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# PUBLIC SERVICES AND EUROPEAN INTEGRATION

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## Abstract

*We first describe briefly the process by which the State withdraws in Europe, under pressure from both the process of European integration (the creation of the single market) and, of course, the process of globalization-liberalization, which began some two decades ago. In this part, we deal with issues of intervention in general terms, canvassing some economic arguments for reducing the State suggesting that the real reason may be ideological and sometimes forced by globalization. We also investigate the future of public services in Europe, in terms of their missions. Are public service missions seriously, and necessarily, impaired by European economic integration? What is the present situation? What is the position of the Commission - in word and in deed? This part looks at the EU regime on competition, trying to answer various questions like how it has been interpreted and how it affects the privatization issue. We show last, with examples drawn from the experience of different countries of universal services in the banking sector, that it is rather difficult to maintain a proactive approach to public services within this competition framework. Here, we discuss the State provision of banking as a case study of the tension between public provision and competition.*

## Introduction

The paper focuses on the disengagement of the State in EU countries from its economic and industrial missions, in response to globalization-liberalization and European integration. This disengagement includes: the reduction of the role of the public sector as direct provider of services; and new constraints in the way in which the State can structure domestic markets and use the profits of public enterprises (cross-subsidize). At the same time, we try to deal with the (paradoxical) greater engagement of the State in others sectors, using new forms of regulation, promoted

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by the European Commission, in order to ensure competition, on an equal basis, between public and private providers and between providers based in different nations. We examine how the definition of “missions of public services” could be articulated with this ongoing construction of hybrid sectors, based on the promotion of quasi-market mechanisms (most obviously in health and welfare, see for example the Seehofer plan in Germany, but also in such sectors as rail transport and in the banking sector). In the banking sector, we show that despite the determination of the European-Commission to sustain a real public-service engagement, “financial reasons” will not allow maintaining such a commitment, unless finding a durable way to finance the banking universal service. During all the paper, we will try to discriminate between the stated reasons (sometimes “theoretical camouflage”) and the real and practical considerations motivating policy change. We conclude on the doubtful capacity of the Commission to take in charge, at the European level, an extensive notion of public services –equivalent to the tradition developed in certain member-State, such as France.

The public sector and public services are two distinct concepts. Today, the public sector refers to the totality of those State bodies, which have been given some task or mission to carry out (the service providers or "operators"). The term, public services (or services of general interest), on the other hand, refers to these missions themselves (the activities which have to be carried out, under the control of a "regulator"). (1) However, because of their history, some European nation-States do not clearly separate these two functions. In France, for example, the organizational forms and the delivery of services were until very recently conflated in what was sometimes described as a "statist" view of the national public authorities: in practice, "public service", "public administration" and "national sovereignty" were virtually synonymous expressions. Thus the mission of the public sector was defined in a very general way: to promote economic and social development with the help of the big nationalized companies, which possessed monopoly power. In fact, defined in this way, the mission of the public sector went well beyond the supply of the obvious outputs of these public monopolies (production of electricity, delivering letters); in a certain way, this national conception of public services diverted the public enterprises far beyond their specific tasks.

The European Union and the single market are being built on the principle of competition. "Economic integration" is the only goal for which the Commission has a clear mandate. It soon became apparent in practice that, to be compatible with this objective, the notion of public service would have to be more narrowly circumscribed, even though, in theory, nations retained the freedom to define the "missions" which public services should accomplish. Thus, although the State is not prohibited from possessing means of production (2), and although States are free to define specific social policies, in fact all forms of cross-subsidy capable of affecting

market conditions are forbidden because they conflict with the principle of competition and, likewise, the State is no longer able to make free use of the monopoly rents generated by public enterprises; this amounts to depriving it of the resources which it used to dispose of. The regulatory functions of the State are preserved, indeed they are broadened; but subject to the condition, a very important one as we shall see, that it is becoming necessary to say very clearly, case by case, what the set of tasks consists of - something which in the past was often left implicit and vague: economic objectives, social objectives, regional objectives and so on. Thus the notion of "universal service", which specifies what each European citizen is entitled to in each field of activity, comes to replace the general notion of "public service." In sum, the European drive for open competition not only calls the status of the operators into question; it also, or so we shall try to show, changes the basic principles of State intervention (3).

This development are intimately connected with two further large political currents: neo-liberal triumphalism and US domination on international economic policy following the end of the cold war; within Europe, the decline of social democracy and the labor movement since the 1970's, and their shift in policies towards a greater accommodation with globalization. These facts have probably influenced strongly the economics and political orientation of the European Union and The Commission.

In the first part, we describe briefly the process by which the State withdraws, as an operator or supplier of services (France being taken as our example), and we present the doctrines, which are used to justify this withdrawal. Economic theory has traditionally considered that State intervention might become necessary when there are externalities, increasing returns to scale or a monopolistic market structure. Today, by contrast, the same analytical concepts, together with recent advances in the economics of information, can be used to explain the disengagement of the State and the limits to this disengagement. At the same time, we shall see that these rationalizations only amount to ex post justifications and are not the real explanation. The disengagement of the State as a service provider in reality results from the fact that traditional methods of intervention are being called into question, under pressure from both the process of European integration (the creation of the single market) and, of course, the process of globalization-liberalization which began some two decades ago.

In the second part, we investigate the future of public services in Europe, in terms of their missions. Are public service missions seriously, and necessarily, impaired by European economic integration? What is the present situation? What is the position of the Commission - in word and in deed? Is it only a matter of delivering an unchanged level of public services, but with the supposedly superior

tools provided by a new competition framework? Or, on the other hand, is the principle of competition merely an instrument with which to carry out an opportunistic reduction in public provision?

In the third part we show, with examples drawn from the experience of different countries of universal services in the banking sector, that it is rather difficult to maintain a proactive approach to public services within this competition framework.

### **The Disengagement of the State at the turn of the Century: towards new principles of intervention**

In France, it is above all the forms of State intervention, which have changed, in recent years. Although the principle of public intervention remains, it is only in very rare cases that this intervention takes the form of a single public service monopoly such as those which emerged in France just after the Second World War. The public sector as a field of intervention has been substantially redefined, with a shift towards a withdrawal of the State as "provider" of public services: firstly, different activities are separated from each other, and then follows an opening up to competition or even privatization. We shall describe these developments first at the national and then at the local level.

