

# EUROPEAN PARLIAMENT



*session documents*

ENGLISH EDITION

19 April 1994

A3-0254/94/A

## REPORT

of the Committee on Economic and Monetary Affairs and  
Industrial Policy

on public undertakings, privatization and public services in  
the European Community

Rapporteur: Mr Roberto SPECIALE

Part A: Motion for a resolution

Part B: Explanatory statement

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PE 208.630/fin./A  
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- \* Consultation procedure  
simple majority
- \*\*I Cooperation procedure (first reading)  
simple majority
- \*\*II Cooperation procedure (second reading,  
simple majority to approve the common position  
absolute majority of Parliament's component Members to reject or amend the common position
- \*\*\* Assent procedure  
absolute majority of Parliament's component Members to give assent  
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- \*\*\*III Codecision procedure (third reading)  
simple majority to approve the joint text  
absolute majority of Parliament's component Members to reject the Council text

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By letter of 24 June 1993, the Committee on Economic and Monetary Affairs and Industrial Policy requested authorization to draw up a report on public undertakings, privatization and public services in the European Community.

At the sitting of 11 February 1994 the President of the European Parliament announced that the committee had been authorized to report on this subject.

At its meeting of 20 December 1993 the Committee on Economic and Monetary Affairs and Industrial Policy had appointed Mr Speciale rapporteur.

At its meetings of 24 February, 30 March and 18 April 1994 the committee considered the draft report.

At the last meeting it adopted the motion for a resolution unanimously.

The following were present for the vote: Beumer, chairman; Malone, vice-chairman; Speciale, rapporteur; Areitio Toledo (for Pierros), Beazley, Bofill Abeilhe, de Bremond d'Ars, de la Camara, Christiansen, Cox, Delcroix (for Caudron), Geraghty, Herman, Hoppenstedt, Metten, Randzio-Plath, Sapena Granell (for Jackson, pursuant to Rule 138(2) of the Rules of Procedure), Siso Cruellas and Thyssen.

The explanatory statement will be published separately.

The report was tabled on 19 April 1994.

The deadline for tabling amendments is 12 noon on Thursday, 28 April 1994.

A  
MOTION FOR A RESOLUTION

Resolution on public undertakings, privatization and public services in the European Community

The European Parliament,

- having regard to its resolution of 12 February 1993 on the role of the public sector in the completion of the internal market<sup>1</sup>,
  - having regard to Rule 148 of its Rules of Procedure,
  - having regard to the outcome of the hearing on public enterprises, held by the Committee on Economic and Monetary Affairs and Industrial Policy on 27 April 1993,
  - having regard to the own-initiative opinion of the Economic and Social Committee of 22 September 1993 on the role of the public sector in the internal market,
  - having regard to the results of the workshop of 17 March 1994, organized by STOA in collaboration with Parliament's DG IV, at the request of the Committee on Economic and Monetary Affairs on the consequences of privatization policy for research and innovation,
  - having regard to the results of the preliminary study of February 1994 drawn up by Parliament's DG IV, at the request of the Committee on Economic Affairs, on the subject of public undertakings and public service obligations in the Community,
  - having regard to the own-initiative report of the Committee on Economic and Monetary Affairs and Industrial Policy (A3-0254/94),
- A. whereas, in Europe, public undertakings are by nature intended to guarantee that the necessary steps are taken towards the harmonious development of the economy and society, in so far as they contribute towards achieving the objectives pursued by the government in the general interest,
- B. whereas the importance of this role can be seen in particular in the current phase of serious economic difficulties and unemployment, in order to tackle which the European Union has adopted (in accordance with the Edinburgh and Copenhagen Summits and the adoption of the White Paper on Growth and Employment) an approach to the economy which requires specific operational instruments,
- C. whereas, however, this important role must necessarily go hand in hand with the pursuit of economic recovery and the drive for greater efficiency in public undertakings,
- D. whereas it is necessary to distinguish, from both the legal and economic points of view, between public manufacturing undertakings and public

