

DOC: GA 6724/99

**THE FOURTEENTH PLENARY SESSION OF THE PABSEC GENERAL ASSEMBLY
THE ECONOMIC, COMMERCIAL, TECHNOLOGICAL AND ENVIRONMENTAL
AFFAIRS COMMITTEE**

**REPORT
ON
"PUBLIC UTILITIES IN THE BLACK SEA REGION"**

RAPPORTEUR: MR. BARBU PIȘIGOI (ROMANIA)

Text adopted by the General Assembly in Kyiv on 8 December 1999

I. Introduction

1. The world is changing -and shrinking- at an astonishing pace. Demographics, science and technology, dealing with the global information society and the demands for openness are profoundly altering the provision of services to the public. These developments are forcing, as well as enabling, changes in the structure and boundaries of public services.

2. During the past half century, the international market increased tremendously, and a 'global economy' has gradually emerged; each country now faces a very strong competitive pressures, not only in foreign markets but also in its home market. International competition demands an efficient economic system in order to avoid marginalisation. Against such a background, efficient public services are a necessity if high competitiveness is to be achieved and maintained.

3. The concept of public utilities covers a relatively large field such as urban engineering (water distribution, sewage, waste management, etc.), transports (road, rail, air, and waterways transport), telecommunications (telephony, data transmission systems- including the Internet- and postal services) and energy (electricity, gas, oil, coal etc.).

4. The importance of public services is hard to underestimate. On the one hand they are directly connected to the welfare of the population, responsible to a large degree for the prosperity of citizens and their standard of living: no society can prosper if it doesn't ensure for its members clean water, heating and electricity, reliable transportation and telecommunications.

5. On the other hand they operate in sectors (e.g. communications) which are at the frontier of technological breakthroughs and contribute to a large degree in keeping the overall economy at the forefront of technological progress. Public utilities supply inputs (e.g. energy, transportation) which affect the production of practically all goods and services; it is therefore crucially important to have these inputs produced at low cost and high quality to keep the economic system competitive as a whole.

6. The justification, purpose and basis of public utilities is to meet the needs of consumers. In order to face the international competition and avoid marginalisation, in an international context where technological progress during the last years has been quite astonishing and has led to the introduction of new production processes for goods and services alike, public utilities in the BSEC countries need to be overhauled and transformed into modern and efficient entities.

7. Given the vital role played by public utilities, BSEC member countries should be highly concerned for their efficiency. However during the last years many of the BSEC countries were faced with problems of adaptation to technological progress, the elimination of inefficiency and low performance, and improving high delivery costs.

8. There is a general view that public sector organisations should be customer-focused, flexible, and outward-looking as opposed to highly centralised, rule-bound and inward looking, as many were in the past. There has long been a debate about the size of government, as well as whether to centralise or decentralise. However there is no panacea for all illnesses; countries must now be willing to move in both directions, decentralising some functions while centralising other critical policy-making responsibilities. Such changes are underway in all countries around the globe. In some, such structural change may be aimed at reducing the role and size of government. In others, it may be aimed at defending and enhancing the public sector.

9. This report endeavours to focus primarily on the general policy problems facing public utilities in the BSEC region. For the drafting of this Report the International Secretariat received an extended contribution from Romania, while the Armenian Delegation also provided its contribution.

II. Policy for Public Utilities

a. Transition economies

10. Throughout the region, decision makers have embarked on a vast, long-term endeavour involving constitutional, institutional, political, legal and social reforms. They do so in a difficult economic context with a heavily charged policy programme. Meanwhile, capacities for policy making, especially the time of ministers and their staffs, are overburdened and administrative reform receives insufficient attention. As a consequence, the quality and coherence of public policy suffers.

11. Governments are beginning to realise the imperative of finding ways to make policy development more cost effective, user friendly and transparent. To maintain integrity, the process also must include the institutionalisation of checks against abuse, and the assurance of opportunities for citizen participation. In sum, the organisational arrangements of policy making need strengthening through a multi-faceted, public administration reform programme.

12. In addition to the above, there is a multitude of problems concerning the personnel of the –mainly state owned- public utilities: public servants have received little formal education in essential practices such as accounting, managerial techniques, computer programming and interpersonal skills. Further, schools of public administration lack the curriculums and qualified staff to train students for public service posts.

