CONSUMER REPRESENTATION IN EUROPE
POLICY AND PRACTICE FOR UTILITIES
AND NETWORK INDUSTRIES

UNIVERSAL AND PUBLIC SERVICE
OBLIGATIONS IN EUROPE

Gillian Simmonds
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UNIVERSAL AND PUBLIC SERVICE OBLIGATIONS IN EUROPE

CRI Research Report 15

CRI Research Programme:
Consumer representation in Europe - policy and practice for utilities and network industries

Phase 1 (Research Report 11):
Part I  Consumer representation in the UK
Part II  Consumer representation within the EU decision-making process

Phase 2 (Research Report 15):
Universal and public service obligations in Europe

Gillian Simmonds

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Preface

The CRI is pleased to publish Research Report 15 on *Universal and Public Service Obligations in Europe* by Gillian Simmonds, Senior Research Officer at the CRI. The research report represents phase two of a study into Consumer Representation in Europe – Policy and Practice for Utilities and Network Industries. The first phase was published as Research Report 11. Part I of research report 11 covered Consumer Representation in the UK and Part II Consumer Representation within the EU Decision-making Process.

Effective consumer representation and consultation with consumers, in order to take account of their views, is an important part of effective and accountable government. The European Union has taken a number of steps recently to examine its governance and to improve its decision-making, most notably with its ‘better regulation package’ issued in 2002. Further discussion will take place with respect to essential service industries (the utilities and network industries, covering water, energy, transport and communications) in the Commission’s forthcoming publication on ‘services of general economic interest’ (expected to be published in the first half of April 2003). This will consider issues of competition and state aids, and set the terms for a framework directive which will establish the role of, and best means of complying with, universal and public service obligations. We hope the three complementary research reports from Gillian Simmonds will provide a good comparative source of information, and make a contribution to the on-going debate.

The CRI would welcome comments on the report. Comments should be addressed to:

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The CRI publishes work on regulation by a wide variety of authors, covering a range of regulatory topics and disciplines, in its International, Occasional and Technical Paper series. The purpose is to promote better understanding and debate about the regulatory framework and the processes of decision making and accountability. Enquiries or manuscripts to be considered for publication should be addressed as above.

The views of authors are their own, and do not necessarily represent those of the CRI.

Peter Vass  
Director, CRI  
September 2003
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1 INTRODUCTION

Consumers, users and citizens have needs and expectations of the services provided by the network industries (such as, telecommunications, posts, electricity, gas, public passenger transport and water). For instance, they want access to safe and reliable services of good quality and at affordable prices. These needs and expectations (the ‘public interest’) have traditionally been defined by public authorities at the appropriate national, regional or local level in the legal and historical traditions of the individual member states; and have been secured through government ownership of monopoly undertakings.

The focus of the European Community on the gradual opening to competition of telecommunications, posts, electricity, gas and, more recently, inland transport markets, to complete its internal market policy and achieve the economic integration of Europe, has raised concerns as to how to maintain or improve access to and quality of delivery of these services in the context of liberalisation.

The community has recognised the importance of these services continuing to operate in the interest of the public. It has made provision both in its overarching principles (as laid out in the treaty establishing the European Community and the Charter of Fundamental Rights of the European Union) and in the regulatory frameworks provided under sector-specific community legislation, for appropriate public authorities to define and secure missions for these essential services in the public interest.

For instance, the treaty establishing the European Community allows relevant authorities in member states to lay down specific service provisions, in the form of obligations placed on designated service providers, to meet the needs of citizens and consumers. The community terms market services which are considered to be in the general interest by public authorities and are not satisfactorily provided by the market, and are thus subject, by member states, to service obligations, as **services of general economic interest**. These include the services provided by the network industries. To guarantee the fulfilment of the service obligations, the treaty also allows for the granting of special or exclusive rights to designated service providers, or the provision of specific funding mechanisms. These provisions are underpinned by the principles of:

- **neutrality** – with respect to whether service providers are privately or publicly owned;
- **subsidiarity** – or member states’ right to define;
- **proportionality** – that is, the rights granted to operators charged with meeting certain service obligations must not unduly interfere with competition and the rules of the internal market.

In the face of significantly varied levels of service in the different member states, the community has also introduced sector-specific legislation (covering, amongst others, the posts, telecommunications, energy, public passenger transport and water sectors). This sector-specific legislation contributes to meeting the community’s policy on social and economic cohesion, by aiming variously to promote balanced and sustainable development, reduce structural disparities between regions and countries, and promote equal opportunities for all individuals.
This sector-specific legislation aims to reconcile the community objectives of introducing competition into specific service markets and ensuring that those services continue to meet certain defined public interest objectives. In keeping with the principle of subsidiarity, sector-specific community legislation outlines the broad regulatory framework for the provision of the essential services, while retaining member states’ freedom to define the way in which these services are organised and their public interest missions fulfilled. Specifically, the sector-specific community legislation develops and defines the general interest role to be assigned to the body (or bodies) providing the service of general economic interest. It also provides a framework for the development of service obligations to ensure that that general interest role is met by the designated service providers.

Universal and public service obligations

At the community level, service obligations are defined as either universal service obligations or public service obligations. For example, the obligations to which telecommunications and postal services (and, under the proposed amendments to the electricity directive, the electricity sector) are subject throughout the community are termed universal service obligations, while the obligations imposed on the gas and transport sectors are termed public service obligations. Although water is considered a service of general economic interest in certain community documentation, the water industry is not subject to any specifically-termed universal or public service requirements at the community level. The difference between these two terms – universal service obligations and public service obligations – has proved to be confusing and is often misconceived.

The European Commission defines the concept of public service as ‘the general interest role assigned to the body’ providing a service of general economic interest. Public service obligations are the obligations imposed by public authorities on the body (or bodies) rendering the service to meet this general interest requirement. The term public service obligation is thus an overall generic term referring to any service obligation which is imposed by government on a service provider or service providers for a public interest purpose. The public service obligation (PSO) can be either universal (UPSO) or specific (SSO) depending on the ‘ambit’ of its intended coverage.

The community commonly expresses the universal service as a defined minimum set of services of specified quality, available to all users independent of their geographic location and, in light of specific national conditions, at an affordable (or reasonable) price. Universal service obligations are hence the obligations placed on designated service providers to meet this universal service requirement. This universal service obligation may be considered to be comprised of a number of specific public service obligations which, together, add up to meet the requirements of the universal service obligation.

Specific public service obligations, which do not form part of the universal service obligation, and do not include a stipulated principle of universal access, are also imposed on the relevant sectors for a public interest purpose. These specific public service obligations may cover, amongst others, access conditions, consumer protection and redress, pricing conditions, security of supply, quality standards and environmental conditions.

The commission refers to these specific public service obligations (SPSO or SSO) as public service obligations (PSO). The term public service obligation is, therefore, used both:
• **generically** to include all obligations (including universal service obligations) imposed by public authorities on service providers to meet defined requirements in the general interest;

• **specifically** to cover those obligations which are targeted to address particular areas of public interest concern and which do not form part of a universal service obligation.

This has unfortunately caused some confusion with regard to the meaning of the different terms. While greater clarity may be provided by limiting the use of PSO to an overarching generic term, and referring to a specific public service obligation as an SSO, the fact that PSO is so widely used to refer to SSOs means that we are constrained to use it in practice.

**Report structure and summary recommendations**

This paper attempts to develop a comprehensive concept of universal service against which to assess the community’s definition and application of the concepts of universal and public service. Chapter 2 of the paper elaborates the concept of universal service, in particular, ‘unpacking’ the notions of:

• access, including physical, social, economic (affordability) and territorial access;
• quality, including both the physical quality of the product and the quality of service;
• choice and clear and transparent information;
• redress and compensation;

as well as the principles and processes necessarily applied in defining and implementing the universal service, such as suitability and adaptability, consumer representation and active participation, transparency, and independent regulation. This is followed by a clarification of the difference between, and classification of, the terms public service obligation and universal service obligation.

Chapter 3 summarises the principles of the treaty establishing the European Community as they apply to meeting the public interest missions of the network industries. It also provides a comparative evaluation of the universal and public service provisions of the sector-specific community level legislation, covering telecommunications, posts, energy, inland transport and water. Finally, Chapter 4 provides a summary, conclusions and recommendations, drawn from the evaluation of the community framework for the provision of the public interest missions of the network industry services.

**Summary of recommendations**

• **Establish a framework directive for services of general economic interest**

To reconcile the objectives of removing competition distortions and meeting consumers’ needs and expectations with regard to services of general economic interest, the community should establish a framework directive for services of general economic interest. This framework directive should not only clarify the legal framework for the application of competition rules relating to services of general economic interest, but also give expression to a European concept of universal service.
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- Regular assessment of service of general economic interest
Regular assessment of services of general economic interest, and in particular the implementation of universal and public service requirements, is required to ensure that the universal service requirements established at community level are sufficient to guarantee the public interest need. In addition, it is necessary to ensure that the principle of subsidiarity is being appropriately applied to ensure the most desirable outcome, and the adaptability of the universal service to changing technological, economic, environmental and social developments. Reporting must go beyond existing assessments, based on the principle of subsidiarity, to establish real disparity between systems (which may result in either social exclusion or competition distortions) and best practice.

- Establish procedures for consumer participation
Consumers should be involved, together with other stakeholders, in the definition, organisation, implementation, funding, assessment and adaptation of universal and public service requirements. This must be implemented at both the community and the member state level. To ensure that consumers are effectively represented in the european policy-making process, the commission should consider including well-respected and effective national consumer advocates as either consumer representatives or expert advisers. To ensure the development of effective consumer representation and effective consultation and involvement of consumers in decision-making within member states, the community must include provisions in their sectoral legislation specifically requiring member states to establish procedures for consultation of consumers.

- Develop robust consumer representation organisations
Effective participation in decision-making processes cannot take place without the development of robust consumer organisations. To be effective, such consumer organisations should be independent (in particular, of industry), produce well-informed work based on sound research, be representative of domestic consumers (in particular, the needs of disadvantaged or vulnerable consumers), be transparent and accountable, and keep in touch with consumers. To achieve this, consumer organisations need clear powers and duties, access to relevant information, duties to operate openly, adequate resources, and research capacity. To encourage the development of robust consumer organisations in member states, the community should, in its sector-specific legislation, include requirements to establish consumer bodies that are adequately resourced (in terms of funding, staff and powers) and independent of industry.
2 UNIVERSAL SERVICE AND SERVICE OBLIGATIONS

The network industries – electricity, gas, telecommunications, post, transport and water – are of particular interest to consumers because they provide services that are essential to both their health and well-being and their economic and social participation in society. Access to these services has long been considered to be in the public interest, and has generally been accepted as a necessary prerequisite for meeting the wider national economic, public health and citizenship objectives of a modern society.

Traditionally, the needs and expectations of consumers, users and citizens with regard to these essential services were met, to a greater or lesser degree, by monopoly service providers and secured through public ownership. During this period of public ownership of the network industries, it was generally accepted that the monopoly service providers were founded on a development trajectory based on increasing levels of domestic connection to the networks. Extension of the networks into rural areas and domestic markets was promoted by, for example:

- publicly owned monopolies providing a standardised level of service at uniform tariffs;
- cross-subsidisation from large to small users;
- obligations to provide access to services at a standardised charge, irrespective of location.¹

Government policy has shifted away from publicly owned and run essential service industries and toward market solutions. Liberalisation and competition may be argued to improve efficiency and choice, resulting in lower prices for consumers. However, the market, left to itself, does not always deliver socially desirable objectives and may result in the under-provision of services. The failure of the market to deliver socially desirable outcomes may be attributed to three main types of market failure:

- **abuse of monopoly power**, such as anti-competitive practice (for example, cartels) and abuse of dominant position (for example, through control of an essential, or natural monopoly, facility) which distort competition;
- **public goods and externalities**, where, for example, the individual or market fail to value all the costs and benefits generated for society as a whole or occurring in the future (that is, the external effects are not captured in private costs and benefits) or where information asymmetry exists between producers and their customers and investors, resulting a misallocation of resources. Such allocative inefficiency may result in under-provision, too low quality and health and safety standards, and environmental pollution;
- **unacceptable distributional outcomes**, this is fundamentally a ‘political’ decision which arises where ‘uncorrected’ distribution of income and access to essential services is deemed politically unacceptable and, therefore, is a form of market failure to be corrected by regulatory action. Societal aspirations to ensure that all citizens, including the poorest, can have access to essential services of an adequate quality result in regulatory action to

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ensure affordable access to such services and to eliminate (or reduce) social exclusion, inequity and discrimination.  

With the liberalisation of the essential service sectors, and the consequent removal of cross-subsidies and the introduction of cost-reflective pricing to prevent distortions in the competitive market, fears arose that access to the essential services would not be safeguarded in the new environment. In particular, there were concerns that new entrants into the market would compete vigorously for lucrative customers (‘cherry-picking’), while incumbents would minimise their costs associated with small domestic users who use few resources and may have high transaction costs because of problems with debt and disconnection (‘social dumping’). In this way, certain groups, viewed as unprofitable by the service providers, would be unlikely to reap the positive benefits (such as, lower prices) of liberalisation and, in fact, could find themselves unable to access essential services at prices they can afford. Furthermore, there were concerns that, without intervention, some essential services, which are not economically viable, would not be provided by the market at all. For example, a transport provider in a liberalised market may not choose to offer services on a little used route.  

Ideally, all consumers, users and citizens should have access to a basic minimum set of services of specified quality, irrespective of their geographic location and, in the light of national conditions, at an affordable price. As service providers do not always provide a universal service in a liberalised environment, appropriate public authorities place obligations on a service provider or service providers to correct for these market failures. Such obligations are termed either universal or public service obligations. The difference between the two terms – universal service obligations and public service obligations – is often not explicit or clear, resulting in misconception and confusion. A comprehensive definition of the universal service concept is developed in the following section. This is followed by a classification and clarification of the terms universal and public service obligations.

Universal service concept

The concept of universal service is shaped by its wider political, economic and technological context; and has developed over time. Universal service has commonly been equated with a right of access by consumers to services, irrespective of whether customers are economically attractive to supply and connect to the network. While, undoubtedly, universal service includes a right of access, the concept is much broader than this narrow definition. A guaranteed right of access (on reasonable and equitable terms) to a commercial service does not necessarily ensure connection to and use of the system for all. Implicit in this definition is the notion of ability-to-pay – while all consumers have a right of access, this is not a free right and consequently only those who can afford to pay for connection to and use of the service are ensured access to that service.  

Definitions of access, as part of a universal service concept, must, therefore, include notions of universality, equality and affordability.

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3 Consumer Committee (1999), Elaborating the Universal Service Concept in the Services of General Interest – A Consumer Committee position paper, 6 December 1999.

4 However, in England and Wales, government has banned the disconnection of household customers for non-payment of water bills, in effect giving free right of access.
The basic minimum level of services included in the universal service is adaptable to sector-specific requirements and structural and technical features. This defined minimum set of services also evolves over time, adapting to technological change, new general interest requirements, and user’s needs. The universal service, however, should aim to provide access to good quality services, and hence obligations to provide a specified minimum quality of service must be included in the universal service package.

In basic terms, therefore, universal service is:

“a defined minimum set of services of specified quality, available to all users independent of their geographic location and, in the light of specific national conditions, at an affordable price”.\(^5\)

In more specific terms, the universal service can be defined in terms of, and assessed against, the needs and expectations of consumers, users and citizens. These include the following requirements:

- guarantee of **access**, on fair and reasonable terms, regardless of economic, social or geographic status;
- good **quality** services, which are reliable and safe;
- **choice** of services and, where appropriate, suppliers;
- clear and transparent **information**;
- **security** of supply;
- **redress** and compensation.

In addition, in defining the general interest missions of these services, authorities should include broader societal interests such as securing **environmental protection** and meeting concerns of **vulnerable groups**, such as the elderly and disabled, those living on low incomes and those living in remote areas.

The universal service concept also includes sound practices and processes which are necessary for ensuring the universal service. These include:

- openness in management, price setting and funding;
- scrutiny by bodies independent of those operating the services;
- consultation with consumers and other stakeholders to ensure the suitability and adaptability of the universal service.

**Access**

There are four interrelated elements to a practical definition of **universal access**:

- physical access;
- economic access;
- social access;
- geographic or territorial access.

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Physical access refers to physical availability of the service or the actual physical connection to the network which enables access to the service. Physical access must be offered on social terms, which ensure access regardless of disability or age and prevent discrimination based on social or personal status (social access). The physical availability of the service is thus not only influenced by the physical extent, or density of, and connection to, the network. It is also influenced, for example, by the availability of standard and specially adapted equipment (such as, special meters for disabled or elderly customers) to ensure connection to supply and, where prepayment meters are offered, the physical networks of pay points for prepayment facilities.

Economic access refers to the affordability of the service and takes into account both the cost of being connected to the service, such as connection fees or deposits (cost of gaining access), and the ongoing cost of using the service (cost of maintaining access or staying connected). The costs of staying connected include both fixed and variable costs, for example, in telecommunications, the cost of line rental and call tariffs. The affordability of a service is also associated with the ability of consumers to access ancillary services, such as the banking facilities necessary for eligibility for cheaper payment options (direct debit tariffs). The ability of customers to make capital investments both in the physical connection and in measures, for example home energy efficiency improvements, which reduce the cost of the service also influences affordability. The affordability of a service is clearly linked to income levels and consequently needs to be measured in terms of indicators linked to standards of living.

Territorial access refers to equality of access regardless of geographic location and addresses concerns for complete territorial coverage of essential services in remote or inaccessible areas.

Definitions of universality must take into account notions of equality and equity. A universal service must provide equal access to a basic minimum service, defined in terms of consumers’ needs and expectations. Equality of access can only be secured where the service is offered on affordable and non-discriminatory terms, and where special consideration of the most vulnerable consumers is taken to prevent social exclusion. All other services falling outside of the universal service must be offered on equitable terms, ensuring fair and equal treatment of customers.

Definitions of universality must also take into account the notion of substitutability of products or services, which, in turn, requires careful definition of consumers’ and users’ needs. Within the energy sector, for example, consumers require access to a range of end-uses – such as, cooking, heating, lighting and media – rather than to a particular energy product. Gas may, therefore, be considered to be highly substitutable, with a range of other products, such as electricity or oil, providing the same thermal end uses. Given equivalent cost and quality, consumers are likely, therefore, to be indifferent to whether their needs are met through access to gas or through access to another equivalent energy product, such as electricity. Similarly, in the communications sector, mobile telephony may provide a sufficiently equivalent service to fixed line telephony and may be a more appropriate means of extending access to communications networks in certain remote areas.

The practicality of establishing universality must also be assessed. For example, a universal rail service is not economically viable and, consequently, the approach would be to establish a minimum transport service, which recognises the substitutability of different modes of
transport (such as rail and bus) and secures the ongoing provision of certain specified transport routes. Establishing universality must, therefore, be subject to reasonable demands.

**Quality**

Quality refers to both the physical quality of the product and the quality of the service provided. Quality includes:

- the physical **safety** of devices and the service provided – the safety and health of consumers and users in compliance with principles of prevention and precaution should be guaranteed;
- the **regularity** of the service, including frequency, speed and punctuality;
- the **reliability** of the service;
- the **continuity** of the service, including requirements that the service should be supplied permanently or regularly, free of interruptions not provided for in the rules, and the need for protection from disconnection or, where disconnection is allowed, fair procedures setting out the specific circumstances and processes;
- **performance** of service provision, including response times for services, and the monitoring of that performance.

In addition, quality includes obligations related to payment options, complaints handling, dispute resolution and communications with customers.

**Choice, transparency and full information**

Consumers have an interest in the widest possible choice of services and, where appropriate, of service providers and should, in particular, be ensured of full choice of payment methods, including cash payments, free of charge. To inform choice, consumers need clear and comparable information on tariffs, and clarity of household bills and terms and conditions of supply. Consumers should also be given full information on their rights, as well as on regulation, ownership and enterprises’ activities.