At the national level, the era of the great public enterprises carrying out high governmental strategies in terms of industrial policy seems to be at an end: indeed, starting from 1986 (then again after 1993), and in the context of liberalization of the world economy and the development of the EU's competition regime, official privatization programs sought to reduce the importance of the State in the field of production (4): Banking, insurance, steel and all the manufacturing sectors in general, are so many sectors from which the State has withdrawn. On the other hand, the main national networks - electricity, telephone services, and rail transport - are still the responsibility of public monopolies, such as EDF, France Telecom (5) or SNCF (6) ("network" is being used in the sense of a certain form of physical infrastructure, and not in senses increasingly found in sociological or policy research). But it is already possible to detect the first signs of an approaching decomposition of these enterprises, even where break-up is not explicitly anticipated in EU directives. For social services (health, education) on the other hand it still seems to be the case that liberalization and dismemberment are not yet on the agenda (despite a certain discourse in favor of such policies) (7).

Meanwhile, at the local level which has become increasingly important since the decentralization reforms of 1982, public services function more and more in terms of "delegation" (8), as is the case for neighborhood services (water supply,

water purification, refuse collection are examples). This is not a new form of intervention - it was very common before the second world war (9), that is before the postwar reconstruction and the first national plans in France, which tended to adopt a somewhat monolithic view of the public sector (hierarchical, centralized and organized by the major State institutions, see for example Hugounenq and Ventelou, 2002). It is in the 1980s that a real reactivation of the notion of delegation takes place with intermediate, essentially mixed, forms of public action, between the State and the market (10); this marked a break with the "all or nothing" approach to intervention in the previous years. This change in the patterns of intervention seems to suggest a "case by case" approach where the method adopted depends on the ability of the private sector to carry out specific public service tasks in a full and satisfactory way.

Going beyond simple description, we can suggest that three theoretical factors played a dynamic role in the liberalization wave; while a fourth factor (information) came to set a limit to liberalization.

### **The Justifications, between theory and opportunism**

Technical progress, first of all, worked in some cases to change the characteristics of the production function: in certain activities, increasing returns to scale were replaced by decreasing returns. This seems to be the case in the telecommunications sector where technical innovations meant that a network of telephone lines could be replaced by a network for radio signals. Although the costs of entry are still high, competition has become possible on the basis of new methods of communication. Such innovations have given support to the idea that increasing returns to scale are giving way to diminishing returns. It would follow that in a number of sectors there is no longer a (technical) rationale for monopolies, whether public or private. If the justification of liberalization is due to decreasing returns to scale, we note that some sectors have been liberalized when increasing return to scale have still remained.

The idea of "segmentation" of activities (originating from the theory of contestable markets) is sometimes referred to in terms of breaking up public enterprises. The implication is that it is always possible to split up the previously unified activities of a public service into several segments, some of which can then be subjected, as a minimum, to the principle of contestation of markets and potential competition, or, as a maximum, to "privatization." School cafeterias, for example, were historically part of the public education service but can in theory easily be separated from that service and thus exposed to competition. Another example is the segmentation of rail transport, which today has been split up into the construction and maintenance of the rail network (RFF) and the actual transport of freight and

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passengers (SNCF); these two segments represent different stages of the same productive process, but the downstream activity (transport) can be exposed to competition on condition that the competing enterprises are required to pay for the services of the upstream network. (In practice, competing providers are not always required to pay for infrastructure. For instance, bus operators in the UK use the roads free of charge).

However, besides these valid reasons for restricting the scope of public services, invalid reasons for so doing must be kept in mind; and we can ask to what extent these rational justifications for a reduction in intervention (technological change, segmentation) merely provide theoretical camouflage for a certain narrowing of the concept of public service - a narrowing imposed through long years of austerity and economic crisis on the one hand, and, on the other, by an ideological assault on the public sphere: the State is no longer seen as the guarantor of fundamental rights and as a structure of social control - it now represents merely one possible service provider among many others. The need for international price-competitiveness, the increased mobility of capital and the new profitability criteria imposed on national economies have in fact led to a kind of race to the bottom for the public supply of public services and/or to an opportunistic reduction in the objectives of the welfare State (cf. Sinn, 1997). Thus economic liberalism is propagated on an international scale - not only subjectively, through its influence on thinking, but also objectively (through international competition) because it is very difficult for a single nation-State to resist these pressures in an environment where most other nation-States have adopted liberalism and are practicing some form of social dumping.

Whatever the relative importance of these various factors may have been, the reality is that the scope of the public sector has been redefined. The essence of the debate now is no longer to examine the reasons for this withdrawal, but rather to identify its practical limits: what, today, are the limits of this disengagement? Or, to put it the other way round, what basic activities, or what criteria, seem to define the public sector in France today?

Table 1 summarizes the criteria, which are used in the theoretical justification to delimit the scope of the public sector. It starts with a relatively traditional set of criteria, within which intervention is seen as necessary when a technical constraint (the "nature" of the good or service to be allocated) coincides with a social and political need (fundamental rights). But in recent years the criterion of "information" - its quality and the possibility of manipulation - appears as a new basis for intervention. It comes in by the back door with the use of delegation of those public service missions, which are still recognized. This takes place case by case and the traditional criteria continue to be respected:

The criteria of increasing return and manipulability of information both stem from the problematic of neo-classical microeconomics. In contrast, the fundamental rights criterion tends to reflect an implicitly more social democratic perspective (cf. Doyal & Gough) (11).

