods of financing public service obligations

The financing modes of the SGEI will strongly depend on the procurement of those services, but the evolution of the content and character of SGEI as well as the ongoing technological changes will also modify the solutions and answers over time and sector.

According to the points of view and the various possible classifications, one can count several financing modes.

From the <u>procurer</u>'s point of view, five categories can be listed while bearing in mind that users as well as non users may finance the public service obligation.

- The state budget;
- Specific financial funds;
- Additional access charges;
- Cross-subsidisation within a company;
- Market prices.

But in terms of final financing sources, the above listed modes mainly correspond to four sources:

- The general taxpayer;
- The taxpayer facing a local, sectoral or specific tax base;
- The owners or clients of the firm providing the PSO, or its competing firms in the same market;
- The user of the service.

From the <u>provider</u>'s point of view, one may distinguish the following instruments:

- A public provider with a legal task (classical utility that provides services with an additional legal task to provide a certain PSO).
- A Public-Private Partnership, with a specific contractual allocation to the partners of the private service provision and the PSO mission. The contractual or governance instruments (which may be obtained through a bidding process, auctions, or otherwise) are specific funding mechanisms, concessions, lease contracts, management contracts.
- Public regulation of private firms (exclusive rights, price-cap regulation, rate of return regulation).
- Competition between providers.
- Voluntary provision of a PSO by providers competing for social reputation or intangible benefits.

### Actual ways of financing public service obligations

It should be noticed that one has only a short experience – if any – in practising financing PSO. Indeed, even if legal texts do exist and if clear dispositions are to be found on PSO, few sectors and countries have applied the various financing modes mentioned here. And when applied, the experiences are not necessarily satisfactory. That pertains notably to the various Public-Private Partnerships (PPP)

constructions. Some projects have turned out to be successful while others had to be abandoned and the State had to take the deficit over. The problem does not really lie in the financial participation of the private sector; it is the definition, the assessment and allocation of responsibilities and risks to the participants. As for financing, the State is a captive participant, which has to renegotiate with the private partners and eventually has to take up the bill in the case of failure.

The most important financial instruments that allow a choice to the providers of certain services to also provide a PSO are the following four:

- Competition for the market of the service
- The "pay or play" system for the PSO-part of the service
- Additional access charges to finance the cost of the PSO
- Internal cross-subsidisation between profitable services and a PSO.

These different financing models are applied in the five sectors under consideration (telecommunications, electricity, passenger transportation, water and financial services). This illustrates the variety of approaches that can be chosen by the Members States in the financing of public service obligations. It expresses also the subsidiarity principle's exercise.

The variety of financing models (as well as the variety in the content of public service obligations) is the main cause for the absence of a European directive concerning the definition, the organisation and the financing of PSOs, which leaves a rather large room for subsidiarity.

# Advantages and disadvantages of different ways of financing public service obligations

The following criteria were used in the study to evaluate the financing modes:

- 1. Extent of achievement of PSO according to quantity, quality, price, continuity, security and other criteria
- 2. Incidence on state budget
- 3. Independence from governmental and political decisions
- 4. Cost of governance and implementation, degree of bureaucracy
- 5. Chance of competitive tendering to reduce the needed subsidies, provided that the standards of PSOs are clear and determined
- 6. Incidence: Who bears the cost of PSOs?
- 7. Competition neutrality versus competition distortion.

Regarding the order of priority of criteria, criteria 1 (Extent of achievement of PSOs) and 6 (Incidence) are particularly important in the evaluation of the various financing modes; the other criteria, while also significant, are more in the nature of additional factors.

So the procurers of a PSO, the national governments and their subordinate public authorities, may call upon a wide range of funding instruments. They increasingly make use of financing instruments that combine private and public sources, the so-called Public-Private-Partnerships, especially since the development of the private financing of infrastructure in the various European countries. In some sectors the (public) financing of infrastructure is separated from the (private) exploitation of this infrastructure. In other sectors this infrastructure can be (privately) financed from the revenue of the exploitation, by means of long term contracts. Optimal long term financing requires an allocation of risks to those providers who are most suited to bear each specific risk.

### Conclusions

All along the work, it appeared that no ideal financing system does exist and bidding could be the most competitive system in case there is no market. Moreover important prerequisites for a well-functioning tender system lie in the length of the terms of the contract, the detailed definition of the service to be rendered (and its conditions) and the renegotiation conditions. The know-how to draft the contents of a new tender procedure is also vital and the public authorities, by not delivering the services themselves anymore, loose insight in the market practices (real costs, margins, professional and business "secrets"). Control never replaces the fact of doing it oneself, which implies know-how and total access to information (including financial one).

Some pretend that to better know the costs of a public service obligation, one should favour the bidding procedures (public tender), since bidding competition should reveal the real cost. Besides a precondition for compensation could be that the costs are to be explicited correctly. However it is quite difficult for the State or the regulator, who is not an operator anymore, to clearly define what has to be done and which costs can be taken into consideration, especially in case of technological change. Moreover, the cost stated in a bidding procedure is a cost promise, which is not necessarily confirmed in reality; the failure and bankruptcy of the candidate can not be excluded, the price and quality promises might not be encountered, etc. Thus the price/cost resulting from a public tender should rather be understood and analysed as the entry cost into the market.

The general conclusion is that the financing of a PSO is embedded in a wider procurement context, which co-determines the success of the desired provision of a SGEI. It is increasingly difficult for a public authority to provide directly and solely a SGEI in the sectors investigated. New financial instruments are developed, tailor-made for specific PSO-contracts. This close relation between financing and governance asks for a new approach by the public authorities. The traditional public funding was not that much oriented on allocative efficiency, because the political lines of control were much shorter in the past, and non-allocative objectives were more dominant. The new approach is searching for the optimal trade-off between most efficient (non-distortive) modes of taxation and the (informational and incentive) cost of governance associated with these modes of taxation. It is also realised that financial funding by means of taxation has to be supported by the understanding and cooperation of users and clients, which element is part of the procurement process. It is a challenge for the European Union to give orientation to these developments, to respect the principle of subsidiarity and to make them transparent for the European citizen.

### Evaluation

The report, carried out as part of the study "Conditions for the supply of services of general economic interest in the context of the implementation of the new Article 16 of the Treaty of European Union", concerns performance assessment. Its aim is not to undertake a comparative assessment of performance, but to draw up an inventory of national experience and good practices, establish a common vocabulary and share references, in order to define what performance assessment could be within the European Union.

Without claiming to be exhaustive, the report describes the wealth of national experience, in particular in Belgium, Finland, France, Germany, Great Britain, Spain and Sweden, in four essential sectors - telecommunications, energy, water and purification and the post - in order to generate community deliberations and contribute to the emergence of a common approach.

### Taking complete account of the complexity of assessment

Owing to the tasks assigned to them, "services of general economic interest" are subject not solely to the common law of competition, but also to **conflictual relations** between the rules of competition and their general interest tasks.

These conflictual relations are not fixed and stable, but **develop** according to the passage of time and their area. They are particularly influenced by national history, traditions, institutions and culture. The ways services of general economic interest are put into operation are closely dependent on the societies in which they function.

Assessment is only meaningful when taken in connection with the designated **objectives and tasks**, which in their definition derive from **three sources** - the consumer, the citizen and the society - and have **three components** - guarantee of the exercise of people's fundamental rights, social and territorial cohesion and the definition and conduct of public policy.

Performance assessment features a different function from regulation, but also is a necessary element of the latter. Regulation has to be supported by relevant assessment and generate it. At the same time, assessment must enable dysfunction, differences in quality and/or type of service from one country to another to be comprehended. We therefore place the accent on the way tasks inevitably evolve along with the regulatory context.

A series of parties are involved in services of general economic interest. Their interests are different, in some cases opposed, and therefore their relations are influenced by lack of symmetry in information and expertise. Performance of a service of general economic interest is a pluralist concept.

The relative performance of services of general economic interest is based on close relations with the **territories**, on different scales -local, national and European. Assessment can relate to different and/or complimentary **levels**, each one having its specific aspects.

Performance can be appraised according to varying **time scales**, in the very short term, according to immediate satisfaction with the service, its quality, effectiveness and management or in the medium, even long term, for effects more spread out over time. Services of general interest often have their **structuring effects** in the

long term. Performance, sometimes irregular, of services of general interest can be influenced by **positive or negative external factors**.

Performance assessment is now proving **indispensable**, but also **complex** owing to the multiplicity of objectives pursued. The specific characteristics of aims, organisation methods and the parties involved lead to "performance" having a **definition both complex and without uniformity**.

On this basis, it is possible to make a number of proposals and recommendations in order to promote performance assessment within the European Union as an essential element in implementing Article 16 of the Treaty. A reference schedule has therefore been proposed for the types of assessment criteria which could be generally applied to all sectors and also recommended are the principles and structures necessary for putting this assessment into operation.

### Proposal for a reference schedule

The proposed schedule presented on the following page is intended to give an overall view of the various possible angles of approach to assessment. It must be elaborated in a more specific way at sectoral level and according to the categories of party involved (users, authorities, etc.). However, when an assessment scheme is being studied it enables what is, and is not, the subject of performance assessment to be properly identified.

The **generic approach** means that all the criteria and fields listed cannot be standardised. The proposed schedule provides **overall coherence**. Each criterion has its relevance, but their cross-reference enables the varying dimensions inherent in services of general economic interest to be connected. For instance the price criterion for the service must be related to its nature and quality.

It is noticeable that assessment criteria such as **productivity** and **economic profitability** have been left aside. The latter relate to conventional economic assessment and as such lie outside the scope of this report. Criteria of this kind do not feature in the directives and laws and are left to the appraisal of public or private sector shareholders and the market. On the other hand, and over and above what is usually understood as "benchmarking", we have tried to cover the **whole series of objectives** which could be set by public authorities, so that the assessment of the system's performance, including its regulation, can enable its **effectiveness** and **efficiency** to be examined.

The indicators taken from the schedule must be compared to the analysis filter of the quality particular to the analysis criteria selected. In order to be broadly and democratically used, the performance indicators for services of general economic interest must themselves obey a number of **quality criteria**, such as relevance, efficiency (cost effectiveness), reliability, comprehensibility and integrity (not conducive to unwarranted behaviour).

### Proposal for a reference schedule

Type of performance	Field of assessment	Possible indicators in development		
Price of service	Price, tariff and development	List prices and real prices		
Universal access, social and territorial cohesion	Connection and supply	Obligation to connect and supply, rate of cuts, pre-payment rate, etc.		
	Social access	Social prices, particular terms for disadvantaged users etc.		
	Physical access	Arrangements for the elderly and/or disabled, etc.		
	Territorial access	Network's territorial density service to rural zones and zones in difficulty, etc.		
Quality of product and service supply	Continuity/general quality of service	Quality of network (speed of mail, water pressure, power cuts, etc.), possible breakdowns, etc.		
	Safety	Users' physical safety, environmental safety, etc.		
		Possible confidentiality (correspondence, communications)		
	Change	Research/development		
		Change in supply owing to technical progress and social expectations, etc.		
Relations with individual consumers	Clarity and transparency of supply and contracts	Analysis of contracts		
	Invoicing	Readability, error rate, etc.		
	Intervention	Speed and quality of intervention on request for service (connection, repair, visits, etc.)		
	Reaction	Time for reply to mail, etc.		
	Treatment of complaints	Speed and quality of treatment		
	Indemnity for non-compliance with contract/criteria	Service charter		
	Rate of consumer satisfaction	Survey, enquiries, opinions, etc.		
Positive or negative external factors	Cohesion and territorial development	Territorial imbalance, territories' attractiveness, etc.		
	Environment protection and sustainable development	Impact studies, compliance with possible quotas, etc.		
	Employment	Direct, indirect, induced		
	Effects on other activities	Specific indicators to be created		
Other specific national objectives	Public policies (security of supply, diversification, long-term planning, etc.)	Specific indicators to be created		
	Public safety	Specific indicators to be created		

## Pluralist, specialised and autonomous assessment bodies

How to define, conduct and use performance assessment of services of general economic interest? Replying to this question, implies taking into account the **specific characteristics** of services of general economic interest, which has led us to emphasise **six essential features**.

1/ The bodies entrusted with assessment – Offices or Observatories or ... - must be accessible to the **plurality of parties** involved, in their expectations, aspirations and interests; any hindrance to the active participation of one of the parties will impoverish assessment and harm its legitimacy. No single party must assume - de jure or de facto – the monopoly of assessment. The best guarantee of involving all parties is that representatives of each party should belong to the structure defining the assessment guidelines and their follow-up.

2/ We have insisted on the specific nature of assessment at the same time as its relationship with regulation. Assessment does not have the power to arbitrate or penalise, but the equally essential power to **speak** and **reveal**. We therefore recommend that the bodies entrusted with assessments should be **specialised** in its definition and conduct.

3/ These bodies must have margins of autonomy in their relations with the various parties concerned. There is the risk of some of the parties appropriating assessment if the assessment function is entirely and solely dependent on them. This could, for example, occur if assessment is entrusted solely to bodies in charge of regulation or to politico-administrative bodies which define regulation or, on a European scale, to the Commission alone. Assessment must take into account the plurality of sources of information and expertise; schemes giving "recourse" must enable the way in which assessment is conducted to be contested and generate counter-expertise. Bodies entrusted with assessment must possess real means of expertise and investigation, guaranteed as far as possible by law.

4/ Bearing in mind the proposals for the reference schedule, bodies entrusted with assessment must be in charge of a **specific sector** (possibly transport, energy, water purification, telecommunications or the postal services) even though it would be useful to prescribe **exchanges** between sectoral bodies. They could exchange experience and good practices and regularly examine the interaction between sectors (increasingly frequently the same operators are to be found in different sectors).

5/ It is clear that the bodies entrusted with assessment must be appointed at each Member State level (on a scale which can be local); at the same time at community level, it is necessary to devise methods for exchanges, encounters, comparison, co-ordination and even harmonisation; the latter could also be a support for national efforts. The European dimension is increasingly important owing to the markets concerned becoming less and less national; the parties are becoming more transnational to the point where one can speak of "Eurooperators". At the present stage and to start the assessment process, as proposed in CEEP's 1994 report, an Observatory could be founded. It could be attached to the European Parliament and thereby, in communication with national bodies, possess real legitimacy.

6/ Lastly, a cost ratio must always be observed between the projected schemes for assessing performance and the advantages accruing from the system's

effectiveness. Consequently, some indicators could only be subject to periodic "searchlights".

### Giving the parties capacity to act

Assessment has several objectives, but its aim is to supply information as objective as possible about the way a sector works. It is then up to the parties to draw the conclusions relating to the objectives which they set themselves. Assessment must therefore, by supplying information, provide the basis for public discussion, and contribute to forming a European public opinion, an essential condition. The discussion's democratic character will depend on all the parties' capacity to take part.

The various public authorities will naturally be present. Formerly they often had the monopoly on legitimately making their voices heard. They will continue to maintain a strong presence insofar as they assume their role of laying down the sector's general interest tasks and regulation. The operators, as well as big industrial customers, will also have the necessary resources to take their place in the discussion, as they have already done in the deliberations on the directives and transposition laws.

The problem arises mainly for the residential **consumer-citizens**. Examining the various situations in Member States shows that they are rarely in a position to make their voices effectively heard when they are not provided with a **structure** enabling them to have access to the discussion in a firm and sustainable way.

The creation of **consumer-councils**<sup>1</sup>, armed with their own expertise and means of communication, could contribute to assessment's effectiveness and enable consumer-citizens fully to play their role by giving their judgement on the way services of general economic interest are organised and regulated. The appointment of "mediators" could also contribute to the recognition of consumer aspirations.

### Strong political will

Putting these proposals and recommendations into operation supposes the existence of a **strong political will**, to overcome the **reluctance** and **obstacles**. Some parties emphasise the inherent difficulties and complexities in order to hinder, even obstruct, the exercise. In the case of public authority officials, assessment can lead to revealing objectives which they do not always want to make explicit. Some operators can count on users not being in possession of the accurate facts for making comparisons. The parties who consider themselves to be in a favourable position in the division of rents may not want true transparency; etc.

By developing a **progressive dynamic** for assessment, reluctance and obstacles will be overcome to a much greater extent than by making rules or giving orders. Therefore we recommend, without waiting any longer, that every kind of experiment be conducted, however partial it might be.

Article 16 of the Treaty of European Union recognises that services of general economic interest are components of the Union's "common values". It emphasises their role in the promotion of "social and territorial cohesion".

<sup>&</sup>lt;sup>1</sup> It is not one of the objectives of this report to examine the ways of representing consumers; they must ensure their own legitimacy and democratic action.

These strong words will remain meaningless unless they are given substance in each one of the areas concerned and are reflected in their effectiveness in society, without being used as an alibi for forms of national protection.

Elaborating performance assessment for services of general economic interest is the **key way** ahead for them to go from strength to strength in fulfilling their purpose, which is **to respond to the needs of consumers, citizens and society** and their future development.

### **Good Practices**

There are well over 10,000 enterprises in Europe engaged in providing services of general economic interest to customers, the general public and local communities on a daily basis. They are active over a wide range of sectors and at a number of different territorial levels – local and regional, national and pan-European. In order to show the efficiency, innovative approach and special capabilities of enterprises engaged in providing services of general economic interest, the "Good Practices" working group has adopted an approach based on the following definition of "good examples" of the work of enterprises engaged in providing services of general economic interest.

"Good examples" of the provision of services of general economic interest are organisations or bodies that have created some kind of added value for consumers and public authorities that cannot normally be provided (or not as efficiently) in another form of organisation.

The working group sent a letter to enterprises engaged in the provision of services of general economic interest and their national associations to explain the purpose and conduct of the study. In addition, based on the above definition the letter explained to the enterprises what a good example is. To illustrate this, in the appendix to the letter the working group outlined three categories of good practice in the form of the following questions:

- 1. In what way are public utilities developing new, more innovative or additional services of general economic interest, and what methods are they using to define objectives precisely and to monitor their implementation?
- 2. How is the general economic interest being served by the internal organisation and management practices of enterprises?
- 3. How are public authorities and enterprises increasing their economic efficiency in implementing objectives for services of general economic interest?

Also, a form was attached to the letter in which the enterprises were asked to present in a few words their main activities and their good practices and to name a contact person for further information. There was little response to this request, which was sent to the National CEEP sections, most CEEP-affiliated enterprises and other associations of providers of services of general economic interest.

However, a large number of examples proposed by the enterprises contacted did not fulfil the defined criteria. For example, a number of enterprises submitted commercial initiatives that could only be regarded as marketing campaigns aimed at increasing competitiveness. Some examples are:

- Improved access to the services of the enterprise, e.g. by e-mail and e-commerce (these examples were not considered as good practices, because in this context only better technical possibilities for the use of the existing services were created, while further objectives, such as territorial cohesion, were not to be achieved)
- Easier payment, again by e-mail (same reason for the non-inclusion in the good practices as above)

 Additional services aimed at increasing customer loyalty, such as special price reductions for customers (in particular customer loyalty programs as conventionally practised in competitive markets)

Marketing campaigns, including sponsorship campaigns (the submitted actions were essentially those which are generally practised on the market, so that they could not be considered as good examples in the meaning of the above definition).

A large number of enterprises submitted examples that, in effect, gave the actual purpose of the business as an example of good practice. Among this group were enterprises involved in urban development, but it also included service companies in the public banking, transport and energy sectors. Close scrutiny of these submissions revealed that they did not meet our definition of "good practices", even though they all described innovative measures that had led to improvements in performance, quality and cost of the services offered.

The working group was forced to conclude that a fairly large proportion of enterprises engaged in the provision of services of general economic interest had not spontaneously seen any difference between their "normal" practices, which they regarded as "good", and "good" practice in the sense of the definition given above. This led the working group to look for the reasons behind this phenomenon, as we had expected this particular group of service providers to make a precise distinction.

One likely explanation is that enterprises that provide services of general economic interest have a different self-image than purely commercially-orientated enterprises, and that in some cases this leads them to believe that their services should a priori be evaluated differently from those of purely commercial undertakings. This conclusion has apparently led some enterprises to regard their "normal" everyday service, i.e. the purpose of their enterprise, as "good practice".

Another possible reason is that a clearly defined national concept of "service public" and services of general economic interest – as in France, for example – does not exist in all Member States. This does not mean that there is no comparable organisational framework in these Member States, but because these services are sometimes defined on a regional or municipal basis rather than by central government (and even this may only apply to certain economic sectors), and because of the extreme diversity of practices due to differences in traditions and behaviour, it is difficult to adopt a uniform set of criteria at European level.

However, the main reason for the relatively small number of examples of "good practices" received may well lie in the fact that many companies are currently focusing their efforts on fighting market competition. Providers of services of general economic interest have recently come under severe pressure to adapt to market conditions, and in some cases this may have relegated the importance of a most extensive development of these services to the background. Competition forces enterprises to improve the quality of their services, increase efficiency and cut prices. Competition is probably the most effective means of bringing this about. However, beating the competition should not be regarded as the sole objective of providers of services of economic interest. Rather, market forces should help them to find ways of providing their services more efficiently and of promoting social and territorial cohesion in their role as providers of services of

general economic interest. These enterprises have a special function that goes far beyond simply providing services that could, in principle, be provided by "anyone".

One of the recommended conclusions of this working group is consequently: that the Community on the one hand and Member States and enterprises on the other have to pay an increased attention, within the conditions of market competition and with its help, to invigorate the obligation imposed by Article 16, which plans to establish principles and conditions that enable services of general economic interest to carry out their missions in a way that promotes and increases social and territorial cohesion in the Member States and in the European Union as a whole.

In addition, it should be mentioned at this point that the work of the "financing services of general economic interest" and "performance assessment of services of general economic interest" CEEP-CIRIEC working groups in particular has already included examination of other interesting practices of several providers of services of general economic interest.

Taking the above into account, the working group has selected below a number of examples of enterprises that are setting exemplary standards of good practice in the provision of services of general economic interest:

- I. Social cohesion
- II. Territorial cohesion
- III. Access to services and level of service guarantees
- IV. Customer care and involvement
- V. Cooperation between providers of services of general economic interest
- VI. New services
- VII. Environment
- VIII. Employees and conditions of employment

#### Conclusions

Both the Community and the Member States are committed to the common goal of creating principles and conditions that will enable services of general economic interest to function efficiently. The enterprises responsible for providing these services are currently under considerable pressure from market competition, and this occasionally prevents them from developing their special role. However, competition should serve only as a means of helping enterprises to work more efficiently and achieve the greatest possible benefit for customers and society as a whole. These enterprises have been, and continue to be, extremely efficient service providers. However, it is crucial that they be given the necessary "room to manœuvre" to enable them fulfil their task of developing services of general economic interest. The Community and its Member States must work to make this happen.

The working group recommends that a permanent working group be appointed to monitor the development of services of general economic interest. This working group would collect "good practices" on services of general economic interest level that could be used as models, and make them available at regular intervals to the EU institutions, the Member States and interested members of the public. This would be another small step towards achieving the goals of Article 16.

III. REPORTS

### **Regulation of Services of General Economic Interest**

### SECTION 1 - PRELIMINARY CONSIDERATIONS

In this paper we will discuss different methods of regulation of Services of General Economic Interest (SGEI) within the European Union, with special attention to the following sectors: energy, transport and telecommunication.

### Regulation in the European scenario

When studying regulation in the EU we must keep in mind some specific features of the European scenario.

### A two-tier regulation

First of all we have a sort of two-tier regulation, since the general juridical framework derives from two sources: on the one hand the Treaties and the European Directives (which at least in principle should be transposed into norms by each of the Member States), and the pronouncements of the Court of Justice; on the other hand the laws and statutes of Member States, which, provided they do not contradict the Directives, have a wide-ranging of discretion.

### Single market, competition, general interest

Another fact to keep in mind is the general orientation of the Union regarding SGEI. One of the aims of the Union has been from the start to create a common market. In the course of time, reinforced by the adoption of the Single European Act, this concept gave way to the idea of a single integrated market.

In line with this philosophy even the SGEI, which initially were considered as belonging to the excluded sectors (excluded that is from the rules of competition), were subjected from the mid-1980s to the general rules of the common market.

The idea was to liberalise, albeit gradually, SGEI sectors that at that time were mainly under a regime of vertically integrated monopoly (a word of caution: even in that period there were marked differences in the management of SGEI in different European countries; just to give an example, the electricity sector in France and in Germany showed marked organisational differences, the first being much more centralised than the second).

The process of liberalising the excluded sectors to introduce competition, in the hope of reaping efficiency gains, was and is not without difficulties since SGEI operate where market failures are present and competition does not come naturally. Besides, SGEI are there to foster some general interest, and this often means that there can be a kind of trade off between general interest and efficiency.

A unified solution for SGEI is moreover complicated somewhat by the fact that they are managed differently in different European countries. Past history,

different geographic conditions and access to natural resources, different political choices are relevant factors. Ownership structure, number of producing units, centralised or decentralised systems, technologies have also contributed to the emergence of different operative systems. Even the concept of general interest is viewed in very different ways: while for instance France and Belgium have elaborated a very precise concept of "service public", other countries have no unified definition of general interest.

# Limits of EU institutions in dealing with conflicts of interest

It is obvious that the general interest may clash with the practice of competition. This potential conflict should be settled through a trade-off, requiring however some kind of political decision. One may wonder if the decision-making structure designed to resolve conflict of interests in the EU is totally satisfactory, i.e. capable of deciding trade-offs of a political nature at the European level.

From a constitutional point of view, the Union is not comparable to a fully federal state. In reality the process of economic union is well ahead of political integration, (if ever this is achieved in the EU) - witness the recent discussion on the institutions of the Union (with very divergent positions) and the frequent reference to the "democratic deficit" of the centralised European institutions. The Parliament, the only European organ to be elected directly, had until recently very limited powers and even now, after the recent reform, is not the primary actor in shaping the overall policy of the Union.

# The trend toward stronger attention to the general interest at EU level

The previous strong focus on liberalisation has now been tempered by the recognition that the public interest dimension cannot be totally ignored. Article 16, introduced *ex novo* in the Amsterdam Treaty is an indicator of the new situation. This article makes an explicit reference to services of general economic interest:

"Without prejudice to Articles 73,86 and 87<sup>1</sup>, and given the place occupied by services of general economic interest in the shared values of the Union as well as their role in promoting social and territorial cohesion, 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."

As it is now, it represents the synthesis of two opposite views advanced by different States at the Intergovernmental Conference. Some States thought a modification of the Treaty would be appropriate because community law was too much in favour of ensuring competition and free circulation, disregarding other interests, such as social needs answered by public services; other States thought the Treaty provisions were sufficient to combine respect for competition rules with the missions of public services.

Art. 16 has been located in Part one of the Treaty, dedicated to the Principles of the Union. This indicates that SGEI now represent a value for the E.U. "Service of general economic interest" is not, however, defined, and can be interpreted as an autonomous Community concept. Art.16 puts on institutions and Member States the positive obligation to promote general interest, and the negative obligation to abstain from any type of behaviour that may endanger general interest.

These obligations, although not detailed, can be controlled by the Court of Justice. Member States and EU institutions share the competence described in art. 16, to be applied within the principle of subsidiarity. The Treaty does not however define the respective powers of national and Community institutions. Judicial pronouncements and practice indicate that defining public service objectives is a matter for Member States; but Community law commits Member States to the principle of proportionality, meaning that measures taken to pursue public service objectives must not restrict inter-community trade more than is strictly necessary to reach the objectives desired. The principles and the conditions for the functioning of public services that should be supervised by the EU and the Member States are not specified. On the basis of the Commission's practice and of the pronouncements of the Court, their essential features may be defined by the principles of equal treatment, and the quality, continuity and adaptability of the public service. The exact content of these principles and the decision as to which level (Community or Member States) is competent in defining them is still a matter of uncertainty<sup>2</sup>.

One must bear in mind this scenario when discussing regulation inside the EU since any feasible solution must take into account the existing constitutional and political situation.

### Main aspects to be considered for regulation of SGEI

### A broad concept of regulation

What should we look at when examining the control of SGEI?

In practice, the control exercised over SGEI is an outcome of legislation, governance and social control. This means that we should consider all the constraints imposed on any party operating correctly in the sector whether laws and statutes specific of that sector, or general rules that have to be observed in any case. We should also consider the specific or general authorities that have the power to "monitor" operators' behaviours (e.g. Anti-trust authorities, which are entitled to prevent or punish behaviour that may be damaging for the market, and sectoral authorities acting only within the sector assigned to them). Finally, judicial decisions need also to be considered. This broader concept of regulation will help us in better understanding differences in the operations of SGEI in different countries. Differences in the regulatory environment result from a variety of factors, of which the activities of sectoral authorities are just one.

Art 73 is on State aid in the transport sector; art 86 deals with the rules of competition applied to public undertakings, and art 87 states the characteristic that aids granted by the States must assume.

<sup>&</sup>lt;sup>2</sup> On the interpretation of article 16 see Lang A., L'article 16, in Pocar F. and Clerici R. (eds), Commentario del Trattato della Comunità e dell'Unione Europea, Cedam, Padova (forthcoming).

### SGEI, networks, market failures

Two other important questions: why do SGEI need some kind of control? And why has the consensus on the type of control changed so that a new model of regulation is being sought?

SGEI are generally subject intervention by the state. One reason for possible interference with the market is the desire to protect low income consumers, or to guarantee supply of the service all over the country, or, given the strategic importance of a certain sector, to protect some national or some public interest, however this may be defined.

The other reason is based on the consideration that if we leave the market to itself the solution produced will not be optimal because of market failures, due to prevailing conditions of natural monopoly in the sectors where public utilities are to be found.

If we try to understand why public utilities display market failure, we realise that this comes from the fact that they usually provide services through networks.

A network can be defined as a "set of points (or nodes) and interconnecting lines (or edges) organised with the object of transmitting flows of energy (electricity, heat), information (sound, data, pictures) or material (water, freight, passengers, etc.). Each point can be an originating node from which the flow is emitted, a terminating node, that is a node receiving the flow, or a node that plays an intermediary role of transmission, storage, amplification, co-ordination, dispatching and so on. The essence of a network is that (almost) every pair of nodes can be linked by more than one line"<sup>3</sup>.

From the above definition two things stand out: first, a network is the infrastructure without which service cannot be provided; secondly, to exploit the infrastructure properly a very strong co-ordination of the flows transiting through the network is needed.

Networks are associated with market failures for several reasons: they usually involve large fixed investments, economies of scale, economies of scope, club externalities. On the other hand, the need for co-ordination also tends naturally to lead to vertical integration. Some examples: railway track can only be properly exploited if we have some kind of co-ordinated schedule to avoid congestion and to allow connections etc. Similarly for electricity, where supply must exactly and constantly balance demand (storage of electric energy on any scale is very difficult), dispatching must be provided by some co-ordinating unit. Operators controlling the network can quite easily control the entire process since they can convert their position of dominance over the essential input (the network) to gain control of upstream and downstream segments.

### What type of regulation? From conduct to structure regulation

The existence and extent of natural monopoly in public services are however now being questioned. Economic theory has described a number of situations where hierarchical or integrated structure is better than market solutions. One of these is when market imperfections produce corresponding rents that increase transaction costs, making market interactions inefficient and unreliable. In this case integrating market relations would internalise the corresponding rents, decrease transaction costs and ensure co-ordination of the various production phases. Internalisation would also obviously present some problems: mainly so called X-inefficiencies<sup>4</sup> and internal co-ordination costs.

Another consideration is that in highly complex sectors with rapid technological change simply adopting market relations could probably produce greater uncertainty and risks, especially in investment policies.

But a better understanding of network systems has shown that vertically integrated monopoly is not always the best solution. It has been realised that the existence of a network does not necessarily imply a situation where no competition can be introduced. Vertical integration, while allowing better and probably less costly coordination, has the disadvantage of reducing the incentive to be efficient. If one can isolate individual segments where competition can be introduced, it is possible to avoid, at least partially, the damage done by the unbundling, and to gain sizeable benefits. This conclusion has been encouraged not only by theoretical considerations, but also by technological breakthroughs that have reduced the importance of some specific networks or potentially made it possible to do without them.

Traditionally the problem was to control the behaviour of a public or of a private monopoly to avoid prices reflecting monopolistic power (conduct regulation), Given the ultimate goal of building a market framework where competition can survive, it is clear that the aim of regulation may now be a lot more complicated (structure regulation). Models of conduct regulation tend in practice to regulate the management choices of individual enterprises. Instead of being general and concerning an undifferentiated set of subjects, their degree of specificity and detail increases with the complexity of the specific activities to be regulated.

Structural regulation in practice tries to define a minimal set of general rules, chosen because they are thought essential for full and efficient access to networks, allowing different competitors to supply effective services in line with users' demand. It is not a question of regulating behaviours and choices, but of avoiding all discrimination among different suppliers who have equal rights to operate and to access the infrastructures which function as common carriers for the supply of

<sup>&</sup>lt;sup>3</sup> Liberalization of Network Industries, European Economy, 1999, n. 4, p. 81. The whole issue dedicated to network industries contains valuable information and discussions on the subject.

<sup>&</sup>lt;sup>4</sup> X-inefficiencies are inefficiencies attributed to lack of motivation by managers and employees to produce the best effort in their job. According to this theory, the relation between inputs and outputs is not totally determined by technical factors. Competition is one important factor to induce people to give their best if they want to stay in the market, while enterprises operating in condition of monopoly, feeling secure, might produce less effort. The first to introduce this term was Leibenstein H. in *Beyond Economic Man*, Harvard University Press, Cambridge, 1976.

public services in Europe. Obviously also this type of regulation must comply with public service obligation.

### Regulation in different sectors

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The issue of regulation of SGEI must be considered case by case because each utility displays different kinds of market failures. The utilities we consider in our study have also, however, some common features: all of them include networks and therefore most of them display significant elements of natural monopoly. To introduce competition in such conditions is not an easy task because both legislation and regulatory acts must simulate competitive markets without the information created by a genuine market.

In the following table we have tried to give a rough idea of different situations determined by different industry structures and types of network, implying, at least theoretically, focus on different aspects relevant for regulation. This is just an outline example of the type of reasoning that could be applied.

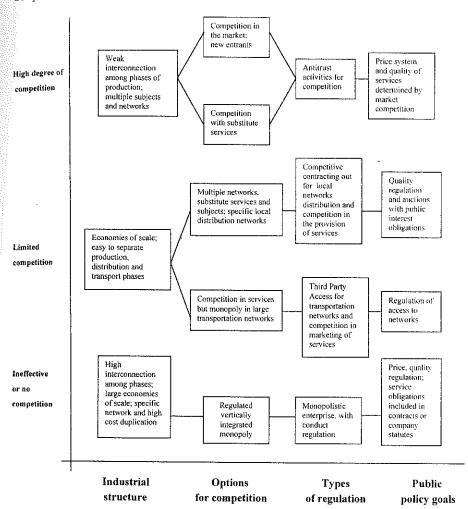
As one can easily see, we go from a situation of ineffective or no competition, where we have high interconnection among phases, large economies of scale and specific networks with high costs of duplication, to an opposite situation where there are weak interconnections, multiple suppliers and networks and where, in the long run, no specific control is needed apart from the normal anti-trust control.

## Different ways of introducing competitive elements

From this table, one can also see how competition can be introduced when networks exist. Competition can be introduced ex-ante or ex-post. In the first case, competition is for the market, and is introduced by way of auctions: this is obviously easier for local markets. Ex-post competition implies separation of different phases of production and use of the network as a common carrier. In this case the carrier operates in monopoly conditions, and the main goal of regulation, besides controlling the level of prices, is to ensure non discriminatory treatment in the use of the network for competing service producers. Depending on the size of the market, it is sometimes possible to have competition among networks; obviously this creates problems of interconnection and interoperability to avoid inefficiencies. Finally, competition may arise through the introduction of substitute services (postal services, fax, e-mail...). Introducing competition in practice however, as will be shown in the section where some examples of regulation will be given, is not easy and does not always bring fully satisfactory results.

The choice between different ways for bringing about competition depends on the characteristics of the sector and on the segment of the production process we are considering.

### Competition Intensity



The following table gives an approximate idea of the structures of some main sectors.

Stages of production	Production	Network main infrastructure	Distribution	Users
Type of service				
Air Transport	Freight and People Transport	Airports	Route Management	<del>-</del>
Rail Transport	Freight and People Transport	Railway track Network		<b></b>
Voice Telecom	Interconnection Signal	Cable and/or Satellite	Non- Discriminatory – Network Access	<b>→</b>
High V.A. Telecom Services	Data bases and Telecom products	Cable and/or Satellite	Multiple and Optional Interconnection	<b>*</b>
Natural Gas Provision	Gas exploration, extraction and stocking	High pressure pipelines	Low pressure_ distribution Network	
Electric Energy Provision	Multiple sources Generation	High Voltage Network	Low Voltage Network	<b>-</b>

One can see that the production phase in all sectors is probably amenable to competition, economies of scale not being a relevant factor. Network infrastructure presents cases where conditions of natural monopoly exist and where therefore tight control over the sole operator is needed. The exception is telecommunications, where competition among networks is possible and where probably, in a short time, even the local loop will be bypassed. In distribution, again with the exception of telecommunications, monopolistic elements are present.

# SECTION 2 - REFLECTIONS ON THE EXPERIENCE OF THE REGULATION OF SGEI IN DIFFERENT COUNTRIES

### SGEI regulation up to the present: an assessment

REPORTS

At this point we should try to assess the situation resulting from the new course started by the Union with the Directives that are now transposed in most national legislations, even if the speed and the extent of transposition differs by country and sector.

### Has an integrated market been created for public utilities?

One of the main goals of the EU has been to achieve an integrated market, open to competition, in public services. Liberalisation should increase efficiency within each country, but for public services that are not local, an enlarged market should probably bring additional advantages<sup>5</sup>. In preparing legislation EU policy makers have given priority to the interoperability of national networks (especially to problems of interconnection and technical harmonisation) and to separating network management and trading the main goal being to extend opportunities for non-discriminatory access to national networks.

The insistence on opening national networks to third parties through the common carrier approach underlines their importance as a sunk element in the liberalisation process taking place at the Community level. The prevailing idea at the Community level is that it is possible to separate sunk and non-contestable parts of a sector from those to which the principles of extended (European) competition can be applied. The "sunk" character of networks would hinder competition should the network be accessible only to a few operators. Making it totally accessible changes it into a common good for users.

Moreover changing technologies now make it possible to exploit the possibilities of a larger network, making it possible to the spread supply risks and perhaps to reduce capacity. If competition is working and results in a more efficient system, European citizens should get the benefit of lower prices. In this particular sense, we could say that a more efficient system is beneficial to the general interest.

From this point of view the results, to date are not particularly impressing. If we look at current prices (net of taxes) in the EU, we see wide differences. Electricity prices can be revealing. Prices vary considerably and depend mostly on the input and technology used (public service obligations per se do not appear to make a big difference).

On the other hand, the convergence of prices that should result from a more liberalised market is inevitably a very long process, and we should not look for

<sup>&</sup>lt;sup>5</sup> A good discussion of the European Internal Market can be found in Helm D., "The Assessment: The European Internal Market: the Next Step", in Oxford Review of Economic Policy, Spring 1994.

immediate results since Directives have been transposed only recently. Moreover, price convergence does not depend exclusively on market institutions.

In fact in the energy sector and in transport (rail) the possibility of creating a single market is dependent on the interoperability and capability of the transport system. The European authorities were certainly aware of the problem, which is why they introduced into the Treaty articles regarding the need to create better and more developed Trans-European Networks in the sectors of transport, energy and telecommunications infrastructures<sup>6</sup>. Special attention was given to interoperability and interconnection. This program, though, has not yet produced significant concrete results7.

## Regulation closely follows technological developments: "experimental" regulation?

Even from a short overview, one can see that the structure of sectors is changing quite rapidly. In some sectors especially, we are witnessing a very rapid technological change. The typical case is telecommunication, where it is foreseen that even local loops could be bypassed, thus avoiding one of the bottlenecks that prevent competition. But even in the sector of energy changes are forecast which, if and when turned into reality, could probably change the whole structure of the industry and also the role of the grid8. We are thus faced with possible changes determined by major technological advances or by new products that could alter natural monopoly situations, eliminating or creating new bottlenecks. This obviously has a bearing on the type of regulation needed. The situation is, and will probably remain fluid, and inevitably makes regulation a matter of institutional and political experiment.

# Impact of European Directives and national differences

Undoubtedly European directives have changed the scenario, forcing Member States to introduce new laws to abide to the "European rule". It is a fact now that management of networks has been separated from the provision of services and that other common rules have been established. For instance in the field of telecommunications a universal service obligation has been introduced at the European level; it is true that that definition can probably be interpreted in different ways, but nevertheless we have now a European obligation (a minimum that can be improved on by decisions of individual countries), binding all Member States. Moreover some kind of transparency has been introduced and directives have been imposed regarding publication of tariffs, method of franchising etc. Even if we know that one of the main problems of regulation is asymmetry of information, regulation has produced quite a lot of information. International comparisons are now feasible, making possible some form of benchmarking competition. It is safe to say that European rules and directives have made a

<sup>6</sup> See art. 154, 155, 156 of the Treaty.

<sup>8</sup> See, The Economist, August 5-11 2000.

considerable impression on the general way in which SGEI sectors operate. If we look at the present situation in the light of the data and information we have gathered, however, we can also see Europe presenting a varied landscape.

The differences we see concern many aspects: number of operators, ownership (public or private), different degrees of vertical and horizontal integration: different rules regarding the setting of prices; the existence of a national regulator and the varying range of that regulator's powers; different ways of defining public service obligations, and different objectives set for these. Examples of this, especially in the energy sector, are different degrees of concern about safety, ownership, environment, etc.

### Different models of national regulation

Europe shows a great variety of models of regulation; choices made in each country are influenced by politics, but also by technology, resources, and by the past evolution and the present structure of the industry. This has produced a scenario where even in the same country different models are operating.

We can very loosely define three types of models according to the different role of the regulatory Authority and the different structure of the industry.

The first can be identified by the presence of a sectoral regulator with rather extensive decisional powers consisting in a general supervision of the regulated sector: this usually means the power to fix tariffs (for non eligible consumers) according to some general rules set by legislator or eventually by the executive power; the possibility to act and give orders ex ante and control ex post operating units to prevent unwanted behaviour. The strength of the sectoral regulator varies in the single models depending on the power of the competent minister. Usually in this model, the regulatory body is largely autonomous from the political power even though sometimes it formally depends from the ministry. It is most of the time composed mainly by "experts".

This model is frequently characterised by the presence of a plurality of operating units often of private nature. Examples of this type of regulation can be found in U.K., where independent Authorities had been a part of the institutional framework for some time. When the privatisation waves touched public utilities at the beginning of the eighties, it was rather rapidly understood that the transition from a public monopoly to a private one could not change radically the situation. The mere changing of ownership was not enough to change the conduct of the utilities. since obviously the private monopoly would adopt an opportunistic behaviour, keeping out potential competitors and maximising profit at the expense of the user. In that situation, it was realised that an independent regulator was needed if competition was to be introduced. This called for specialised regulators, which had, and still have, by common opinion, a rather extensive autonomy.

In the second model regulator has less power (in some cases a national regulator is completely absent as for instance in Germany in the electric sector). Tariffs are not

<sup>&</sup>lt;sup>7</sup> On this see Johnson D., Turner C., Trans European Networks, Routledge, 1997.

fixed by regulators but by contracts; sometimes regulators have an ex post control on tariffs to avoid the exercise of monopolistic power. This type of regulation is frequently adopted when a plurality of subject was already present in the market, before the regulatory process started. No vertically integrated monopoly was present, and the role of local authorities was very important. Ownership is now either public or private or mixed. In any case, what is involved is the local or regional public ownership only. Given the historical presence of a plurality of operators, co-operation and agreement among operators substitute some of regulators' tasks concerning access to the grid; this arrangement can present risks of collusive practices. In these circumstances, an important role might be given to the antitrust authority to avoid monopolistic behaviour.

A third model is characterised by the presence of a fairly public and fairly integrated industry and where regulation has been until recently controlled by the executive, namely the Minister; the recent changes have brought some degree of autonomy to the regulator.

In any case, regulation is in a continuos process of changes, trying to find the better solutions.

### Regulator or Antitrust

We have seen that, although there is not a unique solution, there has been a tendency to create regulators (e.g. Scandinavian, Spanish, Belgian Authorities). In what sense may they be more effective than Antitrust authorities, which have been suggested as an alternative and in some countries (for instance, Germany) adopted? Generally speaking Antitrust is more indicated when market failures are not of first importance and the sector is working with fairly reasonable competition. But we all know that Antitrust procedures are very slow, act only expost and usually on a negative basis (i.e. to prohibit some conduct); besides some Antitrust, unless structures and staffed by sector speciality, do not have expert personnel able to master the intricacies of the specific sectors. Sector authorities on the other side have specialisation, power to act ex-ante, flexibility of intervention; their limit is that they may be more influenced by the regulated, to whom they have more proximity. My conclusion is that when market failures are significant they may be the best solution.

### Public service obligation

There is no official definition at the European level of Public service obligation. The fact that a general definition is missing does not prevent public service obligations from being implemented in a fairly uniform way: we find that in a specific sector the same "core" of obligations is established in different countries.

This "core" has mainly to do with the obligation to give access to the network to anyone requesting it, to tariffs independent of customers' location, to published and non discriminatory pricing, to standards of quality in service delivery. Around this core additional obligations are often added, such as general indications on the

level of prices ("affordable prices" a good example of an attempt to define what affordable price means can be found in the German regulation on Telecommunications), or an obligation to meet the needs of disabled people, or environmental considerations. Sometimes very specific obligations are added (such as in Finland the obligation not to cut off electricity supplies in winter-time for users who have failed to pay), which are interesting indicators of the mission a national legislator or regulator sets for a specific public service. A distinction can be made between (1) public service obligations, many of which are imposed in the interest of the consumers or a particular category of consumers; and (2) policy considerations of such as national security, national defence, etc. With the first category, a solution can often be found without interfering with competition. This is much more difficult when the second category is involved.

### What model of regulation?

As we can see, regulation and regulators are chosen according to overall complex considerations, with history playing a very important role. There is in other words an interaction between the model of regulation and two main factors: the structure of the industry before reform, and political preferences<sup>9</sup>.

In the present situation, it is difficult to say which is the "best" model of regulation in Europe, but we think there are sufficient reasons to let Member States try their own experiments. There are a number of reasons for this:

- (a) It is difficult to have a precise measure that could help us to judge the best model of regulation: as we have seen, models of regulation depend on the type of market failure, which may differ from country to country and from sector to sector.
- (b) The relation between politician and bureaucracy, the quality and the independence of public administration from vested interest are all important considerations when deciding on the type of regulator.
- (c) In this field, the principle of subsidiarity should be applied, being justified by the fact that national regulators probably have better knowledge of their countries' sectors. Besides, the actual mode of regulation of national SGEI reflects also the distributive policies that strike a compromise among different interests, articulated in specific social contracts.

Obviously, the resort to subsidiarity has limits since Member States may be tempted to take decisions without taking into account the rule of proportionality. There should be some form of control reflecting the rationale of the single market.

### An international regulator?

How can this control be exercised? At present, the European Commission with its duty of supervision and the Court of Justice with its pronouncements certainly

<sup>&</sup>lt;sup>9</sup> On this topic, see Debande O. & Drumaux A., "Overlapping Regulatory Institution. An Analysis of the European Infrastructure Policy," in *Annals of Public and Cooperative Economics*, 1995.

have an important role in enforcing European Directives and resolving conflicts of interests. As we said before, however, the action of the Commission and of the Court are usually ex post and by their very nature do not have the flexibility to solve complex situations quickly. A case therefore could be made in favour of some sort of European regulation. Its role should be limited to evident European market failures, concerning in particular interoperability, cross border transactions and resolving conflicts of interest.

Some solution could be found; we just give here some possible suggestion, which obviously need much deeper analysis before a firm proposal could be made.

### Possibilities include:

- a Regulator emanating from and in some way depending on the Commission
- an Autonomous Agency with regulatory powers (there is some doubt whether such an Agency could be created without modifying the Treaties)
- a Regulatory body whose members should be national regulators (there is obviously a problem when there is no national regulator).

We see some advantage in this last solution. It gives regulators the opportunity to sort out problems together, to give and receive information, to create a professional community with its own standards, which would also provide a forum where different national views of the public interest might be represented10.

The recent European Electricity Regulation Forum promoted by the European Commission goes some way in that direction even though its character is rather different (apart from Regulators, it also includes Government representatives, Transport System Operators and Grid users). The Forum has produced a document in order to develop common rules on cross-border network access tariffs and on methods of congestion management. In this specific case regulators have taken different sides from the TSO, and the Commission has stated the intention, in case of failure of negotiations, to consider a proposal for a European Directive. This Forum has certainly done some work that is useful but we think that its composition mixing many parties and in particular representatives of operators would not be proper for a Regulator.

### SECTION 3 - DESCRIPTIVE DATA ON EUROPEAN DIRECTIVES AND ON REGULATION IN DIFFERENT EUROPEAN COUNTRIES

In this part, the European directives concerning the regulation of public service obligation, as well as the actual modes of regulating public service obligations are examined in a few sectors, trying to establish an "état des lieux" by sector and in terms of implementation in Member States. The sectors that were looked into are electricity and gas (in several European countries), rail transportation and telecommunication (in some EU Member States).

### Directives on Transparency

Before the electricity and gas directives were enacted, the EEC adopted the Directive 80/723/EC of 25 June 1980 on the Transparency of financial relations between Member States and Public Enterprises. It aims at establishing equal treatment of private and public companies and serves as a basis for the application of the state aid rules of the Treaty. It states the <u>obligation</u> to <u>publish separate accounts</u>. In a later version the field of application had been broadened by expressly incorporating the energy sector in the directive. At the time being, the European Commission plans to modify the transparency directive. According to these plans it shall not be applicable to sectors where specific rules on the separation of accounts already exist (e.g. electricity and gas!); furthermore, there will be exemptions to the provisions for undertakings on which general economic interest obligations have been imposed, as well as for small and medium enterprises.

There is another directive concerning a Community procedure to improve the transparency of electricity and gas prices charged to industrial end-users, Directive 90/377/EEC of 19 June 1990. It should be pointed out that this Directive only requires the communication of prices, terms of sale and pricing systems to the Statistical Office of the European Communities (SOEC), not including the issue of costs. However, the practical impact of this directive had not been very important in the past, and since liberalisation the importance of these rules is decreasing constantly.

### **ELECTRICITY AND GAS**

### The European Directives

Concerning electricity, the basic directive is Directive 96/92/EC of the European Parliament and of the Council of 19 December 1996; common rules are established for the internal market in electricity, enforceable from February 19, 1997. As for gas, the Directive 98/30/EC of the European Parliament and of the Council of 22 June 1998 concerning common rules for the internal market in natural gas contains the main European regulation in the gas sector, The gas directive came into force on August 10.

Both energy directives aim at setting a framework for the smooth running of the internal market in which the free movement of electricity and gas as a commodity is ensured. Both directives determine that the internal market in energy needs to be established gradually, in order to enable the industry to adjust in a flexible and ordered manner to its new environment and to take account of the different ways in which electricity and gas systems are organised at present. The fundamental principles on which these directives are based are competition, subsidiarity, transparency and non-discrimination.

Articles 3 of both the electricity and gas directives enable the Member States to impose general economic interest obligations to energy undertakings. According to Art. 3, par. 2 those obligations may relate to security, including security of supply, regularity, quality and price of supplies as well as to environmental protection. As a means of carrying out these obligations, Member States which so wish may introduce long-term planning.

According to both directives the elements of competition are access to the system, free construction of direct lines and for electricity free construction of production facilities.

<sup>&</sup>lt;sup>10</sup> A good discussion on European regulation mainly from an institutional and sociological point of view can be found in Majone G., European Regulation, Routledge, 1996.

Concerning the entry of new market players, the directives do not set conditions but leave the details to the Member States. As to the production of electricity, Art. 4 of the Electricity Directive offers the choice between an "authorisation procedure and/or a tendering procedure". Art. 5 enumerates some criteria for the grant of authorisations (e.g. safety and security of the system, protection of the environment, energy efficiency etc.) safety and security of the system, protection of the environment, energy efficiency etc.) Art. 6 par. 6 states that it must be possible for self-producers and independent producers to obtain authorisation on the basis of objective, transparent and non-discriminatory criteria in Member States which have opted for the tendering procedure. Entry to the market of energy wholesalers (traders) and brokers is not regulated at all in the directives.

In addition to that, more transparency in the sector is required. Managerial unbundling (separation of vertical integrated companies), however, is only required as far as electricity transmission systems are concerned. According to Art. 7 par. 6 of the Electricity Directive "the system operator shall be independent at least in management terms from other activities not relating to the transmission system".

The separation of accounting for the different vertical and horizontal activities is required for both electricity and gas undertakings. Art. 14 par. 3 of the Electricity Directive determines that "integrated electricity undertakings shall, in their internal accounting, keep separate accounts for their generation, transmission and distribution activities, and, when appropriate, consolidated accounts for other, non-electricity activities, as they would be required to do if the activities in question were carried out by separate undertakings, with a view to avoiding discrimination, cross-subsidisation and distortion of competition".

As far as natural gas undertakings are concerned, the requirements for the separation of accounts are less strict than for electricity, though as to the separation of accounts requirements art. 13 par. 3 of the Gas Directive corresponds to Art. 14 par. 3 of the Electricity Directive. However, Art. 12 par. 1 of the Gas Directive stipulates that "Member States and any designated competent authority, including the dispute settlement authorities, shall preserve the confidentiality of commercially sensitive information"; exceptions to this rule only being allowed where this is necessary in order for the competent authorities to carry out their functions.

The directives do not establish rules about the control of prices, neither for energy prices, nor for network access prices. However, as far as network access prices are concerned, both directives require "objective, transparent and non-discriminatory criteria". Furthermore there are requirements as to the publication of network access prices.

The auction of franchises is not considered in the energy directives. However, according to the level of market opening chosen, Member States are free to organise the supply of so-called captive customers in defined franchise areas. It is to be noted that these areas are not exclusive, due to the fact that eligible customers in any area are free to choose their supplier.

Art. 22 of the Electricity Directive and of the Gas Directive deal with control issues. According to these Articles, Member States shall create appropriate and efficient mechanisms for regulation, control and transparency so as to avoid any abuse of dominant position, in particular to the detriment of consumers, and any predatory behaviour. The Directives do not specify the nature of the regulatory agency.

There are no other rules on the control of quality, scope and level of services or on the control of general economic interest obligations in the energy directives.

Two other directives concern the transit of electricity through high voltage grids and the transit of natural gas through (high-pressure) transmission grids: respectively, Directives 90/547/EEC of 29 October 1990 and Directive 91/296/EEC of 31 May 1991. The importance of both directives is decreasing since liberalisation.

### Judicial Decisions

The first decision to deal with questions on energy and general economic interest obligations was the decision of the European Commission 91/50/EEC of 16 January 1991 (<u>Ijsselcentrale</u>). It dealt with the European competition rules of the former Art. 85 (new Art. 81) of the Treaty. The Commission affirmed that an undertaking to which the task of

supplying electricity in a secure, efficient, socially compatible and area-wide way has been imposed is carrying out services of general economic interest in the sense of the former Art. 90 par. 2 (new Art. 86).

In the <u>Almelo</u> Decision of 27 April 1997, Rs C-393/92, the European Court of Justice repeated what the Commission had stated in the Ijsselcentrale Decision: an undertaking that is responsible for supplying electricity in its concession area to all customers at any time, acting in a non-discriminatory way and offering uniform tariffs, is regarded as being entrusted with the operation of services of general economic interest. Due to the rules on the burden of proof the European Court did not decide itself whether Art. 90 par. 2 led to an exception to the competition rules in that specific case but left this decision to the national court that brought up the issue.

On 23 October 1997 the European Court of Justice held decisions in four parallel cases concerning import and export monopolies in the electricity and gas sector (European Commission/The Netherlands, C-157/94, European Commission/Italy, C-158/94, European Commission/France, C-159/95, European Commission/Spain, C-160/94). These decisions dealt with the question whether the import and export monopolies of the French EDF and GDF, the Italian ENEL, the Dutch SEP and the Spanish Redesa were compatible with the rules on the free movement of goods and services of the Treaty and the former Art. 37 on State monopolies. The Court stated that the respective national rules were not compatible with these European provisions, but that the import and export monopolies were necessary to fulfil the public service obligations imposed on the above mentioned energy companies. It confirmed its ruling of the Almelo decision that energy supply is to be qualified as a general economic interest service. Most interestingly the Court held that the former Art. 90 par. 2 (new Art. 86) was applicable, and that according to this provision Member States may charge certain undertakings of the public sector as instruments of their national economic and fiscal policy and thus enforce goals of their national policy by making use of Art. 90 par. 2 of the Treaty. Furthermore, it found that the application of this article does not necessarily require that the survival of the undertaking is in danger.

### European Procedures of Self-Regulation

At the time being there is no regulatory authority in the energy sector on the European level. However, in connection with the so-called Follow-up process on further harmonisation requirements in the electricity and gas sector, the European Commission has started to co-ordinate the activities of the new regulatory authorities of the Member States in the electricity sector. Since 1999 the national regulators as well as the national transmission system operators meet at the EU Electricity Regulatory Forum in Florence "in order to develop common rules on cross-border network access tariffs and on the methods of congestion management". The Commission has announced that in case of failure of the negotiations it will seriously think about a proposal for a European directive on these issues. However, the Commission seems to prefer a solution on the basis of an agreement of the members of the Regulator's forum. Thus the electricity market participants may set an example for a self-regulating mechanism on the European level.

Apart from the Regulators' Forum, the national regulators in the electricity and gas sectors recently founded the Council of European Energy Regulators (CEER). The national transmission system operators in the electricity sector are organised within the European Federation of Transmission System Operators (ETSO). Both Associations are encouraged by the Commission to prepare the European Regulator's Forum in Florence.

# The electricity industry and its regulation in some EU countries: similarities and differences in implementation of European directives

Let's take a closer look at the main features of the electricity industry in some European countries: our aim here is not to make a systematic comparison, but to give some concrete example of the variety in the industry, looking at countries with special reasons of interest: Germany because it has eliminated the transition period; France because it has preserved as much as possible the previous structure; the Nordic countries because they were the first to reorganise the electricity sector.

The structure of the electricity industry

The 1998 Energy Law implemented the European Directive in Germany, where a good number of actors was already active in the sector. There are now around 700 utility companies, almost all of them are vertically integrated, operating power stations and/or buying/selling electricity as well as operating the grid. There are three supply levels, according to the tension of the grid: eight interconnected companies own and operate the high voltage transmission grid. About 80 regional companies own and operate the regional transmission and distribution systems, and roughly 600 municipal utilities own and operate the local distribution systems.

A large proportion of the utilities, on all supply levels, own power stations. Electric Utilities contribute about 90%, industry about 10% to the net generation of electricity.

