

## CEEP Opinion

### Services of General Interest Shaping the Future - Guidelines for the New European Approach

*Services of General Interest play a special role in our societies and are central to their functioning.*

*They ensure the well-being of the citizens and the sustainability of our economies.*

#### Executive summary

- Providers of Services of General Interest are a key element of the European economy – they contribute more than 26% to the EU 27 GDP, they employ 30% of the workforce and they create employment indirectly in other sectors.
- Services of General Interest are an integral part of the Internal Market and are essential to its proper functioning. Therefore the need to set up stable and sustainable framework conditions to provide these services stands as a paramount goal.
- Article 14 is among the ‘general provisions’ of the Lisbon Treaty introducing new legal basis for a legislative action together with the new reference to subsidiarity. This means that a specific policy approach to Services of General Interest needs to be developed in relation with the internal market and competition policies.
- CEEP proposes broad policy guidelines to be adopted by the EU decision makers in order to implement opportunities provided by the Lisbon Treaty and to lift the current uncertainties in the EU’s approach to Services of General Interest.
- CEEP also suggests a plural, gradual approach combining the dimensions of theme and sector, aimed at resolving main common problems encountered. Concrete proposals for thematic policy actions to be taken at European level as well as some sectoral policy considerations to be adopted are submitted by this paper to the European decision makers.

Annex – the Lisbon Treaty provisions on the Services of General Interest

## **I. Services of General Interest – figures and facts**

### **1.1. Services of General Interest: an essential actor of the economy**

Providers of services of general interest, or ‘public services’, are a key element of the European economy both directly and indirectly. Directly, they contribute more than 26% to the EU27 GDP. Indirectly they create employment in other sectors. The employment dimension of services of general interest in the EU is even more impressive: 30% of the workforce is employed by providers of services of general interest. This corresponds to more than 64 million employees. The main infrastructure networks (Electricity, Gas, Post, Telecommunications, Public Transport, Railway, Water management, etc.) are significant investors. Their share in the direct total investment in Europe is about 6.4%, representing more than 153 billion € in 2006. More than 500 000 providers (public, private, with mixed capital, operating at local regional, national or sometimes at European level) deliver essential services for about 500 million Europeans. Furthermore, Public Services have proved to be the more resilient stabilising sector of the economy during the current crisis and especially in the period of sharp economic downturn.<sup>1</sup>

### **1.2. Services of General Interest in the Re-launched Single Market**

The European internal market is today more important than ever - it is the basis of European competitiveness in the global economy. Services of General Interest, or ‘SGIs’, are an integral part of the internal market and are essential to its proper functioning. They are the basis of the European social and economic model. In their absence the European economy would not be as competitive and balanced as it is.

Therefore the European internal market needs to be supported and developed bottom-up by viable local, regional and national providers of public services. At the same time these actors need to deliver more competitiveness and welfare to citizens and business, within a flexible framework. They need to preserve the spirit of competition and Internal Market policy, while adapting these policies, set in a top-down and horizontal manner, to the specific needs of SGIs.

Finding a sensible way to apply competition rules in social market economy will be the main challenge for the successful re-launch of the Single Market. And fully reconciling Services of General Interest with the Single Market policies is one of the necessary steps to meet this challenge. The need to set up stable and sustainable framework conditions to provide these services stands as a paramount goal.

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<sup>1</sup> Source: CEEP, “Mapping of Public Services: Fact Sheet”, [www.ceep.eu](http://www.ceep.eu).

### **1.3. Services of General Interest in the Lisbon Treaty**

The Lisbon Treaty and its Article 14 has brought significant changes to the treatment of Services of General Economic Interest from political, legal and from institutional points of view. Article 14 together with the other provisions in the Treaty concerning SGIs (Protocol No 26, Charter of Fundamental Rights) has come to offer a stronghold basis to secure Services of General Interest, their objectives and their varied forms of organisation.