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<sup>1</sup> OJ C 72, 15.3.1993, p. 159

undertakings which run public services at local or national level, since the former meet rather the demands of economic development and the latter meet needs for public services, but bearing in mind that both contribute to the pursuit of general interests,

- E. whereas over the last few years Europe has witnessed a qualitatively and quantitatively extremely important phenomenon of privatization of public undertakings, which has taken different forms and had different purposes in the various Member States, but the results of this phenomenon have not yet been officially assessed and studied by the Union's institutions,
1. Recognizes in general the importance of the principles of private investment, financial transparency, compulsory contractual procedures and privatization, but considers that they are defined and implemented too rigidly and sometimes with a certain degree of prejudice, with the result that support is given to a generalized process of privatization and a tightening of legal obligations on public undertakings, often causing negative reactions;
  2. Considers, however, that in privatization processes sufficient thought must be given to their impact on society and employment and the possible adverse effects on sensitive sectors, and that the most appropriate steps must be taken to ensure that scientific research continues, such as for example the establishment of research foundations involving the privatized undertakings, with public sector participation where appropriate;
  3. Considers furthermore that these privatization processes must be accompanied by a well-defined industrial policy and by state regulation, especially where public services are involved;
  4. Considers that the negative effects on the economy and the inability to ease the situation are contributory factors in the current functional problems inherent in the market and the operational problems which are sometimes encountered in public undertakings. In fact, the way private enterprise operates prevents it from pursuing the strategic objectives of the system overall (infrastructure, research and innovation, cohesion, the protection of essential sectors, widespread services) and the public sector tends towards oversized structures and both financial and productive inefficiency (the ratio between costs and the quality of goods and services);
  5. Considers therefore that an approach which gives rise to a constant conflict between these two equally essential elements of the economy merely aggravates their respective deficiencies, whilst they need to be harmoniously integrated; therefore backs the proposal to promote all possible forms of collaboration between the public and private sectors;
  6. Calls on the Commission to submit a communication on public undertakings in the economy of the European Union, which should tackle the following issues:
    - (a) a general picture of the number and types of public undertakings in the Union, according to size in economic terms, sector and Member State;

- (b) the rules governing public undertakings contained in Community law and whether they correspond to or differ from the national laws of the Member States;
  - (c) existing forms of collaboration between public and private undertakings, their scope for further development and possible new forms of collaboration which may be advocated and supported;
  - (d) possible proposals for a more balanced relocation of public undertakings in the European economic system, on the part of the Union and the Member States;
7. Calls on the Commission also to present, in the above-mentioned communication, a global assessment, but making a distinction between public manufacturing undertakings and public undertakings providing public services, covering the following points:
- the scale of the privatizations carried out over the last ten years in the countries of the Union, including reference to the privatization programmes which these countries intended or still intend to carry out,
  - whether the objectives of greater efficiency, the fostering of competition, the development of the capital market and the satisfaction of needs have actually been achieved and effects on employment,
  - the appropriateness and limits of a homogeneous Community view of privatization policies;
8. Expresses its concern that at present the concepts of public service and general interest remain undefined despite there being more clear-cut guidelines on the liberalization of markets, the dismantling of monopolies and privatization; asserts therefore that competition policy and the other market policies must be in harmony with the recognition of public interest and citizens' right to accessible public services and with homogeneous standards of service, inter alia in order to guarantee true equality among European citizens; therefore requests that these objectives and principles should be given full consideration when the Treaty is revised in 1996;
9. Calls on the Commission to take the initiative to ensure that the Union adopts a European public service charter covering the following points:
- identification of the common principles with which public services in Europe must comply in order to meet the requirements of true European citizenship,
  - equal treatment for users of the various services which are provided on a national basis but have a supranational dimension,
  - qualitative and quantitative standards to be guaranteed for every service,
  - forms of control for users and consumers,
  - a list of services to which the above principles must apply Europe-wide;
10. Calls on the Member States to undertake to set up information systems in their cities, including data processing systems, immediately accessible to all citizens, providing a detailed description of the public services available and the arrangements for providing them;

11. Calls for the creation of a temporary parliamentary committee to deal with the problems of public services in Europe, at least until the charter referred to in paragraph 9 is adopted;
12. Instructs its President to forward this resolution to the Commission and the Council.