13. Compounding the uncertainty and lack of basic skills is an unhappy working environment which does not nurture employees. Society's negative view of public servants is quite widespread in many of the countries in the BSEC region. Lines of communication with colleagues and supervisors are inadequate, and public servants' duties are very compartmentalised. The opportunities for those in the public administration to contribute to decisions that affect their work and responsibilities are limited and sporadic.

14. Tight state budgets offer little hope for improving low pay scales, and workloads have increased exponentially, especially in those parts of administrations dealing with the fast-growing business sector, as most public utilities do. A low level of motivation explains the inattention given to the needs of citizens, including entrepreneurs, who depend upon the machinery of government in their daily activities.

15. Public utility enterprises are also large purchasers in the private economy and thereby affect overall resource allocation. Furthermore, they influence economic efficiency, the rate of technological and organisation innovation, and the cost of resources to users, and strongly influence integration with the wealthy economies of Western Europe and elsewhere in the world. Additionally, if laws and regulations pertaining their operations conflict or are implemented inconsistently, costs and risks of business increase - at a time when the majority of BSEC countries are just coming out of the economic trough of transition.

16. With public resources at a premium, governments must give more attention to expenditure management procedures, including those for regulatory systems and

public procurement of goods and services for public utility enterprises. Courageous political support and direction is needed to overcome resistance to reform.

b. The European Union

17. In February 1986, starting with the Single European Act, the European Commission and the Council initiated the first steps towards the process of liberalising public services. The Commission proposed liberalisation rules under the form of directives, first in the field of telecommunications and air transport, then in the field of postal services, electricity, railroads and gas by designing solutions to favour competition, based on conformity to regulations common to all. With respect to competition, regulations were already been elaborated or are being drawn up.

18. On 17 December 1997, the European Parliament adopted a Resolution inviting the Commission:

- to define clearly the sphere and nature of public utilities, as well as the necessary adequate level that these services should reach in order to fulfil the objectives of the EU;
- to elaborate a Charter of the main principles which should form a basis for evolution of public utilities of general interest;
- to ensure regular consultations between the representatives of consumers, of public utilities companies, of competing companies and of their personnel;
- to ensure a coordination of competing companies, in order to enable a correct evaluation of interests with regard to competition policy, as well as to public utilities of general interest.

19. In order to find a solution to the disfunctionalities related to the current profound transformations (technological revolutions, globalisation, European evolution, the transformation of demand etc.), the following problems were debated at European level:

- a. Alternatives of privatisation. The directives of the European Union do not promote the obligation of privatisation. Decision makers are faced with alternatives pertaining to national political decisions, suitable to the economic conditions of their own country.
- b. The provision of public utility services at a local level.
- c. The status of the personnel in public companies. In most EU countries the status of the personnel working in public utilities companies was assimilated to the status of the staff of public administration, but changes took place after transforming the administration or the privatisation of a public company. It is believed that the status of the personnel is one of the causes of inefficiency of the public service, considered by many as incompatible with ensuring competition.
- d. Involvement of trade unions in the modernisation of public utilities.
- e. Partnership between the providers of the service and the consumers/clients.

20. The EU wants to introduce, at the European and national level, new and stronger elements of competition, being convinced that competition leads firms to much greater efficiency. For this reason, deadlines have been indicated for the introduction of a single market for energy, telecommunications and transportation, in order to match what has been already achieved for other goods and services. Besides, directions have been given for the breaking up of the vertically integrated

monopolies, in order to separate natural resources from the production, transportation and distribution of the product or service.

21. No act of privatisation has been requested, since the EU has always taken a neutral stance regarding the ownership of the companies. The EU in fact, is more concerned with organisational systems than with ownership. Another element requested by the EU regards the liberalisation of access to networks by third parties. Import and export monopoly by the national public enterprises should end, and direct exchanges between producers and individual consumers are to be allowed.

22. In short, the current transformations in the European Union are focused on meeting at European, national and local level the demands of larger categories of participants: managers of public utilities companies; politicians faced with decisions of immense economic and social implications; consumers-clients, whose role is currently being recognised but who are divided along categories of diverse interests; personnel working in the field of public utilities; trade unions; businessmen and industrialists or multinational companies.