**Redress and compensation**

When things go wrong for the individual consumer or user, they want guaranteed remedies. The universal service should, therefore, include systems and procedures for handling individual consumer complaints, independent resolution of unresolved complaints, and mechanisms for compensation and refund where appropriate. Such procedures should result in fair and prompt resolution of disputes.

In addition, there is a need to ensure that there are procedures and systems in place to analyse consumer complaints and identify any issues or problems which arise as a collective concern for consumers (for example, the mis-selling of energy or telecommunications contracts to consumers). The appropriate authorities must have regulatory powers to effect change where such concerns are raised, including powers to access relevant information, to implement appropriate regulatory controls as corrective action (such as performance standards and targets), to monitor and assess company performance, and enforcement powers.
In defining and implementing the general interest role imposed on the network industries, the following principles and processes should be applied:

- **Suitability and adaptability** – as technology develops, the needs and expectations of consumers evolve and consequently the obligations applied to that service may need to change. The concept of universal service must, therefore, be reviewed to ensure its appropriateness in a changing regulatory, technical and economic environment.

- **Consumer representation and active participation** – to ensure the suitability of universal service requirements, consumers, users and other social partners should be consulted in their definition, organisation, assessment and adaptation. To ensure that consumers are adequately represented in these decision-making processes, legal provision should be made to allow for the establishment and systematic consultation of consumer organisations. The consultation of consumers is especially vital to safeguarding consumers’ rights in the proper provision of services.

- **Transparency** – openness in the decision-making processes of government and regulators for defining the needs of users for which the universal service is being established; setting, awarding and funding universal service requirements; and of companies’ costs of delivering universal service, must be ensured.

- **Independent regulation** – to ensure fair and equitable treatment, and the delivery of high quality services, regulatory bodies, independent of the network industries, must be established. The Economic and Social Committee argues that such regulatory bodies should be tasked with assessment of services provided for users, monitoring of undertakings designated to provide the service obligations, and regulation to intervene, in accordance with clear legal limits, when the general interest will not be met by the market alone.6

- **Holistic approach** – underpinning affordability is the inter-relationship between three key elements, access, price and quality. While an increase in price may have a direct effect on affordability, an increase in quality will have an indirect effect. This inter-relationship means that no decision about price, access or quality should be made in isolation. Equally, decisions about regulatory structures that affect price, access or quality cannot be made in isolation. Decision-making should, therefore, take thorough account of the inter-relationship and trade-offs involved.

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**Universal and public service obligations**

The universal service concept represents the societal ideal – that is, the service required to meet consumers’ needs and expectations, as well as broader societal goals. **Service obligations** are the obligations imposed by public authorities on a body (or bodies) providing a service (such as airlines, road or rail carriers, energy producers, telecommunications suppliers and so on) to ensure that those services which are in the public interest, but would not be provided either at all or in the required way if service operators were guided by their own commercial interests, continue to be met by the service provider. Such obligations can be imposed either nationally or regionally.

The community terms these obligations as either **universal service obligations** or **public service obligations**. For instance, the obligations to which telecommunications and postal services (and, under the proposed amendments to the electricity directive, the electricity

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sector) are subject throughout the community are termed universal service obligations, while the obligations imposed on the gas and transport sectors are termed public service obligations. The water sector, by comparison, is not subject at the community level to either universal service obligations or public service obligations in the same way as other services of general economic interest (see the sectoral sector on water in Chapter 3).

In its communication on services of general interest, the commission defines the concept of **public service** as “the general interest role assigned to the body” providing a service of general economic interest.\(^7\) Public service obligations are the obligations imposed by public authorities on the body (or bodies) rendering the service to meet this general interest requirement.

Furthermore, in its first horizontal assessment of the network industries providing services of general interest, the commission defines public service obligations as encompassing all the constraints statutorily defined by public authorities and imposed on some or all of the suppliers of those services in order to meet the needs regarded as essential for citizens and businesses in the EU.\(^8\) This definition encompasses a broad nature of obligations, including social (for example, access conditions and consumer protection), economic (for example, price regulations), environmental, technical (such as, long term planning and harmonisation of technical standards), or accounting (for example, transparency and unbundling of accounts).

The commission has also set out the notion of **public service charter**, an instrument defining the basic rights and principles governing the provision of services to users. Such principles are defined to include:

- continuity of service;
- quality;
- security of supply;
- equal access;
- affordable prices;
- social, cultural and environmental acceptability.

The term **public service obligation** is thus an overall generic term referring to any service obligation which is imposed by government on a service provider for a public interest purpose. The public service obligation (PSO) can be either **universal** or **specific**, depending on the ‘ambit’ of its intended coverage (see **Figure 1**).

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The community commonly expresses the **universal service** as a defined minimum set of services of specified quality, available to all users independent of their geographic location and, in light of specific national conditions, at an affordable (or reasonable) price. The **universal service obligation** is hence the obligation placed on a designated service provider (or service providers) to meet this universal service requirement. This universal service obligation may be considered to be comprised of a number of specific public service obligations related, for example, to the physical availability and coverage or scope of the service, social access conditions, affordability and pricing conditions, quality standards and consumer protection and redress, which, together, add up to meet the requirements of the universal service obligation.

**Specific public service obligations**, which do not form part of the universal service obligation and do not include a stipulated principle of universal access, are also imposed on the relevant sectors for a public interest purpose. These specific public service obligations may cover access conditions, consumer protection and redress, pricing conditions, security of supply, quality standards and environmental conditions.

The commission refers to these specific public service obligations (SPSO or SSO) as public service obligations (PSO). The term public service obligation is, therefore, used both **generically** to include all obligations (including universal service obligations) imposed by public authorities on service providers to meet defined requirements in the general interest; and **specifically** to cover those obligations which are targeted to address particular areas of public interest concern and which do not form part of a universal service obligation. This has unfortunately caused some confusion with regard to the meaning of the different terms. While greater clarity may be provided by limiting the use of PSO to an overarching generic term and referring to a specific public service obligation as an SSO, the fact that PSO is so widely used to refer to SSOs means that we are constrained to use it in practice. In the discussion that follows, therefore, it is important to remember that PSO may refer to both the generic overarching term or to a specific PSO (SSO).

Further misinterpretation of the terms USO and PSO has resulted from the fact that, in sector-specific community legislation, the term universal service obligation routinely encompasses a precisely defined concept of the general interest role of the service provider (that is, to
provide universal access to a high quality service at an affordable (or reasonable) price), as well as a package of relatively well defined and stringent specific service obligations. In contrast, for those sectors where USOs have not been imposed, the specific public service obligations (PSOs) have tended to be more loosely defined and less exacting. This has resulted in a common misperception that the USO represents a more precisely defined and stricter regulatory control than the PSO, and has led to calls for the community to establish USOs across all the network industry sectors. However, there is nothing to prevent a PSO or package of PSOs from being as or more precisely defined and stringent as a USO. Consequently, the imposition of a USO is not necessarily required to ensure that the needs and expectations of consumers are fully met through the obligations placed on service providers.

Finally, the term public service obligation has sometimes been interpreted as requiring delivery by a publicly owned organisation. This is not a requirement and the treaties are specifically neutral with respect to ownership. Hence this usage is ‘political’.

Regulatory instruments used to fulfil service obligations

In practice, the ways in which service obligations are defined and fulfilled are many and varied. The instruments and processes employed to meet the general interest requirements of the network industries can be categorised into the following:

- **access conditions**, including obligations related to universal access to a specified minimum standard of service, guarantees of availability on equitable terms, obligations related to the minimum extent of the network or supply of service to less densely populated areas, and special conditions for vulnerable groups;
- **social conditions**, including rules of, or prohibitions on, disconnection, and codes of practice relating to the provision of services to vulnerable groups;
- **affordability and pricing conditions**, which primarily aim to ensure affordability and transparency of prices, including price caps, special tariffs for vulnerable groups, uniform tariff pricing, non-discrimination between similar customers, recovery of costs, and incentive-based retail price regulation (for example, price controls linked to performance with regard to service provision);
- **quality standards**, including minimum service standards or performance obligations (for example, response times for service), safety standards, performance obligations related to security of supply, reliability and regularity, codes of practice and standards related to provision of information, and rights to refund and compensation if quality standards not met;
- **consumer protection and redress**, including complaints handling and redress procedures, obligations to safeguard consumers’ rights, and obligations to provide the general information necessary to promote consumer participation and choice;
- **consumer representation**, to facilitate participation in decision-making;
- **environmental standards**, including obligations to meet specific targets of environmental quality, and, in the energy sector for example, specific obligations to source energy from environmentally-friendly sources and energy efficiency codes of practice;
- **institutional and process regulations**, including accounting regulations (transparency of accounts), and institutions and procedures for regulatory control.
3 COMMUNITY LEGISLATIVE AND POLICY FRAMEWORK

The community recognises the significance of the general interest missions of the network industries, both in terms of meeting the needs and expectations of consumers, users and citizens in member states (and the social and environmental goals of those member states) and in terms of meeting the community’s policy goal of social and economic cohesion.\textsuperscript{10}

Faced with varied levels of service between member states and the need to secure the continued fulfilment of the public interest missions of the network industries in member states, the community:

- in the treaty establishing the European Community, allows for member states to secure missions of general interest by providing for member states to specify certain universal and public service obligations, and to grant exclusive or special rights and establish funding mechanisms to fulfil these obligations;
- in sector-specific legislation, defines the scope of the universal or public service at community level, the duties placed on member states to secure certain public service objectives, and the rules to which member states must adhere in defining public interest missions.

The principles of the treaty establishing the European Community and the community’s sector-specific legislation, as they relate to securing a universal service, are discussed below.

**Treaty principles**

The principal objective of the European Community is to achieve the economic (and political) integration of the union through, amongst others, its internal market, competition, and cohesion policies. The community’s internal market policy aims to create a ‘common market’ based on the free movement of goods, persons, services and capital. Competition policy is essential for the completion of the common market and the treaty establishing the European Community (EC treaty) thus provides for the activities of the community to include a system ensuring that competition in the internal market is not distorted. The objectives of the community’s competition policy are:

- to guarantee the unity of the internal market and avoid the monopolisation of certain markets by preventing firms from sharing the market via protective agreements, where

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\textsuperscript{10} The origins of economic and social cohesion go back to the treaty of Rome where a reference is made in the preamble to reducing disparities in development between the regions. With the adoption of the Single European Act in 1986, economic and social cohesion proper was made an objective, as well as the single market. The Maastricht treaty finally incorporated the policy into the treaty establishing the European Community. It is an expression of solidarity between the member states and regions of the European Union; and refers, in particular, to achieving balanced and sustainable development, reducing structural disparities between regions and countries and promoting equal opportunities for all individuals.
markets can be monopolised as a result of restrictive agreements or company mergers (article 81);\textsuperscript{11} • to prevent one or more firms from improperly exploiting their economic power over weaker firms (a prohibition on abuse of a dominant position) (article 82);\textsuperscript{12} • to prevent member states’ governments from distorting the rules by discriminating in favour of public enterprises or by giving aid to private-sector companies (state aid) (article 87).\textsuperscript{13}

For the network industries, the focus of community legislation has been on the liberalisation of these sectors (with the exception of the water sector, where the community’s focus has been on environmental quality, rather than on liberalisation). The commission’s liberalisation policy is based on article 86 of the EC treaty. With regard to public enterprises and enterprises to which member states have granted special or exclusive rights, article 86(1) prohibits member states from enacting or maintaining in force any measure contrary to the rules contained in the treaty, and in particular the competition rules (as laid down in articles 81 to 89 of the EC treaty). Article 86(3) allows the commission to address appropriate directives or decisions to member states with regard to liberalisation.

However, the community also recognises the importance of the general interest missions of the network industries – both in terms of the contributions they make to securing consumers’ health and well-being and their economic and social participation, and to the role they play in contributing to the community’s policy of social and economic cohesion. The services provided by the network industries are considered an essential building block of the european model of society, not only because they contribute to the quality of life of citizens, but also because they are a prerequisite for citizens fully enjoying many of their fundamental rights.\textsuperscript{14}

In addition, the community is concerned with the varied levels of service which have developed under the different national systems of regulation in the member states.

Those services which are considered to be in the general interest by public authorities and accordingly subjected to specific public service obligations are termed, by the community, services of general interest. These include non-market services (such as, compulsory education and social protection), matters which are essentially prerogatives of the state (such as, internal and external security, the administration of justice and the conduct of foreign relations) and market services.\textsuperscript{15} Market services which fall into the category of services of general interest, such as the services provided by the network industries, are termed by the community services of general economic interest. The commission definition of services of general economic interest recognises the commercial services provided by the network industries to be of general economic utility. Thus, where the market fails to adequately

\textsuperscript{11} Article 81 of the EC treaty prohibits agreements and concerted practices between firms which “may affect trade between the member states and which have as their object or effect the prevention, restriction or distortion of competition within the common market”.

\textsuperscript{12} Article 82 of the EC treaty states that “any abuse by one or more undertakings of a dominant position within the common market or in a substantial part of it shall be prohibited as incompatible with the common market in so far as it may affect trade between the member states”.

\textsuperscript{13} Article 87 of the EC treaty states that “any aid granted by a member state or through state resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between member states, be incompatible with the common market”.


provide these services, member states are allowed to impose specific public service obligations on service providers to meet certain general interest requirements. Case law of the European Court of Justice has deemed the following activities to be services of general economic interest:

- **transport services**, including air transport services, river port services, berthing and unberthing in seaports, and rail services;
- **energy services**, specifically the supply of gas and electricity;
- **communications services**, including a national broadcasting service, and establishing and operating a public telecommunications network;
- **postal services**, including collecting, transporting and distributing mail and processing cross-border mail;
- **waste services**, specifically collection, treatment and disposal of certain types of waste.16

Without any existing case law, drinking water treatment and distribution is also recognised as a task of general economic interest within the European Union. Other basic requirements, such as food, clothing and shelter, are argued to be provided overwhelmingly by the market and hence do not fall under the community’s definition of services of general economic interest.17

With regard to these services of general economic interest, the community has made a commitment to protect the objectives of general interest and the mission of serving the public. To this end, a reference to the role of services of general economic interest in attaining the fundamental objectives of the European Union was inserted, by the Amsterdam treaty, into the EC treaty through the introduction of article 16.

Article 16 of the EC treaty places services of general economic interest among the shared values of the union and confirms their role in promoting social and territorial cohesion. Article 16 recognises the fundamental character of the values underpinning such services and commits the community and the member states to take care that such services operate on the basis of principles and conditions which enable them to fulfil their missions. Implicit in this is a requirement for the community to take account of the function of services of general economic interest in devising and implementing its policies.

Access to services of general economic interest has also been placed among the fundamental rights of the European Union. Article 36 of the Charter of Fundamental Rights of the European Union provides:

“The union recognises and respects access to services of general economic interest as provided for in national laws and practices in accordance with the treaty establishing the European Community, in order to promote the social and territorial cohesion of the union”.18

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16 Council of the European Union (2001), French Memorandum on Services of General Economic Interest, CONSOM 73, MI 135.
The community’s dual objectives of securing competition and internal market freedoms on the one hand and ensuring the effective fulfilment of missions of general economic interest entrusted by the public authorities on the other hand are reconciled through article 86(2). Article 86(2) reads:

“Undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in this treaty, in particular to the rules of competition, insofar as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the community”.

Article 86(2) allows some derogation to the general rules of the treaty. If public authorities consider that certain services are in the general interest and market forces may not result in 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 (that is, universal or public service obligations). The fulfilment of these obligations may trigger, albeit not necessarily, the granting of special or exclusive rights, or the provision of specific funding mechanisms.

A range of options exist:

- public authorities may decide to apply general interest obligations on all operators in a market or, in some cases, to designate one or a limited number of operators with specific obligations, without granting special or exclusive rights – in this way, the commission argues, the greatest competition is allowed and users retain maximum freedom with regard to choice of service provider;
- certain services of general interest do not lend themselves to a plurality of providers, for instance where only one single provider can be economically viable – in these cases, public authorities will usually grant exclusive and special rights for providing the service of general interest by awarding concessions for limited periods through tendering procedures;
- it may be necessary to combine entrustment of one single operator or a limited number of operators with the particular public service task, with granting or maintaining special or exclusive rights in favour of that single operator or group of operators – in this situation, public authorities may ensure appropriate funding enabling the entrusted operators to perform the particular public service task assigned to them.

The three principles underlying the application of article 86(2) are:

- neutrality;
- subsidiarity;
- proportionality.

The principle of neutrality is enshrined in article 295 of the EC treaty. Article 295 states that “the treaty shall in no way prejudice the rules in member states governing the system of property ownership”. With respect to article 86, this means that the community is neutral as

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19 Consolidated version of the Treaty Establishing the European Community, Article 86.
21 Consolidated version of the Treaty Establishing the European Community, Article 295.
to whether companies responsible for the provision of services of general economic interest are in public or private ownership and consequently does not require privatisation. However, the community does seek to eliminate unfair practices, regardless of whether the operators concerned are public or private.

The principle of **subsidiarity** is enshrined in article 5 of the EC treaty. Article 5 states that: “the community shall take action ... only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the member states and can therefore, by reason of scale or effects of proposed action, be better achieved by the community”. Application of the principle of subsidiarity means that the community should only act where:

- the action has transnational aspects which cannot be satisfactorily regulated by the member states;
- action by member states, or lack of action, conflicts with the requirements of the treaty;
- action at community level would produce clear benefits.

In accordance with this principle, therefore, member states retain the freedom to define the missions of services of general economic interest in their respective territories. This means that public service obligations are defined, in the main, by member states for operators within their own territories and respond to a diversity of specific national social objectives. Competent authorities in the member states are also free to choose how they will award and organise services of general economic interest. Member states may, in particular, grant exclusive or special rights required to perform missions of general economic interest, regulate the activities of the companies responsible for providing general interest services, and maintain the financial balance of the operators charged with obligations of general economic interest.

Intervention by the community in this area is limited to:

- ensuring that the means employed by member states are compatible with community law;
- defining common rules to ensure that there is no distortion of competition in the internal market and that minimum standards are guaranteed in the EU as a whole.

As a consequence, service obligations vary across member states and there are a multiplicity of standards and practices within the EU.

The principle of **proportionality**, as it applies to article 86, requires that restrictions of competition and limitations of the freedoms of the single market do not exceed what is necessary to guarantee the effective fulfilment of the mission of general economic interest. That is, member states must ensure that the rights granted to operators charged with a mission of general economic interest do not unduly interfere with competition and the rules of the internal market. To ensure this, member states must precisely define the content of the

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22 Consolidated version of the Treaty Establishing the European Community, Article 5(2).
23 Council of the European Union (2001), French Memorandum on Services of General Economic Interest, CONSOM 73, MI 135.
missions of general economic interest and the mission must not cover activities wider than required by the general economic interest. An obligation to adhere to the principle of proportionality falls on member states because:

- suppliers of certain services of general interest may be exempted from the rules of the EC treaty, in particular the competition rules, where the rules would obstruct the performance of general interest tasks for which they are responsible;
- definitions of general interest duties do not necessarily determine how they will be carried out.

**Funding**

Many providers of services of general economic interest receive some form of funding as compensation for the public services entrusted to them. Article 87 of the EC treaty lays down the rules with regard to aid. Article 87(1) states: “save as otherwise provided in this treaty, any aid granted by a member state or through state resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, insofar as it affects trade between member states, be incompatible with the common market”. 28

Articles 87(2) and 87(3) specify the categories of aid which are considered compatible with the common market. Such categories of aid are those:

- having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of products concerned;
- making good the damage caused by natural disasters or exceptional occurrences;
- granted to the economy of certain areas of the Federal Republic of Germany affected by the division of Germany, insofar as such aid is required in order to compensate for the economic disadvantages caused by that division;
- promoting the economic development of areas where the standard of living is abnormally low or where there is serious underemployment;
- promoting the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a member state;
- facilitating the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest;
- promoting culture and heritage conservation where such aid does not affect trading conditions and competition in the community to an extent that is contrary to the common interest;
- such other categories of aid as may be specified by decision of the council acting by a qualified majority on a proposal from the commission.

