

A NEW IMPETUS FOR PUBLIC SERVICES IN EUROPE

ENSURING LEGAL CERTAINTY,
LOCAL AUTONOMY AND CITIZENS' RIGHTS



Foreword

High quality public services, accessible to all, are at the heart of the European vision of a well-run society. If the EU can get public services right, it will offer a powerful example of what a Citizen's Europe can mean in practice.

In recent years, many Europeans have begun to express doubts about the nature and destination of the European project. They want to know whether the European vision is about more than just a common internal market. And they worry that the European Union may be a threat to national, regional or local autonomy. On public services, those fears are not entirely groundless.

The EU has no clear legal framework on public services, but highly detailed legislation and Treaty provisions on the internal market. So, whenever questions have arisen about applying European rules on competition, public procurement etc. to public services, it is the principles of the internal market which have guided the decisions of the Commission and the European Court of Justice.

In a Citizen's Europe, public services should answer to the logic of public interest, not of the free market. And public authorities – whether at national, regional or local level – must be free to organise public services in their own way for their own citizens. But that can only be achieved, and legal certainty created for public authorities, public and private service providers and citizens if at European level a clear legal framework defines the relationship between the provision of a public service and the rules of the internal market.

That is why the PES Group is making this proposal for a European framework directive on services of general economic interest. We shall use it to launch a public debate with service providers, public authorities, citizens' groups and all who share our vision of a Europe that is more than a market, a Europe in which good public services are part of what makes a good society and a Europe in which diversity and local autonomy flourish. We hope to build a coalition of European voices to which the Commission and the Council will be forced to listen. If you share our vision, please support this campaign. You can take a first step by contacting us at our e-mail address PSE.publicservices@europarl.europa.eu.

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 - European Economic and Social Committee
 - Committee of the Regions
 - European Federation of Public Service Unions (EPSU)
 - European Centre of Enterprises with Public Participation and of Enterprises of General Economic Interest (CEEP)
 - Council of European Municipalities and Regions (CEMR)
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Introduction

European Socialists call for European Legal Framework for public services

Access to high-quality public services is a key political issue. Good schools and hospitals, clean water, safe and reliable transport and energy, for example, figure in most definitions of a good quality of life. Now the PES Group in the European Parliament is calling for action to safeguard and enhance public services throughout the European Union.

The importance of public services

Public services are not only an essential element in the quality of life of individual citizens. They have a key role to play in the EU's flagship Lisbon strategy, which aims to build on the strengths of Europe's social and economic model to create the world's most dynamic, cohesive and sustainable economy. Good public services can help to overcome economic stagnation, social exclusion and isolation; strengthen social and territorial cohesion; and improve the functioning of Europe's internal market and its external competitiveness.

High-quality public services – open and transparent, with equal access for all – are therefore essential elements in the European model of society. Market forces alone cannot ensure the public services we need. That is why public authorities at every level are deeply involved in providing, regulating, organising or – to various degrees – financing or supporting such services. It is not the EU's job to interfere in the provision of such services – instead, we must insist that the EU should create a legal framework which allows public authorities at every level to do their job of safeguarding the public interest in provision of these services. And the EU has also a role to play in guaranteeing adequate standards across the European Union, making good public services a tangible expression of European citizenship.

Different National Traditions

Throughout Europe, good public services are seen as an essential element in a civilised society. But national traditions – what is provided, how and by whom – vary greatly, creating misunderstandings and confusion about what exactly is meant by public services and a reluctance even to attempt to develop common European criteria and guidelines.

National, regional and local authorities are attached to their autonomy to define their policies for their citizens in their own way. But in practice they are often confronted with interference by the European Commission or by the European Court of Justice, which have judged their activities from the perspective of the EU's internal market rules – for example, deeming cross-subsidisation to be contrary to state aid rules; imposing onerous public procurement obligations; or treating some public service obligations as barriers to the European single market.

This experience has shown that we have neither effective safeguards for local autonomy, nor the legal certainty which public service providers, public authorities, private businesses and service users need. These are the central problems which a European framework directive must address.

What are public services? Grappling with law and jargon

Different people mean different things by 'public services'. Some people think of public services as being those provided, or financed, by the public sector. For others, the key criterion is whether they are provided 'in the public interest' ... and in this complicated debate, many other definitions have been offered.

In the PES Group's proposal for a legal framework, we talk about 'services of general interest' (SGI's for short), because we are concerned about services where there is a wider public interest in their availability, quality and accessibility, regardless of whether they are publicly owned. And in line with Article 16 of the EU Treaty, we talk also about 'services of general economic interest' (SGEI's) – which are those most likely to be affected by Europe's internal market rules.

The idea behind Article 16 is to single out those services which could significantly affect the operation of the single market, because they are economic in character, from non-economic services which do not. Non-economic services, including for example police and the administration of justice, are seen as matters wholly for national and sub-national government, on which the EU has no competence. Unfortunately, current EU law gives no clear guidance on how to distinguish between services of general economic interest, services of general interest and other services – which means that it is not clear, in individual cases, whether and to what extent EU rules on the single market apply.