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EXPLANATORY STATEMENTINTRODUCTION: FROM PUBLIC HEARING TO OWN-INITIATIVE REPORT

On 27 April 1993 the European Parliament's Committee on Economic Affairs, in the context of the current debate, held a hearing on public enterprises in Europe in which experts, representatives of public undertakings and representatives of the Commission took part (see Doc. PE 204.490). The fruitful but problematic results of this hearing prompted the Committee on Economic Affairs to conclude the debate with an own-initiative report in order to present an official position before the end of the life of the present Parliament.

THE NUMBER OF PUBLIC UNDERTAKINGS

The 1980s were marked by the prevalence of a trend towards privatization of public undertakings (even though it was not always implemented) and the tendency to define the value and importance of public enterprises in the economy.

In actual fact, the weaknesses of this approach emerged at the very moment when an attempt was being made to take it to its logical conclusion. The reasons for the creation, existence and role of public undertakings are still just as valid. Public undertakings continue to be linked to the need to fill gaps in the market in certain sectors or areas, the need to tackle economic difficulties and the need to guarantee compliance with the general strategic decisions. From this point of view public undertakings are therefore still a necessary instrument in the hands of government, irrespective of their numbers. At the end of the 1980s of public enterprises in Europe were estimated to account for around 12% of economic activity, with a marked downward trend in the 1990s. However, the situation is not the same in every country, since in four countries they account for approximately 20% of the national economy (Portugal, Greece, Italy and France), there are three countries where the figure is the Community average (Ireland, Denmark and Germany), another three countries where the proportion is 8-9% (Spain, Belgium and the Netherlands) and finally, the United Kingdom and Luxembourg, where public undertakings account for slightly more than 4%. However, there are as yet no official figures regarding public undertakings in the European Union, although they are absolutely essential in order to adopt a uniform approach consistent with the role they play. In fact, there is a danger that the Union as a whole will not manage to take full advantage of their potential at a time when, as a result of the Edinburgh and Copenhagen initiatives, the Union has decided to take steps to stimulate the economy.

THE DEFINITION OF A PUBLIC ENTERPRISE

Apart from a general outline, the European Union still does not have a uniform definition of public enterprise, although it is obviously needed if proper cooperation between Member States is to be developed. Nevertheless, a number of elements can be identified which may help to provide a definition. First of all, the concept of a public undertaking must be explained within the context of the public sector in general, which includes all authorities, administrative bodies and undertakings, whereas an enterprise is only the entity which carries on an economic activity. A further distinction can be made between manufacturing enterprises and those which provide public services.

One of the reasons why it is difficult to define is that different forms of organization are used to create a public undertaking, ranging from a public corporation to a company in which the state holds all or the majority of the shares. Furthermore, even the Court of Justice in Luxembourg has avoided offering a legal definition of a public undertaking, thus leaving scope for wide-ranging interpretations on the part of the Commission.

On a purely theoretical and descriptive level a public undertaking could be said to be an economic entity, whose purpose is an industrial or commercial activity and which is formally independent of the state (or other public administration) as far as its legal personality and financial aspects are concerned, but depends on the state for guidance, control and financial guarantees. What varies from sector to sector or from Member State to Member State is the degree of intensity of each of these characteristics, in particular as regards the kind of appointments which the state (or other administration) may make in the company's bodies, the level of financial cover it can offer, the actual control it exerts (including control over prices and tariffs), etc.

The Commission has for some time been focusing its attention on these very elements, considered exclusively in terms of the principle of free competition. We have therefore seen a hardening of the rules governing public undertakings, as regards financial transparency, obligations in contractual procedures and the principle of private investment. With hindsight we can now see these measures as the outcome of an ideological approach rather than the result of real concern for the functioning of the internal market.