The use of delegation presupposes ex ante a clear definition of the mission and ex post control over its achievement. Both are impossible when information is bad or, more precisely, when information is “manipulable”. By manipulable information is understood any kind of informational deficiency, which makes it impossible to make the achievement of a mission a matter of contract. In the US and Britain the term which is often used is “non-contractible information” (Mulgan, 1998): the level or the complexity of hidden information is such that it is impossible to use a contract (even if it is very well formulated) to ensure that a public service mission is properly carried out by an independent agent; in these circumstances the “integrated model” will be the preferred way of achieving the objectives concerned. This new characterization of the “essential core of the public sector” could be applied, for example, to primary education where the quantity and the quality of the service provided and the effort which is made are all very difficult to measure and therefore very difficult to specify in a contract (12) Thus the criterion of informational controllability is becoming predominant, always combined with the existence of basic entitlements to the good or service involved. But this criterion is starting to dominate to the extent that it is tending to eliminate the technical characteristics - “public goods” and “increasing returns” - which were used in the past. In fact, thanks to the systematic use of the techniques of segmentation and contractual incentives, we can even detect the appearance of a new definition of the role of the public sector, laid out in table 2:

**Table 1: Justifications**

<b>Technical and informational criteria</b>	<b>Increasing Returns</b>		<b>Diminishing Returns Or Public Goods</b>	
	<b>Political Criterion</b>	Information cannot be manipulated	Information can be manipulated	Information cannot be manipulated
<b>The good or service does not involve fundamental rights</b>	Private Sector	Private Sector (constrained by specific laws)	Private Sector	Private Sector (constrained by specific laws)

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<b>The good or service involves fundamental rights</b>	Private Sector (delegation)	Public Sector	Private Sector (delegation)	Public Sector
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**Table 2: the Logic of justification taken to the limit**

<b>Technical and informational criteria</b>	<b>Information cannot be manipulated</b>	<b>Information can be manipulated</b>
<b>Political Criterion</b>		
<b>The good or service does not involve fundamental rights</b>	Private Sector	Private Sector (constrained by specific laws)
<b>The good or service involves fundamental rights</b>	Private Sector (delegation)	Public Sector

Coming in by the back door in the early eighties (for local authorities), the informational criterion today seems to be completely ascendant; the traditional criteria for public intervention (increasing returns, externalities) are tending to be wiped out; and it is only the absence of “contractibility” in a given activity which now justifies, in the last resort, the continued use of public operators. Wherever contracts can be used, on the other hand, privatization and exposure to competition are adopted with the intention of having the private sector, instead of the public, carry out the specified task. Over the last two decades, this new definition of the “essence of the public sector” has in practice authorized first a reassessment and then a major reduction of State interventions: to the extent that the quality of information is good and it is possible to verify the performance of the unit to which a task has been assigned, the order of the day is: “have something done, don’t do it yourself”. The use of sub-contracting (as happens in the armaments industry) or the supervision of private activities by a “Regulatory Authority” (as in telecommunications) is becoming widespread. Even when the need for interventions continues (there are still many activities which relate to “general interests” - indeed the number of such activities may even be increasing (13), intervention is no longer carried out by organizations, which are integral parts of the State apparatus. This new conception of the public sector, based on whether or not information can be manipulated, finds support in two distinct bodies of literature:

Firstly, the “economics of information” applied to public sector economics (14). This discipline seeks to define, around the agenda put forward by Laffont and Tirole (1999), the conditions which have to be met for an “incentive contract” in the presence of asymmetric information, this amount to trying to widen the range of activities which can be governed by contracts. An incentive contract permits individuals who are not, a priori, in a hierarchical relationship (that is, they are free to agree on a contract) to enter into a relation where one of the parties, the “agent”,

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carries out some action for another, the “principal”, in such a way that the informational advantages (which the agent is assumed to possess) do not prevent the achievement of the social objectives involved. This theory is well developed not only for public contracts but also in the field of private contracts (employment contracts, relationships between corporate management and shareholders, contracts between enterprises). It is also applied to the control - to the “regulation”, in its English sense - of public and private monopolies: the monopoly enterprise is an agent of the State (which is the principal) and has been given a specific task - to provide a good or a service (15). Public orders should then as much as possible make use of this framework of analysis, which shows how to have something done without being cheated.

Secondly, the “economics of institutions” examines the nature and the interactions of hierarchies and markets. Where should the limits to markets be? Where should hierarchical organizations begin? The works of the institutionalists (Coase, Williamson) have shown clearly that “organizations”, as opposed to “markets” are justified by a certain number of informational deficiencies: hierarchies, the integration of activities into a single organization (rather than using contracts, case by case, to have these activities carried out elsewhere) correspond to the difficulty, or even the impossibility of allocating resources effectively in the presence of “transactions costs”, which are themselves linked to the absence of certain key types of information. What really is the input, which is being purchased on the market, what is its quality and what its productivity? To obtain all this information may be too costly. It may also be too complicated to write into contracts all the possible contingencies, which would have to be covered to arrive at a complete set of markets. Instead, the enterprise chooses to extend its boundaries so that it can control the input in question (a so-called “firm-specific” asset). This “institutionalist” theory is thus the logical complement of the theory of “incentive contracts”; it examines its hidden face (one might say, it deals with “incomplete” contracts (16) that is, the cases where, because of the inability to quantify an incentive mechanism, the “integrated” model of resource allocation is adopted, in spite of its apparently less efficient nature –within a definition of efficiency (“allocative efficiency”) propounded by the neo-classical micro-economics.

It is easy to see how these tools of economic theory could be used to justify the various privatizations and fragmentations which have taken place in recent years: some industrial or commercial activities do not involve both fundamental rights and manipulable information - they have in fact been excluded from the essential core of the public sector. Once again, however, it must be asked whether this justification for the withdrawal of the State is only an ex post rationalization, which uses the new microeconomics of information to rationalize policies which are in fact dictated by international competition and globalization. It all depends on the analysis that is made of the complexity (social, informational, etc) of the tasks which are carried out

by these sectors: where that complexity is limited it may be justified to break up a public operator; where there is a high degree of complexity, it would be going too far to do so - in such cases the new economic theories are only a rhetorical mask for an opportunistic contraction of French public services.

Whatever conclusions are reached, the future of the main public services is being determined today in the framework of European integration. The principle of competition is seen as the instrument, which can give back to the consumer the monopoly profits, which were previously appropriated by public enterprises in a neo-liberalization point of view (17). These remarks make us think about the competition that really generates the increases in efficiency, which, it is claimed, will make it possible to maintain the level of public services? Or, on the other hand, is the principle of competition just another way of bringing about a further opportunistic reduction in public provision? What is the present situation in Europe - in official documents and in actual practice?

### **Public Services in Europe: competition and universal services**

The European situation as regards public services can be examined at different levels; in the articles of the founding Treaties; in the Directives; in the Communications of the Commission, or indeed, in the "Charters". To begin, consider the founding Treaty (box 1).

Thus the section of the Treaty devoted to public services begins (box 1) by reaffirming the basic principle by which the other articles had, essentially, been drawn up: that is to say, competition. Then it makes some room for "services of general economic interest" by referring to "the performance of the specific tasks assigned to them", by authorizing the member States to define, relatively independently, the scope of their public services. The order of priorities established by the text should be noted: "the rules of competition" are subordinated to the "specific tasks" to the extent that the application of these rules might "obstruct..." Finally, once again, the "development of trade" is reasserted as a priority. It would be hard to find a more subtle text from a juridical point of view.