The aim of an EU framework directive must be to clarify the situation, in order to **safeguard local autonomy, and the principle of subsidiarity**, by defining the relationship between – on one hand – single market rules and – on the other – the pursuit of public interest objectives in the provision of those services of general interest which do have a significant economic dimension and could affect the operation of the single market. Following Treaty usage, we shall call the latter Services of General Economic Interest.

Confusion and uncertainty in Current legislation

Although the proposed Constitutional Treaty, once ratified, would provide constitutional safeguards for services of general interest, detailed legislation – accumulated over many years – leaves great practical uncertainty, because the Treaty sets out only the most general principles governing public services¹, whereas there is a detailed body of EU legislation interpreting and implementing its single market provisions.

It is not clear to what extent services of general interest or general economic interest are covered – for instance – by competition law, single market legislation, or rules designed to regulate subsidies or open up public procurement. The law evolves through the – often unpredictable – twists and turns of Commission or European Court judgments. And the liberalisation of various public services networks over the years – such as telecoms, posts, energy and rail – has been based each time on different rules, adding to the legal complexity and uncertainty.

Several Court judgments have called into question the methods of organisation and financing chosen by town councils. This was notably the case for a bus service in a German canton (Altmark judgment), and for energy services or even municipal heating services in certain Italian districts (Conane and Teckal judgments). The Commission, for its part, has initiated proceedings against several Member States to contest the operation by their administration, or their authorities, of local services as various as museums (in Germany), ambulance services (Tuscany), or water treatment (Hamburg).

Thus, in the vacuum left by the European legislator, the Court of Justice through its jurisprudence sets the rules of financing, of operation and delegation, of concession, of public-private partnership, of organisation of semi-public companies, for local public services, to the detriment of the choices made by elected local authorities in accordance with the mandate they have received from the citizens.

Without a clear legal framework, the financing and management of public services in Europe depend on the unpredictable development of case law and judicial interpretation. The Commission's recent Green and White Papers on Services of General Interest, and the Communication on

¹ Broadly, that the EU and Member States must ensure the conditions in which operators of so-called 'services of general economic interest' (see next section) can fulfil the public service objectives assigned to them.

Social Services of General Interest², have disappointed those who hoped for a new, surer legal base for public services: the Commission documents say nothing about the possible content of a European legal framework on public services.

Our Call for Action: a sure legal base for Europe's public services

To safeguard services of general interest and put an end to legal uncertainty, Europe needs – without delay, and in parallel to current work on the broader Services Directive – a general EU legal framework for public services, complementary to existing sectoral and national provisions, and introduced on the basis of joint decision-making with the European Parliament.

The new legal framework must:

- clarify the division of responsibilities between the EU and Member States
- introduce criteria for a clear distinction between services of general 'economic' and 'non-economic' interest, to which different legal provisions apply
- enshrine the sovereignty of local authorities in the design and management of the public services for which they are responsible
- guarantee citizens' right to a local input, ensuring that their needs, claims and problems are examined promptly and directly, and protecting consumer and civil rights
- respect the need for specific sectoral legislation for some services, and establish a clear relationship with such legislation, and with the Services Directive currently before the Parliament
- guarantee respect for the principles of transparency; openness; solidarity; a high quality of service; universality; equality of access; partnership with civil society; workforce participation; and a role for the 'third' sector
- clarify the principles governing the funding of public services.

The actual definition, formulation, organisation and funding of services of general interest, whether economic or non-economic, must remain a task for Member States and their regional and local authorities. Subject to meeting the key standards and criteria set out above, the PES Group envisage the widest variety of solutions for the provision of services at local level, responding to local needs.

² COM (2003) 270, COM (2004) 374, COM (2006) 177.

Breaking the deadlock – a draft Framework Directive

Despite repeated calls from the European Parliament, and from the Barcelona European Council of 2002, the Commission has failed to produce legislative proposals for services of general interest and general economic interest. They have repeatedly stalled, claiming that the subject is simply too complicated, that a Directive cannot address the many problems while taking account of the hugely differing national traditions in this area. The truth is that the present Commission is in thrall to a narrow, neo-liberal agenda: their difficulty with services of general interest is that they have no interest in legislation which sets limits to the sway of markets. Public services are not their priority.

It is time to call the Commission's bluff. To answer their claim 'it can't be done', the PES Group has done it. Last September, the PES Group appointed a group of independent legal experts³ to draft a European Framework Directive on public services. We also invited a wide range of organisations representing service providers, public authorities and service users to contribute to the group's work⁴. The expert group met three times, together with the participating organisations, and in February 2006 presented an outline framework directive, for debate, to a public seminar hosted by the PES Group.

The Group, with the help of external legal expertise, then finalised the draft framework directive, which is now presented in this document.

Our draft aims to take account of the interests of all: of public authorities, public service providers, private business, and citizens. It is neutral as between large or small public sectors; between different sectors; between private or in-house provision of services; and between different national or local choices as to the type and quality of services offered. It provides simply a set of 'rules of the game' within

³ The group included Professor Stéphane Rodrigues – Professor of University Paris I and lawyer at Lallemand&Legros, Jean-François Auby – legal adviser for local public services (France), Jens Lattmann – legal adviser for German Local Government Organisation (Germany), Per Klok – senior international adviser for Danish Confederation of Trade Unions (Denmark), Professor Giuseppe Pericu, jurist, Mayor of Genoa (Italy)

⁴ European Commission, European Economic and Social Committee, Committee of the Regions, European Federation of Public Service Unions (EPSU), European Liaison Committee on Services of General Interest (CELSIG), Council of European Municipalities and Regions (CEMR), International Centre of Research and Information on the Public, Social and Cooperative Economy (CIRIEC), European Centre of Enterprises with Public Participation and of Enterprises of General Economic Interest (CEEP).

which national, regional and local authorities operate without undue interference from Brussels. At the same time it provides safeguards against misuse of these national and local competences for protectionist purposes.