On each supply level there are publicly owned utilities, utilities with mixed ownership as well as privately owned utilities. In relation to the total number of companies the share of clearly privately dominated utilities is roughly 12%. On the local level about 20% of the utilities have a mixed ownership. Mixed ownership and private ownership are both

In France only recently The French Electricity Law of 10th February 2000, "Loi nº 2000-108 relative à la modernisation et au développement du service public de l'électricité". has implemented the Electricity Directive 96/92, and further legislation will be needed to

Up to 19th February 1999, EDF (1946 Law) was a public monopoly, vertically integrated, operating power stations, the grid and selling electricity.

EDF is still, as of today, the main electricity generator in France (about 90%). Some selfgenerators and independent power producers are the other operators; they used to sell their production to EDF. Under the new Law generation is liberalised, but the Energy Minister will set a long term programme of production investments... to maintain an energy policy; the five year program is approved by Parliament and reviewed yearly.

Purchase of electricity by a producer for reselling to final customers is allowed for generators wishing to improve their supply to competitive customers only for an amount up to 20% of their own generation capacity.

The new Electricity Law also establishes a TSO which operates inside EDF, being independent, from a managing point of view, from EDF's other activities. EDF is the owner of the network

Its Managing Director is nominated by the Energy Minister, among 3 candidates proposed by EDF's President. The TSO operates and maintains the public electricity transmission grid, and helps the Energy Minister in defining the five year plan. It is also responsible for the development of the grid. To assure technically the access to the grid. the TSO implements all the programmes previously established (dispatching, supply, consumption). These programmes are established respectively by generators, distributors, and final customers, for electricity quantities on trade next day.

A Committee of Transmission Network Users was created in Feb. 2000; composed of users such as generators, eligible consumers and distributors; its role will be to listen to users' claims and to support TSO's impartiality.

EDF and around 170 Non Nationalised Distributors "DNN" (régies, sociétés d'économie mixte, sociétés d'intérêts collectifs, coopératives) have the monopoly of distribution. They are the Distribution System Operator.

In the Nordic countries Norway (January 1991) and Sweden (January 1996) have been pioneers in the process of liberalisation of the electricity sector.

The main characteristics are: abolition of the generation and energy sales monopoly, freedom of choice of the customers concerning their electricity supplier, unbundling (legal or accounts) between generations and energy sales businesses; full de-integration between the transmission business and the grid operation business; creation of a wholesale market; technical regulator and competition authorities sharing the market monitoring.

The functioning of the 4 Nordic countries is linked because of a common wholesale market.

Although not a part of the European Community, Norway is part of the EEA; an integral part of the Nordic market, Norway is a relevant and significant example of reorganisation of the electricity sector.

All four Nordic countries have dominant public ownership in the electricity sector, but with considerable variation. The Norwegian industry represents the most "pure" application of the public sector model, while Sweden and Finland, with a larger share of private ownership, come closer to a mixed economy model. With its large share of direct consumer-ownership, Danish industry represents a special variant of the Nordic model.

In Norway, privatisation and vertical de-integration of companies never was a purpose of the reform. 30% of generation is supplied by a publicly owned company, 55% by local authorities, 15% by a private self-producer. A state-owned company operates the grid. and 220 distributors are active at the local level. The separation of businesses into divisions is mandatory; if a merger or a take-over happens, the creation of a subsidiary is

In Sweden, the reform encouraged the formation of national champions and accelerated the vertical and horizontal concentration of the industry. Privatisation has never been the aim of the reform. The major part of the electric sector does not belong to the State but to local collectivities. 300 companies are active in generation, but 50% is provided by the national state-owned enterprise, and another significant share by municipalities, but private enterprises are also present. Transmission is the responsibility of a sole state owned enterprise, the same that had been the system operator since 1992. Distribution is now in the hands of 240 companies, but this number will decrease in the future.

In Finland, the reform brought consolidation of the State position and structuring into purchase organisations. The Finnish State seeks to reduce its stake in public majority holdings. At the time being, generations sees a mixture of public and private ownership. with regional companies, municipalities and self-producers having a significant role: 400 plants are shared by 120 generators. The grid is owned by a mixed capital company (private, state, institutional investors), which is also the sole operator in transmission. Distribution at the local level (about 110 distributors) is divided between municipal utilities, private companies, and a majority of mixed capital companies, in which municipalities are the main shareholders.

The Electricity Exchange (owned in equal parts by the transmission operator and a municipality) started trading operations in 1996.

In Denmark, production, ownership of the transmission grid, operation of the transmission grid and distribution must be organised in separate legal entities. A restructuring process is under way in generation, with recent or planned mergers between the original utilities owned mainly by local grid operators. There are two different transmission systems (East and West), both independent legal entities; the eastern transmission system is linked to Nordel. Local distribution has a strong tradition municipal/consumer ownership: 90 companies (municipal mainly in cities, co-operatives outside, but also some private enterprises) cover the market. A rapid reorganisation is taking place here as well.

Companies owing nets and providing electricity (have an obligation to provide) must function as non-profit companies. Production companies, commercial electricity companies and service companies are free to work as business organisations.

The situation is really different in each of the Nordic countries because of natural and economical reasons: for instance, in Norway electricity generation comes from hydro at 99%, and generation costs are low; this may change because the new government is interested in natural gas resources. Sweden and Finland have a lot of energy-intensive industry; Denmark hasn't.

Acess to market

In Germany market entrance is in principle free. According to Art. 3 of the 1998 Energy Law new operators in the electricity sector are required to apply for an authorisation, but this authorisation may only be refused if the company does not have the capacity to operate in the energy sector due to a lack of technical or economic capacity or know-how. This refers to all undertakings which operate in "energy supply", namely distribution to end-users and trading.

The construction of new production capacities is free. The former authorisation, the socalled investment control, had been abolished by the 1998 Energy Law.

There is no auction of franchises in the German energy law. Since the new Energy Law came into force franchise areas are no longer exclusive. Territorial authorities conclude so-called concession contracts with energy undertakings. In these contracts, the undertaking is granted the right to supply the final consumer directly with electricity and gas in the local authority area by using public ways. There is no public procurement of the concessions either.

In France, new generation capacity must be authorised by the Government, on the basis of the five-year program. When the program does not cover demand, competitive auctions will be used; in practice, it is useful to remember that 90% of the generation market is controlled by EDF, and that the French market shows a surplus of capacity. Entrance of new operators (such as the big water utilities) is discouraged not only for the capacity surplus, but also because an extension of collective agreements of the electricity and gas sector is a matter of concern, involving an estimated level of salaries 40% higher of the normal average salaries in other sectors.

In the Nordic countries, procedures to enter the market share some common features, but show also specific concerns.

In **Denmark**, the main objective is reduction of CO2 emissions; nuclear and new coal plants are forbidden, and new plants or change of property need an authorisation from the Minister for Environment and Energy. For construction of off shore wind parks a tendering procedure is established. Criteria for generation authorisation are to be specified within year 2000; a license is required for production by plants with capacity of more than 25 MW.

Transmission activity and grid activity must have a license by the Minister for Environment and Energy for specified area and a definite minimum time: 20 years for transmission, 5 for local distribution.

In Finland the general authorisation system, mainly directed at ensuring security of supply, environment protection and respect of land use rules, is applied to installation of

No licence is required for generation. A licence is required from the EMA to build high voltage grids and operate the grid, as well as for each separate line of local distribution networks.

In Sweden as well installation of a new plant requires an authorisation and respect of non-energy specific procedures regarding planning, environmental protection, natural resources etc.

Authorisation by the Government, through the Authority, is required for network concession (either for a line for 40 years or for an area for 25 years); construction and operation of any kind of line or network requires a concession by the Net Agency.

An authorisation is needed in Norway as well for new plants, and a concession to develop and operate a distribution network, with account unbundling mandatory if the operator has other activities.

Local supply activities are submitted to a licence delivered by NVE for 10 years maximum.

Acess to the grid

In Germany, the new Energy Law provides two procedures for the organisation of network access: either negotiated third party access (NTPA) or access through the single

buyer system. The respective rules contain an enforceable title for the users of the grid to network access, but do not lay down the terms and conditions for using the grid.

The associations representing the German industry and the electric utilities (VDEW, VIK, BDI) were required to draw up a framework for network access charges, the so-called Association Agreement on Criteria to Determine Transition Remuneration (Verbändevereinbarung). A first version of this agreement entered into force in May 1998. In December 1999, it had been replaced with a revised version (Verbändevereinbarung II). Contrary to the first version the new system of network access charges is not distance-related. However, the German market has been divided into two trading zones, a northern zone and a southern zone. Network access that includes the transition from one zone to another, as well as the cross-border transition is charged with an additional 0,25 Pf/KWh.

The detailed procedures for grid access, especially with regard to the technical terms and conditions, are spelt out in the so-called Grid Code and Distribution Code. These codes are supplementary to the Association Agreement and had been negotiated by the above mentioned associations.

There is currently no independent regulator to control the pricing of access to the network. However, the 1998 Energy law gives the Federal Economy Minister the right to introduce a more specific regulation at a later date. Until then, the Cartel Office will have to use the instruments in the field of abuse of market dominance to control discriminatory network access prices.

Consumers at all levels are free to choose their electricity supplier. The German legislator did not open the electricity market gradually, following the market opening procedure of the electricity Directive, but without thresholds and without transitional periods for certain groups of customers. This means that since the 1998 Energy law entered into force all industrial and commercial customers as well as private households are free to choose their supplier. Consequently, there is no distinction between captive customers and free customers.

In France, all eligible customers (defined as a final customer whose annual consumption on a site is superior to a threshold fixed by decree) can choose their electricity producer. The contractual framework for the electricity supply must be at least three years

Since 19 February 1999, Third Party Access regulation establishes that: all customers above 100 GWh/year can choose their supplier (direct effect of the directive).

Final customers above 16 GWh / year (30.27% of market opening) will all have access to the grid as soon as the decree is published, in a very short time.

Eligible customers are generators, distributors, owners or operators of rail grids or urban transportation grids.

In order to supply their establishments, their subsidiaries, their parent companies, generators may build additional direct lines to the public transmission and distribution grid, but they need an authorisation. A refusal of access can only be justified by objective, non-discriminatory and published criteria, concerning either the proper functioning of the public service or lack of capacity.

In the Nordic countries access to the network is regulated with different intensity.

In **Denmark** regulated TPA are used both for transmission and distribution network; for both the non-distance-related postage stamp principle is applied. Tariffs are published.

A levy on the use of the distribution network has been introduced, but postponed pending the approval of the Commission The intention is to make electricity cheaper for large consumers, differentiating the levy for large industry, industry and households.

Access to the grid is limited because of the dispatch priority given to co-generation.

Customers with demand in excess of 100 GWh can choose their suppliers since 1998, and from April 2000 customers in excess of 10 GWh; all customers will be free to choose from Jan. 2003. However, since distributors have been included in the definition of eligible customers, the market involved is, as of now, 90%.

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Finland also has regulated TPA, but regulation acts ex post and is light-handed. Tariffs

Since November 1995 customers in excess of 500 kW are free to choose suppliers, and in theory this is true of all consumers since January 1997. In practice the domestic market are published. has been opened to competition in September 1998, with the introduction of new base load profiles.

Regulated TPA is also the rule in Sweden, where access can be refused only for lack of capacity. Terms of access, including tariffs, should be reasonable, non-discriminatory and based on objective calculations. Consumers' interest should be taken into account when setting the tariffs, and prices should be as stable and low as possible.

The postage stamp principle is applied, and tariffs reflect all costs for operating and handling the grid. Tariffs are published.

Since January 1996, 100% of consumers can theoretically choose their supplier. In practice costs for changing suppliers and required time for notice of change have limited this possibility. Since November 1999 consumers can change supplier with no charge up to 4 times a year, and it is possible to change on the first day every month.

Norway has regulated TPA as the other Nordic countries, but here the regulator acts ex ante and can be considered heavy -handed. Tariffs are published.

All consumers can choose their supplier since January 1991, but in practice change of supplier has been free since January 1997, with the abolishment of annual charges.

### Electricity imports

In Germany there is no special regulation concerning the import of electricity. However, the 1998 Energy law contains a reciprocity clause in conformity with the European electricity directive's reciprocity clause. The German reciprocity clause is slightly different from the European model, including energy supply contracts with market players from non-EU-countries.

The new Association Agreement provides a special fee for cross-border access to the network. This has an important impact on energy imports. It is likely that it will contribute to a distortion of the electricity trading within the EU-market. For this reason the European Commission has expressed its concern about this regulation.

In France distributors can buy electricity on the free market only to cover demand from eligible clients.

Import and export between the Nordic countries is limited due to the maximum capacity of the border network and existing bottlenecks.

All monopolies of import and export have been abolished, but there still are limitations due to technical reasons (interconnections), to border tariffs and to special arrangements (for instance in Germany) preventing an efficient trade pattern.

As regards Direct Current lines as found in Scandinavia and in the UK, a specific tariff should be adopted.

On 30-31 March 2000 the Florence process adopted measures for cross-border tariffs in the UCTE area for a transition period of 1 year from October 2000; these tariffs do not apply to the Nordic area, and therefore special account has been taken of Denmark.

The Energy Council of 30 May 2000 recognised the necessity to harmonise national systems of cross- border tariffs, including a reallocation of charges between generation and consumption.

While the transition mechanism holds the principle of a common compensation fund for transit countries, Germany and Belgium, contrary to France, ask that compensation be based on transactions and that generators, non-exporters and non-importing consumers should not pay cross-border taxes.

Regulatory bodies and regulations

In Germany there is no special regulatory body that deals with the regulation of the electricity market. Different authorities on all levels - federal, Länder and local level are responsible for different regulatory tasks.

The Federal Economics Ministry is responsible for the authorisation procedure concerning new energy utilities. In addition to that, the 1998 Energy Law entitles the Economics Ministry to regulate the terms and conditions of the network access, if this seems to be useful at a later time.

Electricity tariffs for domestic customers are regulated according to a special ordinance. which makes the Ministries of Economy of the 16 Bundesländer responsible for authorising the electricity tariffs. In principle there is no nation-wide common tariff, but the aim of the ordinance is to keep prices at the same level within a certain region. Actually it is being discussed whether to abolish this sort of price regulation, due to increasing price differences within all groups of customers. With regard to domestic customers this is possible because they are entitled to have special negotiated contracts that do not refer to the common tariffs.

With regard to network access there is no specific regulation. However, the association agreement provides a special body responsible for the clearing and settlement of disputes.

The anti-trust authorities also have a role in the sector: apart from the classic tasks in the fields of mergers and acquisitions, the German anti-trust authorities both on the federal level and on the Länder level are responsible for monitoring the abuse of market dominance. This means that in practice they are responsible for network access matters in the energy sector, namely network access fees and bottleneck issues, because there is no specific regulation. They are also responsible for supervising energy prices for domestic customers, as far as companies abuse their market dominance.

In **France** the 10 February 2000 Law creates an independent body ("Commission de régulation de l'électricité" CRE) composed of 6 members nominated by the government, the Parliament and the CES for 6 years.

A decree was published on the 28 March French Official Journal, to nominate the first 3 members.

CRE's tasks can be summed up in the following:

- To be consulted on the future draft regulatory texts relating to the organisation of the electricity sector in France, as well as those containing the regulation of transmission and distribution Third Party Access;
- To give advice on the setting of tariffs for non-eligible customers;
- To determine the tariff for access; tariffs are mandatory, non-discriminatory and have to be published. The tariffs will probably be based upon the postage stamp approach, i.e. without any distance-component.
- To protect the interests of all customers (eligible and captive).

#### Ex post:

- Investigation powers; CRE may impose sanctions for violation of law provisions concerning access to the system or of implementing regulation.
- To decide disputes concerning access between users and managers of the transmission and distribution systems.

### Financing:

- CRE may get some fees;
- CRE proposes to the Energy Minister a budget which will be in the State general budget, and submitted to the Cour des Comptes monitoring.

CRE also takes decisions for arbitrage matters, with possibility of appeal.

In the Nordic countries, the amount and ways of regulation vary from country to country.

Technical regulation

It shows varying degrees of intensity, from what could be considered heavy-handed (for in shows varying degrees of intensity, from what could be considered fleavy-handed (for instance, price regulation based on price cap, rate of return, incentive-based...), to a more light-handed approach (for instance, price control based on ex-post investigation, independent tariff setting, case by case...).

Denmark has an independent regulator, The Energy Supervisory Board, replacing the former Electricity Price Committee; the Board is not subject to instructions from the Minister for Environment and Energy.

Costs for the Energy Supervisory Board are met by the companies supervised. Its decisions can be appealed to the Energy Complaints Board.

The main functions of the Board concern inspection and complaints, and imply tasks such

- submitting an annual account of its activities to the Minister

establishing a publicly accessible register of notified charges, terms, technical requirements and standards

reception of notifications from companies (prices, charges, requests for transit, ...)

preparing and publishing periodical analyses of revenue and cost matters pertaining to the collective electricity supply companies and assessments of the performance of

taking any other steps necessary to ensure transparency with regard to prices, charges,

laying down rules concerning the manner in which such matters are to be made public by the companies and rules concerning invoicing and specification of costs vis-à-vis recipients of transport and energy services

requesting services of impartial experts.

In **Finland**, the Electricity Market Authority (1995) will be changed into the Energy Market Authority as of August 1, 2000. In addition to the supervision of the electricity market, it shall be responsible for the supervision of the natural gas market as well. The EMA is subordinate to Ministry of Trade and Industry, but independent in its decisions, which can be appealed to the Supreme administrative Court.

90% of functioning costs are financed through fees collected from the network firms, the remaining part from the State budget.

The main functions of EMA concern promotion of sound and well-functioning competition in the electricity market, through:

control of monopoly activities: (network pricing case by case, pricing of electricity to captive customers; terms of sales of network services);

issue of licences for network operations;

collecting and publishing of price information;

Price control is dealt with through light-handed interventions, such as ex post investigation, independent tariff setting; case-by-case (?); investigation starts through a complaint or on the initiative of the EMA); extensive publicity is given to price and accounting data, and intra-branch benchmarking.

The EMA and the Finnish Competition Authority closely co-operate in control functions.

In Norway, the NVE (Norwegian Water Resources and Energy Directorate) is subordinated to the Ministry of Petroleum and Energy and is responsible for administering the nation's water and energy resources. Interventions and regulations are more heavy-handed than in Finland; NVE acts ex-ante, regulates network charges and issues licences.

In Sweden the Network Authority has been active since January 1998. It is part of the Swedish National Energy Administration and its decisions can be appealed to the Public Administration Court. It can be considered a light-handed regulator, and most of its

- checking that prices are transparent, verifiable, non discriminatory, based on grid costs and ensuring a reasonable return on investments;

ex-post control of tariffs published by distributors (for example, in 1998 the regulator just published distribution grid tariffs and announced an inquiry; the result was a drop in these tariffs).

Competition regulation is also relevant for the electricity sector in all Nordic countries.

In Denmark, the Competition Council enforces the Competition Act.

Danish competition law is enforced primarily by the Competition Authority, divided into several branches; one of them deals with energy matters.

Danish competition authorities report to the Ministry of Industry.

In Finland there is an Office of Free Competition (OFC), subordinate to the Ministry of Trade and Industry, and a Competition Council, exercising judicial power in competition matters; its decisions can be appealed.

The Finnish competition authorities do not have a formal authority to intervene in the electricity market like its Nordic colleagues.

A special case is that no company with generation and distribution assets is allowed to own more than 25% of the national transmission lines (400 kV).

Due to the decentralised structure of Finnish electricity supply industry no interventions by OFC have taken place up to now.

In Norway, the Norwegian competition authorities have adopted a liberal position towards structural developments in the electricity market.

No interventions occurred after the introduction of the Nordic wholesale electricity market.

The Nordic market is considered as the relevant market when looking at market concentration.

In **Sweden**, the Swedish Competition Authority was established in 1992. The Competition Act of July 1993 is based on EU's competition rules.

Intervention is considered only on industry reorganisation, not to change an existing

The Swedish Competition Authority has adopted a liberal attitude towards horizontal sales co-operation; it has not intervened against acquisitions in the electricity sector, and has not been a barrier against structural developments in Swedish electricity industry.

Competition authorities seem to have adopted the view that it is the Nordic total market which is the relevant market for comparison, not the national markets.

The Norwegian and Swedish Competition Authorities have a real power to intervene, but have so far been very reluctant to do so.

Their Finnish counterpart does not have formal authority.

Regulators in the Nordic countries have kept stable prices for network services (Sweden) or in slight decrease (- 6% in Norway).

General economic interest and public service obligations

Article 3 of the European directive enables the Member States to impose general economic interest obligations on energy undertakings. How is this concept applied in the practice of the different Member States?

In **Germany** there is no commonly accepted concept of public services in the energy sector. Nevertheless there is a highly differentiated system of rules touching the above-mentioned general economic interest obligations. The starting points are: laws on the federal level, on the Länder level as well as on the local level. There are also bilateral contracts as a basis for these kinds of obligations. No general law or regulation determines general economic interest obligations in the energy sector, but there are lots of specific rules about single aspects. Within the German law the term "general economic interest obligation" is not known. Instead, this is referred to as "Daseinsvorsorge" (providing basic services).

Art. 20 of the German federal constitution ("Grundgesetz") states the so-called principle of the social state based on the rule of law. This means that the Republic is obliged to guarantee the fulfilment of the basic needs of all citizens. This may be seen as the legal basis for the principle of universality. With regard to the local level, Art. 28 of the constitution says that municipalities are responsible for providing fundamental services to the citizens and that they are entitled to organise these services autonomously.

According to the 1998 Energy Law the philosophy of the new framework is to guarantee a secure, reasonably priced and environmentally friendly provision of energy. In addition to that utilities that provide energy to the general public are obliged to supply energy to all customers in their supply area. Besides, the above mentioned ordinance about domestic electricity prices, similar to the 1998 Energy Law, states that electricity should be secure reasonably priced, efficiently used and environmentally friendly. Furthermore be secure, reasonably priced, efficiently used and environmentally friendly. Furthermore it determines that the electricity tariffs have to be transparent and fair. The principles of universality, continuity and transparency can be implied from the legislation mentioned

The Act against Restraints of Competition (Gesetz gegen Wettbewerbsbeschränkungen) states that the abuse of market dominance is not allowed. This and other regulation in the field of competition law aim at protecting a fair and non-discriminating competitive market. The former special rules for the energy market have been abolished in 1998 when the new Energy law took effect.

There are special ordinances about the terms and conditions for the supply of electricity and gas to domestic customers (AVB EltV, AVB GasV). These ordinances contain rules about the quality and the continuity of the energy supply.

Last but not least the by-laws of the 16 Bundeslander regulate the conditions for the activity of municipally owned enterprises. The local authorities are obliged to fulfil public tasks in their respective area. This could be interpreted to mean that they are responsible for providing a universal and continuous service. Furthermore, the by-laws state that municipal companies need to justify their economic activities; they are only allowed to act economically if there is a public purpose. This refers to the principle of efficiency. As far as concession agreements are concerned, most by-laws determine that these contracts are allowed if they do not hinder the fulfilment of public tasks and do not jeopardise the economic public welfare. This seems to refer to the principles of universality and continuity.

In addition to these laws and ordinances general economic interest obligations are part of the common concession agreements between local authorities and municipal or other energy companies. These contractual clauses usually refer to the universality of energy supply in the respective area as well as to environmental obligations.

Apart from these above-mentioned rules there are no special control mechanisms that refer to the quality, scope and level of services.

The concept of universal service as such is not a commonly accepted concept in the German energy sector. However, the 1998 Energy Law stipulates that energy utilities which are responsible for supplying energy to final customers are obliged to compulsory connection of the customers in their area.

In France it is significant that the title of the new Law is: "modernisation and development of the electricity public service"; "the purpose of the public service of electricity is to guarantee a supply of electricity to the entire national territory, in the respect of general interest."

In practice this means:

- Ensuring the balanced development of the supply of electricity,
- Developing and operating public transmission and distribution systems,
- Supplying electricity to non eligible, emergency supply, ...
- Regulated tariffs for captive customers: the principle of national geographic péréquation ensures the application of standard tariffs all over metropolitan France and overseas départements. Tariffs have to be approved by the public authorities upon proposals from the CRE.

- Purchase obligations: EDF and DNN are obliged to buy electricity produced in France from:
  - \* households wastes or heat and power networks;
  - \* and for renewable energy or CHP plants with an installed capacity / site <12 MW. Additional costs are supported by the "fonds du service public de l'électricité".
- PSOs can be a motivation to refuse the access to the grid.
- Compensation of PSOs charges, such as additional costs for tenders, purchase obligations, and for generation in non-interconnected areas. The amount of compensation is determined by Ministers upon a proposal from the CRE, and compensation is provided by a specific fund of the public service of electricity production ("fonds du service public de la production d'électricité") controlled by the Caisse des Dépôts. The fund is maintained by a levy on certain operators pro rata to the number of kWh delivered to final customers, and finances operators who incur

The compensation of public distribution charges is assured by the "fonds de péréquation de l'électricité" established by the 1946 Law.

- A special authority (the National Observatory for the public service of electricity. "Observatoire national du service public de l'électricité") has been set up, to examine the conditions of implementation of public service. Regional observatories
- A fund (fonds de péréquation de l'électricité) keeps covering additional costs of distribution to people in precarious situation and allows them not to be deprived of electricity, which is considered as a first necessity commodity.

There is no concept of universal service in the directive 96/92.

In the **Nordic countries**, public services obligations are considered in different ways:

In Denmark, the Danish Authorities have not yet notified any public service obligation pursuant to the Electricity Directive to the Commission.

However, it's expected that Denmark will notify 3 main types of PSOs:

- maintaining security of supply (quality and balance of supply, secure capacity of transmission and distribution network, maintain necessary production capacity and
- consumer protection (right to be connected to the grid and to be supplied electricity on fair conditions -regulated prices- if the consumers do not want to purchase electricity on the liberalised market)
- securing environmentally benign electricity generation (Renewable Energy certificates; Purchase obligation: distribution companies have a duty to purchase electricity from local combined heat and power stations (small-scale) and from electricity producing plants that utilise biogas, waste or other fuels that may be renewed or renewable energy. Finally, the electricity distribution companies shall purchase electricity from other existing CHP stations that are specifically designed to deliver heating (large CHP) in the case that the CHP has lost large market shares, and to the extent that the electricity cannot be sold at prices that recover the necessary costs of the electricity generation in question. This scheme, which only includes the 15 existing large CHP plants, is phased out towards the year 2006, and CHP producers who choose this scheme may not make any profit. The scheme consequently is one of preventing stranded costs).

The cost of public service obligations shall be covered by all Danish consumers proportionately.

(Access to the grid is limited because of the dispatch priority for co-generation. (PSOs))

In Finland, the Electricity Market Act contains an obligation to supply electricity. According to the Act an electricity retailer in a dominant position shall deliver electricity at reasonable prices upon the request of a customer if the customer has no other economically competitive opportunities to buy electricity via the power network.

Also a number of other obligations imposed at the network operators or electricity suppliers may be seen as public service obligations.

The Network operator has an obligation to:

- connect new customers
- transmit anybody's electricity
- develop the network
- apply undiscriminating network pricing
- respect regulations for the quality of electricity (in lower statutes).

The Supplier must abide by regulations concerning disconnection of a customer (due e.g. to unpaid bills), especially in winter-time.

The concept of PSO as such is little known in Finland. The above-mentioned obligations in the legislation have been justified by market functioning, consumer protection, or other

In Sweden, the Swedish government has notified the following public service obligations to the Commission:

- network tariffs (non distance-related, net operators are required to charge same net network tariffs from distance-related, her operators are required to sharps that tariffs for similar customers in its area despite differences in actual costs, tariffs must be cost-related but also fair, which implies that a net operator must take all his lines into account when calculating the tariff for a specific line to avoid that high costs for certain lines are not only paid by customers directly connected to that line);
- all final customers, including industrial customers, must be connected to the national electricity system. In order to minimise the costs of the entire network (main, regional, local grid) all customers are consequently obliged to be connected to the local grid unless the operator of the local network gives its consent for the direct connection to a regional line. The large customers are hence contributing to the operation of the entire network and are reducing the costs for the smaller customers. A consequence of this obligation is a very restrictive policy towards authorisation of direct lines between producers and customers, including own subsidiaries, as this could lead to higher tariffs for other customers, especially small customers. In fact, direct lines would only be authorised if they are beneficial from the point of view of the society. This implies that there must be lack of capacity in the network and it is not deemed economical or beneficial to develop new capacity in the network.

Until 1 November 1999 when all customers got the opportunity to switch supplier without investing in special meters, the Electricity Act included the system of supply concessions which obliged concessionaires to supply electricity to all customers who did not want to be supplied from third parties. This system has now been abandoned.

In Norway, every concessionaire of a grid has a supply obligation on its area and must inform customers of liability and quality of supply. No supply obligations are set towards poor consumers (electricity is not a solidarity instrument).

# Implementation of the European Directives and results achieved with regard to the general economic interest in different countries

#### Electricity

On 16 May 2000 the Commission adopted a communication on the implementation of the single electricity market. It insists particularly on the importance to guarantee the highest quality level of public services inside the Community.

In most European countries the process of transposition of the European Directives in national laws has been completed, with practical results considerably different in different countries, as shown in the following table:

Countries	Liberalised market share allowed in year 2000	Total liberalisation forecast
Austria	30	2004
Belgium	33	2006
Denmark	90	Not defined
Finland	100	Already existent
France	30 (foreseen)	Not defined
Germany	100	Already existent
Greece	28 (foreseen)	Not defined
England Wales	100	Already existent
Italy	35	Not defined
Ireland	28	Not defined
Netherlands	33	2007
Portugal	30	2006
Spain	46	2007
Sweden	100	Already existent

Where do these differences come from? Many factors influence the course taken in implementing the European Directives: mainly the pre-existing structure of the industry (number of actors, type of property, etc.), and different policies and preferences of the

In Germany, the Electricity Directive had been implemented by the 1998 Energy Law which entered into force on 29 April, 1998. The Gas Directive has not yet been implemented. However, with regard to access to the system the associations representing the gas industry and gas utilities are negotiating an Association Agreement about network tariffs in the gas sector which is likely to take effect before the implementation of the gas directive.

Since no transitional regime has been set up, the main problem arising is to spread the benefits and risks equally among all groups of customers. However, the existing price situation shows important price differences even within similar groups of customers. The problem of the so-called "cherry-picking" leads to advantages for big industrial customers at the expense of small and medium, especially domestic customers. In addition to that, smaller utilities suffer from non-transparent wholesale market prices and from a nonexistent regulation of network access.

The German Economics Ministry is of the opinion that energy companies are not fulfilling services of general economic interest, which is another way of saying that they are not charged with public service obligations according to Art. 86 para. II of the EU-Treaty, but at the same time leaves the regulation of the conditions for network access to the market players. This makes it difficult to evaluate the "desired results" from the point of view of the government.

On the one hand, from the point of view of the final customers, the continuity, efficiency and quality does not seem to be a problem. Instead, it seems to be necessary to find a more efficient regulation concerning principles of equality and transparency of energy prices as well as network fees. This concerns small and medium energy companies as well as final customers in the domestic and industrial market.

In **France** the postage stamp approach, all the transitional rules set up, and the fact that there is but one transmission grid with one grid operator, whose activities are closely monitored by the regulatory authorities, make it easy to open up the French market to

The notion of public service is highly defended (cf. the title of the law, and the legal definition of the public service of electricity).

In the Nordic countries, Denmark passed a number of laws from 1996 to 1999 dealing with implementation of the European Directive.

The Danish electricity market was the last in the Nordic to de-regulate. Two main problems remain: the definition of eligible customers (including distributors) alters the market opening; dispatch priority for co-generation hampers free access to the grid.

Finland, with laws passed from 1995 to 1999, went further than the requirement of the directive.

Sweden also went further than the requirement of the directive, with laws passed from 1995 to 1999.

Norway, not a member of the EU, set up its reform with different aims: not to privatise. but to make more efficient a split-up electric system.

#### Gas

Directive 98/30/CE should have been transposed in national legislation by Member States Directive 98/30/CE should have been transposed in national legislation before the deadline within Aug. 2000. Some countries have passed primary legislation before the deadline and are now in the process of completing the framework; this is the case of the UK. Spain, Germany and Belgium. In all other European countries legislation has been advanced and is being discussed in national Parliaments in view of the August deadline; Greece and Portugal are a step behind, but no requests for delay have been presented as Greece and Portugal are a step behind, but no requests for delay have been presented as

The two following tables are a summary of the state of gas industry reorganisation in different countries.

# Gas Directive transposition in some European countries

	Directive	U.K.	Germany	Spain	<del></del>
Normative basis	Directive 98/30/CI	Gas Act, 1986 Gas Act, 1995	Energy Industry Act, 1998		Belgium  Law on Gas  Market
	20%				organisation, 19
Degree of market openness and eligibility limits	20% at opening 28% in 2003 33% in 2008 Eligibility: gas plants for energy production, final users with con- sumption in excess of 25 Mmc in 2003, and 5 Mmc in 2008	All domestic use can choose freely since May 1998 among 25 suppliers; industrial users at free to choose since 1992 among 70 suppliers	eligibility limits	1999:60% (10Mmc) 2000:65% (5Mmc) 2003:72% (3Mmc) 2008:100%	aleotei-i-
Access to network	Regulated and or negotiated	Regulated access with published tariffs; transparent and non discriminatory rules of access (Network Code)	set by suppliers and buyers and buyers associations; obligation to publish access conditions. An agreement on TPA has been reached between: gas and water distributors (BGW), energy users association (VIK); enterprises association (BDI)	a Directive rules in case of refusal (Royal Decree 1914/97)	liberalisation Negotiated acces with obligation to publish access conditions. Adoption of a Behavioural Cod for access procedures
eparation f activities	for transportation, storage and distribution	Separated companies for transportation and Supply (TransCo and BG Trading)	Accounting separation	Separated accounts for vertically integrated activities and separate companies for activities in free and captive market	Separated account
ublic ervice oligations	Member States may impose public service obligations	Social and public service obligations in authorisation licences	Not defined	Gas services are considered a general interest activity. Storage obligations 35 days) for suppliers and	Obligations concerning quality safety and storage
guiation	maepengent	One authority for gas and electricity regulation since Jan. 1999 (Ofgem)	Antitrust authority (Kartellamt)	eligible clients Commission Nacional de l'Energia (CNE), competent for hydrocarbons, gas and electricity	Commission de régulation de l'électricité et du gaz
ciprocity	Commission	ĺ	Access denied if there is no reciprocity	Access denied if	Access denied if there is no

# Projects of transposition of Gas Directive being discussed in some European countries

		Denmark	Finland	Netherlands	France
oposal for	advanced in March 2000; now being revised after first parliamentary discussion	Law proposal (March 2000) now being discussed. Approval foreseen for July 2000	Law proposal approved in May 2000		Law proposal of May 2000  20% at first opening.
Degree of narket penness nd ligibility imits	Until Oct. 2002 electricity producers and final users in excess of Mcm 25; after totally free market. 50% from beginning, 100% after Oct. 2002	Limits proposed for market opening: 2000: 30% 2008: 48% Single eligibility limit around 35 Mcm, generation included	2000: 90%	2002: 60% (I Mcm) 2004: 100% (limits for cogeneration)	Eligibility: limits in line with the Directive
Access to network	Regulated access with obligation to publish general access conditions and price structure	Regulated access for distribution network and negotiated for transmission; obligation to publish main commercial conditions	Regulated access with obligation to publish access tariffs	Negotiated access to transmission and regulated to distri- bution; tariffs pro- posed by operators and controlled by Authority. Obligation to publist access conditions and tariffs	
Separation of activities	Separated accounts		Separated accounts	Separated accounts for vertically integrated activities; separate companies for distribution and sales.	
Public service obligations	Obligation to connect clients an to supply them in case of denial of access to the network	Public service d obligations concerning R&D activitie storage, suppl security, network safet and balancing	supply clients connected to the s, network	Service obligations for low consumptio clients; extraction from small sites; energy saving and sustainable development	Gas service is a public service with regard to prices (equal tariffs for captive clients), obligation to supply storage, interconnections A Commission will
Conflict regulation	Economic Affair Minister until 2002; an independent authority is considered		The Authority for Electricity will change to Authority for	Regulator for electricity changes energy regulator	to be set up for electricity and gas regulation
Reciprocit	у			and special provisions for safe	ì

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RAIL

#### The European Directives

Even if EC policy in the sector goes back to the 60s, the first important Directive comes at the beginning of the 90s (91/440/CE). The focus is, more realistically than in the past, on overcoming the rigidity of the natural monopoly typical of the infrastructure by separating the management of the network and the offer of services; responsibility for the former is placed on the States, while the offer of services is opened to competition.

Four main principles are set by the Directive:

- independence of rail operators, even when ownership is totally or partially by the State. The role of the State is limited to regulation and to providing rail infrastructure;
- separation of network management and transportation activities; this requires, however, only separate accounting and not necessarily different subjects;
- financial recovery is considered a priority, and responsibility for it is placed on the State;
- access to rail networks is granted, for combined freight services only, to international associations of operators or to national operators, through contracts with network managers.

Two other Directives complete this design: 95/18/CE and 95/19/CE.

The first one concerns licences to rail operators: licences are granted by the state on the basis of the usual criteria requested from contractual partners of public administrations: good repute, technical and financial competence. When the criteria are met any operator has a right to get the licence, but actual use of the network depends on specific agreements with its management.

The second deals with the problem of distribution of network capacity; this is certainly not an easy problem, since different concerns must be taken into account; special rights in capacity distribution, freedom in offering services, flexibility and optimal use of the network, possibility of access. The Directive has left this task to national bodies; the result is substantial discretionary control by national administrations on services, and a significant reduction of market space.

# Implementation of European Directives in different countries

Directive 91/440/CE has been transposed into national legislation in all countries, with the exception of Greece. Portugal has not implemented separation between network and transportation activities, and a few other countries (such as Italy, Belgium, Spain and Luxembourg) have not completely defined access rights. Transposition of the later Directives has only started. Different policies, tactical arrangements and timescales will probably result in different reorganisation processes, as has been the case for other public services.

Let's take a close look at a few cases, emblematic of different approaches.

# The British case

Structure of the rail sector

The UK rail industry following its privatisation was divided in over 100 parts, including:

- 25 passenger train operating companies awarded franchises for periods of 7 to 15 years;
- 1 monopolistic national infrastructure manager (Railtrack) owning and operating all track and associated infrastructure;
- 3 rolling stock leasing companies;
- 2 privatised rail freight operating companies.

Passenger and freight operating companies pay access charges to Railtrack to access the network. To ensure that passengers do not experience service reductions as a result of the privatisations process, conditions in the form of Passenger Service Requirements are attached to each franchise. Train Operating Companies have to contract to a minimum

level and pattern of services laid out in a timetable. The Franchise Agreement defines how long the franchise is, the level of subsidy from the government or, in the case of profitable franchises, the premium the Train Operating Company must pay. The agreement also specifies key fares.

An incentive regime also forms part of the agreement, designed to encourage the operators to reach agreed standards of punctuality and reliability for the service they provide. Targets for punctuality and reliability are set either at the same level or better than those achieved under British Rail. If the Train Operating Company fails to deliver at the required standard they can be penalised but if they achieve higher standards they receive bonuses.

#### Access to market

There is a public body, the Office of the Rail Regulator (ORR), which is responsible for granting operating licences to operators and for regulating access to track and stations. ORR also sets the levels of track access charges, promoting competition and preventing abuse of monopoly power and anti-competitive practices.

# Access to the network

Access to the network is regulated by contractual arrangements between the Infrastructure Manager and train operating companies. Under the track access agreement. Railtrack, the Infrastructure Manager, grants the train operator permission to use specified routes on the network. The agreement sets out the rolling stock which may be operated on those routes and the train movements which may be made using that rolling stock. Operators are required to work with Railtrack to develop a timetable.

Services to rail consumers (passengers or rail freight users), are provided by either the 25 passenger Train Operating Companies or by the 2 privatised freight operating companies.

On some routes, passengers can choose between different operators. The London-Birmingham route is served by several operators such as Chiltern and Virgin trains.

# Regulatory bodies and regulations

The Office of the Rail Regulator is a government department. The Regulator is appointed by the Secretary of State for Environment, Transport and the Regions.

In addition, a non-governmental public body, the Shadow Strategic Rail Authority (SSRA) was set up in 1999 by the Government to provide a focus and strategic direction for Britain's railways, to encourage investment and manage the passenger rail franchises. It is managed by the Franchising Director who is also appointed by the Secretary of State. Currently it is engaged in a process of replacing these franchises, with the aim of increasing capacity and improving the overall service to the customer.

The SSRA operates in its current 'Shadow' form, pending legislation, introduced to Parliament in November 1999, to constitute the Strategic Rail Authority.

The main areas of the Regulator's statutory functions are:

- the issue, modification and enforcement of licences to operate trains, networks, stations and light maintenance depots
- the enforcement of domestic competition law in connection with the provision of railway services
- the approval of agreements for access by operators of railway assets to track, stations and light maintenance depots
- consumer protection and promotion of passengers' interests

The Regulator has duties under Section 4 of the Railways Act 1993 which include:

- the protection of the interests of users of railway services, including disabled people
- the promotion of the use and development of the national railway network for freight and passengers
- the promotion of efficiency and economy
- the promotion of competition
- through ticketing

- minimisation of regulatory burden
- commercial certainty and security
- the protection of persons from dangers arising from operation of railways, with the advice of the Health and Safety Executive
- the environmental effect of railway services
- the financial position of the Franchising Director and holders of network licences (including Railtrack)

# General Economic Interest and Public Service Obligations

#### The Regulator:

- is responsible for deciding whether proposed closures of passenger services and railway facilities should be allowed to take effect.
- is under duty to investigate certain representations concerning contraventions of conditions attaching to licences and closure restrictions. The Railways Act lays down an enforcement procedure for the Regulator to use to secure compliance with conditions of licences and closure restrictions.
- has functions in relation to keeping under review the provision of railway services in Great Britain, the collecting of information in respect of such services and the giving of the information.

# The Franchising Director:

- is to ensure that no disruption to services occurs when a franchise agreement comes to an end. If no other franchisee is available to run the service immediately, the Franchising Director must secure the provision of those services.
- His main functions include the provision of services for the carriage of passengers by rail under franchise agreements, as well as encouraging efficiency and economy in the provision of these services.

#### SSRA

has to make sure that rail services are provided to passengers in accordance with the Passenger Service Requirements laid out in each franchise agreements, which set out a minimum level of service on each route.

Implementation of the European Directives and results with regard to the general economic interest

Political agreement was reached on rail policy, including international rail freight liberalisation. The package of three draft directives, constituting the rail package, liberalises access to a Trans European Rail Freight Network (TERFN), provides for separation of function between infrastructure management and train service operations and establishes a framework for infrastructure charging and for allocation of capacity. This institutional separation is already reflected in the existing practice in the UK.

Results in term of general economic interest are satisfactory: the system of PSRs protects most or all of the service pattern which British Rail operated.

# The French case

#### Structure of the rail sector

France started its reform applying one of the basic principles of Directive 91/440: separation of network and transportation services. An entity was created (Direction de l'infrastructure) in charge of network management; A state owned company, Réseau Ferré de France (RFF) is the owner of the infrastructure.

France has decided not to privatise, and has a kept high degree of vertical integration and of state control.

While RFF manages the rail network for the state, SNCF, unburdened of a considerable part of the debts run up in the last forty years, deals exclusively with passengers and freight transportation.

In 1997 important functions concerning passengers' transportation gave been transferred to the regions.

#### Access to market and access to network

The French network has not yet been opened to national or international competition.

An experimental tariff system has been devised, valid until 1999; computation takes in account three variables (right of access, right of circulation, right of reservation) depending on the importance of the line and from the time and day of transportation.

#### The German case

#### Structure of the rail sector

Germany has been one of the first countries to start a radical restructuring of the rail sector; the main features of the intended reform, presented 1994, were the merger of the two previous national railway companies to form one holding company, with three business areas: passengers, freight and infrastructure management.

As of today, heavy rail is provided 99% by Deutsche Bahn A.G.(state owned but privately organised). Local rail systems (metros and trams) are all owned by local administrations. The remaining share of the market is covered by small private companies.

#### Access to market and access to network

Heavy rail: companies wanting to operate on long distances have to propose to the administration, pay for using the infrastructure and operate - if they are allowed to - at their own risk; for regional trains there are calls for tenders, and the operator has to pay for using the infrastructure. No discrimination is allowed.

In practice there is no operator without Deutsche Bahn on long distances and only a small percentage of private operators for regional trains.

For metros and trams there is today no activity for tendering.

There is no choice of supplier by consumers; administrations of course choose when tendering.

#### Regulatory bodies and regulations

The regulatory bodies charged with the regulation are: the administrations of the central government for the long-distance transport and the infrastructure of Deutsche Bahn; the administrations of the German regions for regional transport and general aspects of local transport (metros and trams), the local administration for local transport.

The main tasks of the regulators are: to grant licences to operators; to call for tenders; to ensure that there is no discrimination in access to the infrastructure. The role of the antitrust authorities is not defined but in discussion.

#### The Spanish case

The railway sector in Spain retains a unitary structure for the time being in regard both to the legal structure and to actual operation (infrastructure management and rail service operations)

Regulation is the exclusive competence of central government and the state-owned public company RENFE has exclusive responsibility for all rail operations.

Some public services are the competence of the Ministerio de Fomento (infrastructures and transport): granting licences to undertakings applying to provide transport services; fixing conditions for access to infrastructure; approving safety rules; and acting as an appeal body if necessary to protect fair competition and to avoid preferential treatment.

RENFE however remains both the only authorised rail transport operator using the public rail network and also the integrated company with responsibility for managing rail

infrastructure (maintenance and traffic control). The State has not yet taken steps to regulate a competitive market.

Spain has transposed the existing Community directives relating to access to the rail sector (91/440, 95/18 and 95/19) but these are currently being modified in order to extend the right access rail infrastructure to new operators and to promote competitiveness.

When the amended directives have been transposed into national legislation, the organisation structure of Spanish railways is likely to be opened up. The government will therefore need to create the necessary protection mechanisms to be able to act as sector regulator and to provide a control structure for the market to allow competition.

# Implementation of the European Directives and results with regard to the general economic interest

There is a large package of new national laws; first steps in implementation have been taken, public owned companies are training hard for competition. We can see the beginnings of an open market, although networks are monopolistic bottlenecks. The discussion on which will be the right organisational forms is not finished.

It will take time to see the desired results in terms of general economic interest.

#### A variety of models

The policy of the EC for rail transportation has one main thrust: promoting a competitive market in public services. The building blocks of the Commission's design are: liberalisation of access to freight and passenger transport networks on international lines; construction of "super highways" in rail transportation; improvement of passengers transportation.

A new model of rail is created for the European Community, based on business criteria and competition: this implies State refunds to the railways operators for welfare policies, focusing of the operators on profitable activities with managerial autonomy, clear cut responsibilities of State and operators and the recovery of a solid financial structure.

It is recognised that States have the right to require the fulfilment of public service obligations from operators, provided that additional charges be covered by the State and freight and passengers' mobility on rail may be ensured. Welfare policies are thus a matter of choice for the different States and are paid directly by them; operators in public transportation must have clear accounting systems.

Compared with the Commission's design, the European Parliament has tended to underline more public service obligations and welfare policies and has asked for an adequate transition time with a special consideration for the level of prices.

If the EC policy has been clear and on the whole consistent, it must be acknowledged that the reality of rail transportation has not evolved accordingly for a variety of reasons: States' resistance, welfare policies, employment considerations, and probably also a lack of interest from prospective operators for a sector considered unappealing.

If we look at the UK, Germany, France and Spain, we see four significant examples of different models in the reorganisation of rail transportation.

The UK has created a process of total privatisation: not only transportation services, but ownership of the network (Railtrack) have been put on the market. Profitability for private enterprises is made possible subsidising operators for access to the network, whose financial and technical amortisation can thus be guaranteed. The outcome of this system has been that public expenditure for rail transportation is larger than before privatisation.

In Germany nothing has been privatised as yet; a separation process has been put in motion to create four different companies (freight, passengers, local transportation and network management), owned by a public holding company; the four companies will be put on the market in the future, but non conclusion is possible for the time being based on results.

France has nominally privatised the company responsible for rail services (SNCF), while keeping under public management the company in charge of the network (RNF). A strong vertical integration has been preserved and, notwithstanding valuable synergies,

important investments to improve the quality of service and entry into interconnected sectors (sea transportation, engineering, energy...) a larger deficit has been the result, with freight and passengers diminishing, as everywhere else in Europe.

In Spain, despite the transposition of the existing Community legislation, very little progress has been made in practice in creating a new structure to open access to new operators. This will only now be implemented following transposition of the amended access directives now on the point of approval by the EU institutions.

#### TELECOMMUNICATIONS

The telecommunications sector, a sector characterised by internationalisation, continual mergers and alliances as well as by constant technological advances, has played a pioneer role in the process of liberalising the network industries. It was one of the first sectors to change from traditional monopolies to a new regulatory framework based on competition. European regulation was expected to generate a new dynamism in the development of the sector, bringing beneficial repercussions in terms of productivity improvement. reductions of running costs, and the emergence of new products and services at equitable

At the EU level the liberalisation process began in 1980 and culminated at the end of the 90's. The starting point for a Community policy in telecommunications was the Green Paper on Telecommunications (1997). This document provided a sound basis for subsequent discussion, led by the Commission, on the methods of introducing competition, particularly on open network provision and on the separation between control and regulatory tasks and service provision. In the following years the regulation of the sector developed through a comprehensive set of sector specific directives, dealing with network access, interconnection, licensing, leasing of lines, numbering, data protection and other issues.

Due to the rapid rate of change in the sector the development of the European framework is still not complete. The legislative framework achieved to date has been primarily designed to manage the transition from monopoly to competition and was therefore focused on the creation of a competitive market and market entry rights. The plans for a new regulatory framework will take into account the development of the markets, the evolution in technology and the requirements of the user. They have recently been published by the Commission in its "Proposal for a Directive on a Common Regulatory Framework for Electronic Communications Networks and Services" 12. This legislative proposal contains important rules on fundamental regulatory issues relevant to this study, including a new regulation on universal service and users' rights as well as rules on the functioning of National Regulatory Authorities. We shall therefore examine it more closely

# Existing European Directives

The Directives 90/388/EEC, concerning Competition in Telecommunications Services Markets, and 90/387/EEC, concerning the Establishment of the Internal Market for Telecommunications Services by way of the Creation of an Open Network Provision (ONP) have established as the cornerstone of the EU regulation of the telecommunications sector. Both directives introduced competition to telecommunications services, with exception to telex services, radio courier services, broadcasting, and services provided via satellite. Under this regime, only the voice telephony service for the general public and the establishment and exploitation of the public network could be provided under special or exclusive rights. The data transfer service was subjected to a specific regulation: in this field Member States were entitled to introduce restricted competition by authorising only a limited number of operators. The right to network access had to be granted under public, objective, non-discriminatory

conditions, brought into line with those of other Member States. The fixing of tariffs remained the responsibility of the Member States. In regard to pricing principles, the Directives only set fundamental rules: prices must be: based on objective criteria; costorientated; clear and adequately publicised; and non-discriminatory. Basic and supplementary services must be separately priced. The granting of authorisations. operation, allocation of frequency bands etc. must all be administered by an entity independent from telecommunications organisations.

The ONP Directive is a framework Directive, and has given rise to a series of separate daughter directives in order to transfer the ONP principles to each specific service, namely to leased lines (Directive 92/44 of June 5, 1992), and voice telephony (Directive 95/62/EC of December 13, 1995, repealed in 1998). Other Directives concern satellite communication (Directive 94/46) and mobile communications (Directive 96/2).

Subsequently, the ONP Directive had been modified substantially by the Directive 96/19/EC of March, 13 1996 on the "Establishment of Full Competition in Telecommunications Markets". This Directive obliged the Member States to lift all restrictions that limit competition in telecommunications services other than voice telephony. It stipulated that the provision of these services, with the exception of voice telephony, the supply of public telecommunications networks and networks involving the use of radio frequency bands, only needed a general authorisation or declaration. In regard to licensing, the Directive permits limits to be placed on the number of licences. Apart from this market entry regulation, the other modifications dealt with pricing issues (concerning the interconnection provision and universal service obligations). the separation of accounts when special or exclusive rights are involved, and numbering.

The obligation to fully liberalise the services was reinforced in 1997 by an agreement signed within the WTO members (GTB agreement), that embraces more than 93% of the world telecommunications market.

In 1997 the regulatory framework has been modified by two other directives. The 97/13/EC Directive on General Authorisations and Individual Licenses of April 10. 1997 sets out specific rules based on the principles of the licensing procedures; individual licences are required to grant specific rights or to establish specific obligations on the holders of these; other cases must be covered by general authorisations.

The Directive 97/33/EC of June 30, 1997 concerns Interconnection in **Telecommunications** with regard to ensuring universal service and interoperability by applying the principles of open network access. This Directive deals with the rights and obligations of parties to interconnection agreements and the powers of and supervision by the regulator.

<sup>11</sup> Communication of the Commission, Towards a dynamic European economy, Green Paper on the development of the common market for telecommunications services and equipment, COM (87) 290 of

<sup>12</sup> Proposal for a Directive of the European Parliament and of the Council on a Common Regulatory Framework for Electronic Communications Networks and Services COM (2000) 393 of 12.7.2000.

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# Implementation of the European Directives

The following table gives an overview of transposition of harmonisation directives in different countries.

## (1.10.1999)

Directive	В	DK	D	EL	E	F	IRL	I	L	NL	A	P	FIN	S	UK
ONP Framework 90/387/EEC as amended by 97/51/EC	11	1	11	√ i)	1	1	1	1	√ i	11	√ i	<b>√</b> 1)	1	11	√ √.
Leased lines 92/44/EEC as amended by 97/51/EC	i i	<b>√</b> √	1	<b>√</b> 1)	1	11	1	√ r	i 🗸	>>	<b>4</b>	1) 1)	1	11	<b>Y</b>
New voice telephony 98/10/EC	i	1	1	1)	1	1	1	r 3)	i	✓	1	i	1	1	1
Licensing 97/13/EC	i	1	1	1)	1	1	1	i	1	1	1	1	1	1	1
Interconnection 97/33/EC	1)	1	1	1)	1	1	1	1	i	1	1	1	1	1	1
Numbering 98/61/EC amending 97/33/EC	1	1	1	1)	1	i	1	i	1	1	1	✓	i	1	2)
Data protection 97/66/EC	i	i	1	r	1	i	r	1	r	i	1	1	1	1	i

Legend:

✓ (Substantially transposed) i (Partially transposed) r (Not transposed).

1) (Recent legislation under examination) 2) (Deferment requested) 3) Old Voice Telephony 95/62/EC is substantially transposed.

(From "Fifth Report on Implementation of the Telecommunications Regulatory Package" COM (1999) 537 final).

# Proposal for a new Regulatory Framework

A complete revision of the existing European directives is now being discussed. The recently published "package of measures" is based on a horizontal view of all infrastructures and services in the communications sector, including broadcasting. According to the European Commission, a small number of specialised new Directives on specific regulatory issues will take the place of the twenty existing Directives in this field. The Commission has presented six proposals (one Framework Directive and five Directives on specific regulatory issues) as follows:

Fundamental questions will be dealt by the "Directive on a common regulatory framework for electronic communications networks and services". According to the proposal of the European Commission, this framework directive will set out a number of principles and objectives for regulators to follow, as well as a series of tasks in respect of the management of scarce resources. National regulatory bodies will be required to be independent and to act impartially in decision-making. Member States will have to state publicly which part of the regulatory body is responsible for fulfilling the rules of the different Directives. Following the explanations of the Commission, these requirements do not extend the obligations already imposed by the existing framework. Other provisions will establish: a right of appeal to a body independent from government; a right of the regulators to collect information from market players; and a right of the Commission to request this information for the Commission's purposes; and, where

applicable, obligations on national regulators to consult when they take decisions affecting third parties' interests.

It is noteworthy that these plans include a European regulation on the functioning of national regulatory bodies – a feature which is completely unknown in other sectors such as the energy sector.

Apart from the above-mentioned issues, the Framework Directive will deal with the fulfilment of policy objectives and regulatory principles by the national Regulators, the allocation and assignment of scarce resources, the granting of wayleaves, and the separation of accounts, particularly when special and exclusive rights are involved. Other provisions will stipulate a new definition of significant market power as well as procedures of market analysis that national regulators are required to apply.

Five other Directives will focus on authorisation, access and interconnection, universal service and user's rights and data protection as well as the unbundled access to the local loop:

The "Directive on Authorisation of Electronic Communications Networks and services" aims at harmonising the rules for authorisation of such services. The "Directive on access to, and interconnection of, electronic communication networks and associated facilities" aims at establishing a common framework for access and interconnection agreements across the EU. The "Directive on universal service and user's rights relating to electronic communications networks and services" will set out the user's rights, particularly in respect of universal service. The "Directive on the processing of personal data and the protection of privacy in the electronic communications sector" will update the existing framework in this field, and the "Regulation on unbundled access to the local loop" will introduce a requirement for local loop unbundling.<sup>13</sup>

The European Commission expects these measures to come into force after a consultation period of about 12 to 15 months.

### The Spanish case

REPORTS

The structure of the industry

In Spain there are no alternative access Networks to those of the dominant operator (Telefónica S.A).

In fact, the established operator totally dominates the provision of fixed access Networks, counting up with the 98% of the available user connections. (For the purpose of this calculation, mobile Networks are excluded). Currently, the only real alternative to the local loop are the mobile Networks given that Networks via cable operators are very limited.

In March 1999, the conditions for indirect access to the local loop of the fixed public telephone Network were regulated; which made it possible for other operators to access the local loop forming part of Telefónica's Network.

Interconnection constitutes one of the basic pillars in the opening process of the telephony market. Therefore, a series of obligations have been established for the dominant operator in the market (Telefónica) with the prime object of facilitating entry to new operators using the existing infrastructures.

The principle of obligation of the owners of public Telecommunications Networks to interconnect their Networks to those of all operators of the same telephony service providers was established. The agreements will be freely reached between the two parties, with the intervention of the Market Commission of Telecommunications (Comisión del Mercado de Telecomunicaciones - CMT) solely reserved for cases of disagreement.

Nevertheless, to promote competition, the dominant operator is obliged to publish an Interconnection Offer of Reference (Oferta de Interconexión de Referencia – OIR) which includes the description of the offers broken down into elements and the technical and

<sup>&</sup>lt;sup>13</sup> See Commission Recommendation of April, 26 2000 C(2000) 1059.

economic conditions, including price and quality levels. This offer to which the dominant operator is committed respects, in all cases, the freedom of negotiation between the parties. In fact the interconnection agreement now signed have not been based on the offer.