Among other novelties, the Lisbon Treaty refers to SGIs as a whole for the first time: it refers to the SGIs of economic nature (SGEIs) in Article 14 and to SGIs of non-economic nature in the Protocol No 26, stating that ‘the provisions of the Treaties do not affect in any way the competence of Member States to provide, commission and organise such services’.<sup>2</sup>

Therefore, a new reference to the subsidiarity principle (‘...without prejudice to Article 4’), coupled with the completely new legal basis for an EU legislative action, suggest the change of the overall approach to SGEIs. Article 14 being among the ‘General Provisions’ of the Lisbon Treaty means that it **should apply in all EU policies, including those on internal market and competition**. For CEEP this means that SGEIs have now gained extra weight and self-sufficiency.

This change means that on the basis of Article 14 of the Treaty on the Functioning of the European Union and Protocol No 26 on Services of General Interest as well as on the basis of Articles 4 and 5 of the Treaty on European Union in combination with the Protocol No 2 on the principles of subsidiarity and proportionality, **a specific policy approach to SGIs needs to be developed**, in relation with the internal market and competition policies. Furthermore, the point of view should now be taken from a bottom-up perspective taking into account the necessity and importance of properly working SGIs. Policy on SGIs should not be influenced by regulatory policy orientated primarily towards competition, liberalisation, deregulation and, in the end, privatisation but should instead be considered as the humus needed for a successful economic development and that way also for European competitiveness.

## **II. Guidelines for the New European Approach**

### **2.1. Broad European policy guidelines to be adopted**

If Europe wants to continue being a prominent player in creating products, services and ideas, it needs to maintain the necessary instruments to develop Services of General Interest further. To achieve this, broad EU policy guidelines need to be adopted:

- SGIs form an important pillar of the social and economic Europe, a pillar that private industry and services can rely upon to enable them to grow. Maintaining and expanding basic infrastructure services is essential: well-functioning national, regional and local infrastructures are the basis of a successful and competitive European economy.

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<sup>2</sup> For the exact wording of the provision on SGIs in the Lisbon Treaty, please see ANNEX (page 8).

- SGIs are the responsibility of public authorities. National, regional and local authorities are the guarantors and the responsible entities for SGIs, even in sectors that have been partly privatised. Therefore they need to preserve all the possible instruments for the service provision, including the right to run services in-house, through their own services or enterprises or a possibility to re-municipalise the service provision if such a democratic decision is taken.
- Efficiency in network industries needs more than just market competition. Social and territorial cohesion as well as economic progress should also be preserved, together with proper access at reasonable prices for all citizens.
- Infrastructure provided as Services of General Interest should be fostered through a favourable framework. All too often liberalised service markets focus on lowering marginal offer prices, the risk being to deprive service providers of incentives to invest. State aid policy for SGIs lacks clear rules on the treatment of investment buffer funds to secure long term provision of essential services. These shortcomings need to be addressed.
- Even though SGIs form the basis of the European social and economic model, many of the services are provided at local level, by local public enterprises and targeted at their local municipal market only, which means they lack market relevance at the European level<sup>3</sup>. Simplification of the public procurement and competition rules seems therefore essential to avoid unnecessary burden for local SGIs.

## **2.2. Policy actions to be taken**

In order to implement opportunities provided by the Lisbon Treaty and to lift the current uncertainties in the EU's approach to SGIs, CEEP proposes a plural, gradual approach combining the dimensions of theme and sector. This would lead to the adoption of a number of legislative acts aimed at resolving, one after the other, the main common problems encountered. CEEP proposes further to that a prudent and pragmatic attitude which would consist of examining whether the existing secondary law is in line with the new primary law. On the basis of that new legislative initiatives induced by Article 14 TFEU or by other Treaty provisions it may seem necessary to lift the present legal uncertainties and provide added value.

Nevertheless, before any action is taken at the European level, CEEP invites the European policy makers to carry out an exercise of stock-taking of all regulations, soft-law and jurisprudence of the European Court of Justice, which forms the current 'acquis' of the EU for SGIs and SGEIs, in order to build on the positive developments that already have been achieved.<sup>4</sup>

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<sup>3</sup> Commission decision in case N-258/00 Leisure pool Dorsten.

<sup>4</sup> See 'Mapping of the Public Services: experts report' [http://www.ceep.eu/images/stories/pdf/Mapping/CEEP\\_mapping%20experts%20report.pdf](http://www.ceep.eu/images/stories/pdf/Mapping/CEEP_mapping%20experts%20report.pdf), Annex 1, p. 450.