The Court of First Instance has recently held that financial advantages granted by public authorities to an undertaking in order to offset the cost of public service obligations classify as aid within the meaning of article 87(1) of the EC treaty. Compensation payments must, therefore, be subject to state aid rules if the other conditions of article 87(1) are met.

27 Council of the European Union (2001), French Memorandum on Services of General Economic Interest, CONSOM 73, MI 135.
28 Consolidated version of the Treaty Establishing the European Community, Article 87.
If a compensation is caught by the general prohibition of state aid under article 87(1), it can still be compatible with community law. Such compensation can either apply for one of the exemptions under article 87(2) and (3), or 73 in the case of inland transport (for example, rail), or it may qualify for a derogation under article 86(2) of the EC treaty. The grant of state aid may, under article 86(2) of the treaty, escape the prohibition laid down in article 87 of that treaty provided that:

- the sole purpose of the aid in question is to offset the additional costs incurred in performing the particular task assigned to the undertaking entrusted with the operation of a service of general economic interest;
- and that the grant of aid is necessary in order for that undertaking to be able to perform its public service obligations under conditions of economic equilibrium.

The method applied to determine whether the aid is compatible with community law involves assessing the amount of extra-costs resulting from the public service obligations, and comparing this amount with the amount of aid granted. If the amount of aid does not exceed the amount of extra-costs, this aid is in principle admissible on the basis of article 86(2). The means by which compensation takes place is left largely to the discretion of the member states and may include receiving annual subsidies, a preferential fiscal treatment, or lower social contributions.

In accordance with case law of the Court of Justice, the obligation of prior notification set out in article 88 is a general obligation covering all aid in order to prevent the implementation of aid contrary to the treaty. Aid must, therefore, be notified to the commission before it is granted, even if it qualifies for a derogation and is compatible with the treaty.

There are only two relevant exceptions to this obligation. First, a notification is not necessary if the aid granted is a de minimis aid meeting the conditions of commission regulation 69/2001 of 12 January 2001. Second, compensations granted in conformity with the requirements set out in council regulation 1191/69 of 26 June 1969 (as amended) on action by member states concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterway are exempted from notification.

These procedural rules of prior notification and suspension of payment of financial compensation have been argued to involve delays which are not suited to the performance of missions of general economic interest. It is argued that in some cases, applications of these rules could threaten the proper performance of such missions, either because of the suspensive nature of notification or because of earlier subsidies previously notified. To address these concerns, the commission proposes to establish a community framework for state aid granted to undertakings entrusted with the provision of services of general economic interest. This framework will inform member states and undertakings of the conditions under which state aid granted as compensation for the imposition of public service obligations can be authorised by the commission; and may specify the conditions for the authorisation of state aid schemes by the commission, thus alleviating the notification obligation for individual aid.
Sectoral legislation

In the face of varied levels of service in the different member states, the community enacts sector-specific legislation. This sector-specific legislation aims primarily to reconcile treaty objectives of introducing competition into specific service markets, while ensuring that those services continue to meet certain defined public interest objectives, in accordance with article 86(2) of the EC treaty.

Guided by the treaty principles, in particular the principle of subsidiarity, sector-specific community legislation outlines the broad regulatory framework for the provision of services of general economic interest and for meeting universal or public service requirements, while retaining member states’ freedom to define the way in which these services are organised and their public interest missions fulfilled.

Community legislation sets out a range of different universal or public service requirements, including those related to ensuring:

- access and affordability;
- quality;
- security of supply;
- environmental protection;
- consumer protection and redress.

The focus and level of detail of specification of the universal or public service requirements of the community legislation varies substantially between the different sectors (see Table 1). Notably, the community requires universal service, including specific quality and affordability obligations, only in the telecommunications and postal sectors. Existing legislation for the energy, inland transport and water sectors focus on quality issues, in particular, on security of supply in the energy sector, safety and regularity in the public transport sector, and environmental health and quality in the water sector.

Proposed legislation for the energy sector will bring the public interest provisions of the gas and, in particular electricity, directives more in line with the current community level provisions for the telecommunications and postal sectors. Specifically, these amendments will introduce a universal service in the electricity sector and will harmonise the provisions for safeguarding consumer rights across these service markets. However, disparity in the detail of the provisions, in particular with regard to affordability and quality standards, remain.

The discussion which follows provides a detailed analysis of the universal and public service requirements specified in community legislation for the telecommunications, postal, energy, inland transport and water sectors.
Table 1: Summary of community level universal and public service requirements

<table>
<thead>
<tr>
<th>Access conditions</th>
<th>Pricing conditions</th>
<th>Quality standards</th>
<th>Consumer protection and redress</th>
<th>Environmental conditions</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Postal services</strong></td>
<td>• Universal access: permanent provision of a universal service of specified quality at all points at affordable prices • Standards for density of access points • Transparent and non-discriminatory</td>
<td>• Prices for universal services must be affordable, geared to costs, transparent and non-discriminatory</td>
<td>• Minimum frequency for collection and delivery specified at community level • Member states must establish complaints handling procedures for all users • Universal service providers must regularly provide users with detailed and up-to-date information on the universal services offered, particularly on general conditions of access, on prices and on quality standard levels</td>
<td>• No specific provisions</td>
</tr>
<tr>
<td><strong>Telecoms</strong></td>
<td>• Universal access: provision of a universal service of specified quality to all end-users, independently of geographical location and, in light of national conditions, at an affordable price • Service includes access to public telephone network and service at a fixed location, directory enquiries and number of payphones • Specific measures to guarantee access to and affordability of universal service for disabled users</td>
<td>• Prices for universal services must be affordable • Special tariffs for vulnerable consumers, including those on low incomes or having special social needs • Provisions for retail price regulation and geographic averaging of prices • Specific obligation, on national regulatory authorities, to monitor the evolution and level of retail tariffs of the universal service, in particular, in relation to national consumer prices and income • Provisions to ensure that subscribers can monitor &amp; control expenditure and avoid unwarranted disconnection</td>
<td>• Supply time for initial connection • Fault rate per access line • Fault repair time • Unsuccessful call ratio • Call set up time • Response times for operator services • Response times for directory enquiry services • Percentage of pay phones in order • Bill correctness complaints • Right to a contract with service provider on specified minimum terms • Provision of comparable information on prices and tariffs, on standard terms and conditions, and on quality of services • Consultation of consumers on issues related to all end-user and consumer rights concerning the provision of the universal service; and quality of service provision • Member states must establish dispute settlement procedures for consumers</td>
<td>• No specific provisions</td>
</tr>
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### Universal and Public Service Obligations

<table>
<thead>
<tr>
<th>Access conditions</th>
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</tr>
</thead>
<tbody>
<tr>
<td><strong>Electricity</strong></td>
<td>• Universal service: member states shall ensure that all consumers have the right to electricity of a specified quality within their territory at reasonable prices • To ensure the universal service, member states may appoint a supplier of last resort and must impose obligations on distribution companies to connect customers to their grid under specified or approved terms, conditions and tariffs • Service and quality parameters specified at member state level • Social and economic cohesion</td>
<td>• Prices must be reasonable • Full choice of payment methods, free of charge • Regulated or approved uniform tariffs to equivalent customers</td>
<td>• Protection of vulnerable consumers from disconnection • Right to contract with service provider on transparent specified terms • Provision of transparent information on prices and tariffs and on standard terms and conditions • Member states must establish complaints handling procedures for all users</td>
<td>• Member states must implement measures to achieve the objective of environmental protection • Member states may impose obligations related to environmental protection, including energy efficiency and climate protection • Specific provisions allowing for the setting of criteria or obligations on generation, transmission and distribution to ensure environmental goals are met • Requirement on suppliers to specify, in bills and promotional materials, the impact on climate change</td>
</tr>
<tr>
<td><strong>Gas</strong></td>
<td>• Prices must be reasonable for those connected to the gas system • Full choice of payment methods, free of charge • Regulated or approved tariffs may be established at national level by national regulators</td>
<td>• Security of supply • Obligations on operators to ensure the reliability and safety of their systems and facilities • Provision for member states to set quality standards, but no specifications with regard to minimum quality of service</td>
<td>• Protection of vulnerable consumers from disconnection • Right to contract with service provider on transparent specified terms • Provision of transparent information on prices and tariffs and on standard terms and conditions • Member states must establish complaints handling procedures for all users</td>
<td>• Member states must implement measures to achieve the objective of environmental protection • To this end, member states may impose obligations related to environmental protection, including energy efficiency and climate protection</td>
</tr>
</tbody>
</table>
Postal sector

Postal services are of significance to consumers, not only because of their necessity as a form of communication, but also because of the role postal outlets play in providing ancillary services. These include financial services (for example, handling pensions and other social security payments, money transfers, savings and current accounts), sales and handling of insurance policies, retail services for third parties (for example, mobile telephones and office supplies), administrative services (for example, applications for passports, handling of drivers licences and issuing other licences), authentication services, and internet-related services. The rural postal network also plays an essential role in integrating businesses into the national or global economy, and in maintaining cohesion in social and employment terms in rural regions. Postal outlets thus play an important role in enhancing social and economic inclusion.

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29 This section is drawn primarily from the two Postal Directives (Directive 97/67/EC and Directive 2002/39/EC), and two studies undertaken for the commission on the implementation of the directives, namely Omega Partners Ltd (2001), Study on the impact of certain aspects of the application of the Directive 97/67/EC on the postal sector, and CTcon (2001), Study on the Cost Accounting Systems of Providers of the Universal Postal Service.
UNIVERSAL AND PUBLIC SERVICE OBLIGATIONS

The European Community recognises postal services as being an essential instrument of communication and trade. The main objective of the community’s postal policy is to achieve the reconciliation of the furtherance of a gradual, controlled liberalisation of the postal market and that of a durable guarantee of the provision of universal service. In an effort to meet this objective, the community adopted, on 15 December 1997, a Postal Directive which provided for partial liberalisation of the postal services market and the establishment of a universal postal service within the community.\(^{30}\) With regard to liberalisation of the postal market, the 1997 Postal Directive opened up to competition the market for the delivery of items of correspondence weighing more than 350 grams or priced more than 5 times the basic tariff.\(^{31}\)

The recent amendment to the 1997 Postal Directive provides for the continuation of the process of gradual and controlled opening to competition of the postal markets.\(^{32}\) The 2002 directive requires member states to open up to competition the following market segments:

- from 2003, delivery of letters weighing more than 100 gram (or costing more than three times the price of a standard letter), and all outgoing cross-border mail (but member states which need the revenue from this market segment to continue to provide their universal service could reserve it);
- from 2006, delivery of letters weighing more than 50 gram (or costing more than two and a half times the price of a standard letter).

The 1997 Postal Directive provided for a universal postal service at the community level.\(^{33}\) These provisions were in response to the significantly varied extent of the postal service and of the conditions governing its provision, and, in particular, to the very varied levels of quality of service across the EU. In accordance with the principle of subsidiarity, the directive adopts a set of general principles at community level, while the choice of exact procedures remain a matter for member states. The postal directive defines the universal service, in article 3(1), as the permanent provision of a universal postal service of specified quality at all points in member states’ territory at affordable prices for users.

Articles 3(4) to 3(7) specify the coverage of the universal service. Article 3(4) requires the clearance, sorting, transport and distribution of domestic postal items (letters) up to 2 kilograms in weight, and domestic postal packages (parcels) up to 10 kilograms in weight, to be included in the universal service. In addition, article 3(5) allows the specified weight limit of universal service coverage for parcels to be increased up to 20 kilograms.\(^{34}\) Article 3(4) also requires the universal service to include services for registered and insured items.\(^{35}\) Other value-added services, such as express services, generally fall outside the universal

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\(^{31}\) Equal to roughly 3% of the European market for postal services.


\(^{33}\) The amendment to the 1997 directive (Directive 2002/39/EC) keeps in force all the provisions of the 1997 Postal Directive which concern the provision of a universal postal service.

\(^{34}\) Most member states have expanded the universal service for domestic parcels from 10 kilograms to 20 kilograms to maintain consistency with weight limits for cross-border parcels, of which the delivery of parcels of up to 20 kilograms is also included in the universal service.

\(^{35}\) Registered services provide the sender with a fixed level of compensation in the event of loss, theft and damage to mail and also with proof of postage and delivery. Insured services provide the sender with compensation up to a value chosen by the sender in the event of loss, theft or damage.
service. Article 3(7) makes clear that the universal service defined by the article covers both national and cross-border services.

The provision of the universal service must meet the fundamental need to ensure continuity of operation, while at the same time remaining adaptable to the needs of users, as well as guaranteeing them fair and non-discriminatory treatment. Specifically, article 5 states that member states shall take steps to ensure that universal service provision:

- offers a service guaranteeing compliance with the essential requirements;
- offers an identical service to users under comparable conditions;
- is made available without any form of discrimination whatsoever;
- is not interrupted or stopped except in cases of force majeure;
- evolves in response to the technical, economic and social environment, and the needs of users.

The discussion that follows unpacks the provisions of the universal postal service as laid out in the directive, as well as the implementation and interpretation of the directive across the member states, where possible.

- Physical availability and frequency of service

To ensure a universal postal service, member states are required to ensure that the density of the points of contact (that is, of postal outlets) and of the access points (mainly collection letter boxes and delivery points) take account of the needs of users (both senders and recipients) (article 3(2)).

The directive also specifies a minimum frequency for collection and delivery, requiring that member states ensure the universal service provider(s) guarantee(s), as a minimum, one clearance and one delivery to the home or premises of every natural or legal person every working day and not less than five days a week. The national regulatory authorities may grant exceptions to this only in exceptional circumstances or geographical conditions.

All member states have implemented regulations about density of access points and frequency of service in their national legislation. The extent and depth of the regulations differ between countries. There are very detailed and exhaustive provisions about distances and number of collection letter boxes and postal outlets in Germany, the Netherlands and Belgium. In contrast, a general description on a common level is implemented by other member states, with no stipulations concerning the number of post offices and the distances to the next access points. CTcon (2001) found that there has been limited impact on access in each national market and at EU level. For example, with regard to frequency of clearance and delivery, the directive has not resulted in changes or modifications to prior conditions.

- Affordability and pricing conditions

Article 12 requires member states to take steps to ensure that the tariffs for each of the services forming part of the provision of the universal service comply with the following principles:

- prices must be affordable and must be such that all users have access to the services provided;
prices must be geared to costs (member states may decide, however, that a uniform tariff should be applied throughout their national territory);

- the application of a uniform tariff does not exclude the right of universal service providers to conclude individual agreements on prices with customers;

- tariffs must be transparent and non-discriminatory.

Article 12 also prohibits cross-subsidisation of universal services outside the reserved sector out of revenues from services in the reserved sector is prohibited, except if strictly necessary to fulfil specific universal service obligations imposed in the competitive area.

The postal directive does not define the concept of affordability, the definition of which is consequently left up to the member states. Research undertaken for the commission by Omega Partners (2001) finds that member states, with the exception of Sweden, have not discussed or defined the concept of affordability. Affordability of prices is taken for granted. Prices are viewed by national regulatory authorities as affordable prior to the implementation of the directive, and it is assumed that a combination of a uniform price and price controls will continue to ensure affordable prices for all users in the future. The implementation of the directive in member states has thus resulted in the entrenchment of the uniform price, although this was not the intention of the directive.

Uniform price alone does not adequately guarantee affordability. Consumer organisations have called for both a national definition of affordability, and for the community to provide terms for defining and measuring affordability. In particular, the Bureau Européen des Unions de Consommateurs (BEUC) argue that affordability must be defined on the basis of GNP per inhabitant and any future increase in the price of universal service must be linked to the rate of inflation. Furthermore, they argue that the cost of living of social groups that are to benefit from the provision of universal service must also be taken into account.

- Quality standards

To guarantee a good quality postal service, article 16 requires member states to ensure that quality of service standards are set and published in relation to services forming part of the universal service. Quality standards must focus, in particular, on routing times and on the regularity and reliability of services. These standards are set by the member states in the case of national services, and the European Parliament and the council in the case of intra-community cross-border services. These standards must be attained or surpassed by the universal service providers. Independent performance monitoring must be carried out at least once a year by external bodies having no links with the universal service providers, under standardised conditions, and shall be the subject of annual reports.

All member states have set quality standards for the universal service provider in their territory. The European Committee on Standards (CEN) has been working on quality of service measurement, specifically focusing on independent end-to-end measurement capabilities (both domestic and cross-border), complaint and redress procedures, and a single uniform system for monitoring delivery performance within the union. Due to the disparate postal traditions and cultural differences in each member state, a common measurement system has not been introduced. Rather, CEN has concentrated on developing a European standard that outlines the minimum requirements to be applied for measurement of the transit

time of national and cross-border mail. Other areas of work which CEN will look at include end-to-end measurement of parcels and measurement of quality of access to postal services.

According to the latest figures published by the IPC, the quality of cross-border services has improved significantly over the past 7 years. In 2000, 92.5% of intra-european letters arrived at their destination within 3 days of posting (J+3), compared with 83.5% in 1997 and 69.1% in 1995. Reliability has also improved with almost 99% of mail arriving at its destination within 5 days of posting, exceeding the target of 97%.

Due to the current lack of harmonised and independently monitored quality measurement systems, it is difficult to establish whether there has been a real increase in domestic quality since the introduction of the directive. Consumer organisations are, however, of the view that there has been no significant impact and that actual standards were the same prior to the introduction of the directive. Consumer organisations supported the introduction of independent performance standards in order to monitor accurately the service levels of universal service providers. Consumer organisations would also like to see the measurement system adapted to take account of door-to-door transit time, which is their principle concern. In addition, they seek the introduction of quality indicators which go beyond guaranteed delivery times/days, to encompass all aspects of postal services, including number of personnel, availability and queuing times.

The directive does not establish penalties for failure to meet quality targets. However, it does require national regulatory authorities to take corrective action. Research undertaken by Omega Partners (2001) shows that certain national regulatory authorities are reluctant to impose the financial penalties provided for in their management contracts with the universal service provider. They see this as being obstructive to the growth of the operator and prefer to play a more supportive role. This raises the question as to whether the community should introduce penalties in case quality targets for universal service are not reached at community level.

- Guaranteeing the universal service

The 1997 Postal Directive obliges member states to guarantee the universal service. Member states impose universal service obligations on a universal service provider or universal service providers to ensure the universal service. These obligations have been implemented in the member states variously through contracts, grants, concessions or licences.

As the directive recognises that imposing obligations on universal service providers may be an insufficient guarantee, member states are allowed to adopt further measures to guarantee the universal postal service. These measures include the reserved area, a licensing system for operators without universal service obligations, and a compensation fund.

Article 7 makes provisions for the reserved area, allowing member states to reserve for the universal service provider(s) the clearance, sorting, transport and delivery of items of domestic correspondence weighing less than 350 grams or priced less than five times the basic tariff. Cross-border mail and direct mail may also be reserved within these price and weight limits if necessary to ensure the maintenance of the universal service. The reserved area will be reduced, from 2003, to the delivery of letters weighing less than 100 grams (or costing less than three times the price of a standard letter); and, from 2006, to the delivery of letters weighing less than 50 grams (or costing less than two and a half times the price of a
standard letter). In the case of the free postal service for blind and partially sighted persons, exceptions to the weight and price restrictions may be permitted. From 2003, in-coming cross-border mail will be removed from the reserved area. However, member states may continue to reserve both in-coming and outgoing cross-border mail and direct mail within the specified weight and price limits if considered necessary to ensure the provision of the universal service.