In fact, none of this has solved the central problem, which is what role a public undertaking should play in a situation where the economy needs to be stimulated and, in a certain sense, must be helped: all this made it impossible to see that the problems of economic growth, employment and the weak strata of society were worsening.

At this point it therefore seems necessary to find a concept of a public undertaking which makes sufficient allowance for the essential role which it is required to play: even if it must abide by the rules of productivity and profit, a public undertaking must not neglect the general interest and the role it has to play in the state's economic and social policy. It is clear therefore that the idea of 'state aid' cannot be excluded from this wider concept.

#### FUNCTIONAL PROBLEMS AFFLICTING PUBLIC UNDERTAKINGS AND THE MARKET: TOWARDS A BALANCE ACHIEVED BY COLLABORATION

Having said this, it would be a serious mistake to adopt the opposite attitude and ignore the negative and sometimes extremely negative elements emerging from the experience of public undertakings, especially in the last few years. These elements include the following:

- (a) excessive expansion (meaning that sometimes it is unjustified) of public companies in various sectors of the economy
- (b) growing productive and financial inefficiency of public undertakings, leading to a reduction in the positive effects of public financing
- (c) a deterioration in the quality of goods and services, which does not reflect the costs or even the prices charged to users and consumers.

These problems must be solved, but without losing sight of the strategic objectives which require the existence of public undertakings.

On the other hand, the market too has clearly demonstrated its functional problems and its inability to guarantee harmonious development of the economy. The market by itself cannot make the necessary investments in transport, energy, high technology and infrastructure in general, nor is it capable of backing up industrial policy decisions in strategic sectors or the measures needed in the most sensitive areas abroad (Eastern Europe, ACP countries, etc.). We should add that the market does not always mean free competition, since in some cases of privatization a public monopoly has simply become a private monopoly, not to mention the fact that privatizations have also led to reductions in the distribution of certain services, or have had negative effects on employment and pay. Unfortunately there are no precise and comprehensive figures on these phenomena, although such figures would be essential to obtain a correct picture of the Union's measures.

To this end it would seem appropriate to abandon an approach which considers the two pillars of the economy as two opposite poles, and instead try to promote all forms of collaboration between the public and private sectors, in order to exploit to the full the potential of both, each according to its own role but in the general interest and in the interests of the harmonious development of the economy and society. Encouragement should therefore be given to forms of collaboration between companies established in public law and forms of collaboration in systems of reciprocal control. Furthermore, all this should be part of social dialogue at Community level, in order to create some common ground between public employers, private employers and workers, not least with a view to a unified European view of the problem.

#### PRIVATIZATIONS

The most significant phenomenon concerning public undertakings is still the process of privatization, which has involved a number of countries in Europe and the rest of the world. Inside the European Union the United Kingdom is a special case, since it started a vast programme of privatization in 1979 and continued it throughout the 1980s. At first, privatization involved mainly industrial companies which were already involved in competition, but since the end of 1984 steps have been taken to privatize large-scale undertakings providing essential public services in the sectors of telecommunications, gas, electricity and water: these privatizations have been accompanied by the setting up of regulatory government bodies to safeguard the interests of consumers.

France too, which is characterized (like Italy) by a large amount of state control in the economy, launched a wide-ranging privatization programme which was started in 1986-88 and has been resumed since 1993. However, the French have only privatized public industrial and financial companies already competing on the market. The same applies to Italy (which is, however, still only beginning the privatization process), where the main aim is to dismantle the system of state shareholdings.

The privatization programme in Germany has been on a smaller scale and less widespread: nevertheless the programme has recently also included companies in the transport and communications sectors. In addition, of course, there are the privatizations being carried out in East Germany by the Treuhandanstalt: in January 1993 more than 11 200 companies and more than 15 000 small businesses (hotels, restaurants, cinemas, etc.) were privatized.

All these privatization programmes have been or are being carried out according to different methods. In Great Britain the most frequent is the so-called 'public company', with the government often keeping a 'golden share' for itself. France has adopted the method of setting up a control group chosen by the government which holds between 20 and 30% of the shares. In Italy companies are sold off on the open market and run by 'management bodies'.