On the basis of the new legislation of July, 23 2000 (Real Decreto-Ley 7/2000) the Government will establish the conditions for the dominant operators of the fixed public telephone networks to facilitate the unbundled access as well as the shared access to the local loop, becoming effective by January 2, 2001. The Government will determine the prices for the first Interconnection Offer of Reference for the network operators with regard to both modalities of access to the local loop.

As to local calls, the new rules determine that by November 15, 2000 operators of the fixed public telephone networks considered as dominant are required to facilitate the proceedings of selection of "call by call operators" as well as of the pre-selection of operators, as far as digital telephone connections are concerned.

Furthermore, the new legislation aims to strengthen the information and transparency obligations and thus requires dominant market operators to present the results of the system of cost accounting. Operators who are not dominant but provide universal service obligations also have to fulfil these requirements.

The granting and interpretation of the OIR has created serious problems in Spain. The process of the grant is as follow: The dominant operator presents the proposal to the CMT, The Commission evaluates it and modifies it as it deems appropriate and sends it to the Ministry of Development (Ministerio de Fomento) who grants it. Telefónica itself has appealed against the offer in the courts.

Regarding the discrepancies in the interpretation of the rules guiding interconnection and Network access the following stand out: discrepancies between Telefónica and the entering operators regarding the number of connection points or the lack of effective application of the OIR which demonstrates the preponderance of negotiating power in favour of the dominant operator and the balance of interests that the new operators confront.

# Fixed Telephony

The market share is clearly led by Telefónica with billing that includes 98% of the total. (This figure drops to 94% if only, provincial, interprovincial and international calls are considered, which is were the entrants have fundamentally Competed). (Figures refer to 1998).

## Mobile Services

The market share is distributed between Telefónica and Airtel with 72.6% and 27.4% respectively. (Figures refer to 1998).

The granting of four individual licences to provide mobile communication services of the third generation (IMT 2000 - UMTS) is planned from March 2000.

#### Access to market

The general Telecommunications law establishes entrance to the market through two basic titles:

- General authorisations: these are required for certain Telecommunications Services (those which do not require an individual licence). They are conceded automatically (without the need of an express resolution by the public authority).
- Individual Licences: these are necessary to be able to provide services and operate in a more complex Networks. These are conceded freely but not automatically. They require an explicit resolution for every applicant specifying the content of the duties imposed.

They are required for the provision of a fixed telephony service available to the Public without own — Network (Type A), the provision of telephony services available to the public via the establishment or exploitation by the owner of a public Telecommunications Network (Type B) and the establishment or exploitation of public Telecommunications Networks which can not be made available to the public (Type C).

Regulatory bodies and regulations

There has been a separation of the regulation functions, understood as being the preparation of basic legislation and the regulation that develop it from, those of the regulation and administration of these with the aim of establishing some ground rules and acting on market forces. The former have remained within the government and the Ministry of Development (Ministerio de Fomento), while the latter have been transferred to the CMT.

The State has exclusive control over Telecommunications.

The Ministry responsible for Telecommunications policy is **the Ministerio de Fomento** and within the Secretaria General de Telecomunicaciones. The Ministry retains important functions:

- Responsibility for regulations
- Responsibility regarding market access
- Defining the required conditions for the concession of authorisations and licences
- Awarding the titles if tenders are required (due to the lack of limited resources public radio airspace)
- Amplification and revision of the services required by law as universal service
- Determining according to regulation the procedure for designing the dominant operators charged with guaranteeing the provision of the universal service
- Provisionally fixing maximum or minimum prices or criteria for its fixing as well as its control.

Another State body is the **Telecommunications Advisory Council (Consejo Asesor de Telecomunicaciones).** Its main function is to propose to the government whatever measures it considers opportune; to know and inform about legislative and regulatory projects and to issue reports on Telecommunications related issues.

The independent regulation body of the sector is **the Comisión del Mercado de Telecomunicaciones**, which does not form part of the general State Administration and is run by its own juridical regime in order to guarantee its autonomy from the government and State Administration (it is formally part of the Ministerio de Fomento, but this in no way implies a hierarchical definite system). Among its functions are the following:

- Control of market access
- Promotion of free competition
- Interconnection and access to Telecommunications Networks
- Price regulation
- Management of limit resources
- Control of the compliance of obligations of public service
- Consultancy

National Bodies for the Defence of Competition. Responsible for applying the law of competition in the national sphere are the Servicio de Defenca de la Competencia (which forms part of the Ministerio de Economia y Hacienda) and the Tribunal de Defensa de la Competencia (which is part of the previously mentioned Ministry but enjoys total functional independence). Both The Servicio and the Tribunal have acted applying the established principles in the Telecommunications sector, coming down against actions by Telefonica and its competitors.

The responsibility of the CMT, regarding the application of the rule of competition in the Telecommunications sector is limited in principle to the possibility of initiating the intervention of the bodies for the defence of competition (restrictive practices) and of informing perceptively in the procedures of authorisation of economic concentration.

General economic interest and public service obligations

All the operators of Telecommunications services available to the public and the operators of public Telecommunications Networks requiring an individual licence are subject to the regime of public Service obligation.

Three categories of public service obligations have been established.

The universal Telecommunications service.

The obligatory Telecommunications services which are deployed in all or part of the national territory.

Other obligations of public service imposed for reasons of public interest.

Initially, the following measures are guaranteed under the concept of universal service.

- That all citizens can be connected to the fixed public telephone Network and can access the provision of fixed telephony service available to the public. (Emitting and receiving national and international calls and allowing the transmission of voice, fax
- That all subscribers to the telephony service are supplied free of charge, with a telephone guide which is up to date, printed and unified for each territorial area. The production and commercialisation of the guides to subscribers to Telecommunications services will be made under the rule of free competition, guaranteeing the subscribers the right to protection of their personal details, including that of not figuring in the said guides.

That a sufficient supply of public pay - phones exist in the public domain throughout the national territory.

That disabled users or those with special social needs have access to the fixed telephony service available to the public, in similar conditions to those offered to the rest of the public.

To guarantee the universal Telecommunications service throughout the national territory, any operator considered as dominant (Telefónica) in a certain field can be ordered within the field to provide any of the services included in the concept of universal service.

Financing of the universal service of Telecommunications. The CMT will be responsible for determining whether the provision of this service supposes a competitive disadvantage or not for the operators who bring it to fruition. If this is so the mechanism to distribute the net cost amongst all the operators of this provision will be established and made public. The procedure for the calculation will be the following:

Net cost = Incremental cost for providing unprofitable services

- Income derived from the activity.
- Intangible profits associated to the universality of the service.

This calculation will be made by the operator who in each case provides the universal service, in agreement with the principles set by the CMT and with the CMT's approval of

It will be the CMT itself that determines the distribution of this cost amongst the operators, taking into account the principles of transparency, non - discrimination and proportionality according to the activity of each operator. The objective parameters that serves as indicators of this activity will be determined by the Ministerio de Fomento and be applied by the CMT.

Quality conditions for the provision of Telecommunications services were set down in October 1999. This norm established the procedure for the publication of an annual report on the quality of the fixed telephony service and of the service of lines available for rent. It also fixed specific objectives and obligations of quality corresponding to given services as well as the definition and measuring methods of the corresponding quality parameters. This regulation will be further developed.

# Results achieved

After the introduction of full competition in December 1998, there is a large number of market entrants and falling tariffs. The remaining limitations to be resolved are three

The way in which regulatory tasks are shared with National Regulatory Authority and

An important factor is the clarity with which powers are assigned as between the NRA and other bodies, including ministries and the national competition authority; too wide a dispersal of regulatory powers can weaken implementation.

In Spain, the allocation of regulatory tasks as between ministries and regulatory agencies lacks clarity. On the other hand some measure of co-ordination is required between the NRA and the national competition authorities (NCA). In the case of Spain, this Cupertino is not formal but there is a de facto one.

The lack of competition in the local access market.

Although steps are being taken to issue wireless local loop licences and to use national regulation to provide alternative ways of accessing to the "last mile".

The conditions for the indirect access to the local loop of the fixed public telephone Network were regulated in March 1999. It introduce the ADSL (Digital Subscriber Loop technologies) technology in the local loop by the dominant operator with the aim of enabling flat-rate tariff schemes for Internet users (50% of end-users in 2000 and 100% in 2001). The order fixes the prices that entrant operators had to pay to Telefónica, S.A. for this provision until December 2000.

At present neither cable TV nor wireless local loop (WLL) are widely used as a practical alternative for local access.

Universal service and user/consumer protection.

The fundamental objective of the EC regulatory package is to secure a choice of operators and services, and lower tariffs.

The universal service requirement exists to ensure that a minimum set of services of specified quality and affordable price, are made available to all users. Universal Service Funding

While Spain has introduced legal provisions for a universal service funding mechanism, it has not been put into operation. The method of calculating the cost which are to be recouped, by the incumbent, under the funding mechanism has not been approved yet by the NRA. NRA has not yet approved the cost accounting system of the incumbent (it is reported to lack transparency).

The greatest problem affecting consumers appear to be the lack of transparency in tariffs and in service information.

A special problem is the absence of transparency in the tariff offerings of operators, who regularly modify both tariffs and the structure of offerings, which differ widely from one operator to the other, thus making comparisons difficult for consumers.

# The German case

The structure of the industry

The German telecommunications services and infrastructure market has been liberalised in three steps: In 1989 and 1995, two laws on the restructuring of the telecommunications and postal sectors established the basis for the liberalisation of the market ("Postreform I" and "Postreform II"). Subsequently, the "Telekommunikationsgesetz" (TKG) of July 25, 1986 introduced the fundamental rules for the liberalised market, particularly rules on network access as well as on the establishment of an independent regulatory body.

Service providers are around 1,680<sup>15</sup>, including both new licensees and companies not requiring a licence for their operations. There are now 47 operators (including Deutsche Telekom AG (DT) licensed to offer voice telephony nation-wide and 100 operators with a geographically limited voice telephony licence. 179 operators have a network licence. Of those, 10 have a national and 169 a geographically limited licence, 111 of the total number of network operators have started activity in the city (local) zone and 9 at

<sup>14 &</sup>quot;Gesetz zur Neustrukturierung des Post- und Fernmeldewesens und der Deutschen Bundespost" of June 14, 1989 and "Postneuordnungsgesetz" as well as modification of the "Grundgesetz" of January 1, 1995. 15 Data referring to 01.07.99.

national and international level. There are 86 interconnection agreements in place and 52 agreements for access to the local network.

# Voice telephony market

In fact, more than 70 companies now offer telephony services, some of whom operate as resellers. Meanwhile, a trend towards provider loyalty, towards preselection, is emerging. Use of the call-by-call facility still predominates, however. Although the number of competitors' local loops is growing as local providers become less thin on the ground, it is still comparatively low. The share of the new subscriber network operators will only be around 1 percent, however, according to current forecast, the remainder still being accounted for by Deutsche Telecom AG (The State's 65.3% shareholding in Deutsche Telekom is managed by the Ministry of Finance).

New entrants' share of total minutes generated in Germany every day was some 14 percent. In terms of volume of long-distance domestic calls, international calls and fixed to mobile calls, the new providers are currently notching up a market share of 35 percent.

Since the market was fully deregulated on 1 January 1998 Germany has seen a sharp drop in the price of long-distance calls as a result of the competition deregulation has ushered in (Now the customer pays anything up to 85 percent less than 18 months ago for a domestic long-distance call on a weekday). Consumer satisfaction as a result of liberalisation is reported to be high.

#### Mobile market

The total number of mobile users, 16.9 million, is distributed among the operators as follow:

DeTeMobilNet: 41,2% Mannesmann Mobilfunk: 42.2% E-Plus Mobilfunk: 15,4% Viag Interkom: 1,2%

# Universal service obligations

According to the European legislative framework, the German legislator has introduced a concept of universal service which is regulated in detail by the provisions of the TKG. In addition to these rules a specific regulation gives a definition of universal service obligations. It is up to the regulatory authority "Regulierungsbehörde für Post und Telekommunikation" (RegTP) to decide whether a specific universal obligation is not provided or not provided sufficiently in a certain market. According to the general concept of the German Basic Law ("Grundgesetz") in the case of such deficiencies the Federal State is not allowed to provide the service itself, but is required to create a suitable framework in order to grant the provision of services to private market participants. Thus, RegTP may oblige licence-holders to provide this service, or to pay a compensation fee.

# National regulatory authorities (NRAs)

Regulatory tasks in the telecommunications sector are assigned to the above mentioned RegTP. This body has been established on January 1, 1998 according to the rules of the above-mentioned TKG. It acts as an independent higher federal agency. RegTP's decisions are taken by ruling chambers which have the power to decide in major areas of regulation, such as rates regulation and interconnection issues. Proceedings are public and decisions have to be published. Action against its decisions can be brought before the administrative courts. In contrast to the general German Law against Restraints of Competition, decisions cannot be overruled by the Minister of Economic Affairs. The Ministry only performs the general legal supervision of RegTP.

RegTP is responsible for granting licences, ensuring access to the network, setting tariff principles, imposing universal service obligations, assigning frequencies and numbering

and data protection issues. It is empowered to order, at the request of an interconnecting party, public telecommunications network operators to interconnect and to define the conditions of interconnection, and it sets the deadlines for implementation of the decisions. RegTP does not have the necessary powers to intervene on its own initiative in interconnection negotiations, nor can it set deadlines for the conclusion of negotiations.

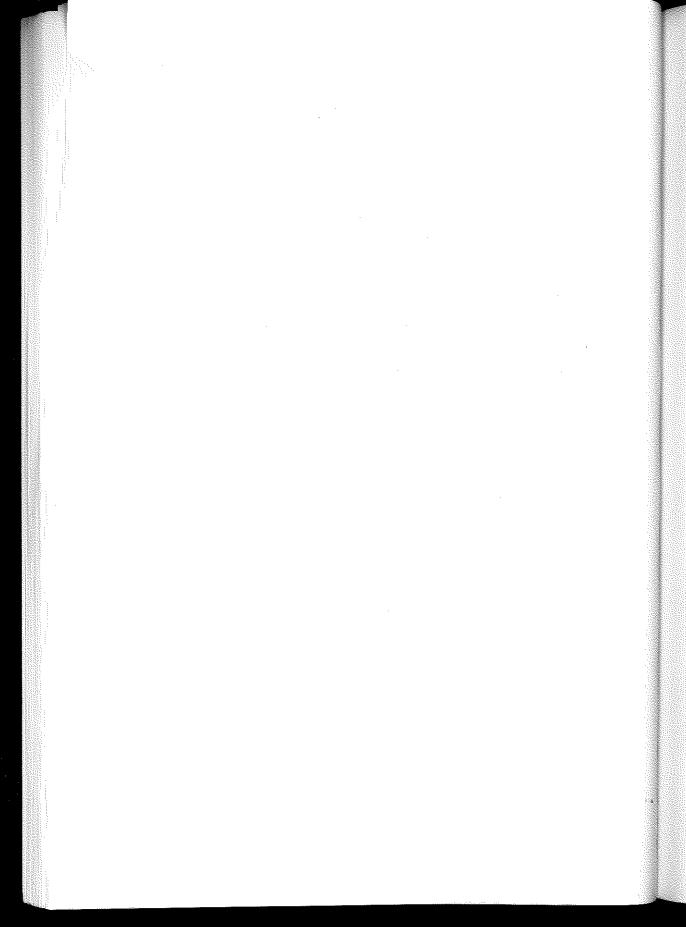
In relation to the general competition authorities on the federal level and Länder level. RegTP is considered as a sort of specific competition authority in the telecommunications and post sectors. Thus, the TKG contains specific rules on abuse of market dominance. General anti-trust law remains applicable, for instance in those areas where no licences are granted. In order to ensure convergent decisions of RegTP and general competition authorities, all authorities are required to co-operate and to exchange information. In some cases RegTP even needs the Competition authority to agree, in other cases a consulting procedure is sufficient.

# Relation between European Commission and national regulatory bodies

According to European legislation, the national regulatory bodies are required to forward information to the European Commission, in order to ensure a minimum degree of coordination between decisions at EU level and at national level, as well as among the Member States. The European Commission is entitled to intervene in a national regulatory procedure if the parties complain about the length of the process, for example if a network access decision takes longer than six months. The national regulatory body is required to apply Community law. If a dispute arises about whether an agreement or market behaviour conflicts with Community law, the case can be brought before the national courts, which may use the procedures of the EU treaty to seek the opinion of the European Court of Justice regarding the case.

<sup>&</sup>lt;sup>16</sup> See Section II of TKG, §§ 17-22.

<sup>&</sup>lt;sup>17</sup> "Telekommunikations-Universaldienstverordnung" (TUDLV) of January 30, 1997.



# **Financing Services of General Economic Interest**

This study concentrates on five sectors that have a long tradition in offering services of general economic interest: energy, telecommunications, transport, urban services and financial services. These sectors are not analysed exhaustively, neither is the situation in all EU-countries described completely. The purpose is, firstly, to present a framework in which the most important ways of financing services of general economic interest (GEI) can be described and, secondly, to describe modes of financing that are characteristic for the various countries of the European Union. These findings can be applied to other sectors that offer services of general economic interest, such as broadcasting, or to countries that are not mentioned in this report.

This report is organised in three parts: general considerations, sectoral aspects, conclusions. Section 1.1 elaborates on the conceptual framework, while Section 1.2 describes various modes of financing public service obligations. In the second part, Sections 2.1 to 2.5 present for some Member States the actual ways of financing in the sectors mentioned. The last part concludes.

#### PART 1 - GENERAL CONSIDERATIONS

# 1.1 The conceptual environment

In the process of gathering information about the various modes of financing services of general economic interest (GEI), the working group encountered a great variety of instruments. One reason of this variety is the complexity of the GEI notion; another reason is its dynamic aspect. As for the dynamic aspect, a service considered of GEI may change in content as the technology or the tastes of the citizens develop. The hygienic conditions in the nineteenth century, for example, appealed to the local authorities to establish public bathrooms and swimming pools. Most of them have been privatised today. On the other hand, the public accepted in the nineteenth century the tremendous pollution in the industrial basins caused by the smoke of the factories. Today, the legal requirements imposed on firms for environmental protection is a service of general interest that is supported by the public. Large firms increasingly set their own environmental and ethical criteria as an expression of their public responsibility for sustainable development. It follows that the content and the character of a service of GEI change over time, and so do the provision of this service and its financing.

The Commission of the European Communities has updated its 1996-Communication on services of general interest in Europe<sup>1</sup>. In the 2000-Communication, the following definitions of terms are presented. A *service of general interest* (SGI) covers market and non-market services which the public authorities class as being of general interest and subject to specific public service

<sup>&</sup>lt;sup>1</sup> DOC/00/25 of September 20, 2000.

obligations. The Commission observes that the European citizens, as users of these services, have come to expect universal access to high quality services at affordable prices.

The concept of a service of general economic interest (SGEI) is used in Article 86 of the EU Treaty and refers to market services which the Member States subject to specific public service obligations by virtue of a general interest criterion. It considers a public service to be an ambiguous term since it may refer to the actual body providing the service or to the general interest role assigned to the body concerned. This report presents an approach that resolves the ambiguity. The Commission observes that services of general interest are a key element in the European model of society. The new Article 16 confirms their place among the shared values of the Union. However, competing providers in the private sector claim that existing arrangements give an unfair advantage to the organisation entrusted by the public authorities with the provision of such services and infringe on Community law. The Commission's objective is therefore to provide further clarification on the respective roles of the different levels of public authorities and of the competition and the internal market provisions in order to provide legal certainty. This report is in line with the European framework developed by the Commission.

The report focuses on a specific type of service of general interest. The CEEP has defined an SGI as follows: "A service of general interest is a service created or organised by a public authority responsible for a territory when it believes that the market does not enable the service to be supplied in conditions which it considers necessary to satisfy society's needs."2 Both the Commission's and the CEEP definition require some comments. Firstly, it is by definition a public authority that determines the content of general interest. Private motivations to realise a civil society, constituting voluntary or non-governmental organisations, do not fall under the definition of general interest, which is a politically determined aspiration. Private as well as public firms, however, may be contracted by the public authority to provide a service of general interest: the distinction between procurement (demand) and provision (supply) of a service of general interest is therefore important. Secondly, many services such as food, clothing and shelter, are by definition not of general interest because the market provides them satisfactorily and no public authority needs to interfere. So the governance of a service (through the market or through political institutions) plays an important role in the definition of a SGI. That weakens the analytical use of the concept for a neo-classical economist.3 If the public authorities consider that certain services in a market are services of general interest, they can lay down a number of specific provisions to meet these needs in the form of SGI-obligations that are imposed on

<sup>2</sup> ETUC-CEEP Charter on Services of General Interest, First draft February 2000.

the providers of the service. The fulfilment of these obligations may trigger the granting of special or exclusive rights to the provider, or the provision of specific funding mechanisms. These providers may be public firms (such as the traditional utilities) or private firms. Concerning the criticism about an unfair advantage given to the organisation entrusted by the public authorities, public tendering can be one of the instruments to solve this problem on the supply side. On the demand side, the public authority may need popular support to formulate and finance an SGI.<sup>4</sup> The sensitivity for these needs is often stimulated by social initiatives in the private sector. These organisations (such as environmental groups, unions, or nongovernmental organisations) address usually only aspects of the general interest. However, they may claim that existing arrangements give a decisive advantage to the organisations entrusted by the public authorities in the European space.<sup>5</sup> As political, economic and social values tend to interact stronger, it may be helpful to acknowledge formally the complementary support of such private organisations in the realisation (or procurement) of a service of general interest.

In economics, the term *public service* relates to a service rendered equally to all members of society, without connotation to its governance. Similarly, a *universal service* (US) is a service rendered throughout a territory. A territorial authority can provide a US by imposing on the providers of the service a universal service obligation (USO).<sup>6</sup> So a USO is the obligation to provide a certain service throughout the territory at affordable tariffs and on similar quality conditions, irrespective of the profitability of individual operations.<sup>7</sup> The concept of universal services is thus based on the three public interest principles of universality, equity and continuity. The USO-notion usually applies to technical or physical networks. such as roads, water and telecommunication networks. The cost of access to such a network will not necessarily be equal for all consumers in the community and may sometimes be prohibitively high. Utilitarian or efficiency considerations will then exclude some consumers from this service. The GEI-dimension of this service, based upon egalitarian values, consists of full coverage of all consumers in the community considered.

This report focuses on the service of general economic interest (SGEI), which concept is used in Article 86 of the EU Treaty and specified in Article 16. It refers to market services which the Member States subject to specific public service

<sup>&</sup>lt;sup>3</sup> Both neo-classical and neo-institutional economics research has given ample attention to the problem of economic order. The neo-classical concept of mechanism design has focused on the information and incentive aspects; see e.g. Aghion and Tirole (1997). The neo-institutional concept of governance has focused on transaction costs, see e.g. Williamson (1967) and Alchian and Demsetz (1972). Holstrom (1999) and Ruys (2000) address the boundary problem between organisations.

<sup>&</sup>lt;sup>4</sup> Examples are given in the following sections. The unrest about the divergence of water prices in France. all set according to the EU-principles by (local) public authorities, may show that some element in the developed SGEI concept is still lacking.

<sup>&</sup>lt;sup>5</sup> Many voluntary organisations, social cooperatives and non-governmental organisations aim to realise the general interest on specific domains, such as welfare, environment or poverty. Although such a service may coincide with a service of general interest, it is not recognised as such. It may be efficient to acknowledge that the efforts of those private organisations are complementary to public initiatives and sometimes need an international coordination.

<sup>&</sup>lt;sup>6</sup> It should be noticed that the service rendered by the providers in a market is not necessarily a universal service. The first type is called a market service. The second type is the universal service associated with some market service.

<sup>&</sup>lt;sup>7</sup> The notions of USO and PSO have been acknowledged by the case law of the Court and developed in Community legislation for those services, for which a common regulatory framework has been put in place to achieve a single European market. See DOC/00/25.

obligations by virtue of a general interest criterion. A public service obligation (PSO) is an obligation imposed on one or more providers of a specific market service by a public authority to render a service of general economic interest on that market, with specifications and under conditions that are defined by the public authority. The financing of such a PSO is closely related to its governance. The financing of a PSO is addressed in this report.

The importance of governance is shown by the past. It proved to be cheaper to organise the whole network-industry as one public utility that manages this industry and finance the service of GEI, the USO, usually by means of cross-subsidisation between clients. Today, it may be cheaper to decompose a network industry into a set of complementary activities, some of which are marketable services and others GEI-services. This is the problem of optimal governance of the industry. In solving this problem, both the historical or cultural background of a country and the technological and organisational developments are important codeterminants for the allocation of responsibilities and tasks in the industry.

In comparing public organisations with private organisations, institutional and organisational aspects are as important as technical aspects. In practice, it was usually economically and politically more favourable to have one public authority taking care of more services, rather than establishing one public authority for each service. But again, that argument is also wearing out in time, because the incredible increase of the information and communication technology (ICT), as well as the technological miniaturisation of production processes, allows for disintegrating and unbundling activities. That strongly affects the choice of an optimal mode of finance. So technological and organisational innovation makes decentralisation within the public domain possible, as well as decentralisation from the public domain to the private domain. That last development requires a restructuring of the organisation in the sense that the task of the public authority changes from a producer to a regulator or a régisseur. It also may be the case that some service of GEI is internalised by private organisations. In this report only those services of GEI are considered that are procured and/or provided by some public authority.

# 1.2 Modes of financing public service obligations (PSO)

Usually, a PSO cannot be sufficiently provided by the market mechanism. It depends on the definition of the defined standards and conditions of a PSO. If a public authority considers that certain services need to be provided (so its constituency wants to procure them), that public authority can provide it either directly by giving this task or mission to an own public firm<sup>8</sup>, or indirectly by outsourcing this task to other (private or public) firms. The fulfilment of this PSO mission requires resources that are obtained by specific funding mechanisms, by the granting of special or exclusive rights or privileges<sup>9</sup>, which can be valued in

Such a privilege may be the granting of exclusivity or of a monopoly on a market to the firm.

terms of money, or by imposing the PSO on firms by means of regulation. It may be noticed that a PSO mission can also be accepted voluntary by private firms if the benefits of their reputation and of their response to social pressure outweigh the cost of the PSO. A public authority can accomplish outsourcing by entering into a monetary transaction with appropriate firms that accept the PSO mission, or by imposing the PSO mission in them by means of public law. The imposition of a PSO on a firm without such rights or remuneration can be considered as taxation of that firm. Whether that firm bears the tax burden or her clients bear the burden depends on the tax incidence: the possibility the firm has to shift the tax burden to the clients.

A distinction is made between the 'procurement' and the 'provision' of a service of general interest. The Commission of the European Communities uses the term 'public procurement' in a narrower sense to refer to the purchase of goods and services by public and private enterprises, notably by means of tender or auction 10. Efficient procurement means in that case the choosing of the supplier who can supply the desired goods and services at the lowest price. The notion of 'procurement' introduced here refers to the society's decision to be provided some service and to pay for it with their resources, which are needed for the governance and the provision of that service. That implies a social choice to be made by the society, usually by means of a political procedure to determine the desired pricequality ratio of the service and the governance of its provision. This choice of the procurer includes the choice of the provider and the purchase of the service. So efficient procurement means here the choosing of the optimal conditions of being provided a certain service included its governance and its supplier. In short, the procurer pays for and governs the PSO it demands, whereas the provider supplies that service.

# 1.2.1 The procurement of a PSO

Since a public authority procures a PSO, the resources needed for its provision are obtained somehow by means of taxation or by some other form of compulsory contribution of resources. The theory of public finance teaches where taxes should be levied if the public authority wants to maximise its revenue with minimal reallocation effects. These taxes are suited for general purposes, such as anticyclical policy or redistribution policy. The allocation considerations of taxation have grown in importance, however, for various reasons. The most important economic reason is that *allocative taxation* supports users to make responsible decisions by pricing the products and services according to their real social scarcity. For that reason allocative taxation is of primordial interest in realising fair competition between firms in the Member States of the EU. It also has an attractive dynamic property because innovations can better be incited by prices

<sup>&</sup>lt;sup>8</sup> A public firm is characterised by public ownership. A firm established under public law is by definition publicly owned. A firm established under private law is publicly owned if the public authority owns the majority of its shares or is able to determine the management or activities of the firm.

<sup>&</sup>lt;sup>10</sup> Procurement in the narrow sense refers to the organisation of the public markets, that is markets on which public authorities demand services.

<sup>&</sup>lt;sup>11</sup> Apart from the administrative cost considerations, general taxation may be chosen for realising egalitarian principles. Allocative taxation aims at realising utilitarian or efficiency principles.

including appropriate social costs than by prices based on private costs only. The problem with allocative taxation is, however, the cost of its governance or implementation. From the institutional point of view, it may be cheaper to use a coarse, general tax base for levying tax rather than a finer allocation oriented tax base. So the public authority can choose from the following types of contributors, who are ordered according to increasing specificity:

- 1 The general taxpayer;
- 2 The taxpayer facing a local, sectoral or specific tax base;
- 3 The owners or clients of the firm providing the PSO, or its competing firms in the same market, depending on the obligation contract and the incidence effects:
- 4 The user of the service.

This order corresponds with an increasing fine-tuning of costs and benefits, which depends on the possibilities to measure the individual's willingness to pay for a service and the output- and cost-measurability of that service. The first three cases use tax-bases that have a multi-purpose character and are not or only coarsely related with the use a person makes of a specific SGEI. It therefore is impossible to tax a person according to the cost borne by the firm to provide for that person. The second case may imply earmarking of revenues from government charges and taxes. The third case, which refers to a firm pricing its services, without any compensation (from the state budget or from a fund), covers what is known as cross-subsidisation. The competing firm bears the cost of a PSO if the providing firm receives privileges or special rights to cover the cost of that PSO. The last case implies that the user of a certain marketable service that is associated with a PSO can be identified. The user either pays a tariff to cover the cost of the PSO (or at least part of it), or a surcharge or a mark-up on the marketable service to finance the extra costs caused by the PSO. This levy must be based on a legal right granted by a public authority. 12

When a responsible public institution has decided which services are of GEI, the next question that arises is how a public service may be provided.

It is conceivable that public services in sectors working according to the principles of market economics may even be offered by private providers. However, this ideal scenario of the competitive market economy is contingent on certain conditions being fulfilled. Firstly, the public service must be profitable; if this is not the case, the assumption of responsibility for such services must at the least have a positive impact on the enterprise's reputation, so that lack of profitability is compensated for by an enhanced standing. It is also conceivable that a public service may involve a network, e.g. universal network coverage. It is known that the size and comprehensiveness of the network affect its attractiveness, i.e. the level of demand and hence of profitability. Under such conditions, a public service involving universal network coverage may also be provided by private companies competing with one another.

However, a competitive market-economy financing solution is unlikely to be forthcoming very frequently, meaning that specific enterprises have to be obliged to offer public services. This is particularly the case when prices do not cover costs. Enterprises operating under a PSO may be public, private or semi-public enterprises. Where public services need to be provided in a particular quantity (extent of coverage), at an appropriate level of quality and at a socially acceptable price, the issue concerned is that of the procurement of a PSO, and hence also of the **financing** of public services, as in cases of low profitability or prices that fail to cover costs, such services will only be provided if the enterprises on which a PSO is imposed receive adequate financial compensation.

With regard to the **financing modes**, the following options may be distinguished (see Table 1.2 - Financing of PSOs):

- 1. Financing from the **state budget**. PSO enterprises receive financial compensation in the state budget to cover their costs. This is the case of external financing from the state budget.
- 2. The compensation may also be provided via a **specific fund**, into which certain enterprises, such as all licenced postal and telecommunications enterprises, pay **compensation**, which is used to finance PSOs. This is another instance of external financing or subsidisation.
- 3. It is also conceivable to finance public services through additional charges, which have to be paid in addition to the normal access charges to the PSO enterprise. This approach has been discussed in the area of telecommunications, and applied in France in the transitional phase en route to a completely open market, but is hardly used at all in financing practice. The charge model is supposed to work as follows. A network provider in an area such as telecommunications, if obliged to provided a public service that fails to cover its own costs, is entitled to demand payment of an additional charge by telecommunications enterprises seeking network access who are not under a PSO. This charge is on top of the normal interconnection fee, and is paid directly (rather than via a fund). This enables the network provider to cover part of its public-service costs. This is another instance of external finance compensation. In this way, such enterprises who are not operating under a PSO (e.g. do not have to offer a universal service), share in the PSO network provider's public-service costs through payment of supplementary mark-up charges. This prevents a situation where certain enterprises are unfairly burdened with a PSO which makes them uncompetitive.
- 4. Whereas financing modes 1 3 represent instances of external compensation or subsidisation, **cross-subsidisation** is an example of **internal** compensation and **internal** subsidisation. An enterprise provides the finances to cover the costs of a PSO out of profits which have been made from other (profitable) products, services, areas of business or regional sales areas. This internal cross-subsidisation is the classic approach of the (public) supply monopoly (public enterprises as sole providers in the sense of being natural monopolies, or of sole provision rights being licensed by government authority, or private providers with licensed sole provision rights). In the European Union, this

<sup>&</sup>lt;sup>12</sup> These surcharges are frequently used to cover the cost of road-infrastructure in development projects. The cost of sewerage is usually covered by a surcharge on the price of water, etc.

Table 1.2 - Financing of PSOs

rices lies, d profit n the	ranteed			tion
5. Market prices i. e. no subsidies, strict cost and profit orientation on the supply side	PSOs are <u>not</u> guaranteed in case of non- profitability	No	Yes, market solution	No bureaucracy due to market solution
4. Cross subsidies within a company from profitable to non-cost covering sectors or products (in case of monopoly prospectively to be abolished in the EU)	Favourable conditions for the fulfilment of PSOs because the supplier can make use of cross subsidisation due to his monopoly rights	No, because of internal financing	Yes, because no external subsidisation	су
3. Additional access charges to defray the cost of PSOs	Favourable conditions to guarantee PSOs if cost properly calculated	No, because budget will be discharged	Yes, if the regulator is really independent	acy, on cost due c
2. Specific financial fund licensed suppliers pay to a universal service fund	Favourable conditions for the fulfilment of PSOs as the financing does not depend on political decision and is so far guaranteed by fund compensation	use state budget be discharged	Yes, if the regulator is really independent	Probably middle extent of bureaucracy depending on organisational form of financing fund
1. State budget in case of prices not covering costs	PSOs fulfilment not necessarily guaranteed because results of annual pSOs as the financing budget decisions not predictable; it depends also on political also on political commitments fund compensation	Yes		High degree of bureaucracy, cost of governance
FINANCING MODES CRITERIA	Extent of achievement of PSOs according to quantity, quality, price, continuity, security and other criteria	Incidence on State budget Independence of state	Suc	Cost of governance and implementation, degree of bureaucracy
	<b>*</b>	<i>γ</i> ε		4

	FINANCING	1. State budget	2. Specific financial	3. Additional access	4. Cross subsidies	5. Market prices
	MODES	in case of prices not	<u>Fund</u>	charges	within a company	i. e. no subsidies
		covering costs	licensed suppliers pay to a universal service fund	to defray the cost of PSOs	from profitable to non-cost covering sectors or products	strict cost and profit orientation on the supply side
[	CRITERIA				(in case of monopoly prospectively to be abolished in the EU)	
W	Chance of competitive tendering to reduce the needed subsidies, provided that the PSOs are clear and determined	Competitive tendering possible and expected, positive competition effects by subsidies underbidding, finding real cost of PSOs	Competitive tendering possible and expected, positive competition effects by subsidies underbidding, finding real cost of PSOs	No competitive tendering and no subsidies underbidding. If subsidies too high, due to political decisions, risks of allocation inefficiencies	Competitive tendering not possible due to monopoly of supply; allocation inefficiencies cannot be excluded	Competitive tendering not relevant as PSOs can be achieved by the market process; allocation efficiency in theory
9	6 Incidence: Who bears the cost of PSOs?	State resp. society is debited with non-covered costs of PSOs. No special group of society or enterprises will be debited	Operators or consumers if passing along to prices is possible	Operators or consumers Operators or consumers Special consumers, if passing along to prices if passing along to prices resp. consumers in high-is possible is possible populated and urban zones pay for low-populated and rural zones consumers		No question of non- covered cost due to proftability of PSOs.
,	Competition neutrality versus competition distortion	No competition distortion because no specific providers or customers are debited; competition neutrality	Unequal treatment of companies may be possible if market powerful companies are able to pass on compensation charges to consumers. No competition neutrality	Probable competitive distortion because access and distributive goals are mixed	Competition neutrality not relevant due to monopoly case. No competition	Competition neutrality not relevant because services offered at competition prices

mode of financing may be regarded as a defunct model, because supply or financing monopolies have increasingly been broken up, and today represent the exception in a prevailingly competitive environment. Internal cross-subsidisation will therefore increasingly fade out, with other financing modes becoming more prominent.

More realistic is another similar case of cross-subsidisation, involving, not monopolies, but market-dominating enterprises who have a PSO imposed on them, **without** receiving external compensation. Here it is argued that a market-dominating enterprise is, by reason of its quasi-monopolistic market position, well able to cross-finance PSOs out of its corporate profits (cf. the Telecommunications and Postal laws in Germany).

5. The already mentioned **market solution**, where financing comes from **market prices**, which are calculated so as to ensure cost-coverage and profitability. The market solution is, as we said earlier, entirely realistic in the case of services with a positive effect on the enterprise's reputation and with universal-coverage networks. In this case, this means that PSOs may be financed via market prices.

It is hard to say which financing mode constitutes the optimal form of financing for PSOs. It depends on one's evaluation criteria, the order of priority assigned to them, the nature of the PSO in question and other conditions. There is no one optimal form of financing for PSOs; each individual case has to be analysed and decided upon separately.

The following criteria may be used to evaluate the financing modes:

1. Extent of achievement of PSO according to quantity, quality, price, continuity, security and other criteria.

This criterion is important because the type of financing has an impact on the extent of achievement of the PSO. In other words, the type of financing may not be allowed to jeopardise the fulfilment of public duties.

# 2. Incidence on state budget

This criterion considers whether the financing mode in question relieves the public budget. Past experience has shown that the public authorities are scarcely able to finance their own public enterprises any longer; this means that it is important to open up other sources of financing in order to ensure the PSO. The priority with regard to fiscal policy has gone to debt-reduction policies and the reduction of public spending – not least with an eye to the Maastricht criteria for acceptance into Euroland.

# 3. Independence from governmental and political decisions

The relative dependence or independence from governmental and political decisions has to be considered as a theme because the **rationality** of decisions becomes an issue in democracies. Public choice theory has a significant contribution to make here, which is also relevant to the question of financing.

# 4. Cost of governance and implementation, degree of bureaucracy

The different financing modes may be associated with varying transaction and implementation costs (including the costs of bureaucracy and the inflexibility of political decisions). Where such costs are high, the result is inefficiency.

5. Chance of competitive tendering to reduce the needed subsidies, provided that the standards of PSOs are clear and determined.

The suitability of a financing mode also depends on whether competitive tendering can be made possible to reduce the needed subsidies. This is not the case with all financing forms.

# 6. Incidence: Who bears the cost of PSOs?

Different parties bear the costs with different financing modes. Possible cost-bearers include state/society, operators and consumers. The point of a PSO may be undermined if its beneficiaries (i.e. the consumers), also have to bear its costs. This is another factor to be taken into consideration when selecting financing modes.

# 7. Competition neutrality versus competition distortion

This criterion is closely connected with incidence criterion 6. What needs to be checked is whether the intended cost-bearers actually bear the costs of PSOs, or whether they are able to pass on the costs to third parties, such as the customers. Obviously, the competitiveness and market might of the enterprises that are charged with PSO costs determine whether this is possible.

Regarding the **order of priority of criteria**, criteria 1 'Extent of achievement of PSOs' and 6 'Incidence' are particularly important in the evaluation of the various financing modes; the other criteria, while also significant, are more in the nature of additional factors. An evaluation of the different financing modes produces the following picture:

#### Mode 1: State budget solution

\* The state budget solution offers a guarantee in principle that PSOs will be fulfilled, provided the state's financial policy is ready to provide the necessary funds for PSOs that are clearly defined with respect to quantity, quality, socially acceptable prices, continuity, security and other criteria. These have to be included in the annual budgets which are approved by Parliament. Budgetary decisions in democracies tend to be compromises between the prevailing political forces, i.e. parties, coalitions and governments. As public choice theory shows, strategies and tactics such as vote-maximisation, package solutions or log-rolling are often applied in the process, which are serious obstacles to the implementation of a rational policy. These political factors may also be detrimental to a rational PSO policy. Thus, although it may be basically assumed that where the political will exists, financing to underpin PSOs will be forthcoming from the state budget, the limits of this financing mode must also be kept clearly in view. Especially in an era of tight

- budgets, budgetary decisions are unpredictable, so that some level of risk to the guaranteed provision of PSOs cannot be ruled out.
- The transactional costs of finance policy decisions according to criterion 4 'Cost of governance and implementation, degree of bureaucracy' are generally high in parliamentary democracies, so that the state budget solution comes off worse than other financing modes measured by this criterion. However, the state budget solution does have certain decisive advantages when measured by the other criteria:
- Uncovered PSO costs are borne by the state or by society as a whole. There is
  no unfair burdening of any specific social group (e.g. customers, providers) or
  any specific enterprise. Public tasks are financed by the state.
- For this reason, the state budget solution is also **competition-neutral** according to **criterion 7**.
- The possibility of employing **competitive tendering** is another positive factor. The true level of the needed state subsidy by way of compensation for uncovered PSO costs is determined in competitive tendering, where a publicly tendered PSO is awarded to the bidder who demands the **lowest** subsidy for a clearly defined public service. This enables the allocation-efficient (i.e. not artificially boosted) costs of the public service to be determined. Public tendering is in this sense an efficient search- and discovery-process (von Hayek) to establish the true cost of the PS.

# Mode 2: Specific fund solution

- \* This financing mode is employed in various EU countries for PSOs in the telecommunications and postal sectors. To some extent, this approach is also rooted in postal and telecommunications legislation. The European Commission has preferred the fund solution over other financing modes, and especially over the state budget solution.
- In the specific fund model, some or all **licensed providers** are obliged by law to pay monetary contributions into a fund whose purpose is to offset the uncovered costs of a PSO. PSO enterprises receive the money they need from this fund to implement the PS. Provided the fund is sufficiently extensive, the PSO may be regarded as guaranteed, especially as there is no dependence on political decisions for financing. However, there remains a certain level of risk that any shortfall in the fund will have to be covered by other financing modes.
- One advantage of the specific fund is that the state budget is relieved something that is particularly important at a time of tight budgets. Likewise, this option also benefits from independence of financing from political decisions. Obviously, the PSO must be clearly defined by a public authority. Likewise, a public regulator is needed with de jure independence who is responsible for competition and task regulation. In practice, there are certain limitations and risks with regard to the question of independence, and these have to be taken into account.

Certain **transactional costs** (fund administration, bureaucratic spending and hence inefficiencies) may also be associated with the implementation of the PSO. Compared with the state budget solution, the transactional costs of the

- specific fund model may be lower. The extent of the transactional costs largely depends on the fund's organisational form.
- Competitive tendering may be used in connection with the fund solution, facilitating the search for the lowest possible subsidy.

Problems arise, however, when one considers **criteria 6 'Incidence'** and 7 'Competition neutrality'. The costs of the PSO are borne by licensed enterprises. Enterprises with market power can pass on the costs of their fund contributions in their own prices, so that the de facto third party, i.e. the consumer, ends up financing the PSO via increased prices. This contradicts the spirit of a public service. The extent of the price pass-on depends on the enterprise's degree of monopoly, i.e. on its market power. Less powerful licensees are unable to pass on their fund contributions in the form of higher prices, putting them at a disadvantage compared with market-dominating providers in the market in question. Workable competition is a precondition for the intended incidence and for competition neutrality. In sectors characterised by a high degree of monopolisation or in restricted oligopolies, the workable competition may be limited.

# **Mode 3: Additional Access Charges**

- \* This financing solution is one which tends to play a subordinate role in current debate as regards the financing of PSOs. The procedure using additional charges was described earlier. With regard to criterion 1 'Extent of achievement of PSOs' what was said about the specific fund also holds true here: conditions are relatively favourable for implementing PSOs at the desired standards if the costs of the PSO, and especially the break-even point, are correctly calculated and the additional charges suffice to finance the PSO.
- It is obvious that PSOs need to be defined unambiguously, so as to determine the level of the true PSO costs and the proportion of uncovered costs. This is important if the additional charges are supposed to compensate for a portion of the uncovered PSO costs. Incidentally, the problem of asymmetrical information may arise here. The network provider may argue that he faces high PSO costs in order to justify a request for excessive additional charges which are not properly geared to the market and lead to allocation inefficiencies. To prevent this, consistent access regulation is needed, administered by a regulatory body, one of whose tasks will be to verify the correct level of the PSO charge.
- Additional charges also have the effect of **relieving the state budget**, something regarded as an advantage given the tightness of budgets.
- As with the fund solution, there is in principle independence from the state and from political decisions, with the reservation that where the additional charges do not suffice, other forms of financing have to be found. It is also vital that the public regulator is actually independent, and not subject to political or economic interests.
- The transactional costs are lower with the additional charge solution than with the state budget solution, as no state institutions or bureaucratic bodies are

involved. As has been explained, however, additional information and verification costs arise.

- With regard to criterion 6 (Incidence) and criterion 7 (Competitive neutrality) the same holds true here as was said with regard to the specific fund solution. Here too, there arise the problems of the market power of specific providers (unworkable competition), excessively high and unjustified additional charges, and the passing on of charges to third parties (where the enterprise has enough market power). It may thus be seen that criteria 6 (Distribution Incidence 6) and 7 (Competitive neutrality) are severely jeopardised. With respect to these important factors, it is just as critical to evaluate the additional charge solution correctly as it is the specific fund model.

# Mode 4: Cross subsidies

\* As stated earlier, cross-subsidisation applies to cases of monopoly, and facilitates financial compensation between profitable and unprofitable products, services, sectors or regions.

- In the case of cross-subsidisation within a monopolistic enterprise, the conditions for fulfilment of a PSO may be regarded as especially favourable (Criterion 1).

- As the state and the state budget are not involved in questions of financing, there is no dependence on the state and no specific transactional costs of the kind that would be triggered by state involvement (Criteria 2, 3, 4).

- Allocation inefficiencies cannot be ruled out, as the market is not competitive and competitive tendering would be irrelevant given the monopolistic situation (cf. Criteria 5 and 7).

- The question of 'Incidence: Who bears the costs of the PSOs?' may be answered easily: The monopoly is a financing monopoly, in which the cross-subsidies are paid for by those who de facto have to pay the inflated monopolistic prices: special customer groups in high-population centres and urban regions, in favour of sparsely populated rural regions, where the costs of the PSO are higher than in the high-population centres. As a result of such cross-subsidisation, the principle of the uniform tariff may be applied throughout the territory. In other words, the cross-subsidisation principle makes it possible to cross-finance the PSO's uncovered costs out of (monopolistic) profits from profitable products, services and areas of the enterprise.

# Mode 5: Market prices in connection with the market solution

\* The market solution and the associated financing of PSOs via market prices are the opposite of the public financing monopoly with cross-subsidisation.

- The market price solution assumes that PSOs are also possible in market conditions, and may be financed via market prices. The conditions for this have already been mentioned (reputation, network effects). It is also true that the lower the standards for PSOs or universal services are set, the easier it is for the market mechanism to facilitate public services. With regard to **criterion 1** 

'Extent of achievement of PSOs', it should be pointed out that the fulfilment of public services is dependent on profitability. Above all, those PSOs whose costs are only covered in part, due to the requirement for prices to be socially acceptable, cannot be guaranteed in connection with the pure market solution. Where there is a proper focus on covering costs and making a profit, state subsidies, fund financing, additional charges and cross-subsidies are irrelevant. Private companies are only ready to take on the PSO voluntarily where there is a long-term inability to cover costs under the above-mentioned conditions (enhanced reputation and network effects). If these conditions are not present, as outlined above, incentives must be retained via external financing forms, or transfer payments made to consumers or budgets so that these are in the position to pay for the market price of a public service, which may be quite high.

Broadly speaking, it may be concluded that, compared with all the other financing modes, the market price solution is a rather uncertain means of financing and fulfilling a PSO. This is true of PSOs which are offered at a socially acceptable price, or whose costs are only partially covered by the price. However, positive examples and experiences may also be pointed to from the past, and the opening up of the markets and other deregulatory measures have had positive effects in the form of a consumer-friendly service offering in terms of quantity, quality, price and other PSO criteria. Good examples here are the positive mix- and price-effects on the liberalised telecom and electricity markets.

- As the state is not at all involved in the market price solution, the state budget is not depleted by this PSO financing. Independence from state and from political decisions is ensured, and inefficiences due to bureaucracy and inflexibility are reduced to the minimum.

- The market solution implies allocation efficiences as defined in neo-classical theory, as functioning markets are the starting point. Whether these markets are really workable or not remains open to question.

- If it is possible for public services to be delivered efficiently by private providers within functioning market processes, this theoretically implies the reduction of costs as a result of competition, price cuts and optimal territorial servicing. Whether the competition remains workable in the long term is another question. Even in the case of today's telecom and energy markets, the obvious high level of competition at present cannot be guaranteed for the future, as no one can guess at future market structures, the behaviour of market players or market performances.

So the procurers of a PSO, the national governments and their subordinate public authorities, may call upon a wide range of funding instruments. They increasingly make use of financing instruments that combine private and public sources, the so-called **Public-Private-Partnerships**, especially since the development of the private financing of infrastructure in the various European countries. In some sectors the (public) financing of infrastructure is separated from the (private) exploitation of this infrastructure. In other sectors this infrastructure can be (privately) financed from the revenue of the exploitation, by means of long term

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contracts. Optimal long term financing requires an allocation of risks to those providers who are most suited to bear each specific risk.

# 1.2.2 The provision of a PSO: the choice of governance and the allocation of risks

Given a common agreement about the desirability of a PSO, a choice of governance, of a suitable provider within that governance, and a contract that guarantees the PSO have to be negotiated and agreed upon. One may distinguish the following governance and financial instruments:

1. A public provider with a legal task:

This is the classical utility that provides services with an additional legal task to provide a certain PSO.

2. A Public-Private Partnership, with a specific contractual allocation to the partners of the private service provision and the PSO mission. The contractual or governance instruments, which may be obtained through a bidding process, auctions, or otherwise, are:

Specific funding mechanisms;

Concessions:

Lease contracts (affermage);

Management contracts.

3. Public regulation of private firms:

Granting exclusive rights to one or more operators;

Price-cap regulation;

Rate of return regulation.

4. Competition between providers (see the next section).

5. Voluntary provision of a PSO by providers competing for social reputation or intangible benefits.

It should be noticed that one has only a short experience – if any – in practising financing PSO. Indeed, even if legal texts do exist and if clear dispositions are to be found on PSO, few sectors and countries have applied the various financing modes mentioned here. And when applied, the experiences are not necessarily satisfactory. That pertains notably to the various Public-Private Partnerships (PPP) constructions. Some projects have turned out to be successful while others had to be abandoned and the State had to take the deficit over. The problem does not really lie in the financial participation of the private sector; it is the definition, the assessment and allocation of responsibilities and risks to the participants. As for financing, the State is a captive participant, which has to renegotiate with the private partners and eventually has to take up the bill in the case of failure.

On the other hand, there are important complementarities between the public authority and its private partners. These complementarities should be well defined and on these complementary capabilities the PPP should be constructed. The traditional view that the public authority can obtain funds at better financial conditions is relevant only if the project succeeds; if it fails it becomes a heavy burden that exceeds the favorable interest difference. A sound way for the public

authority is to create favorable conditions for private enterprise complementary to the infrastructure. Its finance can be funded from the revenues of these private enterprises, which should be organised such that the entrepreneurs have interest in the continuation of the project and will continue to pay the amortization of the infrastructure to the private banks. The question of ownership is one of the elements to be considered and depends on the way risks are handled. The provision of the infrastructure itself can, of course, also be outsourced to private firms. This reasoning is an example of good procurement (in the wider sense) giving ample attention to the various resources and the governance needed for some PSO. It is impossible to give an 'optimal' solution to the financing of a PSO in general. The optimal choice of modes of financing is yet mainly determined by the characteristic attributes of the PSO and its options for governance. These vary for each situation.

Thus bearing these elements in mind, necessary conditions for the instruments 2, 3 and 4 are:

- Output orientation: unambiguous price/quality ratio;
- An optimal scope of services provided; coverage of territory;
- Reciprocal interests and balanced risks;
- Transparency and democratic or regulatory control;
- Effective information revealing incentive mechanisms.

The design of contracts between the regulator and the operator focuses on appropriate incentive mechanisms. These include:

- Subsidies;
- Incentive payments and subsidies with a claw back;
- The length of the contract;
- Output-related subsidy payments (use or availability);
- Compensation payments;
- Guarantees:
- Loans:
- Shares.

These instruments allow a vertically integrated public sector to be de-integrated and partially regulated.

# 1.2.3 Competition between providers

The most important financial instruments that allow a choice to the providers of certain services to also provide a PSO are the following four:

- 1. Competition for the market of the service
- 2. The "pay or play" system for the PSO-part of the service
- 3. Additional access charges to finance the cost of the PSO
- 4. Internal cross-subsidisation between profitable services and a PSO.

The first model implies competition by means of an 'auction for the market', that is to say for the right to provide the service including the associated public service obligations in a given geographical area. The operator that asks for the smallest subsidy wins the bid and is alone in charge of these obligations.

The idea behind the second instrument is that the cost of rendering public service obligations has to be shared between the all operators on the market. If all are eligible to fulfil such obligations, a "pay or play" system may be implemented, where each operator is free to choose between supplying itself the universal service (play) or taking part to its financing (pay). If in some country the law requires an eligibility condition (as, for instance, to be able to serve the whole territory), then the incumbent operator may remain the only PSO-provider. The extra-cost incurred by the PSO is then compensated via a fund, fed by all operators, including the incumbent operator itself. This method requires the regulator to be able to calculate the real cost of such obligations in order to share their amount between all, according an explicit rule.

The third way of financing calls upon the contribution of operators to cover the extra cost of providing a PSO. This extra additional charge is applied on the access charge to the network. Thus operators that are not providing the PSO contribute to its financing.

Lastly, cross subsidisation can be held on if no one of the above methods can be implemented. But it supposes that the monopoly is maintained.

These different financing models are applied in the five sectors of the study. This illustrates the variety of approaches that can be chosen by the Members States in the financing of public service obligations. It expresses also the subsidiarity principle's exercise.

The first model, the bid solution is implemented in the United Kingdom in the railway transportation. Since the privatisation of British Rail and the founding of 25 private running companies, franchise contracts are proposed for periods between 7 and 15 years. These contracts determine peak periods tariffs and public subsidies, which have to decrease every year until they disappear.

Consider next the telecommunications sector. France has implemented a Universal Service Fund, fed by all operators, in proportion to their market shares and Italy seems to turn into the same way. The United Kingdom has not planned any financial compensation because the English regulator thinks that supplying the universal service is a profitable activity for British Telecom, in terms of reputation, brand image, market share, and so forth. If this position was to change in the future, the bids for the smallest subsidy and the "pay or play" systems will be explored. The same in Sweden where Telia receives no compensation for the public missions it assumes, the cost of which is considered as negligible. However, it has to be noted that Telia is not required to connect the numerous second homes

at the same affordable conditions it does for first residences. The connection prices here reflect the costs. Moreover, mobiles have broadly expanded because no crossed subsidies worked in favour of traditional technologies, in that country. Lastly, the State's social budget takes charge of some public missions, as the equipment of deaf persons and with difficult elocution ones. Finally, Germany and Austria explore the bids system for the right to supply the universal service in a given geographical area.

Let us also mention that in the French airways transport sector, a specific tax, levied on profitable lines users, contributes to finance the keeping of some non profitable lines.

The variety of financing models (as well as the variety in the content of public service obligations) is the main cause for the absence of a European directive concerning the definition, the organisation and the financing of PSOs, which leaves a rather large room for subsidiarity.

Let us now come back to the advantages and disadvantages of the models financing a PSO.

A first aspect concerns **information** about the cost linked to the PSO. The Universal Service Fund, implemented in France for telecommunications is informatively the most demanding model because it implies an ex-ante evaluation of its cost. It calls for a great deal of information, which information may be manipulated by the operators. Then it is the most likely to be contested by those non submitted to provide the US but compelled to co-finance it. There is also the risk of the PSO being borne mainly by the incumbent operator during the transition period, because its market share is obviously the biggest.

The calculation principle adopted by the French Regulator (ART) is the "net avoidable cost", that is to say, the cost the provider would save if it was free from this obligation. This method has the disadvantage to be very sensitive to hypothesis on the degree of territory coverage in terms of size and equilibrated characteristics of users in this zone (cf. maillage du territoire), which is necessary to calculate the geographical component of the PSO. So, a large maillage lowers the cost of the PSO, because it decreases the number of non-profitable areas, whereas a tight one tends to increase it for the symmetrical reason. The calculation of the avoidable cost is also very sensitive to the costs that are selected as relevant and to the evaluation methods of these costs (historical costs or replacement costs). The Fund model has the advantage to give an (even imperfect) evaluation of the real cost of the PSO. Also, it enables to understand how much these costs may vary with the hypothesis on its way of calculation.

The method of bidding for the smallest subsidy has the advantage to incite operators to reveal their costs. So the system is less demanding in information requirements because the operators provide the information themselves.

The financing by taxes, either by the general budget, or by a specific tax method calls for some information on real costs of public obligations. The amount of

information required for the calculation of taxes and subsidies may be significant and, above all, variable with the (political) choices relative to the definition of public service obligations. A distortion of competition may be the result.

Secondly, one has to look at the organisational costs linked with the implementation of the instruments. The method of bidding for the smallest subsidy implies significant organisational costs. It requires also the bidders to have the same access to different inputs, and above all, not to collude, otherwise, the method looses its good incentive characteristics. Nevertheless, beside quality of service concerns, it should provide the PSO at the least cost.

Concerning the quality of the service, a bids to the smallest subsidy system seems the least good way to guarantee a good quality of service. The contract's length for the right to supply and the modes of re-negotiation at the expiry, here, are crucial.

Finally, the financing by taxes, either by the general budget, or by a specific tax, is the most equitable system since it makes the community to pay for something that increases the collective welfare, but this system lacks transparency.

#### PART 2 - SECTORAL ASPECTS

In this part, the European directives concerning the financing of public service obligation, as well as the actual ways of financing public service obligations are examined in a few sectors, trying to establish an "état des lieux" by sector and in terms of implementation in Member States. The sectors that were looked into are telecommunications (all over Europe), electricity, passenger transportation, water and financial services (in some EU Member States).

