

PARLEMENT EUROPEEN



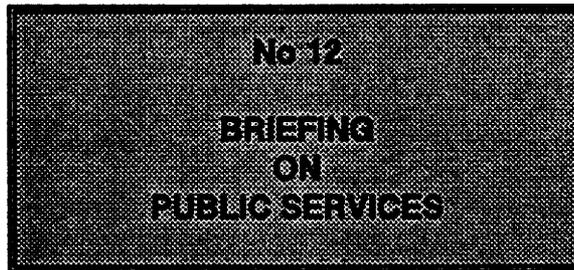
SECRETARIAT WORKING PARTY

TASK-FORCE
ON THE
" INTERGOVERNMENTAL CONFERENCE "

WORKING PARTY SECRETARIAT

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These briefings have been drafted by the Parliament Secretariat Task Force on the Intergovernmental Conference. Their purpose is to gather together, in an organized, summary form, the proposals and suggestions which the authorities in the Member States, the Union's institutions and specialist commentators have put forward on the issues likely to be on the IGC 96 agenda.

Briefings will be updated as negotiations proceed.

Already out:

1. The Court of Justice
2. The Commission
3. The Court of Auditors, ESC and COR
4. Differentiated integration
5. The common foreign and security policy
6. The role of the national parliaments
7. The hierarchy of Community acts
8. Codecision procedure
9. CJHA
10. European citizenship
11. WEU, security and defence
12. Public services
13. Social policy
14. The European Parliament
15. The European Council
16. The Council of the European Union
17. The budget and the IGC
18. The IGC and transparency
19. Subsidiarity and the allocation of powers
20. The Union's legal personality and external representation
21. Commitology
22. Fundamental rights
23. The IGC and the democratic nature of the Union
24. The coherence of the external action of the EU under the first and second pillars
25. The 1996 IGC and the effectiveness of the Union
26. Europol
27. The IGC and the Schengen Convention
28. Combating fraud
29. Energy
30. Tourism and the IGC
31. Economic and social cohesion
32. European environment policy and the IGC
33. The CAP and the IGC
34. Civil protection and the IGC
35. Non-discrimination on sexual grounds
36. The 1996 IGC and the enlargement of the EU
- 36a. Accession of CEEC - agricultural aspects
37. Employment and the IGC
38. The IGC and the EMU
39. Asylum policy and immigration
40. Social exclusion and the IGC
41. The child and the IGC
42. The Fight against drugs and the IGC
43. The IGC and the fight against racism
44. Young people and the IGC

BRIEFING ON PUBLIC SERVICES

1. Subject

Definition: A 'public service' (public-interest or public utility service) is generally taken to mean an economic activity in the general interest set up as such on the initiative of the public authorities and operating under their authority, even where management is delegated to a public or private sector enterprise separate from the administration. The concept applies especially to 'network' activities, in particular electricity, gas and water distribution, public transport (rail and urban transport) and postal and telecommunications services.

2. Position in the current EC Treaty

- The only instance the term 'public service' is used is in Article 77 which states that aid to transport shall be compatible with the Treaty if it represents reimbursement for the discharge of obligations 'inherent in the concept of a public service'.
- However, Article 90 contains what we may consider to be an equivalent concept, that of 'services of general economic interest', and exempts undertakings operating such services from the rules of the Treaty (in particular, those on freedom of movement and competition) if the application of those rules would obstruct the performance of the particular tasks assigned to them.
- In addition, the Single Act and the Treaty on European Union have added objectives to Community policy which, without making specific reference to the concept, are among the usual justifications for public service or may provide support for future 'European public services':
 - consumer protection (Title XI);
 - creation of trans-European networks (Title XII);
 - economic and social cohesion (Title XIV);
 - protection of the environment (Title XVI).

3. Position of the Member States

During the preparations for the Intergovernmental Conference, several Member States have produced a general or special contribution asking for amendment of the Treaty to consolidate the place held by public services.

1. Spain's general contribution (March 1995) includes among the fields where Council unanimity should be maintained 'the degree of quantitative and qualitative development of the public services, closely linked to the characteristics and prosperity of each Member State' although it does not propose amendment of the Treaty.
2. A special contribution by Belgium (1 August 1996) proposes insertion of the following text in the Treaty:

'Any natural or legal person is entitled to benefit from the universal service. The universal service covers telecommunications, postal and transport services and supplies of water and energy. The principle of universal service may be extended to other sectors by a decision in accordance with the provisions of Article 189b.

'Universal service shall be understood to mean access to defined basic services of an adequate quality, whoever the operator may be, open to all users and offered throughout the territory at a reasonable price.

'The appointment of the supplier of the universal service rests with the Member States. They may grant the title of supplier to public bodies.'