The impact of privatization also differs. In general, privatization has had a negative effect on employment and pay. Prices in the sectors of public services have generally increased and therefore a recovery in productivity is often due to these three factors which are, in themselves, negative.

There is a long list of reasons why these privatizations have been carried out in the various countries:

1. ideological reasons, because the state is not the best entity to manage the companies, its task being rather to regulate them;
2. the aim of making companies more efficient, since public ownership cannot provide the necessary incentives for efficient running of companies;
3. the fostering of competition in the various sectors, in the belief that this will increase productivity, improve the use of resources and lower prices;
4. the desire to increase the number of private shareholders and hence develop the capital market;
5. the need to reduce the public sector borrowing requirement and reduce the government deficit by means of the revenue obtained from sales.

As yet there is no clear and complete picture of privatization programmes in the European Union, although this is needed in order to adopt as uniform an approach as possible and, above all, in order to correct errors, functional problems or pointless exaggerations.

#### PUBLIC SERVICES

The scale of the international process of privatization described above prompts consideration not only about the effects that the reduction of public ownership in the economy may have on employment and the dynamics of investment, but also on the satisfaction of the population's needs and the efficiency of public services.

Can the market produce globalized, effective and transparent competition and satisfy the demand for public services, by guaranteeing equality of treatment and respect for the needs of society, the environment and cohesion? Vis-à-vis national decisions the European Union must, according to Article 222 of the Treaty on European Union ('this Treaty shall in no way prejudice the rules in Member States governing the system of property ownership'), play a neutral role, becoming involved only in cases where the transfer of ownership involves an infringement of the Treaty (e.g. state aid).

However, the Commission's proposals for the liberalization of sectors which have traditionally been state monopolies (water, gas, electricity,

telecommunications, transport and postal services) and the powers the Maastricht Treaty assigns to the Commission for the creation of trans-European networks (Article 129b - 'The Community shall contribute to the establishment and development of trans-European networks in the areas of transport, telecommunications and energy infrastructures') - are bound to make one wonder about this neutrality, especially when collective needs have to be met.

The XXIInd Report on Competition Policy states that it is up to the Commission to identify the sectors in which an open and competitive context must be guaranteed and that the Commission must reconcile the requirements of the Treaty with a number of principles which used to justify monopolies, such as security of supply, the principle of proportionality and the universality of services.

Furthermore, it says that these concepts must now be defined not only nationally but also on a Community scale.

In the Commission's various proposals for the elimination of monopolies, the predominant idea is that opening the sector up to competition automatically entails beneficial effects for the universal service. However it does not emerge that, for the various sectors under consideration, the existence of a public service, i.e. the fact that the activity carried out is based on the public interest ...

We might say that the Commission has lacked insight in its proposals, since the part concerning 'deregulation' is quite detailed, but the same cannot be said for the defining of the minimum conditions to be guaranteed to ensure that the general interest is satisfied: thus the rights of 'supplier companies' are well defined whilst those of large or small 'users' are only mentioned in passing.

We do not object to the Commission's approach regarding the introduction of competition in sectors where public undertakings have a monopoly but the proposals should be expanded as regards

- the quality of the services or goods supplied,
- prices and tariffs,
- the obligation to make long-term investments,
- the obligation to provide the service throughout the territory,
- the obligation not to discriminate against sections of the population.

This omission on the part of the Commission is probably due to the fact that the field of public services is directly linked to national sovereignty. The satisfaction of the Community's needs has always been the task of the state since a general interest is at stake.

However, if in the name of the single market and the internationalization of the economy, the Union's institutions undermine the national instruments which used to guarantee the provision of public services, should not these same institutions make up the deficiency by establishing Community instruments, whilst respecting the principle of subsidiarity?

This 'deficiency' becomes even more important if we take into account other factors. The first is the privatization of a large number of public undertakings in the Member States, which often for ideological or more practical reasons (budget deficits), has ignored the fact that many activities are of public interest, so that privatization has resulted not only in public services being managed according to a purely market-oriented philosophy, but in the very concept of public service being negated.

