



**Datar**



## COESIONET

### EUROPEAN COHESION AND TERRITORIES RESEARCH NETWORK

#### Minutes: “Services of General Interest and Cohesion” Workshop

#### Round Table on European and National Debates Regarding SGIs 14 March 2011

##### 14h00 - 16h30:

Round table animated by Pierre Bauby with:

- Françoise Castex, Member of the European Parliament, President of the EP Intergroup on public services,
- Philippe Herzog, Special Adviser to Commissioner Michel Barnier for the Internal Market and Services,
- Erika Szyszczak, University of Leicester, UK,
- Stéphane Rodrigues, University Paris I.

##### Introduction by Pierre Bauby

This round table aims at assessing the state of European and national debates on SGIs/public services, with particular attention given to the challenges facing SGIs and future cohesion policy in the European Union.

The present context of SGIs in Europe is a difficult one. SGIs receive little mention in the 5<sup>th</sup> Cohesion report and they are not present in the EU2020 Strategy. Since 1986, SGIs have been undergoing a liberalization process. At the same time, their norms and rules have been Europeanized. The role of SGIs in social and territorial cohesion was first mentioned in the Treaty of Amsterdam in 1997. This role is also integrated into the Treaty of Lisbon and the EU Charter of Fundamental Rights. However, the liberalization process of some network services has led to new polarization (economic, social, territorial, temporal and financial).

Such a situation raises questions and uncertainties: how do the advantages of the market and competition relate to the missions and objectives of general interest? Do SGIs need a framework directive to reassert their role? Is the sector-based approach the only appropriate one? Or should the full application of the subsidiarity principle be favoured? Or is the proper approach supplied by the market and competition? Are we still limited to these four conceptions or is a more pragmatic approach developing?



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### **Erika Szyszczak, Public Services: Still an Irritant for the Single Market?**

Despite extensive privatisation in the eighties, public services remain important in the UK. The main question is, how are public services to be made modern, responsive and accountable to consumers?

From the beginning in 1957, SGEIs were seen as a departure and not part of the internal market project. It is only since the treaty of Lisbon that we have actually recognized a role for public services, i.e., social services provided by the state.

From a legal perspective, SGEIs are handled via de-legislation and de-legalization. But if we look at the amount of soft law that has been developed since 1996 by the European Commission, a great deal of the law governing Community activity is very blurred, very confused, and yet the Commission seems to be trying to create a normative and prescriptive role through it. Liberalization directives created normative principles for SGI that recognized universal service obligations regarding access, price, continuity of service and vulnerable consumers. Article 14 of the Treaty of Lisbon, for example, could be used to create framework legislation to establish independent principles for addressing SGEIs. These principles, in turn, could be linked to the new values enunciated by the treaty of Lisbon, creating general principles of European law that would be applicable to cohesion policy. And this of course relates to the Charter of Fundamental Rights as well.

We may need a general framework for SGIs but also sector specific frameworks given the specificities of each sector involved (such as health care, education, energy and transport).

One of the issues that worries me in discourse concerning SGEIs is the fact that most of the major thinkers have argued that there is a new calibration between state and citizen. In fact, there are very complex and changing relationships between the EU, particular states, service providers, regulators and consumers/citizens. This also expresses a problem of cohesion policy. In Europe, we are going through a difficult period of public spending and it is not necessarily clear who is going to regulate cohesion policy. Article 14 TFEU could be used to create more than normative principles governing quality and the allocation of responsibilities.

### **Françoise Castex: The Role of the European Parliament Public Services Intergroup in Implementing the Lisbon Treaty Provisions on SGEIs**

A new institutional context based on article 14 and Protocol 26 of the Treaty of Lisbon together with the Charter of Fundamental Rights resulted in the creation of the European Parliament Public Services Intergroup. Moreover, the directive on service liberalization and Member State difficulties implementing it (due to the question of whether certain services should be excluded from the competitive market) demonstrated the need for an Intergroup. Over 100 stakeholders were involved in monthly meetings. Local authorities were among these stakeholders as they have the greatest willingness and need to clarify public service rules.

Article 14 of the Treaty of Lisbon concerns legislation. Since there is no transposition, it favours the establishment of new regulations and rules rather than a framework directive that might be better adapted to the new reality.

As this approach is rather pragmatic, the Intergroup is focusing on both transversal and sector-based approaches. The Intergroup appreciated Commissioner Barnier's initiative as well as the EC Communication on the Single Market Act that aimed to re-launch the Single Market. The general proposals of this Communication allow an ambitious sector-based approach to be coupled with a more transversal one (a Communication on SGIs), with a special status for some public service operators, in particular in the field of the social economy.

### **Stéphane Rodrigues: Supporting a Pragmatic and Progressive Approach on SGIs**

Why support a pragmatic and progressive approach on SGIs? First, the Treaties as well as European legislation have evolved and Article 14 constitutes a real mandate for the European legislator. Second, recent legislative practice involves returning to framework instruments. The dispositions of Article 114 TFEU on the "Approximation of Laws" concern harmonization measures for provisions



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regulating the establishment and operation of the internal market. And it seems to me that we could look at the 2010 Green Paper on European contract law, which offers us all possible options for harmonizing the field of SGEIs. It is a toolbox enabling us to develop an inter-institutional agreement on the basis of which decisions can be made concerning the available options or even a European code, etc.