#### **1. Treaty of Rome (art. 90)**

##### **Article 86 (previously 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.**

On the one hand, the text gives the impression that public services as a whole have to pass through a very narrow gate, since they are sandwiched between two reaffirmation of the principle of competition. But, on the other hand, the hierarchy of priorities which is established reminds us that Europe is not a federation but an assembly of autonomous nation States and gives these nation States the right to specify in advance which activities must be withdrawn from the field of competition as a result of social choice and national political sovereignty. This ambiguity anticipates the notorious difficulties of interpreting the principle of “subsidiarity” (which would be developed later, on the basis of European jurisprudence: “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 the effects of the proposed action, be better achieved by the Community”). Article 5 of the Treaty as revised at Amsterdam).

To find out how European actors, in the first instance the Commission and the Council, could interpret such an ambivalent text, it is necessary to examine the directives that, in applying the rules of the Treaty, specify in practice the range of possible interpretations. It must be noted, firstly, that until very recently the directives never confronted the problem as a whole: services of general economic interest. The problem was only addressed in one sector at a time: thus there exist - a directive on the transport of goods, a directive on air transport, a directive on electricity and a directive on gas, but there is no directive on the “future of national public services as a whole” and this is consistent because in principle it is left to the

member States to say what the public services are. To give a brief overview, it can be said that the directives have been powerful instruments in restricting the scope of the definition of public services as a whole. They are liberalizing directives. Thus, from the point of view adopted in the directives, the ambiguous principles of the Treaty have been settled in favor of a narrow field for public services as a whole. In the four economic sectors mentioned above the derogation for “specific missions” has not been used to provide a basis for the non-competitive provision of services. Great use has been made of clause 3 of article 86, which gives the Commission, in a certain sense, an autonomous power of decision and what the Commission has demanded is the dismantling of public monopolies with a (gradual) opening up to competition for a given percentage of market demand:

- for example, the telecommunications sector was opened up to competition over a period of ten years, from the first directive in 1990 up to the most recent amendments in 1998;

- as a second example, 30% of the internal demand for electricity must be opened up to competition in 2000 and this figure rises over time;

- most recently, the European Commission succeeded in having the 15 ministers of Posts and Telecommunications accept the principle of a gradual opening of national postal services to competition: by 2006 the historic postal authorities will only retain a monopoly over items weighing less than 50 grammes (18).

As can be seen, the historical authorities of the public services have, broadly, been invited to open up their formerly exclusive markets, perhaps just because they have been taken on one at a time, according to the economic sector concerned and its apparent “product” (electricity, gas, transport, postal services). The Commission has opted for “the harmonization of competitive conditions”, starting from the facts that the “product” of these services is an important input for other enterprises which are customers of the services concerned (and which consume energy, telephone services and so on), and that therefore, if non-market prices are charged, serious distortions would result (19). It is on exactly this point that the Commission, although it is being completely true to its mandate, has seemed to oppose, indeed to be openly hostile to the conception of public services as they existed in, for instance, France or Sweden. In spite of their formal neutrality on the public or private status of enterprises (20), European directives, because of their emphasis on a sector-by-sector approach, have acted in favor of privatization. It is the discretionary use of monopoly revenues, which has been the most vulnerable point - the fact that the prices paid for services produced by public monopolies must lead to distortions of competition. Here we must note that the monopoly revenues and the distortions arguments can be separated. Notably, it is often argued that

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public monopolies do distort (indeed, partly negate) competition – but the arguments about whether this is beneficial, and to whom, are different and more complex. Note that they allow the State.

### **The recognition of the concept of public service in European texts**

Two factors, nevertheless, qualify this widely shared judgment about the liberal bias of European institutions:

Firstly, the directives, as regards the “production” side, accept the notion of a network. Today, it is this term (21) which signals that the technical specificities of a given sector and the existence of increasing returns to scale, which might justify the continuation of monopoly control over certain activities, have been recognized (for example, a railway network, a landline telephone network and so on). Here there is an obvious opening for public intervention. But it is difficult to tell how wide this opening is (22).

At the same time, secondly, on the “consumption” side, the directives recognize the obligation to provide a “universal service” (using this expression itself for the first time in the telecoms directive); one also comes across the expression, “essential facilities.” This mission has been recognized in each of the great liberalizing directives for specific sectors (telecoms, Electricity, Post etc.); it establishes, in the last instance, the public service obligations which must be respected by the sector, even though it is open to competition from that point onwards: that is, “a minimal specified group of services, of a definite quality, which is available to all consumers, regardless of their geographical location and at a price which is considered to be affordable in the light of national circumstances.” Each State, however, is free to specify a wider group of services than that specified in the directives.

In telecommunications (23), for example, the universal service requires that each Member State makes sure that the operator or operators provide, as a minimum: connection to the landline network, itemized bills at no extra charge, free use of an emergency number and so on. Beyond this minimum, one finds in the case of France, a social tariff for certain low-income customers, the provision of phone boxes in public places across the country, and so on. In the case of postal services (24), the specified universal service stipulates that each user is entitled, on every working day and on at least five days a week to the collection, sorting, transport and delivery of postal items up to two kilograms and parcels up to twenty and to services relating to registered mail.

As well as the specification of a universal service in each of the liberalizing

directives, one finds that case law, from the beginning of the nineties (case C-320/91, Corbeau (25), European Court Reports 1993; and case C-393/92, Almelo, European Court Reports 1994), explicitly recognizes services of general economic interest (SGEI). More recently, some of the major European texts (see box 2) have reasserted the possibility of a voluntaristic approach to public service objectives.