The variety of financing models (and of content of public service obligations too) is accounted for absence of European directive concerning the definition of such obligations, their organisation and financing. It expresses also the subsidiarity principle's exercise.

#### PSOs in the energy sector 2.1

#### 2.1.1 Energy sector: European directives

Definition of basic service in the directive for the internal market, Article 3, Paragraph 2: "Having full regard to the relevant provisions of the Treaty, in particular Article 90, Member States may impose on undertakings operating in the electricity sector, in the general economic interest, public service obligations which may relate to security, including security of supply, regularity, quality and price of supplies and to environmental protection. Such obligations must be clearly defined, transparent, nondiscriminatory and verifiable..."

Definition of minimum quality in the directive for the internal market:

Security of supply shall be guaranteed by the Member States which ensure "that for the connection to the system of generating installations, distribution systems, directly connected consumer's equipment, interconnector circuits and direct lines are developed and published. These requirements shall ensure the interoperability of systems and shall be objective and non-discriminatory..." (Article 7 (2)).

For reasons of security of supply, priority may be given to generating installations using indigenous primary energy fuel sources to an extent not exceeding 15% of the

overall primary energy necessary to produce the electricity (Article 8 (4)).

- Environmental protection may be developed through the Member States by power supply from generating installations using renewable energy sources, waste producing combined heat and power (Article 8 (3)).

A supply of customers located in a given area may be enabled through the

obligation of distributing companies (Article 10 (1)).

Definition of reasonable prices:

The target of reasonable prices has been shaped in the directive for the internal market. "The tariff for such supplies may be regulated, for instance to ensure equal treatment of the customers concerned." (Article 10 (1)).

The definition of non-discrimination applies to a type of providers in the electricity sector, viz the network operator. It therefore does not belong to the definition of a SGEI and therefore to a PSO. It shows, however, how closely the governance of a service is related with the general interest, which is a competitive environment for providers in this

- The basic principle Unbundling of Article 14 (3) is useful to avoid discrimination. cross-subsidies and competitive distortion.
- For the access to the transmission systems objective and non-discriminatory criteria have to be published.

Further non-discrimination claims:

- Transmission system operator has to act objectively, transparent and non-discrimi-
- Non-discriminatory disposition of power plant capacities.
- Transparency and non-discrimination have also to be guaranteed for vertical integrated power supply undertakings.

# 2.1.2 Energy sector: Implementation by Member States<sup>13</sup>

PSOs in the energy sector are listed in European Directive 96/92. However, due to disagreements that have long existed between the European Commission, the Member States and the European Parliament, this directive offers various different modes for the implementation of these obligations, without making any one in particular compulsory for any country. Nonetheless, the majority of these PSOs have been voluntarily incorporated into national legislations, with modalities that vary from one country to the next. National regulations differ in the way they define the content of the PSOs, the means of financing them and even the responsibility for insuring them. The result, although it shows a certain overall convergence, is that the European electricity market remains highly fragmented. The PSOs provided for in European Directive 96/92 are:

the obligation to supply any consumer who so requests, other than in circumstances outside the provider's control,

the obligation to supply a service that meets a minimum level of quality.

at reasonable prices,

under secure supply conditions,

whilst respecting certain environmental constraints. Encouragement for renewable energies is mentioned.

The obligation to provide a supply is explicitly mentioned in French electricity legislation. For ineligible customers, this obligation is principally the responsibility of EDF, and secondarily that of a number of small unnationalised distributors, who account for 5% of distribution in France. For eligible customers, who are now free to seek their supply from the producer of their choice, the law has provided for an "emergency obligation". It requires EDF to sell a minimum quantity to any customer who has been unable to receive supplies from his usual supplier, due to interruptions to production or

any other cause. The obligation to supply a service that meets a certain minimum level of quality is also explicitly imposed by the law.

The obligation to sell electricity at reasonable prices has been implemented in France through the establishment of uniform prices for ineligible customers, whatever their location or the quantity of their consumption. These prices are known as "equalised" prices. They are the product of the French public service concept, which implies equality of access. Users' equality of access to the public service has thus led France to impose on the incumbent operator the requirement to sell at the same price, whatever the cost of supplying the customer - whether he lives in Paris, Corsica or the Antilles, and whether his consumption is high or low. This means that users may not be barred by reason of insufficient income (social equalisation) or remote location (geographical equalisation). This principle of non-discrimination has always coexisted with pricing modulations (relating to peak and off-peak hours), which have been declared compatible with it by the Council of State.

Various other PSOs are also enshrined in French law: these include respect for the environment, the promotion of renewable energies, and, finally, the obligation to offer

assistance to poor customers.

Regarding the financing of PSOs, it has been seen that the obligation to supply highquality electricity is imposed on operators. The expenses arising from the purchase obligations imposed on EDF and other distributors, and intended to compensate for the insufficient openness of the market or to promote certain kinds of energy, together with those resulting from the principle of geographical equalisation, are financed by an electricity production public service fund. This fund is contributed to by the producers. The calculation of the net contributions paid in by the producers and importers is first checked by independent bodies approved by the Commission de Régulation de l'Electricité (Electricity Regulation Commission), and then submitted to the Commission for approval.

The obligation to offer prices that are accessible to ineligible consumers has resulted in capped sales prices in the French overseas departments and territories and in Corsica. The

regulator has to approve these price ceilings.

Regarding the principle of social equalisation, the law has provided for a tariff mechanism with a social dimension, so as to guarantee the right to electricity of disadvantaged people; this is subject to approval by the regulator.

United Kingdom

Although the supply obligation is explicitly provided for by the law in France, Italy and Germany, this is not the case in the United Kingdom. The obligation does in fact exist de facto, but it is imposed on the regulator. When the latter awards producers', transporters' and distributors' operating licences on the retail market, he is obliged to ensure that the applicant companies are financially capable of carrying out their tasks. This provision impels the regulator to introduce into the licences relating to the former local distribution monopolies clauses providing for the obligatory supply of electricity to all customers who

More generally, English law never refers to PSOs, but they do exist in the text of the relevant provisions. Thus, the law declares that the regulator has an "absolute obligation" to defend the interests of the poor, the disabled, the inhabitants of rural areas and even certain categories of users, including fishermen. However, the law does not specify how

the regulator should go about fulfilling this "absolute obligation"

Regarding the obligation to sell electricity at reasonable prices, this obviously does not take the form of uniform prices irrespective of the cost of supplying the customer. Selling prices vary according to the customer's consumption category, to the area where he lives, and the distributor or, sometimes, the reseller who provides the supply. However, the regulator imposes price ceilings for the resale of electricity to certain categories of customer, which results in a certain kind of equalisation. Likewise, the regulator prohibits distributors and resellers from segmenting their clientele too finely, so as to avoid excessive discrimination.

Finally, the promotion of renewable energies is financed by consumers via a national tax

levied on electricity

This makes the United Kingdom the most competitive electricity market in Europe. Strictly speaking, there are no public service obligations as such - everything is discretionary. Here and there, however, there are a few provisions which are used by the regulator in order to introduce a few constraints in this area. And new legislation on the utilities should introduce much more precise obligations.

Germany

Under the terms of German legislation on energy in general and on renewable energies in particular, the energy industry in Germany also has general interest obligations to comply with as regards the safety, reasonable price and environment-friendly nature of mains electricity and gas. These are definitely PSOs in the sense of the concept of public services employed in this document, and they are imposed by legislation on energy producers and energy distributors. The question of whether the German government has also notified the European Commission of this legal obligation as a public service is a separate issue. This has in fact not occurred. (Cf. here Group I's report: Regulation)

The following stipulations in the German 1998 Electricity Law and the German Rules of Power Supply (Energiewirtschaftsgesetz EnWG of 1998), especially § 1 (Purpose of the New Revision of the Power Supply Law), § 6 (Negotiated Access), § 10 (General Connection and Supply Obligation), § 11 (General Tariffs and Conditions of Supply), § 17 (Maintenance of Reserve Capacity to Safeguard the Energy Supply) reveal the special significance of services of general interest.

Definition of energy service:

"Purpose of the Rules is a main-dependent supply with electricity and gas which is as safe, price limited and ecological as possible in the general interest."

Definition of service quality:

Security of supply is provided if there exist a sufficient reserve capacity and a small

shortfall of time of the power supply system.

Environmental compatibility is developed by the advancement of the power from renewable energy (wind, water, sun, bio-waste) and combined heat and power

The supply of customers located in a given area guarantees the general obligation of supply by the area provider according to Paragraph 10 EnWG (obligation of supply). An exception is made for economically unreasonable situations.

<sup>&</sup>lt;sup>13</sup> Please also refer to the chapter on regulation.

Definition of reasonable prices:

Reasonable prices are a definite target in the general economic interest.

The publication of the general conditions and tariffs of supply according to Paragraph 11 EnWG is provided in subsequent regulations.

The tariffs are subject to approval regarding the rights and duties of the power supply undertakings.

- When controlling and approving the price measures of economic and efficient application of electricity by the customers may be acknowledged.

Definition of non-discrimination in Paragraph 4 EnWG:

Non-discriminatory criteria to utilise systems of generating installations have to be

Principally there is an obligation of submission (Exceptions: technical impossible and economically unreasonable situations).

Non-discriminatory internal prices between stages of production and transport by unbundling.

Executive order II dated Dec. 13, 1999:

Non-discriminatory access to the transmission systems. - Access fees will be calculated on the basis of imputations.

A new law has existed in Germany since 29.03.2000, giving priority to renewable energies. According to § 1 of the law, its purpose is, in the interests of protecting the climate and the environment, to ensure sustainable development in energy supply, and to bring about a significant increase in the contribution of renewable energies to the power supply. This is in line with the objective of the European Union and of Germany to at least double the share of renewable energy sources in overall power consumption by the year 2010. The law regulates the acceptance of and payment for electricity that derives exclusively from hydro-electric power, wind-power, solar energy, geothermal energy, landfill gas, digestor gas, mine gas or the biomass.

In their capacity as network operators, the electricity producers are obliged to connect to the network plants for the production of electricity from renewable energy sources, to accord priority to the acceptance of all electricity on offer from such plants, and to pay for all such supplied electricity in accordance with predetermined compensation rules. These are also precisely defined by law for the electricity that is accepted from renewable energy sources. Minimum compensation levels are set out for the various types of renewable energy.

Belgium

A specific type of PSO is the Minimum Service Requirement. In Wallonia, for example, every disadvantaged person has by law the right to a minimum of electricity power (6 amperes for illumination) by means of installing a metering device that limits use to that minimum. If the consumer fails to pay the electricity or gas bill, the service cannot be cut or suspended until a local public social assistance centre has advised about the situation. The local authorities have given a mandate to this centre to find and propose a long-term solution with public support if needed (legal disposition - last revision March 1999).

An interesting case is the Danish electricity reform. The new Danish Electricity Act (L 375 of June 2, 1999) has made a continuation of consumer ownership obligatory, instead of ownership through the financial markets (privatisation). The act separates competitive activities (generation and trade) from monopolistic activities (transmission and distribution). Utilities that are both obliged to continue the remaining part of the distribution monopoly and to continue consumer ownership are the Distribution Network Operator and the Supply Obligation Company (both providers of a local PSO) To operate a distribution network, a license from the Ministry of Energy is needed. The are a number of organisational restrictions, such as: the operator is a non-profit organisation with only one license and the consumers in the supply area must elect a

majority of the members of the board of the network operator. The purpose of a Supply Obligation Company is to guarantee security of supply for those (small) consumers wanting it: a service of general economic interest. It is a PSO because the Ministry will not grant a license unless this obligation is accepted. Furthermore, one third of the members should be elected by the consumers in the area or by its municipalities. It may engage in buying and selling electricity.

The Netherlands

The Dutch 1999-Electricity Act allows for privatisation of electricity distribution, but requires a license for serving 'captive' or small customers until 2007. After that year also the retail electricity market is liberalised, although under supervision of a regulator. It may be interesting to notice that housing cooperatives are planning to serve as distribution operator, buying electricity for their tenants.

The distributors finance the PSO for the captive customers by adding a surcharge on the

prices. The government assumes that no PSO will be needed after 2007, due to

technological and organisational innovations.

#### 2.1.3 Energy sector: Funding of PSOs

The financing of tasks in general interest (PSOs) has to be differentiated firstly between procurement and provision. Procurement can be done on various ways (see Section 1.2.1), as is the case with provision (see Section 1.2.2). One important mode is the supply of capital, respectively capital ownership, for enterprises that are entrusted with tasks in a general public interest. Another way of financing is compensation of the costs of services in the general interest (PSOs).

The compensation of the cost borne for a PSO may have the following form:

a. Competition prices:

Cost-covering prices will be found in the free competition at a corresponding reasonable rate of interest. The prices are made by mixed calculation (special kind of internal cross subsidisation). To give an example: The competition prices of day and night time energy in Germany will be based on mixed calculation.

b. Non-cost covering prices: These will be externally financed by subsidies, by the state budget or financing

funds or in other external ways.

c. Internal cross-subsidisation (in case of monopoly)

This alternative, however, will be eliminated after the deregulation of the different fields of exceptions to the rules of competition. After opening the nets for third party access (TPA) there will be competition prices in the power supply (according to point a.) without the need of special transactions of cross subsidisation neither from the state budget nor from financing funds.

d. Exceptions from the rules of competition as a financing instrument

Although the Electricity Directive of 1996 and also the German Law of Energy 1998 principally work from the competition principle, i.e. from the opening of the nets (negotiated TPA or single buyer-rule), the directive as well as the national laws allow exceptions from the competition principle.

The directive justifies this approach for the general economic interest, which may be necessary in some Member States to guarantee security of supply as well as customers' and environmental protection. The free competition by itself is not absolutely able to ensure this. According to Article 3: "Having regard in particular to Art. 90 the Member States may impose on undertakings operating in the electricity sector, in the general economic interest, public service obligations which may relate to security, including security of supply, regularity, quality and price of supplies and to environmental protection. As a means of carrying out the above mentioned public service obligations Member States may decide not to apply several competition rules if their application may not fulfil the general economic interest in a legal or real sense."

And Paragraph 6 of the German Law of Energy 1998 about "Negotiated Third Party

Access" accordingly says: "The access needs not to be guaranteed if it is verifiable that the transmission of electricity is not possible or reasonable for operational or other reasons with regard to the targets of the power supply. For decision what means "reasonable", a special regard shall be given to the fact to what extent electricity of longdistance energy systems, environmental and resources caring as well as technicallyeconomically useful generating installations using renewable energy sources will be displaced and an economic operation of the facilities may be prevented. In other words:

In many EU-countries, a PSO is financed by price regulation. The regulator assesses the consequences in terms of costs of a PSO and allows the operator or distributor to adapt its price accordingly.

#### PSOs in the telecom sector 2.2

# 2.2.1 Telecom sector: European directives

Universal service set of services is defined in the communication of 12 March 199614. The Commission indicates that universal service equates to "the provision of voice telephony service via a fixed connection which will also allow a fax and a modem to operate, as well as the provision of operator assistance, emergency and directory enquiry services (including the provision of subscriber directories) and the provision of public payphones. Users should also have access to published information about the cost and prices of services, about their quality and whether targets for quality are being met<sup>15</sup>

The Council resolution 16 notes the Community acts that can serve as a basis for a definition of universal service are:

Council Directive 90/387/EEC of 28 June 1990 on the establishment of the internal market for telecommunications services through the implementation of open network provision,

- Council Directive 92/44/EEC of 5 June 1992 on the application of open network provision to leased lines1

Council Directive on voice telephony, Council Recommendation 92/382/EEC of 5 June 1992 on the harmonised provision of a minimum set of packet-switched data services (PSDS) in accordance with open network provision principles,

Council recommendation 92/383/EEC of 5 June 1992 on the provision of harmonised integrated services digital network (ISDN) access arrangements and a minimum set of ISDN offerings in accordance with open network provision principles.

Universal service set of services is also defined in the interconnection directive as: "a defined minimum set of specified quality which is available to all users independent of their geographical location and, in the light of specific national conditions, at an

The scope of universal service is described in the 1999 Review, in which the European Commission re-asserts that universal service at EU level includes a defined minimum set of services of specified quality available to all users independent of their geographical location at an affordable price. Broadly, the Commission considers that this definition includes basic voice telephony, fax and internet connection, as well as public pay-phones. emergency call access, operator and directory services.

The Commission adds that universal service is currently including the following:

- the provision of the public fixed telephone network, supporting voice telephony,
- the provision of group III fax and voice band data transmission via modems, the provision of fixed public telephony service i.e. provision to end-users at a fixed location of international and national calls,
- access to emergency services (112), - the provision of operator assistance,

- directory services,

- the provision of public pay phones,

- the provision of service under special terms and/or the provision of special facilities for customers with disabilities or special social needs.

Universal service is meant to be a dynamic and evolving concept<sup>19</sup> and will be kept under regular review, particularly with regard to its scope, level, quality and affordability within the European Union.

The services that can be financed by the fund as universal service are those included in the Chapter II of the Council Directive 98/10/CE of 26 February 1998 on the application of ONP to Voice Telephony and Universal Service for telecommunications in a

competitive environment (see Annex 1).

The financing scheme established to compensate the incumbent operator providing The financing scheme established to compensate the incumbent operator providing universal service via contributions from market players may only be used to fund a basic universal telephone service as specified at the EU level. Then, if Member States are free to define a wider scope of universal service that is provided for at the EU level, they cannot oblige market players to contribute to the provision of such services. According to Article 5(1) of the Interconnection directive, Member States may establish

mechanism for sharing the net cost of universal service with other organisations operating public telecommunications networks and/or publicly available voice telephony services". Article 5(2) envisages either an independent universal service fund at a national level or a system of supplementary charges in addition to interconnection payments.

Contributions may be required from providers of public telecommunications networks and/or publicly available voice telephony services, in proportion to the utilisation of public telecommunications networks. Only the fixed public telephone network and fixed public telephony services can be financed via a universal service fund. Furthermore, on the basis of the Full competition directive, it would be disproportionate

to recover costs associated with activities that are not within the scope of universal service, for example:

the cost of implementing specific measures required for purposes of public security. the provision of communication services outside the scope of universal service to

schools, hospitals or similar institutions,

compensation and/or refund payments (or administrative and other costs associated with such payments) made to users as a result of failure to meet specified service quality levels.

the cost of replacement and/or upgrading of telecommunications equipment in the course of normal network modernisation.

# 2.2.2 Telecom sector: Implementation by Member States

1. The universal service obligations (USO) Fund

Several Member States have provided for the legal possibility to create a USO Fund: Austria, Belgium, Denmark, France, Germany, Ireland, Italy, Luxembourg, Netherlands. Portugal, Spain.

Only France and Italy have created an USO fund and the only USO fund in operation is in France.

In the UK, a consultation was launched last July 1999 by the DGT on Universal telecommunications services including the issue of the USO fund<sup>20</sup>.

#### 2. Universal service obligations

Universal service obligations at the Community level have the following characteristics:

- affordable tariffs
- geographically available
- possible funding by all operators (Universal service fund)

- minimum quality

<sup>14</sup> Communication to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions on Universal service for telecommunications in the perspective of a fully liberalised environment - an Essential element of the Information society, COM (1996) 73 of 12 March

<sup>15</sup> This last provision was already provided in Directive 95/62/EC on voice telephony "Users should also have access to published information about the cost and prices of services, about their quality and whether targets for quality are being met."

is Council resolution of 7 February 1994 on universal services principles in the telecommunications sector. These two last directives have been amended in 6 October 1997 and were codified for the adaptation to a competitive environment in Directive 97/51/EC of the European Parliament and of the Council amending Council Directives 90/387/EEC and 92/44/EEC for the purpose of adaptation to a competitive environment

<sup>&</sup>lt;sup>18</sup> Council Directive 97/33/CE of 30 June 1997 of the European Parliament and of the Council on Interconnection in Telecommunications with regard to ensuring Universal Service and Interoperability through Application of the Principles of Open Network Provision (ONP).

<sup>&</sup>lt;sup>19</sup> The question of possible financing of preferential tariffs for access to Internet type networks by schools is mentioned in the Action Plan "Learning in the Information society" adopted by the Commission in October

<sup>&</sup>lt;sup>20</sup> And the BT license provides that details in interconnection charges terms and conditions and any contribution to US fund cannot be excluded from publication of the agreement or amendment (condition

Universal service obligations are mandatory for the designated telecommunications companies operating in the Member States. Regarding special terms and/or special facilities for customers with disabilities and social

eight countries (Austria, Denmark, France, Italy, Portugal, Spain, Sweden, United Kingdom) adopted a legal framework for disabilities,

and seven countries (Austria, Belgium, France, Ireland, Italy, Portugal, United Kingdom) for special social needs.

Only France provides for the inclusion of social tariffs for disabilities and special social needs in the Universal service obligations fund.

3. Mandatory ONP services

Member States shall ensure that organisations notify to the Commission: significant market power operators in general and offerings of leased lines services, ISDN services and packet switched data services. These offerings - which derive from ONP obligations - are mandatory and have the following characteristics:

cost oriented tariffs

geographically available

- minimum quality

- no financing by a USO Fund

4. National specific obligations

Every Member State is free to add new services at the national level, but they cannot be taken into account by the USO Fund.

Telex service, defence and public security missions are the main national specific obligations. Defence and public security missions are imposed for instance in Belgium, France, Portugal, and Spain. In Sweden, Telia has an agreement with the Defence Ministry for such a field of operation. Research & Development<sup>21</sup> and training obligations are only required in France.

# 2.2.3 Telecom sector: Funding of PSOs (see table)

#### 2.3 PSO in the public transport sector

# 2.3.1 Public transport sector: European Directives

# The notion of public service

In the area of public passenger transport the notion of public service has been present in the EU Treaty since its inception. Article 73 (formerly Art. 77) explicitly provides that "aid that meets the needs of transport co-ordination or represents refunding of some of the constraints inherent in the notion of public service" is compatible with the Treaty.

The first application of this was a rule in Council dated June 26 1969 (Rule 1191/69) on "obligations inherent to the notion of public service in rail, road and inland water transport". It further provided that the purpose of the obligations in question was to guarantee adequate transport services, given the social, environmental and urban planning factors among others, or (to) offer determined fares in favour of some passenger categories", qualifying them as obligations that "the transport company would not perform, or would not perform to the same extent or in the same conditions as if it were acting in its own commercial interest". As regards to putting these obligations into practice, the Rule distinguished the obligation to operate, the obligation to transport and the obligation to set reasonable fares. However, these three types of obligation were not the only public service obligations since the Rule provided that, for the other types of obligation (which are not defined) it is the most appropriate rules (of those defined) that would apply.

The ruling required States to abolish these obligations or to compensate for them under common criteria. However, it initially applied only to the 6 national railway companies in the Member States of the time, and, as regards other transport modes, to companies offering transport the main purpose of which was not local or regional transport.

In 1991, Rule nº 1191/69 was amended by Rule 1893/91, which introduced the possibility to conclude "public service contracts" between the relevant authorities in the Member States and transport companies. Member States could still exclude from its field of application those companies offering urban, suburban or regional services exclusively.

This Rule is currently being amended and the European Commission on July 26, 2000 introduced a new draft. It will be presented in the Council and the European Parliament in the next few months. The purpose of the new Rule is less to define the obligations of a public service than to increase (or introduce) competition in the field of urban, suburban and regional transport. It provides for generalisation of "public service contracts" of determined terms, to be attributed via European calls for tender, in all cases where there is public funding over a certain amount and/or an exclusive right, save in certain cases where rail safety, for instance, is involved. Moreover, the Rule provides for a strict system of public funding scrutiny for these contracts, which are attributed directly because of the exception.

In the more specific area of railways, not counting local or regional rail companies. Directive 91-440 and later regulatory texts had a distinct influence on the Rule, even if they did not directly concern the notion of public service or service of general economic interest, and a trend to restrict the ambit of public service, and therefore legitimate public intervention, has been noted:

Provision of sufficient infrastructures,

- Granting of fare reductions to certain categories of person (large families. schoolchildren, the unemployed, the poor) on lines operated on profit making principles, and

Supply of local and/or regional passenger transport services where they are socially

necessary but not commercially viable.

Thus, it has gradually become the norm that freight and international and national rail services should be operated on commercial principles with no direct or indirect public funding.

While inland passenger transport is considered to be a public service, the notion of "universal service" developed by the European Commission in the fields of telecommunications and postal services, does not exist. Mrs. Loyola de Palacio. the Commissioner for Energy and Transport, has indeed several times indicated publicly that there was no question of drawing up standards in respect of service frequency or quality. Current and future laws are based merely on vague notions such as "adequate high quality services" or "socially necessary services"

Moreover, there is no objective definition of the public service duties of transport companies operating at national level. In France, for instance, the Loti law (Framework law on inland transport) dated 1982, merely lays down the "right to transport", with no practical definitions, leaving it to organising authorities to define the local services and fares they wish - and can afford - to offer. In Spain, the 1987 LOTT requires all towns of over 50,000 inhabitants to organise public transport but does not lay down standards for numbers of services.

# 2.3.2 Public transport sector: Implementation in Member States

As seen above, properly speaking there are no Directives governing public service obligations in inland passenger transport. Member States have therefore not needed to transpose them into national law. However, whether pursuant to European law or not, national law and national practices in passenger transport have changed significantly over the past few years, in a context which is undeniably favourable to privatisation.

In heavy rail transport, the national companies have seen far-reaching change in almost all the countries in the EC, with separation both in activities (at least as regards operation) and in regionalisation of public responsibility for local passenger transport. Where access rights to infrastructures have been granted, new rail companies have emerged which can, where some services are placed in competition by local authorities, compete with the old national companies. In passenger transport, with the exception of Great Britain where British Rail has been divided up into over 25 entirely privatised companies, the market share of these new companies remains small, although it is growing. Elsewhere, ultimate privatisation of the national companies is predicted in some countries, namely Germany and Spain.

<sup>&</sup>lt;sup>21</sup> Network Operators are required to use 5% of their annual investment for R & D.

Table 2.2.3 - Telecommunications services and means of financing - 1999

ľ			7	<del></del>	<del></del>
	Ireland		Eircom	USO Fund provided by law, but not implemented	X X X X X X X X X X X X X X X X X X X
	Greece		OTE	Not yet decided	×××× ×× ×× ,
	Сегшану		Dcutsche Telekom	USO Fund provided by law, but not implemented	×××× × × × × × × × × × × × × × × × × ×
	France		France Telecom	USO Fund: Contributions from public network (inc. Mobile) operators and voice tel. Providers	X X X X X X X X X X X X X X X X X X X
	Finland	UNIVERSAL SERVICE	Telecommunication operators (Sonera, Finnet Group, etc.)	,	X X X X X X X X X X X X X X X X X X X
	реппагк	UNIVER	TeleDanmark	USO Fund provided by law, but not implemented	X X X X X X X X X X X X X X X X X X X
a d	mediam		Belgacom	USO Fund provided by law, but not implemented	X X X X X X X X X X X X X X X X X X X
Apstria			Tefekom Austria	USO Fund provided by law, but not implemented	Provided by Iaw
Countries			Operators	Funding	Public fixed telephony services Directory services Operator assistance (*) Public payphones Emergency calls: 112 (*) Special terms and/or special facilities for customers with disabilities or - special social needs Leased lines services ISDN services Packet switched data services Packet switched data services R& D and training R& D and training
L			<u></u>		

Countries	784]	The state of the state of	100				
	real	Envembourg.	Nemerlands	Fortugai	Spain	Sweden	United Kingdom
			UNIVERSAL SERVICE	1CE			
Operators	Telecom Italia	Entreprise des P&T	KPN	Portugal Telecom	Telefonica	Telia	BT Kingston (Hull)
Funding	USO Fund (but no contribution)	USO Fund provided by law, but not implemented	USO Fund provided by law, but not implemented	USO Fund provided by law, but not implemented	USO Fund provided by law, but not implemented	,	(on debate)
Public fixed telephony service	××	××	×	×	X	×	×
Directory services Operator assistance (*)	< ×	× ×	××	××	××	××	××
Public payphones  Emergency calls: 112 (*)	××	××	××	××	<b>×</b> ×	× >	: × ;
Special terms and/or special facilities for customers with	Provided by Jaw		: .	Provided by law	Soon provided by law (only disabilities)	Provided by law	A Provided by law
disabilities or - special social needs		1 1	××	××	1 1	Public funding	××
		NO	ONP MANDATORY SERVICES	RVICES			
Leased lines services ISBN services Packet switched data services	×××	***	***	***	***	***	×××
		Z	NATIONAL OBLIGATIONS	SNOL			
Telex		1		×	×		
Deserve and puose security	21/4 E11	ı		×	×	Agreement Telia / Defence Ministry	,
R & D and training	J	,	1		,	,	,
(*) This obligation is imposed on all operators, including mobile ones	all operators, including 1	nobile ones.					

Urban transport has traditionally been the responsibility of State companies in the large cities of most countries, except for the French and Greek provinces, and by private companies in smaller towns and around large cities. All these companies have monopolies, either by right or de facto.

In Great Britain, bus transport was de-regulated in 1986. In the provinces, any company with a license may decide to offer services on routes of its choice, and fix fares of its choice. The responsibility of the State (PTA and PTE) is limited to management and creation of rail and road infrastructures, and to maintenance and creation of unprofitable services which are necessary to society and are awarded upon calls for tender. They continue, however, to operate the metros (Glasgow, Newcastle) directly and sometimes tramways too (Blackpool). However, new light metro projects are often joint State/private ventures (Croydon, Nottingham). In London, the former State company London Transport sold the bus companies it still owned in 1996, after handing its operational activities over to subsidiaries. Today it plans and co-ordinates the services offered by the private companies operating 34 distinct networks subject to calls for tender. It continues, through its subsidiary, to operate London Underground, but the Government is envisaging a State-private partnership which would place infrastructure renovation and maintenance in private hands, while the State company would continue to operate the underground.

Similar developments, albeit by different means, have taken place or are in progress in the Scandinavian countries. In the space of a dozen years, the former State owned company operating in Copenhagen has become an organising authority after progressively handing over its operation of the bus lines to subsidiaries, and then to private companies. Now, bus services, awarded by call for tender for each line, are all operated by private companies. However, the S-Bahn is still operated by the national rail company DSB, while the five-year contract for operation of a new light metro link has been awarded to a private English group, starting in 2001. In Stockholm, the State owned company SL, which formerly operated transport, also handed its operation of the metro, tramways and urban bus networks over to subsidiaries and progressively set up bidding procedures from 1993 onwards, including for services operated by its own subsidiaries. Its bus subsidiary recently merged with another Swedish bus company, and should in the near future be privatised, while the French group CGEA-Connex announced at the end of 1999 that it had won the five year contract (renewable for 5 years) for metro operation. In that same year, the national rail company SJ lost the contract for suburban rail lines to Citypendeln, a consortium of French, English and Swedish railway operators.

In other countries, recent regulations have laid down or provided for more or less systematic competition. In France, the Sapin law dated January 29 1993 required provincial organising bodies and private or State/private companies which had signed contracts to delegate services, to make their operations public and open up to competition. This has gradually occurred as the current contracts have come to their expiry dates. It does not apply to provincial towns where networks are run by local authorities, nor to the Paris region. In Germany, the law governing service authorisations was amended at the end of 1993 to take effect from January 1st 1996, and distinguished "profitable" services which could be authorised without recourse to call for tender, and non-profitable ones (or exclusively public services) requiring subsidies and would be the object of calls for tender once the current concession had expired. It has been little applied to date, due mostly to the system of reciprocal subsidies used by many municipal companies (Stadtwerke). In Italy, a 1997 law provided that as of 2004, the networks would be required to bid for public transport concessions lasting 2 to a maximum of 9 years, but it has not yet been passed: in provides for progressive bidding for bus services supplied by municipal companies, but it will not apply to large cities initially.

Bidding procedures therefore still remain very limited in urban transport throughout EU countries. However, other forms of organisation have appeared with, more and more often, contractual relationships being concluded between the appropriate public authority and the operators, be they public or private, and giving rise to new financial and contractual arrangements for the funding of new infrastructures.

As regards the spread of contractual relationships, there are many examples in Belgium, France and Spain. Examples of complex arrangements are the new rail link crossing the Tagus in Lisbon, the suburban extension of the Madrid metro line 9, and the light metros

or tramways in Paris (Orlyval), Toulouse, Rouen, Strasbourg, Grenoble, Porto, Nottingham, Croydon, Barcelona and Thessalonika.

The other regular coach services (intercity and regional) are not always deemed to be "public services" in the EU countries. They are considered thus in France, Luxembourg, Belgium, the Netherlands and Greece but are not in England and Portugal (since the privatisation of the State owned national bus companies); and they are partly viewed so in Finland and Spain. Whether public services or not, they are mostly operated by private companies, with a few notable exceptions. In Germany and Austria, the market is still dominated by the bus subsidiaries of the railways and the Post office; in Belgium, private companies are subcontracted by the State-owned regional companies; and in the Netherlands, the State-owned national holding VSN and its 9 regional subsidiaries controlled virtually all the market before selling two subsidiaries to an English group by order of the government.

It is in this sector that the public authorities' methods of intervening differ the most from one country of the EU to another, ranging from the "laissez faire" attitude of the United Kingdom, through simple authorisation to operate (and so an exclusive right) or organisation and part funding of "lacking links or services" (with or without bids for these contracts), to the administered economy of Greece, where the ministry sets fare prices, receives revenues and pays operators per vehicle/kilometre. It is also in this sector that companies wishing to penetrate a market other than their own have set up the most easily, by buying or acquiring interests in local private companies (CGEA-Connex in Portugal, Via-GTI in Spain etc.).

# 2.3.3 Public transport sector: Funding

Funding of public transport services has two aspects: funding of infrastructures and funding of the service itself, it being understood that rolling stock can be accounted for under investment or under service.

As yet, no European regulatory framework has been fixed completely for **funding of infrastructures**, but the European authorities have clearly indicated the orientations chosen. Important in this respect is the green paper on "Equitable and effective ticketing in transport and options for internalising the external costs of transport in the European Union" (COM 95-691). This is followed by the white paper on "Equitable payments for the use of infrastructures: a step by step approach to establishment of a common framework for leasing transport infrastructures in the European Union" (COM 98-466).

The purpose of the EU is to build, over a period of some twelve years, an approach to "the user payer" and fares in all transport modes, on the basis of the marginal social cost. All the commercial users of transport infrastructures must jointly bear the cost of these including costs arising from environmental and other external effects, at the location of use or as near as possible thereto. However, Member States may continue to fund supply of public services or services of general interest, by subsidising the transport operators using the infrastructure, thus compensating for the effect on the cost for the final users. They may also subsidise the administrators of the infrastructure directly for the additional advantages (not least town and country planning aspects) which are granted to non-users of the infrastructure de facto. As for the payments made, they could be used in the funding of national, regional or municipal infrastructures. For, according to the Commission, although the method chosen (that of the marginal social cost) does not allow the cost of each infrastructure taken in isolation to be covered, it can guarantee that the costs for all the infrastructures together are covered.

These principles were implemented first for rail infrastructures. According to the principles set forth in the White Paper:

The first phase (1998-2004) will see generalisation of paying infrastructures for

The first phase (1998-2004) will see generalisation of paying infrastructures for freight transport, based on the distance covered and marginal costs, with additional optional payments the maximum sum of which must not exceed the average costs. Furthermore, compensatory payments are provided for the external costs of competing transport modes, which are not covered.

 In the second phase, from 2001 to 2004, the possibility of payment for noise will be studied.

And in the third phase (from 2005 on), the foregoing system will be extended to operators of passenger trains, on the basis of infrastructure and external costs. In parallel, the rules on State aid and VAT treatment applicable to transport will be

Additionally, the European authorities, which are conscious of the financial difficulties of Member States, wish to foster partnerships between States and private enterprise, which can only develop if the private sector can count on reasonable profit with sufficient income and an acceptable degree of uncertainty. Independently of any regulatory measure, they have strongly encouraged these complex structures in network development projects that they partially fund from "structural funds".

As regards the funding of transport services, the European Commission accepts that public authorities may intervene in the general interest. That may be done by granting exclusive rights or by giving financial compensation for the public service obligations they require of transport companies. But it wishes to ensure that this direct or indirect State aid is proportional to the goal sought and that it does not hamper competition in an emerging interior transport service market. On the other hand, the Commission has laid down no rule as yet on the practical methods of this public funding. That leaves each State and local authority free to choose between the various possible "contributors" (national or local taxpayers, indirect or direct beneficiaries, habitual or occasional travellers, etc.) and the various funding methods possible (assistance to transport companies or assistance to private individuals).

Thus, while the organisation and methods of regulating inland passenger transport differ greatly from one transport mode to another, one country to another and even within a single country for a single mode, from one region or city to another, public funding is always part of the equation and is a welcome adjunct, in various forms, to the income from paying customers. The public authorities finance even in fields where institutional funding is rare: operators in Great Britain continue to receive subsidies after privatisation. but the contracts now in force provide for gradual reduction over time. State/private partnerships for new urban infrastructure projects always (except for Orlyval which... went into liquidation) provide for financial participation from the public authorities. Regular intercity coach transport is in practice generously financed in one way or another. in almost all countries, via the financial compensations for fare reductions (or free travel) for students and schoolchildren, who are their main customers.

On the other hand, although public co-funding is a constant, its relative proportion is very variable. For example, if Jane's<sup>22</sup> is to be believed, State subsidies to heavy railways

some 46% of the revenue in passenger transport in the Austrian national railway

nearly 30% of all revenue for all activities in the Belgian SNCB.

almost 30% of operating costs in the Danish DSB (not counting the subsidy and equipment costs),

some 50% of operating costs, including charges for use of infrastructures, for the German DB Regio,

over 40% of operating costs in the regional services of the Spanish RENFE,

- some 35% of the revenues of the passenger transport services in the French SNCF.
- some 33% of operating costs (all activities) in the Irish national company.
- about 15% of the revenues in the national Finnish company's passenger sector.

In the field of urban transport, the level of subsidy is 40 - 60% of operating costs in Denmark, 30 to 70% in Germany, around 65% in the two largest Greek cities, from 40 to 60% in the large French cities, 10% in Dublin, 60 - 75% in Italian cities, 35 - 85% in cities in Luxembourg, 30 - 50% in the large cities in Finland, 60% in Stockholm, and 15% for London buses.

However, in this sector even more than in the rail sector, the figures should be viewed with caution, since they are provided by the transport companies and do not take account of the direct expenditure of the public authorities, which varies enormously from one city to another. Thus, in France, the Ministry of Transport considers that fare revenues covered a mere 35% of total public transport costs in the Ile de France in 1996, and 25% of those in the provinces, and that the "transport payment", the special local tax paid by companies in the area covered by the public transport funded another 31% in the Ile de France and 44% in the provinces. The remaining finance came mostly from the State and the "départements" in He de France, or the "communes" in the provinces.

The amount of public funding varies from one country to another and from one town to

another. Methods of funding are even more varied, as evidenced by the following range:
- direct participation by States (and therefore of national taxpayers) in funding of heavy rail infrastructures, everywhere except for Railtrack in England, where the access duty paid by operators cover the costs of administering the infrastructures,

participation or not of these States in funding of infrastructures and regional or urban transport services, either by direct payment to operators, or by transfer of financial resources to local authorities, which must then indemnify operators:

indirect funding from States via lowered VAT rates, tax rebates on fuel, loans with interest-rate subsidies or guaranteed long term loans, compensation for reduced fares for certain passenger categories (large families, students, young people, the unemployed etc.).

indirect funding paid for by national or local taxpayers by means of crossed subsidies for different public service activities within the same company,

direct or indirect funding from local authorities (paid for by local tax payers) for local infrastructures and transport services,

creation of special transport taxes at national or local level; transport tax in France, employers tax in Vienna, fuel tax in Germany.

Most often, particularly for urban transport in towns of a certain size, there are combinations of various funding modes.

# PSOs in the water sector

# 2.4.1 Water sector: European directives

There are several directives describing the PSO for the water industry.

Council Directive 98/83/EC relating to the quality of drinking water intended for human consumption. Its objective is to lay down at Community level the minimum quality and control standards for water intended for human consumption.

Commission Communication of 21 February 1996 on Community water policy. establishing an integrated water management policy. It details the objectives of such a policy, namely to secure the supply of drinking water and non-drinking water, to protect and preserve the aquatic environment, and to restrict the effects of natural disasters (drought, floods). It defines the various types of pollution, which may affect water, and states the principles of this policy, such as the principle of the polluter pays. It puts forward the idea of a Water Resource Framework Directive. Council Directive 91/271/EEC concerning urban wastewater treatment amended by

Directive 98/15/EC. It aims at harmonising measures on water protection and management throughout the Community.

Council Directive 80/68/EEC on the protection of groundwater against pollution caused by certain dangerous substances.

Council Directive 76/464/EEC on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community aimed to harmonize legislation of the Member States.

The EU is mainly concerned with establishing minimum standards for environmental protection and for the quality of drinking water. The implementation and strengthening of standards is left to the Member States.

# 2.4.2 Water sector: Implementation by Member States

In almost all countries of the EU the water industry is organised as a vertically integrated public utility. The differences between the Member States relate to the allocation of responsibility to various public bodies and to various methods of management. Almost everywhere the cities or regions are responsible for water service, whereas the state

Jane's - Urban Transport Systems, edited by Chris Bushell - 1998-1999. Jane's - World Railways, edited by Ken Harris - 1999-2000. Janes Information Group limited, Coulsdon, Surrey, UK.

supervises the lower public bodies. It follows that SGEI are procured by definition. Only in England and Wales private companies provide water services, which companies are

Management methods can be distinguished in:

Direct management: by the city administration itself; by some administrative unit with some financial autonomy; or by an autonomous administrative body with a public

Hired management, or intermediary management: on the basis of a contract that specifies the management services and remunerates according to a lump-sum payment, a profit sharing or a cost-plus rule.

Outsourcing or delegation of management to a private company: by means of a concession or a lease, on the basis of a contract that specifies the management services and remunerates by a fixed water price set in the contract. The last option is applied in France.

Austria

Austria has considerable water resources (about 12,000 m³ per inhabitant per year). In Austria the provision of water and wastewater disposal are considered public tasks. In fact, these services are regarded as services of general economic interest (SGEI). The responsibility for these services lies with the state. The provision of water and of wastewater disposal is organised in a decentralised way.

In 1994, 85% of the Austrian population were supplied with water by means of a pipeline distribution system. 75% were connected to the public canal system. 100% coverage of the territory by the state is not envisaged. The most important institutions in the Austrian water industry are the communities; the associations of communities; the administrative associations; the associations pursuant to Water Law Act; and the private-law organisations. The water-related tasks are performed by different kind of companies. In Vienna, for example, the provision of drinking water is assigned to part of the local government. In many boroughs, however, the local utilities are responsible for it. In one of Austria's nine Länder, Burgenland, the water associations supply 75% of the population. The provision of water and of wastewater disposal is organised separately from the companies (also administrative units) in question being responsible for certain

Belgium is a particularly complex case. Its water resources are rather meager and of uncertain quality. The country is a federation between a Flemish, a Walloon, and a Brussels administration. This political division also regards water management. Since the Walloon region has substantially more water resources than the Flanders and Brussels region, it sells drinking water to these regions, covering one third of their needs. That implies a second vertical separation: between production (mainly in Walloon) and distribution. Water distribution is organised by two regional corporations, the Vlaamse Maatschappij voor Watervoorziening (VMW) and the Société Wallonne des Distributions d'Eau (SWDE) as well as through over 100 distributing companies (public or mixed ones, concessions, ...). These companies serve their regions, provinces, cities and intercity unions. Sewerage systems fall under the responsibility of the cities. The management of the water cycle, collecting and purification stations, has been entrusted in Wallonia to the Société Publique de Gestion de l'Eau (SPGE). The difficult interregional communications add to the problems of international co-operation. It seems hard to take measures that prevent wastewater to pollute the rivers. This again is harmful for tale actions that support pollution abatement and, more specifically, the recycling of water, which is clearly an PSO on the European level.

The water resources of Denmark amount to about 2,500 m<sup>3</sup> per inhabitant. Municipal councils are in charge with the enforcement of European regulation and water quality. Citizens may institute cooperatives in specific areas, which own water distribution installations, and gather information about the performance of water companies and determine further management regulations.

France has developed an interesting model of water management. It has well-developed concepts of services of the general interest for which public authorities on different levels are responsible. Local communities are responsible for the price and quality of water distributed in their community. The actual management of the water provision has often been outsourced to large companies. Since the local authorities bargain individually with these international companies, price and quality differences may arise. But that may be at large with the popular conception that water prices should be reasonable and not differ too much: the service of general interest on the national level. This interesting problem is not easily solved in the existing context.

The Netherlands

The Netherlands is the most densely populated country in Europe and has rich, but fragile water resources: about 6,100 m<sup>3</sup> per inhabitant. Its water management is very complete and integrated. Water production, distribution and purification are organised in a vertically integrated monopoly, controlled by the government. The 1975 Water Law has improved the effectiveness of the industry and increased the scale of water companies. The number of public water companies (Waterleidingbedrijven) has since reduced from 111 to 24. In 1975 mostly city boards governed these companies. Today, 9 water companies are public limited liability companies, based on Private Law, and owned by the provincial or national government; one is still managed by the Amsterdam City Board, and one small water company is still in private hands. The 1975 Water Law will shortly be revised. Parliament has already approved a policy

statement to revise the Water Law and a new act will be submitted in 2000. The main point of discussion is how far one can liberalise the industry. The government has decided

to allow liberalisation only for large water users.

Purification of wastewater belongs also to the responsibility of Water Boards (Waterschappen), which are public and political bodies dating from the fifteenth century. They control the aquatic environment of polders and river basins. Today they are also charged with water protection and purification and can levy taxes to the inhabitants to balance budgets.

United Kingdom

Water resources are relatively small, about 2,200 m<sup>3</sup> per inhabitant per year. In 1973 a

new regional system for water management has been created.

There are three independent public bodies in charge with the implementation and enforcement of the government's water policy. The National Rivers Authority (NRA) is in charge of water policies; the Drinking Water Inspection (DWI) checks the sanitary standards; the Office of the Water Regulator (OFWAT) determines the water prices and regulates the water companies.

In England and Wales, there are 31 private water companies, of which 10 Water Service Companies (WSC) and 21 Statutory Water Companies, or Water Supply Companies. which are in charge of water distribution in restricted geographic areas, where their market share is about 25%. They have a monopoly for water purification in their region. A WSC may provide water in any region. Each WSC is the subsidiary of a water holding company. These 10 holding companies are horizontally integrated conglomerates in order to diversify risk. They own firms in the tourist industry, in waste and environmental management. They also integrate vertically with civil engineering, and research.

# 2.4.3 Water sector: Funding of PSOs

The communities are responsible for safeguarding the operation and financing of the provision and disposal of water. In doing so they are legally bound to specific laws of the Länder. The communities, being independent economic entities, are entitled to run their own companies in order to ensure the provision and disposal of water. Furthermore they can bind their citizens to contribute to the financing.

The financing goals refer primarily to safeguarding and improving existing water networks and safeguarding and improving the water quality. Financing is necessary for

current costs and project-related costs.

Financing of current costs:

To finance the current costs communities charge fees for the use of community facilities. These fees are exclusively reserved to financing the costs incurred by the communities.

The costs incurred for the setting up, the maintenance and the operation of the facilities provide for the basis of calculating the fees. The benefit-received principle (equivalence principle) is to be applied. The costs can be further split up into running costs (personnel, maintenance, energy, other) and capital costs (interest paid on borrowed capital, calculatory interest, depreciation). The calculation of the fees is based on cost accounting and includes the following principles:

- Cost-oriented fixation of the fees.

Cost-efficient economic and functional operation of the facilities

Cost-officient, economic and functional operation of the facilities.

Gains and losses due to fluctuations in costs and proceeds can be compensated over a 10-year-period. Prohibition of cross-subsidisation: The fees are to be calculated for each and every

service separately.

- Costs should be covered completely.

These principles should be applied irrespective of whether or not the community assumes directly the responsibility for the provision and disposal of water.

Financing project-related costs:

The community providers of drinking water were subsidised by the Water Industry Fund from 1960 to 1993. This fund was the basis for government policy aimed at promoting the Austrian water industry. However, since 1993 promotion is done directly by the Austrian Ministry of Environment with the legal basis thereof the Environmental Protection Act

Various instruments are currently used to promote capital spending activities in the water industry. Promotion usually takes the form of improvements of borrowing facilities, such as annuity or interest rate subsidies. Such promotions can be awarded for a period of five

of the market for water services in Austria, France, Germany, Italy and Spain **Table 2.4.2** 

	of legislation	definition of	obligations	operators	nonnadmoa	percentage or public ownership	percentage o linked to	percentage of nousenoids linked to the water
		service obligations	purific.)				distribution network	purification network
Austria	Länder	ou	yes	<ul> <li>direct public</li> </ul>	- no competition	100	82	71
				management				
				companies				
-				- intercity associations				0.0
-				<ul> <li>public companies</li> </ul>				
France	municipality	22	yes	- autonomous	- private partners	40	66	80
				administration	play an			
				<ul> <li>intercity association</li> </ul>	increasingly			
				- intermediary	important role		•	
				management	<ul> <li>few big private</li> </ul>			
				<ul> <li>leasing ("affermage")</li> </ul>	companies			
				- concession				
Germany	Länder	по	yes	<ul> <li>required water quality is</li> </ul>	<ul> <li>few rare private</li> </ul>	80	86	9,06
				laid down in the	companies			
				Drinkable Water	- no competition-			
				Regulation	friendly			
				<ul> <li>duration of contracts</li> </ul>	environment		•	
				between municipalities				
				and firms remain	•	•	•	
				unknown				
Italy	central	no	yes	<ul> <li>long duration of</li> </ul>	<ul> <li>no competition</li> </ul>	96	n. d.	75
	government and			partnership contracts				
	regions			between firms and cities			•	OWAD-A
				(25 to 30 years)				
				<ul> <li>Italians possibly</li> </ul>	•			
				strongly attached to				
				public administrations				
				and concessions				
Spain	central		yes	<ul> <li>existing firms hold</li> </ul>	- private partners	74	66	56
	government and			monopolies	piay an			
	regions				increasingly			
					important role			

The costs incurred for the setting up, the maintenance and the operation of the facilities provide for the basis of calculating the fees. The benefit-received principle (equivalence principle) is to be applied. The costs can be further split up into running costs (personnel, maintenance, energy, other) and capital costs (interest paid on borrowed capital, calculatory interest, depreciation). The calculation of the fees is based on cost accounting and includes the following principles:

Cost-oriented fixation of the fees.

Cost-efficient, economic and functional operation of the facilities.

Gains and losses due to fluctuations in costs and proceeds can be compensated over a 10-year-period.

Prohibition of cross-subsidisation: The fees are to be calculated for each and every service separately.

- Costs should be covered completely.

These principles should be applied irrespective of whether or not the community assumes directly the responsibility for the provision and disposal of water.

Financing project-related costs:

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Various instruments are currently used to promote capital spending activities in the water industry. Promotion usually takes the form of improvements of borrowing facilities, such as annuity or interest rate subsidies. Such promotions can be awarded for a period of five

Austria, France, Germany, Italy and Spain of the market for water services in Table 2.4.2

	of legislation	definition of	obligations			public ownership	linked to	Inked to the water	4247054
		service obligations	purific.)				distribution network	purification network	
Austria	Länder	no	yes	<ul> <li>direct public</li> </ul>	<ul> <li>no competition</li> </ul>	100	82	7.1	
				management					
				- autonomous municipal					
				companies					
				<ul> <li>intercity associations</li> </ul>					,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,
				<ul> <li>public companies</li> </ul>					
France	municipality	uo	yes	- autonomous	<ul> <li>private partners</li> </ul>	40	66	80	
				administration	play an				700-
				<ul> <li>intercity association</li> </ul>	increasingly				
				- intermediary	important role				
				management	- few big private			****	w
				- leasing ("affermage")	companies				
				- concession	•				
Germany	Länder	ОП	yes	<ul> <li>required water quality is</li> </ul>	- few rare private	80	86	90,6	Darken.
				laid down in the	companies				
-				Drinkable Water	- no competition-				
_				Regulation	friendly				
				<ul> <li>duration of contracts</li> </ul>	environment				-
				between municipalities					_
-				and firms remain					
				unknown					
Italy	central	100	yes	<ul> <li>long duration of</li> </ul>	- no competition	96	n. d.	75	
	government and			partnership contracts					
	regions			between firms and cities					_
				(25 to 30 years)			•		
				- Italians possibly	•				
				strongly attached to				····	
				public administrations		•			
				and concessions					
Spain	central		yes	<ul> <li>existing firms hold</li> </ul>	<ul> <li>private partners</li> </ul>	74	66	56	
	government and			monopolies	play an				
	regions				increasingly				
					important role				

and Spain Germany, Italy Austria, France, 2. services of water financing **Table 2.4.3** 

	responsibility for financing	financing principles for operational costs	investments financed by
	and price fixation		
Anstria	communities and Länder	<ul> <li>legal obligation to balance receipts and</li> </ul>	- municipality
17 (17 T)		expenditures	- companies
	ASSESSED A PROPERTY OF THE PRO		<ul> <li>central government</li> </ul>
Trans	municipalities and associations	<ul> <li>Municipalities legally bound to settle up for the</li> </ul>	<ul> <li>municipality</li> </ul>
		expenses in relation to public water purification	- association
		installations	<ul> <li>concessionnaire</li> </ul>
Cermany	municipalities, Länder and cartel office	<ul> <li>prices have to cover all costs</li> </ul>	<ul> <li>municipality</li> </ul>
		<ul> <li>cross-subsidies from one activity to the other(s) in</li> </ul>	- company
	·	the integrated services companies ("Stadtwerke",	
		"(Juerverbund")	
Italy	municipalities, central and regional governments	<ul> <li>prices must cover expenses</li> </ul>	<ul> <li>municipality</li> </ul>
		<ul> <li>budgets are required to be balanced</li> </ul>	<ul> <li>association</li> </ul>
		<ul> <li>"aziende" often being very small do not dispose</li> </ul>	<ul> <li>company</li> </ul>
	-	of their own budgets, cross-subsidies possible	<ul> <li>concessionaire</li> </ul>
Snais	municipalities and regions	<ul> <li>investment costs not included in prices</li> </ul>	- association
	,	<ul> <li>requirement of balanced budgets</li> </ul>	<ul> <li>municipality</li> </ul>
о <del>моз .</del>			- company
			<ul> <li>concessionnaire</li> </ul>
			- consortium

# 2.5. PSOs in the financial sector

# 2.5.1 Financial sector: European directives

The notion of "services of general economic interest" (SGEI) in the financial sector can be identified with the specific financing missions, which the public banks are entrusted with by their national (or regional) governments. The legal definition of the financing missions of those banks, is a very sensitive question for the European Commission, who asked the banks in 1988 to fill out a questionnaire on this subject, which is considered a confidential matter.

The mission that National investment and development banks have to fulfil and that is expressly established in the regulation about its financial and legal status, is undoubtedly a service of general economic interest (SGEI) within the meaning of Art. 86.2 of the TEU and of the Commission Communication of the 20 September 2000, the Resolution of the European Parliament of December 1997, the Jurisprudence of the European Court of Justice and the Report of the Commission to the Council about the Services of general economic interest in the banking sector of August 1998.

economic interest in the banking sector of August 1998.

The mission of general economic interest fulfilled by these banks consists in filling the gap in those medium and long term financial activities in sectors considered strategic for their countries development that are not satisfactorily covered by the private financial system for several technical reasons. Among them, high risk, low profitability, long periods of maturity, substantial initial investments, are specially relevant. Some examples of those specific-financing missions are basically:

- promotion of small and medium sized enterprises (SMEs);

- granting of guaranteeing of export credits;

social housing loans;municipal financing;

- financing of infrastructure projects; and

- regional development.

To this list, providing minimum banking service has to be added.

In this way, these Institutions operate in co-operation with the general financial system and in full respect of the principles of subsidarity and complementarity. This explains why they do not intervene in those assets operations that compete or replace those carried out by private institutions or may produce distortions in the financial system. Besides, they operate under strict banking criteria achieving acceptable ratios of efficiency and profitability, although these are somehow different of those attained by private credit institutions. Being providers of services of general economic interest, these banks do not look for a maximum benefit but this does not prevent them of seeking in their activities financial balance and therefore the assets operations are carried out according to the most sound banking practices. The complementary nature of their functions is essentially underlined by their activity as second-floor institutions, particularly in the case of SMEs financing. Therefore, those activities are headed to social and economic cohesion objectives and thus they contribute to the promotion of the solidarity and the equality of all the citizens as well as the competition between economic agents. All of them are values associated by the Community to the function developed by the services of general economic interest established by the Member States, acknowledging simultaneously that they are part of the European model of society that conciliates market dynamism, cohesion and solidarity.

The financing of enterprises or sectors that are considered basic for an economic and social balanced development of the country and are not satisfactorily covered by the private financial sector, is an essential problem that justifies State intervention as the guarantor of general interest. State intervention in this field has always been done under the principles of subsidiarity and complementarity, i.e., in order to fill the eventual gaps of the private financial system. For example, the provision of financing of certain special sectors that need a substantial medium and long term financing as a basic condition to carry out their investments in a stable way.

It is a proven fact that free market creates a shortage of long term funding due, among others reasons, to the fact that private banking system creates shortcomings as long as it concentrates on the more profitable markets; this performance becoming more critical in economic recession periods. Likewise, the practice of controlling banks performances in annual or even shorter periods and the volatility of the interest rates, are other factors that

go deep on this lack of long term resources, because there is a tendency to limit or to minimise risk situation.

This means that the public banks select those projects, which can not be financed solely by means of resources of the private financial system due to the technical reasons before mentioned. This is the case of big infrastructure projects (transport, telecommunication, energy, etc.) that are financed through the *project-finance* technique. Through *project-finance* it is possible to carry out projects whose financing exceeds the promoter's capacity to obtain funds by themselves through equity, through external financing or through public budget. This is also the case of investments by small enterprises that do not offer adequate guarantees to the private financial sector, which thereby consider their financing demands as of too high risk.

In conclusion, those are investments whose benefits cover a wider field, because of their externalities, than solely the borrowers, contributing therefore to improve the country's global productive structure, to promote employment growth, to enhance technological investigation, the environment protection, regional development, etc. Also, as before said, many of these operation are done in close co-operation with private credit institutions through second-floor loan facilities, where the public financial institution establishes preferential loan conditions on cost and term that will be the same for all potential borrowers, and must be respected by intermediate institutions.

Organisation

The service operator is a Financial corporation that has its organisation and functioning regulated by specific law and its capital belongs partly or totally to the State. Such a public financial institution ensure the public service essential principles of functioning:

- Equal opportunity of access to the services offered for all the users. In the financial sector it is particularly shown by means of using the mediation system (acting as a second-floor institution) in order to distribute the different credit line throughout the national territory.

