I. Resolution:
To ensure that the City of Munich can continue to provide user-oriented services of general economic interest that are efficient, sustainable and of high quality, the City Council Commission on Europe has adopted the following fundamental positions prior to the proposed reforms announced by the EU Commission:

- The definition, organization and quality of the provision of services of general economic interest (SGEIs) is the responsibility of local government. National administrative bodies are free to decide whether to provide SGEIs themselves (under internal management, by commissioning companies or in the context of intercommunity collaboration) or to have them provided by third parties.

- There is no need for a horizontal framework regulation to govern services of general economic interest on the basis of Article 14 of the Treaty on the Functioning of the European Union (TFEU). Such a regulation would impose significant limits on the discretionary powers granted to local governments at the present time. The legal certainty that such a regulation might potentially provide would not be commensurate with the risk that it might contain provisions that are difficult or even impossible to reconcile to Munich’s specific situation, and that might hence place an inordinate burden on local government.

- The revision of the internal market must not lead to the compulsory deregulation of sensitive aspects of services of general economic interest such as for example water supply and school education.

- The City Council Commission on Europe calls for exemption clauses in competition law and asks to make the EU’s state aid law more flexible with regard to the financing of services of general economic interest. For example, compensation paid to companies that provide social welfare services – especially companies engaged in geriatric and nursing care – should be exempted from the thresholds laid down in the exemption decision. Annual revenue of EUR 100 million for recipient companies should be annulled as the threshold for compulsory reporting since this figure is of relevance to the possibility of illegal subsidies only under certain circumstances. We propose that the thresholds in the *de minimis* ordinance be increased. The threshold of 200.000 € over a period of 3 years as of which the competition rules apply does not take the relationship between bureaucratic efforts and the impact of the subsidy on the European market sufficiently into account.

- As a democratically elected body, the City Council decides which efficiency criteria must be met by the local government departments, utilities and companies that are charged with providing SGEIs. Legally binding European quality standards linked to European cost/benefit control mechanisms, access controls and access obligations would not add value on a scale commensurate with the cost of the associated bureaucracy.
II. Explanation

The City of Munich attaches great importance to providing high-quality SGEIs at reasonable prices. Its ability to do so underpins the city's high quality of life and helps safeguard social cohesion in Munich. Essentially, a focus on the common good – rooted in considerations such as universal access, reliable service delivery, efficiency and compliance with quality and environmental criteria – takes precedence over purely economic considerations that focus on maximizing profits.

The Treaty of Lisbon draws up a new framework of conditions for both the provision and financing of public services by local governments. This framework includes a fundamental commitment to the member states’ economic freedom of choice concerning whether and how they provide, commission and finance services of general economic interest (Article 14 of the Treaty on the Functioning of the European Union (TFEU); Protocol 26 on Services of General Economic Interest).

However, European Competition Law also imposes limits. These limits are intended to make national structures compatible and facilitate a European market for services, as well as leading to lower costs and efficiency gains as a result of greater competition. The important issue here is the principle that “competition is the rule” - a rule to which there are exceptions, e.g. in the context of public utilities. Exactly what this competition should look like can often only be judged separately for different individual markets and, in many cases, only on a case-by-case basis. One result of this situation is a large number of decisions by the European Court of Justice in which a tendency to regard local governments merely as the guarantors that tender out SGEIs is emerging. That, however, is making the provision of SGEIs increasingly complicated. In 2005, the EU Commission attempted to create greater legal certainty and predictability by introducing a series of administrative regulations known as the “Monti Package”. This is especially significant when one remembers that, for many benefits and subsidies, the German law legal basis ceases to exist if compliance with European competition law is not given, and that benefits and subsidies must be reversed in such cases. Application of the Monti Package has affected the City of Munich in many cases. One example is the question to what extent the adult education courses offered by the MVHS (Munich Adult Education Center) are allowed to compete with the services offered by commercial educational institutions. Another is the question whether and how the practice of granting non-repayable subsidies to social welfare agencies can be brought into line with European competition law. Social and healthcare services in particular are under close scrutiny of the European Commission. On the other hand, the City of Munich provides considerable support to precisely these service areas. In doing so, the City of Munich must therefore comply with the thresholds specified by the Monti Package and repetitive reporting duties. Since the amount specified for such personal services can quickly be exceeded, especially in larger cities, the EU Commission has made exemptions for certain segments such as compensation paid to hospitals and for social housing. Notwithstanding, local governments are still required to comply with both transparency requirements and the prohibition of excessive compensation. However, the exemption referred to above does not apply for a series of related services, such as geriatric and nursing care services of the kind provided by the MÜNCHENSTIFT, for example, or to actions taken to provide care and support for children and youngsters. This situation appears to be inherently contradictory.

Part of the Monti Package is due to expire in 2011. Moreover, the EU Commission is planning a thorough review of public services. Based on the new Article 14 TFEU, the EU Commission would have the right to propose a regulation that governs this entire field. Even without national implementation, any such regulation becomes compulsory as soon as it is ratified by the European Council. France and Belgium in particular, supported by the Party of European Socialists (PES), have already called in advance for a binding European framework directive. Their argument is that unforeseeable case-by-case decisions and legal interpretations would limit the autonomy of local
governments in the absence of a clear legal framework. Other member states such as Germany and Austria, supported by the European People's Party (EPP), reject the notion of a framework directive, arguing this would contradict the principle of subsidiarity, that a uniform body of rules does not make sense in light of the sheer variety of forms taken by SGIs in Europe, and that any such regulation would undermine competition. In its initial statement published on March 23, 2011 (Communication from the European Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions dated March 23, 2011; COM(2011) 146 final), the European Commission said nothing about whether or not it intends to submit a proposal for such a regulation. However, it did indicate that it will in future pay even greater attention to efficiency and quality aspects in the context of subsidies for services of general economic interest. Should the matter be dealt with via a regulation there is a certain concern that the City Council's administrative discretion on whether, what kind of and what quality of SGEIs should be provided will be considerably restricted. On the other hand the elected members of the City Council will remain accountable to the citizens of Munich for the provision of high quality SGEIs.