Parliaments – Public Authorities – Service Providers – Citizens: let's build an unstoppable coalition for change

The PES Group will be carrying forward on twin tracks the campaign for a clear European legal framework for public services:

- Within the European Parliament, a PES Group Member, Bernhard RAPKAY, rapporteur on the Parliament's report on public services, which the EP adopted in September 2006. The Rapkay report will provide an opportunity to build support within the Parliament
- In parallel to the Rapkay report, the Group will use the attached draft legislative proposal as a basis for further increasing the pressure on the Commission and Council, and for mobilising a wider coalition of support among stakeholders.

The Commission has promised to give its response to the Rapkay report before the end of 2006: which gives us just a few short months to mount a strong campaign to ensure that their response will be to bring forward a satisfactory legislative proposal.

The objectives we have set out above – legal certainty, local autonomy, enhanced rights for citizens and users of public services – are widely shared, throughout Europe, by those who have a stake in good public services. In our contacts and discussions over the last year of intensive activity, we have been presented time and again with evidence of the urgent need for action to clarify the law. The publication of this draft directive is a first major step in building an unstoppable campaign for change, uniting users, providers, public authorities and elected representatives at all levels.

The PES Group calls on the European Council and the Commission finally to do the work which the European Parliament and European Council have asked them to do, by formally presenting legislative proposals to the Parliament and Council. Our next task is to demonstrate the breadth of support that exists for such action. We will call on the Council to demonstrate its readiness to reach agreement on an effective European legal framework for public services.

The PES group is sending copies of this document to the organisations with which we have worked until now – and, in addition, to all other major stakeholders, to other political Groups in the European Parliament and to national Governments and Parliaments in the Member States. The PES Group sees the draft legislative proposal as the basis for a wider debate. We would value all comments and input. Over the next few months we shall initiate direct, bilateral contacts with national Parliamentarians and interested organisations, including the organisation in autumn 2006 of a round table for all those interested in building the momentum for a European legal framework for public services. We are ready to listen to comments from all quarters; to collaborate with others – if so desired – on production of a revised, broad-based common text; and to agree on how we can all work together to intensify the pressure on the European Commission to come forward finally with legislative proposals and on the Council of Ministers to work with the Parliament on a legal framework to meet our common aims.

We have all waited long enough. It's time for the Commission and Council to deliver.

PES Group of the European Parliament

Brussels, November 2006

Proposal for a Framework Directive on Services of General Economic Interest Preamble

The European Parliament
and the Council of Ministers

Having regard to the Treaty
establishing the European
Community, and in
particular Articles 16, 86,
95 and 295,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Economic and Social Committee,

Having regard to the Opinion of the Committee of the Regions,

Acting in accordance with the procedure referred to in Article 251 of the Treaty establishing the European Community,

Whereas:

(1)¹ In the framework of the Lisbon Strategy designed in particular to consolidate the internal market of services, particular attention must be paid to the specific category of services which are services of general interest, that is, those which are placed under the control of a competent public authority within the framework of a system of public service or universal service obligations.

(2) It is necessary to distinguish between services of general interest which are, on the one hand those of a commercial nature and mainly financed by the user, which the EC Treaty qualifies as services of general economic interest (SGEI), and, on the other hand, those which are not of a commercial nature and are financed mainly by public or social funds, which may be regarded as services of non-economic general interest (SNEGI), such as services of general interest exercising exclusively social functions or prerogatives of public authorities.

¹ The principal objective of recitals (1) to (9) is to set out the content of the Proposal for a Directive through justifying its implementation by reference to the 'political mandate' referred to in Article 16 of the EC Treaty, which is addressed both to the Member States and to the Community institutions in order to ensure the effective operation of services of general economic interest in the internal market. Moreover, under recital (1) and (2), definitions are given for SGEI and SNEGI.

(3) Thus Article 16 of the Treaty recognises the place occupied by services of general economic interest in the shared values of the Union as well as their role in promoting the social and territorial cohesion of the Union. These services contribute to the principal objectives of the Community's task, which are laid down in Article 2 of the Treaty: a harmonious, balanced and sustainable development of economic activities, a high level of employment and of social protection, a high degree of competitiveness and convergence of economic performance, a high level of protection and improvement of the quality of the environment, the raising of the standard of living and quality of life, and economic and social cohesion and solidarity among Member States.

(4) Article 16 of the Treaty also clearly establishes a shared responsibility of the European Community and the Member States, each within their respective powers, to take care that services of general economic interest operate on the basis of principles and conditions that enable them to fulfil their missions.

(5) Declaration No 13 annexed to the Treaty of Amsterdam stipulates that Article 16 of the Treaty must be implemented '*with full respect for the jurisprudence of the Court of Justice, inter alia as regards the principles of equality of treatment, quality and continuity of such services*'.