Adaptability (also named mutability or flexibility) of the service by means of a
permanent analysis of the better possible answer to the user's evolutionary needs, i.e.,
adapting the financial condition to the borrower needs and the financing objectives to
satisfy the public general interest in every moment.

Transparency on the service management that must be shows on the financing modalities and tariffs (transparency and equality on prices and mediation credit lines, etc.)

The provision of those financial services is carried out according to prudential banking criteria and under the following principles:

 They are instrumented fundamentally and preferentially as medium and long-term loans aimed at financing real investments.

- Their approval will require the implementation of the necessary provisions to safeguard, in all financial activities, the principle of financial balance.

 Those public banks grant the loan directly to the borrower, or use the mediation of credit institutions can make the provision of the service.

# 2.5.2 Financial sector: Implementation by Member States

In the UK, the Post Office will submit a plan to the government (according to *The Economist*, September 2nd 2000) for a "universal bank", aimed at those on low incomes who do not currently use basic financial services. Almost the only difference between the universal bank and a commercial bank will be that overdraft facilities will not be offered. The 19,000 branches of the Post Office may reduce the lack of banking facilities among the less well off, which is a key factor in "social exclusion". As many as 3.5m people – 9% of Britain's population – are "unbanked", meaning they have no account of any kind. The unbanked tend to be out of work, poor and on the dole. A significant portion comes from minority communities. They also pay a heavy price for being unbanked: it makes transaction costs 9% higher.

The government expects the established banks to help to fund this plan. They are less keen on this form of competition, of course. The banks face an awkward choice. They could tell the chancellor that it is his job, not theirs, to bail out the Post Office. But if they refuse to co-operate, they will face pressure over some less-than-competitive practices, identified earlier this year. If, however, the government continues to bully the banks into

helping it subsidise a competitor, it will run the risk of violating the European Union's competition rules, according to *The Economist*. Some government help would almost certainly be needed to get a universal bank off the ground.

In Germany municipal savings banks ("Sparkassen") and regional banks (property of federal states "Bundesländer") play a significant role. Municipal savings banks and regional banks do private business as private banks as well as typical public business such as for the municipalities, specific small-business programs, regional policy development financing and so on. The Sparkassen also have the obligation to provide financial services to anyone settled on their community.

In Belgium as well as in France, the postal bank has the obligation to open an account for anyone living on the territory, in order for them to have access to a minimum banking service (money deposit and withdrawal, money transfers, receiving statements of accounts).

In Spain, France and Germany, among the public banks with specific tasks, one can find for example the Instituto de Crédito Oficial (ICO), la Banque du Développement des PME (BDPME) and the Kreditanstalt für Wiederaufbau (KfW). The field of activity of the BDPME is more specific as its mission is focused on financing SMEs. In conclusion, these banks through their financing activity do fulfil a common mission of general economic interest, i.e., to promote the social and economic development of their countries. Consequently they are nominated as National Investment and Development Banks.

Other European countries have public or private financial institutions that develop similar financial missions of general economic interest, also entrusted with by their national or regional governments.

#### 2.5.3 Financial sector: Funding of PSOs

Public banks raise funds in domestic and foreign markets through any type of financial transaction allowing them to obtain funds and manage their balance sheet. Generally, debts and obligation that may be incurred by these banks when raising funds will benefit, as regard third parties, from the State guarantee.

It is true, anyway, that these banks have several credit lines that are not profitable and this lack of profitability is compensated with the benefits of other asset operation. In general, the compensation can be made through the model of "Cross subsidies" or through a Fund fed with the benefits from the profitable credit lines. Some times (few) this Fund is also fed by the State budget.

Nevertheless this situation is perfectly acceptable in the case of services of general economic interest. For the European Court of Justice has expressly stated in two very important sentences — Corbeau (19.5.93) and Almelo (27.4.94) — that economical consideration as global financial profitability of service of general economic interest, can be legitimate justifications to benefit from a exemption of the competition rules.

#### PART 3 - CONCLUSIONS

The purpose of this Section is to draw some conclusions based on the analysis and the observations made for the various sectors and countries, and to assess the prospects of the financing of public service obligations.

# Conclusion 1 - Financing modes

Concrete recommendations about financing modes, even if they were possible, would not make sense. There is no "Royal Road" of financing. All financing modes that are used have their advantages and disadvantages, and these have to be weighed up when making a decision in any specific situation. The choice of financing mode depends firstly on the relative weighting and order of priority assigned to the relevant evaluation criteria, and secondly on the level of the minimum standard for PSOs, and hence the level of costs that are not covered by the price.

Nonetheless, a few conclusions may be drawn.

- Where PSO standards are high, meaning high financing volumes, the state budget solution and the specific fund solution should be given serious consideration as financing modes, whereas where minimum standards are low, financing via market prices as part of a mixed calculation is also viable, as private providers will be more ready to take on PSOs.
- This results in an observed trend.
- Where budgets are tight or restricted, the state either tends towards low PS standards, or attempts to pass on the PS obligation to third parties. In the latter case, the PSO costs will be financed by specific funds or through market prices, rather than state budget financing. The state budget solution may have many advantages with regard to the evaluation criteria, but it is vulnerable to restrictions in the state budget, or to a lack of will on the part of politicians or the public authorities to provide public services of a high standard at reasonable prices. In many European countries, the state's retreat from public-service financing is very much in evidence.
- Whether the other financing modes (additional charges, cross-subsidisation and market-price financing) are able to replace state budget financing and fund financing and to finance public services of a high standard at reasonable prices depends on several factors. Where financing problems arise in connection with public services, this means a significant demand for subsidies. However, financing problems arise whenever there are high service standards and a substantial subsidy requirement.
- The additional charges may be insufficient to finance the public services. On the other hand, the additional charges may be set at an unreasonably high level, which obviously results in making network access unduly onerous to charge payers.
- Internal cross-subsidisation is clearly irrelevant as monopolies have been abolished under European community law. Market-dominant enterprises can

obviously be obliged to cross-subsidise, but their position in the market allows them to pass on the costs of the PSO in their prices, at the consumer's expense.

- The market-price solution is only possible under specific, restricted conditions (where there is a positive effect on the enterprise's reputation, and in the case of network services). Where there are network effects, totally unprofitable sections of a universal-coverage network may of course be financed via market prices by means of a mixed calculation. This takes place, for instance, with the telecommunications and electricity networks.

As has been shown, no definite recommendations can be given regarding financing modes. It remains to be seen what effects the withdrawal of the state or the public authorities from PSO financing will have on the extent, quality and reasonable pricing of public services in the future. No clear answer can be given as yet to the question of whether the state's withdrawal from public service financing will have pronounced negative effects on the public service offering. However, new financial constructions are being developed, which may change the trend observed in the past.

# Conclusion 2 - Transparency in financing

The assistance of the European Union is needed for creating uniform, transparent and attractive procurement conditions with a governance structure that incites private financiers to participate and providers to perform according to the wishes of the users and clients (according to the principle of subsidiarity there should be left room for manoeuvre to the individual Member States). Again, procurement constructions that engage the users of a service improve the performance of the providers. The design of new contract between the regulatory authority and the operator for the provision of SGEIs as well as the need to have greater internal transparency (reduction of cross-subsidies between internal units or activities) have allowed the introduction of incentive mechanisms. This is due to the implementation of European directives.

Different types of contract are available, including different sharing of risks between the actors and incentives provision. These include:

- Incentive/penalty payments related to service characteristics such as punctuality and reliability. The latter may be measured by capacity reduction as well as by outright cancellation, as is the case for passenger train services in Britain. One difficulty with incentive related to the quality of the service is the ability to have an accurate measurement of the characteristic included in the mechanism.
- Output-related subsidy payments, in which (of course) the output measure relates to passengers carried rather than capacity provided. Such payments supplement the actual fare revenues.
- Compensation payments made by providers to passengers, and required by the regulator/public authority purchaser when the provider fails to meet specified service standards; rail passenger services in Britain again offer an example. Sometimes, however, although the regulator or the public authority does not properly require a compensation payment, the provider nevertheless grants it itself.

Incentives for a better quality of services are implicit in the conventional, provider market. But typically the effect is less direct – and perhaps less potent. For example, the service operator who acquires a poor reputation in regard to reliability may expect to lose clients in the longer term, as people adjust their mode choice. But such adjustment may be delayed, and some users may not be able to adjust at all due to for instance, income constraints. Thus the provider, having some monopoly power, may thereby give less weight to quality than under a consciously designed system of immediate, direct penalty payments. We have to note that distortions of competition are still prevailing between various modes of transport for example and need to be taken, into consideration when analysing the effective level of competition between railways and road.

While this suggests that outcome-related funding may be more effective than conventional private markets, it is important to note that the designing of such ambitious funding schemes is not easy, and there is potential for setting the parameters at levels that are not in the public interest. In effect, the funder is acting as a regulator, and faces the usual problems of lack of information on various characteristics, including in particular user preferences. If a client/user does not get in time the amount of energy he expected, or waits for too long before his connection is restored after power cut, or if a train is late, how much value do the users place upon the delay? In the absence of such detailed knowledge on the willingness to pay, can the funder's choice of penalty payments yield a welfare outcome that is better than that stemming from a simpler contract? A contract in which there is no penalty payment at all but the provider suffers some loss of patronage in the longer term. The empirical answers to this question depends (among other factors) on the proportion of provider revenue that comes from public-authority funding, and on the nature of the circumstances that justify such funding. For the total social value placed on the delay may exceed the total of the private values of the users.

# Conclusion 3 - The interdependence between marketable and public service financing

It may be observed that in each sector the specific service of general economic interest (SGEI) on which the PSO is founded, is strongly integrated with the regular marketable services that the sector provides. The procurement of the regular private service provision (which includes the financing and the governance of the service) forms the context of any PSO. National governments and subordinate public authorities may call upon a wide range of funding instruments and make use of various financing structures associated to private and public sources of funds. This is especially true since the private financing of transport infrastructure has developed fast in various European countries, notably in the UK, France, Portugal, and Spain. The funding and financing of passenger services is separated from the infrastructure, though in practice the revenue from some instruments may be applied in both contexts.

For the financing of infrastructure, new financing instruments have been developed, especially through the development of project finance. The recourse to

the private sector for the provision of infrastructure services has modified the nature of the contractual arrangements. Whereas public provision of infrastructure may be considered as a vertical integration with construction and operation often organised within the public sector, private financing projects are governed by long-term contracts. The private sector participation transforms the role of the public sector from being an owner of capital assets and direct provider of services into a purchaser of service through a long-term agreement. This institutional structure differs from the simple dichotomy between public versus private provision of infrastructure services. Infrastructure projects are governed by complex long-term concession contracts with costs and demand uncertainty. Hence, contracts in infrastructure projects are characterised by incompleteness, which implies that the transactions between agents are not fully specified or governed by the contract. Fair risk sharing is essential too.

The aggregation of the design, construction and most particularly operation into one contract may generate synergies: by involving the operators with the designers cost optimisation is more likely to be achieved. The role of the public sector in specifying outputs enables the private sector to innovate in how service is provided whilst simultaneously keeping the public policy and service level definition within the public sector.

#### Conclusion 4 - Innovation of financial instruments

Funding instruments are continuously developed, adapted and improved. They are usually complementary and constitute an integrated financial construction. The elements of this construction are chosen in relation with the specific governance of some subproject within the provision of the service in question. This trend can be illustrated as follows. Different sources of funding have been identified in Section 1.2. The main source of funding is the allocation of public subsidies by the government. Those funds are raised through the general tax system. In addition to this first financing source, other funds come directly from users' contributions. For specific segments of activity, the user of the services may not be the direct purchaser of the service: the employers may purchase services for employees. Where the employee cannot receive money in place of a transport ticket for example, the journey may not be so highly valued by the traveller (compared with valuations placed by other travellers who pay for their own tickets). Indeed, on occasion, some employer-funded tickets (if non-transferable) may not be used at all, an outcome that may be more likely if employer-purchase is at the behest of a public authority. On the other hand, such mandated purchase may be in the public interest whenever the alternative is for the employee to travel by private car, with attendant negative externalities. In that context, 'subsidised' tickets - as a form of transfers in kind - may help to align private and public valuations of the use of public transport. Specific tax-deductions mechanisms or sharing formula of the cost of public transport between the employer and employees can be alternative instruments and may represent a stopgap measure in the absence of appropriate tariffs for the use of private vehicles.

Other funding instruments are also to be found. Among the various possibilities for the earmarking of revenues from government charges and taxes is the deployment of revenues from related services or substitute services for a SGEI. For example, transport-related instruments such as fuel levies and vehicle licence fees, and road tolls and parking charges. The last two are relevant in the context of passenger services to the extent that the revenue is not required for the funding of the infrastructure itself.

Although these earmarked revenues are not directly linked to the service to be funded, there is an indirect causal relationship, when the charges are levied mainly on the use of alternative or substitute services. Such use may bring negative externalities (congestion, pollution). When applied to the funding of public transport, the revenue serves to increase the quality and quantity of such transport, and thereby encourages its use, in part by attracting travel otherwise made by car. In this sense, such charges are 'principled'; and the idea of earmarking can be justified by appeal to the usual economic calculus. Whether the financial incentives are sufficient to influence/modify the behaviour of the users/clients may vary between sectors, services etc.

Earmarking of government revenue can be applied also to on-going sources including local property taxes (perhaps including elements of land-value capture), and levies on the payroll amounts of local employers. Even here there may be some causal justification in that such employer and residential location benefits from the provision of public passenger transport, and at the same time creates a need for additional transport provision. On the other hand, the transport objective competes for this type of funding against other purposes, notably the provision of other public or semi-public goods such as sewerage, public parks and health care.

The tariff options proposed by some telecom operators are an interesting example of financing. They do not represent a mode of financing for the telephone universal service, which is why they have not been mentioned before. However, they could if necessary provide a useful complement to other financing modes.

It has been seen that the social tariffs reserved for disabled and low-income users have generally been financed by a universal service fund, although this fund has not always had money put into it. The beneficiaries are automatically selected on the basis of social criteria such as low income. The tariff option principle, on the other hand, is a mechanism involving auto-selection on the part of the users, and may help ensure that the obligations of accessibility and affordable prices are satisfied more effectively for everyone.

In its most straightforward version, there are just two options, offered indiscriminately to all users. In the first, the subscription price is low, but the rate for long-distance and international calls (except for certain pre-specified numbers) is high. In the second, the subscription price is high, but the rate for long-distance and international calls is lower than with the first. It is up to each user to select the option best suited to his/her requirements.

This type of contract thus amounts to having subscriptions under the first option subsidised by customers who choose the second option. The advantage is that users who do not need financial assistance are not attracted to the first option, as was the case with traditional telephone tariffs before the market opened up to competition. Provided the contract proposed complies with the condition of incitative compatibility (Laffont 1986), it is thus possible to offer the least affluent users highly affordable prices without passing on such a benefit to users as a whole, including the more prosperous ones, and thereby causing a deficit which, in a competitive situation, would have to be financed by the tax-payer.

One may also envisage (Henry 1997) combining the two mechanisms – auto-selection and automatic selection of low-income users, so as to avoid penalising users whose salary is just above the minimum level, and who for this reason do not benefit from social tariffs.

Likewise, the equalising of low-voltage electricity prices in France, extended to electrical heating in second homes and more generally to homes not built to a standard which caters for this type of heating, has led to wastage that has ultimately been borne by the tax-payer. This is another case where appropriate tariff options could ensure that no-one was excluded, while avoiding undue transfers or any form of internal cross-subsidisation on the operator's part.

Price equalisation, by contrast, remains a tool of geographical solidarity, which could in certain cases be used as part of a coherent regional development programme. From this viewpoint, it would not be illogical to make phone and electricity charges less expensive in areas whose development was declared to be a priority.

# **Conclusion 5** - National variations in financing constructions

Financing constructions still vary nationally, which may cause distortions on the European level. But complementary financing between various levels of public authorities may contribute to a better performance of the sector. The sharing of the funding of public services between the different actors depends on the country under consideration, the infrastructure vs. the services, the type of public services (local, regional or national), and the type of regulatory mechanism (incentive contracts). In various European countries, funding comes from various levels of government. Recent advances in the fiscal federalism literature provide useful insights to look at the optimal sharing between level of authorities. In many cases, especially in urban passenger transport, the transport service is largely or entirely a local public good. The financing of infrastructure for the provision of local public transport might associate other regional or local authority, depending on the extent of spillovers across local authorities.

In such contexts, there is an obvious equity case for local funding, which may also encourage economic efficiency, by avoiding the severe profligacy that can occur when a local authority spends money that is provided (almost entirely) by national

government. On the other hand, local taxing capacity may be insufficient to allow a local authority to meet the entire cost of the service. National (or regional) government may devolve revenue from one or more of its taxation instruments, where this is practicable. Otherwise, the higher-level authority may contribute a grant to cover part of the cost. Provided the local share of the cost remains substantial, the local authority will still have a substantial incentive to guard against profligacy. The involvement of national government also allows deployment of a standard appraisal criterion, which has to be satisfied if the project is to receive national funding.

# Conclusion 6 - A hierarchy in public services

National or supra-national institutions (such as the European Union) can help to fund projects. This help of a higher level public authority is needed for, e.g., projects in disadvantaged areas; projects that have desirable effects (such as improved environmental quality) for the higher level government, or projects that use experimental technology. All these projects have external effects with costs and risks that should not be borne (solely) by the local authority since a successful outcome will later benefit other areas too. The provision of funds by public authorities has been perceived as a source of lower efficiency of the public or private service providers. Their lack of interest in performance standards was reinforced by government payment of aggregate, annual lump-sum subsidies, in amounts that were not related positively to the quantity of service sold nor to the quality of that service. To the extent that the operator's total revenue depends partially of users' revenues, i.e. fare revenues too, the operator has some financial incentive. But this effect was diluted, especially when the subsidy was a substantial part of total income. Even worse was the possibility that subsidy might be increased when fare revenue decreased.

About the ownership of enterprises, finally, it may have one of the following forms:

- a. Public undertakings with mainly ownership of state
- b. Undertakings with combined ownership or as Public Private Partnership
- c. Private undertakings in the hand of private owners that are obliged by law or contract to supply tasks in general interest, especially when the tasks are non-profitable.

We can find all these kinds of property a-c in the power supply in Europe. In some countries a certain shape of property dominates. However, in some sectors there is a strong tendency to remove from an pure public company to a mixed or private company which is entrusted with public tasks. This tendency can be terminated as "change of paradigm". The provision of new capital will play a leading part in supplying public services in future. That is, the companies that are entrusted with public tasks will look for the most appropriate shape of capital and ownership.

Once again, the consequences of a specific form of ownership with respect to the extend and the quality of PSO have to be analysed case by case. There is no universal solution.

The general conclusion is that the financing of a PSO is embedded in a wider procurement context, which co-determines the success of the desired provision of a SGEI. It is increasingly difficult for a public authority to provide directly and solely a SGEI in the sectors investigated. New financial instruments are developed, tailor-made for specific PSO-contracts. This close relation between financing and governance asks for a new approach by the public authorities. The traditional public funding was not that much oriented on allocative efficiency, because the political lines of control were much shorter in the past, and non-allocative objectives were more dominant. The new approach is searching for the optimal trade-off between most efficient (non-distortive) modes of taxation and the (informational and incentive) cost of governance associated with these modes of taxation. It is also realised that financial funding by means of taxation has to be supported by the understanding and cooperation of users and clients, which element is part of the procurement process. It is a challenge for the European Union to give orientation to these developments, to respect the principle of subsidiarity and to make them transparent for the European citizen.

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# Performance Evaluation of Services of General Economic Interest

# Foreword

The European Commission has asked CEEP and CIRIEC to carry out a study on the "Conditions for supply of services of general economic interest (1) in the context of the implementation of the new Article 16 of the Treaty of European Union" (2),

To this effect, four subjects have been considered: regulation methods, financing, performance assessment and highlighting "good practices". For each of these subjects a CEEP-CIRIEC working group has been formed in order to carry out the required detailed study (3).

CEEP's report "Europe, competition and public service" drawn up in 1994 for the European Commission (4), had proposed the creation of an Observatory for services of general economic interest. The measure was intended to follow up action and assess results, in view of the public nature of the tasks with which they are charged and the specific characteristics of the rights liable to be attributed to them. The objectives were to place the analyses at the disposal of Community authorities, to develop comparative studies and provide elements for public discussion. The report proposed that all of the partners concerned should be associated with its management and work (in particular consumer organisations and partners in Community social dialogue), and that the Observatory should be attached to the European Parliament in order to confer on it a measure of legitimacy and authority.

The present report covers performance assessment of services of general economic interest. It does not set out to make a comparative assessment of performance within the European Union. The diversity of European national situations and the current absence of a framework for common analysis would make such an assessment meaningless.

The report's approach consists of drawing up a list of national experience and good practices, establishing a common vocabulary and sharing references, so as to define what could constitute an assessment of the performance of services of general economic interest within the European Union.

<sup>(1) &</sup>quot;Services of general economic interest" cover industrial and/or commercial services in the sectors of telecommunications, transport, energy and urban services (water-purification).

<sup>(2) &</sup>quot;Without prejudice to Articles 73, 86 and 87, and having regard to the place occupied by services of general economic interest among the common values of the Union, as well as to the role they play in the promotion of social and territorial cohesion in the Union, the Community and its Member States, each within the limits of their respective competence and the scope of the present treaty, shall ensure that these services function on the basis of principles and in conditions which allow them to accomplish their tasks".

<sup>(3)</sup> Annex I shows the composition of the working group which carried out the work on performance assessment.

<sup>(4)</sup> Europe, competition and public service, Brussels, 1995.

# Introduction - Why assess services of general economic interest?

Services of general economic interest, having been long ignored in the building of Europe, have been since the mid-80s at the centre of an economic, legal and political discussion. Its first definite result was the new Article 16 of the Treaty of Union. Their place has now been acknowledged in the treaty; several directives have begun to frame them and transpositions into internal laws have encouraged the emergence of common thinking between Member States. Services of general economic interest are now at the heart of the **process of European integration**.

### Sources

According to the Treaty of the **European Union**, if "services of general economic interest" exist, it is because a "particular task has been assigned to them" (Article 86-b); they "occupy a place among the common values of the Union" and "play a role in the promotion of the Union's social and territorial cohesion" (Article 16). The treaty is no more precise than that. It mentions "principles and conditions which allow them to accomplish their tasks", but without specifying what they are; the final Act of the Council of Amsterdam mentions "the principles of equality of treatment, as well as of quality and continuity".

The series of **directives** on single sectoral markets, and also the Court of Justice of the Communities through a series of **case law** rulings (ref. Annex II), as well as the **Communication** of the European Commission "Services of General Interest in Europe" of September 1996 (5), have all contributed content to these ideas, without so far producing a solid general conception.

In the telecommunications and postal service sectors, the European regulation defined a "universal service", at the disposal of everyone throughout the territory of the Union. It prescribed precise rules to this effect. In other directives such as that on electricity, the possibility is given to Member States of assigning particular tasks to operators of services of general economic interest.

# Competition and general interest

Owing to the tasks assigned to them, "services of general economic interest" do not only come under the common law of competition (condemnation of anticompetitive behaviour) and market forces. Their definition is based on the recognition of the existence of "failures of the market", "natural monopolies" and "public goods" -, but also on the conflicting relations between the rules of competition and general interest tasks.

This aspect was confirmed by the Commission in the paragraph of its Communication on the progress of the internal electricity market devoted to the **level of supply of public services**: "It must be ensured that the level of public electricity service is not affected by the process of liberalisation. This principle arises clearly from the spirit and letter of the directive, which envisages measures aiming to guarantee that the essential rules of public service will be complied with in a competitive market (...). Experience so far shows that the quality of public

services is not affected by the introduction of competition provided that administrations or regulators impose specific conditions, (...)."

The conflicting relations between competitive pressures and general interest tasks are not stable and fixed, but **change** according to time and place. They are based in particular on national history, traditions, institutions and culture; their traces are noticeable in the transposition of European rules in each Member State. Similarly the effect of technology and the means of implementation, and also of sociopolitical considerations on the assigned tasks, can affect the balance the authorities previously established.

Managing these conflicting relations between general interest and competition implies a **clear definition** of the objectives and tasks of services of general economic interest. There must be clear understanding of the responsibilities of the different parties in charge of public services, of the transparency and proportionality between the latter's objectives and means and the ways to regulate the relations between competition and general interest. The development criterion should also be taken into account The effects of measures of sectoral liberalisation as a whole should be regularly appraised to define the following stages in the process and possibly adapt the content of regulation.

This type of process, with the introduction of mechanisms to assess performance in the regulation of services of general economic interest, is perfectly consistent with the increasing spread of **new theories of public management** ("New Public Management") in politico-economic circles (6). New Public Management presupposes the existence of a system of performance assessment to produce the desired effect. The establishment of a new type of responsibility, where the parties have to prove their efficiency, management for results, the separation of decision-makers and managers and the constant search for improvement, presupposes that the public at large, decision-makers and operators all have access to clear performance indicators on the **results** obtained in relation to the **objectives** set.

Failing assessment of the progressive relations between rules of competition and of general interest tasks, "the invisible hand of the market" would become the system's only assessor-regulator. From an economic point of view this situation is not optimal, as the efficiency of the sector requires that a number of rules be established to ensure the market's smooth functioning. National experience of too hasty liberalisation in the sectors of services of general economic interest have shown the risks run by the absence of effective regulation. From the political point of view Europe cannot be reduced to a large market and the specific characteristics of services of general economic interest, long attached to national symbolism, must now be redefined at European level.

A key objective of this report is equally - both through the empirical study carried out on national experience and existing structures, and thought creating a common vocabulary to contribute to the farming of **politico-economic concepts** for proper assessment of services of general economic interest and sound regulation.

<sup>(5)</sup> The European Council of Lisbon in April 2000 asked the European Commission to "update its communication of 1996, taking account of the Treaty".

<sup>(6)</sup> On this point, one can usefully refer to Eichhorn P. and Greiling D. (2000), "EU Policies towards Services of General Interest within the Framework of Public Management" in H.I. Macdonald and D. Barrows (Eds.): The New Public Management International Developments, Captus Press, North York, Ont., 2000.

It is in this spirit that the Commission therefore proposed its Communication on the progress of the internal electricity market (ref. Annex III). It lists the measures undertaken by Member States on consumer protection, in order to conduct an exercise of comparative assessment aiming at the general promotion of **best practices**.

# Regulation and assessment

Performance assessment has a different function from regulation of services of general economic interest, but is a component of it (7). Analysis must distinguish between the relations to be established between these two functions.

Regulation, as we understand it in the context of this report, is not limited to legislation on competition, the rules controlling the sector or to the action of the sector's regulating authority. Regulation defines all political, legal and economic mechanisms contributing to order within the sector. Consequently, all those involved in the sector are considered as participating in its regulation, but their capacity for contributing real added value to the process depends on their access to useful information. Regulation should therefore be supported and relevant assessment encouraged. At the same time, any breakdown, differences in terms of quality and/or type of service from one country to another will be noted. The necessary development of the tasks, as well as the regulatory framework for their accomplishment or financing, will be emphasised in properly informed discussion.

Ofgem's Deputy Director General, Richard Morse, said: "Good information is a key ingredient of good regulation. Companies that are well managed use knowledge as an important tool. If we, as the regulator, are not provided with good information then we need to use a greater element of judgement to set price controls. This brings with it an undesirable and unnecessary element of regulatory uncertainty."

Without claiming to be the substitute for competition, performance assessment is indispensable in sectors of service of general economic interest. German, British and American experience show that **competition tends naturally to be only oligopolistic** between a few large operators, who dispose of considerable means to exert influence, form agreements, split up the market and income, even gain control of the main mechanisms of regulation. In the electricity sector, the links and mergers underway between operators clearly illustrate this danger. In the water sector the privatisation of the distributors has accelerated the merger phenomena already at work. A real implementation of the assessment procedures would prevent the operator(s)-regulation separation ending up in a closed confrontation between two parties or in the capture of the latter by the former; instead it would facilitate the response to social demands for transparency, by moving from a two-way exercise to multi-party interaction.

# Parties and levels

Services of general economic interest involve a whole series of parties with different and sometimes conflicting interests: public authorities (elected and

administrative, at European, national and sub-national levels), operators (businesses and employers), consumers (individuals, companies of all sizes) and equipment manufacturers, etc. Their relations are influenced by lack of symmetry in information and expertise. The appreciation which each party will have of the service rendered and of "its" performance depends on their expectations and needs. This does not mean that one perception would necessarily be better than or superior to another, but that "the performance of a service of general economic interest" is a **plural concept**, and that assessment in the general interest must take into account its different types of performance.

Moreover, assessment can reveal different and/or complementary **levels** (local, regional, national, European), each having its own specific task and interests. Developing the principles of organisation and regulation of each sector, at Community level, while leaving essential implementation to the national level, encourages comparison between countries.

Lastly, for this assessment to be useful it should be **continuous** and its results made public.

Consequently performance assessment of services of general economic interest appears **indispensable** in order to carry out general interest tasks effectively and establish relevant development criteria. They are **complex** due to the multiplicity of objectives pursued.

# Multiple objectives

The objectives of performance assessment of services of general economic interest are therefore multiple, as varied as the parties themselves. From the political point of view, assessment is a source of information which nourishes democratic discussion prior to decisions on social and/or territorial redistribution and especially the allocation of resources. It permits subsequent appraisal of the implementation of the political decisions taken. It allows an improvement in control over sectoral regulation by governing bodies and all authorities and/or structures involved in the process of regulation. For the operators, assessment of their performance is essential for improvement, both economic and qualitative. On this last point, British experience showed that apart from regulatory actions of the public authorities, the operators themselves began to improve their performances as soon as public indicators were published. Results were, however, only measurable where the indicators had been published; the development of nonmeasured services obviously remained unknown. Lastly in the case of **consumers**, subject to growing tension between their user-customer status and citizenship, assessment enables them in a fragmented environment to improve their knowledge of service rendered and to choose between operators, while at the same time giving more elements for general appraisal.

As Michel Conan writes (8), "assessment is a political practice in the wide sense of the term, inasmuch as it aims to transform the process of the conduct of collective actions in a society". Similarly Patrice Duran (9) points out that assessment provides "access to a real collective intelligence on the process of government of

<sup>(7)</sup> The report Services publics en réseau. Perspectives de concurrence et nouvelles régulations from the working group of the Commissariat général du Plan chaired by Jean Bergougnoux, La Documentation française, Paris, 2000, even affirms that "the information structured around reliable reference indicators (...) constitutes the very backbone of regulation".

<sup>(8)</sup> L'évaluation constructive. Théorie, principes et éléments de méthode, Ed. de l'Aube, La Tour d'Aigues, 1998.

<sup>(9)</sup> Penser l'action publique, LGDJ, Paris, 1999.

public affairs". Howard E. Freeman and Peter H. Rossi add (10) that "assessment must embrace the usefulness, implementation, effectiveness and efficiency of measures which aim to improve the lot of members of society". The French Scientific Assessment Council has listed the various definitions of assessment, whether it be considered informative, ruling or instrumental (ref. Annex IV); probably it will not be necessary to decide between these three attributes, but to show their complimentarity.

Consequently, this report will start by analysing the specific characteristics of performance assessment of services of general economic interest (Part I). It will then successively address the criteria of assessment (Part II) and its operation (Part III). Without claiming to be exhaustive as to sectors and countries covered, the report will lean on national and European assessment experience, while revealing the obstacles encountered. It will accordingly make recommendations to develop performance assessment in the European Union (Part IV).

# Part I – Specific characteristics of performance assessment of services of general economic interest

Performance assessment of services of general economic interest is **more complex** than that of the economic activities of the "traditional" competitive sector, for which the company's short term financial performance, "the creation of value for the shareholder" or cash flow capacity are currently the most widely used criteria.

The particular tasks entrusted to services of general economic interest, the diversity of the parties involved in the management and regulation of services, the multiplicity of the territorial scales and the weight of short, medium and long term effects, and also their impact on other activities, require the adoption of open assessment methods based on a **broad range of parties and criteria**.

Assessment goes much further than an audit, limited to ensuring compliance with a standard and based on the verification of administrative and accounting documents. It aims to appraise the **direct and indirect effects** of a policy, a reform, an action, or a task, in relation to fixed or implicit objectives. At the same time it records **feedback on experience** contributing to improve service and adaptation to needs as they arise.

### Particular tasks

Services of general economic interest are the object of intervention by **public** authorities to define particular tasks and objectives.

These tasks relate to **three defining sources** – the consumer, the citizen and the community – and have **three components** – the guarantee for people to exercise their fundamental rights, the social and territorial cohesion and the definition and conduct of government policy.

The assessment is not therefore carried out in the absolute; it is only meaningful in relation to assigned **objectives and tasks**, as they arise from regulation (quality, price, guarantees for certain categories of consumers, universal service, general

interest, etc.), and also in relation to the **means** available and used. It presupposes that these objectives and tasks are **listed** as clearly as possible in advance. But these are not always clearly publicised, and in the objectives defined by politicians all are not always declared and/or some effects remain implicit (territorial development, jobs, etc.).

In the **secondary legislation** of the European Union, one can find some definitions of objectives and tasks, in particular concerning universal service for telecommunications (ref. Annex V), the universal postal service (ref. Annex VI) and transport (ref. Annex VII); they can serve as a basis for developing **indicators**.

On the other hand, in other sectors such as energy, European regulation does not fix any common objectives other than minimum degrees of opening to competition, leaving to the States the **possibility** "of imposing on sector companies obligations of public service in the general economic interest" (ref. Annex VIII). However, the second report of the European Commission on the state of liberalisation of energy markets of 4th May 1999, stresses that all Member States shall in a **convergent** manner regulate the activities of electricity companies, covering consumer protection (connection, supply and prices) obligations, environment protection (promotion of renewable energy sources, internalisation of external costs), and security of supply (capacity of reserves, guarantee of primary fuels). The report adds that in these areas "the objectives and approaches of the States are increasingly similar", thereby enabling assessment **criteria** to be defined and completed on the opening of national markets.

The exercise carried out by each Member State **transposing** the European rules and directives into its national legislation is often an opportunity to specify which **relations** should be established between opening to competition and accurately defining **general interest tasks**. These clarifications should be the opportunity for defining follow-up and development criteria as well as procedures to carry out these assessments.

In **Belgium** for example, public service tasks in the electricity sector are defined on a federal level for transmission and by each region for distribution, their financing however being undertaken at the level of the transmission network.

At the same time European regulations stipulate that the **means** allocated to accomplishing tasks of general interest should be in **proportion** to them, in order not to distort competition. Here again this implies procedures for follow-up and assessment in order to take change into account.

# Plurality of parties

Services of general economic interest imply the participation of a **series of parties** who do not have the same interests and whose relationships are complex.

Two large categories of parties are always in relation: on the one hand **public authorities** (local, regional, national, European), which define tasks, organisation methods and regulation, and on the other hand **operators**, who can produce, transport and/or supply products and services. In general these two categories do not have the same access to information, knowledge, skills, etc. Lack of **symmetry** is increased by "business confidentiality", owing to competition between operators. There is therefore the risk that operators use these imbalances for their own profit

<sup>(10)</sup> Evaluation. A Systematic Approach, Sage Publications, Thousand Oaks, 1993.

to capture business to the detriment of other parties concerned or resort to crossed subsidies between different types of consumer or activity.

Moreover, other parties are involved in the service – especially its recipients (consumers-citizens, companies of all sizes), but also employees (and union organisations), elected representatives or equipment manufacturers, participating directly in the functioning of the system. They have their own appreciation of performance.

The process of growing **differentiation** of service, according to varying demand, contributes to complicating the notion of performance as perceived by the consumer. The appreciation of performance will therefore tend to vary from one consumer category to another (domestic/companies, urban/rural, captive or not, etc.). The consumer also has the right as a **citizen** to request accounts on the management and regulation of the collective service, i.e. accountability.

Consumer-citizens can therefore be involved on a dual level in performance assessment: **upstream**, as a result of their comments on the service provided (quality/price ratio, conditions of supply, validity of contracts, balance of supply and demand), and **downstream**, when accounts have to be rendered to them as citizens, and the results of the assessment widely circulated (readability and accessibility of the results).

More broadly, the service provided is destined on one hand for **each consumer**-recipient of the service (the citizen and each large category), on the other for the **community** (and for each of the components of the general interest).

It is not so much a question of assessing only the performance of a given party and/or operator, as that of the **system** as a whole, from the definition of objectives and regulations to their implementation and regulation.

# Diverse territorial levels

The relative performance of services of general economic interest is based on close relations with **territories**, on different levels (local, national and European).

These different territorial dimensions apply first of all to the **levels of regulation** of services, which vary according to country and sector. The public water service in France, for example, comes under a local regulation system controlled by the municipalities. The performance of the water services should therefore be assessed on several levels: local, to take into account the territory-related constraints, and regional, national or European, to allow comparisons of performance. The assessment of the services will therefore tend to be multi-scale, both keeping to the levels of regulation and widening the range, in order to elicit **comparisons**.

Secondly, analysis of the territorial dimensions of the performance of services of general economic interest should show the effects - direct, indirect and induced – on the territories, of new forms of management, reform, or geographical variation in service performance. The territorial **differentiation of performance** of services of general economic interest (geographical differentiation of tariffs, differences of quality, etc.) affects the balance and solidarity of territories; it has consequences for economic and social cohesion, questioning the policies pursued by the European Commission on cohesion. These effects tend to be more or less diffuse

or structured according to the nature of the space concerned (urban, rural, industrial, in crisis or expanding etc.). For example, differences of equipment persist between regions and also between countries of the European Union. How can one appreciate the principle of mutability (permanent technical adaptation of the service) at territorial level (high throughput network equipment, equality in the face of competition), especially for unprofitable geographical zones?

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A dual demand for **proximity** (in order to better appreciate the stakes and microterritorial effects), and for **homogeneity** (to catch the differences and compare performance), should be integrated in the assessment process.

# Relative time periods

Performance can be appraised according to different **time scales**, in the very short term, as to the immediate satisfaction with the service, its quality, the effectiveness of its management, or in the medium, long, or even very long term as to effects more spread out over time. Services of general interest often have long term **structuring effects**. Effects on environmental plans, balance and solidarity of territories, on social cohesion and economic development generally emerge in the long term and therefore require an assessment method of long duration. Such a method should allow longer term developments to be followed.

For some the "long" effects can be quantifiable and relatively simple to assess (effects on employment, on economic development). Other long term effects, such as those relating to the notion of **sustainable development** cannot simply be assessed by quantifiable criteria but depend more on qualitative studies, studies on impact and results of experiments, allowing a more refined perspective.

Performance, in the more or less long term, sometimes irregular, of services of general interest can be subject to positive or negative external factors. These external factors – environmental, socio-economic (jobs, growth, impact on other activities) and demographic – have implications for development and territorial cohesion. In this context performance assessment supposes integrating external effects with the considerations already stated.

On the subject of assessment another time scale is conceivable, since we speak of "prior" and "post" assessment. In performance assessment it is clear that criteria can subsequently be attributed. Similarly, experience gained from assessment can be used for giving opinions prior to proposals for reforming regulation.

# Need for a more flexible and suitable method

The specific characteristics of the aims, methods of organisation and the parties concerned lead to a **complex and multi-faceted definition** of "performance". It simultaneously comprises different dimensions; these are financial, organisational (efficiency of the type of organisation and structure), social (social relations in the broad sense, employment in a given sector – more an indicator than an assessment criterion) and societal (external effects, economic development, social cohesion, territorial solidarity, protection of the environment and sustainable development).

In each case one can distinguish the **direct** effects obtained when the service is provided; the **indirect** effects and the **induced** effects, are more diffused and difficult to discern.

On these bases, assessment of services of general economic interest consists first of all of verifying how the operators fulfil the tasks assigned to them by measuring the results of actions undertaken, relating their social usefulness to their cost, and studying their impact. It measures the **effectiveness** (relation of results to objectives), **efficiency** (relation of results to available means) and the impact on society (externalities). Assessment thereby clearly implies that services of general economic interest have to **render accounts**, to justify their actions. It allows pressure to be brought to bear on operators to induce them to improve their performance, effectiveness, quality, etc.

The specific characteristics of services of general economic interest relate especially to growing tension in the context of globalisation between on the one hand market forces and rules of competition and on the other the general interest tasks. This tension implies that special provisions have to be defined and implemented for performance assessment. Services have external effects, so that their assessment goes beyond the operators and progresses to a multi-party process based on the notion of co-responsibility.

Services of general interest present both particular sectoral characteristics and common characteristics. Performance can only be appraised in relation to indicators of sectoral quality. For example the quality of the electricity grid will be assessed by the frequency of breakdowns and power cuts, whereas the mobile telephone network will take into account connection time during rush-hour or the average time for maintaining a communication.

Performance assessment therefore needs to be supported by a double scheme, associating sectoral performance indicators with transversal assessment fields. Sectoral assessment bodies will thereby be able to exchange methods and experience as a result of building up a community assessment schedule.

# Part II – Assessment criteria

For each objective and task, assessment cannot only be carried out on the basis of a single criterion, but with a **series of indicators**; the interests of the various parties concerned, time scales to be taken into account etc. are different, if not in opposition. Therefore to give preference to apparent work productivity would lead to forgetting that there are other sources of productivity than work.

### Complexity of criteria

Performance assessment of services of general economic interest owes its complexity to its **hybrid** nature. It is often a matter of assessing the action of operators and therefore companies; in this case an economic assessment would not be relevant since some of the objectives defined by a public authority, which one is seeking to assess, are achieved or not achieved. Similarly the exercise is not intended to assess a public policy; the objectives have to be clearly defined in advance and therefore the indicators must have a strongly operational character, while taking into account characteristics particular to services of general economic interest.

First of all, it must be borne in mind that **objective** criteria exist, easily measurable such as waiting times for connection to a network or after a request for service.

Others are **subjective** such as satisfying consumer-citizens. The latter is all the more subjective, owing to the personal relationship being an essential characteristic of the service area, whatever the quality of the service itself.

Secondly, the difficulty in performance assessment is strengthened by the service often comprising a **general** aspect, standardised and measurable, and a **particular** aspect (often individual), connected with the specific nature of the requirement of each user (over a long period a diversification of demand is noticeable), difficult to measure and aggregate in the indicators.

Thirdly, an additional difficulty in assessing performance of services of general interest is due to the services concerned often being "indivisible public goods", the most classic example in the economy being the public lighthouse where it is impossible to ascertain the users in advance; everyone can take advantage of it once the service exists. This complicates classic quantification and therefore assessment.

Fourthly, performance assessment not only concerns a service directly delivered by an operator to a user, but also involves the positive and negative **external effects** ("externalities") and their existence, field of activities and their means. These effects are particularly noticeable in the field of utility infrastructure network. For instance, a means of communication, apart from the service it provides for its users, contributes to the economic development of a whole region.

Fifthly, assessment results are always closely dependent on **contextual factors**. Any objective European comparison will have to consider the deep diversity in physical and human geography (densities, divisions, natural resources, etc.) which exists between the various European regions. In addition, each industry exists within a specific **historical and structural context**. The ways of operating services of general economic interest are closely dependent on the societies where they are located. Therefore it is necessary explicitly to understand these factors to avoid excluding them owing to a uniform process. Nonetheless, this diversity does not at all exclude prospects for convergence and mutual enrichment of national experience.

Sixthly, assessment can more generally be influenced by "societal" effects. According to the case and the decisions of the public authorities, which define the general interest tasks, it can be a question of contributions to economic development, research and development, technological information, social cohesion, access conditions for each inhabitant, territorial solidarity, practical accessibility, environment protection, sustainable development, and job creation etc. In each one of these cases assessment depends on taking into account numerous parameters. Any general economic interest service's action in these areas is not always easy to identify and appreciate.

Performance assessment equally implies assessing the manner in which it is **regulated**, i.e. the performance of the bodies in charge of this regulation, the cost effectiveness ratio for the public, etc.

# **Balances** and comparison

REPORTS

We have entered into a period, with the setting up of the Euro zone, when comparisons between service prices between the majority of Union countries are

going to be made directly sensitive to and comprehensible by all users. It can therefore be expected that operators and governments will be interrogated to justify the differences which may relate to a large number of factors (quality, nature of the service, local structural conditions, etc.) particularly in some sectors, as for example the price of a postage stamp.

Likewise, assessment covers stakes in terms of "balance": the essence of general interest tasks means that services relate to objectives comprising contradictory aspects — between quality and cost, short-term and long-term, individual and collective interest, environment protection and costs, between indebtedness (therefore credit to be paid back by future generations) and sales price, etc. Consequently, even if it is an essential factor, preferential treatment cannot be given to development and comparison of service prices and/or quality (prices and quality are contradictorily connected and their construction is itself complex).

Also noticeable, would be development of competition between service providers; on the one hand there is a diversification of service supply and on the other price differentiation partially taking into account differentiation in consumer needs but also marketing trends. There are many factors which complicate comparison.

Another factor complicating comparison is due to analysis of development over time supposing the taking into account of a number of factors, in particular developments in regulation and/or structures. In this kind of case there is not the same appreciation of developments taking place, or comparison between national situations, owing to the dates to be taken into consideration; in particular different national situations at the time of the starting date of the analysis have to be taken into account.

Assessment will have to succeed in clarifying, when appraising national sectoral development, what **relates** to technological progress, improvement in operators' effectiveness, and what relates to the positive or negative effects of new regulation (impact of the introduction of forms of competition, transaction costs, etc.) while concentrating on effective performance. For instance it is often claimed that the introduction of competition in the telecommunications sector has led to a noticeable price reduction, without any account being taken of the part which relates to technological change or lesser taxation by individual states.

Lastly, in order not to remain focussed on simple statistics, it is often interesting to study assessment in "who loses, who gains?" terms, according to the parties concerned (public authorities, shareholders, customers – by category –, personnel – which ones? - compilation according to jobs –, suppliers, etc.). How is the surplus from productivity, added value or income to be shared? What are the parties' ploys, powers and strategies?

In order to analyse productivity by taking into account all means of production (work, intermediate consumption, equipment, etc.), at the end of the 60s "overall productivity surplus" methods were produced in France. They aimed to assess the wealth produced by a company and its division among the various parties concerned (developments in prices, costs or wages). But the complexity of the calculations, the contestable nature of conventions dividing development by volume and price and the difficulty in interpreting results led to the scheme being abandoned (ref. Annex IX).

# Quality of the criteria

Assessment criteria must be accessible and readable, in particular for uninitiated consumers. In France the decree of 6 May 1995 (applying the law "Barnier" of 2 February 1995 on strengthening environment protection), obliges the official responsible for the drinking water service (the Mayor), in municipalities of more than 3,500 inhabitants, to produce an annual report on the price and quality of public services for drinking water and purification. However the report most often concentrates on too technical or too variable indicators and remains difficult to read for the uninitiated citizen; in addition, only 32% of reports contained all the compulsory indicators.

In order to encourage their broad and democratic use, the performance indicators for services of general economic interest must themselves conform to a number of quality criteria:

- Relevance: the indicator must cover an essential function, it must also really measure the variable in question, and the latter must be measurable.
- Reliability: taking the measurement must be exact, objective and possible to relate to a definite scale.
- Efficiency: the cost of the measure must not be out of proportion with the benefit expected from producing it, and the measurement must be carried out in good time.
- Comprehensibility: the indicator's meaning must be clear and unambiguous.
- Integrity: the indicator must not be conducive to unhealthy practices in operators' strategies.

Compliance with quality criteria in the indicator's conception as far as possible ensures that the assessment will have truly beneficial effects on the sector's regulation.

# National and European experience and contributions

After describing the possible objectives of performance assessment criteria for services of general economic interest and also having shown their limits, we now make a rapid review. This part of the report does not claim to draw up an exhaustive picture of all the performance assessment practices for services of general economic interest in the 15 Member States and also at European Union level.

We have had neither the time nor the means to provide such a survey, which would however be useful to carry out. More modestly, we in this case propose to place the accent on certain practices and experiences which could generate **community deliberations** and contribute to making a **common approach** emerge.

Moreover in order to emphasise the wealth but also sometimes the convergence of national experience, we are particularly concerned by **four essential sectors**: telecommunications, energy, water and purification, the post.

At European level, the European Union's Consumers Committee in the autumn 1999 produced 10 principles which we use as a basis for a redefinition of the notion of universal service in the consumer's interest (ref. Annex X); it is one of the works we have used to list the possible criteria for assessment.

University work has also been developed in recent years to conduct performance assessments of services of general economic interest. They often include contributions on the subject of criteria and methodology (ref. the work of Jean-Michel Glachant on the British electricity system, Annex XI). Unfortunately university literature dwells mainly on assessment which is too closely directed towards economic, quantitative assessment, or qualitative assessment of government policies, to be completely useful in a hybrid assessment such as appears necessary in the present case.

The tools used by the European Commission to assess the impact of structural funds (see particularly *Evaluating socio-economic programmes*, European Commission, MEANS Collection, OPOCE) also proved useful, not in terms of possible criteria but above all from the methodological point of view.

At **national level** situations are very diverse from one member to the other, from one sector to another.

By way of example, in France the Commissariat général du Plan proposes a "minimal analytical schedule", which lays down a series of 10 basic indicators aiming to measure the performance of utility services, for which information is fairly readily available (ref. Annex XII). The Contrat de Plan Etat-EDF covering the 1997-2000 period defines a series of indicators (ref. Annex XIII). In the telecommunications field, the Regulation Authority has progressively collected data, which without yet enabling the state sector's stakes as a whole to be covered, make a start, not without difficulty, on showing transparency (ref. Annex XIV).

In Great Britain, an almost identical scheme for the water and energy sectors is to be found (ref. Annex XV). There are two series of relatively exhaustive criteria on service quality itself. First of all they specify standard guarantees which cover services directly rendered to the citizen-consumer and for which, if they are not complied with, the latter can demand financial compensation. Secondly there are "overall standards", which cover services not concerning a particular consumer but for which the latter has the right to expect a minimum quality. Although the list of criteria is regularly lengthened, there are no criteria covering the obligation of general interest service other than the obligation to connect. In the water sector, however, the British have for a long time hesitated to fix minimum objectives; they are afraid of discouraging companies which would be bound to keep to the strict minimum. Lastly the system chosen ties in the minimum objectives with a scheme for fines to be paid directly to the consumer in cases of non-compliance. British experience in addition shows at what point it is also useful to follow up and analyse customers' protests and complaints, the effectiveness and speed of dealing with them and the conflicts and disputes arising between parties.

In Germany, a series of measures, according to sector, are to be found (ref. Annex XIV). First of all there is a prior assessment of operators for them to have access to the market (Rails, Post, Telecommunications). Subsequently there is public authority control, often strict, over traditional operators and their pricing (Rails, Post, Telecommunications, Water). Sometimes there is specific supervision over a sector (green or co-generated energy quota, control over line closure, obligation to connect, etc.). Lastly, according to the sector, performance indicators of service quality have been introduced (Rails, Post, Telecommunications).

# Table of indicators

REPORTS

The tables of indicators by sector, proposed below as a guide and grouped together by country (ref. Annex XVII), clearly throw light on the various national traditions and experience in the sector of services of general economic interest, and also in some respects on the beginnings of convergence.

Two major types of indicator are clearly distinct: first, the quality criteria. These are the most consistent from one country to another. Sometimes because they are set within the framework of a directive (the Post is a case in point), sometimes because they appear to fall within the category of good practices and therefore tend to become general. They are very definite (reliability of the service, reaction time, price, appointments, etc.) and they fix the minimum service quality the consumer-citizen has the right to expect, or are merely confined to measuring service quality. Within the quality criteria, criteria referring to a general service quality are noticeable without the latter relating to the consumer-citizen in particular but rather to users as a whole (state of the network, environment, etc.).

Secondly, there are the universal service criteria. Much less uniform, they most often depend on national choice and therefore tend to vary in their concept from one sector to another within the same Member State.

Great Britain presents a very distinct regulatory framework, which can probably be explained by services of general economic interest having been reformed over a relatively short lapse of time. The characteristic of British indicators and performance criteria is the minimalist nature of universal service. On the other hand, the British have built up a very successful system of service standards which guarantee consumer-citizens a minimum level of service, or, as the case may be, awards for damages. The sole exception is provided by telecommunications, where the regulator did not want to introduce criteria as such, claiming that market forces were sufficient in themselves. Instead they preferred to confine themselves to a straight indicator schedule enabling consumer-citizens to compare operators' performance to help them in their choice.

Germany has introduced highly comparable systems for its post and telecommunications sectors. On one hand the law fixes the upstream criteria for granting a licence, even if the latter do not provide a great deal of transparency. On the other hand, the law very precisely lists the public service obligations to which the operator is subject. Lastly, the law defines the indicators for universal service performance; it is the only Member State to do this in the table presented. However, very few of these performance indicators are useable to assess to what extent the specific requirements of universal service are fulfilled. The majority of indicators introduced by the law are quality indicators, apart from rules regulating service quality nothing is specified as to the extent of universal service.

France possesses a system, which will become more striking in the future insofar as, by means of experience and existing projects, an all-encompassing assessment can be discerned. In addition to a start being made in implementing service quality standards noticeably based on the Anglo-Saxon model, assessment also covers the number of jobs created, the nature and size of investments, town and country planning, without, however, these objectives being made formal by means of definite indicators. At the same time, although the French legislator clearly has a number of particular tasks, no indicator matches them.

This brief **review** enables interim conclusions to be drawn. On the one hand there is the diversity of national experience. A number of schemes could thereby usefully be incorporated in other Member States' legislation so that the latter could be made complete. On the other hand it is possible to identify a number of convergent characteristics such as quality criteria becoming general, or even the introduction of experiments or thought being given to the assessment of universal service requirements.

On these bases, it appeared to us possible to propose what could be the **centrepiece for a community performance schedule** for services of general interest (see Part IV).

	LENFORM	TENFORMANCE INDICATORS AND CRITERIA IN THE FOSTAL SECTOR	LSECTOR	
Ш	Finland	Germany	Sweden	
	Objectives	Conditions for granting a licence	Universal service obligations	
•	Improvement in delivery and despatch times for domestic		One delivery and one collection per working day	
	and international mail less than 2 kg, and lower than		<ul> <li>Single and reasonable price for letters</li> </ul>	
	10 kg for other types of mail throughout Finland		<ul> <li>Attention to needs of the disabled (e.g. Braille)</li> </ul>	
=	Improvement in postal service quality and cost,		correspondence)	
	particularly in less populated zones	<ul> <li>No likelihood of upsetting the sector's traditional social order</li> </ul>	<ul> <li>Attention to needs of the elderly and the disabled in</li> </ul>	
=	Indicators	Operating criteria	rural zones  Attention to national defence needs in a crisis	
<u>-</u>	Speed of mail circulation for domestic users (e.g. *	Compliance with confidentiality of correspondence	Indicators of universal service performance	
	distribution rate at J+A)	Compliance with taw on data confidentiality	_	
	Consumer satisfaction surveys (companies and users	<ul> <li>No social dumping in employment</li> </ul>	<ul> <li>85% of mail delivered on the next working day (without)</li> </ul>	
	taken separately)	Universal service obligations	geographical distinction, currently = 95%)  97% of mail delivered in less than 3 working days	
		<ul> <li>A letter box on average every 1 000 metres</li> </ul>	(figures from the directive)	
		<ul> <li>A post office or equivalent every 2 000 metres</li> </ul>		
		<ul> <li>Regulated pricing</li> </ul>		
		<ul> <li>Except in exceptional cases, letters must be placed in the</li> </ul>		
		addressee's private letter box		
		<ul> <li>Poste restante obligation</li> </ul>		
		<ul> <li>Obligation to follow up mail</li> </ul>		
		Performance indicator for service quality		
		<ul> <li>80% of letters must reach their destination in less than 24 hrs</li> <li>95% of letters must reach their destination in less than 48 hrs</li> </ul>		
		<ul> <li>A letter hox must be emptied at least once every working day</li> </ul>		

A d	PERFORMANCE INDICATORS AND CRITERIA IN THE ELECTRICITY SECTOR	ITERIA IN THE ELECTRICITY SECT	FOR
France	Great Britain (OFGEM)	Belgium	Spain
State contract / EDF 1997/2000	Standards guarantees for the customer (constantly improved)	Accountable indicators	Objectives and tasks
	20 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	* Investment plans for the provision and	Ensuring energy supply
Accountable andicators	GS 2: Regioning a tuse (3-4 nrs max.)	distribution of electricity	<ul> <li>Cuaranteeing the quality of supply</li> <li>Guarantee service with minimum cost</li> </ul>
Productivity (overall, and by job)	GS 3: Connection time (2 days)	Customers services	South In the Will In the Will the Cost
(separately accountable)	GS 4: Estimate (5 days)		Indicators
<ul> <li>Profitability of capital invested</li> </ul>	GS 5; Prior notice of cuts	Price equalisation (between domestic and	i.
internationally (overall and by	GS 6: Low tension (7 days to react)	industrial customers)	I me and number of interruptions
investment)	GS 7: Response to meter problem ( (5-7 days	Customer information on prices and	Method
■ Debt repayment	to react)	scales  Minimal electric nower	
Lowering of state payment rate	GS 8: Reply to invoice complaints		<ul> <li>Benchmarking, indicators supplied by</li> </ul>
Customer service	GS 9: Appointments (offer, exactness, compliance)	Social measures	operators
	GS 10: Payment of fine	Coris perces	
	GS 11: Meter errors	Right to a minimal electricity supply	
Minimum tension level throughout	Specific services of the services of the services of	Particular measure in case of non-	
territory .	Ceneral service standards	compliance with payment date	
POWER CIRTARE	OS 1. Minimum of last than 2 hours for	<ul> <li>Pre-power cut procedure</li> </ul>	
Introduction of convices appropriates	reconnection ofter beautions to	Mutual funds	
Social prices	Reconnection of all consumers in 24	Social fund	
	hours after breakdown		
Environmental quality	OS 2: Minimum of 6 months for correcting		
Line burying rate	tension	<ul> <li>Fund for the rational use of energy</li> </ul>	
Development of co-generation and	OS 5: Minimum of at least one month for	Aid for renewable energy     Aid for renewable energy	
renewable energy	done for others)	Price for purchase of self-produced	
<ul> <li>Improvement of installation</li> </ul>	OS 4: Minimum of 24 hrs. for reconnection	energy	
Economic development	after re-start of regular service		
	OS 5: Minimum of one fortnight for visit to		
Number recruited	move meters		
<ul> <li>Aid to redeployment in unemployment</li> </ul>	OS 6; Minimum of less than 10 days for		
areas	changing meter price		
	OS 8: Minimum rate for renk to written		
	complaints		

FENTONIANCE INDICATORS AND	PERFORMANCE INDICATORS AND CRITERIA IN THE WATER SECTOR
France	England and Wales (OFWAT)
The schedule has not yet been applied in France. It was produced by AFNOR (certificate DG I: Access	DG I: Access
issuing body) and by ENGREF (research centre). It could be the start of an assessment of water DG 2: Pressure	DG 2: Pressure
Services.	DG 3: Interruption
Customer service	DG 4: Cuts (suspended)
To an addition and by the smooth	DG 5: Flood (purification)
Formight to septy to main  Notable recurring complaints (by subject: smell taste etc.)	DG 6: Response to invoicing complaints
(included a second property of the second pro	DG 7: Response to mail
General quality of supply (water)	DG 8: Response to consultations on the environment (removed)
<ul> <li>Rate of quality conformity of the water</li> </ul>	DG 9: Accessibility of reception services
<ul> <li>Linear index of primary losses</li> </ul>	
<ul> <li>Primary supply: Volume accounted for / volume distributed</li> <li>Interruption rate (number of interruptions per year)</li> </ul>	Each indicator is noted in absolute terms or compared.
	Indicators on the quality of water and the environment by the NRA (National Bissar
General quality of supply (purification)	Association) and the DWI (Drinking Water Inspectorate)
<ul> <li>Rate of overflow and flooding among users</li> </ul>	
Outflow rate	The licence makes three codes compulsory: Consumer code (description of services provided).
Rate of balance conformity	Debt code and disconnection (describing procedure), Code of leaks.
<ul> <li>Mud extraction rate</li> </ul>	
Renewal and preservation of heritage (water and purification)	Standard consumer code (regulator)
Rate of physical renewal of the network	Every criterion not complied with is subject to a fine.
Linear index for repairing leaks or rupture	Appointments (exactness, compliance)
	Response to mail
Other interesting indicators	Response to claims
Presence or not of a customer charter	Time for installing a meter
Deneficient rate of parament orders	Foreseen interruptions
Doseibility of stangard navments	Unforescen interruptions
ו השוויל עו שהקברות השליה של השווים של ה	Insufficient pressure
	<ul> <li>Flooding purification</li> </ul>
	- Restriction
	Insanitary conditions
	Non-novment of fine

# Part III - Assessment methods

Who does the assessment, what **parties** are involved, with which means, and with what relations with public authorities, etc.?

