



The President

Committee of the Regions

Speech by Michel Delebarre, President of the Committee of the Regions
Seminar: Promoting SGIs for all – Which European legal framework?
European Liaison Committee on Services of General Interest (CELSIG)

14 November 2006, Committee of the Regions, Brussels

Ladies and gentlemen, dear friends,

First of all, I would like to congratulate the CELSIG for successfully bringing such a wide range of participants together at this event, representing the diversity of players working in the field of services of general interest. I will not introduce everybody one by one since, after my speech, Pierre Bauby from the CELSIG secretariat will give an overview of the history and development of the services of general interest dossier; I will take the liberty of anticipating one of his likely conclusions by saying that we all made our introductions some years ago!

Nonetheless, I can say that today's event is attended by representatives of the European institutions (European Parliament, Commission, Council, Committee of the Regions, European Economic and Social Committee), the European social partners, regional associations and civil society.

I, for my part, will give my own "snapshot" of the current situation regarding services of general interest, and shall then consider some key points relating to the short and medium term challenges that we face.

What is the state of play?

Since the European Parliament's 2001 report (the first to show support for the principle of a framework directive), the Commission's procrastination in its White paper on SGIs of May 2004, the Altmark judgment and the Monti-Kroes package have spurred SGI players to go beyond simply calling for a framework directive (which could seem more ideological than pragmatic), and to formulate detailed, legally sound, operational text proposals.

To date and to my knowledge, five SGI players have made such proposals:

- the CoR, which, with the assistance of Professors Stéphane Rodrigues and Marianne Dony, encapsulated its discussions on the subject in a study on Services of general interest published in spring 2005, distributed here today, which included an appended initial proposal for a framework directive on SGIs;
- the socialist group in the European Parliament which, after an extensive consultation in autumn 2005 and spring 2006 involving inter alia the CoR and the CELSIG, presented another proposal in May this year;
- the CELSIG, which presented its own proposal in June 2006; the CEEP (European Centre of Enterprises with Public Participation) and ETUC (European Trade Union Confederation), which put forward their own proposals in September 2006.



The points that these various draft framework directives have in common are so significant that there is no need to dwell on the few differences of opinion; although these do exist – relating, for example, to the precise distinction between services of general economic interest and services of general non-economic interest, the issue of whether to set up a monitoring centre for services of general interest, or the status of European services of general economic interest – they are minor points.

What is important is the fundamental demand: while acknowledging the concept of subsidiarity as understood by the constitutional treaty, i.e. that services of general (economic) interest are specified, organised, financed and monitored at local, regional and national levels, all these proposals concur that a common set of obligations or functions to be fulfilled by services of general interest must be provided for, as a kind of universal toolkit, with common principles, particularly in terms of financing.

This toolkit must make it possible to solve the key problem confronting regional authorities: legal certainty in their activities as providers of services of general interest. However, without clear legislation, it is up to the Court of Justice to "fill in the gaps" on a case-by-case basis, with the consequence that local public services, municipally controlled companies, mixed-economy companies and inter-municipality structures are faced with an increasing number of legal proceedings brought in the field of competition law.

The points shared by these proposals for a framework directive are also essential in order to keep up pressure on the European Commission.

The vote held on 27 September 2006 on the report by Bernhard Rapkay (PES/DE) concerning the White paper on services of general interest made it clear that there was no majority in favour of framework legislation within the European Parliament. The parliamentary majority was content with a token compromise requesting the Commission to present appropriate legal initiatives in order to explain a certain number of problematic issues, particularly the application of the rules governing the internal market and competition in the field of SGIs and SGEIs. The European Parliament vote means, above all, that the ball is back in the Commission's court, although the Parliament will not put pressure on the Commission to act before the next European elections in 2009.