(6) Therefore, in order to determine and complement this jurisprudence and thus comply with the requirements of Article 16 of the Treaty, and with a view to providing legal certainty for both the undertakings entrusted with operating services of general economic interest and the citizens who benefit from them, it is necessary to consolidate and clarify in this Directive the general principles and common conditions for the operation of these services.

(7) This consolidation and clarification is all the more necessary as it helps to reinforce each individual's right to access services of general economic interest, as provided for in Article 36 of the Charter of Fundamental Rights of the European Union, in line, in

particular, with the principle of solidarity and, more generally, the constant desire to respect all of the rights and freedoms enshrined in the Charter.

(8) The proliferation of sector-specific texts on the opening up of the internal market in services of general economic interest reveals some confusion, not to say conceptual contradictions, which are the source of disputes and litigation. This needs to be remedied by introducing a horizontal legal framework to specify and stabilise common concepts and principles, in order to improve the legal environment of sector-specific legislation regarding services of general economic interest and provide greater legal certainty for the benefit of national, regional and local public authorities as well as benefiting citizens and undertakings entrusted with managing or providing them.

(9) This Directive seeks to complement the application of the rules of the internal market and the rules on competition to services of general economic interest through common rules that guarantee protection of the general interest and the satisfaction of the users and consumers of these services. This Directive will therefore respect both the spirit and the letter by fully applying Article 86(2) of the Treaty, which states that undertakings entrusted with the operation of services of general economic interest shall be subject to the rules contained in the Treaty, in particular to the rules on competition, in so far as the application of such rules *'does not obstruct the performance, in law or in fact, of the particular tasks assigned to them'*. In this respect, it is important to remember that the objective of this provision, as reiterated by the Court of Justice, is to *'reconcile the Member States' interest in using certain undertakings, in particular in the public sector, as an instrument of economic or fiscal policy with the Community's interest in ensuring compliance with the rules on competition and the preservation of the unity of the common market'*, and that its conditions of application seek to allow undertakings entrusted with the operation of services of general economic interest to perform the tasks assigned to them without obstruction, in law or in fact, resulting from the rules of the Treaty and without affecting the development of trade to such an extent as would be contrary to the interests of the Community.

(10)² This Directive applies to all public authorities or entities delegated by a public authority where the latter seeks to lay down public service obligations for the performance of specific tasks likely to be entrusted to undertakings operating services of general economic interest within the meaning of Articles 16 and 86(2) of the Treaty.

(11) This Directive is not intended to apply to services of general interest which do not have an economic nature and which are not open to competition; the directive applies only to undertakings entrusted with the operation of a service of economic general interest.

(12)³ This Directive applies without prejudice to the sector-specific Community legislation that already sets out the rules applicable to services of general economic interest in order to take account of the specific characteristics of the sectors concerned. Nonetheless, this Directive requires a prior analysis of the impact of its provisions on the operation of services of general economic interest in respect of each of the Commission's proposals to amend one of these sectoral instruments or to establish a new instrument in the area of services of general economic interest.

(13)⁴ This Directive does not in any way prejudice the regulation of services of general economic interest in accordance with the division of competences between the Member States and the European Community and the principles of subsidiarity and proportionality provided for in Article 5 of the Treaty. In this respect, and as reiterated by the Court of Justice, 'the Member

² Recitals (10) and (11) relate to the Directive's scope as described in Article 2 of the text and with reference to the definitions in Article 3 of the text.

³ Recital (12) relates to the links between this directive and other existing provisions in secondary Community law, as explained in Article 5 of the text.

⁴ Recitals (13) to (15) deal respectively with Member States' and the European Community's spheres of action with regard to the definition, transfer, operation and financing of services of general economic interest, as explained in Article 4 of the text.

States have broad discretion in defining what they consider to be services of general economic interest'. Their definition may only be called into question by Community law in cases of obvious error. This power of discretion must apply to both the definition of services of general economic interest by the Member States and the method of allocation of these services. To this effect, it is important to recall the Community case-law that stipulates that *'neither the wording of Article 86(2) of the EC Treaty nor European jurisprudence concerning this provision imply that a task of general interest can only be assigned to an operator following a tender procedure'*.

(14) This Directive shall be implemented in accordance with Article 295 of the Treaty without prejudice to the public or private nature of the operation of services of general economic interest and does not encourage the Member States to liberalise such services. In this respect, this Directive seeks to encourage diverse forms of management and partnership between public authorities, at both national and local level, service operators, social partners, and users and consumers, in accordance with the Member States' competence for furnishing, and ensuring execution of, these services.

(15) To enable the operators of services of general economic interest to discharge their functions, this Directive shall establish the minimum, common requirements for financing these services, without prejudice to the competence of the Member States with regard to financing these services, taking into account, in their implementation, the decision of the Commission n°C(2005) 2673 of 28 November 2005 regarding the application of the provisions of article 86, paragraph 2, of the treaty of State aid in the form of compensation for public service, granted to certain undertakings entrusted with managing services of general economic interest⁵.