While some member states, notably Sweden, have guaranteed the universal service by imposing obligations on a single universal service provider, most member states have, in addition to imposing obligations on a single universal service provider, restricted competition in some way.

Article 9 gives member states the option of establishing a compensation fund intended to compensate the universal service provider, where the universal service obligations are deemed to represent an unfair financial burden. The compensation fund must be administered for this purpose by a body independent of the beneficiary or beneficiaries. In addition, the principles of transparency, non-discrimination and proportionality must be respected in establishing this fund and when fixing the level of financial contributions. However, most universal service providers, with the exception of those in Sweden and Finland, finance their universal service obligations mainly through revenues from the reserved services.37

- **Adaptability of the universal service**

Article 5 requires that member states ensure that universal service provision evolves in response to the technical, economic and social environment and to the needs of users.

Research undertaken by Omega Partners (2001) shows that implementation of the directive has resulted in a relatively harmonised legislative framework, with little interpretation of the directive and little room for flexibility. At present the universal postal service gives all individuals the right to send and receive communications to ensure participation in society. The development of technology, such as digital television and the internet, could result in a decline for the need for physical transmission of messages. However, information technology is unlikely to offer opportunities for replacing the universal postal service in the near future. Even when household access to information technology is much higher than at present, reducing the universal postal service could further disadvantage households lacking access to information technology. Furthermore, a universal parcel service could be crucial in ensuring that all consumers have access to electronic commerce.

- **Consumer protection and redress**

While the postal directive is vague with regard to the principles of consumer protection, the directive does make certain provisions for meeting consumers’ information requirements, as well as establishing procedures for complaints handling and redress.

Article 6 requires member states to take steps to ensure that the universal service provider regularly gives users sufficiently detailed and up-to-date information on the universal

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services offered. In particular, they are required to give information on the general conditions of access to these services, on prices and on quality standard levels.

Article 19 of the directive requires that disputes are settled fairly and promptly and makes allowances, in addition to forms of legal redress available under national and community law, for a procedure dealing with complaints. Such procedures should be transparent, simple and inexpensive and should enable all relevant parties to participate. The newly amended article 19 of the Postal Directive extends the complaints and out-of-court settlement procedures to all users of postal services. Under article 19, member states are required to ensure that procedures are drawn up for dealing with users’ complaints, particularly in cases involving loss, theft, damage or non-compliance with service quality standards. Member states may provide that this principle is also applied to beneficiaries of services which are outside the scope of the universal service (or within the scope of the universal service, but which are not provided by the universal service provider). Article 19 also makes provision, where warranted, for a system of reimbursement or compensation.

The European Committee for Standardisation (CEN) has been developing a standard on ‘measurement of complaints and redress procedures’ in order to provide guidelines for member states for the management and improvement of redress procedures. These guidelines define the minimum standards which member states should implement in the area of consumer protection. The main areas of focus are:

• complaints process description – lays out the minimum information that should be made available to customers and the minimum requirements requested from the user making the complaint;
• classification of complaints – including a requirement to classify complaints according to whether or not they fall within the universal service;
• complaints management system and redress procedure – lays down minimum requirements for complaints handling processes and defines guidelines for the service provider to define a standard handling time for complaints;
• measurement and reporting of complaints – establishes a methodology for measuring complaint response rates, acknowledgement, processing and resolution by the service provider.

The actual implementation of procedures has largely been influenced by the historical approach to consumer protection in each member state. In most cases there is no single postal consumer body, but rather a consumer body dealing either with all services of general interest, or consumer complaints across all markets. The exception to this is the UK, where there is a dedicated body for the protection and advancement of consumer rights. Postwatch is responsible for representing the interests of consumers of all licensed postal operations.

In most member states, the route for consumers wishing to make a complaint begins with the universal service provider. The role of the national regulatory authority in the complaints process is generally that of an overseer of the universal service providers’ procedures. However, in cases where disputes between consumers and universal service providers are not resolved, the national regulatory authority will often act as arbiter or refer the matter to the courts or a consumer ombudsman.

While the directive requires the publishing of information on numbers of complaints, a third of universal service providers are yet to implement this. The procedures used by universal
service providers to deal with complaints are argued, by consumer organisations, to be insufficiently transparent and insufficiently prompt. While the directive makes provision for compensation and reimbursement where appropriate, the chances of reaching a financial resolution for damages or loss of mail, in most member states, is slim or non-existent. This raises the question, therefore, as to whether there needs to be a clear methodology on reimbursement and compensation at the community level.

- Process and institutional aspects

Article 22 of the Postal Directive requires each member state to designate one or more national regulatory authorities for the postal sector.\(^{38}\)

There are two basic organisational forms for national regulatory authorities – the regulatory authority may either be part of a ministry or a separate public body with a distinct legal status. Whether the national regulatory authority is part of a ministry or a separate body depends very much on national traditions. For example, in Sweden or the UK, where there is a strong tradition of administrative autonomy the postal regulator is more likely to be separate and autonomous of government. In Italy, on the other hand, the ministry attributed the lack of legal separation to national concern at the proliferation and powers of separate bodies.

Nine member states have a national regulatory authority separate from the ministry (Belgium, Finland, Greece, Ireland, Luxembourg, Netherlands, Portugal, Sweden and UK). The UK is the only member state which has a special dedicated postal regulator. Other member states with a separate regulator have combined postal and telecommunications regulators. This may provide economies of scale in smaller member states. In Germany and Denmark, it is hard to classify the national regulatory authorities as either parts of ministries or as separate regulators. The national regulatory authority in Germany is an executive agency of the ministry, subject to general ministerial guidance, but has its own autonomous governing body, whose independence in dealing with individual cases is established by legislation. In Denmark, the national regulatory authority has its own legal status, which gives it independence in dealing with individual cases, but it is also a unit within a ministry. The status of the director of the Danish national regulatory authority is the same as that of the heads of other units within the ministry. For all other member states (Austria, France, Italy and Spain), the national regulatory authority is part of the ministry.

**Telecommunications**

The community’s policy of liberalisation was initially targeted at the telecommunications sector and, hence, the greatest progress has been made in this sector. The phased approach to telecommunications liberalisation began in 1987 with a green paper that proposed the creation of a common market in services and equipment and began to address the question of how the telecommunications sector should be regulated. The paper launched a series of measures that progressively sought to liberalise the market structure of the community’s telecommunications industry. In 1993, the European Community and its member states gave a commitment, in accordance with the treaty on European Union, to liberalise the telecommunications services sector in Europe by 1 January 1998.

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\(^{38}\) National regulatory authorities are defined as the bodies entrusted by the member states with the regulatory functions falling within the scope of the directive. Where a postal regulator is separate from the ministry responsible for postal regulation, both the regulator and the ministry are considered national regulatory authorities in terms of the directive.
In parallel to the liberalisation of the telecommunications sector, the community also sought to create a regulatory framework which secured the delivery of a universal telecommunications service throughout the member states. Community action in this regard was in response to the extremely varied levels of development in telecommunications services in the different member states; and recognition that the existence of a certain minimum set of telecommunications services was essential to the development of the internal market. The commission argued that different levels of service obligations in the member states would hamper the take-off of Europe-wide telecommunications services. They were also concerned that the absence of coherent national approaches to universal service could create barriers to effective competition.\(^{39}\)

With the adoption of the Voice Telephony Directive in 1995, the community identified for the first time the common scope of universal service obligations in the European Union.\(^{40}\) By doing this, the community aimed to create obligations which would guarantee a defined level of service in a liberalised environment and which would improve the existing level of service in many parts of the community.

The universal service concept, as applied to the telecommunications sector, has evolved over time. The most recent expression of the community level provisions for securing a universal service and users’ rights for the communications sector is found in Directive 2002/22/EC, which was adopted by the European Parliament and the council on 7 March 2002.\(^{41}\) All member states must adopt national legislation implementing the Universal Service Directive (and the other directives in the regulatory package for the electronic communications sector) by 24 July 2003.

The Universal Service Directive, which applies to the communications sector only, defines the universal service, in article 3(1), as a defined minimum set of services of specified quality, made available by member states to all end-users in their territory, independently of geographical location and, in the light of specific national conditions, at an affordable price.

In accordance with the principle of subsidiarity, it is left up to member states to determine the most efficient and appropriate approach for ensuring the implementation of the universal service. In determining the best approach, member states must respect the principles of objectivity, transparency, non-discrimination and proportionality. They must also seek to minimise market distortions, whilst safeguarding the public interest.

The discussion that follows unpacks the provisions of the universal telecommunications service as laid out in Directive 2002/22/EC, as well as the implementation of the existing directive where appropriate.

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- Physical availability and scope of the universal service

Articles 4 to 6 specify the scope of the universal service. Member states are required to ensure that, on reasonable request, users are provided with a connection to the public telephone network, and access to publicly available telephone services, at a fixed location. The connection provided must be capable of allowing end-users to make and receive local, national and international telephone calls, facsimile communications and data communications, at data rates that are sufficient to permit functional internet access, taking into account prevailing technologies used by the majority of subscribers and technological feasibility. This requirement is currently limited to a single narrowband network connection, the provision of which may be restricted by member states to the end-user’s primary residence, and does not extend to the integrated services digital network (ISDN). 42

Directory information and a directory enquiry service constitute an essential access tool for publicly available telephone services and form part of the universal service. Member states are required to ensure that at least one comprehensive directory is available to end-users. This must be in a form approved by the relevant authority, and be updated at least once a year. In addition, member states must ensure that at least one comprehensive telephone directory enquiry service is available to all end-users, including users of public pay telephones. The directories must comprise all subscribers of publicly available telephone services, subject to the rights of individuals not to be included. The information must be provided in a non-discriminatory manner.

The adequate provision of public pay telephones is also included in the universal service. The national regulatory authority in each member state must be able to impose obligations on undertakings to ensure that public pay telephones are provided to meet the reasonable needs of end-users in terms of geographical coverage, the number of telephones, the accessibility of such telephones to disabled users and the quality of services.43 Member states must also ensure that users are able to call emergency numbers and, in particular, the single european emergency call number (112), free of charge from any telephone, including public pay telephones.

A member state is able to make additional services, apart from those services within the universal service, publicly available in its own territory. However, in such circumstances, no compensation mechanism involving specific undertakings may be imposed (article 32).

The scope of the universal telecommunications service, in particular its focus on the provision of a fixed telephony connection or service, may come into question as the accession countries, with lower existing levels of extent of the public telephone network, are required to fulfil the provisions of the directive. Given advances in technology, in these countries, an offer of mobile telephony services may be a more appropriate means of extending access to telephony services.

42 The capacity of a telecommunications network is measured in terms of the amount of information it can carry in digital ‘bits’ (or analogue ‘hertz’) per second. Narrowband is digital communication which transmits data at a rate of 64kbit/s or lower, while broadband is usually used to describe services with data transmission rates in excess of 2 Mbit/s. ISDN is a high-speed broadband digital connection that can transmit data, voice, image and facsimile either separately or simultaneously on the same network that carries regular telephone calls.

43 If, after consultation with interested parties, member states are satisfied that there are sufficient public pay telephones, or comparable services, in all or part of their territory, they (or their national regulatory authority) can decide not to impose such obligations.
It is interesting to note that when assessing the penetration of telephony services in member states, the European Commission itself does not distinguish between fixed and mobile telephony networks and services. The commission found that service provision in telecommunications was virtually universal if assessed in terms of levels of fixed and mobile telephony penetration in member states. However, there were substantial variations in levels of penetration of telephony services at the regional level, with between 19% and 25% of households not having a telephone – either fixed or mobile – in 6 regions. In 21 regions this percentage was between 11 and 19%.

- **Social access**

The universal service directive also makes specific provision for the needs of disabled users. Article 7 of the directive requires member states to take specific measures to guarantee access to and affordability of publicly available telephone services (including access to emergency services, directory enquiry services and directories) for disabled users. The commission defines such measures as including:

- making available accessible public telephones, public text telephones or equivalent measures for deaf or speech impaired people;
- providing services such as directory enquiry services or equivalent measures free of charge for blind or partially sighted people;
- providing itemised bills in alternative format on request for blind or partially sighted people.

Member states may also take specific measures, in the light of national conditions, to ensure that disabled end-users can also take advantage of the choice of undertakings and service providers available to the majority of end-users.

The directive also makes provision, in article 11, for the development of performance standards and relevant parameters to specifically assess the quality of service received by disabled users. This does not exist in current quality of service standards.

- **Affordability and price regulations**

Article 3(1) provides that prices for universal services must be affordable. An affordable price is defined as “a price defined by member states at national level in light of specific national conditions”.

To ensure the affordability of the universal services, national regulatory authorities are required to monitor the evolution and level of retail tariffs, in particular in relation to national consumer prices and income.

To ensure the affordability of prices and, in particular, to ensure that those on low incomes or with special social needs are not prevented from accessing or using the publicly available telephone services, member states may provide for designated undertakings to provide tariff options or packages to consumers which depart from those provided under normal commercial conditions. In addition to such tariff options, member states may ensure that

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support is provided to consumers identified as having low incomes or special social needs. Member states may also require undertakings with universal service obligations to apply common tariffs, including geographical averaging, throughout the territory, or to comply with price caps.

Where a designated undertaking has an obligation to provide special tariff options, common tariffs, or to comply with price caps, the national regulatory authority must ensure that the conditions are fully transparent and are published and applied in accordance with the principle of non-discrimination.

The community defines affordability for individual consumers as being related to their ability to monitor and control their expenditure. This, in turn, is influenced by the information which users, including consumers, receive regarding telephone usage expenses, as well as the relative cost of telephone usage compared to other services. To ensure that consumers are able to control their expenditure, the directive requires member states to ensure that designated undertakings, in providing facilities and services additional to the universal service, establish terms and conditions in such a way that the subscriber is not obliged to pay for facilities or services which are not necessary or not required for the service requested. In addition, member states are required to place obligations on undertakings with universal service obligations to provide specific facilities and services that enable subscribers to monitor and control expenditure and avoid unwarranted disconnection of service. Such facilities and services include:

- a specific level of itemised billing, free of charge;
- selective call barring for outgoing calls, free of charge;
- the possibility for consumers to control expenditure via pre-payment means;
- phased payment of connection fees to offset upfront connection fees.

Except in cases of fraud, persistent late payment or non-payment of bills, consumers should be protected from immediate disconnection from the network on grounds of an unpaid bill. Member states are required to authorise specified measures, which are to be proportionate, non-discriminatory and published, to cover non-payment of telephone bills for the use of the public telephone network at fixed locations. These measures are to ensure that:

- due warning of any consequent service interruption or disconnection is given to the subscriber beforehand;
- any service interruption is confined to the service concerned;
- disconnection for non-payment of bills should take place only after due warning is given to the subscriber.

To assess the affordability of telecommunications services in the community, the commission has developed affordability indicators, defined as the percentage of per capita income needed to acquire a given basket of services. For the telecommunications sector, two indices were defined – one for people in the lowest 20% of the income distribution bracket and the other for people in the 40 to 60% income bracket. These groups were considered to be purchasing different baskets of services at different prices. Based on these indices, the commission concluded that the percentage of personal income required to buy the standard basket of services.

45 Member states shall ensure that the relevant authority is able to waive these requirements in all or part of its national territory if it is satisfied that the facility is widely available.
telephone calls had fallen in most countries between 1996 and 2001. They also concluded that the increase in affordability had been most important in countries with low income levels.\textsuperscript{46}

- Quality standards

Under article 11, national regulatory authorities must ensure that all universal service providers publish adequate and up-to-date information concerning their performance in the provision of universal service. These must be based on specified quality of service parameters, definitions and measurement methods. The quality of service parameters are:

- supply time for initial connection;
- fault rate per access line;
- fault repair time;
- unsuccessful call ratio;
- call set up time;
- response times for operator services;
- response times for directory enquiry services;
- proportion of coin and card operated public-pay-telephones in working order;
- bill correctness complaints.

Analysis of performance in relation to these parameters should take place at the regional level and the published information should be supplied to the national regulatory authority. An attempt by the commission to analyse these parameters across the member states revealed that there was a large amount of missing data and lack of comparability across countries.\textsuperscript{47}

National regulatory authorities may specify additional quality of service standards, where relevant parameters have been developed, to assess the performance of undertakings in the provision of services to disabled end-users and disabled consumers. The information concerning the performance of undertakings in relation to these parameters must also be published and made available to the national regulatory authority.

To ensure that end-users and consumers have access to comprehensive, comparable and user-friendly information, national regulatory authorities may also specify the content, form and manner of information to be published. National regulatory authorities must be able to set performance targets for those undertakings with universal service obligations at least in relation to the provision of publicly available telephone connections and services at fixed locations. In setting such performance targets, the national regulatory authorities must take account of views of interested parties. Member states shall ensure that national regulatory authorities are able to monitor compliance with those performance targets by designated undertakings. Persistent failure by an undertaking to meet performance targets may result in specific measures being taken. National regulatory authorities shall be able to order independent audits or similar reviews of the performance data, paid for by the undertaking.


concerned, in order to ensure the accuracy and comparability of the data made available by undertakings with universal service obligations.

- **Consumer protection and redress**

The universal service directive proposes certain measures that member states must take to ensure that consumers’ rights are safeguarded. Specifically, member states must ensure that consumers have a right to a contract with their communications service provider that specifies, at a minimum:

- the identity and address of the supplier;
- services provided, the service quality levels offered, as well as the time for initial connection;
- the types of maintenance service offered;
- particulars of prices and tariffs and the means by which up-to-date information on all applicable tariffs and maintenance charges may be obtained;
- the duration of the contract, and the conditions for renewal and termination of services and of the contract;
- any compensation and the refund arrangements which apply if contracted service quality levels are not met;
- the method of initiating procedures for settlement of disputes.

Subscribers must also have a right to withdraw from their contracts without penalty upon notice of proposed modifications in the contractual conditions. They must be given adequate notice, not shorter than one month, ahead of such modifications. At such time when notice is given, subscribers must be informed of their right to withdraw.

Article 21 of the directive requires member states to ensure that transparent and up-to-date information on applicable prices and tariffs, and on standard terms and conditions, in respect of access to and use of publicly available telephone services is available to end-users and consumers. National regulatory authorities shall encourage the provision of information to enable end-users, as far as appropriate, and consumers to make an independent evaluation of the cost of alternative usage patterns, by means of, for instance, interactive guides.

Under article 22 of the directive, national regulatory authorities must be able, after taking account of the views of interested parties, to require undertakings that provide publicly available electronic communications services to publish comparable, adequate and up-to-date information for end-users on the quality of their services. National regulatory authorities may specify the quality of service parameters to be measured, and the content, form and manner of information to be published, in order to ensure that end-users have access to comprehensive, comparable and user-friendly information.

The universal service directive also makes provision, in article 33, for systematic consultation of stakeholders. Member states are required to ensure, as far as appropriate, that national regulatory authorities take account of the view of all stakeholders (including consumers and, in particular, disabled users) on issues related to end-user and consumer rights concerning publicly available electronic communications services, in particular where they have a significant impact on the market. Where appropriate, interested parties may develop, with the guidance of national regulatory authorities, mechanisms involving consumers, user groups
and service providers, to improve the general quality of service provision by, for example, developing and monitoring codes of conduct and operating standards.

With respect to meeting consumers’ needs for redress, article 34 of the directive requires member states to ensure that that transparent, simple and inexpensive out-of-court procedures are available for dealing with unresolved disputes involving consumers (although member states may extend these obligations to cover disputes involving other end-users). Such procedures must enable disputes to be settled fairly and promptly and may, where warranted, include a system of reimbursement or compensation. Member states must also ensure that their legislation does not hamper the establishment of complaints offices and the provision of on-line services at the appropriate territorial level to facilitate access to dispute resolution by consumers and end-users. Where disputes involve parties in different member states, member states must co-ordinate their efforts with a view to bringing about a resolution of the dispute.