## **2. Public Services in Recent Major European Texts**

### *Treaty of Amsterdam (art. 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 fulfill their missions.**

### *Declaration of the Lisbon Summit*

**The European Council considers it essential that, in the framework of the internal market and of a knowledge-base economy, full account is taken of the Treaty provisions relating to services of general economic interest, and to the undertakings entrusted with operating such services.**

### *European Charter of Fundamental Rights*

**(adopted at the time of the Nice Treaty but, for the present, having only the status of a "charter", that is, without juridical effect)**

**The Union recognizes 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.**

The mission of “services of general economic interest” is now specified in relation to, on the one hand, the shared values of the member States and their social and territorial cohesion, and, on the other, to the imperatives of the “knowledge economy”. The Charter bears the title, Fundamental Rights, and this accords well with a certain French tradition - which was built up in the years when the public sector was strong and expanding and which is sometimes described as “neo-colbertist” (see Hugounenq and Ventelou, 2002). Certain jurists even see in this Charter the basis of a real “common European grammar of public intervention” (this

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is the formulation of Lyon-Caen, 1996 (26) because on this occasion a principled, but potentially operational, doctrine on public services is adopted with two key characteristics:

- it is a shared doctrine in that all European countries, whatever their differences, agree on the definition of human rights;

- it is a positive doctrine in that intervention is no longer just a question of legal derogation or of permitting government action to deal with the specific situations inside each member States and with their “particular tasks” as seen in article 86 (previously 90), clause 2.

This optimistic view, however, ought to be qualified because the texts in question do not at present have much practical effect (the Charter is not a law). In practice, it is the sectoral directives and the way in which the notion of universal service is introduced into these directives, which actually shape the regimes in any given sector. In this context, the definition of each universal service imposes a one-dimensional logic: public service missions are certainly defined in a clear way but, because the definitions in each sector are very restrictive, these missions remain marginal. In fact, at the present time, a key question remains unanswered: given that the notion of public services which is being developed at European level is still embedded in a sector-by-sector approach will Europe be able to produce policy instruments powerful enough to achieve the “territorial and social cohesion” which is enshrined in the Treaties and in the Charters?

This question can be illustrated by the situation of La Poste (the French Post Office) today. La Poste, by leveling prices across the country (the price of a stamp is the same everywhere), by covering the whole national territory with its network of branch offices, by the financial services which it provides (and which were originally intended for the lowest income groups) has done more than any other enterprise to promote the social and territorial cohesion which is always being talked about. But the logic of European integration today is hostile to this complex organization. In fact, the definition of a universal postal service deals only with the delivery of mail; the banking and financial functions linked to the postal service are not taken into account. Now, if this approach to La Poste is adopted, then there seems to be no need to preserve its dense network of branch offices - even to serve the most remote and depopulated regions. At the same time, the Commission can call into question the financial services provided by La Poste as an “abuse of a dominant position”, for example (27). For the time being, the status quo prevails, because La Poste has always succeeded in blocking the lawsuits that have been launched against it (28), but it remains vulnerable.

We now take a closer look at this instability: through a more detailed analysis of the banking sector; we shall see what happens in reality to a universal service mission when it has to be implemented in a field open to competition such as banking.

### **Universal Services in a Competitive World: the example of banking in Europe**

France has been through a long debate on the way to establish a universal banking service, a debate initiated especially by the Jolivet committee (29): the issue was to guarantee, for both natural and legal persons, the right to a bank account, that is to say, access for everyone, including the poorest, to a bank or post office account which would allow them to carry out basic financial transactions: to deposit wages or other income, to pay bills, to withdraw cash. A recent decree (see the discussion below of basic banking services in France) laid down how this was to be done and specified that the users of these basic services must not be made to pay for them (30). This debate raised a fundamental question: did the necessity of the banks to function in a profitable and efficient way allow them to carry out a certain number of social activities? More broadly, had the reinforcement of competition in Europe made it possible to improve access to basic banking services or, in other words, was more intense competition compatible with the successful implementation of general interest missions in the banking sector?

To illustrate our argument we focus on the notion of a "universal banking service", to use the Anglo/American expression, or on the notion of a "mission of general interest in banking", to give its European equivalent. These notions are first assessed by looking again at the development of European official documents on regulation. To clarify our discussion we return to the case of France and we examine the Charter of Basic Banking Services, the proposed law put forward in the Senate by Gerard Larcher, and the law on basic banking services finally passed by the Parliament in the framework of laws on New Economic Regulations (NER) in the year 2000.

### **European legislation has gradually introduced notions of "social cohesion" into its definitions of general interest missions**

*The origin of the societal concepts*--for a long time the concept of a "service of general interest" has been linked, in European law, to the special nature of the missions carried out by public enterprise monopolies. This concept made it possible to put certain limits to the free play of competition. Gradually, however, as was seen

above, on occasions when it was necessary to give a regulatory response to questions on the application of these texts, the concept became more "societal". Thus we see the emergence of the holistic notion of "social cohesion", as is shown by article 16 of the Treaty of Amsterdam cited above. Paragraph 10 of the Commission Communication of 20/09/2000 (COM 2000/0580) goes so far as to list the needs of "users", "consumers" and above all "citizens". This notion of citizenship requires the assignment of fundamental rights: "The needs of users should be defined widely. Those of consumers clearly play an important role. For consumers, a guarantee of universal access, high quality and affordability constitute the basis of their needs..." The range of concerns mentioned is also widened - to include, in particular: "specific needs of certain categories of the population, such as the handicapped and those on low incomes; complete territorial coverage of essential services in remote or inaccessible areas." We shall see how these notions take real effect when they are applied to the banking sector in particular.

*The concrete application in the banking sector of this holistic concept of a mission of general interest may be difficult in several respects* (31). In fact, the survival of the banking sector depends on the free circulation of goods and services, as the interpretative text (32) issued by the Commission on the second banking directive (33) makes clear; but it also depends on a permanent search for greater banking efficiency and this means that there will be an evaluation of "default risks" which is inconsistent with the notion of a universal service mission. This leads us to the key question: whether missions of general interest are economically viable in the competition regime which is promoted by the European authorities, a question which becomes all the more pressing just because the Commission is increasingly concerned with issues of exclusion (34).