III. Member countries contributions

Armenia

23. In the water supply and drainage system there are two companies operating in different geographical areas: 'Armvodocanal' serves 42 cities and 280 villages, and 'Vodocanal' serves Yerevan and 37 nearby villages. The water supply another 600 villages is undertaken by the respective local authorities.

24. The government has initiated a very large national programme that aims at providing all settlements with high quality, reliable and cheap water distribution systems. Capital investment for this project was \$535,000 in 1997, and \$3,830,000 in 1998. The expected investment for 1999 is \$4,700,000. The World Bank and the donor countries USA, Germany and Japan have initiated extensive programmes in financing water distribution systems.

25. In heating, the Ministry of Urban Planning has started a programme of upgrading the centralised heating system. Concerning waste management the government expects to have fully privatised all operators until the year 2002.

Romania

26. The initiation of the process of liberalisation of public utilities started in 1997 on the basis of the Law regarding the reorganisation of national monopolies ("regies"), and the process of transforming the monopolies in national companies or commercial companies continues at present.

27. Telecommunications

Law 74/1996 regulates the networks and services of telecommunications on cable, radio and VSAT, and stipulated the creation of a regulatory body on the field of telecommunications and information technologies. The system of mobile telephony, the system for data transmission and the facsimile system all function in the parameters of market economy. As stipulated by the relevant provisions of the World Trade Organisation Romania agreed to liberalise telecommunication services until 31/12/2002. The National Company for Telecommunications, Romtelecom, was privatised at the end of 1998 (with OTE, the Greek Telecommunications Organisation, holding 35% of the shares, and the rest belonging to the Romanian state).

28. *Energy*

a. Gas

The field was regulated by Law 174/1995 which also created its regulatory body; according to the Constitution, the subterranean natural resources are public property.

b. Mining

The field was regulated through Law 61/1998 on Mining which stipulates the same regulating authority as in the field of gas. The National Agency for Mineral Resources has managing authority over mineral resources and of the national geologic deposits, and grants licensing and exploitation permits to private companies.

c. Electricity

The partial dismantling of the monopoly took place in 1998 when the Autonomous Monopoly for Electricity "Renel" was transformed in the National Company for Electricity S.A., the National Company "Nuclearelectrica" S.A. and the Autonomous Monopoly for Nuclear Activities.

29. *Transportation*

Transport was regulated through a Government Order in 1997 which was later issued as law Nr. 197/1998 which set out the legal framework for these services. The Ministry of Transports is the competent authority in the field of transport. All international agreements and conventions in the field were ratified.

a. Roads

This field is currently undergoing a regulatory process; there is a Government Order from 1997 which is under debate in Parliament. With the exception of public transport for persons which is in the scope of the local public administration, subsidising it in the case of low-income consumers, the rest of the sector (transport of goods etc.) is open to complete privatisation.

b. Air

This field is undergoing regulatory changes, and the relevant laws are currently debated in Parliament. Airports were transformed in commercial companies which are administered by local district councils ("Consilii Judetene"), and the decentralisation of the infrastructure has been achieved at a rate of 70%. With respect to operators, competition is ensured through foreign companies, but also through private Romanian companies. Connection services were also liberalised.

c. Waterways transport

Regulations are currently debated in the Parliament that will keep under state authority the infrastructure and the core maritime and river navigation while the rest (over 75% of the sector) will be privatised. All international measures regarding the protection of the environment were included in the national legislation.

d. Railroads

In 1998 the national monopoly was dismantled, while railways infrastructure and the provision of railway service were separated.

IV. Overall Recommendations

30. One of the most important element in transforming public utilities in the countries of the region is recognising the consumer as an active participant, and securing partnership relations. The other common basis in designing the future of public

utilities in the region is the respect of the principles of market economy. Competition should be accompanied however by cooperation between all parties involved in order to create or consolidate market economies in all BSEC countries and to create a BSEC region open to the rest of Europe and the world.

a. principles

31. In order to design a common future with respect to public utilities in the Black Sea region, there are several principles which could be used as a basis for such an elaboration:

- principle of **respect for the fundamental rights of the citizen** - the right to have access to transport, electricity, water, heating, telecommunication services, and postal services. This would have obvious consequences for the principles governing services and their cost, their financing and their price. At the same time, public utilities must respect and adopt principles with respect to society (long term policies, exemplary environmental and employment policies).
- principle of **universality** - a public service offered to and accessible to all, based on economic and social legal principles in order to prevent social or territorial exclusion. However it must be noted that not all utility services are universal and that a universal service is only a specific case of a public utility service.
- principle of **continuity**, which relates to the uninterrupted nature of the service to be delivered (water, electricity etc.).
- principle of **equality of access (or equity)** - it implies neutrality and transparency, and it concerns territorial and social solidarity, and the fight against exclusion.
- principle of **adaptation** - the permanent search for the best solution to the changing and diverse needs of the consumers-citizens.
- principle of **participation** – dialog between all parties involved.
- principle of **relativity** - public utilities can be of variable intensity or geometry.
- principle of **separation or differentiation** of the regulator and operators - this is in order to clarify responsibilities and to guarantee transparency.
- principle of **transparency** of the relations between regulators and operators.
- principle of **plurality of the status of regulators** - each public authority to determine the status of the regulator, which can thus be an administration, a regulatory commission or a group of independent experts.
- principle of the **uniqueness of the regulator** at a specific territorial level - there cannot be two competent regulators for the same service, except in the case of cooperation between these regulators.
- principle of the **plurality of the status of the operators** - because of the variety of the situations in different countries and of the differences between countries, there is no question of setting a single status for operators, which can be an administration or a public, mixed or private operator. Changes in the status of the operator (transformation of an administration into a public, autonomous operator, part or total privatisation, or on the contrary part or total public control) cannot be the object of a common recommendation.
- principle of **competition and cooperation between operators** - if a service is subject to competition, this should not, under the control of the relevant regulators, conflict with cooperation between operators, operating either on the same territory (complementarity) or on neighbouring territories (harmonisation or interconnection of

networks). The task of the regulator consists in finding the best equilibrium between competition and cooperation among operators.

- **principle of evaluation** - public utilities, regulators as well as operators must be the subject of regular and public evaluation.
- **ethical principle** - public utilities must operate under specific ethical guidelines, on the basis of their main purpose and of the responsibilities they have towards society.

b. strategies

32. There is a number of ways to which BSEC countries can respond to pressures for change in the role and structure of public utilities:

- Re-examination of (i) what government should both do and pay for, (ii) what it should pay for but not do, and (iii) what it should neither do nor pay for;
- Consideration of more cost-effective ways of delivering services, such as contracting out;
- Customer orientation, including explicit quality standards for public services;
- Benchmarking and measuring performance; and
- Downsizing the public service, and (where deemed appropriate) privatise activities;
- Reforms designed to simplify regulation and reduce its costs.
- Introducing evaluation tools to assess the operation, performance and competitiveness of public utilities services on a sector-by-sector basis, so that the best examples can be emulated and the services adapted in line with technological changes, new consumer needs and new public interest demands. In that respect it is advisable to launch a study to get an overview of forms of regulation and methods of organising and financing networked services in the Member States;
- adopting a step-by-step approach based on consultation with the various parties concerned, including consumers;

34. This approach should get the best out of the activities undertaken, particularly as regards the development of a universal BSEC service concept.

34. Modernising public utilities means finding new answers. One cannot produce a successful modernisation strategy only on the basis of reducing the costs. Most studies reveal the fact that it is necessary to have a combined vision on the objectives to be attained, as well as an active involvement of trade unions in the modernisation process.

35. This common vision of the aims demands that all participants in public utilities - managers of public utilities companies, politicians, employees and trade unions, consumers and citizens - achieve a balance between economic efficiency and social efficiency, a compromise between economic and social advancement, in order to define criteria for evaluation and to regulate the control procedures which should be exerted both politically and by the citizens.

36. Many believe that monopoly often generates inefficiency and that therefore competition is useful to keep down costs; the overall system must be reconsidered and discussed. Nevertheless, in the privatisation process, it must be kept in mind that there are important differences between certain industries: gas, electricity, water and transport industries are different from other industries because they supply goods

and services through networks. This means that even if production and distribution could in some circumstances operate within a competitive system, at least one stage of the whole production process will maintain the characteristics of natural monopoly.