(16)⁶ This Directive contributes to the implementation of the priorities for Community action with a view to 'better lawmaking' and seeks to make the economies of the Member States even more competitive. It aims to improve the mechanisms for evaluating and supervising the performance of services of general economic interest, with regard, in particular, to the shared principles and operating conditions set out in the Directive, always with a view to improving the quality of the service provided to citizens and users as a whole. The evaluation procedure set out for this purpose may be used as a basis for drawing up Community quality standards for services of general economic interest whose activities have an impact on the development of trade between Member States.

(17) In this way, this Directive also contributes to the Community objective of a high level of consumer protection by ensuring that those benefiting from and using services of general economic interest will see their right to information enhanced, their economic interests properly taken into consideration and their right to make an effective claim recognised should the common principles laid down by this Directive not be complied with.

⁶ Recitals (16) and (17) state and justify the provisions of the directive concerning the evaluation of services of general economic interest and the protection of consumers of these services.

Have adopted this directive:

CHAPTER I⁷

GENERAL PROVISIONS

Article 1 – Subject

1. This Directive lays down the general principles and appropriate conditions for the smooth operation of services of general economic interest in the internal market, thus contributing to fair, high-quality access for all service users and greater legal certainty for both national, regional and local public authorities as well as the undertakings entrusted with operating these services.
2. The principles and conditions set out in paragraph 1 of this article cover, in particular, the rules governing the operation, management, supervision, evaluation and financing of services of general economic interest.

Article 2 – Scope

This Directive shall apply to services of general economic interest whenever a competent authority at national, regional, local or community level imposes public service or universal service obligations on a service provider exercising an economic activity.

⁷ The content of this chapter focuses on the type of services to be governed by the Directive, namely services of general economic interest. It defines the subject of this Directive by laying down the general principles and appropriate conditions for a smooth operation of these services in the internal market. Furthermore, all the definitions used in the application and interpretation of the Directive are given in this chapter, under Article 3, including what have been presented until now as the common principles of operation and to which we will refer in a specific chapter. The definitions proposed are taken mainly from Community case law (notably the Corbeau, Commune d'Almelo and EDF/GDF judgments) and from secondary Community legislation either currently in force (especially the Electricity, Gas and Postal Directives) or to be implemented (Proposal for a Regulation on public transport services). Moreover, under Article 4 it is made clear that the principle of subsidiarity is not called into question and that it is up to the Member States to define these services and to decide how to organise, regulate and finance them. However, Article 4 underlines the power of the European level to lay down a system of public services and universal service obligations in the interest of the internal market and consumers and to ensure the proper functioning of cross-border services in this respect. Finally, Article 5 makes clear that this horizontal directive will not replace any sectoral community instrument in this context, but that any provisions of the Service Directive, which are incompatible with the present proposal, would not apply to services of general economic interest.

Article 3 – Definitions

In the implementation of this Directive, the following definitions shall apply:

- a) 'Accessibility': the right to benefit from a specified service, whatever its location, in a specified area, in accordance with the conditions specific to the sector in which the service is likely to be offered and supplied; and, where necessary, the right to access an infrastructure or network operated by a single operator and essential for the supply of the specified service.
- b) 'Economic activity': any real and effective activity which consists of supplying, in a specified market, goods or a service in response to a demand.
- c) 'Adaptability': ability of service providers to develop the service in line with the economic and technological developments of the context in which this service is supplied.
- d) 'Competent authority': any community, national, regional or local public authority with the power to specify the public service obligations and impose them on suppliers of a service.
- e) 'Affordability': reasonable, transparent, non-discriminatory, easily and clearly comparable price for the supply of a service.
- f) 'Public service compensation': any benefit, particularly financial, granted directly or indirectly by a competent authority from public funds during the period of implementation of the system of public service obligations, universal service or individual obligations or in connection with that period.
- g) 'Continuity of service': permanent supply of the service to the public under the conditions set out by a competent authority.
- h) 'Public service contract': a legally binding act confirming agreement between a competent authority and an enterprise over which the competent authority does not exercise a control analogous to that which it exercises over its own services, with a view to entrusting the latter with the management and operation of a service of general economic

interest; this may include in particular acts of concession, association, public- private partnership or foundation:

- taking the form of an individual legislative or regulatory act, or
 - containing conditions under which the competent public authority takes on the direct operation of the service.
- i) **'Exclusive or special right'**: category of rights as laid down by Commission Directive No 80/723/EEC of 25 June 1980, amended, on the transparency of financial relations between Member States and public undertakings.
 - j) **'Sustainability'**: characteristic of a method of management or supply of a service which has regard to respect for the environment through a judicious use of natural resources in order to manage them in the long term.
 - k) **'Equality of treatment'**: right to benefit from a service under conditions which do not discriminate between similar categories of users.
 - l) **'Public service compensation fund'**: body set up by the competent authority with a view to providing the financing for a service of general economic interest, independent of these beneficiaries and funded by contributions from the operators in the market in which the operator and/or supplier of this service participates.
 - m) **'Public service obligations'**: specific requirements a competent authority may impose on the supplier of a service in order to ensure that the general interest objectives which have been clearly set out in advance by the public authorities in an express measure are satisfied.
 - n) **'Long-term planning'**: long-term planning and organisation of production and/or supply and/or transportation capacity of undertakings entrusted with a service of general economic interest, with a view to satisfying the demand of the network on which supply of this service depends and to ensure that consumers of the service receive their supply.
 - o) **'Specified quality'**: quality as defined in advance by a competent authority in compliance, where appropriate, with standards drawn up by the European Community.

