

To: All Members of the European
Parliament

25 September 2006

THE SECRETARY GENERAL

Dear Member of the European Parliament,

On 26 September 2006 the European Parliament will deliberate in plenary on the report on the European Commission's white paper on services of general interest (SGI).

Against that background, UNICE would like to recall (1) its position and (2) its recommendations in view of your vote on this report.

1. UNICE position on legislative initiatives regarding SGI and SGEI

UNICE has always rejected proposals for a framework directive on services of general interest (SGI) and services of general economic interest (SGEI) because:

- (a) Their definition falls exclusively within the competence of Member States, and must continue to do so, by virtue of the principle of subsidiarity and of article 86-2 of the Treaty, monitored by the Commission in areas including state aid and by the European Court of Justice (ECJ) on the classification as an activity of general interest.
- (b) A framework directive may be used to maintain the privileged or monopoly positions of public operators in activities which ECJ regards as economic, to the detriment of optimising public spending based on increased opening of these markets to competition.
- (c) Member States' macro-economic balances no longer make it possible to leave entire swathes of economic activities outside the market, at either local or national level, and this also relates to network services and economic social services.
- (d) In order to mitigate the growing budgetary difficulties experienced by Member States, it is important increasingly to promote regulatory tools such as service concessions or public-private partnerships, leaving each Member State to create and support regulation of these markets, taking account of their respective economic and political histories.

2. UNICE recommendations

UNICE shares the report's main objectives, with the following reservations:

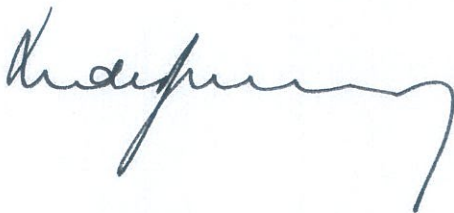
- i. UNICE believes that it is inappropriate and harmful to have a legislative initiative on SGI, SGEI or social services of general interest in general for all the reasons already explained, and conversely supports the creation of EU legislative tools which foster harmonious economic regulation of these activities of shared interest between consumers and companies.
- ii. As much as public authorities must remain free to choose the mode of production for SGI by virtue of national constitutional rules, it is also necessary that they can reverse these management choices from time to time, including in cases where they have chosen in-house provision (paragraphs 22 and 23).
- iii. UNICE would also like the European Commission to recall ECJ's strict interpretation of "in-house provision" in a future communication, and deplores the legal and economic confusion created between the transfer of competences and management of activities of general economic interest for an indefinite period to an inter-authority organisation ("cooperation between local authorities" - paragraphs 23 and 24).

UNICE does not object to the right of local authorities to cooperate and have joint organisations to carry certain duties in their stead; this type of reorganisation implies that a new joint authority is now indefinitely responsible for carrying the duties that were heretofore carried by the constituent authorities. UNICE does however object to the possible extension of the concept of in-house provision on that basis:

- either by assuming that the constituent authorities and the new one are in-house: each authority cannot be deemed to have the same control on the new joint authority as it has on its own services (Teckal SRL case) and therefore pursue cross-services outside of the internal market rules;
- or by claiming that several authorities can award an economic task to companies that they own or control without competition.

We hope you can support our views and remain at your disposal should you wish to discuss this further.

Yours sincerely,



Philippe de Buck