### 2.2.1. Thematic policy actions

In the light of the principles established in the Protocol No 26 of the Lisbon Treaty CEEP deems it necessary to develop further certain financial and operational conditions for the SGEI provision and to establish them in the positive EU law.

#### Financial conditions

- 1) The **fourth criteria of the Altmark ruling** on public service compensation concerning the ‘well run and adequately equipped undertakings’ should be further clarified for public authorities and based on cost references of public service or universal service obligations.
- 2) **Financing SGEIs** through public service compensations is considered compatible with State Aid rules on a systematic basis, as long as no cross-subsidy of commercial activities takes place. Thus a sweeping simplification of notifying requirements should be undertaken, exempting all SGEI providers that are fully financed by State resources and raising the existing thresholds.

#### Operational conditions

- 1) Conditions referring to the principle of ‘the essential role and the wide discretion of national, regional and local authorities in providing, commissioning and organising SGEIs as closely as possible to the needs of the users’:
  - **‘In-house’ provision of SGEIs.** The European Parliament together with the Council already established the much needed ‘in-house’ provision in the sectoral legislation on transport (Regulation (EC) 1370/2007). This provides for a workable in-house solution which CEEP believes calls to be extended to the provision of all SGEIs.
  - **Inter-municipal cooperation** as recently confirmed by the judgments of the European Court of Justice<sup>5</sup> must be left outside the scope of the public procurement directives.
  - **Commissioning SGEIs through tendering, service concessions and exclusive or special rights** must remain within the competence of public authorities within the existing legal framework.
- 2) Authorisation schemes as means of imposing public service obligations shall be a priori compatible with EU law as far as they are not discriminatory.

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<sup>5</sup> ECJ judgment in case C-324/07 Coditel Brabant.

### 2.2.2. Sectoral policy considerations

Regarding the **sector-based approaches**, CEEP proposes to take into account the new provisions of primary law when revising existing secondary law and to investigate whether the sector-based approach applied to date is sufficient in relation to the specific features of each activity, resulting more particularly in the proposal to consolidate the EU framework applicable to services of general interest.

For the different sectors, this would imply:

- **Energy markets:** Liberalisation has not led to announced results so far. National markets are in large parts liberalised, but a European internal market is not in place so far. More than that, many national markets and even cross-national markets are dominated by few large players. In order to achieve a well-functioning energy market, only political targets should be fixed at European level allowing national, regional and local undertakings to participate in the market. The internal energy market should be better linked-up with the European energy policy to ensure the long term security of supply and operation, and to better implement the universal service.
- **Transport:** The most significant piece of legislation in recent years concerning urban mobility has been the Regulation on Public Passenger Transport Services by Rail and by Road<sup>6</sup>. CEEP believes that this regulation strikes the right balance in ensuring fair competition without imposing unnecessary burdens on public authorities and service providers. Therefore this regulation should be preserved as adopted avoiding any indirect changes that could be introduced through amending the Public Procurement directives (2004/18/EC and 2004/17/EC).
- **Postal Services:** Member States are at the moment implementing the 2007 Directives aimed at the achievement of the internal market in this sector. While carrying out this exercise they have the responsibility to guarantee and finance the universal service. Economic and geographical realities and densities of population are very diverse throughout the EU. Therefore it will soon be necessary to evaluate the challenges that Member States are facing and to examine if new provisions are necessary to ensure the economic, social and territorial cohesion and to guarantee the rights of the users.
- **Public Banks:** They need a stable European regulatory ground they could work on. It is above all the public banks that provide the access to basic banking services and credits for all citizens and also for Small and Medium Enterprises (SMEs). Without them, an important brick in the basis of the European economic system would miss.
- **Telecom:** The structures of communication via telecom and internet have made rapid progress over the past years. Though this process has not yet come to a hold, it is becoming more and more difficult to develop policies in this field as communication

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<sup>6</sup> Source: CEEP, "Mapping of Public Services: Fact Sheet", [www.ceep.eu](http://www.ceep.eu)

structures are taking place in a global context. Telecom and internet services are also services of general interest. Therefore in order to maintain a minimum of control the European Union needs to come forward with an integrated policy on telecoms and internet, including broadband internet access as universal service.