- p) 'System of public service obligations': all the binding rules laid down by a Member State or by the European Community concerning the public service obligations which the operator or supplier of a service of general economic interest must comply with.
- q) 'Universal service arrangements': system of public service obligations laid down by the European Community intended to harness the requirement for universality to the specific characteristics of some services of general economic interest.
- r) 'Security': both the security of supply of a service and the technical security which the supply of the service and, if possible, the operation of the network on which this service depends must possess.
- s) 'Security of supply': ability of the supplier of an energy service to supply this service to users in accordance with the continuity conditions previously laid down by a competent authority.
- t) 'Service of general economic interest': service activity of a commercial nature, mainly financed by the service user and placed under the responsibility of a competent authority in the framework of a system of public service or universal service obligations.
- u) 'Universal service': service which meets the requirement of universality.
- v) 'Universality': right to be a beneficiary of a service of a specified quality and at an affordable price in the whole of a specified geographical area.
- w) 'User' : beneficiary or consumer of a service of general interest or a service of general economic interest.

Article 4 – Shared responsibility of Member States and of the European Community

1. The competent authorities of the Member States are free to define what they consider to be services of general economic interest and have broad discretion to decide how to organise, regulate and finance these services, subject to compliance with the definitions and principles set out in this Directive and to ensuring that the system applicable to these services does not affect exchanges between Member States to a degree contrary to community interest and beyond what is necessary for the good functioning of these services.
2. The competence of Member States set out in this article is without prejudice to the power of the European Community to lay down, to the extent necessary, a system of public service and universal service obligations in the interest of the internal market and of consumers and users of a service of general economic interest.

Article 5 – Relationship with other provisions of Community law

1. Application of this Directive shall not prevent the application or the adoption of provisions of sectoral Community instruments concerning services of general economic interest governed by those provisions.
2. The horizontal nature of the provisions of this Directive excludes the application of any other Community provisions of a horizontal nature concerning services in the internal market where they are incompatible with these provisions.

CHAPTER II⁸

TRANSFER OF SERVICES OF GENERAL ECONOMIC INTEREST

Article 6 – Free choice of operation method

All competent authorities are free to choose how to manage a service of general economic interest and in particular to associate themselves with other competent authorities and decide whether to take on the direct operation of a service alone or with other competent authorities or to outsource its operation totally or partially.

Article 7 – Direct operation

1. Direct operation of a service of general economic interest involves the operation of the service by the competent authority using its own means or through a legally distinct entity over which the authority exercises complete control, similar to the control it exercises over its own departments. Control is deemed to be analogous when the entity cannot take any strategic or important decision without or against the opinion of the competent authority.
2. In the event of recourse to the direct operation of a service of general economic interest, the competent authority, or the separate legal entity which it controls and which manages the service on behalf of the competent authority, shall refrain from any involvement in the operation, supply or financing of any similar service of economic interest outside its territorial jurisdiction.

⁸ Rather than setting out individual provisions on SGEIs' methods of operation or devolution and thus risking an incursion into contract law and public contract law, this chapter starts from the presumption that the services will be freely administered by the public authorities, which means a choice between two categories of operation method: direct operation (Article 7) and outsourced operations (Article 8). The only constraint is therefore the use of a contractual instrument to define the scope and effect of the public service obligations. In particular, under Article 8, the directive clarifies the situation for SGEI in relation to public procurement provisions and supports new ways of management of SGEI, linked to article 3(h).

Article 8 – Outsourced operation

1. Outsourced operation of a service of general economic interest is the delegation by the public authority, on the basis of a public service contract, of the operation of this service to a legally distinct entity over which it does not exercise a similar control to that exercised over its own departments.
2. The public service contract, apart from the exceptions referred to in paragraph 3 of this article, must be established with respect for the principles of non-discrimination, fairness, publicity and transparency and, where applicable, in accordance with the Community provisions governing public procurement procedures.
3. As an exception to the previous paragraph, a competent authority may decide to grant a public service contract without using a tender procedure. The Commission, after following the consultation procedure set out in Art. 22.2 of the present Directive, shall specify the categories of acceptable reasons, which may relate only to emergencies, situations which have a small impact on exchanges between Member States or situations involving the specific characteristics of some services of general economic interest.
4. The public service contract shall define the following features clearly and precisely:
 - the system of public service obligations, universal services or individual objectives assigned to the beneficiary of the contract.
 - the service's financing method, complying with chapter IV of this Directive;
 - the period of implementation, which must be adequate and appropriate for the completion of the contract and which must not for any reason whatever exceed (seven) years;
 - the system of penalties in the event of breach of contract.

CHAPTER III⁹

OPERATION OF SERVICES OF GENERAL ECONOMIC INTEREST

Article 9 – Common scope of public service obligations

Where a competent authority intends to define and regulate the operation of a service of general economic interest, it shall adopt an express measure in which one or more of the following public service obligations to be imposed on the operator of the service shall be listed and specified:

- accessibility;
- equality of treatment;
- adaptability;
- long-term planning;
- affordability;
- specified quality;
- continuity;
- security;
- sustainability;
- universality.

