Services of general interest. White Paper

2006/2101(INI) - 27/09/2006 - Text adopted by Parliament, single reading

The European Parliament adopted a resolution based on the own-initiative report drafted by Bernhard **RAPKAY (PES, DE)** on the Commission's White Paper on services of general interest. The report was adopted by 491 votes in favour to 128 against with 31 abstentions and represented a consensus reached between the largest political groups. Parliament asked for clarification on a number of topics and emphasised that the majority of SGIs could be provided under conditions of fair competition, according to the principle that private and public undertakings must receive equal treatment. It asked the Commission to submit to Parliament a comprehensive analysis of the effects of liberalisation to date, in particular on the situation of the consumers and employees concerned.

It also made the following points:

- the legitimate requirements of the general interest must not be used as a pretext for the improper closure of services markets as regards international providers who undertake to respect the legitimate requirements and are capable of so doing;

- the way in which SGEIs are organised can affect the internal market, for example by prohibiting establishment in the country in which the service is provided;

- sector-specific rules should not be called into question, since they have been successful. Parliament recommended that the sectoral approach be expanded into other sectors;

- outsourcing the supply of SGIs normally imposes on the authority in question the obligation to assign the service on the basis of a public service contract, following a public tender procedure. Local authorities should be able to assign service tasks directly to inter-communal companies or similar forms of joint arrangements, or to companies that they own or control, provided that such bodies carry out the essential part of their activities for the controlling authority or authorities, and do not compete on external markets. An arrangement must be found which does not categorically exclude private participation from the outset.

The Commission was asked for clarification and more legal certainty on several points, including the following:

- the distinction between SGIs and SGEIs through the development of operational criteria. The latter should take into account Member States' national traditions, based on the nature of collective goods and public funding or by solidarity mechanisms of SGIs. Parliament underlined that for many SGIs making the distinction between economic and non-economic aspects was extremely difficult due to the dynamic character of these services and their rapid development;

- the consequences of the jurisprudence of the Court of Justice based on a sectoral approach and application of competition law to SGIs and SGEIs, especially with regard to the financing of these services;

- more legal certainty on the application of internal market and competition rules in the field of SGIs and SGEIs while ensuring democratic accountability for the application of rules to SGIs and SGEIs to the Member States, regional, and local authorities. There is a need to clarify how responsibilities are shared between the EU and Member States. The sectoral approach should be an important element in this respect.

In this context, Parliament emphasised that after a due evaluation of the Treaty and the jurisprudence of the Court of Justice, SGIs remain to be defined by the Member States. Moreover, there is no legal basis for a proposal seeking the non-application of the relevant EC Treaty provisions to particular services;

- more legal certainty in the area of social and health-care SGIs. The Commission was asked to formulate a proposal for a sector-specific directive of the Council and the Parliament in those fields in which it is appropriate to do so;

- more legal certainty as regards the different forms of inter-authority organisations (cooperation between local authorities, public-private partnership, awarding concessions) and the clarification of European law on competition the award of contracts and State aid and of the general criteria applicable throughout Europe. Parliament stressed that there should be legal clarification concerning the outsourcing of public services, which was distinct from the award of public contracts. It called on the Commission to spell out the rules for awarding such outsourced services and to make a clear distinction between those rules and the rules governing public contracts.

Parliament also made some recommendations about the criteria which should be applied in considering when compensation for supply of public services for funding an SGI should be considered constituting State aid in the meaning of Article 87 of the EC Treaty.

It asked the Commission to propose appropriate legal initiatives, as referred to in its resolution, and recalled that codecision rights, where foreseen by the Treaty, should be fully exercised by all parties involved in the field of SGIs and SGEIs. International agreements concluded by the Community must be compatible with internal Community policies and rules.