- Guaranteeing the universal service

In order to guarantee the provision of the universal service throughout the national territory, member states may designate a universal service provider or universal service providers. Member states may designate different undertakings or sets of undertakings to provide different elements of universal service and/or to cover different parts of the national territory. Member states are required, when designating undertakings as having universal service obligations, to use an efficient, objective, transparent and non-discriminatory designation mechanism. Such designation methods must also ensure that the universal service is provided in a cost-effective manner.

To further guarantee the provision of the universal service, where the provision of the universal service is considered to represent an unfair burden on an undertaking, member states may introduce a mechanism to:

- compensate that undertaking for the net costs of universal service obligations from public funds;
- share the net cost between providers of electronic communications networks and services.

The net costs of the provision of the universal service must be calculated taking into account any market benefit which accrues to an undertaking to provide universal service and making use of the net costs of providing universal service identified by the designation mechanism discussed above. The accounts and other information serving as the basis for the calculation of the net cost of universal service must be audited or verified by the national regulatory authority or a body independent of the relevant parties and approved by the national regulatory authority. The results of the cost calculation and the conclusions of the audit must be publicly available.

Where the net cost is shared, member states must establish a sharing mechanism administered by the national regulatory authority or a body independent from the beneficiaries under the supervision of the national regulatory authority. Only the net cost may be financed. A sharing mechanism must respect the principles of transparency, least market distortion, non-discrimination and proportionality. Member states may choose not to require contributions from undertakings whose national turnover is less than a set limit. Any charges related to the sharing of the cost of universal service obligations must be unbundled and identified separately for each undertaking. Such charges must not be imposed or collected from
undertakings that are not providing services in the territory of the member state that has established the sharing mechanism.

The principles for cost sharing, and details of the mechanism used, must be made publicly available. The national regulatory authorities must publish an annual report giving the calculated cost of universal service obligations, identifying the contributions made by all the undertakings involved, and identifying any market benefits that may have accrued to undertakings designated to provide universal services.

- Adaptability of the universal service

The adaptability of the universal service to changing social, commercial and technological conditions is particularly important in the communications sector, where services used, and the technical means used to deliver services to consumers, continues to evolve at pace.

Article 15 of the directive makes provision for the commission to periodically review the scope of the universal service, in particular with a view to proposing to the European Parliament and the council that the scope be changed or re-defined. The commission is required to undertake the first review within two years of implementation of the directive, and thereafter every three years. The review must be undertaken in light of social, economic and technological developments, taking into account, for instance, mobility and data rates in the light of the prevailing technologies used by the majority of subscribers.

The periodic review of the universal service aims to ensure that services that become available to the substantial majority of the population are included in the universal service, thereby avoiding the risk of social exclusion for those who can not afford them. The commission states that care should be taken that any change in scope of universal service obligations does not artificially promote certain technological choices over others, result in a disproportionate financial burden being imposed on sector undertakings, or result in any financing burden falling unfairly on consumers with lower incomes.

- Competition and choice

To ensure consumer choice of service provider, article 19 requires national regulatory authorities to ensure that those undertakings with significant market power for the provision of, connection to, and use of, the public telephone network at a fixed location enable their subscribers to access the services of any interconnected provider of publicly available telephone services on a call-by-call basis. This may be achieved by dialling a carrier selection code or by means of pre-selection, with a facility to override any pre-selected choice on a call-by-call basis by dialling a carrier selection code. National regulatory authorities shall ensure that the pricing for access and interconnection related to the provision of the facilities mentioned above is cost-oriented and that direct charges to subscribers, if any, do not act as a disincentive for the use of these facilities.

Energy

In the energy sector, the focus of community legislation has largely been on securing the gradual and controlled liberalisation of the electricity and gas markets. To this end, the community adopted Directive 96/92/EC (the Electricity Directive) and Directive 98/30/EC
the Gas Directive), which made provision for the partial liberalisation of these markets.\textsuperscript{48} Specifically, these directives required member states to open to competition a segment of the market equal to at least:

- 28\% of annual electricity consumption by February 1999, expanding to 35\% by 2003;

To date, the directives have had little impact on consumers, as market opening does not extend to household customers and hence few of the benefits of competition have been experienced by them. In an attempt to further the process of liberalisation of the energy markets, proposed amendments to these directives have been introduced.\textsuperscript{49} These proposed amendments will require member states to open to competition, by 1 January 2004 at the latest, both the electricity and gas markets for all non-household customers, with a view to full market opening by 1 January 2005 at the latest.

While the provisions of the electricity and gas directives primarily focus on ensuring the conditions necessary for effective competition, the community does recognise, in accordance with the principles of the EC treaty (and, in particular, article 86(2)), the public interest objectives of electricity and gas industries. Accordingly, the directives make allowances for member states to impose public service obligations on electricity and gas undertakings.

The provisions in the electricity and gas directives relating to public service obligations are somewhat vague and imprecisely defined. Article 3.2 of both the electricity and the gas directives provide that member states may impose public service obligations “which may relate to security, including security of supply, regularity, quality and prices of supplies, and to environmental protection.” Article 3.2 of the respective directives goes on to state that “such obligations must be clearly defined, transparent, non-discriminatory and verifiable,” and should be published and notified to the commission. The precise definition of such public service obligations is, however, left up to the member states.

The Economic and Social Committee (ESC) argue that it is precisely this vagueness that has resulted in the large discrepancies in the legislation of the various member states with regard to what can be included under the concept of public service in the electricity and natural gas sectors.\textsuperscript{50} The ESC argues that these discrepancies may lead to distortions of competition and must, therefore, be removed. Such discrepancies may also lead to significant disparities in levels of service and consumer protection. It is only through the introduction of more detailed legislation at the community level, which harmonises the rights of users and the obligations of energy companies, that consumers’ rights can be safeguarded and distortions of competition removed.


\textsuperscript{50} ESC opinion on the proposal for a directive of the European Parliament and of the council amending directives 96/92/EC and 98/30/EC concerning common rules for the internal market in electricity and natural gas, OJ C 36/10, 8 February 2002.
The proposed amendments to the electricity and gas directives aim to strengthen the existing public service provisions. These include additional safeguards to ensure security of supply, enhanced environmental and consumer protection conditions, and a universal service requirement for the electricity sector. However, the community level provisions in the proposed amended directives continue to be less comprehensive than those developed under telecommunications and postal legislation. Detailed definition of the public service obligations, therefore, continues to be the domain of the member states.

The discussion which follows unpacks the provisions relating to public service obligations in the proposed amended directives, as they currently stand. Improvements on the existing provisions are highlighted where appropriate.

- Access conditions

In the existing electricity and gas directives, the possibility exists for member states to impose on distribution or supply undertakings, an obligation to supply customers located in a given area (or, in the case of gas, in a given area or of a certain class or both). The directive further allows the tariffs for such supplies to be regulated, for instance to ensure equal treatment of customers concerned.

These provisions are proposed to be removed from the amended directives. For the electricity sector, this provision is to be replaced by an obligation to ensure a universal service. Article 3.3 of the proposed amended electricity directive requires member states to ensure that all final customers enjoy universal service. The universal service is defined as the right for final customers “to be supplied with electricity of a specified quality within their territory at reasonable prices”. To ensure the universal service, member states may appoint a supplier of last resort and must impose on distribution companies an obligation to connect customers to their grid under specified or approved terms, conditions and tariffs. In addition, final customers must be informed of their rights regarding the universal service.

Taking into account the extent of the existing gas network in the EU and the substitutability of the product, there is no such universal service obligation proposed for gas. The amended gas directive proposes to replace the above-mentioned provision with a new provision allowing member states to appoint a supplier of last resort for customers connected to the gas network. In addition, final customers connected to the gas system are required to be informed about their rights to be supplied with natural gas of a specified quality at reasonable prices.

The universal electricity service as defined in the proposed amended directive falls far short of those universal service requirements defined by the community in the telecommunications and postal directives. The community definition of a universal electricity service does not secure access to the service for all consumers, as it fails to encompass notions of economic, territorial or social access. As a consequence, the needs of the most vulnerable consumers – those on low incomes, elderly and disabled people, and those living in remote areas – are not secured by the universal service.


52 While earlier versions of the proposed amended electricity directive included a reference to “affordable and reasonable prices” in the universal service, this has been removed in the most recent version.
The needs of vulnerable and disadvantaged consumers are addressed outside the universal service, with requirements, in article 3.4 of the proposed amended electricity directive, for member states to ensure that there are adequate safeguards to protect vulnerable customers from disconnection. In this regard, member states are allowed to take appropriate measures to protect final customers in remote areas. The commission interprets this to mean protection from unjustified disconnection of people who are elderly, unemployed, or disabled, as well as other vulnerable customers. The definition of what is reasonable or justified is left to the member states.

Furthermore, article 3.6 requires member states to implement appropriate measures to achieve the objective of social and economic cohesion. Such measures may include, in particular, the provision of adequate economic incentives using, where appropriate, all existing national and community tools, for the maintenance and construction of the necessary network infrastructure. The commission interprets this to mean that member states will need to take appropriate measures to ensure supplies at appropriate prices to, for example, peripheral areas.

Equivalent provisions for the protection of vulnerable customers and the achievement of the objective of social and economic cohesion are included in the proposed amended gas directive.

The commission’s first benchmarking report on the implementing the internal energy market shows that member states are already employing a range of measures to secure access to electricity and to protect vulnerable consumers. These include:

- securing physical access to electricity through an obligation, placed either on specially designated supply licence holders or on the supply company affiliated to the distribution system operator, to act as a default supplier to those customers who have no alternative available;
- all member states, with the exception of the UK, also regulate the price charged by the default supplier to household customers;
- most member states have general provisions, deriving from competition law, obliging suppliers not to discriminate between customers with similar characteristics;
- some member states (Belgium, France, Greece, Ireland, Italy, Portugal, Spain and the UK) have introduced a range of options for protecting the interests of vulnerable customers, including certain restrictions on disconnection, schemes for phasing the payment of arrears, pre-payment meters, and special tariffs for low users;
- other member states consider the existing provisions in the overall social security regime as being sufficient to allow households to meet their bills for electricity and gas.\(^{53}\)

The benchmarking report does not, however, indicate the degree to which these different measures are successful in achieving a universal service and in meeting the specific needs of vulnerable consumers. Consequently, the report has limited value in determining the comparative levels of service provision in member states and the adequacy of the provisions of the existing electricity and gas directives.

- Consumer protection and redress

Articles 3.4 of the amended electricity directive and 3.3 of the amended gas directive propose to introduce obligations to protect consumers and, in particular, vulnerable consumers. Specifically, these articles require member states to take appropriate measures to protect final customers, and, in particular, as mentioned, to ensure that there are adequate safeguards to protect vulnerable customers from disconnection. Member states may also appoint a supplier of last resort for customers connected to the gas network, and for electricity customers to ensure the provision of a universal electricity service. Member states are required to ensure high levels of consumer protection, particularly with respect to transparency regarding contractual terms and conditions, general information and dispute settlement mechanisms. Member states are also required to ensure that eligible customers are able to switch supplier.\(^{54}\)

The amended directives propose specific measures that member states must take to ensure that the rights of energy consumers are protected. As in the telecommunications sector, member states are required to ensure that final customers have a right to a contract with their energy service provider that specifies, at a minimum:

- the identity and address of the supplier;
- services provided, the service quality levels offered, as well as the time for initial connection;
- the types of maintenance service offered;
- the means by which up-to-date information on all applicable tariffs and maintenance charges may be obtained;
- the duration of the contract, the conditions for renewal and termination of services and of the contract, and the existence of any right of withdrawal;
- any compensation and the refund arrangements which apply if contracted service quality levels are not met;
- the method of initiating procedures for settlement of disputes.

Contractual conditions must be fair and well-known in advance, and final customers should be given adequate notice of any intention to modify those conditions. Energy service providers are required to notify their subscribers directly of any increase in charges, at an appropriate time not later than one normal billing period after the increase comes into effect. Member states must also ensure that final customers are free to withdraw from contracts if they do not accept the new conditions, notified to them by their energy service provider, and that they are informed of their right of withdrawal when notice is given.

Member states are also required to ensure that final customers receive transparent information on applicable prices and tariffs and on standard terms and conditions, in respect of access to and use of energy services. Final customers must also be offered a full choice of payment methods, free of charge, on general terms and conditions which are fair and transparent and given in clear and comprehensible language. Final customers must also be protected against unfair or misleading selling methods.

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\(^{54}\) Where **eligible customer** is defined to mean those customers who have access to competitive suppliers of electricity or gas in accordance with the directive.
In the case of electricity, final customers must also be informed about their rights regarding universal service. In the case of gas, final customers connected to the gas system must similarly be informed about their rights to be supplied with natural gas of a specified quality at reasonable prices.

With respect to meeting consumers’ needs for redress, the proposed directives require member states to ensure that final customers benefit from transparent, simple and inexpensive procedures for dealing with their complaints. Such procedures must enable disputes to be settled fairly and promptly with provision, where warranted, for a system of reimbursement or compensation. The procedures for the settlement of disputes are required to follow, wherever possible, the principles set out in commission recommendation 98/257/EC.\(^\text{55}\) These principles include:

- **independence** – independence of the decision-making body must be ensured to guarantee the impartiality of its actions;
- **transparency** – appropriate measures must be taken to ensure the transparency of the dispute settlement procedure, including the provision of information, on request, on the types of dispute which may be referred to the body concerned, the rules governing the referral of the matter to the body, the possible cost of the procedure for the parties, the types of rules serving as the basis for the body’s decisions, the decision-making arrangements within the body, and the legal force of the decision taken; and the publication by the competent body of an annual report setting out the decisions taken;
- **adversarial principle** – all parties concerned should be allowed to present their viewpoint before the competent body and to hear the arguments and facts put forward by the other party, and any experts’ statements;
- **effectiveness** – ensured through measures guaranteeing that the consumer has access to the procedure without being obliged to use a legal representative, that the procedures are free of charges or are of moderate costs, that only short periods elapse between the referral of a matter and the decision, and that the competent body is given an active role thus enabling it to take into consideration any factors conducive to a settlement of the dispute;
- **legality** – the decision taken by the body must not result in the consumer being deprived of the protection afforded by the mandatory provisions of the law of the state in whose territory the body is established (or in the case of cross-border disputes, the consumer should not be deprived of the protection afforded by the mandatory provisions applying under the law of the member state in which he/she is normally resident);
- **liberty** – the decision taken by the body concerned may be binding on the parties only if they were informed of its binding nature in advance and specifically accepted this;
- **representation** – the procedure does not deprive the parties of the right to be represented or assisted by a third party at all stages of the procedure.\(^\text{56}\)

- **Security of supply** \(^\text{57}\)

The commission considers ensuring continued secure supplies of electricity, and to a lesser degree gas, as the most important public service objective of the energy sector.


\(^{57}\) Where **security** is defined to mean both security of supply and provision of electricity, and technical safety.
Traditionally, security of supply has been assured by requiring a single company or organisation to plan the necessary amount of production and transmission capacity, and then providing that company with a closed market in return for taking on this obligation. Such a regime is not compatible with market opening and, therefore, new arrangements are required. A range of possible mechanisms can be adopted by member states to ensure that an appropriate regulatory framework and the right incentives are provided to secure the provision of an adequate amount of electricity and gas in a liberalising market. These include:

- bilateral long-term purchasing agreements between generators or gas shippers and suppliers to spread the risks associated with entering into long term investment by sharing those risks with suppliers and ultimately customers;
- enhancing bilateral wholesale markets with spot markets, such as power exchanges or hubs, to send correct price signals to market participants to make new capacity available;
- financial incentives to new capacity (availability payments to generators);
- obligations on suppliers to hold reserve capacity (or to have available a certain amount of reserve volume) compared to their level of demand;
- obligations on the transmission system operator or some other independent agency to maintain and control a general emergency reserve supply;
- direct price signals to customers (hourly metering) and use of interruptible contracts;
- long term planning and tendering for new capacity;
- in the gas sector, measures to ensure adequate import and network capacity (that is, that transmission networks are adequately designed to carry gas required at peak times), including obligations on the transmission system operator.

The proposed amendments to the gas and electricity directives provide for additional safeguards to ensure security of supply in a liberalising market.

Specifically, article 3.6 of the amended electricity directive and article 3.4 of the amended gas directive propose that member states must implement appropriate measures to achieve the objective of security of supply. Such measures may include, in particular, the provision of adequate economic incentives using, where appropriate, all existing national and community tools, for the maintenance and construction of the necessary network infrastructure, including, in the electricity sector, interconnection capacity.

In addition, article 5 of the electricity directive requires member states to adopt an authorisation procedure for the construction of new generation capacity, which lays down the criteria for the granting of such authorisations. These include criteria relating to the safety and security of the electricity system, installations and associated equipment, and the protection of public health and safety.

Article 6 of the amended electricity directive proposes further provisions for ensuring security of supply. Article 6.1 requires member states to ensure the possibility, in the interests of security of supply and environmental protection, to tender for new capacity or energy efficiency/demand-side management procedures on the basis of published criteria. A tendering procedure can, however, only be launched if, on the basis of the authorisation procedure, the generating capacity being built or the energy efficiency/demand-side management measures being undertaken are not sufficient to ensure security of supply and to meet environmental targets.

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Under the electricity directive, member states are also allowed, for reasons of security of supply, to direct that priority be given to the dispatch of generating installations using indigenous primary energy fuel sources. In any calendar year, this may not exceed 15% of the overall primary energy necessary to produce the electricity consumed in the member state concerned.

Article 6a of the proposed amended electricity directive and article 4a of the proposed amended gas directive make provisions for member states or national regulatory authorities to monitor security of supply issues. This monitoring shall, in particular, cover the supply/demand balance in the national market, the level of expected future demand and envisaged additional capacity under planning or construction, and the quality and level of maintenance networks. The competent authorities are also required to publish an annual report, to be forwarded to the commission, outlining the findings of their monitoring, as well as any measures taken or envisaged to address them.

In addition, the proposed amended directives allow member states to undertake long term planning to ensure that they meet their security of supply objectives. The directives also place certain obligations on transmission and distribution system operators to contribute to the security of supply through providing adequate transmission capacity and system reliability (in the electricity sector); and maintaining and developing secure, reliable and efficient systems and facilities (in the gas sector).

Finally, article 24 of the gas directive provides that in the event of a sudden crisis in the energy market or where the physical safety or security of persons, apparatus or installations or system integrity is threatened, a member state may temporarily take the necessary safeguard measures.

- Quality standards

While the directives do make general provisions for member states to impose public service obligations related to quality of supplies, and specific provisions requiring transmission and distribution operators to ensure the reliability and safety of their systems, the directives do not include any detailed specifications relating to the minimum quality of service to be provided. This is of particular concern in the electricity sector, because without any specified standards placed on the universal service provider, it will be difficult to guarantee the universal service.

While, in its first benchmarking report, the commission recognises continuity of supply to be the most fundamental aspect of performance in the electricity sector, the amended electricity directive is vague with regards to provisions ensuring continuity supply. The setting of performance standards to ensure continuity of supply thus remains a matter of subsidiarity.

Most member states have set targets for transmission and distribution operators to ensure the continuity of service. These targets are either set at the overall level (that is, overall average targets for performance) or guarantee certain minimum standards for individual consumers (that is, guaranteed individual standards). Varying degrees of enforcement also exist between member states.59

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The commission’s horizontal assessment of the market performance of network industries highlighted the fact that there were few indicators of performance quality available for the electricity sector. As a result, it is difficult to determine the equivalency of service quality between member states.

- Price regulations

While the electricity and gas directives allow member states to impose public service obligations related to the price of supplies, there are no explicit provisions relating to the regulation or monitoring of prices. Provisions for the monitoring of retail tariffs by regulators, the proper consultation of consumer organisations and the possibility of introducing price caps were introduced into the proposed amended directives during the co-decision process. However, these were subsequently removed by the commission on the basis that such references were considered to be too detailed for the framework directive, and matters for subsidiarity. The ability for the regulator to use retail price regulation is, however, important to ensure that benefits from increased competition accrue to all consumers, including the most vulnerable.