Article 10 – Consideration of individual objectives

1. Apart from the imposition of a system of public service or universal service obligations, the competent authority may decide to make the operator and/or supplier of a service of general economic interest contribute to objectives of Community, national, regional or local interest, which are clearly defined in advance and laid down in a formal measure in accordance with individual methods and constraints which go beyond simple compliance with common law regulations.
2. Among the objectives alluded to in the previous paragraph, only non-economic objectives may be taken into consideration; for example, urban and country planning, economic and social cohesion, media pluralism, protection of the environment, sustainable development or the protection of personal data.

⁹ The main idea of this chapter is to give a mandatory common list of public service obligations from which the Member States must draw when they intend to define a SGEI, with greater discretion for Member States to impose other constraints, on condition they do so with a certain minimum level of transparency and justification. The reference to ‘individual objectives’ is directly drawn from Court of Justice case law (especially the *Commune d’Almelo* and *EDF-GDF* judgments quoted above).

CHAPTER IV¹⁰

FINANCING OF SERVICES OF GENERAL ECONOMIC INTEREST

Article 11 – Power of Member States to provide financing

This Directive shall not prejudice Member States' power to provide financing for a service of general economic interest insofar as this financing is granted for the purposes of the smooth running of the service in acceptable economic conditions and the implementation of the system of public service and universal service obligations connected thereto.

Article 12 – Financing methods

Where a competent authority intends to provide financing for a service of general economic interest other than by direct financing through its general budget, it shall choose from one of the following methods of financing, in accordance with the rules of the Treaty, especially Article 86(2):

- the granting of special or exclusive rights;
- the granting of public service compensation;
- the assistance from a public service fund;
- the establishment of a tariff averaging system.

Article 13 – Granting of special or exclusive rights

Where a competent authority intends to grant an exclusive or special right to provide the financing for a service of general economic interest, it shall ensure that these rights do not encourage their beneficiary to abuse a dominant position pursuant to Article 82 of the Treaty and that these rights shall not for any reason whatever limit competition in certain markets to a degree which would not be necessary to comply with the system of public service and universal service obligations imposed on the said beneficiary.

¹⁰ This chapter gives general principles and appropriate conditions regarding financing of SGEI, and in particular lays down some financing methods and clarifies public services obligations following the Community case law of 'Altmark' (2003) and its implementation by the European Commission. Moreover, these provisions provide for additional transparency and objectivity in the context of financing SGEI without fixing specific thresholds.

Article 14 – Granting of public service compensation

Where a governmental authority provides compensation to an undertaking delivering a service of general economic interest, that compensation shall not constitute state aid under Article 87 of the Treaty provided that the following two conditions are met:

- a) the basis or formula on which the compensation is calculated has been established in accordance with an objective and transparent procedure;
- b) the compensation does not exceed what is necessary to cover all or part of the costs of implementing the system of public service or universal service obligations for which the compensation is intended to provide the financing, taking into account the relevant revenue, and allowing for a reasonable profit.

Article 15 – Assistance from a public service fund

Where a competent authority intends to establish a public service fund to provide financing for a service of general economic interest, it shall comply with the following principles:

- independence of the fund operator from the operators and suppliers of the service;
- equality of treatment of the contributors to the fund;
- transparency and objectivity in defining and calculating contributions to the fund;
- adequate and commensurate amount of contributions to the fund within the limit required by the system in place for public service or universal service obligations.

Article 16 – Establishment of a tariff averaging system

Where a competent authority intends to provide financing for a service of general economic interest through establishing a tariff averaging system, such a system must set out objectively and transparently the average price for the supply of this service, and this price should be applied uniformly throughout the whole territory under the jurisdiction of the said authority and should be affordable, despite the large differences in the cost of supplying this service.

CHAPTER V¹¹

CONTROL AND REGULATION OF SERVICES OF GENERAL ECONOMIC INTEREST

Article 17 – Authority responsible for control

The competent authority is the guarantor of control and compliance with the system of public service or universal service obligations and the individual objectives assigned to the operator and supplier of a service of general economic interest, without prejudice to the powers granted to the independent regulatory authorities.

Article 18 – Forms of regulation

1. In the sectors where it has laid down a system of public service or universal service obligations or individual objectives, the competent authority shall ensure the setting up of the regulatory procedures and instruments appropriate to the sector concerned, based on transparent rules which allow the organisations entrusted with implementing these regulatory procedures to be identified.
2. The instruments of regulation covered in paragraph one of this article should, as a minimum, allow for the adoption of rules in the following sectors:
 - establishing ways of accessing existing networks, where such access is necessary for the supply of the service;
 - establishing prices and/or rates for the supply of the service;
 - amicable settlement of disputes between the supplier of the service and the user, without prejudice to judicial appeal procedures;
 - consultation and, where necessary, referral to the competent competition authorities of any matter likely to reveal a breach of the rules of national competition and of the Treaty.