The second factor to be considered is the Community's commitment to establishing large-scale trans-European networks. The development of these networks, sanctioned by the Treaty, became, after the Copenhagen European Council, one of the cornerstones of the action by which the European Union intends to assist the recovery of the economy and employment. In the White Paper it is clear that the Union can only make a limited financial contribution. However, its efforts to attract private capital into the sector of the networks will be much more substantial. Furthermore, the right conditions should be created for a partnership between all the parties involved: public authorities, the managers of the networks, users, suppliers of services and those providing financial backing. This idea must be developed in practical terms. Indeed, the massive private investment needed entails a risk that the networks will only meet the needs of the market (profitability). This is why the Commission must provide an immediate and better definition of this partnership and must play an active role not only in releasing investments but also in guaranteeing that these networks are managed in accordance with criteria which are not confined to the mere calculation of profit.

The third factor to be taken into account is the definition of European citizenship. Most of the rights and duties deriving from European citizenship, as defined in the Treaty on European Union, are essentially of a political nature. But some of them also have economic implications, for example the fundamental right of every citizen of the European Union to move freely and reside in every Member State.

The existence of widely differing situations as regards the availability of public services (differences due to privatizations and the dismantling of Community monopolies) threaten to undermine freedom of movement of consumers and the mobility of workers.

Furthermore, the reduction in resources, such as public services, needed to allow citizens to make their own choices will certainly not help the growth of a European consciousness.

For more than a year the Community has been discussing the possibility of Community action. It was the memorandum on public services, presented by the French Government at the 'Telecommunications' Council of March 1993 which officially launched the debate. The memorandum recognizes that the market and competition cannot satisfy certain needs of general interest in sectors such as transport, communications, etc. Furthermore, this is what the Treaty itself means when it talks about 'services of general economic interest' (Article 90(2)).

The same document acknowledges that for the major European networks there is the problem of carrying out projects determined not only by the competitiveness of the European economy (although this is important for employment) but also by the common interest.

It is therefore necessary to draw up a single reference framework laying down the minimum standards to be offered in public services whenever the general public interest must be served. This framework should be valid both for Community action and for the Member States, whether they privatize or not. Hence the idea of a public services charter to be adopted by the European Union.

#### TOWARDS A PUBLIC SERVICES CHARTER

A public services charter has already been adopted in a number of major countries such as Italy, France, Great Britain, Spain and Portugal. There are at least three reasons why a European Union Charter is needed. The first is that there are public services which must be provided on a supranational scale and must therefore abide by uniform principles. The second is the need to guarantee a degree of uniformity in treatment for users of the various services provided at national level, the idea being that one of the ways of creating European citizenship is to eliminate differences in services. The third reason, which follows automatically from the other two, is that the quantity and quality of a public service must in no way depend on whether the supplier is a public or private entity.

To this end the European Charter should stress the general principles, the qualitative and quantitative standards to be guaranteed, the form the supplier's responsibility should take and the form of control the user or consumer is to have. A list of the services to which the Charter is to apply must of course be the starting-point. Because of its ability to analyse and coordinate and because of its power of initiative, the Commission is the body assigned with the task of proposing a European public services charter, in the most appropriate legal form.

A number of comments might be made on this subject. The public services which are considered essential are a fundamental factor in the achievement of equality of opportunity in society: education, culture and health, and also, because they help to establish equality, services such as energy, transport, the postal service and telecommunications. Competition cannot be introduced for any of these services unless the principle of accessibility for everybody is preserved. Furthermore, this principle must be considered as an integral part of cohesion policy and this poses the problem of adopting common rules at European level. We must ask ourselves whether the Member States can still retain total freedom in decisions on public services. It has been pointed out (see the study by DG IV) that the Union is now involved in the sectors of consumer protection and the environment, implements a policy of economic and social cohesion and pursues the objective of linking up, jointly operating and creating European transport, energy and communications networks. All this probably implies the possibility of arriving at a joint view of some of the essential elements of public services in Europe.



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