# Multi-party assessment

Assessment is a necessarily **shared exercise**. No party must appropriate the monopoly or be in a position to exercise a dominant role, i.e. the power to make judgements on services of general economic interest, their effectiveness and relevance. Furthermore the **lack of symmetry** in information and expertise between parties in services of general economic interest leads to promoting joint measures and interaction between the components particular to each party. Assessment being a **multi-party** process, it therefore is not subject to choice; the multi-party aspect is inherent in its nature.

The definition and construction of criteria for assessing and using relevant performance indicators will be all the more suitable and acceptable if all parties involved have taken part in the exercise. Assessment is therefore a learning and knowledge process. It contributes to the sharing of information and fuels discussion. Assessment's **legitimacy** supposes that both its conception and conduct is **democratic and pluralist**.

Services' purpose is to respond to their users' needs. Those to whom services are rendered are in particular consumer-citizens, and therefore the organisations which represent them; this representivity, as in the case of the other parties must be ensured. But companies and groups are also customers; they must therefore all be closely associated in the definition and guidance of assessment, the designation of indicators and the analysis of results.

Michel Conan points out (11) that "most often bureaucracies which intervene [in the production of public goods] become involved in the co-production process by avoidance, under constraint or in a spirit of mutual hostility. Cases of co-operation between users and producers of public goods are rare. It leads to a growth in the number of rules, authoritarian rules because they are not conceived by subjects of their own free will".

Consequently the setting up of "assessment offices" or "observatories" is advised. They would associate all the parties concerned: public authorities, regulatory bodies, operators, various kinds of consumer, the sector's unions, general interest associations and researchers and university people. Each component must possess the means to be able to play its part.

### Effective assessment

The assessment bodies must be in possession of the necessary human, financial and legal **means** to fulfil their task. These means must not be left to the hazards of state budgets. In France, in the case of drinking water, it is the absence of means and assessment bodies which for the moment is preventing the introduction of an assessment scheme for comparing water services.

<sup>(11)</sup> L'évaluation constructive. Théorie, principes et éléments de méthode, Ed. De l'Aube, La Tour d'Aigues, 1998.

The most relevant **territorial level** for assessment should be ascertained in accordance with the sector concerned, criteria chosen, the possibilities of parties' participation and the institutional procedures of each country. As we have seen, assessment cannot only concern a single level, but must relate to local-regional, national and European levels. In these conditions, it would be relevant to define a **consistent common framework** and compatible and comparable assessment criteria at community level, while at the same time implementing the **subsidiarity** principle.

To be able to collect all the useful data, assessment bodies must be in a measure to **compel** all the parties to send in their data.

To be credible and contribute to transparency, assessment results must systematically, and at regular intervals, be made **public**. When they concern confidential information connected with "business secrecy", their compilation must enable this obstacle to be overcome.

Assessment implementation bodies must also propose its constant **adaptation** to changing needs, technologies, and contents of services.

For this purpose, "technical advisors" could follow and analyse the collection methods and data processing and make recommendations to improve assessment quality.

Should these offices or observatories be **integrated** in the regulatory bodies, or must they be independent from the latter?

What should be the links with national and European Parliaments? What should the connection be with Economic and Social Committees or other relevant bodies?

# National and European experience and contributions

A proposal has been made to the European Parliament to create assessment bodies, but without any definite results (ref. Annex XVIII).

The Commission in its September 1996 Communication, "Services of general interest in Europe", proposed "introducing instruments for the assessment of the functioning, performance and competitiveness of services of general interest. Assessments of this kind would be conducted sector by sector. They would enable better practices to be circulated and encourage the adaptation of general interest tasks to technological change, new user needs and new public interest requirements. Already, the Commission has started a survey into the methods of organising utility services in Member States, their forms of regulation and the financial means placed at their disposal".

However up to now the Commission has enjoyed a de facto **monopoly of expertise and assessment**, both in sectoral studies and more general works. Counting on "the monopoly" to make proposals, conferred upon it by the treaty, it has in general proceeded in the following way: itself it defines the specifications for studies to be conducted. It launches tenders whose beneficiaries, owing to the references and capacities required, can hardly be any other than the customary **consultant** offices. The latter conduct studies and surveys confined to their usual processes, without being able to enlist real expertise. Their reports place the accent on the recommendations most currently present on the "market" or those they believe correspond to the desires of their order-givers. On these bases, each

Directorate-General concerned usually organises "public hearings" open to "initiated" parties. They thereupon make liberalisation proposals which they submit to the Council and Parliament, without presenting any real alternative around which a democratic European discussion could take place. At the same time, the Competition Directorate-General, examines all cases and complaints in the light of competition law, which is its role, but without any other considerations, whereas services of general economic interest are dependent on a shifting balance between competition and general interest.

Consequently in its 16 May 2000 Communication on "Recent progress in completing the internal electricity market", the **European Commission** proposed a whole **series of assessments**. These covered the level of public services supplied, effects of liberalisation on employment, comparative assessment of the market's functioning and the production of electricity from renewable energy. However it did not propose associating all the parties concerned in the process (ref. Annex III).

The European Council of Lisbon of March 2000 asked the European Commission to update the 1996 September Communication "Services of general interest in Europe", to take into account the Treaty's Article 16. The updating project adopted by the European Commission on 20 September 2000 contains no new provision on assessment performance of services of general economic interest. It is confined to the following provisions: "The Commission will continue to uphold the following principles for its policy on opening markets: recourse to assessment instruments to appraise the functioning, performance and competitiveness of services of general interest so that regulation can be adapted in accordance with technological change (which increases the opportunities for cross-border supply of services within the single market), new consumer needs and new requirements relating to general interest. The major guidelines for economic policies, the review of their implementation and the annual Commission Communication "Economic Reform: report on the functioning of the Community's product and capital markets" (Cardiff report) constitute the framework, among others, of a regular assessment of the functioning of services of general economic interest in the single market. In the case of particular sectors notably telecommunications, there exist regular examinations of regulatory reform and its effects. It will be worthwhile extending this practice to all sectors for which a common context has been established at Community level". The document adds that the Commission will maintain "a case-by-case approach based on the assessment of reforms and consultation with the various parties concerned, including consumers. The Commission will continue, as it already does, to prepare the amendment of regulatory frameworks by publishing Green Papers, accompanied or completed by other public consultations".

In some Union countries there are schemes for assessing performance. In **Spain**, in the **telecommunications** sector, a double system is prescribed to assess operators' quantitative and qualitative performances in compliance with universal service obligations. These obligations are defined by the General Law on Telecommunications according to criteria produced by the Telecommunications Market Committee and the Ministry of Public Works. The latter ministry has a specialised team, a telecommunications inspectorate with extensive powers to examine networks, services and service conditions. However, the essential part of the data, used in preparing the annual public report on service quality, is supplied by the operators themselves. In addition the operators once per year must supply an independent audit report on compliance with service quality obligations.

In the **energy** sector, the criteria measuring service performance are jointly produced by the State and Autonomous Communities. In this case also, the data are collected by the operators; they are then publicised by the sectoral associations. A technical committee, however, assesses the data transmitted by companies, and a regular improvement in performance is noticeable.

In **Finland**, in the **postal sector**, assessment is conferred upon a specialised department in the Telecommunications Supervisory Authority. The latter conducts satisfaction surveys among citizens and consumers. The collection of quantitative and qualitative data is subcontracted to a company. The results of the two types of assessment are published every year and are the subject of a press release.

In Belgium there is an Electricity and Gas Supervisory Committee, bringing together all parties concerned, the social partners, operators and representatives of federal and regional governments. The pluralist nature of the committee's membership is not, however, sufficient for a true assessment of operators and service performance to be made, as pointed out in the report of the expert working group on liberalisation of the electricity sector on 15 December 1999 (ref. Annex XIX).

The performance assessment of the **British telecommunications sector** is rather different from other utilities. This is partially due to the industry no longer considering itself a utility. Consequently it has up till now succeeded in convincing the public authorities that a performance assessment system could only harm the quality of service provided for the consumer-citizen. OFTEL, the telecommunications regulator, is therefore content with merely subcontracting simple benchmarking of the various operators to a company, without imposing any minimum objective in terms of service quality.

Currently, new thinking is taking place in Great Britain, aiming to give their proper place to consumers via representative associations, at least in the energy sector. A National Consumer's Council would be entrusted with centralising information on breakdowns and disputes affecting consumers. It will be their spokesman in dealings with the public authorities.

In the telecommunications sector in **France**, the Regulation Authority for Telecommunications initiates and progressively organises assessment performance (ref. Annex XIV). Consequently, assessment into the way in which the authority fulfils its task is not conducted since the scope of its responsibility is regularly contested, in particular in its relations with the Ministry for Industry. In the electricity sector, the Law of 10 February 2000 prescribes the setting up of a national Observatory and regional Observatories for the electricity public service, but without referring their implementation to ministerial decrees (ref. Annex XIX). In the case of Parisian public transport, the operator itself has been instrumental in quality certification in partnership with consumer associations for defining quality and with a certification agency (AFNOR) for the certification process (ref. Annex XX). In the water sector, in the absence of a national framework and faced with growing lack of symmetry in information, local authorities have started to take matters in their own hands. Currently, experience is beginning to be collected so as to make proposals for common schedules (ref. Annex XXI).

# Part IV - Proposals and recommendations

At this stage of our study it is impossible to claim that we possess complete information on all national and/or sectoral practices for the assessment of performance of services of general economic interest. Nonetheless it is possible to make a number of proposals and recommendations in order to promote performance assessment within the European Union as an essential component in the implementation of Article 16 of the Treaty.

Examination of the assessment methods in force in Member States and sectors reviewed have led, at the end of this report, to producing, first, a reference schedule for the kind of assessment criteria generally applicable to all sectors and, secondly, showing the principles and structures necessary for putting the assessment into operation.

# Proposal for a reference schedule

The proposed schedule presented on the following page is not exhaustive. Its first aim is to give an **overall vision of the possible, varying angles of approach** to assessment. It must therefore be understood in a more specific way at sectoral level and according to the category of the parties involved (kinds of user, authorities, etc.). However, when an assessment scheme is being studied it enables what can, and what cannot, be the subject of performance assessment to be properly identified.

The **generic approach** means that all criteria and fields listed cannot be standardised. This is entirely reasonable when the report's objective is considered. For instance, the analysis of contracts in order to detect possible unfair clauses does not lend itself to comparisons, but this in no way detracts from the political legitimacy of such a task if it is conferred on an assessment body.

The proposed schedule provides **overall coherence**. Each criterion has its relevance, but their cross-reference enables the varying dimensions inherent in services of general economic interest to be connected. For instance the price criterion for the service must be related to its nature and quality.

It is noticeable that assessment criteria such as **productivity and economic profitability** have been left aside. The latter relate to conventional economic assessment and as such lie outside the scope of the report. Criteria of this kind do not feature in the directives and laws and are therefore left to the appraisal of public or private sector shareholders and the market. On the other hand, over and above what is usually understood by "benchmarking", we have attempted to list a series of potential objectives to be set by public authorities, so that an assessment of the system's performance, including its regulation, can enable its efficiency and effectiveness to be examined.

The indicators taken from the schedule must be compared to the analysis filter of the quality particular to the analysis criteria selected. In order to be broadly and democratically used, the performance indicators for services of general economic interest must themselves obey a number of **quality criteria**, such as relevance, efficiency (cost effectiveness), reliability, comprehensibility and integrity (not conducive to sharp practice).

# Proposal for a reference schedule

Type of performance	Field of assessment	Possible indicators in developmen
Price of service	Price, tariff and development	List prices and real prices
Universal access, social and territorial	Connection and supply	Obligation to connect and supply, rate of cuts, pre-payment rate, etc.
cohesion	Social access	Social prices, particular terms for disadvantaged users etc.
	Physical access	Arrangements for the elderly and/or disabled, etc.
	Territorial access	Network's territorial density service to rural zones and zones in difficulty, etc.
Quality of product and service supply	Continuity/general quality of supply	Quality of supply (speed of mail, water pressure, power cuts, etc.), possible breakdowns, etc.
	Safety	Users' physical safety, environmental safety, etc.
		Possible confidentiality (correspondence. communications)
	Change	Research/development
		Change in supply owing to technical progress and social expectations, etc.
Relations with individual	Clarity and transparency of supply and contracts	Analysis of contracts
consumers	Invoicing	Readability, error rate, etc.
	Intervention	Speed and quality of intervention on request for service (connection, repair, visits, etc.)
	Reaction	Time for reply to mail, etc.
	Treatment of complaints	Speed and quality of treatment
	Indemnity for non-compliance with contract/criteria	Service charter
	Rate of consumer satisfaction	Survey, enquiries, opinions, etc.
Positive or negative external factors	Cohesion and territorial development	Territorial imbalance, territories' attractiveness, etc.
	Environment protection and sustainable development	Impact studies, compliance with possible quotas, etc.
	Employment	Direct, indirect, induced
	Effects on other activities	Specific indicators to be created
Other specific national objectives	Public policies (security of supply, diversification, long-term planning, etc.)	Specific indicators to be created
	Public safety	Specific indicators to be created

# Pluralist, specialised and autonomous assessment bodies

How to define, conduct and use performance assessment of services of general economic interest? Replying to this question, as suitably as possible for what is at stake in the current stage of European integration of services of general economic interest, leads to taking into account the specific characteristics, which have emerged as the study has progressed, in particular:

- three sources for the definition of general interest tasks: the consumer, the

citizen and the authority:

- three components of general interest tasks: guarantee for people to exercise their fundamental rights, social and territorial cohesion and government

- the need to take into account conflicting and changing relationships between competition rules and general interest tasks:

- relations between assessment and regulation and the specific nature of each

- diversity of parties concerned - and their objectives - in the definition, assessment and regulation of services of general economic interest;

- lack of symmetry in information and expertise structures between the parties involved:

- difference and complimentarity of territorial levels;

- scale of positive and negative external features according to place and time;

- the diversity of backgrounds historically and institutionally at national or local level.

These structural aspects have led us to emphasise six essential features in the way performance assessment of services of general economic interest is to be conducted.

1/ The bodies entrusted with assessment – Offices or Observatories or ... – must be accessible to the **plurality of parties** involved, in their expectations, aspirations and interests; any hindrance to the active participation of one of the parties will impoverish assessment and harm its legitimacy. No single party must assume – de jure or de facto – the monopoly of assessment. The best guarantee of involving all parties is that representatives of each party should belong to the structure defining the assessment guidelines and their follow-up.

2/ We have insisted on the specific nature of assessment at the same time as its relationship with regulation. Assessment does not have the power to arbitrate or sanction, but the equally essential power to state, to reveal. This has led us to recommend that the bodies entrusted with assessment should be specialised in its definition and conduct.

3/ These bodies must have margins of autonomy in their relations with the various parties concerned. There is the risk of some of the parties appropriating assessment if the assessment function is entirely and solely reliant upon them. This could, for example, occur if assessment is entrusted solely to bodies in charge of regulation or to politico-administrative bodies which define regulation or, at European level, to the Commission alone. Assessment must take into account the plurality of sources of information and expertise; schemes giving "recourse" must enable the way in which assessment is conducted, to be contested and generate counter-expertise. Bodies entrusted with assessment must possess real means of expertise and investigation, as far as possible guaranteed by law.

4/ Bearing in mind the proposals we have just made for the reference schedule, bodies entrusted with assessment must be in charge of a **specific sector** (possibly transport, energy, water purification, telecommunications or the postal services) even though it would be useful to prescribe **exchanges** between sectoral bodies. They could exchange experience and good practices and regularly examine the interaction between sectors (increasingly frequently the same operators are to be found in different sectors).

5/ It is clear that the bodies entrusted with assessment must be appointed at **Member State** level (on a scale which can be local); at the same time at **Community** level, it is necessary to devise methods for exchanges, meetings, comparison, co-ordination and even harmonisation; the latter could also be a support for national efforts. The European dimension is increasingly important owing to the markets concerned becoming less and less national; in each sector single European markets are emerging and the parties themselves are becoming more transnational to the point where one can speak of "Euro-operators". At the present stage, and to start the assessment process, as proposed in CEEP's 1994 report, an **Observatory attached to the European Parliament** could be created; it would thereby, while in communication with national bodies, possess real legitimacy.

6/ Lastly, there must always be a **cost ratio** between the projected schemes for assessing performance and **the advantages** accruing from the system's effectiveness. Consequently, some indicators can only be subject to periodic "spotlights".

# Giving the parties capacity to act

Assessment has several objectives, but its aim is to supply **information as objective as possible** about the way a sector works. It is then up to the parties to draw the conclusions relating to the objectives which they set themselves. Assessment must therefore, by supplying essential information provide the basis for **public discussion** and contribute to the formation of a European public opinion.

It is important not to stop at this point and consider the analysis complete. The question of the public discussion itself has to be examined. The discussion's democratic character will depend on all the **parties' capacity**, or incapacity, to take part.

The various **public authorities** will naturally be present. Formerly they often had the monopoly on legitimately making their voices heard. They will continue to maintain a strong presence insofar as they assume their role of laying down the sector's general interest tasks and regulation. **The operators**, as well as big industrial customers, will also have the necessary resources to take their place in the discussion, as they have already done in the deliberations on the directives and transposition laws.

The problem arises mainly for the **consumer-citizens** residing in the district concerned. Examining the various situations in Member States shows that they are rarely in a position to make their voices effectively heard when they are not provided with a **structure** enabling them to have access to the discussion in a firm and sustainable way.

The creation of "consumer-councils" (12), armed with their own expertise and means of communication, could contribute to assessment's effectiveness and enable consumer-citizens fully to play their role by giving their judgement on the way services of general economic interest are organised and regulated. The appointment of "mediators" could also contribute to the recognition of consumer aspirations.

Putting these proposals and recommendations into operation supposes the existence of a **strong political will**, to overcome the **reluctance** and numerous **obstacles** along the road to assessing the performance of general economic interest. The French Scientific Assessment Council (13) has stressed the point. Some parties emphasise the inherent difficulties and complexities in order to hinder, even obstruct, the exercise. In the case of public authority officials, assessment can lead to revealing objectives which they do not always want to make explicit. Some operators can count on users not being in possession of the accurate facts for making comparisons. The parties who consider themselves to be in a favourable position in the division of funds may not want true transparency; etc.

By introducing **progressive dynamism** into assessment, reluctance and obstacles can be overcome, to a much greater extent than by making rules and giving orders. We therefore recommend, without further ado, that every conceivable experiment, however partial, be conducted.

Article 16 of the European Union Treaty recognises that services of general economic interest are components of the Union's "common values". It emphasises their role in promoting "social and territorial cohesion". These strong words will have no meaning unless they are applied to each one of the areas concerned and are reflected in their effectiveness for society, without at the same time being used as a form of national protection. It is also necessary to have the means to appreciate their efficiency and measure their effectiveness.

Elaborating performance assessment, for services of general economic interest is the **key way ahead** for them to go from strength to strength in fulfilling their purpose, which is **to respond to the needs of consumers, citizens and society** and their future development.

<sup>(12)</sup> It is not one of the objectives of this report to examine the ways of representing consumers; they must ensure their own legitimacy and democratic action.

<sup>(13) &</sup>quot;In a democratic concept of the functioning of the State and public management, a requirement of this kind appears necessary. Experience shows, however, that assessment is not a natural process in public services. The obstacles it encounters can be attributed to practical difficulties. Thorough assessment is time-consuming and costly. Decision-makers often justify their scepticism towards assessment owing to their being confronted with short deadlines; they have to make choices which cannot wait for the results of long-term studies. Electoral timetables, nonetheless, are more medium-term and emergency management and improvisation are not inevitable. Better mastery of decision-making time will make assessment both entirely meaningful and useful. Deeper resistance exists, more or less knowingly connected with the wish to keep twilight zones in public actions. This twilight can be a factor providing autonomy for officials and the elected. The sleeping partner in assessment runs the risk of not wholly mastering the process of change which is likely to occur." Petit guide de l'évaluation des politiques publiques, Documentation française, Paris, 1996.

### Annexes

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# Annex II

# Some case law of the Court of Justice of the European Communities

Several rulings of the Court of Justice of the European Communities have defined the complex criteria for assessing performance of services of general economic interest and the conditions in which they cannot be subject to the common law of competition. Without drawing up a complete inventory, we have listed some of them.

The "Corbeau" judgement, rendered on 19 May 1993 specifies the conditions in which certain exclusive rights granted to a service of general interest can escape from the competition rules laid down by the treaties: "it is necessary to start from the premise that the obligation, for the entity entitled to carry out this task, to ensure these services in conditions of economic balance presupposes the possibility of compensation between the sectors with profitable activities and the less profitable sectors and thereby justifies a limitation of competition, on the part of particular entrepreneurs, to the level of economically profitable sectors".

The "Almelo judgement" of 27 April 1994 states that to appreciate whether restrictions on competition are necessary "account must be taken of the economic conditions in which the enterprise is placed, notably the costs which it has to bear and the regulations, particularly on the subject of the environment, to which it is submitted".

The judgement of 27 February 1997 rendered by the Court of First Instance in the Affair T-106/95 placing several French insurance companies in opposition to the Commission, the French Republic and La Poste, states that the public postal service consists of the obligation to ensure the collection, transport and distribution of mail for the benefit of all users, throughout the territory of a Member State, at uniform prices and in similar quality conditions, without regard to particular situations and the degree of economic profitability of each individual operation. The court ruled that the law of Member States shall compensate the financial losses incumbent upon their enterprises in charge of managing a service of general interest. The advantages, notably tax advantages, granted to these enterprises do not amount to state aid if they do not exceed the constraints resulting from particular tasks.

On 23 October 1997 the Court of Justice rejected the Commission's case relating to monopolies for the import of electricity and gas into several countries. The States have to justify their respective legislation based on Article 86-2 which — with the reservation that they do not affect the development of community trade — exempts enterprises in charge of the management of services of general economic interest from the rules of the treaty, when these rules hinder the accomplishment of their particular tasks in economically acceptable conditions. The Commission "had not take into account the particular nature of national systems and had confined itself to considerations of an exclusively legal order, without giving the grounds for its arguments". In addition the Commission "had not demonstrated that the regulation on exclusive import and export duties had negative repercussions on the development of community trade".

In the case of the State monopoly for the sale of alcohol in Sweden, on 23 October 1997 the Court recognised that "aiming at the protection of public health against the ill-effects of alcohol, a national retail sales monopoly for alcoholic drinks pursues a public interest objective" and was not contrary to the Treaty.

Annex III

# Internal electricity market: Commission's assessment proposals

Source: Commission communication to the Council and European Parliament: Recent progress in the completion of the internal electricity market (COM(2000)297 final). Extracts.

# Level of public service supply

It must be ensured that the level of service in the electricity sector is not affected by the liberalisation process. The principle derives clearly from the spirit and letter of the directive, which prescribes measures to guarantee that the essential rules of public service shall be complied with in a competitive market. These rules habitually ensure all citizens the right to electricity supply at fair prices; sometimes they stipulate particular protection for the most vulnerable (elderly people, disabled) and also provide for the protection of the environment and security of supply.

With the European Council of March 2001 in Stockholm in view, the Commission will present a communication describing the measures taken by Member States on consumer protection. Available information will moreover be used to start a comparative assessment exercise to promote better practices. In association with Member States and other interested parties, the Commission could produce proposals on the guidelines to develop public service. Following the example of strengthening "universal service" in the telecommunications field, the objective is to ensure the highest possible quality of public services in the community.

# Effects of liberalisation on employment

The process of opening up markets must take into account the change in the sector's employment situation. An overall assessment must consider not only restructuring, even some job loss specific to the sector, but also the series of positive effects on the economy and employment deriving from added competitiveness and the lowering of costs, notably for industries with high energy consumption. A study has been started by the Commission to note experience gained in the most advanced countries on the subject of liberalisation. The results, expected before the summer of 2000, were due to enable a review to be presented on the main tendencies and the qualitative measures to be taken.

# Comparative assessment ("benchmarking")

Member States have opened their electricity markets more widely than required in the directive. Nonetheless, experience has shown that the degree of liberalisation prescribed by legal acts does not necessarily correspond to real market developments. Consequently, the Commission supported by EUROSTAT, will produce indicators to assess the real degree of competition in national markets and also in the community market as a whole. A study will begin in coming weeks on Member States' pricing system for access to networks; the results will be available for the European Council in Stockholm. The aim is to obtain a complete picture of the way the markets work and emphasise the best practices in the community.

# Import/export

In principle commercial rules enable other countries to sell electricity in the European Union; some already seek to exercise this right. There are two particularly important points: reciprocal access to markets and compliance with environmental standards.

Progress could be made by concluding regional or bilateral agreements – or a joint interpretative declaration, like the one currently being prepared between Switzerland and the EU.

Annex IV

# Comments on some assessment definitions French Scientific Assessment Council Petit guide de l'évaluation des politiques publiques La Documentation française, Paris, 1996

A large number of definitions of assessment have been suggested.

a) Some definitions consider assessment as mainly informative.

The sole official definition in France is the one which appears in the Decree of 22 January 1990: "Assessing a policy is to find out whether legal, administrative and financial means in operation enable the policy to achieve its desired effects and objectives". The definition quite rightly insists on the effects of policy being appraised with reference to its objectives. To do this they have to be worded sufficiently precisely and operationally to enable them to be compared with empiric observation of social reality, or at least in such a way that they can be reconstituted with this in view. This is how the Scientific Assessment Council understood the decree's definition: assessment's terms of reference can never be completely deduced from official texts and its construction is an integral part of the assessment process.

Another definition of assessment was proposed in a report on the 1985 Plan (Deleau Report): to assess a policy is "to recognise and measure its particular effects". This definition does not presuppose the existence of objectives, but it neglects the fact that the effects of a policy are generally extremely numerous, complex and diverse. They cannot be identified without a prior reference schedule and are, furthermore, rarely measurable. They have, however, the merit of placing the accent on the notion of "particular effects": what is expected of assessment, is not only finding out whether objectives have been attained but seeking to identify all the effects of a policy. It must show the effects attributable to the public action under consideration and the influence of external factors.

- b) The definition in the Viveret Report (1989), on the other hand, places the accent on the rules for assessment: "to assess a policy is to form a judgement on its value". The word "evaluation" in French contains the words "value", and it follows that reference values underlie the majority of assessments (evaluations). The decision to assess is always connected with the willingness to discuss the success or grounds for an action. It is always the case that the final decision on a policy, or its reform, is a political act: it can be seen that assessment can only contribute to it in conditions and within limits which must be carefully specified.
- c) Other definitions emphasise the instrumental aspect, the usefulness of assessment, which is only implicit in the previously mentioned definitions. According to Freeman and Rossi, for example, assessment must concern itself with "usefulness, implementation, effectiveness and efficiency of measures which aim to improve the lot of members of society".

It can be gathered from this brief discussion that assessment is an activity simultaneously, and in varying proportions, informative, ruling and instrumental.

Annex V

### Universal service in telecommunications

Assumptions and regulation

# Stakes

As the European Commission points out in its communications on universal service (14), society's transformation towards the advent of an information society implies avoiding the emergence of a "two-speed society", divided between those who can fully access to new communications technology and those who are marginalised by the process.

From 1993 onwards the Council, European Parliament, Economic and Social Committee and the Committee of the Regions unanimously recognised that liberalisation must go hand in hand with a framework guaranteeing the supply of universal service. The notion of universal service has been defined by the Council as: "minimal access to the services defined according to a given quality, and also the supply of these services to all users independently of their geographic location, and in keeping with specific national conditions, at an affordable price".

In this context, and in view of positions taken, making a regulation framework formal is the necessary condition to ensure everyone has access to essential services. A regulation framework has therefore been defined, and continues to be completed by successive directives, by virtue of the principle of mutability and adaptation of the concept of universal service in accordance with the sector's technological change.

# Concept of universal service defined by the present regulation framework

The present regulation framework (15) requires Member States to make vocal telephone service, telecopier (fax) and internet access available to all users, independently of their geographic location, at a reasonable price.

From a fixed abode users must have access to international and national calls and also to emergency services. The definition also covers the supply of an operator's assistance, directory services, public telephones with payment and special installations for the disabled or those with particular social needs. For this purpose, Member States may introduce ceiling price systems, geographic equalisation or other similar mechanisms.

Current legislation recognises that, in some countries, the charge for the supply of universal service will be higher than in others. States then have the possibility of constituting a universal service fund, to which all operators contribute, to indemnify the operator in charge of the universal service (16). Legislation also provides for the introduction of a "payment and participation" scheme. By virtue of the scheme, some operators may reduce their contribution if they supply a universal service.

### Limits and prospects

Pricing: Although the present rules prescribe that the universal service be available at a reasonable price, no definition specifies, in quantitative terms, what is a reasonable price.

Member States have devised various methods to ensure a reasonable price: price control, special regimes for some categories of user, payment facilities, limitation of disconnection for default. However the application of affordable prices remains unequal owing to the absence of a community framework.

Financing: the "payment and participation" scheme is still little used. Moreover only one country has constituted a universal service fund.

Range: universal service is a concept defined by the Commission as dynamic and evolutive, its extension therefore poses a constant question.

The move towards broadband networks (cables, satellites, ADSL) and mobile telephones obviously falls within the context of technical development and change in the information society. These services have implications socially, for territorial development and access to new information technology.

Twice – in 1996 and 1999 the Commission has pointed out (17) the essential criteria for extending the range of universal service: analysis of demand and political assessment of its economic and social usefulness.

# Commission proposals

In a recent directive proposal (18) the Commission mentioned some innovations which might enable the limitations described above to be partially offset.

- The ways of financing the universal service will be revised. The calculation of the universal service's net cost will be made formal throughout the community with a view to harmonisation. Operators will be encouraged to fulfil their universal service obligations profitably, the particular financing for this type of service only covering net costs. A new financing possibility is being introduced, with mechanisms for operator indemnity, net cost calculated, out of **states' general budget**. This measure should enable the universal service to be extended to costly broadband networks without the cost falling on consumers.
- The financial transparency criterion will be extended. In the case of finance by sharing, National Regulatory Authorities (NRA) will henceforth have to provide the public with the detail of the mechanisms applied, in particular by ensuring that an annual report is published on the universal service's cost and its calculation. The NRA could even require company contributions to universal service to be mentioned on user-invoices.
- Without proposing any definite extension of the range of universal service the Commission proposes that it be periodically reviewed, the first time within two years at the latest.

Lastly the new draft directive prescribes that the NRA, could, in the national context, require the designated companies to implement options or pricing services with the aim of guaranteeing that people with low-income or specific social needs are not prevented from having access to the telephone service.

<sup>(14)</sup> Communication of the Commission to the Council, European Parliament, Economic and Social Committee and the Committee of the Regions. Universal service for telecommunications with the prospect of a fully liberalised environment – an essential component of the information society. COM(96)73 final of 13.3 1996

<sup>(15)</sup> Articles 2 and 3 of the Directive 98/10/EC of the European Parliament and Council of 26 February 1998 on the application of supply of an open vocal telephone network and the establishment of universal service for telecommunications in a competitive environment (replacing Directive 95/62/EC of the European Parliament and Council), called the "vocal telephone" directive.

<sup>(16)</sup> Article 5 of Directive 97/33/EC of the European Parliament and Council of 30 June 1997 relating to interconnection in the telecommunications sector to ensure universal service and interoperability through the application of the principles of supply of an open network, called the "interconnection" directive.

<sup>(17)</sup> COM(96)73 final of 13.3.1996 op cit., and Commission communication to the Council, European Parliament, Economic and Social Committee and Committee of the Regions. Movement towards a new framework for electronic communications infrastructure and associated services. COM(99)73 final.

<sup>(18)</sup> Directive proposal of the European Parliament and Council presented by the Commission on universal service and users' rights with regard to networks and electronic communication services COM(2000) final of 12.7.2000.

### Annex VI

# Universal postal service

Source: Directive 97/67/EC of the European Parliament and Council of 15 December 1997 concerning common rules for the development of the internal market for the postal services of the community and the improvement of the quality of the service.

# Chapter 2 – Universal service

### Article 3

- 1. Member States shall ensure that users enjoy the right to a universal service which corresponds to provision of postal service of given quality constantly supplied to any point of the territory at prices affordable for all users.
- 2. To this effect the Member States shall take measures so that the density of contact points and access take into account users' needs.
- 3. They shall take measures so that one or more providers of universal service guarantee on all working days and not less than five days per week, except in circumstances or geographic conditions deemed exceptional by National Regulation Authorities, at the minimum:
  - one collection,
  - one delivery to the address of each natural or moral person or, by waiver in conditions determined by the National Regulation Authority, in appropriate

Any exceptional circumstances or waiver accepted by a National Regulation Authority in conformity with the present paragraph shall be notified to the Commission and all National Regulation Authorities.

- 4. Each Member State shall adopt the necessary measures so that the universal service comprises at minimum the following provisions:
  - the collection, sorting, transport and delivery of postal despatches up to 2
  - the collection, sorting, transport and delivery of postal packages up to 10 kilograms, - services for registered mail and mail of declared value.
- 5. National Regulation Authorities may raise the weight limit for universal service coverage for postal packages up to a weight not exceeding 20 kilograms and may fix special regimes for the delivery of these packages to an address.

Notwithstanding the weight limit fixed by a given Member State for universal service coverage for postal packages, Member States shall ensure that the postal packages received from other Member States and weighing up to 20 kilograms shall be delivered on their territory.

- 6. The minimal and maximal dimensions of the above-mentioned postal despatches are those fixed in the convention and the arrangement relating to postal packages adopted by the Universal Postal Union.
- 7. The universal service as defined in the present article also comprises both national services and cross-border services.

# Article 5

- 1. Each Member State shall take measures so that the provision of the universal service responds to the following requirements:
  - provision of a service guaranteeing compliance with essential requirements,
  - provision to users in comparable conditions of an identical service. availability without discrimination, in whatever form it may take, notably for
  - political religious or ideological reasons,
  - no interruption or stoppage, except in cases of *force majeure*, development in accordance with the technical economic and social environment and users' needs.

# Article 6

Member States shall take measures so that the one or more providers of universal service regularly supply users with sufficiently accurate and up to date information on the characteristics of the universal service provided, in particular pertaining to general conditions of access to the service, prices and the level of quality standards. This information shall be published in an appropriate manner.

Member States shall notify the Commission, within a twelve-month time limit to be counted from the date of the entry into force of the present directive, concerning the methods whereby the information to be published in application of the above subparagraph is supplied. Any subsequent amendment shall be notified to the Commission as soon as possible.

# Chapter 6 - Quality of the services

### Article 16

Member States shall ensure that the quality standards of the service are fixed and published for the universal service with a view to providing a postal service of good

The quality standards cover in particular forwarding times and the regularity and reliability of the services. These standards are fixed by:

- Member States for national services.
- The European Parliament and Council for intra-community cross-border services (Annex).

An independent monitoring of performance on the subject of quality is carried out at least once per year by bodies having no link with the providers of the universal service, in standardised conditions (...). The results of the monitoring shall be the subject of reports which are published at least once per year.

# Annex - Quality standards for intra-community cross-border mail

The quality standards for intra-community cross-border mail in each country must be defined in accordance with the quickest time for forwarding despatches of the standardised category, calculated from start to finish according to the J + n formula, J representing the date of deposit and n the number of working days which run between that date and the date of delivery to the addressee.

Quality standards for intra-community cross-border mail

Duration	Objective
J+3	85% of mail
J + 5	97% of mail

The standards must be attained not only for the entire flow in the overall context of intracommunity traffic, but also for each bilateral flow between two Member States.

### Annex VI

# Universal postal service

Source: Directive 97/67/EC of the European Parliament and Council of 15 December 1997 concerning common rules for the development of the internal market for the postal services of the community and the improvement of the quality of the service.

# Chapter 2 – Universal service

### Article 3

- 1. Member States shall ensure that users enjoy the right to a universal service which corresponds to provision of postal service of given quality constantly supplied to any point of the territory at prices affordable for all users.
- 2. To this effect the Member States shall take measures so that the density of contact points and access take into account users' needs.
- 3. They shall take measures so that one or more providers of universal service guarantee on all working days and not less than five days per week, except in circumstances or geographic conditions deemed exceptional by National Regulation Authorities, at the minimum:
  - one collection,
  - one delivery to the address of each natural or moral person or, by waiver in conditions determined by the National Regulation Authority, in appropriate

Any exceptional circumstances or waiver accepted by a National Regulation Authority in conformity with the present paragraph shall be notified to the Commission and all National Regulation Authorities.

- 4. Each Member State shall adopt the necessary measures so that the universal service comprises at minimum the following provisions:
  - the collection, sorting, transport and delivery of postal despatches up to 2
  - the collection, sorting, transport and delivery of postal packages up to 10 kilograms, - services for registered mail and mail of declared value.
- 5. National Regulation Authorities may raise the weight limit for universal service coverage for postal packages up to a weight not exceeding 20 kilograms and may fix special regimes for the delivery of these packages to an address.

Notwithstanding the weight limit fixed by a given Member State for universal service coverage for postal packages, Member States shall ensure that the postal packages received from other Member States and weighing up to 20 kilograms shall be delivered on their territory.

- 6. The minimal and maximal dimensions of the above-mentioned postal despatches are those fixed in the convention and the arrangement relating to postal packages adopted by the Universal Postal Union.
- 7. The universal service as defined in the present article also comprises both national services and cross-border services.

# Article 5

- 1. Each Member State shall take measures so that the provision of the universal service responds to the following requirements:
  - provision of a service guaranteeing compliance with essential requirements,
  - provision to users in comparable conditions of an identical service, availability without discrimination, in whatever form it may take, notably for
  - political religious or ideological reasons,
  - no interruption or stoppage, except in cases of *force majeure*, development in accordance with the technical economic and social environment and users' needs.

# Article 6

Member States shall take measures so that the one or more providers of universal service regularly supply users with sufficiently accurate and up to date information on the characteristics of the universal service provided, in particular pertaining to general conditions of access to the service, prices and the level of quality standards. This information shall be published in an appropriate manner.

Member States shall notify the Commission, within a twelve-month time limit to be counted from the date of the entry into force of the present directive, concerning the methods whereby the information to be published in application of the above subparagraph is supplied. Any subsequent amendment shall be notified to the Commission as soon as possible.

# Chapter 6 - Quality of the services

### Article 16

Member States shall ensure that the quality standards of the service are fixed and published for the universal service with a view to providing a postal service of good

The quality standards cover in particular forwarding times and the regularity and reliability of the services. These standards are fixed by:

- Member States for national services.
- The European Parliament and Council for intra-community cross-border services (Annex).

An independent monitoring of performance on the subject of quality is carried out at least once per year by bodies having no link with the providers of the universal service, in standardised conditions (...). The results of the monitoring shall be the subject of reports which are published at least once per year.

# Annex - Quality standards for intra-community cross-border mail

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Quality standards for intra-community cross-border mail

Duration	Objective
J + 3	85% of mail
J + 5	97% of mail

The standards must be attained not only for the entire flow in the overall context of intracommunity traffic, but also for each bilateral flow between two Member States.

Annex VII

# Public service in transport

In the transport sector, Article 73 of the Treaty makes mention of "public service".

The European communities have specified the content of the public service notion in the transport field by railway, road and navigable waterway in Council regulation (EEC) No 1191/69 of 26 June 1969. According to its terms, sufficient public service transport shall be supplied, enabling:
- transport services to meet standards laid down for continuity, regularity, capacity and

- complementary transport services,

- transport services at fixed prices and conditions, notably for some categories of traveller and for some routes,

adaptation of services to effective means.

While always based on Article 73 of the Treaty, the 26 June 1969 regulation was amended by the regulation N°1893/91 of 20 June 1991. The latter prescribes that the removal of public service obligations is the normal rule but, with the aim of guaranteeing "sufficient transport services", public service contracts, containing public service obligations, may be made with companies.

"Member States' competent authorities shall remove obligations inherent in the notion of public service, defined by the present regulation, imposed in the field of transport by railway, road and navigable waterway. In order to guarantee sufficient transport services, notably taking into account social, environment and town and country planning factors, or with a view to providing particular tariff conditions in favour of some categories of traveller, Member States' competent authorities may conclude public service contracts with a transport company".

Nonetheless, public service tasks may be maintained for urban and inter-urban transport. "However, Member States' competent authorities may maintain or impose the public service obligations mentioned in Article 2 for urban, suburban and regional passenger transport. The conditions and terms, including compensation methods, are laid down in sections II, III and IV".

In this case, the community texts make a clear distinction between transport service, which being subject to specific obligations (pricing, town and country planning ...) may be subject to public service contracts, and therefore subject to public purchasing procedures (OJEC publications and competition rules), and "public service obligations", where conditions and terms are clearly defined by regulation. This concept is once more in the process of change, because the Commission wants to impose "public service contracts" and submit these contracts to competition rules including public services for urban, suburban and regional passenger transport urban, suburban and regional passenger transport.

The regulation N° 2408/92 of 23 July 1992 concerning airlines' access to intracommunity air routes provides a similar situation in the air transport sector. It regulates community transporters access to air routes and allows Member States to impose "public service obligations" in accordance with its Article 2.0:

"Public service obligations: obligations imposed on an airline with a view to its taking, with regard to any route which it may operate by virtue of a license delivered to it by a Member State, all necessary measures to ensure the provision of a service responding to standards laid down on the subject of continuity, regularity, capacity and prices, standards which the transporter would not be able to meet if it had solely to consider its commercial

In the case of maritime transport, the Council regulation N° 3577/92 of 7 December 1992 stipulates in its Article 4 "that a Member State may conclude public service contracts with shipping companies, which undertake regular services going to and coming from islands and also between islands, or may impose public service obligations as a condition for the provision of cabotage services...".

Annex VIII

# Electricity and gas directives

Article 3 of the Directive on the internal electricity market (adopted by the Council of Ministers on 20 June 1997) stipulates: "While fully taking into account the relevant provisions of the Treaty, in particular its Article 90, Member States may impose public service obligations on companies in the electricity sector in the general economic interest, which may cover safety, including security of provision, regularity, quality and price of supply and also protection of the environment. These obligations shall be clearly defined, transparent, non-discriminatory and supervisable; Member States shall publish these obligations, and any revisions, and notify them without delay to the Commission. As a means of carrying out the aforementioned public service obligations, Member States which so wish may implement long-term planning. Member States may decide not to apply the provisions of Article 5 [authorisation procedure], 6 [tender procedure], 17 [negotiated access to network], 18 [single purchaser] and 21[direct lines] insofar as the application of these provisions would obstruct, de jure or de facto, the fulfilment of the obligations imposed on electricity companies in the general economic interest, insofar as the development of trade would not be affected to an extent which would be contrary to the community's interest. The community's interest includes, among others, competition concerning eligible customers in conformity with the present directive and Article 90 of the Treaty

Article 3 of the directive on the internal market for natural gas (adopted by the Council of Ministers on 22 June 1998) stipulates: "2. While taking fully into account the relevant provisions of the Treaty, in particular its Article 90, Member States may impose on natural gas companies, in the general economic interest, public service obligations which may cover safety, including security of supply, regularity, quality, provision of supply and protection of the environment. These obligations shall be clearly defined, transparent, non-discriminatory and supervisable; Member States shall publish these obligations, and any revisions, and notify them without delay to the Commission. As a means for carrying out public service obligations concerning security of supply, Member States which wish to do so may implement long-term planning taking into account that third parties might want to accede to the network. 3. Member States may decide not to apply the provisions of Article 4 ([authorisation procedure] for distribution, insofar as the application of these provisions, *de jure* or *de facto*, would obstruct the fulfilment of obligations imposed on natural gas companies in the general economic interest and insofar as the development of trade would not be affected to an extent which would be contrary to the community's interest. The community's interest includes, among others, competition concerning eligible customers in conformity with the present directive and Article 90 of the Treaty."

### Annex IX

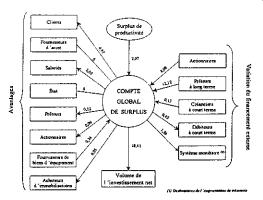
# Methods for overall surplus productivity in France

**Source:** "Services publics en réseau. Perspectives de concurrence et nouvelles régulations", report of the Commissariat général du Plan working group presided over by Jean Bergougnoux, Documentation française, Paris, 2000.

Correct assessment of productivity must necessarily take into account all means of production (whether work, intermediate consumption, equipment, etc.). With this in view and in the context of the theory of surplus, methods for overall so called surplus productivity have been developed. The Centre for Study of Income and Costs (CERC) has been making these methods, originating in the work of P. Massie and A. Vincent, systematic for twenty years. They aim to assess the wealth a company can produce from a given organisation and describe how this wealth is subsequently divided among the various economically engaged parties (by developments in price, cost or wages) (19).

Surplus accounts, as shown in the example below, enable numerous analyses to be made and give a summary view of all the company's effective relations with its partners and also its own way of working.

# Overall surplus account: creation and division of surplus



Relations exprimées en pourcentage de la production de l'année précédente

Source: documents du Centre d'étude des revenus et des coûts (CERC), « La productivité globale et camptes de surplus », n° 55/36, 1980, p. 72

This tool was duly suggested to help public sector decision-makers to measure the performance of a public sector company; measurement was intended to offset the non-market sector's lack of market criteria. The tool would also avoid reducing performance analysis to the narrow context of solely the apparent productivity from work, leading to serious errors in personnel management by failing to include sources of productivity other than work. Over and above the straightforward measurement, these methods were ultimately conceived as a negotiating tool between the state and the traditional operator. For example they can monitor the division of the company's surplus between the sector's various parties. This form of analysis still keeps its relevance now that public authorities, in the reform process, want the gains, notably those distributed to consumers, to be appraised. The method for the overall surplus of productivity has thereby played an important role in negotiations on income policy by linking the increase in wages to gains in productivity. The method has been applied from the 1970s onwards in four public sector companies: Charbonnage de France, EDF, Gaz de France and SNCF.

### Annex X

# 10 Universal service principles for the Consumers' Committee

"Redefining the notion of universal service in the consumer's interest"

The European Commission's communication "Services of general interest in Europe" (COM 96/443) lists a series of principles on which the notion of universal service will have to be based. The principles are vague and not clearly structured. Moreover, the communication recognises the existence of other important problems for the consumer, such as the cost/efficiency ratio, choice, transparency, access to objective information, quick and easy redress and participation.

The Consumers' Committee considers that it is necessary to possess a series of clearly defined principles to assess the application of the universal service notion in each one of the services of general interest. Consequently the committee has defined 10 principles on which the supply of essential services must be based, i.e.:

1. Access: Access has three aspects:

- Economic access – access at an affordable price. "Affordable" must be defined at national level in cooperation with all the parties concerned. The definition must provide all citizens with guaranteed access to universal service. The definition must be published. It is up to each Member State to ascertain the price level deemed affordable. It is essential that pricing structures be transparent and not penalise customers in the way they choose to pay (for example, those who do not pay by bank transfer).

Physical access – independent of disablement or age.
 Geographic access – independent of place. Quality standards must ensure appropriate access to varying cultural and organisational structures.

- 2. **Choice**: consumers want the widest choice of services and, as far as possible, of suppliers of services. Choice will be broadened by standards ensuring free access to technology and infrastructure. Also consumers should be guaranteed total choice in the way they pay, notably they should be free to pay in cash, without expenses.
- 3. **Transparency and complete information**: Clear and comparable information on prices, clarity of household bills, methods and conditions of supply, consumers' rights, regulation, ownership, company activities. Transparency of government and regulatory bodies' decision-making process in the conception and financing of universal service requirements, and also the decision-making process for the cost of supplying universal services by the companies.
- 4. Quality: This supposes basic obligations guaranteeing the physical quality of products supplied and the quality of the service provided for consumers. Obligations must cover aspects such as reliability and continuity of services, payment options, treatment of complaints, settlement of disputes and communications with consumers. Regular publication of quality indicators and consumer satisfaction relating to services supplied in all sectors to uphold lasting quality.
- 5. Safety: Physical safety of services.
- 6. **Continuity and reliability**: Continuous and reliable services to be ensured. This implies the need for protection against disconnection. If disconnection is authorised, fair procedures must be introduced specifying the exact circumstances and methods.
- 7. **Fairness**: Fair and real competition is essential between suppliers to guarantee a uniform system between all the operators/suppliers, and notably their access to infrastructure. Consumer access to services would be helped by standards ensuring fair competition and freedom of access.
- 8. Independent regulatory bodies: Introduction of regulatory bodies independent of governments and the companies, possessing suitable resources, powers of sanction and clearly defined tasks. It is vital that consumer associations take an active part in decisions concerning consumers.
- 9. Representation and active participation: Legal provisions will have to be drawn up to enable organisations to be systematically consulted and so that consumers take an active part in decision-making processes. Service suppliers must be encouraged to

<sup>(19)</sup> Over a given period productivity gains or losses, contributions received and goods distributed are in balance.

consult consumer representatives in decisive phases. Even if national representation structures may vary, the basic principle of independence must be a *sine qua non* condition.

10. **Redress**: Introduction of free of charge and unstressful treatment of complaints, indemnity mechanisms and impartial settlement of unresolved disputes.

The Consumers' Committee believes that the regulatory context encompassing each one of the general interest services must be the subject of regular assessment based on these 10 principles. The success of applying the notion of universal service to each of these services of general interest has to be assessed according to the level of application of these 10 principles.

# Annex XI

REPORTS

# Jean-Michel Glachant: New British electricity system

Source: Jean-Michel Glachant, "Le nouveau système électrique britannique : quels traitements des clientèles et des facteurs de production ?" in CIRIEC, Cox H. (Ed), "Services publics, missions publiques et régulation dans l'Union européenne", Pedone, Paris, 1997.

### Summary

This section analyses the impact of liberalisation on the British electricity system. It therefore does not deal with performance assessment as such, but rather the development of performance over a time period, by seeking to identify winners and losers. The study of the criteria chosen and also the method used can, however, be extremely useful in the context of our own research.

The author takes the following criteria into account:

- Pricing according to customer categories.
- Definition of 10 guaranteed standards in direct dealings with customers (reaction to cuts, response to complaints, calls to the customer's home...) 8 general standards for dealing with customers (connection to new buildings, frequency of meter reading, restoring current and correcting tension faults). These standards have been defined in consultation with consumer representatives.
- Number of complaints received (13,364 in 1991 and 7,661 in 1995).
- Change in employment: 60% job losses in production (up to 75% in the coal trade), 20% in distribution.
- Financial value: Total Shareholder Return increased from 23.7 to 34.2% compared with an average of 12% for the London area. Managers' incomes have more than quadrupled.

The part on pricing is the most methodologically intense. The author clearly shows the danger of a too brutal economic assessment. The sources he uses are first of all national measurements published by OFFER the British regulator and by the Chartered Institute of Public Finance and Accountancy (CRI) and secondly the figures published by EUROSTAT, entrusted with ensuring the transparency of electricity prices for the final consumer (Directive 90/377/EEC).

These studies show wide disparity according to the type of customer. Once the effects of inflation has been ironed out, a lowering of supply prices from 25 to 37% is noticeable for large and very large industrial customers but only from 7 to 9% for residential customers. Moreover, international comparison enables relative performance assessment to be made. Although industrial customers benefit from a gain in competitiveness going as far as 12.5% compared with their continental competitors, on the other hand the treatment of British residential customers has been negative by comparison with their German, French and Belgian counterparts.

### Prospects

International comparison of price development requires the use of the Standard European Purchasing Power. The pound sterling's exit from the European Monetary System at the time produced additional gains in competitiveness for British customers without it being possible to take into account the currency devaluation in the sector's performance assessment. The article is an excellent basis for proposing an assessment method in terms of customer prices. Moreover it points out the problems of the lack of symmetry in performance provided for customers. It shows the need for a European assessment to place apparent improvements in perspective.

Annex XII

# France: Proposed minimal analysis schedule

**Source:** "Services publics en réseau. Perspectives de concurrence et nouvelles régulations", report of the Commissariat général du Plan working group presided over by Jean Bergougnoux, Documentation française, Paris, 2000.

The indicators adopted for the analysis of reforms must always reconcile their relevance with the availability of information necessary to designate them. Practical, but also financial, necessity therefore leads to recommending a pragmatic process, which in the immediate future rejects the use of costly, sophisticated and often difficult to interpret indicators, owing to the conventions determining their conception. Obviously this does not prevent the joint implementation of more technical studies of major interest. However it must be borne in mind that the latter are difficult to carry out systematically over a given period and in different countries.

The table which follows therefore suggests a minimal operational assessment schedule, which although not including all the criteria contained in the previous summary table, already enables an analysis of the reforms to be produced and international comparisons to be made. The schedule groups together "informable" indicators, i.e. basic indicators where information is readily available. It associates effectiveness indicators with indicators showing the sector's transformation.

Table 2: Performance indicators for utility services
A minimal schedule

	Dimension		Indicators
R1	Effectiveness	Price development	1. Businesses 2. Domestic
R2	Customer treatment	Price differentiation	Between business customers     Between domestic customers
R3	Division of Value Added Tax	5. Distribution of Pro	ofit/ Cash-flow / Wages
R4	Use of production factors	<ul><li>6. Use of production</li><li>7. Investments</li></ul>	factors
R5	Market position	8. Traditional operate	ors' market share
R6	Activity portfolio	9. Traditional operate diversification	ors' geographic and sectoral
		10. Foreign market p	enetration rate

Source: Commissariat général du Plan

The dimension relating to effectiveness, which as we have seen can be tackled in numerous ways, can ultimately be reduced, in a first stage, solely to final price considerations by making a distinction between prices obtained by businesses and those charged to domestic customers. Isolating price practices relating to domestic customers appears all the more important since the latter may, in some cases, remain the captives of traditional operators. Moreover, as suggested above, it would be a good idea to complete this indicator with a service quality indicator even if it is often difficult to define the one or several indicators enabling it to be correctly comprehended and obtain the information for its calculation. These processes remain to be accurately defined sector by sector.

The five other dimensions adopted in the table feature the transformation that the sector undergoes owing to the introduction of competition.

A first dimension relating to producers' treatment of customers (R2) can first of all consist of the components of price differentiation; analysis of this separation must be done according to the different customer categories. This indicator appears broadly insufficient and needs to be completed by an indicator relating to disputes. However indicators of this kind are difficult to construct owing to the diversity of procedures introduced in the various countries and the frequent lack of data. Absence of systematic information therefore tends to make these indicators difficult to operate.

The division of added value (R3) is a second dimension where analysis is indispensable to grasp the important changes caused by reform. It is a point which deserves to be particularly analysed in any comparison of the effect of reform. Three main indicators can be adopted, analysis of the division of profits, use of available cash-flow and change in total salary structure.

Two others, which assess the reorganisation of the sector's production tool, must be added to these indicators (R4). Some reforms lead to far-reaching change particularly visible in the use of production factors. Two types of indicator may be required: indicators relating to change in the use of the work force and others relating to investment policy.

Analysis of the sectors cannot be complete without reverting to the market's fundamental dimensions (R5) and (R6) and the behaviour of the sector's traditional operators. Change in the dominant operators' market share amounts to one of the first indispensable components for assessing market structures. Also to be connected with this indicator are, on the one hand, the indicators which describe in the sector, or other sectors, diversification strategies and, on the other, the indicators giving an idea of the traditional operators' international position (rate of penetration on foreign markets for example).

# Annex XIII

# France: Assessment criteria for the State-EDF Plan Contract 1997/2000

### Context

The traditional model for national public services featured a public sector company under state control. The company possessed a monopoly and applied the same pricing and service quality conditions throughout the country. Although control may now be in the process of reform, a reminder of former state control enables the gap to be measured between these practices and assessment methods imposed by the new regime for regulating competition in national public services.

From 1967 onwards, the state granted broad autonomy to the operator Electricité de France, as a result of periodically concluding pluriannual contracts. State control, simultaneously the sole shareholder, mentor and regulator, is exercised by the Ministry of the Economy and Finances for prices, investment volumes and dividends, the Ministry of Industry for energy choices and questions of industrial and nuclear security, and the Ministry of the Environment for questions relating to risks or the burying of cables. Regulation of the electricity sector reflects French centralised structures which in their planning traditions emphasise the principles of energy independence, national price equalisation and town and country planning.

# Example of the 1997/2000 company contract

The last company contract, signed on 8 April 1997 between EDF and the State (Ministry of the Economy and Finances and Ministry for Industry, Post and Telecommunications), met three major guidelines: strengthening the company's basic public service tasks, giving EDF new prospects for growth in France and on international markets and improving the company's financial performance.

EDF's tasks and guidelines were thereby encompassed in a series of predefined objectives.

1 Confirming the public sector company's basic tasks

First of all a reminder was given of these tasks with the object of strengthening them:

- implementing the state's energy policy to maintain the country's independent energy supply;
- ensuring at least cost and with respect to the environment, the security of electricity supply in the short, medium and long term;
- enabling every consumer to benefit from a quality electricity grid throughout the national territory;
- developing a service supply suited to customers' new expectations and market factors relating to the opening to competition;
  greater attention to customer views, and also dialogue and concertation with

consumer organisations, particularly at local level.