CHAPTER VI¹²

USERS' RIGHTS, QUALITY AND EVALUATION OF SERVICES OF GENERAL ECONOMIC INTEREST

Article 19 – Users' rights

1. The competent authority shall ensure that the supply and operation of the services of general economic interest have a high level of user protection and pay particular attention to the categories of users who are most disadvantaged, most isolated, or most economically or socially vulnerable.
2. To this end, every user or beneficiary of a service of general economic interest must have the following rights recognised by the competent authority:
 - the right to an optimum level of health protection, physical safety and technical reliability of the service;
 - the right to clear, useful and easily accessible information on the essential conditions of supply, operation, financing and invoicing or pricing of the service;
 - the right to access information concerning the user which is kept or collected by the operator and/or supplier of the service and by the competent authority;
 - the right to claim compensation from the operator and/or supplier of the service in the event of a failure to comply with a public service obligation or an individual objective under this Directive which has been assigned to the latter, and the right to diligent and prompt treatment of this claim;

¹² As already underlined in recitals (16) and (17), among the objectives of this Directive is to contribute to a high level of user and consumer protection by ensuring the rights to information and to redress. Moreover, without creating an obligation to develop European quality standards, the Directive establishes procedures for transparent quality standards and their evaluation, provided by the competent national, regional or local authority which could be based – on a voluntary basis – on a charter or code of good conduct. At European level, the European Commission will publish each year a summary comparative report of national evaluations per sector. Finally, inspired by the Open Method of Coordination, consultation, involving all key EU institutions, social partners and representatives of regional, economic and consumer protection bodies, should be used when implementing this chapter and when drawing up any initiatives or impact assessments on the application of this directive.

- the right to have recourse, effectively and distinctly, to amicable and judicial procedures to settle disputes between the user and the operator and/or supplier of the service or in the event of the rejection of a claim under this Article or the failure to reply to it, provided the procedure is, whatever its cause, reasonably efficient, speedy and inexpensive;
- the right to adequate and commensurate compensation in the event that a claim or procedure under this Article is adjudged valid.

Article 20 – Policy on quality

1. The competent authority shall establish objective and transparent quality standards in order to guarantee the performance of the public service or universal service obligations or individual objectives assigned to the operator and/or supplier of a service of general economic interest.
2. In establishing the quality standards referred to in the first paragraph of this Article, the competent authority shall ensure that the following aspects shall be taken into consideration:
 - protection and safety of beneficiaries of the service;
 - adequate and commensurate standard with regard to the objectives implemented and the cost of the service;
 - widest possible broadcast and publication of the standard;
 - easy and effective checking of compliance with the standard.
3. As far as possible, and especially if the evaluation procedure referred to in Article 21 of this Directive shows this to be useful, the competent authority may demand that the operator and/or supplier of a service of general economic interest make(s) precise commitments in terms of improving the quality of the service, based on a charter or code of proper conduct.
4. The competent national, regional and local authorities shall make the charters or codes of proper conduct referred to in this Article publicly available and easy to consult.

Article 21 – Evaluation

1. In order to verify that the system of public service or universal service obligations and, where necessary, individual obligations are correctly and effectively carried out by the operator and/or supplier of a service of general economic interest, and in order to meet the requirement for the service to be adapted to regulatory and technological developments, the competent authority shall set up an evaluation system for the performance and quality of such services.
2. The evaluation system set up by the competent authority at national or local level, in accordance with this Article, shall meet the following requirements:
 - the evaluation process to take place annually, unless there should be an exception;
 - transparency of evaluation criteria;
 - compulsory communication, by the operator and/or supplier of the service, of the data required for the evaluation;
 - consultation of regulatory authorities in the sector being evaluated;
 - involvement of citizens' associations, consumers and users groups and social partners in the evaluation process;
 - publication of a report setting out the results of the evaluation.
3. The competent authorities shall, upon its publication, send to the Commission a copy of each evaluation report adopted by virtue of this Article. The Commission shall make public each year a summary comparative report of the national evaluations per sector, emphasising in particular the good practice which it will take into the greatest consideration each time it intends to adopt an initiative or a proposal likely to have an impact on the operation, supply or financing of a service of general economic interest.

Article 22 – Public consultation and participation methods

1. Member States and the European Community shall ensure, each in their respective field of competence, that the largest number of economic, institutional and social partners concerned shall be involved in the adoption of measures regarding the implementation of this chapter.
2. Where the Commission intends to adopt an initiative or a proposal as part of the implementation of this chapter, it shall, in collaboration with the European Parliament and the Council, and in accordance with the most appropriate methods, especially those inspired by the Open Method of Coordination, encourage and organise debate between the various existing forums (Economic and Social Committee, Committee of the Regions, consultative bodies, consumer associations and associations of locally elected representatives, consultative bodies of regulatory authorities in the sectors involved, and in general any organised consultative body which promotes or considers services of general interest), and shall involve representatives of the economic sectors concerned in this debate. Following the debate, a summary report, an impact analysis of the proposal regarding the application of the present directive and a list of recommendations shall be drawn up and made public. The Commission will make every effort to take these into account in drawing up its initiative or proposal.

CHAPTER VII¹³

FINAL PROVISIONS

Article 23 – Transposition into national law

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [2 years after its entry into force] at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.
2. When Member States adopt the provisions referred to in paragraph 1 of this Article, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.
3. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 24 – Entry into force

This Directive shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Directive is addressed to the Member States.

¹³ This chapter deals with the usual provisions in order to bring this directive into force.

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