3. France also made a special contribution (17 September 1996), pointing out that public services were an important factor in economic and social cohesion in Europe and proposed adding the following to Article 90:

'The Community and the Member States in the framework of their respective powers recognize and guarantee the right of everyone to services of general economic interest in Europe. These are intended to ensure equal treatment of citizens, balanced town and country planning, social cohesion, quality, continuity and adaptability of services provided, and the preservation of long-term strategic interests.

'To this end the Community should take account of bodies or undertakings responsible for tasks of general economic interest, the conditions in which they operate and the constraints upon their activities.'

4. According to the Reflection Group Report (5 December 1995) a majority [of national representatives] want the IGC to consider strengthening the concept of public service in the general interest as an additional principle for market criteria.

4. Parliament's position

(1) As has been its regular practice when considering sectoral legislation (railways, gas and electricity, telecommunications, postal services, etc.), on 6 May 1994 Parliament adopted a resolution on public undertakings, privatization and public services in the Community, in which it called for:

- revision of the Treaty to guarantee the citizen's right to public services accessible to everyone;
- adoption of a European public service charter.

(2) The resolution for the IGC (Bourlanges-Martin report of 17 May 1995) devotes a sub-paragraph to public service, Part I, paragraph (x):

'The place of the public service within European Union policy measures should be affirmed by introducing new articles defining the concept and scope of the 'universal service', guaranteeing each citizen the right to equal access to services of general economic interest, and ad hoc provisions taking account of the specific nature of public service undertakings.'

(3) The resolution of 14 December 1995 on the agenda for the IGC with a view to the Madrid European Council asks that the mandate given to the conference include, among other priorities established by Parliament, the establishment of 'a role for public services of general economic and social interest' and the development of 'a universal right of access to these services'.

(4) The resolution of 13 March 1996 (setting out Parliament's opinion on the convening of the IGC and on the evaluation of the work of the Reflection Group) is the most detailed official position on this subject. While stating that the Community's action is not only directed towards the establishment of a competition regime within the single market but is also at the service of the general interest and therefore has 'functions relating to the strengthening of economic and social cohesion and the protection of consumers and service users', it calls for:

- the amendment of articles B TEU, and 90 and 100a ECT to include services of general interest;
- the incorporation in the Treaty of 'the fundamental principles of public service, i.e. accessibility, universality, equality, continuity, quality, transparency and participation'.

(5) The resolution of 13 November 1996 on the XXVth report by the Commission on competition policy repeated the call for amendment of Articles 3 and 90(2) and the articles on citizenship and common policies to ensure 'universal availability of basic services'.

- (6) The resolution of 16 January 1997 on the general outline for a draft revision of the Treaties, which encapsulates Parliament's wishes for the IGC, calls for:
- 'the inclusion in the Treaty of an explicit reference to public services as one of the elements of the rights of citizens of the Union, with a view to strengthening economic and social cohesion and the protection of users';
 - 'such rights and objectives to be accompanied, with a view to their effective implementation, by a redefinition of the resources and powers of the Union's institutions'.

5. Position of the other institutions

- (1) Among the reports and opinions delivered by the other institutions for the IGC, only the Commission opinion of 28 February 1996 on the holding of the conference makes any mention of public service with the statement that 'access for all members of society to universal services or to services of general benefit, thus contributing to solidarity and equal treatment' features among the 'values shared by all (Europe's) societies'. However, it does not ask for the Treaty to be amended along these lines.
- (2) In its communication of 11 September on 'Services of general interest in Europe' in which it expresses its basic views on public services, the Commission called for amendment of Article 3 so the Union would have a role in promoting services of general interest.

6. Other opinions

- (1) ISUPE (Initiative for Public Services in Europe) has proposed amendments to the Treaty aiming on the one hand to end the situation where public services form an exception to the principle of competition by giving them their own place and on the other encouraging the development of European public services.
- (a) Title V of the Part Three of the Treaty would be amended to include activities of general economic interest. It would in future be called 'Common rules on activities of general economic interest, competition and approximation of laws' and would contain a new chapter on these activities. This would include the following provisions:
- a Council regulation laying down for each sector minimum requirements of general interest that a Member States could impose on an undertaking;
 - under this regulation the states could define the tasks of undertakings responsible for a service in the general economic