The company contract then points in three strategic directions in which the company must concentrate its efforts.

First of all an ambitious policy for industrial and environmental safety was pursued by:

- ensuring the safety of nuclear production;

- meeting energy demand;

- developing renewable energy, pursuing efforts to improve the inclusion of environmental work (burying 20% of new high-tension, 90% of new mediumtension lines, broader dialogue with local authorities to increase burial of low-tension cables and priority treatment for existing equipment in natural and monument sites);
- promoting electric transport.

The second direction aims at town and country planning and solidarity. EDF was confirmed as a motor of economic development and as an activist in combating unemployment and promoting national solidarity. The main priority commitments were:

- compliance with a minimal quality level;

- integration of distribution networks into the national town and country planning scheme;
- compliance with "service guarantee" commitments;
- disadvantaged users' access to the service (maintenance of energy service and "poverty –precariousness" agreements);
- particular efforts for town and country priority zones;
- policy for major public works, conversion of sites and local development programmes.

In the context of the electricity market's progressive opening to competition, EDF was given responsibility for the balanced and optimal functioning of the electricity sector. The company, in compliance with competition rules, will have to provide services suited to customers' expectations.

# 2 Preparing the company's futur

Company growth is projected on a national and international scale.

In France obligations to improve performance and lower prices were confirmed, as a result of better adjustment of price structure to cost structure and also by adjustment of the average price level to the company's financial prospects (gains in productivity). At the same time, the company will have to develop its supply of services, by continuing its action to make customers loyal and by suiting the supply of services to customers' diversified expectations. In concrete terms, these measures feature labels showing strengthened service quality (control over the length and time and number of cuts, falls in tension,...).

These efforts must be accompanied, according to the contract, by suitable commercial measures.

Abroad, EDF's growth will be directed towards a "selective strategy", with the priority objective of increasing the company's overall competitiveness, particularly in basic operations (production, transport, distribution and marketing of electricity). The zones to be given preferential treatment are also mentioned in the company's contract: Europe, Mediterranean basin, Asia, Latin America, Middle East.

Lastly EDF growth will have to be accompanied by research and development in technological innovation and also actions to obtain the best value from research as a result of partnerships, advice for SME and taking part in research networks.

Growth must involve the whole company, with 15,000 new jobs prescribed, notably to promote the employment of young people and to reduce working time. New guidelines will be directed to recruitment, personnel training, wages, improvements in work safety, dividing the gains in performance and social cohesion.

# 3 Placing the company in a renovated institutional and financial context

From 1997 onwards, the objective of the company contract was to further clarify relations between state and company, with the state acting as both shareholder and regulator. EDF's financial position will be renovated according to two objectives: to improve the company's competitiveness and stabilise financial relations between state and company to reach a situation close to the common law.

State payment will from now on comprise two components: payment in capital endowment and an additional payment of 40% the net accounting result. At the same time general interest and solidarity charges will be the subject of particular financing.

Improvement in the company's competitiveness will enable it on its own to generate resources to "prepare for the future", i.e. financing industrial investments in particular abroad and to decrease the company's gross debt. The remaining surpluses will be allocated to lowering prices.

The company contract presents the major guidelines for EDF, aiming at the same time to exemplify its tasks and plan for the future development of the public sector. The criteria aimed at in the contract are not confined only to the financial aspect, of direct interest for the state shareholder, but cover a broader field in company management, its pricing and its growth policies, while maintaining its traditional public service task.

Placed in perspective with classic assessment practices, as in the telecommunications sector for example, the contract appears to a great extent both as a tool for providing a framework for EDF activity and as a real scheme for assessing performance. It follows that the development of the electricity sector's regulation in France opens new prospects for the assessment of the public electricity service.

# Prospects and difficulties

The recent law of 10 February 2000 on the modernisation of the electricity sector, is based in its principles on the law regulating the telecoms, but attempts to correct some of the limitations. Like the "telecoms" law the "electricity" law defines the task of public service electricity: developing balance in electricity supply, developing the electricity grid and distribution networks, supplying the whole country, contributing to social cohesion by geographic price equalisation and the right of those in precarious situations to be supplied with electricity. Committee for the Regulation of Electricity (CRE) has been created to regulate the new competition and supervise the carrying out of tasks.

Like the ART, the CRE will have to publish an annual report showing conditions for access to the networks and the accomplishment of public service tasks. Furthermore a regulation body under the "electricity" law prescribes the setting up of a national Observatory and regional Observatories for electricity. Their composition will be on an equal basis: operators, elected officials, unions and representatives of customer categories. Unlike the telecoms, the regulator will not be alone in measuring performance. However the powers and means the Observatories possess to fulfil their purpose are still not known.

The opening to competition and the setting up of an autonomous regulation structure (CRE) will not consequently lead to the end of contracts signed between the state shareholder and the public sector company. The new company contract in the process of negotiation will concentrate, like the previous one, on EDF guidelines. Alongside its role as the sole shareholder, the state must also enjoin EDF to fulfil its public service tasks, its environment policy and growth policies. The plan is at present to provide a single document, replacing the three previous ones (Company Contract, Public Service Contract and Environmental Charter) to make state supervision effective.

These relations between the state and public service companies will have to be made formal in the forthcoming "new economic regulations" bill, which prescribes that contracts can be concluded between the state and companies undertaking public service tasks (whether they be public sector owned or mixed).

Géraldine Pflieger

# Annex XIV

# France: Assessment in the telecommunications sector

The law of 26 July 1996 regulating telecommunications lays down the conditions for implementing competition and regulating the telecom sector. The objectives set upstream by the law, enable subsequent consideration to be given to the criteria and indicators for checking objectives' execution. The definition of the criteria and the assessment itself is exercised by the regulatory authority: Authority for the Regulation of Telecommunications (ART).

In a first stage the legislator has made the objectives to be attained formal, i.e. the framework for ART action:

- a) exercise of effective and fair competition for the benefit of users;
- b) supply and finance for all the components of public service telecommunications:
  - price equalisation corresponding to the imbalance in the current structure of France Télécom's pricing (e.g. cost of subscription financed by long-distance communications);
  - price equalisation corresponding to obligations for geographic equalisation;
  - specific pricing for some subscriber categories;
  - supply of directory enquiry service and directory;
  - telephone booths throughout the territory.
- c) development of employment, innovation and competitiveness in the telecommunications sector;
- d) taking into account of the interest of territories and users, in access to services and equipment.

### Method

For each objective, a list of criteria is then provided so that their achievement can be checked. In the case of the first objective (a), these are mainly price and service quality criteria (lowering prices, number of operators, diversification and service quality). Financing the universal service (b) is subject to annual assessment. In definite terms, universal service features the supply of the telephone service to everyone, affordable prices for the service, a general annual directory, linkage of public booths and application of social prices. The economic development objective (c) is assessed in terms of jobs created, sector's growth, investment and technological innovation. The town and country objective (d) is monitored according to the coverage of the national territory by the various networks and according to the effective development of competition, including the local circuit.

# Tools

Assessment is subsequently carried out with technical support organised by ART: the Observatory for the telecommunications market. INSEE (20) supports the scheme by collecting information on a sector's companies turnover, expenditure, number of subscribers and lines, number of jobs. These data cover the "supply" side of assessment; in the case of the "demand" side, market research institutes are used (Mediamétrie, SOFRES) to assess service quality, the degree of consumer satisfaction, market shares, expenditure by type of service (mobile, fixed, internet, local, international),...

These data are subsequently published on the ART Internet site and in an annual report on the telecommunications market.

<sup>(20)</sup> Institut National de la Statistique et des Etudes Economiques [National Institute for Statistics and Economic Studies].

# Limitations and prospects

ART's assessment has some limitations.

First of all, assessment of the public telecommunications service does not go beyond the stage of observing the market, directed towards a close assessment of the sector's performance. Data on the various operators' quality - price ratios are not available; the development of the markets and the faults of one operator compared to another cannot be discerned.

ART assesses the universal services' overall cost at 4.374 billion francs for the year 2000. The universal service component financed by the universal service fund comprises the telephone booth network, social prices and directory services. Operators' contributions to the fund are in proportion to their traffic. On the other hand, the financing of obligations for geographic equalisation are covered by a payment additional to the connection tariffs, amounting to 1.40 centimes per minute for France Télécom and 0.72 centimes per minute for mobile operators, exempted from the share of the additional payment corresponding to the imbalance in the traditional operators' pricing structure. The assessment of the universal services' annual cost still remains approximate; ART does not know France Télécom's technical conditions for operating the network. The operator does not want to submit an audit of its accounts which would clearly show the cost and the induced advantages due to its position as operator of a universal service.

In the case of consumer surveys, some of the data is still not published; market shares lost by France Télécom for the fixed telephone still remain confidential. The data for monitoring markets, produced by ART, are still subject to statistical secrecy.

The results of the annual surveys on the quality of the mobile telephone service, as perceived by the consumer, are far removed from the facts. The gap is caused by several kinds of bias. The survey's time period (15 September/15 October) does not change from year to year and is known by the operators. The mobiles used by the investigators to test the network are chosen according to agreements between operators, their reception quality being better than the average. Monitoring only takes in zones covered by the three operators.

Social pricing has only recently been introduced, on 5 June 2000, with more than a year's delay. The reasons were mainly due to methods for setting prices (with charitable or consumer associations), the segment targeted (beneficiary of the RMI, of the Allowances for Disabled Adults, ...) financing (state, local authorities) and its application (allocation of pre-paid cards, invoices at reduced prices). A card with a hundred francs worth of telecommunications will now be provided by the Caisses d'Allocations Familiales (Family Allowance Fund) to all beneficiaries of social minima.

The production of a general annual is also proving difficult. Less than 50% of mobile telephone users want their number to appear in a directory. The number of operators makes it difficult to compile a single directory.

Unsuitable criteria, lack of data and obscurity of operator practices do not enable regular and thorough assessment of the sector to be constructed; telecommunications, nonetheless, is the most advanced sector in France in terms of public service assessment.

Géraldine Pflieger

Annex XV

### Great Britain: Criteria and standards

### Railways

### 1) Presentation

The UK railway industry was privatised and split into a number of different parts under the 1993 Railways Act. The track and most stations are owned by railtrack, which remains a regulated monopoly. There are several Train Operating Companies (TOCs), often competing with each other over different routes serving the same destinations. There has been considerable consolidation within the industry, with several routes being owned by the same companies or consortia, as well as considerable integrated ownership with bus operating companies. TOCs generally lease trains from rolling sock companies (ROSCOs), and yet other companies are responsible for maintenance of the track, under contract to Raistrack. There has thus been considerable disaggregation of the different parts of the industry.

# 2) General Regulation framework

The 1993 legislation set up two regulators – the Director of Rail Regulation and a Franchise director. The former was to oversee regulation of railtrack, and its main functions are to issue and oversee licenses to operate trains, networks and stations; to approve access agreements; to enforce the UK competition law in connection with railway services; and to protect consumers and promote passengers' interests. The present rail regulator, from summer 1999, is Tom Winsor. The second regulator, the Office of Passenger Rail Franchising, was responsible for franchising routes to the TRain Operating Companies. It was subsumed into the (shadow) Strategic Rail Authority, which was established in the summer of 1999 under the Chairmanship of Sir Alastair Morton to develop a strategic plan for the railways. This plan is due to be published in November 2000. The SSRA is particularly concerned to see that there is investment of sufficient quantity and quality, and is required to work closely with the various consumer representation groups and local authorities. It is closer to government, particularly the powerful Department for Environment, Transport and the Environment, than the Rail Regulator, who operates independently (but co-ordinated with the SSRA) on a similar model to other utility regulators. Safety on the railways is the responsibility of Railtrack and the Train Operating Companies, and they are accountable to a special railways inspectorate which regulated safety and carries out accident investigation.

Unlike other utilities, both operating companies and Railtrack are regulated by contracts. This makes adjustment in the conditions of operation much more complex than with the licenses which are operated by the energy and water regulators.

# 3) Monitoring services of general economic interest

Franchises often incorporate subsidies to maintain services which would otherwise be uneconomic. These are designed to decrease to zero in the next few years, but there is a problem with credibility where this might imply loss of service.

Each franchise agreement specifies minimum service levels and subsidy (or payments), defines performance standards for incentive regimes and enforcement purposes, and regulates certain fares. Where these obligations are not met, the franchising Director is empowered to issue formal orders to require compliance and impose financial penalties if there is not compliance.

The rail regulator has recently reviewed Railtrack's access charges; these were originally set up with over 90% of the revenue independent of use, which was viewed as taxation by the operating companies who paid the charges, and gave little incentive to Railtrack to expand its network in response to increased demand. In reviewing the access charges, the regulator has raised Railtrack's allowed revenue, but tied this much more closely to activity and 'output'.

Railtrack is required to provide each year a Network Management Statement, demonstrating how it expects to carry out its duties. Railtrack proposed that minutes delay per passenger train should be a major component, and the March 1998 statement

contained targets for reductions in this measure. After it failed to meet this target in 1998-1999 the rail regulator imposed an order to reduce delays, and a sliding penalty for failure to meet these targets. The penalty was in fact imposed in November 1999. In May 2000 a final enforcement notice was made requiring Railtrack to provide information on the West Coast line.

Sources: web pages www.rail-reg.gov.uk and www.opraf.gov.uk

# **Telecommunications**

# 1) Presentation

British Telecom was privatised in 1984, initially with a protected duopoly, and after 1991 with much freer entry by a variety of companies.

# 2) General regulation framework

The economic regulator, Oftel, initially concentrated on controlling BT's retail prices; more recently price control has been restricted to services used by those whose bills form the lowest four quintiles of demand and on controlling inter-connection prices. The telecommunications industry was excluded from the reforms of the Utilities Act (largely as a result of pressure from operators) and a Communications Act is promised for 2002, incorporating additional duties, probably including those to low income consumers now applied to the energy regulator. The Competition Act, which was enforced from March 2000, is an important additional factor in regulation of all industries.

# 3) Regulatory aspects referring to services of general economic interest

The Director General decided not to use his powers to set standards for telecoms companies, but rather "has encouraged the industry to take responsibility itself for the development of comparative performance indicators".

"In pursuing a voluntary initiative,....., it was recognised that the direct involvement of telecoms companies and consumer groups would produce a much better set of indicators. It would also minimise the risk that an imposed set of measures would limit innovation in a sector in which there is rapid technological development".

Geoff Delamere, 'Consumer Policy Review' (1996), page 7

In 1993, following an industry forum organised by OFTEL, common performance indicators were established for operators, and performance against these are then reported to an independent third party for verification and publication. The process is owned by the companies. Data collection started in late 1994, and the first data from July 1995 were published in January 1996. The current third party incumbent is P-E International plc, and 'Telecommunications Companies: Comparable Performance Indicators' Reports are issued every six months, separated into Residential and Business reports. Mobile phone services are not covered in these reports.

Current residential measures include both quantitative and customer satisfaction measures of service provision, customer-reported faults, repeated faults, fault repairs, complaint handling and billing. A recent survey shows that three fifths of adults are unaware of comparative service quality information, with higher awareness amiong middle-aged, well-off families who were heavier telecoms users. Of those aware of the measures, half had found them useful, 21% had not found them useful, and 26% had not used them. 30% said they were likely to use the comparisons in the future.

### The Post Office

### 1) Presentation

The Post Office is a publicly owned corporation with the government as the sole shareholder. The main operating businesses are Royal Mail, Parcelforce Worldwide and Post Office Counters Limited.

# 2) General regulation framework

The sponsoring government department of the Post Office is the Department of Trade and Industry (DTI). The Post Office itself is set up under statute with a Board appointed by the government. It is required by legislation to meet all reasonable demands for letter

services. Although the Post Office is accountable to government ministers, it has been the policy of successive governments to leave operational matters to the Post Office Board. The government's role is two-fold. First, overseeing the strategic direction; the government requires the Post Office to produce an annual corporate plan setting out its proposed strategy for the next five years. Second, the government sets financial controls.

### 3) Regulatory aspects referring to services of general economic interest

The government sets the Post Office Group as a whole an External Financing Limit target (EFL). EFL has thus been the main driving force behind the Post Office's financial strategy. In practice the Post Office does not pay a 'dividend' to the government, but it is required to purchase public sector securities, thus making a positive contribution to government finances. In setting the EFL the government is to take account of the Post Office's need to finance investment.

A postal regulator is currently being established consisting of a commission with a chairman and five part-time members.

Royal Mail and Parcelforce Worldwide are set a profit target expressed as a Return on Capital Employed (ROCE). Royal Mail is set a productivity target, Real Unit Cost Reduction (RUC). Post Office Counters is set a Return on Turnover (ROT).

Royal Mail is required by statutory obligation to provide a universal service at a uniform and affordable tariff. It has monopoly over all letters costing under £1. The European liberalisation plans are to be enforced from 2003. Currently the debate is about which weight-related postal monopoly to decide (European Commission currently suggests a reduction from the present 350 g to 50 g but not decided yet, Summer 2000).

Quality of first and second class letter and parcel services have targets (set by the Group itself). Performance is measured by the proportion delivered next day and after three days respectively, and are sub-divided into postal regions and according to distances. European quality of service performances measures are set and monitored by International Post Corporation (IPC), and each of the three divisions is subject to monitoring (but no apparent targets) for complaint handling.

Catherine Waddams Price

Annex XVI

# Germany: Assessment in the railways, the post and telecommunications, water and electricity

### Railways

1) Presentation

Sector still dominated by the Deutsche Bahn AG (100% public sector enterprise); major restructuring of the Deutsche Bundesbahn and the Deutsche Reichsbahn in 1994 (foundation if the so called special assets entity "Sondervermögen Bundeseisenbahn"; separation of entrepreneurial and public authority divisions (responsible for public authority functions, administration of personnel and indebtedness); second stage in 1999: foundation of the Deutsche Bahn AG; separation of the two divisions, i.e. the network provider (Deutsche Bahn Netz AG) and the operator (long-distance passenger transport, short-distance passenger transport, freight transport); regionalisation of local passenger transport; indebtedness by German Government (DEM 67bn).

2) General regulation framework

 Special sector specific regulation law and various accompanying directives;
 The general railway act requires the federal and Länder governments rather vaguely to aim for the best possible provision of transport services and to promote fair competition between the different modes of transport in order to facilitate useful division of labour for the economy;

- Special sector specific regulation authority: Eisenbahnbundesamt (Supervisory office for railways); agency within the responsibility of the ministry of transport; 1,270 employees; primarily task: environmental, safety and technical supervision; rather weak competence to act as a competition watchdog; interested in changing into a full-fledged regulation authority.

3) Regulatory aspects referring to services of general economic interest

Market entry permissions for the railway operating and infrastructure companies;
 Market exit permission necessary for closing down parts of the infrastructure;

- Monitoring whether the railway companies operate in line with technical safety standards:
- Conditions of transportation for the long distance transport needs to be approved;

Passenger transport obligation if the passenger does not violate the transport conditions or exceptional circumstances prevents transport;

- On application by a railway operator: examination by the Eisenbahnbundesamt whether the prices charged by the infrastructure provider are discriminative;

Rather weak steps are taken to establish structure and process indicators.

# Postal sector

1) Presentation

Traditionally dominated by the public sector enterprise: Deutsche Bundespost; in 1989: Postreform I (separation of public-political and entrepreneurial functions; subdivision of the entrepreneurial division in three entities: DBP Postdienst (mail service), DBP Telekom (Telecommunication) and DBP Postbank (banking service); index of obligatory services for DBP Postdienst; in 1995: Postreform II (change of legal form into private law companies (Deutsche Post AG, Deutsche Telekom AG and Deutsche Postbank AG); administration of the government stakes by the German national agency for post and telecommunications; full privatisation envisaged; not yet fully liberalised market; exclusive licence for the Deutsche Post AG for letters up to 200 grams if not the exemptions mentioned in the Postal Act are applicable (exemptions exist for letters under 200 grams for which five times the amount is charged of the amount charged by the Deutsche Post AG on 31 December 1997; the transportation of identical letters over 50 grams, of which more than 50 are sent by one sender at one time; value-added services; letters exchanged by an exchange centre; services whereby letters are collected on behalf of the sender at the sender's place and transported to a post office and services whereby letters are collected from post pox units on behalf of the recipient).

2) General regulation framework

- Special sector specific regulation law and various accompanying directives;

- Aims of regulation: to secure fair competition; to prevent discriminative behaviour: to protect the interests of the users (including the secrecy of letters); to ensure areawide, adequate and sufficient provision of universal services in the field of postal services at reasonable prices; to safeguard the interests of public security and to take into account social aspects;

- Since 1998: Regulierungsbehörde für Post und Telekommunikation (regulation body for telecommunication and postal services); started operating in 1998; nearly independent agency in the responsibility of the ministry of economics; 2,200 employees; organised in decision chambers; main task: to promote competition by preventing anti-competitive behaviour; special monitoring of abuse of market power

by the market-dominating enterprise.

3) Regulatory aspects referring to services of general economic interest

Market entry licence for postal service providers which collect, transport or distribute letters up to 1,000 grams;

- Annual inspection whether licensees still meets licence requirements;

- Special price regulation in the case of the market dominating enterprise. Prices must meet the following requirements: no surcharges are charged in abuse of a marketdominating position; no discounts are given, impairing the competitiveness of other telecommunication enterprises and selected customers must not be granted advantages; prices of the Deutsche Post AG can include surcharges for pension obligations; price correction competence in case of market power abuse of the market dominating enterprise;

- Special service requirements for the provider of universal services; imposition and

monitoring of universal services obligations;

- Supervision of the obligations of the postal customer protection act;

- First steps taken in establishing performance indicators.

### Telecommunication

1) Presentation

Traditionally dominated by the public sector enterprise: Deutsche Bundespost; major restructuring in Postreform I and Postreform II; in 1989 first steps towards liberalisation of the telephone market (70 mobile phone and satellite broadcasting licences); index of obligatory services for DBP Telekom; 31 December 1997: expiry of the network and telephone service monopolies of the Deutsche Telekom AG, since then fully liberalised market.

2) General regulation framework

- Special sector specific regulation law and various accompanying directives;

- Aims of regulation: to secure fair competition; to prevent discriminative behaviour; to protect the interests of the users (including the secrecy of telecommunication); to ensure area-wide, adequate and sufficient provision of universal services in the field of telecommunication at reasonable prices; to promote telecommunication services at public-sector facilities; to safeguard the interests of public security;

- Since 1998: Regulierungsbehörde für Post und Telekommunikation (regulation body for telecommunication and postal services); started operating in 1998; nearly independent agency in the responsibility of the ministry of economics; 2,200 employees; organised in decision chambers; main task: to promote competition by

preventing anti-competitive behaviour; special monitoring of the market-dominating enterprise; additionally supervision of a bulk of technical safety requirements.

3) Regulatory aspects referring to services of general economic interest

Market entry permissions; granting of scare telecommunication licences and

Special price regulation of the market dominating enterprise. Prices must meet the following requirements: no surcharges are charged in abuse of a market-dominating position; no discounts are given, impairing the competitiveness of other telecommunication enterprises and selected customers must not be granted advantages; a special analytical cost model exists defining how the marketdominating enterprise has to calculate its costs; price correction competence in case of market power abuse of the market dominating enterprise;

Special service requirements for the provider of universal services; imposition and

monitoring of universal services obligations;

- Supervision regarding the undistorted and non discriminative access to telecommunication network/interconnections; market dominating network provider must grant any applying third party the same access conditions as he enjoys himself;

Supervision of the obligations of the telecommunication customer protection act;
 First steps taken in establishing performance indicators.

### Water

### 1) Presentation

Local authorities may - without calling for tender - give water companies the exclusive right to use the public highway for distribution installations.

2) Way of regulating the sector

Supervision of company activities - particularly concerning prices - by the "Länder" or the Federal State (Bund) agreement offices.

# 3) Aspects of regulation relating to service of general economic interest

obligation to connect and supply

- balanced regulation of relations between the customer and the water company by the "Verordnung über Allgemeine Bedingungen für die Wasserversorgung" (decree relating to general conditions for water supply)

- safety of public drinking water supply by means of the Wasserhaushaltsgesetz of the Federal State (regulation for water supply) and in the 16 Länder by the following regulations:

. use of water

- , special zones for the treatment and protection of water
- . quality of the water . removal of used water

. promotion of rational use of water.

- Water companies' pricing is fixed by elected officials. According to the municipal law of the Länder these companies are authorised to make profits, if the public good allows it.

# Electricity

# 1) Presentation

The sector has been almost entirely liberalised from 29 April 1998 onwards since all customers and distributors are eligible.

2) Way of regulating the sector

- access to the grid is regulated by a branch agreement with the following criteria:
- toll for access to the grid; the toll is independent of transactions

"postage stamp" type pricing with two commerce zones
. standardised scale of charges for customers without measurement of power
- the law does not provide for a "regulator" but the Länder and Federal State agreement offices have additional competence in regulating the sector.

### 3) Aspects of the sector's regulation relating to the service of general economic interest

Obligation for the company to guarantee supply in compliance with safety standards, an advantageous price, the environment and public interest

- General obligation to connect and supply

- approval of pricing (repeal of this regulation is under consideration)

- balanced regulation of relations between customer and company by the "Verordnung über Allgemeine Bedingungen für die Stromversorgung" (decree relating to general conditions for electricity supply)

- obligation to purchase electricity from renewable sources (Gesetz vom 29.2.2000 über den Vorrang Erneuerbarer Energie - EEG; law of 29 March 2000 concerning priority to be given to renewable resources - EEC)

- promotion of electricity production from co-generation. For this purpose the law prescribes financial aid to companies managing co-generation stations

 Municipal electricity companies' pricing is fixed by elected officials. According to the municipal law of the Länder these companies are authorised to make profits, if the public good permits.

Dorothea Greiling and Heinrich Decker

# country (France, United Kingdom, Spain, Germany) of indicators by

PERF	PERFORMANCE INDICATORS AND CRITERIA IN FRANCE	ANCE
Telecommunications	Electricity	Water
Defined by law and ART	State / EDF contract 1997 / 2000	This schedule is still not applied in France. It has been another by APNOR (Pertification holy) and FNORFE
Competition	Accounting indicators	(research centre). It could be the start of water service
Lower prices	<ul> <li>Productivity overall and by operation (separate</li> </ul>	assessment
<ul> <li>Number of operators</li> </ul>	accounting)	
Diversification of service	<ul> <li>Profitability of international capital investment (overall</li> </ul>	Customer service
<ul> <li>Service quality (e.g. communication rate maintained at</li> </ul>	and by investment)	Rate of reply to maif within a fortugal
normal quality, more than two minutes)	Debt repayment	<ul> <li>Notable recurring complaints (by subject: smell, taste,</li> </ul>
[Jajversa] service	Lowering of State payment rate	cite; )
<ul> <li>Supply of affordable service for all</li> </ul>	Customer service	General operating quality (water)
Directory	■ Lower prices	<ul> <li>Rate of water's quality conformity</li> </ul>
Social prices	<ul> <li>Minimal level of tension throughout the territory</li> </ul>	<ul> <li>■ Linear index of primary losses</li> </ul>
<ul> <li>Telephone booth network (simple objective)</li> </ul>	Power cut rate	<ul> <li>Primary yield: volume accounted for/volume distributed</li> </ul>
	Low tension rate	<ul> <li>Interruption rate (number of interruptions per year)</li> </ul>
Economic development	<ul> <li>Introduction of service guarantees</li> </ul>	Contract connection annulate (consideration)
<ul> <li>Number of jobs created</li> </ul>	Social prices	General operating quality (purincation)  Rate of overflow and flooding among users
Sector's growing		Outflow rate
Growth in investments	Environmental quanty	Outline rate
<ul> <li>Technological innovation</li> </ul>	<ul> <li>Rate of cable burial</li> </ul>	Rate of balance conformity
	<ul> <li>Development of co-generating of renewable energy</li> </ul>	Mud extraction rate
Town and country planning  Development of effective competition throughout the	<ul> <li>Improvement of installation safety</li> </ul>	Renewal and preservation of heritage (water and
territory	Economic development	purification)
f.co.ira	Number recruited	<ul> <li>Rate of network's physical renewal</li> </ul>
	Aid for redeployment in unemployment areas	<ul> <li>Linear index of leak or rupture repair</li> </ul>
		Other interesting indicators
		<ul> <li>Presence or not of customer charter</li> </ul>
		Rate of direct debit payment     Dossibility of stacoered payment
	Later was a second and a second a second and	

PERFORMAN	PERFORMANCE INDICATORS AND CRITERIA IN THE UNITED KINGDOM	D KINGDOM
Telecommunications (UK)	Electricity (UK)	Water (England and Wales)
Since 1986 extended in 1993. OFFEL has produced common. Standards guaranteed to the customer (constand)	Standards guaranteed to the customer (constantly	DG I: Access
performance indicators, published every six months (currently improved)	improved)	DG 2: Pressure
seven) These are simple indicators; no minimum level is GS 1: Replacing a fuse (3-4 hrs max.)	GS 1; Replacing a fuse (3-4 hrs max.)	DG 3: Interruption
sequined They comprise both gross quantity measurements. GS 2: Restoring current (24 hours)	GS 2; Restoring current (24 hours)	DG 4: Cut-off (suspended)
and customer satisfaction surveys.	GS 3: Connection time (2 days)	DG 5: Flooding (purification)
	GS 4: Estimate (5 days)	DG 6: Response to invoice complaints
<ul> <li>Supply of service</li> </ul>	GS 5: Power cut notice	DG 7: Replies to mail
<ul> <li>Network reliability</li> </ul>	GS 6: Low tension (7 days to react)	DG 8: Response to environment consultation (suppressed)
<ul> <li>Persistence of breakdowns</li> </ul>	GS 7: Response to a meter problem (5-7 days to react)	DG 9: Access to reception services
<ul> <li>Repair time</li> </ul>	GS 8: Reply to invoice complaints	
<ul> <li>Treatment of complaints</li> </ul>	GS 9; Appointments (offer, punctuality, compliance)	Each indicator is noted both in an absolute and comparative
<ul> <li>Invoicing accuracy</li> </ul>	GS 10: Payment of fines	way.
<ul> <li>Rate of customer disconnection</li> </ul>	GS 11; Meter card errors	Water quality and environment indicators by the NRA
		(National River Association) and the DWI (Drinking Water
	General standards of service	Inspectorate)
	OS 1: Minimum reconnection rate three hours after	The licence oblines compliance with three codes: Consumer
	breakdown. Reconnection of all consumers 24 hours	Code (description of services provided). Debt and
	after breakdown	Disconnection Code (describing procedure) and Leak Code
	OS 2; Minimum rate of tension correction in less than 6	Disconnection Code (describing procedure), and pean code:
	шошфз	Standard Consumer Code (regulator)
	OS 3; Minimum rate of residential customer connection in less	Each criterion not complied with is subject to a fine
	than one month (40 days for others)	<ul> <li>Appointments (punctuality, compliance)</li> </ul>
	OS 4: Minimum rate of reconnection in the day following the	Response to mail
	resumption of service	Response to claims
	OS 5; Minimum rate of visit in less than a fortnight for moving	■ Time to install meter
	meters	<ul> <li>Predicted cut-offs</li> </ul>
	OS 6; Minimum rate for changing meter charge in less than 10	<ul> <li>Unpredicted cut-offs</li> </ul>
	days	<ul> <li>Insufficient pressure</li> </ul>
	OS 7: Minimum rate of annual meter reading	<ul> <li>Flood purification</li> </ul>
	OS 8: Minimum rate of response to written complaints	• Restriction
		<ul> <li>Insanitary conditions</li> </ul>
		Non-payment of fines

PERFORMANCE INDICATORS AND CRITERIA IN SPAIN	ND CRITERIA IN SPAIN
Telecommunications	Electricity
Objicess to telephone network  nooths abled or those with particular social needs Indi	Objectives and tasks  Ensuring energy distribution  Guaranteeing distribution quality  Guaranteeing supply of service at minimum cost
Administrative terms  Clauses specifying particular objectives, tasks and obligations for and prior to grant of Method licence	Time and number of cuts hod Benchmarking, indicators supplied by operators
Customer Services  Prices programmed by decree  Minimum number of telephone bootts  Minimum percentage of booths in working order  Minimum quality criteria for telephone service  Maximum waiting time for calls  Maximum wait for connection  Percentage of missed calls  Precentage of missed calls	

Telecommunications	Post
Conditions for granting licence/frequency	Conditions for grant of licence
	Reliability of operator
Resources	Resources
* Expertise	<ul> <li>Expertise</li> </ul>
No danger to public order	No danger to public order     Na manager to public order
Operating criteria	* ING protability of upsetting sector 5 social traditions
Compliance with safety standards	Operating criteria
Compliance with secrecy of communication	<ul> <li>Compliance with confidentiality of correspondence</li> </ul>
<ul> <li>Compliance with law on data confidentiality</li> </ul>	• Compliance with legislation on confidentiality of data
Tiniversal service obligations	* 140 SOCIAL GUILIFILIS III CIAPIOYLICIII
Iniversal supply obligation of (exceptions defined)	Universal service obligations
Compliance with general service standards	<ul> <li>One letterbox on average every 1 000 metres</li> </ul>
Emergency repair service (24hrs)	<ul> <li>One post office or equivalent every 2 000 metres</li> </ul>
Supply of modern telephone	<ul> <li>Regulated pricing</li> </ul>
<ul> <li>Everyone's right to a telephone number</li> </ul>	<ul> <li>Except in exceptional cases, letters must be put in the addressee's private letterbox</li> </ul>
<ul> <li>Right of entry in the directory</li> </ul>	Poste restante obligation
■ Right to receive one regional directory per year	<ul> <li>Obligation to forward mail</li> </ul>
Direct enquiry service	Performance indicator of terroice musity
<ul> <li>Regulated prices and tariffs</li> </ul>	80% of fetters must reach their destination in less than 24 hrs
Performance indicators for service quality	<ul> <li>95% of letters must reach their destination in less than 48 hrs</li> </ul>
a Installation time	A letter box must be emptied at least once per working day
<ul> <li>Annual rate of breakdown per line</li> </ul>	
Repair time	
Frequency of failure to access network	
Operators' reaction time	
Time for directory enquiry reply	
<ul> <li>Percentage of telephone booths in working order</li> </ul>	
Rate of involce errors	
Assessment quality	

# Annex XVIII

# European Parliament proposal

Mrs Angela Theodora Billingham's report to the European Parliament on the Commission's communication "Services of general interest in Europe", lodged on 7 November 1997, suggests instituting a "European Committee for Public Services" with an assessment function:

"In the supply of services of general interest, strengthening social partnership implies the creation of a European committee for public services, comprising representatives of public service companies, their personnel and consumers. The committee will be an advisory body for the Commission and an Observatory for European and national public services; it will carry out analyses and assessments and present proposals".

The proposal, however, was not accepted by the European Parliament when the vote was taken.

Annex XIX

# **Belgium: Electricity and Gas Supervisory Committee**

In **Belgium** there is an Electricity and Gas Supervisory Committee, combining the social partners, operators and representatives of federal and regional governments. The committee has "as its object to ensure that the technical, economic and pricing situation in the electricity and gas sectors, and also their development, are directed towards the general interest and that they are integrated in overall energy policies". The statutes also prescribe that the Supervisory Committee has the power to make recommendations to the sectors concerned and issue opinions. The federal and regional governments may ask for any kind of information, propose any subject for study and suspend the issue of any recommendation.

Performance assessment is mainly directed to the appraisal of productivity and profitability, based on the aggregated accounts for production and transmission on the one hand and distribution on the other. The available margin of profitability is then used for lowering the regulated pricing (and equalisation) recommended for the various categories of electricity and gas consumer (industrial customers, SME customers, business and residential customers). It should be noted that the big industrial consumers negotiate their purchase price directly with the producers.

Assessment of disconnection of customers with payment difficulties is undertaken by the Mutual Funds. These funds are financed by the operators in the electricity and gas sectors; they make means available to the CPAS (Public Centres for Social Aid) who use them for financial support for customers with payment difficulties.

The report of the experts working group "on liberalisation of the electricity sector" was extremely severe on the Supervisory Committee in its 15 December 1999 report. It notably pointed out that the main member (Electrabel) is an important member of the FEB (Belgian Employers' Federation), one of the supervising parties; furthermore the committee has been for a long time located in the promises of the Tractebel Group. The secretariat is financed by the operators under supervision, the latter, moreover, being almost its only source of information.

At the same time, the national union organisations wearing two hats poses a problem. Their role as sectoral union organisations seeking to obtain advantages for wage-earners, advantages which producers will include in their cost, is difficult to reconcile with the role of organisations representing the interests of residential consumers.

In these conditions, the Experts Group considered that all these factors made the nature and methods of the sector's functioning in Belgium extremely ambiguous.

The transposition of the electricity and gas directives into Belgian law prescribes setting up a new regulator - the Committee for the Regulation of Electricity and Gas (installed at the end of 1999).

The committee has been given an advisory role for public authorities concerning the organisation and functioning of the electricity and gas market on the one hand and, on the other, a general monitoring and supervisory task covering the application of laws and regulations relating to the sector.

Its Management Committee, comprising a President and four other members, undertakes the operational management and the necessary or useful acts for carrying out the CREG's tasks. It is supervised by a General Council, which includes among its members government representatives, representatives of worker and small consumer organisations, organisations representing employers and big consumers, environmental bodies and the operators.

The CREG is responsible for the regulation of the market for eligible customers. The Supervisory Committee remains responsible for the captive customer (non-eligible). As in due course all consumers will become eligible customers, the competence of the Supervisory Committee will be transferred to the new regulator.

Annex XX

# France: Move towards Observatories for public service electricity

**Source:** Article 3 of the law of 10 February 2000 relating to the modernisation and development of the public electricity service (extracts).

A national Observatory for the public electricity service was created under the Economic and Social Council, to examine conditions for operating the public service. It can issue opinions on any question within its competence and make substantiated proposals, which are made public.

It comprises representatives of each type of customer, authorities making concessions covered in Article L.2224-31 of the general code for territorial and local authorities having commissioned a non-nationalised distributor, covered by Article 23 of the abovementioned law N° 46-628 of 8 April 1946. It also includes organisations representing the unions, Electricité de France and other operators in the electricity sector, associations with economic and social interests and local and nationally elected persons.

It is provided with the means for the accomplishment of its tasks.

A decree lays down the Observatory's composition and ways of working.

In each region, a regional Observatory for the public electricity service has been created within Economic and Social Councils. The Observatory examines the conditions for operating the public service and sends its opinion and comments to the Prefect of the region, the Regional Council and the Higher Electricity and Gas Council.

It comprises representatives of each type of customer, the commissioning authorities covered in Article L.2224-31 of the general code for territorial and local authorities having constituted a non-nationalised distributor covered by Article 23 of the aforementioned law N° 46-628 of 8 April 1946. Also included are representatives of union organisations, Electricité de France and other operators in the electricity sector and local and territorially elected persons.

The functions of a member of the Observatory covered by this article are not remunerated.

A decree lays down these Observatories' composition and way of working.

# Annex XXI

# France: Example of quality certification in Parisian public transport

# Context

RATP (21) has always monitored train delays, fraud, speeding,... The question of competition led RATP to introduce a quality certification process. The first quality steps, derived from the United States and Japan, were taken by RATP at the beginning of the 90s. They were mainly directed towards the production aspects (machines, maintenance,...) in particular as a result of the ISO 9000 standards.

On the service side, it was necessary to go beyond the production area and note users' expectations and satisfaction. Service standards were defined in 1997, then monitored internally, by obliging units to make commitments. The standards are:

- regularity;

- availability of escalators;

- availability of sales equipment;

- reception at ticket offices;

- cleanliness.

The standards were then measured and centralised by the company, using instrument panels. Alongside these standards, particular commitments were made such as the PARI RER (Cleanliness, Reception, Regularity, Information).

# Certification process

The certification process was started two years ago in partnership with AFNOR (22). The method is organised in four stages:

- 1 **Definition of the terms of reference for certification** (quality standards, obligatory criteria and performance levels), for the metro, bus, RER and changeover points. The definition was made in partnership between the STP (23), the RATP and consumer associations (24), at meetings directed by AFNOR.
- 2 Comparison between customer expectations (service expected) and company constraints, a comparison which, in terms of strategic objectives, provides the required service.

3 Measurement of gaps between:

- the service required from the company (objectives) and the service effectively achieved:
- the service expected by the customer and the service as actually perceived.

The measures pertaining to passengers took the form of satisfaction surveys: one at the start of the certification process to measure expectation and then one every three years to measure shortcomings and any change in expectations.

Other measurement of standards is carried out by "mystery customers" (testers posing as customers) to measure quality of individual's reception at ticket offices. Other performance measurements were obtained in real time using IT systems, so that, for example, the number of delayed passengers or the number of ticket machines and escalators out of service could be assessed.

4 If the results are good, the **certificate** is issued. At present 20 bus lines and one metro line out of 14 (line 8) have been certified *NF Services*. 4 other metro and 20 bus lines are undergoing the certification process.

The certificate is subsequently renewed every year. The process is costly for the company, because often the quality level has to be improved and then maintained in the long term. The most difficult and costly part of the processes, according to RATP, is keeping the NF certificate. The difficulties, the black spots are cleanliness and crowded trains.

The results are sent in to STP and AFNOR (at the time of certificate renewal). Some instrument panels are then published in the stations. Meetings are also periodically organised by the metro and bus centres with consumer associations to keep them informed of the way certification is running and the results of measurements.

### Limitations

Owing to the cost of certification, the most successful lines will be the first to be certified. For example the certification process for line 8 was started by its particularly keen manager who volunteered to experiment certification. It also happened that the line had the advantage of relatively modern equipment in good repair, an average passenger load and an average and unforked length. It was therefore an interesting case. Older lines, where the gap to close is wider (line 4 for example), will not achieve certification in the immediate future.

In the case of RER, the difficulty is above all structural. The network is co-managed by RATP and SNCF. Certifying the RER lines requires partnership with SNCF, which is longer to achieve. While waiting, RATP is pursuing its PARI RER commitment, on it's A, B lines, by organising regular meetings with passengers in stations, to understand their expectations, needs for improvements and to present the measurement results.

Géraldine Pflieger

<sup>(21)</sup> RATP - Régie Autonome des Transports Parisiens [Autonomous Parisian Transport Public Corporation].

<sup>(22)</sup> Association Française de Normalisation [French Standardisation Association].

<sup>(23)</sup> Syndicat des Transports Parisiens [Parisian Transport Union] (Union of Local Authorities, Authorities Organising Public Transport).

<sup>(24)</sup> The associations represented were the FNAUT and the "Léo Lagrange" consumer association chosen by RATP, STP and AFNOR.

### Annex XXII

# France: Start of assessment in the water distribution sector

The water purification and urban transport sectors are mainly run according to the delegated management principle. An organising authority on a municipal or intermunicipal scale entrusts a private sector company with the management of the service. As a result of this model integrated multi-service companies, such as Vivendi and Lyonnaise des Eaux, have expanded and have acquired world leadership on the urban services market.

Delegating a service is in principle offset by the maintenance of the authorities' public control. Specifications enable the delegating authorities to include public service obligations. Public control therefore emerges as an essential condition for the legitimacy of the delegated service.

Assessment indispensable for effective regulation, has only been modestly developed in the water sector in France.

# Assessment still embryonic

Local authorities have only here and there applied the old municipal code which prescribes the application of standardised specifications, at the time of signature of the delegation agreement. From the start of the 80s, model specification have replaced the former standardised specifications. Produced by the Ministry of the Interior, these "models" define service quality standards and the effective minimum to be attained. These specification models, however, are still less binding than the former standardised specifications. The scheme leaves broad freedom of action to local authorities; they can choose or unilaterally refuse, to abide by the models defined by the Ministry of the Interior.

At the time of the signature of the concession contract, the authorities can always be supported by consultants. Among them are the Public Service 2000 association, founded in 1996 by the AMF (Association of Mayors of France) and the FNCCR (Fédération Nationales des Collectivités Concédantes et Régies - National Federation of Delegating Authorities and Corporations). It has the task of aiding the preparation and negotiation of the delegation of public services. By making experience mutual and guaranteeing independence of expertise, owing to the absence of a link with operators, the association provides the local authorities with specific competence in the water distribution and treatment sector.

The objective of the expertise, supervision and audit is to enable local regulation to make progress and achieve a balance of strength between delegatees and authorities.

Public Service 2000 support enables the authorities to supervise the service performance more thoroughly. In particular the conditions for the application of the contract have to be verified. The methods used are based on the classic practices of financial analysis (analysis of yearly accounts, balance-sheets, intermediate management balances and financial flows between the group and its affiliates). Technical studies complete the financial audit. The objective is to take into account the age of infrastructure, investment needs and the maintenance or renewal of installations. The financial and technical audits support the negotiations, which precede the signature of codicils to contracts or the revision of prices and changes in operating conditions.

While rapidly spreading, audits and expertise practices remain nonetheless marginal compared with the scale of 15,000 authorities organising the production and distribution of drinking water.

# New legal provisions: Strengths and weaknesses

The 90s were disturbed by irregularities and obscurity of links between delegaters and delegatees. The application of entry rights, automatic prolongation of delegation agreements and the danger of lack of symmetry in information between the operator and the authority are now leading to a revision of the system.

A series of laws is consequently reframing delegated management: the law of 28 January 1993 on the prevention of corruption and transparency in economy life, the law of 6 February 1992 relating to Territorial Administration in the Republic and the law of 8 February 1995 on public purchasing and delegation of public service. These laws provide for the limitation of the length of agreements (20 years) forbid entry dues and pave the way for democracy and greater transparency in the management of urban services.

The creation of advisory committees for local public services in the law for the Territorial Administration of the Republic, has not been effective; only about 10 active committees have been noted. Moreover even if the law prescribes annual notification of companies' financial results, their publication remains incomprehensible for the non-initiated citizen.

The question of supervision, democratic performance assessment of public services and their managements' transparency remains without response. The new legislative scheme has only led to a judicial dimension being given to the regulation of local services, centred on judges and Regional Chambers of Accounts. Only supervision of legality and financial supervision has been made more thorough. Assessment, the competence of a municipality, both judge and party, is so diverse and fragmented that it is impossible to compare water service performance between towns.

# What prospects?

The series of laws promulgated at the beginning of the 90s shows by their limitations, the difficulty in clarifying regulation; they are based solely on legislative and judicial provisions. Local authorities remain relatively isolated in their regulation activity and control over *ex post* legality alone does not lead to effective regulation of the water service.

The need for an independent assessment structure, is now backed by views shared by all the parties: local authorities, user associations and also the operators, for whom assessment is necessary for developing open competition. The Public Service 2000 association, beginning to acquire expertise in the sector, is claiming the assessment task and intends to develop it in the future.

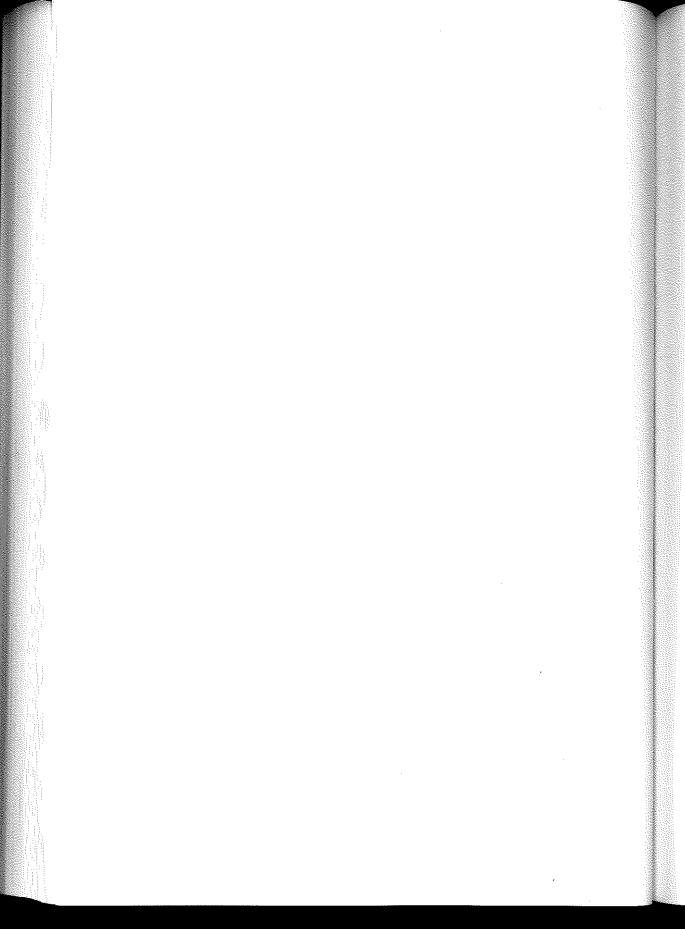
Consequently the question of the assessment criteria to be used arises. As a first stage it is a matter of producing expert models so that prices in relation to production cost structures can be compared. Assessment could also be based on technical and quality criteria (25): network yield, loss rate (leaks), interruption rate, rate of installation renewal, user surveys, rate of recurrent complaints, classified by subject, time for replying to mail, invoicing,...

Lastly, implementation of a comparative assessment of water services must be based on a reciprocal exchange, sharing the same list of indicators and using the same measurement methods. The dispersed state services (Departmental Directorates for Agriculture and Forests and Departmental Directorates for Equipment) are often entrusted with assessing water services. A common method for supervising local services is currently in the process of elaboration at national level. It is an initiative, which must lead to a more thorough approach to the question of assessment of water services.

Géraldine Pflieger

<sup>(25)</sup> GUERIN-SCHNEIDER, Lactitia et GRAND'ESNON Antoine, Performance indicators for the monitoring and regulation of water services: from choice to application. AFNOR Symposium on 6 May 1999, AFNOR, ENGREF, p. 18.

See the list of criteria in the comparitive tables by sector and country, concerning the water sector in France.



# Examples of Good Practice in the Provision of Services of General Economic Interest

There are well over 10,000 enterprises in Europe engaged in providing services of general economic interest to customers, the general public and local communities on a daily basis. They are active over a wide range of sectors and at a number of different territorial levels – local and regional, national and pan-European. In order to show the efficiency, innovative approach and special capabilities of enterprises engaged in providing services of general economic interest, the "Good Practices" working group has adopted an approach based on the following definition of "good examples" of the work of enterprises engaged in providing services of general economic interest.

"Good examples" of the provision of services of general economic interest are organisations or bodies that have created some kind of added value for consumers and public authorities that cannot normally be provided (or not as efficiently) in another form of organisation.

The working group sent a letter to enterprises engaged in the provision of services of general economic interest and their national associations to explain the purpose and conduct of the study. In addition, based on the above definition the letter explained to the enterprises what a good example is. To illustrate this, in the appendix to the letter the working group outlined three categories of good practice in the form of the following questions:

- 1. In what way are public utilities developing new, more innovative or additional services of general economic interest, and what methods are they using to define objectives precisely and to monitor their implementation?
- 2. How is the general economic interest being served by the internal organisation and management practices of enterprises?
- 3. How are public authorities and enterprises increasing their economic efficiency in implementing objectives for services of general economic interest?

Also, a form was attached to the letter in which the enterprises were asked to present in a few words their main activities and their good practices and to name a contact person for further information. There was little response to this request, which was sent to the National CEEP sections, most CEEP-affiliated enterprises and other associations of providers of services of general economic interest.

However, a large number of examples proposed by the enterprises contacted did not fulfil the defined criteria. For example, a number of enterprises submitted commercial initiatives that could only be regarded as marketing campaigns aimed at increasing competitiveness. Some examples are:

- Improved access to the services of the enterprise, e.g. by e-mail and e-commerce (these examples were not considered as good practices, because in this context only better technical possibilities for the use of the existing services were created, while further objectives, such as territorial cohesion, were not to be achieved)
- Easier payment, again by e-mail (same reason for the non-inclusion in the good practices as above)
- Additional services aimed at increasing customer loyalty, such as special price reductions for customers (in particular customer loyalty programs as conventionally practised in competitive markets)
- Marketing campaigns, including sponsorship campaigns (the submitted actions were essentially those which are generally practised on the market, so that they could not be considered as good examples in the meaning of the above definition).

A large number of enterprises submitted examples that, in effect, gave the actual purpose of the business as an example of good practice. Among this group were enterprises involved in urban development, but it also included service companies in the public banking, transport and energy sectors. Close scrutiny of these submissions revealed that they did not meet our definition of "good practices", even though they all described innovative measures that had led to improvements in performance, quality and cost of the services offered.

The working group was forced to conclude that a fairly large proportion of enterprises engaged in the provision of services of general economic interest had not spontaneously seen any difference between their "normal" practices, which they regarded as "good", and "good" practice in the sense of the definition given above. This led the working group to look for the reasons behind this phenomenon, as we had expected this particular group of service providers to make a precise distinction.

One likely explanation is that enterprises that provide services of general economic interest have a different self-image than purely commercially-orientated enterprises, and that in some cases this leads them to believe that their services should a priori be evaluated differently from those of purely commercial undertakings. This conclusion has apparently led some enterprises to regard their "normal" everyday service, i.e. the purpose of their enterprise, as "good practice".

Another possible reason is that a clearly defined national concept of "service public" and services of general economic interest – as in France, for example – does not exist in all Member States. This does not mean that there is no comparable organisational framework in these Member States, but because these services are sometimes defined on a regional or municipal basis rather than by central government (and even this may only apply to certain economic sectors), and because of the extreme diversity of practices due to differences in traditions and behaviour, it is difficult to adopt a uniform set of criteria at European level.

However, the main reason for the relatively small number of examples of "good practices" received may well lie in the fact that many companies are currently focusing their efforts on fighting market competition. Providers of services of general economic interest have recently come under severe pressure to adapt to market conditions, and in some cases this may have relegated the importance of a most extensive development of these services to the background. Competition forces enterprises to improve the quality of their services, increase efficiency and cut prices. Competition is probably the most effective means of bringing this about. However, beating the competition should not be regarded as the sole objective of providers of services of economic interest. Rather, market forces should help them to find ways of providing their services more efficiently and of promoting social and territorial cohesion in their role as providers of services of general economic interest. These enterprises have a special function that goes far beyond simply providing services that could, in principle, be provided by "anyone".

One of the recommended conclusions of this working group is consequently: that the Community on the one hand and Member States and enterprises on the other have to pay an increased attention, within the conditions of market competition and with its help, to invigorate the obligation imposed by Article 16, which plans to establish principles and conditions that enable services of general economic interest to carry out theirs missions in a way that promotes and increases social and territorial cohesion in the Member States and in the European Union as a whole.

In addition, it should be mentioned at this point that the work of the "financing services of general economic interest" and "performance assessment of services of general economic interest" CEEP-CIRIEC working groups in particular has already included examination of other interesting practices of several providers of services of general economic interest.

Taking the above into account, we have provided below a number of examples of enterprises that are setting exemplary standards of good practice in the provision of services of general economic interest. The examples are presented in accordance with the following criteria:

- I. Social cohesion
- II. Territorial cohesion
- III. Access to services and level of service guarantees
- IV. Customer care and involvement
- V. Cooperation between providers of services of general economic interest
- VI. New services
- VII. Environment
- VIII. Employees and conditions of employment

Most of the examples could not be fitted into one sole category, as they contained elements of several categories. Each example therefore appears under the heading that best corresponds to the main area of "good practice" to which it relates.

#### **EXAMPLES**

#### I. Social Cohesion

Apart from Article 16, Article 2 and Article 3, paragraph 1, k of the EC Treaty also identify social cohesion as a Community goal. The "Points d'information médiation multi-services de Lyon" [Lyon multi-service information and mediation points] are a good example of the type of special contribution that can be made in this area by providers of services of general economic interest, as the programme aims to improve social cohesion in a problem urban region, where it has provided easier access to its services.

Les Points d'information médiation multi-services de Lyon, France

The Lyon multi-service information and mediation points are premises shared by partners who have jointly organised a presence in the community in order to meet the needs of certain people with problems. The other partners are EDF, La Poste, transport companies and community sponsors. The aim is to ensure that people who are destitute are better served by a joint response situated in one place. The work carried out with the association "Partenaires pour l'emploi" [Partners for employment] has allowed a detailed action to be conducted in order to provide information on controlling cost (telephone, electricity, etc.). This association is closely linked to the 8th district council and is intended to assist people on a long-term basis out of the labour market. It has also helped to reduce debt and insolvency due to the creation, within each neighbourhood, of a new sense of community allowing people to get closer, problems to be heard and appropriate responses to be given.

#### II. Territorial Cohesion

Article 16's emphasis on the "territorial" element points to the fact that services of general economic interest can help to remove the disadvantages afflicting a number of individual regions by improving infrastructure. The following three examples from economically deprived regions demonstrate how providers of services of general economic interest can help redress the balance and improve conditions.

#### Borlänge Energi A.B., Sweden

A good example for the efforts of local governments in improving their territory is the Borlänge example. Borlänge is situated in an area with a decreasing number of inhabitants which needs to be made more attractive to current and incoming inhabitants. This is a task for Borlänge Energi A.B. In order to support the municipality of Borlänge, its citizens and businesses in the region, this local public enterprise provides traditional infrastructure services of general economic interest

such as energy, water, waste, construction and goods management and also creates innovative services such as high speed telecommunication/fibre-optic cables for households and industries. Borlänge Energi A.B. is efficient because it takes advantage of the synergy effects from energy, water, construction and waste using public tenders procedures to find the best service provider. All the fields of activities are run under market conditions and always with concern for the environment. A concrete example of local environmental work is the establishment of environmental contracts between Borlänge Energi A.B. and businesses in Borlänge and its surroundings. The contract guarantees delivery of environmentally friendly products and services so that the customer can sort at the source and reduce his waste and lower his consumption of water and energy.

 Société d'Economie mixte d'exploitation du centre multifonctionnel des Télécommunications avancées (SemProtel), La Réunion

The mixed-economy operating enterprise of multi-functional centre for advanced telecommunications is based on the island of La Réunion. The company is engaged in the construction of a satellite communication system on La Réunion.

La Réunion is some 10,000 kilometres from Paris. As early as 1992, at a time when telecommunications services were still monopolistic, SemProtel proposed to set up a teleport to permit satellite telephone services and other forms of communication. When France Telecom granted SemProtel authorisation to operate a public telephone system, the company started operating its teleport. This consists of a satellite dish measuring 7.3 m in diameter that is fitted with equipment to transmit and receive radio signals. The system not only enabled the inhabitants of La Réunion to use the latest telecommunications possibilities, but it also made call rates much cheaper than those of France Telecom. Once this system was set in place, SemProtel sold the facilities to a private operator ("Informatique et Télématique") who operated the system, while SemProtel confined its work to its role as a provider of services of general interest, such as the observation of the telephone market in the Indian Ocean region.

Thanks to its initiative, SemProtel gave La Réunion access to the new information and telecommunications technologies at an affordable price. In fact, had it not been for SemProtel, La Réunion would presumably have only much later gained access to these state-of-the-art technologies.