- Water: There is no need for European legislation aiming at any liberalisation or deregulation of water services<sup>7</sup>.
- Waste Sector: Municipal structures in the waste management sector stand for the high quality level that has been reached, the orientation towards sustainability and socially responsible collection, treatment and disposal services. These structures should be maintained by ensuring the precedence of the general interest over the competition rules, both at national and at the European levels.
- Health Services: Health Care is a service that is vital for every European citizen. If market elements become too dominant in this sector and health services are not being offered in an inclusive and comprehensive manner, sharp inequalities are likely to emerge in this sector that is based on specific ethical values. Therefore the principles of universality, accessibility, affordability, proximity and quality should always prevail over any attempt to extend the internal market to the health care sector.
- Social services: Well-functioning social services are one pillar for trust of people in their society represented by the public authorities at all levels. Europe should not make them subject to a regime of overall competition and should instead restrict its legal action to the minimum necessary to keep them running. Social services are there more than to meet the specific needs of the most vulnerable part of the society, they are also an essential tool to achieve social cohesion.
- Housing: decent housing is the elementary need of every European citizen. Providing access to decent and affordable housing of high quality for all is crucial for societal stability and sound urban and regional development. A socially, economically and environmentally sustainable approach should be pursued. A regulatory approach without any impact assessment would lead to societal destabilization.
- Education: the strategic importance of education is unparalleled for Europe's aspirations for global leadership in the knowledge economy. Therefore CEEP fully supports the target of reducing the early school drop-out rate to 10% from the current 15%. However, we believe that the scope of target to increase the share of the population having completed tertiary education is too narrow. Education in the form of informal and non-formal learning as well as vocational training and adult education is equally important in this aspect.

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For more information please see [CEEP opinion on EU water policy – www.ceep.eu/OPINIONS/2009/Avis17](http://www.ceep.eu/OPINIONS/2009/Avis17).

- Culture: EU should be very prudent when it comes to cultural policies. The cultural heritage as well as current policies on culture are within the competence of the Member States or sub-state authorities.
- Radio/TV Broadcasting: Public service broadcasters have to fulfil public service tasks as entrusted by each Member State based on its democratic, social and cultural needs. When applying or revising internal market and/or competition rules, the European institutions must take into account public service broadcasters special role for democracy, society and culture in each Member State and the need to preserve media pluralism. This is also essential to foster the invaluable contribution of public service broadcasters to the cultural sector.

## **ANNEX**

### **PROVISIONS ON SGIS IN TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION**

*Article 14*  
(ex Article 16 TEC)

Without prejudice to Article 4 of the Treaty on European Union or to Articles 93, 106 and 107 of this Treaty, 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 Union and the Member States, each within their respective powers and within the scope of application of the Treaties, shall take care that such services operate on the basis of principles and conditions, particularly economic and financial conditions, which enable them to fulfil their missions. The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall establish these principles and set these conditions without prejudice to the competence of Member States, in compliance with the Treaties, to provide, to commission and to fund such services.

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**PROTOCOL (No 26)**  
**ON SERVICES OF GENERAL INTEREST**

THE HIGH CONTRACTING PARTIES,  
WISHING to emphasise the importance of services of general interest,  
HAVE AGREED UPON the following interpretative provisions, which shall be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union:

*Article 1*

The shared values of the Union in respect of services of general economic interest within the meaning of Article 14 of the Treaty on the Functioning of the European Union include in particular:

- the essential role and the wide discretion of national, regional and local authorities in providing, commissioning and organising services of general economic interest as closely as possible to the needs of the users;
- the diversity between various services of general economic interest and the differences in the needs and preferences of users that may result from different geographical, social or cultural situations;
- a high level of quality, safety and affordability, equal treatment and the promotion of universal access and of user rights.

*Article 2*

The provisions of the Treaties do not affect in any way the competence of Member States to provide, commission and organise non-economic services of general interest.

## CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

### *Article 36*

#### Access to services of general economic interest

The Union recognises and respects access to services of general economic interest as provided for in national laws and practices, in accordance with the Treaties, in order to promote the social and territorial cohesion of the Union.