- interest; the undertakings would thus be authorized to derogate from the Treaty, especially in respect of competition rules;
 - the Member States could establish requirements of general interest other than those laid down in the Council regulation, but respecting the rules of the Treaty;
 - the Community would aim to create services of general economic interest at European level.
- (b) Paragraph 1 of Article 100a, which lays down the procedure for legislative harmonization in the internal market would be supplemented by the following phrase: 'Such measures shall take into account, in particular through application of the principle of economic and social cohesion, the considerations of public service which may justify an adjustment to the rules of competition laid down in this Treaty'.
- (2) A very detailed proposal was made by the European Centre of Public Enterprises (CEEP) in a report entitled 'Europe, competition and public service' published in June 1995. This report found that, in order to anchor the concept of public service in the Community system, the Treaty would have to be amended and a charter drawn up. For the sake of compatibility with existing provisions and using terminology as widely comprehensible as possible in the various Member States, it proposes using the term 'service of general economic interest' from Article 90.
- (a) The amendment to the Treaty, by inserting the principle of public service alongside that of competition in the Union's 'constitution', seeks to offer a foothold for action by the Community institutions, through legislation in particular, in areas where these principles would apply. It would take the form of a new Chapter II in Title V of Part 3, and comprise a sole article embodying:
- the recognition that it is for the Member States to introduce services of general economic interest on the basis of common justifications (economic efficiency, social cohesion or preparations for sustainable development);
 - a catalogue of obligations to which services of general economic interest should be subject, some deriving from traditional principles (equality, continuity, adaptability and quality) and some from new ones (transparency and consultation);
 - a provision that special or exclusive rights may be conferred in order to allow these obligations to be fulfilled;
 - a statement that the competition rules should apply, using the same terms as the current Article 90;

- a recognition of the role of the European Union both in harmonizing the way these services operate on a national scale and coordinating such services at Union level, with the prospect of introducing services of general economic interest on a European scale.
- (b) The Charter would be a document for guidance and interpretation issued by the Council and subject to approval by each of the Member States. It would lay down:
- (a) the division of powers between the Union and the Member States;
 - (b) the justifications for setting up services of general interest;
 - (c) the kinds of obligation to which such services might be subject;
 - (d) the guidelines for organizing and managing them.
- (3) The European Liaison Committee on Services of General Interest has expressed its view (24 November 1995 in a document on 'Services of general interest and the Intergovernmental Conference') on linking the concept of public service or general interest to 'fundamental personal rights' and including the is concept in the Treaty;
- Article 3 (Community action)
 - second part (citizenship of the Union)
 - Article 37 (adjustment of national monopolies)
 - Article 90 (competition)
 - Title XI (consumer protection)
 - Title XXII (trans-European networks)
 - Title XIII (industry)
 - Title XIV (economic and social cohesion)
 - Title XVI (protection of the environment)

Part Two of the Treaty would be amended by the addition of an Article 8f stating that 'Every citizen of the Union must have access to certain goods and services considered essential, the definition of which falls within the scope of rules on services of general interest'. By linking the right to services of general interest to citizenship, it is taking one of the soundest principles of the concept of public services as a basis in making them a right of a citizen of the Union, it is laying the foundation for a European public service.

- (4) The European Trade Union Confederation (ETUC) had already asked in a resolution on 'the challenges of the IGC' on 14 and 15 December 1995 for the principle of service in the general interest and the right of access to a quality service and recognition of its role as a precondition for European citizenship to be secured in the Treaty. In September 1996 it took up this theme again by asking for:

- a new article in the Treaty setting out the concept and scope of public services and guaranteeing that every citizen has equal and obtainable access to these services;
 - amendment of Article 90 so public services no longer form an exception to Treaty rules and limiting the Commission's regulatory powers;
 - a public service charter.
- (5) In an 'Appeal by representatives of civil society' of 27 February 1996, the International European Movement asked for recognition in the Treaty of the role of services of general interest.

7. Summary and conclusion

(1) Summary of the proposals

(a) All proposals vary in the solutions offered (which provisions in the Treaty should be amended or supplemented) but most agree on their objectives which are still:

- defensive: safeguarding the possibility of Member States maintaining their public services by raising public service as a Community principle to a level equal to the others (freedom of movement and competition);
- constructive: encouraging the development of European public services by putting forward the principle of equal access by all citizens of the Union to a minimum of essential services;

(b) There are other, very relevant proposals to amend the Treaty:

- amendment of Article 90 to make public service an internal market principle on the same footing as the others and no longer a derogation;
- using Part Two on citizenship of the Union to add an article that will make equal access to public services defined and guaranteed by the Union, at least in broad terms, a right of the European citizen.

(2) Proposal to amend the Treaty

In this spirit it seems appropriate to replace Article 8e (the present text of which would become Article 8f) by the following text: 'The Union shall guarantee its citizens access to the principle public economic services to the extent necessary in its collective interests and its economic and social cohesion. It shall fulfil this

objective either by safeguarding public services laid down by the Member States, in respect for the rules of the internal market, or by defining minimum services to be assured, which shall vary in accordance with the sectors concerned and will fulfil the principles of equality, continuity, quality and respect for users.'

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