3. Highways with "shadow" tolling – SCUT (without charging its user). The Portuguese case

#### The framework

The 1998 Portuguese Road plan defines and organises the national road network, specifying the technical characteristics of each road group and establishing the priorities for its construction. According to this Plan, there is a main network of 2,600Km Itenerários Principais (principal Iteneraries – PI) that link the cities and

major harbours as well as the main land borders. This network completes itself through another structure of complementary roads, Itenerários Complementares (Complementary Iteneraries – CI) that insure the intra-regional and major city connections. The complementary network has nearly 3,200Km. There is a third group, called "estradas Nacionais" (National Roads – NR), with 5,500Km, that has the same purpose as the CI but with inferior technical features, the existence of cross-roads being the most notorious one.

These three road groups are contemplated in the Portuguese Road Plan. In addition to these networks, there are local roads, streets, etc., whose construction and maintenance usually falling within the responsibility of the local authorities.

The PI plus the CI add to 5,800Km and they are the main frames of the Portuguese Road Network. Of these, 3,000Km exist or are designed as highways.

Historically, the investments were made according to three different classes:

- Direct State investment
- Mixed investment
- Mixed financing public Contest for the construction, maintenance and concession management of the new bridge over the Tagus River.

In spite of the significant financial efforts made since Portugal has joined the European Community, presently, it still lacks 1,000Km of PI (36% of PI), of which more than 800Km are highways, and 1,900Km of CI (58% of CI).

The European competition rules impose an international public contest for highway construction; namely, the new toll highway concessions.

The involvement and seizing of private investment to construct and maintain new toll highways

During 1996, the Planning and Public Works Ministries worked out an integrated analysis of the necessary strategies and policies to tackle this vast and complex problem.

The Government opened an international public contest for a 30-year concession, for the financing, construction and maintenance of a 360 km long highway. The Concessionaire Company has the right to collect the toll and highway exploitation income. The Government set the Km toll charge.

In many cases, this attractive and liable solution presents some difficulties, summarised as follows:

#### Technical Problems:

 Deficient traffic prevision, which renders fallible the price per Km set by the Government and hinders consistent proposals presentation by the concession applicant Companies.  The Portuguese Law requires the existence of a toll-free road as an alternative to a toll highway, which generates, in many cases, large State investments.

Besides technical reasons, there are important political reasons:

The implementation of this kind of concession has some advantages for the Private Sector as long as the toll-based traffic flux is assured, which only happens in the most developed areas.

In the less developed regions, the toll, in line with the reduced traffic flux, would be so high that it would discourage its possible users.

Aiming to achieve a better economic and social cohesion, the Government has decided to favour the use of tolled highways along the Country's seaside (richer and better developed) reserving the toll-free highways for the interior. When planning, it has elaborated development case studies with scenarios of wealth growth and development within inland regions, predicting also a future toll payment for the present less developed regions.

Thus, the highways within these regions must be free of charges for its users, although the State assumes the compromise to pay its use to the Concessionaire Company.

The "shadow payment" concept

Resulting from the analysis of the applicant's proposals to highways concession contracts, the State, as regulating Institution, approves the scales for toll taxing according to the vehicle category and to the Km covered. There is a comparison element between the proposals of the concession financial conditions (for a 30-year period) and the appraisal of the State disbursement for the highway construction and maintenance taking into consideration the possible return on toll payment. This operation is called "State Sector Comparing".

The adoption of the private concession model to construct and maintain highways against the receipt (real or virtual) of tolls has several advantages vis-à-vis the traditional practices:

- In previous procedures, the State performed several contracts concerning:
- The project
- The building contract job
- The maintenance
- And possibly, other contract services, such as advertising, etc.
- The present contracts are established with a sole Entity that copes with all stages and handles several situations.

This concentration anticipates by far (in several years even) the general works conclusion and increases significantly the global efficiency planning, the works execution and the highway management.

Furthermore, in the concession contract it is possible to establish premium and penalty clauses for the Concessionaire Company. For instance:

#### Bonus/Fining:

- Reduced accident rates or higher than the remaining network;
- Higher or lower than the average annual number of hours of closed lanes, agreed by contract, and considered indispensable for the convenient maintenance and preservation;
- Maintenance and construction risk contractual determination, pertaining to the State the attribution of "Force Majeure" risks (weather-related catastrophes, earthquakes, and wars), being the remaining attributed to the Concessionaire Company.

The State payments to the Concessionaire Company, are in accordance to electronic registered traffic measurements, and do not worsen the State debt, because in the National Accounts those are considered as mere "Service payments" (according to the EUROSTAT criteria).

#### III. Access to Services and Level of Service Guarantees

Easy access and a guaranteed level of service are particularly important for their lasting effect on the community. The following four examples show how providers of services of general economic interest can use the tools of the market to increase efficiency and make significant contributions towards improving transport infrastructure and developing services in the power supply sector. Finally, the example of Stadtsparkasse Köln shows that even in a changing market, services of general economic interest can be provided in the banking sector.

#### 1. AVE-RENFE, Spain

In 1994 the Spanish enterprise AVE-RENFE introduced a programme on its short and long distance railway networks to improve the punctuality of its service and increase customer satisfaction. If trains run more than 5 minutes/hour late, customers are entitled to a refund of the cost of their ticket. As soon as it becomes apparent that a train is delayed, customers are informed that their train will arrive over 5 minutes late. They are advised that they may claim a refund and given details of the procedure.

Season ticket holders are also entitled to a refund. For monthly season tickets this is one-sixtieth, for Monday-Friday monthly tickets one-forty-fourth, and for 10-journey tickets one-tenth of the ticket price.

The company also writes to affected customers to apologise for the delay and provide details of the refund procedure.

All delays over 5 minutes per hour are investigated and analysed by AVE-RENFE.

The programme has resulted in a very high level of punctuality, and a consistent punctuality rate was achieved each year between 1994 and 1999. In 1999 only 0.3% of trains ran over 3 minutes late, and only 1.4% of express train journeys were subject to a delay of more than 10 minutes.

Figures for the period 12 September 1994 to 31 December 1999 show that out of a total of 75,177 trains, 203 (0.27%) were subject to the delay mentioned as above, affecting 54,045 (0.26%) of a total 19,278,814 passengers. A sum of 263.3 million pesetas (0.27%) was refunded from revenues of 99,825 million pesetas (including VAT).

#### 2. Electricité de France: Appointment of a Mediator, France

In November 1998 Electricité de France (EDF) introduced a service called "Médiateur EDF" [EDF Mediator], with the dual aim of improving competitiveness in the areas of price and product quality and providing a high standard of public service.

#### The Mediator has 4 main tasks:

- He is responsible for maintaining good relationships between the enterprise and outside associations, particularly consumer associations, professional associations, "chambre consulaire" and important state and economic groups and institutions.
- He acts as an arbitrator in disputes between EDF departments and external parties to help defuse potentially difficult situations.
- He can be used as a final resort for settling disputes within the company.
- He makes recommendations for improvements in the company's procedures, working practices and public announcements.

The Mediator needs to be largely neutral in order to carry out this role. He is therefore not involved in the day-to-day activities of the enterprise and is also permitted to seek outside assistance. He is supported inside the company mainly by its regional offices, which assist him in his contact with EDF's external partners.

In addition to his work with customers and customer organisations, the Mediator also deals with individuals or companies who complain about or are affected by the company's work (cable laying, etc.).

The Mediator produces an annual report of his activities containing details of any matters of significance, including solutions to disputes. The report also analyses the problems he has dealt with and the methods used to resolve them. The

President of EDF and external partners of the company, particularly interest groups, receive copies of his report, and associations are asked for their views and comments.

The use of an independent intermediary means that disputes can be settled, contacts with interest groups can be cultivated to gain feedback, analysis of disputes can be used to avoid future areas of conflict, and the overall performance of the enterprise in its role as a public service provider can be improved.

#### 3. Office of Electricity Regulation, Great Britain

The Office of Electricity Regulation (OFFER) carried out an investigation of the information provided by public electricity suppliers on customer service and network performance in 1994. This investigation indicated variability in approach, procedures, rigour and interpretation of the standards of performance. The director general of Electricity Supply subsequently decided to engage consultants to review companies' systems in order to

- ensure consistent reporting and that procedures exist and be followed
- assess the extent of the deviations
- consider the comparability of the companies' performance returns
- advise on how comparability could be improved.

The consultants found that there were weaknesses in the public electricity suppliers' procedures for reporting on the standards of performance. The type and degree of these weaknesses varied from company to company; but the consultants concluded that there were steps which OFFER could take to provide guidance so that companies reported on a consistent basis. Such guidance, they felt, should provide greater assurance that the standards would be applied uniformly across the public electricity suppliers.

OFFER publishes a report which contains standards of performance. The director general sets standards of performance for public electricity suppliers on the provision of electricity supply services to customers. The standards are set following consultations with suppliers, the electricity consumer committees and other customer representatives.

There are two types of standards:

- guaranteed standards set service levels that must be met in each individual case. If the company fails to provide a level of service required, it must make a payment to the customer affected.
- overall standards cover areas of service whereas it is not feasible to give individual guarantee, but appropriate to assure customers in general that companies will provide determined levels of service.

One of the main purposes of the standards is to set a common framework for customer service by the companies. This framework is intended to ensure a minimum level of service for all customers and to encourage companies to aim for higher levels of performance.

OFFER has proposed in its annual report and in consultation papers a lot of improvements to the guaranteed and overall standards aimed at ensuring a higher level of service for customers. By this and by the effect of publishing failures of companies, OFFER contributed to improving the technical performance of electricity supply as well as customer service and the promoting of an efficient use of electricity.

#### 4. Stadtsparkasse Köln, Germany

Stadtsparkasse Köln is a municipal institution operating under the municipality of Cologne which, according to paragraph 1 of its statutes, is a "nonprofit public entity having legal personality operating in the general interest".

While the private banks are increasingly withdrawing from the full-coverage services sector due to insufficient profits, Stadtsparkasse Köln has over 100 branches and 19 advice centres on the territory of the city of Cologne. Stadtsparkasse Köln operates under an obligation to accept customers which is not imposed on private banks. As of 30 June 1999 it had 394,248 private current accounts, including 33,966 credit balance accounts. Of these, 11,407 were held by persons receiving social benefit, which accounted for 33.58% of the total. The holders of these accounts and account holders from other economically deprived segments of the population have greater need for advice than others. Stadtsparkasse Köln provides for these needs with an extensive network of branches and specially trained staff.

One particularly important aspect of the activities of Stadtsparkasse Köln is the promotion of small business enterprises. Compared with around 2,000 loans granted to large corporations, Stadtsparkasse Köln granted some 50,000 loans to borrowers in the SME sector. When one considers that the private banks have effectively halved the proportion of credit granted to small business enterprises since the start of the 90s from 30% to 15% because of their commitment to the shareholder value principle, one gets some idea of the extent of Stadtsparkasse Köln's commitment. It has undertaken a serious commitment to promote the setting-up of new enterprises and encourage young entrepreneurs. In its central department responsible for "the promotion of new enterprises", 15 experts work with the financing of new enterprise projects including the provision of publicsector funding packages of all kinds. At the present time, 500 young enterprises are receiving advice on all matters relating to credit, investment and services. The "enterprise advice" department has experts on hand to provide advice in economics and finance, consultants in technology and the environment with a background in the natural sciences and also media consultants. The services offered by

Stadtsparkasse Köln to persons wishing to set up new enterprises include in particular:

- the provision of sectoral information
- the organisation of the start-up concept
- arranging partnerships and takeovers through enterprise fairs
- advice on applying for public funds, completion of applications and the application process
- arranging useful institutional contacts
- designing an optimum financing concept
- financing of start-up projects
- specialised advice for new enterprises and young entrepreneurs by a team of experts.

In business year 1998, a volume of well over 50 million DEM in loans was reached with around 350 businesses. Between 1994 and 1999, around 5,000 new jobs were created in 1,500 assisted new enterprises.

In addition, Stadtsparkasse Köln is involved in many private and public initiatives aimed at encouraging new enterprises projects or that it has initiated. These support services have led to the formation of a network in which the different contact partners work together on solutions that supplement each other.

#### IV. Customer Care and Involvement

Under market conditions, customer involvement in improving services of general economic interest is practically a necessity, as it not only increases their satisfaction level but also enables them to make an active contribution towards reaching objectives and directing the process. AEM SpA Cremona is a good example of this approach. Another example is that of Stockholm Vatten AB, which has also provided improved environmental services for the processing of waste water through customer involvement.

#### 1. AEM SpA Cremona, Italy

The activities of Azienda Energetica Municipale SpA di Cremona (AEM SpA), a wholly owned subsidiary of the municipality of Cremona, cover local public transport, the supply of gas, water and electricity and the disposal, recycling and treatment of waste.

AEM SpA has developed an integrated waste management system. The local authority collects different types of refuse separately (paper, plastic, glass, cans, etc.). Organic waste and metals, which comprise approximately 35% of the waste collected, are recycled. 60% of waste is burned to provide electricity and heat in a state-of-the-art combined heat and power plant, and only 5% is dumped at controlled sites.

This system has reduced the number of landfill sites required by municipality of Cremona, and the authority has an excellent emissions balance sheet. Finally, AEM SpA's high level of efficiency is evident from its per kilo cost for domestic refuse, which is low compared to France and Germany (350 ITL in Italy, approximately 500 ITL in France and approximately 900 ITL in Germany).

AEM SpA is particularly keen to improve its performance in the area of selective waste collection and to this end has introduced an incentive scheme called "Ciclo & Riciclo". Points are awarded at refuse collection points for each kilo of refuse sorted into separate categories, and these points can be used to gain discounts on public transport and parking season tickets or to obtain a range of gifts that includes televisions and bicycles. Last year, 20,000 bonuses in the form of discounts or goods were awarded. The scheme aims to encourage the public to adopt a responsible attitude towards waste disposal, although the incentives do not include rebates on refuse charges. The number of bonuses awarded and the low proportion of refuse dumped prove that the scheme has been successful in gaining active public cooperation in recycling.

#### 2. Stockholm Vatten AB, Sweden

Stockholm Vatten AB is owned 7% by the City of Stockholm, 91% by Stockholm's Stadshus AB and 2% by Huddinge municipality.

Stockholm Vatten AB operates the public water distribution and purification network in Stockholm and Huddinge. Its activities extend to the production and distribution of drinking water, the collection and treatment of waste water, and the restoration of lakes in its operating area. The company supplies drinking water to Stockholm, Huddinge and 9 surrounding municipalities, and receives waste water from 6 surrounding municipalities.

An important aim of the business of Stockholm Vatten AB is to ensure that the customers are happy with its service. Stockholm Vatten AB tries its best at all times to speed up repairs and reduce the number of complaints. It is equally important to increase water consumers' awareness of the link between the environment and what ends up in the waste water.

The environmental and quality management system is on the further development. During 1999, the company as a whole was involved in the work of establishing quality routines and instructions which will exist primarily in electronic form. Around 30 persons were designated as environmental and quality coordinators and the first internal auditors were trained.

Complaints and questions from customers have increased since these date began to be collected in 1988. The procedure for recording was tightened in 1999 in line with the city's quality strategy. The aim is to make complaints rapidly accessible, so that the company can keep abreast of criticism and put right any defects. There was a significant increase in complaints about service interruptions. The number of

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water leaks also increased during 1999. It will be possible to process complaints in GIVAS, the geographical information system which is being developed within Stockholm Vatten AB for the efficient processing of pipeline information and environmental data, and to increase the standard of service provided to customers.

Of a total of 566 service interruptions that took place in 1999, 19 incidents, or 3%, continued for more than 10 hours. Targeted measures are undertaken systematically in order to increase quality in problem areas and a plan to increase the reliability of the supply to major customers will be in place in the year 2000.

Complaints arriving from sewage problems were reduced by 18% to 480 compared with 1998. Only 96 properties were affected by more than one blockage over a period of two years. The target was 175. The total number of blocked sewers was similarly reduced by 101 to 421. The pipes are now flushed to a greater extent than previously.

The sewage treatment plants need to transport 70 tons of sand and litter every week. A dumping charge of 250 SEK per ton will take effect from the start of the year 2000. This represents increasing costs of approximately 18 million SEK. Total ban on the dumping of organic material on waste deposits will come to force in the year 2005. Information campaigns are being mounted in an effort to increase awareness and create commitment to cleaner waste water. The autumn campaign ran on poster sites in the underground and in the streets. The theme of the campaign was "Very bad!" (litter flushed down the toilet) and "Very good!" (litter to the waste bin). The campaign attracted attention and created excellent opportunities for dialogue with customers. Stockholm Vatten AB public relations officers for schools met 10 times more than 5,000 pupils, and approximately 6,000 persons from at least twenty countries took guided tours at sewage treatment plants. The annual telephone survey conducted among people selected at random revealed that only 45% of consumers never flush litter or chemicals down the toilet. This was an improvement of 2% since 1997, but the target of "at least 50% of customers" has still not be met.

Chemicals, medicines and other substances which find their way into the sewers present direct environmental problems, since they can influence sewage treatment by reducing the opportunities for returning sludge to agricultural land as part of a natural cycle. A series of information brochures targeted directly at three different sectors was produced. These were sent out to environmental officers at engineering companies, printing companies, laboratories and municipal departments. A campaign about the toxic heavy metal cadmium was targeted specifically at artists and art colleges in order to increase their awareness of how they can protect health and environment by disposing of paints containing cadmium in the correct way or by choosing alternatives.

# V. Cooperation between Providers of Services of General Economic Interest

Cooperation between providers of services of general economic interest can increase the value of an individual service many times over. Service providers may join forces with providers from other sectors or form partnerships within their own sector. The Münchner Verkehrs- und Tarifverbund GmbH is a good example of successful cooperation between regional public transport operators.

#### Münchner Verkehrs- und Tarifverbund GmbH, Germany

Münchner Verkehrs- und Tarifverbund GmbH (MVV) is organised in the form of a traditional association of supervisory bodies which are the Free State of Bavaria, the State (Land) capital city of Munich and 8 State (Länder) districts. Its integrated transport system was launched on 28 May 1972.

MVV's service area covers 50,471.32 square kilometres with a population of approximately 2.5 million. Its route network covers 4,639 km, of which 443 km are served by suburban railways, 4,047 km by buses and 149 km by trams/underground.

Around 1.8 million passengers a day use the services operated by MVV transport companies, which include the public transport utilities of the city of Munich, Deutsche Bahn AG, Regionalverkehr Oberbayern GmbH and 50 private companies. This represents an extremely high market coverage in proportion to the number of inhabitants compared with similar areas.

The heart of the MVV transport system is its rapid rail network, consisting of the suburban and underground railways, and this is complemented by a dense network of trams and local and long-distance buses. The network, particularly the rapid rail network, is constantly being extended, providing ongoing improvements in local public transport services.

Apart from the density of its route network, another important factor in MVV's success has been the fact that timetables for the various forms of transport are synchronised. Services are timed to ensure that passengers can reach a given destination without unreasonable long waiting periods. MVV is currently introducing trams timetables with a maximum 10-minutes frequency, and the different modes of transport within the city of Munich itself run at even shorter intervals.

Another key element of the integrated system is coordinated route planning for suburban railways, trams, urban and regional buses.

The decisive factor in the system's success, however, has been the introduction of an easily understood, uniform fare structure in the whole covered area. Customers only need to purchase a single ticket for any journey within an area covering over 100 km from east to west and 160 km from north to south, even if a number of different modes of transport are used. With a radically simplified fare structure, transferable season tickets, ticket machines that provide a wide range of cashless payment facilities, an Internet information service and a virtual call centre, MVV offers its customers a high level of service in the area of ticket purchase.

In summary, MVV provides:

- a coordinated routes planning,
- a uniform, synchronised timetable for all transport modes,
- a uniform fare structure that allows customers to use a single ticket for any journey within its service area,

making it a good example of an efficient regional public transport network in an important region of Europe.

#### VI. New Services

Providers of services of general economic interest need to work constantly at improving the forms in which they provide their special services and at increasing access possibilities for customers and users. The examples of Postecom SpA and La Poste demonstrate how new services can be made readily available to customers everywhere, particularly to sections of the population that might otherwise be excluded from using them. Another example, that of Kölner Verkehrs-Betriebe AG, demonstrates how a public transport enterprise can provide improved mobility using new market possibilities. The example of "Transilien\*SNCF" shows how the subjective feeling of insecurity that many users of public transport have can be combated.

#### 1. Postecom SpA, Italy

Postecom SpA is part of the Poste Italiane group and was founded in August 1999 to market both group and third-party network services. It uses Internet technology to provide universal financial and telecommunications services of the kind traditionally offered by post offices. Apart from the usual services offered by IT companies, Postecom SpA has introduced three new services:

- on-line payment of public utility invoices (water, gas, electricity and telephone);
- free public Internet access and e-mail facilities at post offices;
- electronic versions of traditional post office services and an officially certified secure gate for on-line shopping, access to major e-commerce websites, etc., all provided on Poste Italiane's Internet portal.

Postecom SpA's objective is to find new and profitable ways of fulfilling its obligations as a public service provider in the postal sector. This has enabled it to improve the quality of traditional services, and the additional revenue generated by

these new activities (financial transactions, delivery of goods, website advertising) is used to maintain its universal services. At the same time, e-commerce enterprises linked to the system are receiving more business, largely as a result of the widespread opportunities for access provided in the majority of Italy's 14,200 post offices.

It should be emphasised that the company has adopted an explicit strategy of non-selective provision of these services. Some services (such as money transfer) are offered at competitive prices compared with the banks. Postecome SpA is not trying to achieve a high degree of vertical integration in the value chain, instead it wishes to bring about improved economic efficiency and encourage the development of new products and applications in goods and services distribution. Postecome SpA's objective is to play a part in the development of these services by combining high technological and security standards with easier access to new communications media.

Postecom SpA's new services will be in full-scale operation by the year 2000.

#### 2. The business policy of La Poste in deprived urban areas, France

In March 1999, as part of a wider attempt to improve its performance in meeting the needs of its users and fulfilling its public service obligations, La Poste signed an agreement with the leading trades unions committing it to pursue a specific commercial policy for deprived urban areas. The French local authorities have identified 740 of these areas, and special development programmes have been introduced. As the provider of an essential public service, La Poste plays an important part in the daily life of these communities. La Poste has undertaken a programme of maintaining existing post offices and opening new offices in order to provide equal access to all users of its service in accordance with the principle of equality. At least 10% of the measures implemented under this programme will be carried out in deprived urban areas. An annual budget of over 20 million francs has been earmarked for the programme.

In addition to its policy of establishing a physical presence, La Poste has also introduced a special recruitment and continuing training programme for staff to encourage them to provide a more customer-friendly service and a higher level of assistance to the public, and to play part in fostering good community relations and local partnerships.

In addition, La Poste has recruited over 3,200 new members of staff, of whom over 2,300 are working in post offices as customer assistants. 14% of these customer assistants are employed in deprived urban areas. Their job is to provide information to customers on La Poste's services, the introduction of the euro and access to information sites and electronic mail via the Internet, to show them how to use the machines, help them with documents drafting and refer them to other public services as required.

Over 700 of these 3,200 new members of staff work as postal delivery assistants, and 43% of this group work in deprived urban areas. They help the postmen on their rounds and make an active effort to establish contact with members of the public. They are encouraged to use their initiative and can report problems, such as the poor state of buildings in a particular area, which may be evident from the state of its post boxes, to the relevant authorities.

There is also a special continuing training programme for staff working in deprived urban areas to help them manage stress and conflict and give them a better understanding of the symptoms of social exclusion. This enables staff to provide a more customer-friendly service and avoid problems with customers. The role of the postal employees is enhanced, and staff can become more involved in the life of the community.

Finally, La Poste has also linked up with other service providers, particularly providers of public services, to help develop local economies. One of the main aims of this type of cooperation is to improve access to these services.

#### 3. Kölner Verkerhs-Betriebe AG, Germany

Kölner Verkehrs-Betriebe AG is owned 10% by the city of Cologne and 90% by Stadtwerke Köln GmbH (which is 100% owned by the city of Cologne). It operates in the territory of the city of Cologne (1 million inhabitants) and provides local public transport services with 15 lines of tram and light-rail system and 42 bus lines and in 1999 carried some 230 million passengers in the territory of the city of Cologne. Kölner Verkehrs-Betriebe AG is linked to the Rhein-Sieg transport association, which provides transport services in the greater Cologne-Bonn area with synchronised timetables and a uniform fare structure.

Kölner Verkehrs-Betriebe AG sees itself as a complete provider of services assuring the mobility of the citizens of the city of Cologne. With its extensive network of lines with 282 kilometres of tram and light-rail system and 441 kilometres of bus lines, which are served with high frequency, Kölner Verkehrs-Betriebe AG enables every citizen of the city of Cologne to reach any point in the city from early morning until night-time within a reasonable time. It thus provides a system that can be considered as a real alternative to individual transport. However, in spite of this extensive transport system, there are still situations in which the users of Kölner Verkehrs-Betriebe AG have to rely on the use of a car, for example to transport large objects or simply to go on holiday.

Kölner Verkehrs-Betriebe AG has therefore set up, together with CarPool® GmbH, a service for a closed group of users (i.e. all their subscribers). This service allows all subscribers to Kölner Verkehrs-Betriebe AG to hire at very cheap rates a vehicle of their choice, which can be anything from a small car to a limousine or a van to transport furniture.

To use the services of CarPool®, subscribers receive a CarPool® card when they register and show their driving licence and then sign a direct debit agreement. The card is then activated. Initially the vehicles will only be available in the district of Deutz, but from January on 4 additional districts of the city of Cologne will have vehicles available for hire 24 hours a day. The customer pays only the time during which the vehicle is used, and there are no minimum rates or monthly rates. The charge to hire a Renault Twingo for a day is around 45 DEM, and if the vehicle is used for more than one day an hourly fee of 4.50 DEM is charged. For short-term hire when the vehicle is returned before 11 a.m. on the day when it is hired, the charge is only 29.50 DEM. The licence plate is automatically registered when the vehicle leaves the garage. The same happens when the vehicle is returned. The charge is withdrawn from the customer's account every week according to duration of use. With this service, Kölner Verkehrs-Betriebe AG wishes to further develop its mobility management for the citizens of the city of Cologne in order to provide improved customer lifetime value.

#### 4. Transilien\*SNCF, France

With the help of the Syndicat des Transports Parisiens (STP) and the region of Ilede-France, the SNCF has set up a program to do something about the subjective feeling of insecurity experienced by many passengers on public transport. The main elements of the program are as follows:

the busiest stations, i.e. normally those located in zones 1-5 of the orange card, are gradually being opened up until the departure of the last train so that the personnel can be seen by passengers — and by potential delinquents — to be working in the stations. In addition, extra security personnel are posted in the stations — also with a visible presence. In this way the passengers on the last trains can be sure to have a member of staff on hand at all times. As of the end of 1999 the program had been implemented in 92 stations. There was also a change of atmosphere on board the trains as an accompanying service was offered in zone 5 of the orange card from 9 p.m.

To improve the security of passengers, they were invited to occupy the first wagons of the train. This also applied to the platforms, because in this way passenger safety could be guaranteed more effectively. The program has been accompanied by the installation of technical assistance and surveillance devices, such as emergency telephones and surveillance cameras.

To man the reception and information stands in stations, 800 additional jobs have been created, 400 with government funding and 400 by the SNCF itself. These measures will not only ensure that passengers can get information at all times on connections, delays, etc., but will also improve the passengers' subjective feeling of security.

In order to further improve the atmosphere in stations, the SNCF has set in place a program to renovate its stations. 250 SNCF stations in the region of Ile-de-France will be renovated over the next 3 years, while 45 had already been completed by

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the end of 1999. It is anticipated that cleaner stations with appealing station furniture and better functioning facilities will significantly improve the atmosphere, and the constant presence of staff will prevent any dirt and damage in stations.

At the same time, the rolling stock will be modernised, the passenger comfort will be improved, and life will be made more difficult for the vandals thanks to additional technical measures.

When the measures for the stations and the rolling stock are implemented, the station facilities will be identified by a new "Transilien\*SNCF" label.

With the "Transilien\*SNCF" program, the French national railway company is helping improve urban development in the region of Ile-de-France by providing transport services for around 2 million passengers. By providing appealing facilities for stations, which will in future be occupied by staff until the last trains leave, with extra security personnel in stations and on trains and through generally improved comfort, the SNCF will significantly increase the well-being of its passengers and enhance their subjective feeling of security. To make the different improvements clearly visible, the "Transilien\*SNCF" label will be affixed to the various facilities, and the quality standards will be maintained by regular checks.

#### VII. Environment

Improving environmental conditions is one of the Community's overriding objectives. Many providers of services of general economic interest have also given this absolute priority and are helping to create a safer environment. Gaz et Electricité de Grenoble is a good example.

#### Gaz et Electricité de Grenoble, France

Gaz et Electricité de Grenoble (GEG), which is a local mixed economy enterprise with the city of Grenoble as main shareholder, is developing the use of clean vehicles in the Grenoble area.

The geographical location of Grenoble makes it particularly vulnerable to atmospheric pollution. The approach introduced by GEG benefits from the support of the public authorities, the population and the local communities. The clean vehicles are a positive and economical response to the problem of urban pollution as opposed to coercive measures such as allowing the use of vehicles only on alternate days. GEG is relying on a six-years experiment, a specialised garage under an agreement with Ademe (Agence de l'environnement et de la maîtrise de l'énergie [Environment and energy control agency]) and a fleet of forty vehicles running on natural gas or electricity in order to promote clean vehicles in Grenoble. The reliability, profitability and ecological impact of these solutions have reinforced GEG's desire to generalise the use of these vehicles.

The construction of a clean vehicle service station began in March 1998. Since September 1998 it has enabled the population to obtain information and users to buy supplies of natural gas and electricity. In addition to this station, three other filling points have been created and networked in order to ensure an unrestricted supply for users in the whole Grenoble basin.

Five people on youth employment contracts "Contrat Emploi Jeunes" have been hired to bring the station to life (dealing with the public, visiting schools, exhibitions, events) and to monitor users both commercially and technically.

In May 1998 GEG signed a contract with the town of Grenoble and Gaz de France with the aim of having 300 vehicles running on natural gas by the year 2000.

GEG has introduced a specially tailored commercial offer which consists of an attractive price for the energy (twice as cheap as petrol), sales bonuses on equipment and management of consumption by monthly invoicing.

The effects are: 25% less carbon dioxide, 50% less carbon monoxide, 50% less unburnt hydrocarbons and 100% less lead and particles. This is the pollution reduction impact of each clean vehicle.

GEG is a mixed-economy company. Privileged links with other mixed-economy companies and with local communities are allowing equipment decisions and contacts to be speeded up. The approach has increased credibility due to the public nature of the company and the ability to react and speed of decision-making are those of a company structure.

#### VIII. Employees and Conditions of Employment

Services of general economic interest are provided "on the ground" by employees. Measures to improve employees' working conditions can also improve service quality and increase the overall efficiency of an enterprise. This is clearly illustrated by the example of Gas- Elektrizitäts- und Wasserwerke Köln AG. Another example is that of Nantes Gestion Equipements, which demonstrates that enhanced comfort and security can be achieved for parking lots through the creation of new jobs.

#### 1. Gas-, Elektrizitäts- und Wasserwerke Köln AG, Germany

Gas-, Elektrizitäts- und Wasserwerke Köln AG (GEW) is a local public utility with 2,600 employees. It is fully owned by the city of Cologne. GEW, which has the task of providing the population of Cologne with safe, environmentally friendly, low-cost energy, has faced a dramatic increase in competition over the past few years in the wake of the opening of the energy markets. This has forced it to seek ways of improving its efficiency and quality of service on an ongoing basis.

One of the ways in which GEW has reacted to this challenge, perhaps unusually for a public sector company, has been to introduce the concept of flexible working hours. Its model is based on a uniform working time framework during which staff are available to serve customers. Working time framework is 7.00 - 18.30 on all working days (Monday to Friday), and may be extended as circumstances dictate. This framework is the only requirement that applies to the entire enterprise. Service times and minimum staffing levels are set on a departmental basis. The key requirement for service times is that they must be geared to the needs of customers. Managers consult with their teams to set the minimum staffing levels that must be maintained during the service time. Departments are not required to maintain the same staffing level throughout the service time but may vary it to accommodate changes in workload.

This skeleton model gives departmental teams the freedom to chose their hours within the prescribed working time framework for all that departmental service time and minimum staffing levels are met. Individuals' working times and manning duties must be agreed within the team before being set.

As a rule, employees are expected to divide their set working hours, which are based on the 38.5-hours week stipulated in the collective agreement, equally over the working week. For a five-day week, a full-time employee will therefore work 7.7 hours on each of five days, giving a total of 38.5 hours. Exceptions are permitted in justified cases, enabling employees to change their set working hours at different points throughout the year for all that the collective working time requirement is met on average (variable annual working time). This arrangement allows departments to cover occasional or seasonal peak loads without the need for employees to work overtime or accumulate an excessive number of hours. In addition, a number of different arrangements can be provided for individuals within a team.

This model has been complemented by the introduction of service standards that stipulate quality of service requirements for service centres. A key consideration in setting these requirements is the kind of general and specialist assistance that needs to be made available to customers during service times. Under today's highly competitive conditions, a constant balance has to be found between the twin demands of efficiency and customer service.

GEW's working time model has improved the efficiency of the service provided by this municipal utility to its customers, as it gives the company a high degree of flexibility in meeting customer needs in terms of working hours and specialist work. It gives employees a degree of freedom in setting their working hours, helping them balance the needs of work and family life. It also improves teamwork and enhances job security. For the municipal utility GEW the new model has increased efficiency and competitiveness, enabled it to extend its operating hours, and has reduced overtime and optimised workflows.

# Nantes Gestion Equipments (NGE), France

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NGE is a mixed-economy enterprise that was set up in Nantes in 1976. It currently employs a staff of around 120.

Improving mobility in the city centre has been the focus of efforts by the city of Nantes in recent years. In this connection, the city has in particular been working to set up a second city tram line, to develop a new traffic plan and to improve the parking situation in the centre.

NGE is a mixed-economy enterprise that pursues several aims, 66% of which are geared towards improving the parking situation.

NGE has offered unemployed school-leavers the opportunity to follow a special training course as service personnel to accompany and assist customers in the various parking lots in the city. These young people wear uniforms and can be identified by their identity badges and are linked by walkie-talkies. Their job is to assist customers, to provide them with information, to accompany them and to help them carry their shopping.

This measure has helped make a real improvement to security in the city's parking lots and to make them more customer-friendly. And with very affordable prices, the use of the parking lots has increased by over 11%.

Through this initiative, the NGE has created new jobs and improved parking services for the citizens of Nantes.

#### **SUMMARY**

Both the Community and the Member States are committed to the common goal of creating principles and conditions that will enable services of general economic interest to function efficiently. The enterprises responsible for providing these services are currently under considerable pressure from market competition, and this occasionally prevents them from developing their special role. However, competition should serve only as a means of helping enterprises to work more efficiently and achieve the greatest possible benefit for customers and society as a whole. These enterprises have been, and continue to be, extremely efficient service providers. However, it is crucial that they be given the necessary "room to manoeuvre" to enable them fulfil their task of developing services of general economic interest. The Community and its Member States must work to make this happen.

The working group recommends that a permanent working group be appointed to monitor the development of services of general economic interest. This working group would collect "good practices" on services of general economic interest level that could be used as models, and make them available at regular intervals to the EU institutions, the Member States and interested members of the public. This would be another small step towards achieving the goals of Article 16.

### The Special Case of Broadcasting

#### Introduction

Although broadcasting services are services of general economic interest (SGEIs) within the meaning of the EC Treaty, they differ significantly from other SGEIs, and, not least in the way they are regulated in Europe. The general interest objectives with regard to broadcasting primarily concern *programme content*, and the functions of broadcasting for society are thus not so much economic as *political*, *democratic*, *cultural* and *social*. This is particularly true in the case of public service broadcasting.

Broadcasting does not correspond to the model of "public utilities" associated with many SGEIs, such as water, electricity, transport and telecommunications.

There may be one common factor: universal coverage or, in other words, the requirement, particularly for public service broadcasting services, of being available for everyone. "Universal coverage" is close to the "universal service" concept advanced for other services of general economic interest. However, it is only one aspect of the public service remit in broadcasting, related to transmission/infrastructure. What is far more relevant, in terms of public service, is the content aspect of broadcasting.

Although broadcasting services depend on distribution via (terrestrial, satellite, cable) networks to reach the public, public service obligations primarily concern programme content, with major objectives including pluralism and quality. These criteria are not as readily measurable as are technical criteria related to universal coverage, etc. Consequently, Member States have set up special public service broadcasting organizations, with institutional and procedural safeguards to ensure that the public service remit is understood and fulfilled in the interests of society as a whole.

The Amsterdam Protocol (No. 32) on the system of public broadcasting in the Member States, which is part of the EC Treaty, recognizes that the system of public broadcasting in the Member States is directly related to the democratic, social and cultural needs of each society and to the need to preserve media pluralism.

Public service broadcasting is regarded as essential for the functioning of the democratic systems at the national and the regional levels, through its extensive and pluralistic coverage of the political debate and by helping people to form opinions about political issues. It is also considered essential for social coherence and for integration in society, avoiding a divide between those who can afford access to information and those who cannot. And, last but not least, it is considered essential for the cultural diversity of Europe's countries and regions and the development of their audiovisual cultures, particularly in the smaller cultural and

linguistic areas. To a certain extent, it may be said that public service broadcasting contributes to shaping a country or region's identity.

In view of the competence of the Member States for these areas, as has been recognized by Article 151 of the EC Treaty and the Amsterdam Protocol, it is primarily for them to regulate and organize the general interest aspects of broadcasting. The European Commission has no sector-specific regulatory powers in this area and has always exercised a degree of restraint in using its horizontal powers under, for example, Article 86 paragraph 3 of the EC Treaty, to interfere in the broadcasting sector.<sup>1</sup>

These are some of the reasons why a specific section is devoted to broadcasting.

### A. Models for regulating SGEIs in the broadcasting sector

### 1. Characteristics of the broadcasting sector

#### Liberalization

The former monopolies in the broadcasting sector have long since been abolished, and in some Member States they disappeared more than twenty years ago.<sup>2</sup> In addition to the resulting competition among national broadcasters, many broadcasters established in a given Member State use the freedom enshrined since 1989 in the "Television without Frontiers" Directive to have their output retransmitted in other Member States, particularly in countries where cable retransmission is well developed. Finally, a significant number of non-EU broadcasters are present on national markets via the direct-to-home (DTH) satellite retransmission of their programmes.

## Dual (mixed) broadcasting systems and privatization

Liberalization has not, however, led to the privatization of public broadcasters<sup>3</sup>. In purely economic terms, this may be explained to some extent by the fact that making and assembling programmes does not include the same degree of "natural monopoly" as is the case with public utilities. In other words, the privatization of public service broadcasters was not a pre-requisite for private companies being able to enter the market of making and offering programmes. Limited instances have occurred, however, an example being the privatization of one of the public television channels in France (TF1, in 1986).

<sup>1</sup> Nevertheless, broadcasting may be covered to a certain extent by horizontal rules, such as the so-called "Financial Transparency Directive", provided that due regard is paid to its specificity.

<sup>2</sup> Austria, which was the last Member State where broadcasting was a monopoly as regards national programmes, is currently liberalizing the sector.

In fact, Member States have maintained a dual system of broadcasting which includes both public and private broadcasters. One reason for this is the "market failure" following on from the main business model underlying the sector: advertisers paying broadcasters for advertising, and sponsored programmes. This model inevitably leaves purely commercial broadcasters with one priority, i.e. trying to attract as many viewers and listeners as possible at the same time, in order to induce advertisers to advertise (and sponsor) on their radio and television channels, to the detriment of other considerations of general interest. The structure and funding of a public organization is felt, throughout virtually all European countries, to be a guarantee which counter-balances this tendency. The aim is to produce and deliver programmes corresponding to general interest requirements: the broadcasting of both popular and less popular programmes, a mix of undemanding and controversial programmes, of programmes for the mass audience and programmes targeted at various age categories or minorities.

This need for public service broadcasters has recently been re-emphasized by the Council of the European Union (see the Council Conclusions of 26 June 2000 - Official Journal C 196 of 12 July 2000, referring to the continued importance of the dual system of broadcasting in Europe).

### Technological developments

The broadcasting sector has undergone, and is still undergoing, profound technological changes, with the pace varying from one country to another. Firstly, encryption and conditional access techniques have made it possible for pay-TV to develop alongside more "traditional" free-to-air television. Secondly, digital technology is increasingly being used for the production and distribution of radio and television programmes. This makes it possible, *inter alia*, to provide even more programmes with the same technical capacity (thanks to the compression of signals), a case in point being the digital bouquets of thematic channels. It also permits better technical quality, particularly in terms of sound and images, as well as new services (such as interactive services or pay-per-view). Other factors are the increasing ability of computers to receive audio and video services, and the emerging possibility for consumers to have access to the Internet via their television set.

# Scope of the regulation (What is regulated?)

The present section briefly addresses the specific public service obligations of public service organizations as SGEIs<sup>4</sup>, starting with the concepts which usually prevail as regards other SGEIs.

<sup>&</sup>lt;sup>3</sup> Privatization needs to be distinguished from another trend: the development of commercial "arms" or subsidiaries of public service broadcasting organizations (e.g. BBC Worldwide Ltd.) with financial (or even structural) separation. This is a response to developments in the commercial broadcasting sector, diversification and vertical integration, and can also help to develop new sources of funding for public service broadcasting organizations (see below).

<sup>&</sup>lt;sup>4</sup> Other legal requirements are not covered, i.e. those corresponding to the protection of consumers (e.g. advertising practices, mandatory features of television sets) or to public interest policies (e.g. the protection of minors) or basic human rights (right of reply). From a general perspective, however, it cannot be denied that the latter requirements also contribute to the general interest objectives.

As mentioned in the introduction, one difference between public service broadcasting and other SGEIs is the absence of sector-specific harmonization rules at the European level, since competence for the organization, definition and funding of public service broadcasting remains with the Member States. (See the Protocol appended to the EC Treaty on the system of public service broadcasting.)

With respect to the services themselves, obligations on operators of SGEIs traditionally fall within the following main categories: price, quality, security, and universal access. To some extent, these requirement categories are relevant as regards the distribution of broadcasting services, subject to variations according to the networks concerned. The subscription price for a cable network service, for instance, is regulated in most European Union countries with CATV networks. Other requirements, such as the quality or the security of the distribution services, may also be regulated. The issue of universal access to networks is more directly relevant to public service broadcasting. Indeed, the national coverage often required from terrestrial networks corresponds to the requirement imposed on broadcasters to offer broadcasting services for all citizens. The must-carry system which exists in many countries, whereby public service programmes must be carried by CATV networks, tends to lead to the same result as regards cable television.

However, these criteria become less relevant - or, at least, less important - when considered in the light of the main subject of the regulation of public service broadcasting, i.e. the programmes distributed over networks. One example is pricing. There is no price directly paid by the listener or viewer of public service broadcasting programmes. There exists, rather, an indirect financial relationship between the licence-fee payer - or tax payer - and the programmes which he will be able to receive at home. Similarly, audiovisual programmes are not subject to specific security requirements. The same also applies to the technical quality of programmes, which is not a major subject of public service obligations, even regarding digital broadcasting.

Public service obligations for public service broadcasting are focussed on the content of the programmes to be provided. This appears to be due to the audiovisual media nature/component of broadcasting. In other words, the impact of the broadcasting media on, and their potential contribution to, such values as the democratic opinion-forming process and social and cultural life and cohesion are felt to be such that at least one broadcasting organization should have as its main

task the provision of programmes contributing to these values to the greatest extent possible. This specific characteristic of public service broadcasting has been recognized in EU law, where a Protocol appended to the EC Treaty mentions that public service broadcasting is directly linked to the democratic, social and cultural needs of each society, and to the requirement of preserving media pluralism. Moreover, contrary to the situation with other SGEIs, the EU has no competence to define what the public service obligations of a public service broadcaster may be.

It follows on logically from the above that there is great diversity in the scope of national rules governing the content of public service broadcasting programmes and services, depending on the specific cultural, political and social features of a given Member State.

# 3. Methods and instruments used for its regulation (How is it regulated?)

The starting-point for regulating public service broadcasters is the law, since in most cases public service broadcasting is provided by public service organizations. It may even be the Constitution in cases where the right to public service broadcasting is provided for as a basic constitutional right (e.g. in Germany and Portugal).

Despite the variety of national traditions, it may be said that generally speaking such laws provide for a rather broad definition of the public service, in terms of both mission and structure.

These points are sometimes set out in further detail in agreements between the Member States and the organization.

Provisions are also included to define the controls and procedures to which public service broadcasters will be subject. These controls may be made either by specific supervisory boards or by the authority specifically responsible for the broadcasting sector. In some cases there exists political control too, in that the realization of objectives is also subject to annual evaluation by the national Parliament. Furthermore, most countries have independent bodies which supervise public service broadcasting organizations. A recommendation of the Council of Europe identifies the competences and the status that these bodies should have. 9

As already mentioned, public general interest requirements and objectives are related to democratic, social and cultural requirements. These need to evolve over time but also in accordance with the development of technology. As a consequence, it is difficult to specify quantifiable criteria for assessing performance.

<sup>&</sup>lt;sup>5</sup> From the economic viewpoint, it cannot be denied that, through the payment of the licence fee or tax, or even through payment for goods and services advertised on television and radio, there is an indirect financial contribution which, to a certain extent, may be compared to the flat subscription paid for a telephone connection or water supply. This is not, however, a price as such. Nevertheless, it should not be excluded that, in the future, some form of direct payment will be required as regards, for instance, access to thematic channels or specific programmes. (See also the paragraphs on the funding of these services, below.)

<sup>&</sup>lt;sup>6</sup> Although there have been exceptional cases where viewers have suffered harm from watching television programmes (for instance, where these include stroboscopic images).

This does not mean that public service broadcasters may be subject to certain requirements in terms producing and offering programmes corresponding to specific formats (e.g. HDTV, 16:9).

<sup>&</sup>lt;sup>8</sup> Protocol No. 32 on "the system of public service broadcasting in Member States", adopted in 1997.

<sup>&</sup>lt;sup>9</sup> Recommendation of the Committee of Ministers No. R (96) 10 on the guarantee of the independence of public service broadcasting, adopted on 11 September 1996.

This has resulted in Member States providing not so much for quantifiable criteria as (primarily in fact) for organizational and procedural safeguards for assessing the performance of public service broadcasters. Such safeguards offer the "evaluator/assessor" sufficient freedom to interpret the activities of the broadcaster(s) in the light of developments.

#### 4. Assessment of the models

In view of the requirements applicable to public service broadcasters, the extent to which regulation succeeds in implementing them may be measured against the following criteria: independence, adaptability, flexibility, efficiency and proportionality. The guarantee of adequate funding is a fundamental criterion against which regulation must be evaluated, and in view of its importance a specific section will be devoted to this issue.

#### Independence

Public service requirements, such as objective information and pluralism, imply that public service broadcasting should be independent from the political and administrative institutions. Ouch independence would not be guaranteed where funding was excessively dependent on the goodwill of governments and parliaments. The same is also valid as regards independence from commercial pressures, which would result in broadcasters refraining from making and offering programmes intended for small numbers of viewers or listeners, such as demanding or controversial programmes or cultural output.

#### Adaptability/flexibility

Because of changing circumstances, such as the expectations of viewers and listeners, or the ever faster rate of technological change, it is important for public service broadcasting to be flexible and able to adapt. Important indicators include the possibility provided in regulations to offer new programmes or services, and the ability to enter into partnerships with companies in the technological field.

#### Efficiency

Efficiency is another important criterion for assessing regulation. Applying this economic concept to public service obligations implies that financial, technical or human resources are regulated in such a way as to provide the best possible service with the fewest possible means. For instance, a regulatory system which leaves sufficient scope for administrative or management autonomy may be said to be more efficient than a system wherein any initiative must be explicitly laid down in law, and thus by definition subject to burdensome procedures out of keeping with a market-driven approach.

#### Proportionality

With respect to broadcasting, proportionality may be regarded as twofold. Firstly, as in the case of other SGEIs, it means that only the rules that are strictly necessary should be imposed upon - or maintained for - public service broadcasters. Thus the maintenance or introduction of costly or burdensome mechanisms for systematically controlling, for instance, pluralism or ethical standards of information should be abandoned in favour of self-regulation and complaint-based systems, if the latter prove that they achieve the same results. Secondly, in view of the contribution made by broadcasting to the fundamental freedom of expression as laid down in Article 10 of the European Convention on Human Rights, proportionality may also be seen from the viewpoint of the balance between the objectives pursued by a given rule and its impact (or limitation) on freedom of expression.

#### B. Funding of SGEIs in the broadcasting sector

#### 1. Methods of funding

Various models exist in Europe for the financing of public service broadcasting, from a licence fee paid by every viewer and listener to no public funding at all and recourse to advertising and other commercial revenue. (Advertising and other commercial revenue are obviously not a form of public funding in the strict sense of the term.) The most common model, however, is a mix between those two models of funding, i.e. licence fee revenue complemented by advertising and other commercial revenue.

#### Licence fees paid by listeners/viewers

The licence fee or broadcasting fee is a mandatory fee or levy which has to be paid by viewers and/or listeners receiving, or equipped to receive) radio and/or television broadcasting services and whose receipts are used for funding public service broadcasting. The licence fee exists in most Member States. If it is collected by public authorities, third parties or by the broadcasters themselves. In countries such as Germany and Denmark there is a direct transfer to the public service broadcaster.

The level of the licence fee is fixed in law by Parliament (e.g. in the United Kingdom, France and Germany) or by virtue of the law, i.e. by the Government implementing the criteria specified by law. A Recommendation of the Council of Europe provides Member States (thus including the Member States of the European Union) with useful guidelines on the criteria for determining the level of the licence fee, such as the prior consultation of the public service broadcaster in question, the continuity of its activities, and the necessity of long-term planning.<sup>12</sup>

<sup>10</sup> Council of Europe Recommendation of 1996.

<sup>&</sup>lt;sup>11</sup> Exceptions are Spain, the Netherlands and Luxembourg.

<sup>&</sup>lt;sup>12</sup> Council of Europe Recommendation of 1996.

#### Franchise fees paid by commercial operators

In Finland, an extra-budgetary "State Television and Radio Fund" has been set up to collect both a licence fee paid by the viewers for the use of a television set and a concession fee paid by commercial radio and television operators. The latter fee is a proportion of the advertising and sponsorship revenue and other income of these broadcasters. Part of the income generated is used to finance the activities of the Finnish public service broadcaster. The counterpart of this system for the public service broadcaster is a ban on advertising and sponsorship.

#### State budgets

State budgets are used as a main source of funding in only a very few countries. The main reason appears to be the lack of independence and long-term certainty that such a system can create. However, it is still being used in various countries, especially where the licence fee does not exist (Spain, Luxembourg and Portugal as regards television<sup>13</sup>) or where it needs to be complemented in order to make it possible for the public service broadcaster to fulfil its public service mission. The above-mentioned Council of Europe Recommendation is also applicable to state budgets.

Radio and television advertising/sponsorship of programmes and other commercial revenue

Advertising remains the main complementary source of revenue for public service broadcasters in the great majority of Member States, despite an overall decrease. That decrease may be attributed to competition from commercial broadcasters on the same advertising markets, as well as to stricter rules applicable to public service broadcasters. <sup>14</sup> The sponsorship of programmes <sup>15</sup> also results in complementary revenue (though to a much lesser extent - around 10-15% of advertising income), particularly for certain programmes, such as game shows with prizes and sports broadcasts. As in the case of advertising, public service broadcasters are subject to stricter limits than are commercial broadcasters. To a limited but growing extent, additional commercial revenue is derived from other sources, such as merchandizing, the sublicensing of programmes and programme sales.

<sup>13</sup> In the Netherlands, the licence fee was recently transformed into a specific tax, in order to reduce the collection costs associated with a separate licence fee.

#### 2. Assessment of the methods of funding

#### Criteria

The various methods of funding described above all have advantages and disadvantages. These may be explained in terms of stability (the guarantee of a certain level of funding), predictability (the legal security provided by a given method), independence (not only from public authorities but also from commercial pressures), dynamism on the market, and the impact on competition.

#### Assessment

Revenue from the licence fee is both stable and predictable. If adequate procedures are in place (e.g. objective and independent decision-making), the licence fee model guarantees a high level of independence vis-à-vis both public authorities and commercial pressures. There is no problem concerning competition on advertising markets. However, it is not very dynamic, as it is not directly based on the market, and its growth is limited (the number of licence fee payers does not increase substantially).

In contrast, the franchise fee system (pro memoria, it exists only in Finland) is neither very stable nor predictable, since it mainly depends on the revenue of various parties within the market. Independence (from public authorities and commercial pressures) may be said to be adequate. Revenue is dynamic and grows in keeping with the market, while no competition problems arise since public service broadcasters are not directly present on advertising markets. The main disadvantage seems to be that the turnover of national private broadcasters may not represent a sufficient share of the effective audiovisual landscape of a country if, for example, foreign broadcasters active in the country, or other (new) media, are left aside. This would in turn imply that insufficient revenue could be made available.

The State budget method of financing public service broadcasting is considered both less stable and less predictable, since it usually depends on annual decisions by public authorities. For the same reasons, it is also more dependent on politics, while dependence on commercial pressures is low. The same applies to competition with private broadcasters. It is not *per se* dynamic, since it is not linked to the market. However, it may be adaptable fairly quickly, although in practice this latter point will be counter-balanced by the relative weight of public service broadcasting among other budgetary considerations to be taken into account by public authorities when fixing the overall budget. As in the case of the licence fee, procedural safeguards may greatly improve the workability and practical value of such a method.

The advertising model and other commercial sources should be regarded as dynamic yet unstable and unpredictable. Dependence on politics is low, while the degree of dependence on commercial pressures is rather high. Competition on

<sup>&</sup>lt;sup>14</sup> The restrictions may go as far as an advertising ban on certain channels (e.g. in Germany and Belgium).

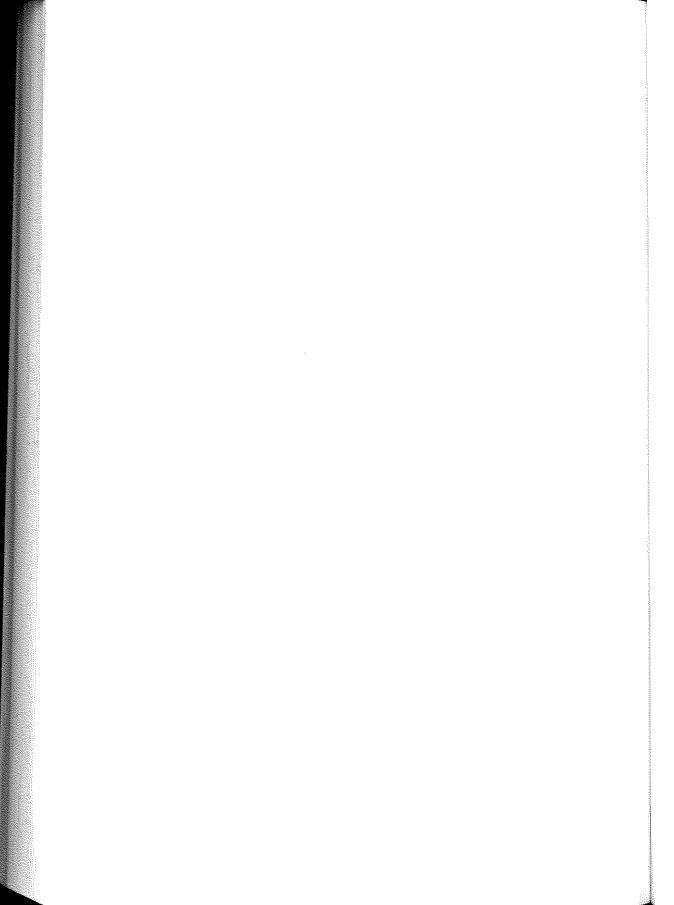
<sup>15</sup> The 89/552/EEC Directive ("Television without Frontiers") defines sponsorship as "any contribution made by a public or private undertaking not engaged in television broadcasting activities or in the production of audiovisual works, to the financing of television programmes with a view to promoting its name, its trade mark, its image, its activities or its products". A typical example of sponsorship is the mention of the name/trademark/logo of a company at the beginning and/or at the end of a programme.

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advertising and other markets will also be an issue. Diversification of commercial sources may be an important factor for counter-balancing the instability and the dependence on commercial pressure.

In conclusion, it should be recalled that, in practice, more than one method of funding is used in almost all European Member States. This is called mixed funding. The usual situation is for licence fee income to be complemented by advertising and other revenue. Provided that the right safeguards are put in place for each of the methods used, the disadvantages of one method may be counterbalanced by the advantages of the other. With respect to the mixed system of licence fee and advertising revenue, the stability and predictability of the licence fee system may be complemented by the dynamism and (potentially high) growth resulting from complementary advertising income. Finally, the specific features of each Member State (e.g. the size of the market and the diversity of cultures represented) should also be taken into consideration before any definitive attempt is made to assess in practice the pros and cons of a particular method of funding.

IV. SEMINAR



# Guidelines for the CEEP/CIRIEC Seminar Brussels, May 10-11, 2001

The seminar (one and a half day long in plenary session) essentially aims at presenting the results of the preparatory work in four thematic workshops and at confronting the findings in a public debate in presence of external key figures (representatives of the European Commission, managers, etc.).

Each workshop would be structured in three parts: introductory report to allow all participants to understand the issues at stake; reactions and external points of view on behalf of experts and special observers, one of them might make a theoretical criticism of the report presented; panel debate.

A more general address could encompass thoughts on the Charter of fundamental rights with access to services of general interest as a component of these rights, but also discuss the potential legal effects of Article 16.

The theme of the debate in each workshop will be ultimately decided upon considering the speakers chosen for the discussion. Concerning their selection, preference should be given on one hand to at least a field specialist, on the other to an academic, a member of a regulatory structure, a representative of consumers' association or of the unions or even the author of a ministerial report. Practitioners from outside Europe (Americans, Swiss for example) could usefully enrich the debate, notably on the problem of performance assessment.

Nevertheless, here are already some suggestions for the debate themes in the workshops:

- Workshop 1 Regulation: A European regulator? What would be its composition, role and tasks? What would be its place and relations with national regulators?
- Workshop 2 Financing: How does the financing of public service obligations influence competition issues? How do funding modes of public service obligations affect the provision of services?
- Workshop 3 Performance assessment: How to develop a dynamic to assess performances? With which actors and according to which criteria?
- Workshop 4 Good practices: How to organise the dissemination of interesting good practices in order to improve the quality and efficiency of services of general interest?