

The European Health Data Space - market creep, regulatory grab and protocol 26

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The European Union has little-known rules and regulations on services of general interest (SGI) established in protocol 26 of the EU Treaty. The protocol says that member states should stress the importance of SGI and it sets out a number of ideas how to interpret the shared values of the EU with regard to those services. Public authorities can, for example, ensure the services operate close to the needs of users, and that these services take account of the preferences of the people. However, the protocol is written in a way to prevent or make it very difficult for people to draw any meaningful rights from it. More importantly, it can be used to protect member states against internal market creep, where the European Commission proposes legislation to address a particular problem, but in fact tries to create new markets in areas that are the competence of member states. A good example is the European Health Data Space.

Marketing of telemedicine across the EU

A central idea of the European Health Data Space, according to the European Commission, is to make it easier for people to access their medical records across the EU. However, in reality the Commission is trying to promote the possibility for businesses to market digital services in the field of health. It is the pipe dream of many to open up health and care to commercial exploitation. Contained in article 8 of Data Space regulation is a Commission demand that if a member state accepts telemedicine services, then health care providers from across the EU should be able to market their services. This cross-border marketing of telemedicine services raises issues about the reimbursement of costs made in one country by another country. Member states have apparently deleted this article, conscious as they are that such provisions will gradually undermine their possibilities to organise, regulate, control and finance their health and care services. And creating an internal market for health leads ultimately to corporate dominance and regulatory grab by the European Commission. Rejecting this cross-border commercialisation of the European Health Data Space is not a bad position.

Commission usurps national competencies

Since the mid-nineties, the European Commission has executed policies focused on the creation of markets in public services. The internal market for electricity, for example, started with a market for electricity trading for large companies and now we have ended up with the complete deregulation of the electricity market, with households having to artificially compete with each other for electricity. The Commission pushed hard to remove the right of member states to regulate electricity prices for domestic users and workers and our communities are currently experiencing what it means to leave a crucial public service to the vagaries of the market. This is a market that has led to underinvestment in renewables and if it did deliver any savings for people and for public authorities from this artificial competition, then these have surely now been wiped out.

Shared values and public services

It could all be very different if the European Commission was obliged to conduct assessments of how its policies contribute to realising the rights in the Social Pillar. Will its policies bring about more gender and income equality? Would they ensure more workers are covered by collective agreements? And would such policies result in good health and safety conditions at the workplace? What if the Commission had to conduct impact assessments on how policies contribute to achieving another point of Protocol 26 – public services of “a high level of quality, safety and affordability, equal treatment and the promotion of universal access and of user rights.”

While this would be a positive step, we would still need to change the basic premise of much of the Commission’s approach, that people’s interests are equated with merely being consumers and that these are best served by relentless competition. According to this view we are not users, or patients, but people that consume health or transport or electricity and everything is marketable. This is not a view we share. The Treaty contains the elements for change. The Future of Europe debate is about what kind of EU we want and the verdict from the recent people’s panels was clear – we want a Social Europe.

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