The proposed amendments to the electricity and gas directives do, however, introduce a right for customers to be supplied with energy at reasonable prices (for gas, only those customers who are connected). Final customers must also receive transparent information on applicable prices and tariffs and on standard terms and conditions, in respect of access to and use of energy services. In addition, final customers must be offered a full choice of payment methods free of charge. The general terms and conditions of such payment methods must be fair and transparent, and written in comprehensible language.

- Environmental conditions

The proposed amendments to the gas and, in particular, electricity directives also aim to enhance the environmental protection provisions of the directives. The amendments seek to recognise and affirm the environmental goals of the community. To this end, the definition of environmental protection as a public service objective is expanded to include references to the specific goals of energy efficiency and climate protection.

Article 3.6 of the proposed amended electricity directive and article 3.4 of the proposed amended gas directive require member states to implement appropriate measures to achieve the objective of environmental protection, which may include means to combat climate change. Such measures may include, in particular, the provision of adequate economic incentives, using, where appropriate, all existing national and community tools.

For reasons of environmental protection, the electricity directive and its proposed amendments allow priority to be given to production from renewable resources. Specific requirements of the directive (and its proposed amendments) aimed at securing the community’s environmental goals include:

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• provision for member states to specify criteria for the granting of authorisations for the construction of new generation capacity which relate to the protection of the environment, energy efficiency, and the nature of the primary sources;

• a requirement for member states, in the interest of environmental protection and the promotion of infant new technologies, to ensure the possibility of a tendering procedure for new capacity or energy efficiency/demand-side management measures, where the generating capacity being built, or energy efficiency/demand-side management measures being undertaken, through the established authorisation procedure are insufficient to meet environmental targets;

• provision for member states to place requirements on the transmission system operator, when dispatching generating installations, to give priority to generating installations using renewable energy sources or waste or producing combined heat and power;

• provision for member states to place requirements on distribution system operators, when dispatching generating installations, to give priority to generating installations using renewable energy sources or waste or producing combined heat and power;

• a requirement for distribution system operators to consider, when planning the development of the distribution network, energy efficiency/demand-side management measures and/or distributed generation that might supplant the need to upgrade or replace electricity capacity;

• requirements for member states to ensure that electricity suppliers specify in the bills and in all advertising and promotional materials made available to final customers, the percentage contribution of each energy source to the commercial fuel mix for the electricity supplied, the overall fuel mix of the supplier over the preceding year, and the relative importance of each energy source with respect to the production of greenhouse gases (with respect to electricity obtained via an electricity exchange, the aggregate figures provided by the exchange over the preceding year may be used).

- Processes and institutional aspects

With regard to processes and institutions, the proposed amended directives require member states to designate one or more competent bodies as national regulatory authorities. These authorities are required to be wholly independent of the interests of the energy industry. They shall at least be responsible for continuously monitoring the market to ensure non-discrimination, effective competition and the efficient functioning of the market (for instance, with respect to, amongst others, the level of competition and the time taken by transmission and distribution undertakings or system operators to make connections and repairs).

Regulatory authorities for the gas sector shall also monitor any mechanisms to deal with congested capacity within the national gas system, and shall act as the dispute settlement authority for complaints against transmission, LNG or distribution system operators relating to issues of competition, congestion or connection and repair times.

Inland transport: rail, road and inland waterways

The community provisions for the regulation of public passenger transport are somewhat different to those for the other services of general economic interest. In addition to the competition rules and the provisions of article 86 of the EC treaty, inland transport is governed, where appropriate, by the provisions of the community’s common transport policy, as provided for by articles 70 to 80 of the EC treaty.
The development of the highest possible standards of public service in the provision of passenger transport by rail, road and inland waterways is, as a means of boosting the use of sustainable forms of transport, one of the primary community objectives under the common transport policy.

Article 73 of the EC treaty refers to the discharge of certain obligations inherent in the concept of public service. Council regulation (EEC) No 1191/69 of 26 June 1969, as amended by regulation 1893/91, implements the article of the treaty, establishing the community regulatory framework for public passenger transport. The regulation indicates how competent authorities in member states can ensure adequate transport services which contribute to sustainable development, social integration, environmental improvement and regional balance.

Council regulation (EEC) No 1191/1696 of 26 June 1969, as amended, grants authorities in the member states the right to conclude public service contracts with transport undertakings to ensure minimum frequencies, capacity, routes, tariffs and timetables, and continuity of service. Specifically, the existing regulation makes provision for certain public service obligations to be imposed on operators in the passenger transport sector. These include:

- the obligation to operate – that is, for transport operators to ensure the provision of a transport service satisfying fixed standards of continuity, regularity and capacity;
- the obligation to carry – that is, for transport undertakings to accept and carry passengers and goods at specified rates and subject to specified conditions;
- tariff obligations – that is, the obligation for transport undertakings to apply, in particular for certain categories of passengers or on certain routes, rates fixed or approved by an authority which are contrary to the commercial interests of the undertaking and which result from the imposition of, or refusal to modify, certain tariff provisions.

In return for these obligations, which usually form part of a concession, the operator is granted:

- exclusive rights for that area – the reason for these exclusive rights is to provide a service and to compensate the operator, in part or in full, for the additional costs occasioned by certain routes or special conditions. The exclusive rights give the operator security and mean that costs can be offset within its concession area, thus encouraging the provision of more regular and reliable services;
- and/or financial compensation for the costs incurred in meeting the public service requirements.

In addition, in certain cases, concessionary arrangements may provide for supplementary aid to keep down tariffs. In such cases, operators cannot unilaterally set the prices which users have to pay; instead they are set and adjusted by the relevant authority as stipulated in the concession contract.

Many member states have introduced legislation providing for the award of fixed-duration exclusive rights and public service contracts (which set out public service requirements) in at least part of the public transport market. However, the situation currently varies considerably from one member state to another. Some markets are open to competition (on the basis of tendering for public service contracts of varying duration), while in a substantial number of countries, there is no competition as the markets are closed. In addition, there are public and
private enterprises often competing together in the same market segments. The opening of the market on the basis of national legislation has thus led to disparities in the procedures applied and has created legal uncertainty as to the rights of operators and the duties of competent authorities.

The commission submitted a proposal in July 2000 to review the community regulations relating to inland transport. An amended proposal was adopted in February 2002. The proposed regulation aims to update the community legal framework in order to ensure the further development of controlled competition in the provision of public passenger transport services. To achieve this, the proposal introduces the concept of ‘regulated competition’, based essentially on the regular renewal of exclusive rights in a market based on free access. The commission states that “the development of competition should ... be accompanied by community rules that promote the protection of the general interest in terms of adequate availability in all regions of high-quality, reasonably priced public transport, accessible to people with reduced mobility and providing full social coverage.” Furthermore, they state that, in securing this general interest, it is important for consumers and interested parties to have at their disposal integrated information about the services available.

To achieve a balance between public mission and the competition principle, the proposed regulation includes the following regulatory instruments:

- the obligation for the competent authorities to provide adequate public passenger services;
- the establishment of quality criteria;
- financial compensation that covers expenditure incurred in meeting the public service requirements;
- compensation for the cost of public services;
- the granting of exclusive rights (for a specified period);
- the organisation of competition through tendering, with appropriate derogations.

Specifically, with regards to securing the public service, the proposed regulation requires competent authorities to secure adequate consumer-oriented public passenger transport services that are of high quality and reasonably priced, providing integration, continuity, safety and full social coverage. The means by which this public service mission will be achieved is through concluding public service contracts, specifying minimum criteria to meet the public interest, or by laying down general rules for public passenger transport operation.

The ways in which public service requirements can be secured in the public transport sector, and the specific public service obligations laid out in the proposed regulation, are unpacked in the discussion which follows.

- Guaranteeing the public service

To secure the provision of socially necessary public passenger transport services (which are unable to operate on a commercial basis), competent authorities in member states may employ the following mechanisms:

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- awarding exclusive rights to operators; 62
- granting financial compensation to operators;
- laying down general rules for public transport operation, applicable to all operators.

Where financial compensation is given for the expenditure incurred in meeting specified public service requirements and where exclusive rights are guaranteed, public service contracts must be concluded between the competent authority and the undertaking. 63 Public service contracts are generally awarded by tender, for a maximum duration of fifteen years, but may be awarded directly on a case-by-case basis for any rail, metro or light rail initiative:

- provided that it can be shown that it would be impossible to meet national or international rail safety standards or the costs of maintaining coordination between the operator and the manager of the infrastructure would exceed the benefits accruing from the bid;
- where an operator provides transport services other than rail transport but they are integrated with directly awarded rail services;
- for public service contracts with an annual value of less than Euro 400 000 (or in the case of network, less than Euro 800 000);
- with an exclusive right provided that no financial compensation is given and it involves a new service or an individual route which is awarded on the basis of quality criteria.

Under the public service contracts, operators must furnish competent authorities with the information necessary to monitor and evaluate their performance and the performance of the transport network as a whole. In particular, operators must provide information on the services provided, tariffs charged, number of passengers carried, number of complaints received, and any safety-related problems. Such contracts may also include a system of bonuses and penalties based on operators’ performance as measured by quantitative data, customer surveys, independent monitoring and inspection or other means.

Finally, public service contracts must not cover a wider geographical area than is required by the general interest, and, in particular, by the need to provide services to significant groups of passengers who habitually use more than one link in the public transport network during the same journey.

- Public service requirements of contracts

In assessing the adequacy of public passenger transport, defining selection and award criteria, and awarding public service contracts, competent authorities are required to consider the following criteria:

- Quality conditions, including the overall quality of the service provided to consumers, in particular the accessibility of the services in terms of their frequency, speed, punctuality, reliability, the extent and capacity of the network, and the service information that is provided; the health and safety of passengers; integration between different transport services, including integration of information, ticketing, timetables, consumer rights and

62 Exclusive right means the entitlement on the part of an operator to operate a particular type of passenger transport service on a particular route or network or in a particular area, to the exclusion of other potential operators.
63 Public service contract means any legally enforceable agreement between a competent authority and an operator for the fulfilment of public service requirements. Public service requirement means a requirement adopted by a competent authority in order to secure adequate public passenger transport services.
the use of interchanges; and the specifications and condition of the rolling stock, infrastructure and other assets to be used in the provision of the service, and the arrangements for the maintenance and renewal of those assets;

- **Pricing conditions**, including the level of tariffs for different groups of users set by the authority or operator and the transparency of tariffs;

- **Access conditions**, specifically the accessibility for people with reduced mobility,\(^\text{64}\) the balanced development of regions, including integration between local, regional and long-distance transport systems; the transport needs of people living in less densely populated areas; and the transport needs of people living in border regions, including the integration across national borders of information, timetables, ticketing and services in general;

- **Environmental factors**, including rational use of energy and local, national and international standards and norms, notably those pertaining to the emission of air pollutants, noise and global warming gases;

- **Consumer protection and redress**, including how complaints are handled, disputes between passengers and operators are resolved and service shortfalls are redressed.

Operators of public passenger transport services must make available in accessible formats and within a reasonable timescale, on request, complete and up-to-date information about the services’ accessibility for people with reduced mobility, their timetables and their tariffs. The only charge they shall make shall be to cover the marginal administrative cost of providing the information.

In addition to the above-mentioned public service criteria, competent authorities must also take into account, in defining selection and award criteria and awarding public service contracts, the qualifications of staff and the internal training provided by operators, and the pay and other employment and social conditions that are in force in the member state, region or locality in which the services are to be performed, including any specific conditions that the authority itself has agreed to apply. They must also take account of the cost of providing the services.

- **General rules for public passenger transport operation**

To further guarantee the provision of socially necessary public passenger transport, competent authorities in member states may lay down general rules to be adhered to by all operators. These rules must be applied without discrimination to all transport services of similar character in the geographical area for which the authority is responsible. General rules may include:

- requirements for operators to use rolling stock or infrastructure that meet defined standards of quality, environmental impact, accessibility or appearance;
- requirements for operators to participate in integrated systems of ticketing, timetabling, or information;
- restrictions, applied without discrimination between operators, on the total number of vehicles using a particular section of road for reasons of public safety or environmental protection;
- tariff obligations, setting out maximum tariffs for some or all trips.

\(^64\) Where ‘people with reduced mobility’ means anyone who has a particular difficulty when using public transport, including elderly people, disabled people, people with sensory impairment and wheelchair users, pregnant women, people accompanying small children or people with heavy or cumbersome baggage.
General rules may also include compensation for the cost of complying with them, provided that compensation is available to all operators on a non-discriminatory basis, and the general rule in question refers to quality and reliability standards for the services it affects, and to appropriate penalties that shall be imposed on operators that fail to comply with these standards.

**Water**

Water services include drinking water treatment and distribution and waste water collection, treatment and disposal. However, this paper focuses on drinking water only. As with the other network industries, the water industry provides a product and service which is essential to consumer health and well-being. However, while community legislation does recognise the services provided by the water sector as services of general economic interest, the sector is often viewed and treated differently by the community. Unlike the other services of general economic interest, liberalisation of the water sector has to-date not been a priority for the community. Service obligations have, for the most part, been introduced by the community as safeguards to ensure that, in a liberalised environment, services continue to meet certain defined standards. As liberalisation has not been a focus of community-level water policy, community policy discussions on services of general economic interest tend to overlook developments in the water sector. However, a strong environmental ethic has been imposed on the water sector at community level. This has resulted in the community introducing service obligations for the water sector, which focus specifically on meeting goals of environmental protection, including aspects of environmental quality and health. Other public service objectives, such as ensuring affordability and service quality and safeguarding consumer rights, tend to be eclipsed by the environmental objectives of the community.

The community’s policy with regards to drinking water is laid down principally in the Directive 98/83/EC (the Drinking Water Directive) and Directive 2000/60/EC (the Water Framework Directive). Other directives, such as the Urban Waste Water Directive (91/271/EEC) and the Nitrates Directive (91/676/EEC), also have implications for the quality of water resources and hence for securing good quality drinking water supplies.

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65 There are tensions, however, within the community with regard to EU water liberalisation policy and the status of the water sector. For example, in response to the commission’s communication on services of general interest, the Parliamentary Committee on Economic and Monetary Affairs takes the view that with regard to requirements and controls, the private water economy is in at least as good position as state undertakings to ensure long-term water quality and to dispose of waste water in a reliable and environmentally acceptable way; and argue that opening the market in water management presents no risk either to the quality of drinking water or to protection of groundwater, and that the high environmental importance of water supply is not necessarily incompatible with competition. In contrast, the Committee on the Environment, Public Health and Consumer Policy have suggested that privatisation or liberalisation of drinking water supply is not particularly desirable, arguing that water is not a commercial product like any other but, rather, a heritage which must be protected, defended and treated as such and, as a consequence, the service of distributing water does not lend itself to a policy of liberalisation (see Committee on Economic and Monetary Affairs (2001), Draft report on the commission communication ‘Services of General Interest in Europe’ (COM(2000)580 – C5-0000-0000(COS)), 8 May 2001; and Committee on the Environment, Public Health and Consumer Policy (2001), Amendment 1-43: Draft report by Werner Langen, commission communication ‘Services of General Interest in Europe’, PE 307.539/1-43, 31 July 2001).

- Quality standards

The primary focus of the community’s water policy, as it relates to drinking water supplies, is on ensuring the quality of water, in particular to meet consumers’ needs with regard to the health and safety of the product supplied. By securing the sustainable management of good quality water resources, including controlling the quantity of supply, the community water policy also aims to ensure the continuity and security of drinking water supply. These aspects are not subject to any specific community requirements or obligations however.

The drinking water directive requires member states to take the measures necessary to ensure that water intended for human consumption is wholesome and clean. To this end, the directive sets out a range of essential health-related quality parameters and minimum standards, with which member states must ensure that drinking water complies. These standards cover microbiological, chemical and indicator parameters, including parameters relating to the colour, odour and taste of the drinking water supply. The drinking water directive also requires member states to take all measures necessary to ensure that regular monitoring of the quality of drinking water is carried out, in order to check that the water available to consumers meets the requirements of the directive and, in particular, the parametric values or minimum standards set by the directive. To this end, the directive sets out the minimum requirements for the establishment of monitoring programmes by member states, and methods of analysis for specific parameters.

The water framework directive aims to establish a framework for the protection of community water resources (specifically, inland surface waters, groundwater, transitional waters, and coastal waters) which, amongst others:

- prevents further deterioration of these water resources;
- promotes sustainable water use based on long-term protection of available water resources;
- aims at enhanced protection and improvement of the aquatic environment, inter alia, through specific measures for the progressive reduction of discharges, emissions and losses of priority substances and the cessation or phasing out of discharges, emissions and losses of priority hazardous substances;
- ensures the progressive reduction of pollution of groundwater and prevents its further pollution;
- contributes to mitigating the effects of floods and droughts.

In this way, the directive contributes to the provision of the sufficient supply of good quality surface water and ground water as needed for sustainable, balanced and equitable water use (that is, contributes to securing the drinking water supply for the population).

Specifically, the directive sets environmental objectives to ensure that good status of surface water and groundwater is achieved throughout the community and that deterioration in the

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67 Drinking water is considered to be wholesome and clean if it is free from any micro-organisms and parasites and from any substances which, in numbers or concentrations, constitute a potential danger to human health, and meet the minimum requirements of the drinking water directive.

68 The parametric values set by the directive are based on the scientific knowledge available and take into account the precautionary principle. These values are selected to ensure that drinking water can be consumed safely on a life-long basis, and thus represent a high level of health protection. The quality parameters and parametric values are reviewed every five years in the light of scientific and technical progress.
status of waters is prevented at community level. Member states must prevent deterioration of surface waters and groundwater, and protect, enhance and restore all bodies of surface and groundwater to achieve good status. Where good status already exists, it should be maintained. For groundwater, in addition to the requirements of good status, any significant and sustained upward trend in the concentration of any pollutant should be identified and reversed.

Member states are required to identify, within each river basin district, all bodies of water used for the abstraction of water intended for human consumption and those bodies of water intended for such future use. For each body of water identified, member states shall ensure that they meet the environmental objectives of the water framework directive (that is, good quality status) and that, under a water treatment regime, they meet the requirements of the drinking water directive. Member states must ensure the necessary protection for the bodies of water identified with the aim of avoiding deterioration in their quality in order to reduce the level of purification treatment required in the production of drinking water.

While the community water policy secures the quality of the water product, no specific provisions are made with regard to securing the quality of service provided by water service undertakings. This may be attributed to the absence of a liberalisation policy, which has resulted in, for the other services of general economic interest, the adoption of community principles aimed at harmonising service quality across member states.

- **Affordability and pricing regulation**

In contrast to the other services of general economic interest, in particular the telecommunications, posts and electricity sectors, where specific provisions have been put in place at community level to ensure the affordability of prices of universal or public services, community policy on water pricing focuses on enhancing the sustainability of water resources.

Article 9 of the water framework directive requires member states to take account of the principle of recovery of costs of water services. The directive requires member states to ensure, by 2010:

- water pricing policies provide adequate incentives for users to use water resources efficiently, and thereby contribute to the environmental objectives of the directive;
- an adequate contribution of the different water uses, disaggregated into at least industry, households and agriculture, to the recovery of the costs of water services based on economic analysis conducted according to methods laid down in the directive, and taking account of the polluter pays principle.

In so doing, member states may have regard to social, environmental and economic effects of the recovery of costs of water services, as well as the geographic and climatic conditions of the region or regions affected.

The commission has issued a communication elaborating on the community’s water pricing policy. While the commission communication on water pricing has no legal force, it may be

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interpreted as an attempt by the commission to drive forward by alternative means its policy objectives on water charging in the light of the final wording of article 9 of the water framework directive, which was watered down in negotiations. The commission communication states that, to play an effective role in enhancing the sustainability of water resources, water pricing policies need to reflect different types of costs, specifically:

- **financial costs** of water services, including the costs of providing and administering these services, operation and maintenance costs, and capital costs;
- **environmental costs** that represent damage to the environment, ecosystems and users themselves;
- **resource costs** that represent the foregone opportunities which other uses suffer due to the depletion of the resource beyond its natural rate of recharge or recovery.