## **The French Experience: basic banking services**

*A little history*--Basic banking services in France began in the first half of the 20th century (see de Lima, 2001). From the end of the First World War, one sees post office checking accounts, the first accounts that could be opened with very modest sums. In the aftermath of the Second World War, French people could benefit from a free checkbook, in the context of policies, which tried to extend banking facilities to the whole population. From this point on the use of checks has grown continuously. Indeed, with the reforms of 1966/67, it was decided to abolish official restrictions on the number of service points in banks, to promote the use of checks by making it obligatory to pay wages into bank accounts, to make transfers between accounts obligatory for the payment of wages or other large sums, to make those professionals who were recorded on central registers accept payment of their fees by check. The same tendency was sustained by parallel developments: the

change from weekly to monthly wage payments and the continuation of free check transactions (dating from 1943 when they were introduced to combat the black market). The suppression of interest on current accounts, by a decision of the Conseil National du Credit on 28th June 1967 (which was intended to compensate the banks for free check transactions) did not change the trend. But the dynamic growth of check accounts was interrupted by the rise of unemployment in the 80s and early 90s which led in itself to the phenomenon of “financial exclusion” which is generally related to the withdrawal of banking services, that is, preventing an individual from using checks because of the lack of funds in their current account (35), a situation which led almost systematically to the closure of the account concerned.

In order to make banks and similar institutions take their social responsibilities seriously, and because access to certain methods of making payments was considered as a precondition for the exercise of freedom in general, banking law in 1984 established “the right to an account”, to be supervised by the Banque de France. This right means that people are entitled to be linked into the payments system. It is limited in general to the provision of a current account and the ability to deposit and withdraw cash.

*What are basic banking services?*--In 1992 the consultative committee of the Conseil National du Credit et du Titre, a forum for discussion between banks and their customers, first prepared and then adopted a Charter of basic banking services which reinforced a certain view of the “right to an account”. This was the first appearance of the concept of basic banking services (Mader, 2000).

Finally, the law of 29th July 1998 on Guidelines in the Struggle against Exclusion reaffirmed the same principle in article 73. This article has two objectives:

Firstly, it is reasserted that the obligation to provide accounts applies to all retail banks and similar institutions, in order to avoid La Poste (the French Post Office) and the savings banks becoming the only providers to people with financial problems.

Secondly, both customers and banking enterprises are reminded that the right to an account is an important part of the struggle against exclusion, since people’s awareness of these rights makes it easier to put them into effect.

However, the concept of basic banking services still lacks definition in the present public debate. The banks and other retail financial enterprises that sign up to the Charter commit themselves to provide “basic services” to everyone (including the poorest people) on terms, which develop as technology changes. The Charter

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describes the services, which are considered basic (a bank card allowing money to be withdrawn from the ATMs belonging to a certain network, for example). But nothing is said about the characteristics of the people, who use these services, nor about where the services should be provided and by whom. What institutions should be involved – AFB (French Banking Association), non-profit institutions, savings banks? What is worse, no specific pricing rules are envisaged. In other words, it is an act of faith without any commitment on the part of the authors of the text.

More recently, the Senate has adopted (36) the amendment proposed by Gérard Larcher on a "universal banking service". This amendment makes basic banking services (37) free for specific low-income groups -specified groups of social security claimants, recipients of "revenu minimum d'insertion", in total some 3.2 million French people. In this way a common definition of "basic banking services" is actually emerging, together with a definition of the corresponding "mission of general interest". The definition would bring together the main points of the 1992 Charter and the Larcher amendment (both drawn from French experience) and also draw on the experience of other European countries as regards missions of general interest in banking. The definition would contain three main points:

a) In the context of liberalization of network industries, the universal banking service consists of a minimum provision of banking services linked to a current account - most importantly, a card for cash withdrawals from the network concerned, a monthly quota of checks, RIBs (see endnote 37) and TIPs (titres interbancaires de paiement, a kind of guaranteed check or banker's warrant). To this would be added the necessary account operations - cash deposits and withdrawals, payments and receipts between accounts, and a monthly statement.

b) For the lowest income groups, universal banking services should be free of charge. Thus the universal banking service would guarantee full access to the retail payments system for those with the least resources. Cross-subsidies, compensatory payments or other methods should be used to meet the costs of access to basic financial services across all geographic localities for the poorest people.

c) The geographical availability of universal banking services amounts to making the use of automatic teller machines free of charge for basic banking operations; this is the physical underpinning for access to the banking system and it shows how the needs of the citizens/customers have been changing over time.

***The Role of La Poste (the French Post Office) in the arrangements for financial inclusion: missions of general interest implemented through the financial services provided by La Poste***--Although they now have to meet with competition, the financial services of La Poste still constitute an institutional point of reference,

linked to missions of general interest (Larcher, 2000). La Poste is not treated as a bank in legal terms, but it is nonetheless well able to carry out banking operations. And 64% of the savings deposited with La Poste are used to make loans of general interest: financing social housing projects (43%); financing investments by local government.... Thus the assets of La Poste constitute a mass of savings available for general interest objectives, which benefit the whole country.

The missions of general interest come under two headings: access for everyone to financial and banking services and a contribution to regional policy. As regards the first, La Poste tries to promote the widest possible access to financial services. This policy can be seen both in its acceptance of all types of customer and in the range of financial products which it offers. Thus La Poste tries to maintain a diversified customer base - in terms of income, age and socio-professional status. With its "livret A" account (a savings account operated by a passbook with a fixed interest rate (3%), the CCP (Compte Chèque Postal: a checking account), its personalized advice services and its wide range of other products, La Poste is open to everyone: to those with significant financial assets, but also to those who use their "livret A" accounts as current accounts or even, in the most deprived areas, as a kind of wallet to keep their day-to-day spending money safe. As regards the regional aspect, the financial services offered by La Poste play an important role both in depopulated rural areas and in the run-down areas of the cities. For example, 41% of the rural communes which have a post office or a sub-post office do not have an insurance agent, a savings bank branch, or a branch of a commercial bank; 70% of the activity of the 8000 small post offices in the rural areas is accounted for by "livret A" transactions.

Can these missions survive in a context of thoroughgoing competition? It seems doubtful because it is postal services and the profits, which they generate, which support the network of post offices. In fact, La Poste finds itself today in a rather ambiguous position. The growing competitiveness of its rivals in those fields where it no longer has a monopoly (express deliveries, for example) have led it, in order to protect its profit-making activities, to adopt the strategies of a private enterprise (notably with the Chronopost service for express mail). It is these profits, which in fact subsidize the public postal service. But initiatives like Chronopost, which has very high prices, hardly correspond to the idea of a public service and, in the long run, may call into question the survival of the existing network with its wide geographical spread.

