

Workshop WT23 – Design, funding and management of public service

1. Europeanization of public service

In the course of the first Europe-China forum in Nansha, September 2005, the main characteristics and evolutions of public service in Europe were presented through a workshop. Let us remind its main elements.

In all European countries, no matter how diverse the terms and concepts used, the qualified territorial echelons (local or national), the mercantile (or not) nature of certain services and types of concerned agents (public, private, joint, associative), public authorities were led to decide that some services could not just follow the sole common law of competition and the sole rules of market, but rather specific rules in order to:

- guarantee the right for every citizen to access some fundamental goods and services (education, health, transport, communication, etc.)
- ensure economical, social and territorial cohesion; establish some solidarity
- create the necessary conditions for a durable development on an economical, social and environmental level; take the long-term perspective and the interests of future generations into account.

Those targets and goals of general interest are a common value of Europe. The public services, or services of general interest, represent a key element of the European model of society, characterized by interaction and integration of economical and social progress, making it a social market economy.

The liberalization strategy

However, for the most part, the services of general interest (SGI) were ignored in the 1957 Treaty of Rome. The article 77, dedicated to transport, mentions without any further precision “certain obligations inherent in the concept of a public service”. The article 90 considers possible derogations to the treaty’s rules, on matters such as competition, for the “services of general economic interest” (SGEI – communication, transport and energy, back then) only.

But from 1957 to 1986, some consensus was let to exist: each Member State remains qualified to define, organise, undertake and fund its services of general interest according to their history, traditions, institutions and culture.

The 1986 Single European Act came to qualify the European institutions for undertaking free movement of services and establish the single market. It started a SGEI Europeanization process, but failed to establish any specific measures that would have allowed to guarantee their purposes at community level. The establishment of the four major freedoms of movement (people, goods, services and funds) was somehow matched by some of the major shifts that took place in the 1980s and 1990s: technological mutations, internationalization of economies and societies, diversification and territorialization of needs, weight of many public services, strategies of some big

industrial and financial service companies, growing influence of the neo-liberal theses about the virtues of competition, etc.

From then, the European institutions led an integration strategy that consisted in gradually bringing competition in some network sectors that had been thus far organised on a local or national monopoly basis.

The European Union questioned the national types of organisation and regulation of public services defined through history by every Member State of the European Union. The liberalisation strategy, based on gradual insertion, sector by sector, of competition, the logics of market and economic liberalism, and the questioning of previous territorial (national, regional or local) monopolies, aimed both at breaking national borders and bringing more efficiency in some sectors, often protected by monopoly situations.

However, in the network-type sectors, a full liberalization making them follow the sole community law of competition, is not possible. This can only lead to an oligopolistic competition between a few big firms, leading to new concentrations and to the existence and re-division of allowances, to the expense of the end-users. Liberalization over-favours short-term, for which the market provides valuable indicators, to the expense of long-term, for which the market is shortsighted. It privileges the big customers, granted with “market-power” over the smaller ones. It endangers fairness of treatment and possibilities of tariff realignment. Liberalization takes neither territorial effects nor environmental consequences into account. It can lead to some forms of social *dumping*.

Heading toward community-based norms?

Under those circumstances, the European rules, resulting from debates, from initiatives by European agents or networks such as the European Trade Union Confederation (ETUC-CES), the European Center of Enterprises with Public Participation (CEEP), the European Liaison Committee on Services of General Interest (CELSIG), from social actions, tried to undertake a mastered, organized and regulated liberalization. The European Union was led to complement sectorial liberalization projects by designing new concepts and norms. The concept of “universal service” thus appeared in telecommunications, then in postal service, and now in electricity supply, guaranteeing some essential services to every citizen or inhabitant.

11 years after the European Single Act, the article 16 of the Treaty of Amsterdam refers to SGEI as to values common to the Union, contributing to social and territorial cohesion, and establishes the principle of shared qualification between the EU and the Member States; but it has no legally constraining value.

In 2000, the EU Charter of Fundamental Rights was proclaimed. Its article 36 recognizes and respects access to the services of general economic interest. But the Charter remains, to this day, without any real juridical effect.

Despite those elements, the current situation is characterized by the existence of five major insecurities:

- * juridical, when it comes to hierarchy of community norms in case of conflict between the rules of competition or of inner market and the goals of general interest,
- * regarding the range of what should be considered a SGEI, therefore regarding which community norms each service is prone to follow,
- * economical, both for the funding of long-term investment and for the compensation of public service's obligations,
- * regarding establishment of the subsidiarity principle, i.e. the qualification, rights and duties of public authorities (local, national, European) to define, organize and fund the SGIs,
- * political, concerning the place of SGIs in the European integration and in tomorrow's EU.

It is those uncertainties and insecurities, harmful to the public authorities as well as to the service operators, users and personnel, that must be removed by defining community legislative norms.

Deepening and broadening

Today, the European integration is facing a twofold process, on one side deepening its orientations and policies, and on the other side broadening its structure by welcoming new Member States, each with their own specific history and characteristics.

The Green Book published by the European Commission on the 25th of May 2003, followed by the White Book on the 12th of May 2004, attempted to clarify the debates that took place in the last few years regarding the future of SGIs, the policies that the EU should develop, and the way to intervene (sectorial legislation or general juridical norms). They opened a public debate on the European Union scale concerning the place and role of SGIs in 21st century's Union, and established some guidelines and principles.

At the same time, the European Union is engaged, under the WTO, in the GATS negotiations (General Agreements on Trade and Services), aiming at liberalizing services trade on a worldwide scale.

In order to set basis for a community design that would allow to guarantee quality SGIs for everyone, several European organizations (ETUC-CES, CEEP, Committee of the Regions, EESC, CELSIG, the PES group of the European parliament) have put forward a few proposals of community legislative norms, aiming particularly at:

- re-balancing the general interest as opposed to competition, and guarantee SGIs for all,
- clarify the SGIs' conditions of existence (definition, role of the public authorities, free choice of management modes, guarantee of long-term funding, regulation, evaluation),
- make the goals of general interest and universal service evolve according to technological mutations and needs,
- lead pluralist, democratic, contradictory evaluations,

- organize trade of services on a worldwide scale, thus granting everyone to access to public goods.

At the same time, the 2004-2007 broadening of the European Union integrating 12 new Member States, among which 10 from Middle and Eastern Europe, poses some specific issues.

In those countries, the State had been designed as an instrument whose point was to fulfill the population's needs by directly organizing the production and distribution of the services. Aside from ensuring inner and outer security, the State had to make it so that every citizen should have equal access to basic services, in the field of education, health, accommodation, day nursery, urban heating, electricity and water. In this extensive vision of "public services", it was believed that such services should be out of the market, and the citizen-users would directly fund but a negligible part of their actual cost.

Such a system, without doubt, allowed to guarantee access to certain essential services, those that would be now referred to as basic "universal services", for every citizen; but it generated an absence of responsibility at every level, inefficiency and waste in the use of public funds, under-investment and limited technological innovation, and a State-to-citizen relationship in which the latter would just expect to be fed those services by the former without any counterpart.

This type of organization was rejected at the same time as the political regime that carried it, and it exists today but as remnants, often on the verge of abort. The reforms started by countries of Middle and Eastern Europe since the early 1990s often consisted in adopting the exact opposite of those characteristics, by favouring deconstruction of State control, privatization or call for private management, often with major social consequences, before looking for more balanced solutions.

Our workshop shall examine particularly the reforms led in Romania, the way they were led, their links with the "community attainment", their effects, as well as the specific contribution of Middle/Eastern Europe countries to the definition of a community conception.

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