The guiding principles in implementing water pricing policy which take account of environmental protection and economic efficiency focus on:

- improving the knowledge and information base, especially with regard to improving the estimates of demand for water by use through, for example, installing metering devices to support the implementation of volumetric pricing structures and analysing the relation between prices and demand; and estimating the costs of water services and use, including financial costs, and environmental and resource costs;
- setting the right water prices to promote an efficient use of water resources and limit pollution by different economic sectors;
- the river basin as the basic scale for assessing environmental and economic costs, since it represents the level at which environmental externalities take place.

In setting water prices, the following should be adhered to:

- pricing structures should include a variable element (that is, volumetric rate, pollution rate) to ensure they serve an incentive function to water conservation and reduction of pollution (the weight of the variable element needs to be balanced against the need to ensure the recovery of financial costs and thus the sustainability of water services and infrastructure);
- water prices should be set at a level that ensure the recovery of costs for each sector (agriculture, industry and households);
- water pricing policies should consider both surface water and groundwater;
- assessment of administrative costs of new pricing policies is necessary to guarantee that the predicted gains in efficiency out-weigh the costs of establishing and managing the new system;
- phasing in of new water pricing methodologies to ensure affordability and political acceptability.

The commission justifies its new water pricing policy on the basis that the design of existing water pricing policies in member states neglect economic and environmental issues in favour of general social or developmental objectives, resulting in situations of inefficient use, over-exploitation and degradation of surface and groundwater resources. Furthermore, they argue that different levels of cost recovery among countries and economic sectors, such as

70 The full recovery of financial costs is only partially achieved in the community and environmental and resource costs are seldom considered in member states’ water pricing policies.
agriculture and industry, influence the competitiveness of these sectors both in the internal market and international trade. The implementation of the water pricing policy in member states will, they argue, have a demonstrable impact on the water demand of different uses, which will in turn reduce the pressure on water resources.

By requiring each user to pay for the costs, including environmental and resource costs, resulting from their use of water resources, the community aims to provide incentives for users to improve water use efficiency. However, this water pricing policy of the community does not adequately take account of the needs of vulnerable consumers. The commission’s original proposal for the water framework directive included in the then equivalent of article 9 that an exemption from full cost recovery prices may be allowed “in order to allow a basic level of water use for domestic purposes at an affordable price”. This proposal, addressing an issue of social rather than environmental policy, did not survive the negotiations on the directive and the final text contains no provisions on affordability of water services. Water is more than just an economic asset. It is a basic entitlement of human beings and is essential to their health and well-being. Essential water supplies for all – even those unable to pay for them – must therefore be guaranteed.71

The commission recognises that stricter recovery of costs will impact on the affordability of services, especially for low-income groups, but argues that the increase in the percentage of disposable income allocated to water services for domestic users would remain limited on average. The commission argues that social concerns must be taken into consideration when designing new pricing policies, but that in a situation of unsustainable water use, they should not be the primary objective of water pricing policies. The commission communication makes provision for the introduction of specific pricing schemes, such as rising block pricing that combine affordability and environmental efficiency objectives. Furthermore, the commission argues that ex-ante and ex-post assessment of both the social welfare effects and the impacts on household water demand of such pricing policies is necessary to ensure that both social and environmental objectives can be and have been met.

The means by which social objectives can be integrated into new, environmentally-led, water pricing policies needs to be considered in more detail in order to ensure the affordability of the service for all consumers, and, in particular, vulnerable consumers.

- Consumer protection and participation

The water framework directive requires member states to encourage the active involvement of all interested parties in the implementation of the directive, in particular in the production, review and updating of river basin management plans, which include the programmes of measures to be implemented to meet the environmental objectives of the directive. However, the community has not introduced any requirements or obligations on member states to ensure that the necessary mechanisms are put in place to achieve consistent and effective consumer consultation and representation.

The commission also calls for consumers and users to be specifically involved in and informed of price policy decisions. The commission calls for a bottom-up approach to water pricing achieved through public participation and transparency, arguing that this is essential

71 Opinion of the Economic and Social Committee on the ‘Communication from the commission to the council, the European Parliament and the Economic and Social Committee – Pricing policies for enhancing the sustainability of water resources’, OJ C123/65, 25 April 2001.
in contributing to the definition of water pricing policies, increasing the chances of successful implementation, and making these policies socially and politically acceptable.

The approach of the commission with regard to consumer representation and participation is thus about ensuring that the new water pricing policies are implemented and accepted. To this end, they dictate the need for a broad stakeholder consultation involving all users concerned, which they consider is more likely to result in the development and acceptability of pricing policies with clear environmental goals. In particular, they argue that purely consulting with domestic consumers’ organisations will not result in looking at broader environmental concerns, but rather about price reductions.

To further ensure the acceptability of new, environmentally-led pricing policies, the commission argues for improved information and communication to ensure consumers and users understand how water prices and bills are formed, to justify changes in water price structures and levels, and to link general environmental awareness with prices and consumption.
4 CONCLUSIONS AND RECOMMENDATIONS

The cross-sectoral analysis of community legislation relating to universal and public service requirements shows a wide disparity in the detail of specification at the community level. In particular, the analysis shows that for the communications sector – posts and telecommunications – there is significantly more detailed specification of the universal service requirements at community level than for the other services of general economic interest, in particular, inland transport and water. This can, in part, be attributed to the structural characteristics of the different services of general economic interest (for example, the amount of cross-border trade); and in part to the historical traditions in the member states with regard to the definition and implementation of universal and public service provisions. However, the disparities between community legislation also demonstrate varied application of the principle of subsidiarity across the different services of general economic interest.

Analysis of existing and proposed legislation relating to universal and public service requirements shows a trend toward more detailed specification of universal and public service at the community level, in an attempt to harmonise levels of service provision within the community to ensure the effective operation of the internal market, and contributing to the community objective of social and economic cohesion. Notably, in the energy sector, the proposed amendments to the electricity and gas directives will bring the community level provisions for securing universal or public service in the energy sector more closely in line with those of the communications sector. In particular, there is a trend towards more detailed and harmonised provisions for ensuring consumer protection, specifically through safeguarding consumers’ rights to a contract with their service providers of a minimum specification, to general information on tariffs and prices and on standard terms and conditions to inform choices, and to transparent complaints handling and redress procedures.

However, significant disparities still exist with regard to both the focus and the level of detail of the universal and public service requirements specified at community level. For example, in the water sector, while the community legislation recognises the general interest nature of water, the focus of community water policy is limited, very specifically, to issues of environmental health and quality. Other aspects of universal service, such as meeting the needs and expectations of consumers with regard to access, quality of service, choice and dispute settlement, are left up to member states to determine. The level of detail specified at community level, in particular with regard to safeguarding consumer rights and quality of service provisions, is to a degree linked to the level of liberalisation in the market sector concerned. For example, as energy markets have been progressively liberalised, the community has developed increasingly more robust definitions of the public interest missions of energy services. This is, in part, to safeguard the universal or public service for consumers in a liberalised market, and, in part, to ensure that the fulfilment of public interest missions in member states does not interfere with achieving effective competition and the operation of the internal market.

For liberalising markets, disparities still exist with regard to the detail specified at community level. Notably, the specification of quality standards varies between the sectors. For the communications sectors – posts and telecommunications – the community legislation specifies the minimum quality standards to be met by the service providers in the provision of a universal service. In contrast, in the electricity sector, no specified standards of service
quality are placed on the universal service provider in the proposed amended electricity directive. It is difficult to see how the universal service can be guaranteed at the community level without the specification of such minimum quality standards.

Disparities in definition and detail of the public interest at community level are likely to result in disparities in levels of service and service quality between member states. In certain cases, this may also result in the definition of public interest missions which go beyond the scope of the European public interest and thereby distort competition.

Harmonisation of universal and public service requirements

There have been calls for a robust definition of European public interest in order to ensure the harmonisation of the definition and implementation of public interest missions in member states. The motivations for this are twofold. First, there are concerns that the principle of subsidiarity, which preserves member states’ right to define the public interest missions of the services of general economic interest, will result in distortions of competition. The European Policy Forum, for example, argue that the competition principle and the public service approach are conflicting, and a coherent and consistent definition of community interest is, therefore, required to ensure the effective implementation of liberalisation policies.

Regulatory regimes reflect different conceptions of public interest, which are often rooted in national approaches to the relationship between state, economy, society and the citizen which reflect long historical traditions. The way in which public interest is defined in each country is, thus, influenced by historical and legal traditions. The European Policy Forum view certain conceptions of public interest, in particular notions of national interest, as being in conflict with the principles of liberalisation. They thus argue that there is a need to define a European public interest which includes robust definitions of public interest exemptions to competition policy and which can be applied broadly across the utilities sector. The observations of the Economic and Social Committee in the energy sector would appear to support this argument. The Economic and Social Committee argue that the imprecise and vague definition of the public service obligations in the gas and electricity directives has resulted in large discrepancies in the legislation of the various member states with regard to what can be included under the concept of public service in these sectors. Such discrepancies may lead to distortions in competition and must, therefore, be removed.

Article 86(2) of the EC treaty aims to reconcile the objectives competition and securing the public interest objectives for services of general economic interest. The commission argues that experience with the implementation of article 86(2) confirms the compatibility of the treaty rules on competition and the internal market with high standards of provision of services of general interest.

However, there are a multiplicity of concepts and schemes operating within community legislation (including the use of the concept of universal service in the telecommunications and postal sectors, and the use of public service obligations in the energy and transport sectors), which introduce a form of legal instability for operators of services of general economic interest.

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72 EPF (1998), Better Regulation of Utilities in Europe.
In this regard, the community institutions have recognised the need for clarification of the conditions under which services of general economic interest may be devolved. There is also a need for greater predictability and increased legal certainty in the application of competition rules relating to services of general economic interest. In particular, the community has recognised the need for clarification of the relationship between methods of funding services of general interest and the application of state aid rules. To this end, the commission is working towards establishing community framework guidelines on state aid granted to undertakings entrusted with the provision of services of general interest. These guidelines aim to increase the certainty and predictability of the legal framework in the application of state aid rules to services of general interest, and clarify the conditions under which compensatory measures are not covered by the rules of state aid.

Second, by failing to adequately define the public interest missions of services of general economic interest at the community level, there are concerns that universal service requirements will not be met. BEUC, for instance, call for clarification and harmonisation of the concept and implementation of affordability at the community level.73 They argue that the concept of affordability must be properly defined, in a transparent way, and in consultation with stakeholders, in order to guarantee access to the service for all consumers (including the most vulnerable). The existing telecommunications and postal directives include, in the universal service, requirements to ensure the affordability of prices. However, definitions of affordability are left up to member states and there are no specifications detailing the procedures for the definition of the concept of affordability by member states. Experience in the postal sector has shown that member states have not defined or discussed the concept of affordability and take the affordability of prices for granted. Similarly, the varied detail in the specification of other universal requirements, for example the lack of specific quality standards in the energy sector, means that these definitions are left up to member states. This does not guarantee the provision of a universal service.

The community needs to strike a balance between the principle of subsidiarity, which ensures that member states can meet public interest missions in the most cost-effective and efficient manner, and securing access to services of general economic interest as provided for under article 36 of the Charter of Fundamental Human Rights of the European Union.

To this end, the community should not only establish a framework directive for services of general economic interest which clarifies the legal framework for the application of competition rules relating to services of general economic interest, but also gives expression to a European concept of universal service. While such a framework directive would necessarily be general to ensure its application across the different sectors, there is sufficient overlap between the concepts and procedures applicable to the different sectors to ensure it would enhance existing and guide future development of sectoral legislation. The Consumer Committee’s 1999 position paper, ‘Elaborating the Universal Service Concept in the Services of General Interest’, provides a basis for the establishment of such a European concept of universal service.

**Elaborating the universal service concept**

The basic concept of universal service, that is a defined minimum set of services of specified quality, available to all users independent of their geographic location and, in the light of

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specific national conditions, at an affordable price, should be elaborated further to clarify, at the European level, in particular, the concepts of:

- universal access, including notions of physical, economic (affordability), social and geographic access;
- quality, including the physical quality of the product and quality of service provision;
- information and transparency requirements;
- environmental protection;
- consumer protection and redress

(see Chapter 2: Universal service and service obligations).

The principles and processes which should be applied in the definition, implementation and assessment of the missions of general interest imposed on the network industries should also be elaborated. Such principles may include:

- suitability and adaptability – regular review of the scope of the service obligations to ensure their appropriateness in a changing regulatory, technical and economic environment (for example, the focus of the universal telecommunications service on a fixed telephony connection or service (as opposed to mobile telephony services) may come into question as the accession countries, with lower existing levels of extent of the public telephone network, are required to fulfil the provisions of the directive);
- consultation, active participation and consumer representation – to ensure the suitability of service requirements, consumers and other stakeholders should be consulted in their definition, organisation, assessment and adaptation. The framework directive could usefully provide guidelines outlining the principles and procedures for effective consultation (see following section on Consumer representation, active participation and redress);
- transparency – openness in the decision-making processes of government and regulators must be ensured;
- independent regulation – to ensure fair and equitable treatment;
- holistic approach – the framework directive should also explore the relationship and trade-offs between the different aspects of universal service, in particular access, price and quality; and should ensure that decision-making takes these inter-relationships into account.

For those concepts which are a matter of subsidiarity, for example the definition of affordability, the framework directive could usefully provide terms for their definition and measurement. Affordability, for example, should be defined, on a national level, to include the costs of connection fees or deposits and the ongoing costs of staying connected. Definition of the concept should be undertaken in a transparent way and in consultation with stakeholders, in particular those consumers who are to benefit from an affordable universal service (such as those on low incomes, those living in remote areas and the elderly or disabled). Affordability of the service should be measured in terms of indicators linked to the standard of living in the European Union. The cost of living of social groups that are to benefit from the provision of a universal service should also be taken into account.
Summary recommendation

Establish a framework directive for services of general economic interest
To reconcile the objectives of removing competition distortions and meeting consumers’ needs and expectations with regard to services of general economic interest, the community should establish a framework directive for services of general economic interest. This framework directive should not only clarify the legal framework for the application of competition rules relating to services of general economic interest, but also give expression to a European concept of universal service.

Assessment of services of general economic interest

Regular assessment of services of general economic interest, and in particular the implementation of universal and public service requirements, is required to ensure:

- that the universal service requirements established at community level are sufficient to guarantee the public interest need;
- that the principle of subsidiarity is being appropriately applied to ensure the most desirable outcome;
- the adaptability of the universal service to changing technological, economic, environmental and social developments.

Table 2: Examples of sectoral reporting

<table>
<thead>
<tr>
<th>Sector</th>
<th>Description</th>
</tr>
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<tbody>
<tr>
<td>Telecommunications</td>
<td>The Commission started in 1997 to regularly submit evaluation reports on the implementation of the regulatory measures adopted with a view to full liberalisation of the sector (that is, annual report on the Implementation of the Telecommunications Regulatory Package). These reports sketch out the major developments in the market, analyse the implementation of the regulatory principles covered by specific community legislation and draw conclusions regarding future policy developments. They are established in consultation with member states.</td>
</tr>
<tr>
<td>Energy</td>
<td>The Commission has assessed the functioning of the internal market in electricity in a communication of 16 May 2000 (COM(2000) 297 final, 16 May 2000). In a further communication of 13 March 2001, the commission evaluated regulatory and market developments in the European gas and electricity industries, including the achievement of public service objectives and the development of employment (COM(2001) 125 final, 13 March 2001). This communication was preceded by broad consultation of all interested parties. In preparation for the communication, the commission organised a public hearing.</td>
</tr>
<tr>
<td>Postal sector</td>
<td>Directive 97/67 required the commission to submit a report on the application of the directive, including an assessment of the developments in the sector, in particular concerning economic, social, employment and technological aspects, as well as quality of service.</td>
</tr>
<tr>
<td>Railway transport</td>
<td>Directive 01/02 requires the commission to systematically monitor the market development for railways. Within this framework, the commission will monitor inter alia the service levels for railway passengers’ transport and the financing of the railway market.</td>
</tr>
</tbody>
</table>

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The commission undertakes assessments of services of general economic interest through:

- sectoral reporting (see Table 2);
- annual horizontal evaluation; \(^{75}\)
- benchmarking the effectiveness of measures taken in the member states, with the aim of attaining adequate performance of services of general interest in areas not covered by sectoral reporting or the annual evaluation.

The sectoral reports vary substantially in terms of their regularity, methodology used and scope. Some sectors, for example the telecommunications sector, are required to report annually on the implementation of community regulation, while others submit reports in response to major regulatory or legislative changes. A wide range of methodologies are used to gather information for the sectoral reports (varying between the sectors), including public hearings, consumer surveys, commissioned research, and consultation with relevant officials in member states. The scope of the sectoral reports also varies, with most focusing substantively on the implementation of liberalisation policy and reporting only briefly on the implementation of service obligations. The sectoral reports are bounded by the principle on subsidiarity, focusing, in their evaluations of service obligations, solely on the implementation of the regulatory principles and measures covered by the community legislation. This, together with the lack of a European concept of public interest, on the whole, limits the application of the sectoral reports in determining the degree to which the universal service requirements specified at community level are adequate to meet public interest needs in member states. Certain sectoral reports (for example, the independent research commissioned for the postal sector) do, however, provide more in-depth and useful analysis of the implementation and impact of community legislation in member states.\(^{76}\)

To ensure the regular assessment of services of general economic interest, the commission has committed itself to undertaking an annual horizontal evaluation of these services. The horizontal evaluation of the services of general economic interest forms part of the Cardiff process, which reports on the functioning of product and capital markets, and is annexed to the Cardiff report. The first horizontal evaluation was based on a range of sources. These included studies conducted for the commission, questionnaires sent to national authorities and regulators in different sectors, and consultation with consumers in the member states. The evaluation aimed to include:

- an assessment of market structure and performance (including the evolution of prices, market concentration, entry, and mergers and acquisitions);
- an economic and social assessment of public service obligations (in terms of access obligations, pricing regulation and affordability of tariffs, and qualitative and social aspects of service provision);
- a survey of citizens’ opinions on the impact of liberalisation of services of general economic interest.\(^{77}\)


As for the sectoral reports, the annual horizontal assessment is bounded by the principal of subsidiarity thus limiting the focus of the evaluation to those aspects covered by community legislation.

With regard to evaluating the implementation of the community’s regulatory principles and measures, the first horizontal assessment of the commission has demonstrated the lack of comparability of data in the member states for those sectors where the community legislation fails to specify sufficiently detailed requirements. For example, the availability of indicators to assess the implementation of quality standards in the energy sector is limited.

The commission is working toward improving the assessment of services of general economic interest and, to this end, published a communication on the methodology for undertaking future horizontal evaluations of services of general economic interest. The annual assessment will cover, in particular, general interest obligations related to quality of services, accessibility conditions, affordability and pricing conditions, environmental performance and the impact on territorial and social cohesion. In particular, the assessment will focus on the impact of changes on different users and consumers; and will develop indicators to measure territorial cohesion.

In contrast to the sectoral and horizontal evaluations, benchmarking reports do go beyond the specific principles and measures covered by community legislation. These reports aim to benchmark the performance of regulatory systems in order to draw on the wide variety of regulatory techniques in use across Europe and enable member states to form a view on possible improvements that could be introduced. Analysis of the benchmarking reports shows that much of the information reported on is drawn from the competent authorities in the member states. Consequently, these reports provide little or no critical analysis of the regulatory systems or techniques used in the different member states. Nor do they provide sufficient detail to establish best practice. It is thus impossible to determine from the benchmarking reports the successfulness of the different regulatory measures applied by member states in meeting the public interest missions of the services of general economic interest.