## **Conclusion**

The example of the La Poste (French Post Office) - straddling at least two

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sectors - brings out particularly well the gap between a multi-dimensional (“holistic”, as we have sometimes put it) conception of the role of the SGEI, within which competition might be sacrificed to the final goal of social cohesion, and the uni-sectoral approach of Brussels, of which one can ask whether its competitive premises are not being maintained to the detriment of this final goal. Because of the consequences which are expected to flow from the sectoral separations insisted on by Brussels, some national authorities, notably those of France and Germany, have been led to demand a framework directive which would define the nature of SGEI in a more open and integrated way. The European Parliament (or certain parliamentary groups within it) has taken up this demand. The Commission, however, does not seem to take a favorable view of it. In its communication 598 (2001) the Commission claims that “ a framework directive would necessarily be very general in substance and could not take account of the specificities that characterize each service of general interest. Such a Directive could therefore not replace sector-specific regulation.” (Page 21).

Thus, far from moving towards what could be called a voluntaristic conception of public services, the Commission is limiting itself to the strict implementation of the directives and of the Treaty (this is, of course, the role of the Commission). Thus we have to argue for a redefinition of its mandate. In fact, it is up to the member States to modify the mandate and two possibilities are open to them: either, while staying within the existing institutional framework (that is, while holding to the Treaty of Amsterdam), they could try to widen the Commission’s mandate to take in other considerations besides the promotion of competition, for example, through the preparation of a framework directive devoted to the “SGEI” and by putting forward a general and operational definition of the “social cohesion” which is mentioned in article 16; or, in a more radical way, they could amend the Treaties to put “citizenship” directly at the centre of the functioning of the European institutions. But this second alternative could not be brought about unless the idea of a “Federal Europe” became much more influential, and such a development seems unlikely in electoral terms. The nation States, each of which is the product of a specific history, are not yet ready to accept genuine supranationality, which in any case would not in itself guarantee that a broad and generous conception of public services as a whole would be everywhere and all the time implemented. How, indeed, would the median European voter react to such a prospect? This is a fundamental question but it is difficult to answer it.

At the present moment, European directives have to work within the existing liberal framework and the established public sectors have to be opened up to competition, but, at the same time, universal or minimal standards of service have to be maintained. At the present stage, those network enterprises, which are still public, are in a vulnerable position, because they are caught between continuing to

carry out their missions - and perhaps, also, to defend their rents - and the emergence of new competitors who are establishing themselves in all the profitable parts of the sectors concerned. Such developments make the question of financing universal services even more acute. In fact, it is the financing of public services, which is today becoming the key question. If the service is profitable, it is self-financing; intervention is pointless; if it is not, then it can be financed either by a "reserved service" (that is, by the profits arising from a monopoly position over some segment of the universal service), or by creation a "compensation fund" where the principle is to make all the market agents finance the unprofitable parts of the universal service. The central question is: were the historical authorities in the public sector not already, to a large extent, carrying out this task in a very reputable way - by using systems of cross-subsidy which are not obviously inefficient, even if they are not as transparent as one might wish?

A final thought concerns the notion of monopoly rents especially in local public services: there are obviously rents which arise from the monopoly position of public services; but, as is well known, rents also accrue to private agents who have obtained contracts to supply certain markets or to whom the supply of public services has been delegated. This is the case especially for everything to do with local public services (water, management of parks, etc), where the techniques by which competition is introduced seem to be often very imperfect (either because the ways in which responsibilities are delegated are badly defined - the concessions are unclear, or the contracts incomplete - so that the enterprises who hold the concessions make excessive profits; or because the "mistakes" are in fact intentional - corruption). In this case all that privatization does, in a context where information can easily be manipulated, is to hand over the monopoly profits associated with public services to a different set of beneficiaries (Gatty, 1998), often at the risk of a significant deterioration in the quality of the services.

## Notes

1. The term "regulator" as used here covers both the political instance that decides on the mission and the body that exercises control over the mission, whether this body is a ministry or a regulatory authority.
2. Article 295 of the European Community Treaty says: "This Treaty shall in no way prejudice the rules in Member States governing the system of property ownership."
3. It should be recalled that the principles of continuity, equality and transferability that we find today in the definition of "universal services" originated (as far as France is concerned) in the period of high liberalism at the end of the 19th

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century. It was at that time that juridical notion of public service was born. In conformity with the liberal principles that emerged from the French revolution (Le Chapelier), the State was not to be regarded as a genuinely autonomous power but as an organization whose essential function was to serve the citizens. Indeed, throughout the development of French administrative law, the administration was subjected to a certain number of constraints while the service users were accorded new rights grouped around the three principles mentioned above. It is not by chance that it was an era of high liberalism which gave birth to the expression, public "service" in which one could already detect the influence of utilitarianism.

4. In chronological order (and without including every case) we can mention: the privatization of the Compagnie générale d'électricité and of the Banque de Paris et des Pays-Bas (1987), BNP and Rhone-Poulenc (1993), UAP and Elf-Aquitaine (1994), La Seita, Usinor, Sacilor and PUK (1995). Then, more recently and with only a partial opening to private capital, Renault and the Compagnie Générale Maritime.

5. France Télécom in 2002 still enjoys a monopoly over the landline network. Recall that a radical transformation of this sector began in 1991, with the separation of the PTT (Poste, Téléphone et Telecommunication) into two public enterprises, France Télécom and La Poste.

6. In 1997, a reform of the SNCF transferred the ownership of the rail network to a public body - the RFF - to which SNCF pays user fees. This change paves the way for competition among operators; different companies could run trains on the network, provided they paid fees to the RFF.

7. Bébéar, C. 1995, Protection sociale et charges sociales : pour un changement radical du système !

8. Local public services in France were privatized de facto from 1983 onwards by many town halls that made use of the technique of "delegation of public services" (water, etc). The private sector's share in the distribution of drinking water, for example, rose from 31% in 1954 to 60% in 1980 and 75% in 1991 (source: Rapport de la Cour des Comptes, 1997).

9. Note that the French system of conceding public services to private operators, introduced in the 19th century, is the reference point today for the "Private Finance Initiative" introduced in the United Kingdom in 1993-94!

10. At the end of the spectrum closest to the market, intervention takes the form of an "independent regulatory authority", such as ART in telecommunications, which

restricts itself to ensuring that the private enterprises "charged with a public service mission" fulfill certain responsibilities.