37. For the present, the best solution consists in the individual analysis of each sector of public utilities in order to determine the degree to which it is suitable for liberalisation. For all sectors, the opening should be done carefully, in order to really stimulate competition between existent companies or newly-created ones.

c. regulations

38. At the heart of a regulatory reform programme lie the processes, institutions, and culture of government. Regulatory reform therefore is often based on public sector reform.

39. Regulation has enabled governments to take great strides in providing important economic and social protection, but the regulatory state is today increasingly unable to serve the needs of modern societies and economies. Changing conditions -- globalisation, rising unemployment, cultural diversity, new technologies -- require broad changes in the style and content of regulation, but governments are unable to react quickly enough. Outdated and damaging regulations survive for many years in thick regulatory jungles.

40. Traditional administrative control and managing processes are not suitable for ensuring that regulatory powers are used cost-effectively and coherently, and at the minimum level necessary to achieve policy goals. Regulatory regimes are increasingly technocratic, and vulnerable to interest group pressures. Greater discipline, rationality, efficiency, coordination, accountability, and transparency in regulatory processes are needed.

41. Governments should take several steps within an integrated programme of reform to improve their short and long-term capacities to use regulatory powers more efficiently and effectively.

- Adopt regulatory reform policy at the highest political levels to organise and drive reform efforts through the whole spectrum of public utility enterprises.
- Establish explicit standards for regulatory quality and principles of regulatory decision-making. The policy should establish concrete quality standards and decision criteria to determine if government action is required and whether any proposed regulation is acceptable.
- Build capacities for central management and oversight of implementation of regulatory reform policy. Most OECD countries have created such bodies, which tend to be most effective if they are independent, can initiate reform, and are located close to the centre of government.
- Governments should adopt regulatory impact analysis (RIA) processes to improve the quality of the information on which decisions are based.
- A comprehensive policy on public consultation will open up the regulatory process to interested groups and provide regulators with access to valuable information on regulatory impacts. Safeguards are needed against undue influence by interest groups on the decision.
- Improve regulatory co-ordination so that multiple objectives are integrated and related policies are treated coherently. This coordination system is the focal point for bringing together economic and social objectives within the decision process.

- Review and evaluation of the stock of existing regulations and paperwork is vital to determine if regulations are effective, without undue negative impacts.
42. Reducing red tape and government formalities can produce substantial payoffs in government efficiency and economic cost-savings.

V. Conclusions

43. The international developments hint toward a necessity to improve service delivery, treating citizens more like customers, without conceding the more traditional responsibilities of the state, i.e. as protector of the general interest, and the keeper of law and order, as the champion of fairness and equity, and as the caretaker for disadvantaged or handicapped citizens. Defining how best to strengthen the ability to perform these functions of government is a central challenge.

44. Decision makers continue to search for ways to overcome these contradictions by more active communications with the public, more effective and balanced dealings with pressure groups, strengthening of ethical frameworks for public officials, and broad, open and fair public discussions of policy issues.

45. Competitiveness is a key concern: constantly raising productivity is a particularly pressing requirement in a global economy, but too often it is examined from the standpoint of private sector output alone. Since the public and private sectors depend on each other, competitiveness is a joint concern shared by both sectors. The standard and efficiency of public services determine the quality and dynamics of the environment in which businesses operate, and that in a globalised economy is a key factor in locating productive activity.

46. Public services, subject to increasingly stringent budget constraints, are taking up management practices drawn from the private sector. There has been a convergence of public sector management and its private sector counterpart, but accountability mechanisms and ethical rules under which the public sector operates should continue to be different. However, concern with productivity, and concern with innovation, must now be prominent concerns for public management.

47. The balance should be sought both within the framework of public utilities - which should be really decentralised, open to employee participation and democratically run - but also in the relations of public utilities with the 'outside' world, by granting consumers, as well as local and regional authorities the adequate place, allowing efficient and transparent evaluations in which all society is involved. This should enable the realisation of the two main objectives of public utilities: to stimulate economic and social unity and to allow the efficient and balanced use of the resources of society.

48. The overall aim should be to support the competitiveness of the economies of the BSEC countries in an increasingly competitive world and to give consumers more choice, better quality and lower prices, at the same time as helping, through its policies, to strengthen economic and social cohesion between the Participating States and reduce inequalities. The role of public utility services is instrumental in that respect and will to a large degree affect the economic and social development of the BSEC countries.