

ACTION FOR FULL RECOGNITION OF PUBLIC SERVICES IN EUROPE

Europe has long ignored public services

From the start, the European Community was constructed on the sole principle of free competition. With the Treaty of Rome in 1957, it was a question of establishing a common market comprising four “freedoms” of movement: for goods, capital, services and persons. Each country continued to organise its public services in the context of its social history. In fact, Europe has no competence in this respect.

This was how it worked until the 1980s, with the construction of the Community focusing on the free movement of goods. However, in 1986 the Single Act marked a decisive turning point: by abolishing customs duties, the free movement of goods became a reality. This opened the way to the implementation of the other three freedoms, in the form of an internal market defined as *“an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured”*.

Public services caught up by competition

The European Commission and the Council would then work towards translating this policy into European law. A certain number of sectors where public services were supplied by public monopolies were gradually opened up to competition, on the pretext of this being a further step forward in the integration of the European market. The services concerned entered the market sector and were subject to the application of the Treaty rules and therefore to European competition law.

In parallel, the Member States adapted their organisation to the requirements of the market, or at least to the interpretation they made of them. For instance, in France, the post offices were divided into two entities, the SNCF gave rise to the Réseau Ferré de France and Electricité de France and Gaz de France were made to compete. The Cgt fought against this process, involving the change in the status of the enterprises and their privatisation, being set in motion.

The only redeeming feature was the recognition of services of general interest: the amendment of Article 16 of the Treaty adopted in Amsterdam in 1997 introduced the service of general interest as one of the “shared values of the Union” and a means of ensuring “social and territorial cohesion”. On the other hand, Europe challenged a lateral approach to SGI. The services of general interest were therefore dealt with in the context of sectoral directives (gas, electricity, postal services, telecommunications, rail transport, etc.) and by the case-law of the European Court of Justice, which limits the scope of their recognition.

Constructing positive law for public services

The challenge is consequently to construct an alternative to this restrictive approach.

The ETUC then turned to fleshing out this Article 16 and its Executive Committee adopted the “ETUC Charter on Public Services” in December 1998. In 2000, the ETUC and CEEP (European Centre of Public Enterprises) signed the first proposal for a “Charter on Services of General Interest”, intended for appending to the Treaty as a supplement to Article 16. The European Council of Nice in December 2000 made no progress on this point. On the other hand, the Charter of Fundamental Rights of the European Union, proclaimed at this same European Summit, included an article dealing with access to services of general interest (Article 36).

Several European Commission communications, a Green Paper in 2003, then the Herzog report to the European Parliament in 2004, then a White Paper were the subject of trade union initiatives which tried to reverse the dominant trend. They tried to have the reality of the SGI recognised in relation to the logic of competitive procurement in the services sector.

The confrontation continued. The European Court case-law is characterised by instability as regards the definition of the boundaries of the general interest. The preparation and adoption of the Bolkestein Directive on services in the internal market smashed the concept of public service, as did the Green Paper on Public-Private Partnership. Finally, the debate on the Constitutional Treaty gave broad coverage to the question of the future of public services in Europe.

Need for a European status for public services

After ten years, the European legislation on public services remains almost non-existent and the basic definitions remain very vague (see box 2). Apart from Article 16 (see above), the Treaty on European Union tackles the question of public services from the point of view of services of general economic interest which come under the market sector and are subject to competition law. This SGI/SGEI distinction in fact proves to be formidable. The Commission recognises that services of general interest exist, but it seeks to confine them to the sovereign functions of the State (police, justice, etc.) and to shift public services as far as possible towards the market sphere.

In this way, torn between the incomplete provisions resulting from the Treaty, the case-law of the European Court and the action of the Commission, the status of public services in Europe is neither complete nor stabilised and as such remains at stake in trade union action.

Faced with a European Commission which tackles the question of public services on a sectoral basis and essentially with a view to liberalisation, the trade union movement must focus its efforts at interprofessional-intersectoral level by calling for a Framework Directive on public services, which alone is able to give public services a status in Europe.

Content of the Framework Directive

It is therefore a matter of urgency to draw up legislation which establishes a general framework before any sectoral initiative. Likewise, the Cgt considers it necessary to analyse the impact of the liberalisations and privatisations and to introduce a moratorium on the liberalisations.

For the Cgt, the scope of the services covered by the Framework Directive on Services of General Interest must be determined on the basis of the Charter of Fundamental Social Rights adopted in Nice in 2000. This guarantees a wide view of the rights: rights to health, education, culture, transport, communication, information, energy, water, food safety, the environment, housing. These are public goods which must be placed outside the traditional rules of the market in the fields of public finance, ownership and type of management.

This Directive, which is equivalent to a statute for the public services, should also define obligations for the States and the operators: equal access for all at affordable prices, information, consultation of employees and users, continuity of services, universality, quality. It is at the level of each State that the types of ownership, financing and management must be decided.

Firstly, because this would allow identification of what must be placed beyond competition, notably to satisfy basic rights and needs.

Secondly, because this would allow a general framework to be introduced, coherence and principles to be defined which would then be determined sector by sector.

Thirdly, because this would allow better coordination of the trade union struggles and avoid their fragmentation as a result of the sectoral "dissection" which the Commission wants.