11. Generally, the question whether there is a limit to the State's disengagement was also debated during the end of 1980's in for example G. Esping-Andersen, (1990) or L. Doyal and I. Gough (1991). These references are not extensively used here, as they focused on the welfare missions (supported by the care systems) of the European States, and not really on the economic and industrial missions (which in turn are our specific purpose). However, our intuition is that the diagnosis would be the same: the real limits of the withdrawal of the State are to find rather more in the distribution of the power resources among the different classes of the society, helped by the diffusion of the liberal ideology (the US model), than in the objective and technical constraints identified by the economists.

12. This choice of example might be challenged on the grounds that there certainly exists a private, contractualized, primary school sector in France. However, not only is this sector marginal, but it also seems to be the result of historical accidents - of concessions made by the Republic either to the catholic tradition in education or to various regional forces.

13. It might be thought that such activities are increasing in number because of health and environmental problems (the mad cow disease crisis, greenhouse gasses).

14. To summarize the recent history of this field, one could cite Akerlof (1970) which extends economic analysis to situations of asymmetric information (the seller knows more about the quality of the product than does the buyer) showing how the "market" - defined as a site where exchange takes place instantaneously - can break down and thus providing a new basis for public intervention. Akerlof received the Nobel Prize in 2001 for his works in this field. Subsequently the literature, while it takes these new informational problems into account, has shown that there is still no obstacle to the realization of certain missions by the private sector; however, it is necessary to write the contracts carefully and to make sure that they provide the right incentives.

15. This good or service is either consumed by the State itself or by the public. Laffont and Tirole suggest the term "procurement" for the first case (a good is produced by one or more legally independent units, the principal itself being also the buyer - a military aircraft, for example) and the term "regulation" for the second (a good is produced by one or more legally independent units, the principal in this case being distinct from the consumers of the goods - for example, network

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industries, education).

16. Hart (1995), Segal (1999).

17. On the contrary, many public enterprises do make negative benefit –which is also one reason for their place in the public sector (and why privatizing them is difficult; for example, Network Rail and the nuclear power industry in Britain). Indeed both private firms and EU regulators often complain about “cross subsidy” of public enterprises. It could also be argued that by providing infrastructure, welfare services etc, at less than the market prices, the State is actually subsidizing the profitability of private sectors, users of these public facilities.

18. It was on the basis of this article that the European Court of Justice found against France when it challenged the Commission's power to take initiatives (decree of 19th March 1991, French Republic versus the Commission).

19. Article 31 of the European Community Treaty states that: "Member States shall adjust any State monopolies of a commercial character so as to ensure that no discrimination regarding the conditions under which goods are procured and marketed exists between nationals of Member States."

20. See note 3. It should be noted that "having things done" is only economically rational if it is considered to be cheaper than "doing things oneself". The link between efficiency and ownership status is however difficult to assess. There are certainly some studies that have tried to measure the technical efficiency of public enterprises in isolation (by trying to construct a "production possibility frontier" through the use of methodologies which control for the influence of other factors). But the methodologies used in these studies have attracted criticism.

21. The "network" (sometimes networks are called "universal infrastructures") is a concept which everyone uses but which has many meanings (broad or narrow interpretations). European institutions have adopted only the technical dimension of the concept (interdependencies between the production functions of enterprises which make use of the network). Other interpretations are possible which put more emphasis on externalities in production and consumption (the postal service, for example, does not just deliver the mail; it promotes the social integration of rural areas. La Poste - the French Post Office - has regional policy functions). The technical definition is thus very narrow.

22. Is it simply a question of “regulating”, one at a time, the distortions that may arise (that is, of setting up an authority to take responsibility for the relations between the enterprise which provides the infrastructure concerned and the

downstream enterprises which make use of the infrastructure)? Or, in contrast, is it a question of the European countries taking the opportunity to launch a real industrial policy, aiming at the creation of a comprehensive set of infrastructures which would promote economic development and which would be based on a wide interpretation of network externalities? See, for example, Petit (2001).

23. Directive 98/10/EC, OJ L101 of 01/04/1998, page 24.

24. Directive 97/67/EC, OJ L15 of 21/01/1998, page 14.

25. In its judgment in the Corbeau case which concerned the public Belgian Post Office, the Court acceded that member States could allocate financial resources (from exclusive rights to sell certain goods and services) to enterprises which they had made responsible for running services of general economic interest, even if these resources constituted an obstacle to the application of European competition rules.

26. The interpretations of Lyon-Caen reflect this writer's very "optimistic" view of the attitude of the Commission towards public services.

27. It would be an "abuse of a dominant position" to use the network of post office branches, already accepted as a necessary monopoly, that is, as necessary for public service reasons, to offer financial products which are supposed to be exposed to competition.

28. In 1990, the Federation Francaise des Societes d'Assurance (Federation of French Insurance Companies) took La Poste to court, claiming that the State subsidies that it received (in the form of tax breaks) were an unfair competitive advantage. The European authorities, however, accepted that these subsidies were linked to a regional policy objective and that, since they did not exceed what was needed to carry out this mission, they could not be regarded as a distortion of competition.

29. Jolivet - president of the Conseil National du Cr dit et du Titre.

30. Decree of 17<sup>th</sup> January 2001, to bring into force article L.312-1 of the monetary and financial code.

31. For details see Boutin (2000).

32. Commission Interpretative Communication: Freedom to provide services and the interest of the general good in the second banking directive (SEC(97) 1193 final).

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33. Second Council Directive 89/646/EEC of 15 December 1989 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions and amending Directive 77/780/EEC.

34. An encouraging sign here may be the recognition of the possibility that "certain services are in the general interest and that market forces may not result in a satisfactory provision", paragraph 14 of COM 2000/0580, "Services of General Interest in Europe".

35. Cf. The Fichier Central des Chèques de la Banque de France.

36. 11th October 2000, in the context of the debate on the law on New Economic Regulations (Nouvelles Régulations Economiques or NRE).

37. Opening and managing an account, supplying certificates with bank account details (RIBs, relevés d'identité bancaire, needed in France to organize payments and receipts by bank transfer), a monthly statement, cash deposits and withdrawals, accepting funds by check or bank transfer, a minimum of 5 monthly payments from the account (by standing order, banker's warrant, interbank transfer or by post), use of a bank card to make withdrawals (up to a monthly limit), and a certain number of check per month.

38. There is a maximum amount, which can be deposited, and it is regulated by the government as part of the popular savings system.

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### **Acknowledgements**

Thanks to Jacques Mazier and Pascal Petit. Special thanks to John Grahl who translated and helped editing the manuscript.