It is essential to stress that the demand for framework legislation comes from different sources and types of body, is not monopolised by one particular political camp, and issues from stakeholders of different nationalities. In particular, it is important to debunk the idea that any debate would be futile due to a split between Scandinavians and German-speakers fearful of interventionism from Brussels on the one hand, and, on the other, Latin nations suspected of making a last-ditch attempt to protect their allegedly archaic public services from competition. Indeed, within the Committee of the Regions, I feel that things are changing. Whether involving representatives of Austrian, German and Swedish municipalities or French regional associations, discussions are now focusing on the possible content of future framework legislation. This would include the resolution of financial issues left hanging by the Altmark judgment and the Monti-Kroes package (i.e. the requirement that the compensation of a public service must not exceed "the costs of a well-run undertaking that is adequately equipped"), the definition of "in-house", universal service requirements in terms of territorial cohesion, etc.

The representatives of regional authorities from the new Member States have remained very reticent thus far, and are still to be persuaded that the required clarification on the provision of SGIs does ensure neutrality with regard to property ownership, in line with Article 295 TEC, and is not an expression of corporate resistance or a rejection of market forces within the field of public services.

Pressure must therefore be maintained on the European Commission:

It is true that, during the debate on the Rapkay report, President Barroso announced that the Commission would bring additional clarifications to the questions raised by the European Parliament in a communication to be issued by the end of the year. But let us not be misled! This will not be a proposal for framework

legislation but, rather, an analysis of responses to the White paper, as indicated by the Commission's work programme for 2006.

As for the Commission's 2007 work programme, there is no mention of the horizontal dimension of services of general interest.

However, 2007 will see some major sectoral initiatives by the Commission in the area of public services, including the presentation of a European strategy for social services of general interest, a Community health services framework, and a White paper on health. The year will also be marked by the debate on the review of the postal directive.

It will, therefore, be difficult to maintain the drive and momentum of the horizontal approach, as we will also have sectoral interests to defend.

In any case, I am pleased that Jean-Louis Destans (PES/FR), president of the council of the Eure department and CoR rapporteur for the communication on social services of general interest (SSGIs), has identified this tension in his draft opinion, which will be presented to the plenary session of the CoR in December. The opinion "*reiterates [the Committee's] recommendation to the Commission to draw up a proposal for legislative regulation which should make possible a definition of certain positive principles for all SGEI, as an 'umbrella' initiative for other complementary legislative proposals, and due to their specific features, for SSGI in particular, with a view to providing greater legal certainty for local and regional authorities and service providers*".

Ladies and gentlemen, dear friends,

In conclusion, I would also like to draw your attention to a challenge in the medium term. Almost all of us here today were delighted that Article III-122 of the draft Constitutional Treaty provided for the establishment by law of the principles enabling the missions of SGEIs to be fulfilled. This provision had been portrayed, particularly during the referendum debate in France, as a major step forward in terms of the EU policies presented in the third part of the Constitutional Treaty.

However, you all know what direction the debate on the revival of the draft constitution seems to be taking. Many of the debate's key players believe that Part 1 on the Definition and objectives of the Union and Part 2 on the Charter of fundamental rights of the European Union could form the basis of a new mini-constitutional treaty. Consequently, there is a real risk that the progress represented by Article III-122 could be undermined. Therefore, I believe that it is time to start calling for the provision of services of general interest – a key component of the European social model – and the primacy of missions of general interest over competition rules (a principle highlighted by the Commission in its White paper on services of general interest) to be made EU objectives and thus included in the first part of any new draft Constitutional Treaty.

Finally, I would like to raise a second point relating to the draft Constitutional Treaty. As you know, the Committee of the Regions promotes the culture of subsidiarity, and the draft treaty gave the Committee the right of appeal to the Court of Justice of the European Union if this principle were infringed. Therefore, it is with full knowledge of the facts that I deplore the attitude of some opponents of framework legislation, who hide behind the excuse that subsidiarity would not allow for a uniform approach to services of general interest at EU level. Indeed, we need a cross-functional legal framework precisely so that we can specify and safeguard what "subsidiarity" means for regional authorities in the context of the provision of services of general interest, in relation to the general principles of the Treaties and EU law, without prejudice to the sectoral directives on network services of general economic interest.

I hope that your meetings and debates will be productive, and thank you for your attention.

Speech by Michel Delebarre, President of the Committee of the Regions, 14 November 2006, Committee of the Regions, Brussels



<http://creativecommons.org/licenses/by-nd/2.0/fr/deed.fr>