This call for a Framework Directive is all the more important as the European Commission has just published a communication on Social Services of General Interest. In this document, it seems to wish to subject to the law of the market services such as those relating to indebtedness, unemployment, drug addiction, family break-up, training and professional reintegration, social housing and the activities aiming to ensure the inclusion of persons with long-term needs associated with a disability or health problem.

Trade union action and mobilisation

The mobilisation against the Bolkestein Directive strongly demonstrated the need for a Framework Directive on the SGI. It opened a window which we must not allow to close again without having exploited all the possibilities for action.

At European level, autumn 2006 was marked by several initiatives translating the impact of the trade union interventions and mobilisations:

- the European Parliament adopted a report in September inviting the European Commission to present appropriate legal initiatives in the field of public services;
- the European Economic and Social Council adopted an opinion on the future of services of general interest, in which it reiterates its demand to define the common basic principles at Community level which should be encountered for all the SGI to be included in a Framework Directive and, if necessary, to be determined for each sector by sectoral directives.

Various organisations have outlined interesting proposals. The ETUC drew up its proposal which in particular asserts the primacy of the general interest over the market and defines the basic principles allowing a high level of quality, security and reliability (solidarity, universality, accessibility, etc.) to be ensured.

Mention should also be made of the initiatives announced by the Social Forum of Athens last May: constitution of a European public services network, European social forum devoted to public services and prospect of a day of action in favour of public services in Europe in 2007.

For the success of the petition

During its Executive Committee meeting of 17 and 18 October 2006, the ETUC decided to set up a petition to support its demand for a Framework Directive on public services.

A mass campaign is necessary to face up to a European Commission which continues its work of destruction, as shown by its plan for the total liberalisation of the postal sector by 2009.

The ETUC and its affiliates have set themselves the objective of gathering one million signatures for their petition entitled *"For high-quality public services, accessible to all"*.

The Cgt and its organisations call for signature en masse of this petition and for the organisation of debates raising public awareness of this initiative.

You can sign the petition either directly by Internet: www.petitionpublicservice.eu or on paper and send it by post or fax to: Gabriela Portela, ETUC/CES, 5 boulevard du Roi Albert II, B-1210 Brussels, fax: +32 (0)2 224 04 54.

La cgt
European Trade Union Confederation

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Position of the EPSU on public services

In June 2005, the European Federation of Public Service Unions wrote: *“In the absence of specific EU laws protecting public services, the EU will continue to “open up” public services to competition and, when this is done, to strictly limit the public service obligations of the private operators. A proactive strategy that leads to EU action to support solidarity-based public services is needed...”*. It decided on a major campaign for a legal framework for public services in Europe, which was officially launched in Vienna in April 2006.

A European legal framework is considered as the instrument which would allow a series of essential objectives to be defined, as adopted by the Congress:

- The general interest must prevail over the market.
- Quality public services are key to meeting citizen’s fundamental rights.
- Universality, continuity, affordability and democratic control are important principles for public services.
- EU competition must not undermine solidarity.
- A European legal framework must safeguard the rights of national, regional and local authorities to meet citizens’ needs.

Faced with the exponential influence of internal market regulations and subsequent pressures, the EPSU has come to recognise that the market influence will continue to gain ground at EU level unless a ‘protected space’ for public services is clearly identified.

Europe and public services

The European texts remain deliberately very vague as regards the basic definitions. The White Paper on services of general interest specifies only a few concepts. However, these definitions are themselves still very imprecise and aim to marginalise the concept of public service. Here are a few extracts from the White Paper on services of general interest drawn up by the European Commission:

- *“Services of general economic interest (SGEI): refers to services of an economic nature which the Member States or the Community subject to specific public service obligations by virtue of a general interest criterion. The concept of services of general economic interest thus covers in particular certain services provided by the big network industries such as transport, postal services, energy and communications...”*;
- *“Services of general interest (SGI): the term is broader than the term SGEI and covers both market and non-market services which the public authorities class as being of general interest and subject to specific public service obligations”*;
- *“Public service: the term sometimes refers to the fact that a service is offered to the general public, it sometimes highlights that a service has been assigned a specific role in the public interest and it sometimes refers to the ownership or status of the entity providing the service...”*.

Source: COM (2004) 374, 12 May 2004.

Further reading

- Cgt brochure: *“Le besoin de services publics – L’exemple des services publics de réseaux (communication, transport, énergie)”*, Montreuil, 2006.
- ETUC proposal for Framework Directive: <http://www.etuc.org>, heading Directive.

For high-quality public services, accessible to all

Together, we demand public services that genuinely meet people's needs, and we call on the European Commission to bring forward European legislation [1].

I wish to sign the petition

Public services [2] are essential for social, economic and regional cohesion in Europe. Such services must be of high quality and accessible to everyone. Until now, the only options put forward for developing public services have been privatisation or liberalisation (namely in sectors such as Energy, the Post and Telecommunications). It is time to find different solutions!

For this reason, we are calling on the Commission to propose European legislation on public services designed to:

- ▶ Give priority to the general interest embodied in public services;
- ▶ Ensure that everyone has access to public services;
- ▶ Strengthen public services in order to guarantee citizens' fundamental rights;
- ▶ Guarantee more legal security so as to allow the development of sustainable public service missions;
- ▶ Give public services a firm legal basis and thus immunity from ideologically motivated free market attacks.

[1] The European terminology generally uses the term « directive » or « framework directive » to designate the law, legislation.

[2] Public services are known as Services of general interest (SGI) and Services of general economic interest (SGEIs) in European Union terminology.