**Summary recommendation**

**Regular assessment of service of general economic interest**
Regular assessment of services of general economic interest, and in particular the implementation of universal and public service requirements, is required to ensure that the universal service requirements established at community level are sufficient to guarantee the public interest need. In addition, it is necessary to ensure that the principle of subsidiarity is being appropriately applied to ensure the most desirable outcome, and the adaptability of the universal service to changing technological, economic, environmental and social developments. Reporting must go beyond existing assessments, based on the principal of subsidiarity, to establish real disparity between systems (which may result in either social exclusion or competition distortions) and best practice.

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78 A methodological note for the horizontal evaluation of services of general economic interest, COM(2002).
Consumer representation, active participation and redress

There are three main areas on which the community can legislate with regard to consumer protection:

- the safeguarding of consumer rights and facilitation of redress when things go wrong;
- the consultation and active participation of consumers in decision-making processes, both at the level of the community and within member states;
- to ensure effective consultation, the development of strong and effective consumer representation.

**Consumer rights and redress**

There is a degree of harmonisation across the community legislation with regard to setting requirements for member states to meet consumers’ needs for redress when things go wrong. The existing and proposed legislation for the postal, telecommunications, electricity and gas sectors all require member states to establish simple, inexpensive and transparent procedures for dealing with complaints. Such procedures must enable disputes to be settled fairly and promptly with provision, where warranted, for a system of reimbursement or compensation. In the rail sector, community legislation also requires authorities to take into consideration, in the definition of public service obligations and the evaluation and award of public service contracts, the systems and procedures for dispute settlement and redress.

**Consultation and participation**

In contrast, across the services of general economic interest, community legislation is weak with regard to ensuring the participation and consultation of consumers in decision-making processes. The Water Framework Directive does make specific provision for the consultation of stakeholders, including consumers, in the development and implementation of the directive and, in particular, setting water pricing policy. However, the primary aim of this consultation is to promote political acceptability of environmental objectives. In addition, member states are not required to take any specific action, such as establishing an adequate system of consumer representation. Similarly, the Universal Service Directive makes provision for systematic consultation of stakeholders by member states. National regulatory authorities are required to take account of the views of consumers (in particular, disabled consumers) and other stakeholders on issues related to consumer rights concerning publicly available electronic communications services. Community legislation across the other services of general economic interest address issues of consultation and consumer representation either in a very specific and limited manner or not at all.

In addition to securing politically acceptable outcomes, the effective involvement of consumers is essential to ensure the suitability or appropriateness of universal service requirements. It is also essential to safeguard consumers’ rights in the proper provision of services. The UK’s National Consumer Council identifies the benefits of involving consumers, either directly or through consumer representative organisations, as:

- **better decision-making** – consumer involvement is essential for good quality decision-making and service provision as it helps to ensure that services and future decisions are appropriate to meet the diversity of consumers’ needs. Through informal and formal
dialogue with consumers and consumer representative organisations, policy-makers can gain a deeper understanding of consumers’ needs and fresh ideas about new policy options based on consumers’ needs and expertise. Consumers should thus be involved as early as possible in the development of policies that shape services and processes of their delivery;

- **higher standards** – consumer involvement can help improve service standards and delivery through helping to ensure that service provision is grounded in consumers’ needs. Consumer involvement makes for more efficient services and helps to minimise the risk of failure by enabling providers to tailor their services more closely to the diversity of consumers’ needs;

- **balancing interests** – policy-making involves balancing the needs of different interest groups, within the broader political context, and consumer representation is an essential counter-weight to the interests of service providers and other stake-holders. Consumers are often in a weak and vulnerable position, lacking the resources of large businesses and providers, and this needs to be taken into consideration in approaches to consultation and participation;

- **building confidence** – involvement of consumers or their representatives in policy decisions can build trust and consumer confidence, both in the decisions and in the policy body or service provider. It can also mitigate failures through better communication with consumers and consumer bodies and can result in greater political acceptance of outcomes.\(^79\)

There are a number of approaches to involving consumers in policy-making, which should be considered together as part of an overarching strategy for effective consumer involvement. These include:

- **information gathering** to gain understanding of consumers’ views and experiences is essential to effective policy-making. Such information can be gained by collating consumer complaints and informal dialogue, as well as through active research (through surveys, opinion polls and focus groups);

- **consultation** is a key method of involving consumers and other stakeholders in the processes of policy-making before final decisions are taken, as well as for ensuring the accountability of public bodies. Consultations may include written consultation documents, public meetings and hearings, and inviting views through electronic means. For consultation to be useful, the issues under consultation must be clearly presented and the process must include adequate timelines and feedback;

- **direct participation** of consumers, either individually or through consumer representative organisations, in policy-making processes through, for example, participation in panels, committees or forums set up for that purpose; participation in stakeholder dialogue on bodies or in forums which include other stakeholders; or on ad hoc committees for special projects or consultations.\(^80\)

Consumers should be involved, together with other stakeholders, in the definition, organisation, implementation, funding, assessment and adaptation of universal and public service requirements. This must be implemented at both the community and the member state level.


Evaluation of the community experience of involving consumers in decision-making processes shows that:

- There has been no commission-wide approach to the way it involves consumers and other stakeholders or undertakes consultations, with each department having its own mechanisms and methods for consulting its respective sectoral interest groups;
- The process of inviting stakeholders to contribute to debates (through, for example, being invited to speak at hearings or being consulted on green papers) is not transparent – there is, therefore, a risk of policy-makers listening to only one side of the argument or for particular groups to gain privileged access;
- Insufficient resources and capacity forces consumer organisations to prioritise those issues which they are able to address – as a consequence, certain issues which are significant for consumers may not elicit a response from consumer organisations.

The community institutions are working towards improving the processes of, and procedures for, participation and consultation of consumers and other stakeholders in the development of community legislation. In particular, the most recent consumer strategy of the commission aims, amongst other things, to ensure the proper involvement of consumer organisations in the development and implementation of EU policies. This includes reviewing mechanisms for the participation of consumer organisations at EU level and providing support to, and building capacity of, consumer organisations across Europe. As part of the Better Regulation Package, the commission has also issued a consultation document on consultation and dialogue, establishing general principles and minimum standards for consultation of interested parties by the commission.

In order to establish a more consistent approach to consultation, the commission proposes that the consultation relationship between themselves and interested parties should, in the future, be underpinned by the following fundamental principals:

- **Participation** – the quality of EU policy depends on ensuring wide participation throughout the policy chain – from conception to implementation. The commission has committed itself to an inclusive approach when developing and implementing EU policies and is thus committed to consult as widely as possible on major policy initiatives;
- **Openness and accountability** – transparency of the consultation process, including clarity with regard to what issues are being developed, what mechanisms are being used to consult, who is being consulted and why, and what has influenced decisions in the formulation of policy;
- **Effectiveness** – consultation should start as early as possible, but the method and extent of consultation performed should be proportionate to the impact of the proposal – the commission states that interested parties should be involved in the development of policy at a stage where they can still have an impact on the formulation of the main aims, methods of delivery, and performance indicators;

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81 Green papers are addressed to specific interested parties, organisations and individuals, who are invited to participate in a process of consultation and debate. The process by which such interested parties are identified is not always clear. In addition, consumer organisations are not always considered as interested parties and may, therefore, be consulted either at a very late stage or not at all.

• **Coherence** – consistency and transparency in the way its departments operate their consultation processes.\(^83\)

The commission argues that for organisations to contribute to EU policy development, it must be apparent which interests they represent, how inclusive that representation is, and how accurately they reflect those interests. The commission judges the representativity of consumer organisations by the following criteria. Consumer organisations:

- must be non-governmental, non-profit organisations whose main objectives are to promote and protect the interests and health of consumers;
- have been mandated to represent the interests of consumers at European level by organisations that are representative of consumers of at least half the member states and are active at national or regional level;
- must be active in one or more of the following areas: health and safety of consumers as regards products and services, protecting the economic and legal interests of consumers (including access to dispute resolution), educating and informing consumers about their protection and rights, and promotion and representation of the interests of consumers.\(^84\)

Most national consumer organisations, in seeking to play a part in EU processes, are therefore confined to working from their national offices or via a European interest group. While organisations representing consumer interests at European level must reflect interests across a number of member states, in practice the same does not apply to organisations representing business interests. This puts consumer organisations at a disadvantage as the interests of individual consumers in a member state are superseded by a collective European consumer interest, arrived at through consensus. It also results in the commission relying heavily on the Bureau Européen des Unions de Consommateurs (BEUC), the main European consumer organisation, for consumer input into the consultation process. While BEUC operates extremely effectively within the European policy-making process, they have insufficient resources and capacity to cover all consumer areas or interests. They are consequently required to prioritise (for example, BEUC does not focus significantly on water issues). Anecdotal evidence suggests that the commission will seek the consumer response from BEUC and will attribute BEUC’s inability to respond to all issues as a lack of consumer interest. For example, the consumer seat on the commission’s Strategic Co-ordination Group on the implementation of the Water Framework Directive, an important piece of legislation for consumers, has remained empty since the group was established. This may be attributed to the fact that water issues are currently not a priority for BEUC. If an invitation to BEUC to respond to a particular issue or sit on a particular forum, when they do not have the capacity to do so, is considered as consultation of the consumer interest, then the consultation process is ineffective and misleading. To ensure that consumers are effectively represented in the European policy-making process, the commission should consider including well-respected and effective national consumer advocates as either consumer representatives or expert advisers.

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UNIVERSAL AND PUBLIC SERVICE OBLIGATIONS

Summary recommendation

Establish procedures for consumer participation
Consumers should be involved, together with other stakeholders, in the definition, organisation, implementation, funding, assessment and adaptation of universal and public service requirements. This must be implemented at both the community and the member state level. To ensure that consumers are effectively represented in the European policy-making process, the commission should consider including well-respected and effective national consumer advocates as either consumer representatives or expert advisers. To ensure the development of effective consumer representation and effective consultation and involvement of consumers in decision-making within member states, the community must include provisions in their sectoral legislation specifically requiring member states to establish procedures for consultation of consumers.

Consumer representation

To ensure effective consultation and active participation of consumers in decision-making processes there is a need, not only for the provision of adequate transparent and appropriate information, but also for organisations which can effectively represent the interests of consumers. Meaningful participation in policy-making processes often requires detailed understanding (and consequently research) of the potential impact of future developments for consumers. One cannot, therefore, realistically expect that individual consumers will be able to participate all the time in the issues that affect them. This is particularly the case at the European level where individual participation of consumers is largely prohibited. As a consequence, it is necessary that consumer representative organisations are established and able to represent consumers’ interests.

Amendments to sectoral legislation have gone some way to safeguarding consumers’ rights by providing consumers with transparent and appropriate information. In particular, this is the case with regard to enabling consumers to make personal choices and decisions based on factual comparative information. The existing telecommunications and proposed energy directives, for instance, provide that member states must ensure that customers receive transparent information on applicable prices and tariffs and on standard terms and conditions. Consumers are also invited to participate in decision-making processes at the community level and the commission is working towards improving the transparency and adequacy of both this process and the information provided.

Effective consultation requires the development of effective consumer bodies, which are adequately funded, and have sufficient powers and resources to address and influence the issues concerned. The development of adequate and effective consumer representation is a key area which needs to be addressed further, both at the community level and in the member states. To ensure the development of effective consumer representation and effective consultation and involvement of consumers in decision-making within member states, the community must include provisions in their sectoral legislation specifically requiring member states to establish procedures for consultation of consumers. Member states must also be required to establish robust consumer organisations which are adequately resourced (in terms
of funding, staff and powers) and independent of industry, to effectively represent the interests of consumers, in particular vulnerable consumers, in decision-making processes.

The UK’s National Consumer Organisation (2002) states that in order to be effective such consumer organisations should, amongst others:

- be independent, in particular, of industry;
- produce well-informed work based on sound research, including research into consumers’ experience;
- be representative of domestic consumers and, in particular, the needs of disadvantaged or vulnerable consumers;
- be transparent and accountable;
- keep in touch with consumers by developing dialogue with consumers and collecting information on consumers’ views and experiences.\(^85\)

To achieve this, consumer representative organisations need clear powers and duties, access to relevant information, duties to operate openly, adequate resources, research capacity, open appointments and links with other consumer organisations.

**Summary recommendation**

**Develop robust consumer representation organisations**

Effective participation in decision-making processes cannot take place without the development of robust consumer organisations. To be effective, such consumer organisations should be independent (in particular, of industry), produce well-informed work based on sound research, be representative of domestic consumers (in particular, the needs of disadvantaged or vulnerable consumers), be transparent and accountable, and keep in touch with consumers. To achieve this, consumer organisations need clear powers and duties, access to relevant information, duties to operate openly, adequate resources, and research capacity. To encourage the development of robust consumer organisations in member states, the community should, in its sector-specific legislation, include requirements to establish consumer bodies that are adequately resourced (in terms of funding, staff and powers) and independent of industry.

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APPENDIX

Relevant treaty articles

Article 5

The community shall act within the limits of the powers conferred upon it by this treaty and of the objectives assigned to it therein.

In areas which do not fall within its exclusive competence, the community shall take action, in accordance with the principle of subsidiarity, only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the member states and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the community.

Any action by the community shall not go beyond what is necessary to achieve the objectives of this treaty.

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.

Article 81 (ex Article 85)

1. The following shall be prohibited as incompatible with the common market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between member states and which have as their object or effect the prevention, restriction or distortion of competition within the common market, and in particular those which:

   a. directly or indirectly fix purchase or selling prices or any other trading conditions;

   b. limit or control production, markets, technical development, or investment;

   c. share markets or sources of supply;

   d. apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;

   e. make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

2. Any agreements or decisions prohibited pursuant to this article shall be automatically void.
3. The provisions of paragraph 1 may, however, be declared inapplicable in the case of:

- any agreement or category of agreements between undertakings;
- any decision or category of decisions by associations of undertakings;
- any concerted practice or category of concerted practices,

which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:

a. impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;

b. afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

**Article 82 (ex Article 86)**

Any abuse by one or more undertakings of a dominant position within the common market or in a substantial part of it shall be prohibited as incompatible with the common market insofar as it may affect trade between member states. Such abuse may, in particular, consist in:

a. directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;

b. limiting production, markets or technical development to the prejudice of consumers;

c. applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;

d. making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

**Article 86 (ex Article 90)**

1. In the case of public undertakings and undertakings to which member states grant special or exclusive rights, member states shall neither enact nor maintain in force any measure contrary to the rules contained in this treaty, in particular to those rules provided for in article 12 and articles 81 to 89.

2. Undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in this treaty, in particular to the rules on competition, insofar as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the community.
3. The commission shall ensure the application of the provisions of this article and shall, where necessary, address appropriate directives or decisions to member states.

Article 87 (ex Article 92)

1. Save as otherwise provided in this treaty, any aid granted by a member state or through state resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, insofar as it affects trade between member states, be incompatible with the common market.

2. The following shall be compatible with the common market:
   a. aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned;
   b. aid to make good the damage caused by natural disasters or exceptional occurrences;
   c. aid granted to the economy of certain areas of the Federal Republic of Germany affected by the division of Germany, insofar as such aid is required in order to compensate for the economic disadvantages caused by that division.

3. The following may be considered to be compatible with the common market:
   a. aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment;
   b. aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a member state;
   c. aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest;
   d. aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the community to an extent that is contrary to the common interest;
   e. such other categories of aid as may be specified by decision of the council acting by a qualified majority on a proposal from the commission.

Transport

Article 70 (ex Article 74)

The objectives of this treaty shall, in matters governed by this Title, be pursued by member states within the framework of a common transport policy.
Article 71 (ex Article 75)

1. For the purpose of implementing article 70, and taking into account the distinctive features of transport, the council shall, acting in accordance with the procedure referred to in article 251 and after consulting the Economic and Social Committee and the Committee of the Regions, lay down:

   a. common rules applicable to international transport to or from the territory of a member state or passing across the territory of one or more member states;

   b. the conditions under which non-resident carriers may operate transport services within a member state;

   c. measures to improve transport safety;

   d. any other appropriate provisions.

2. By way of derogation from the procedure provided for in paragraph 1, where the application of provisions concerning the principles of the regulatory system for transport would be liable to have a serious effect on the standard of living and on employment in certain areas and on the operation of transport facilities, they shall be laid down by the council acting unanimously on a proposal from the commission, after consulting the European Parliament and the Economic and Social Committee. In so doing, the council shall take into account the need for adaptation to the economic development which will result from establishing the common market.

Article 72 (ex Article 76)

Until the provisions referred to in article 71(1) have been laid down, no member state may, without the unanimous approval of the council, make the various provisions governing the subject on 1 January 1958 or, for acceding states, the date of their accession less favourable in their direct or indirect effect on carriers of other member states as compared with carriers who are nationals of that state.

Article 73 (ex Article 77)

Aids shall be compatible with this treaty if they meet the needs of coordination of transport or if they represent reimbursement for the discharge of certain obligations inherent in the concept of a public service.

Article 74 (ex Article 78)

Any measures taken within the framework of this treaty in respect of transport rates and conditions shall take account of the economic circumstances of carriers.

Article 75 (ex Article 79)

1. In the case of transport within the community, discrimination which takes the form of carriers charging different rates and imposing different conditions for the carriage of the
same goods over the same transport links on grounds of the country of origin or of
destination of the goods in question shall be abolished.

2. Paragraph 1 shall not prevent the council from adopting other measures in pursuance of
article 71(1).

3. The council shall, acting by a qualified majority on a proposal from the commission and
after consulting the Economic and Social Committee, lay down rules for implementing
the provisions of paragraph 1. The council may in particular lay down the provisions
needed to enable the institutions of the community to secure compliance with the rule laid
down in paragraph 1 and to ensure that users benefit from it to the full.

4. The commission shall, acting on its own initiative or on application by a member state,
investigate any cases of discrimination falling within paragraph 1 and, after consulting
any member state concerned, shall take the necessary decisions within the framework of
the rules laid down in accordance with the provisions of paragraph 3.

Article 76 (ex Article 80)

1. The imposition by a member state, in respect of transport operations carried out within
the community, of rates and conditions involving any element of support or protection in
the interest of one or more particular undertakings or industries shall be prohibited, unless
authorised by the commission.

2. The commission shall, acting on its own initiative or on application by a member state,
examine the rates and conditions referred to in paragraph 1, taking account in particular
of the requirements of an appropriate regional economic policy, the needs of
underdeveloped areas and the problems of areas seriously affected by political
circumstances on the one hand, and of the effects of such rates and conditions on
competition between the different modes of transport on the other. After consulting each
member state concerned, the commission shall take the necessary decisions.

3. The prohibition provided for in paragraph 1 shall not apply to tariffs fixed to meet
competition.

Article 77 (ex Article 81)

Charges or dues in respect of the crossing of frontiers which are charged by a carrier in
addition to the transport rates shall not exceed a reasonable level after taking the costs
actually incurred thereby into account.

Member states shall endeavour to reduce these costs progressively.

The commission may make recommendations to member states for the application of this
article.

Article 78 (ex Article 82)

The provisions of this Title shall not form an obstacle to the application of measures taken in
the Federal Republic of Germany to the extent that such measures are required in order to
compensate for the economic disadvantages caused by the division of Germany to the economy of certain areas of the Federal Republic affected by that division.

**Article 79 (ex Article 83)**

An advisory committee consisting of experts designated by the governments of member states shall be attached to the commission. The commission, whenever it considers it desirable, shall consult the committee on transport matters without prejudice to the powers of the Economic and Social Committee.

**Article 80 (ex Article 84)**

1. The provisions of this Title shall apply to transport by rail, road and inland waterway.

2. The council may, acting by a qualified majority, decide whether, to what extent and by what procedure appropriate provisions may be laid down for sea and air transport.

The procedural provisions of article 71 shall apply.
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