### **Philippe Herzog: SGIs as Key Issue for Competitiveness and Solidarity in Europe**

In the present context of crisis, ambition and pragmatism are needed. SGIs should be considered as key issues for competitiveness and solidarity in Europe and they should be promoted as such. In that perspective, the work that needs to be done is not only legal but also economic in nature and touches on issues of governance. There needs to be an action plan that promotes SGIs as a condition for exiting the crisis and meeting present needs.

In regards to the legal issue: today, European law on SGIs is biased and outdated. Existing law relates to contradictory objectives: freedom of service provision, on the one hand, and public service obligation, on the other hand. In particular, it is clear that these contradictions reveal political questions. The Treaty of Lisbon innovated by introducing a political arbitration power concerning these questions, with “free competition” counter-balanced by shared institutional responsibility. The treaty thus established a political power and enabled the adoption of a global approach on SGIs.

In regards to the economic aspect: it should not be neglected and SGIs should have a place in economic governance. The economic and social context shows the increasing need for SGIs in such sectors as health, education and training, inclusion, sustainable development and the fight against poverty. However, the current economic context limits public investment and expenditure. In order to exit the crisis and meet new needs, investment in priority public infrastructure is required. In many cases, such infrastructure is interconnected and of common interest to several Member States. But who is to decide on priorities?

In regards to governance: the redefinition of development needs is a real issue and should be a matter of collective effort. Quality issues are also important and we need to be able to compare SGIs in Europe. Another observation is that a lot of Member States have difficulty in financing and maintaining SGIs. The market is not working well and the state is confronting its challenges. We need a new framework to ensure the development of a new entrepreneurial spirit to meet developing societal needs. This means that missions and governance need to be redefined. Local authorities and civil society have to be stake holders in the process. Michel Barnier’s “Towards a Single Market Act” has paved the way for change, but he needs support.

### **Pierre Bauby Launches a Second Round of Discussions Concerning the Link between SGIs and Economic, Social and Territorial Cohesion**

#### **Erika Szyszczak**

She pointed out that there was very little regarding the quality and substance of universal service obligations in the liberalisation directives, with disputes to be settled by mediation rather than litigation. It is not just an issue of soft law. This is becoming very de-legalized. The people who most need the services have very little access to the institutions. The law can defend these ideas but enforces them as well.

#### **Françoise Castex**

There is an evident link between cohesion policy and public service missions. Cohesion policy is a tool of redistribution and solidarity at the EU level. However, budgetary constraints and the logic of “I want my money back” also limit cohesion policy action. This is a fundamental break on significant investment.



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## **Stéphane Rodrigues**

The Green Paper on territorial cohesion affirms that access to SGEIs is one of the main instruments in the EU to link territories and ensure cohesion (even if this is not mentioned in the 5<sup>th</sup> Cohesion Report). However, cohesion policy is not only an EU objective but also an objective for the Member States. The Treaty imposes some obligations in this regard (Articles 174 and 175 TFEU).

## **Philippe Herzog**

The point is that the link between SGIs and cohesion is over-determined by financing problems. So first, from a budgetary perspective, cohesion policy should be defended and supported and then a link between SGIs and cohesion can be aimed at. Considering the heavy constraints on public budgets, the EU2020 Strategy focuses on three main objectives (the fight against poverty, integration in training and employment and network infrastructure) to better use limited public budgets. In order to prioritize expenditure as a lever of investment, public-private partnerships should be organised to make necessary investment more dynamic.

In Europe, however, supporters of competitiveness through competition and supporters of competitiveness through cohesion oppose one another. We haven't yet managed to move beyond the Sapir Report. We thus need solid arguments to defend SGIs and cohesion. One way to develop such arguments is to base them on the evaluation of structural fund expenditures to determine whether they are effectively promoting cohesion. This represents a political fight. We need to adapt to the new method launched by the European Commission, i.e. to examine expenditure in relation to the objectives of EU2020. This means that each Member State has to be equipped with strategic capacity, raising the question of the development of strategic capacity in new Member States. It means that the States will have to negotiate with the regions and also consider the cross-border level. Territories are getting increasingly complex. Who are the partners: macro-region, regions etc.? The analysis of funding modes is also essential.

## ***General Discussions:***

- What is the conditionality of SGI action involving both economic and political conditionality?
- What has been the impact of enlargement on the SGIs?
- The cohesion policy seems to be centred on regional and territorial cohesion while SGIs are absent from the debate on cohesion policy: how are these two issues to be linked?
- In the UK, there is a particular legal interpretation of article 14 concerning the role of SIG in promoting social, economic and territorial cohesion? Is cohesion an issue as far as the UK is concerned?
- Member States have blocked the evaluation of public services. Can the European Parliament serve as a tool for going beyond this brake on evaluation?
- What is the most relevant level for public action?
- What are the right questions to raise in evaluating the quality of the public social services?
- Would SGIs have something to lose if Common Agriculture Policy (CAP) were abandoned? What is the link between SGIs and CAP?
- How to interpret the fact that the Barca report doesn't mention the SGIs?
- SGIs are not eligible for structural funds. How can this obstacle be circumvented?
- In regards to the programming dimension, how to aim at strategic objectives instead of aiming at categories of eligible expenditure (as is presently the case)?
- How to contribute to harmonization of universal services in a voluntaristic approach?



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- Is it possible to pursue the battle in favour of cohesion policy in the present financial context? Could adapting the campaign for cohesion to the objectives of EU2020 Strategy represent a solution?
- How can the relevance and modernization of SGIs be justified from the perspective of a national competitiveness and cohesion policy?
- How to link SGIs and territorial appeal?

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