

## Mapping of the Public Services

# Final Report

## Research

## Public Services in the European Union

## Public Services in the 27 Member States

May 2010

# SGIs in the European Union and the 27 Member States

## 1/ Diversity and unity - 1

### a) Diversity

- **The terms/notions** used in Europe for « Public services » are different according to languages, histories, institutions and cultures
- **Two main approaches**
  - **The organic approach** (the entity that provides the service, in particular public authorities or public companies)
  - **The functional approach** (services' goals, missions, tasks and purposes) - **Only the functional conception is common to all national situations**
- **Different legal conception**
  - In most European countries, the recognition of activities of “Public services” is based on **sectoral regulations**
  - Although the legal conceptualisation is different or not present
  - Common law countries; Countries of Romanist tradition;  
**Mixed influences**

# SGIs in the European Union and the 27 Member States

## 1/ Diversity and unity - 1

### b) Unity:

In all European countries, there is “public service” when it is decided or recognized by a public authority or case law that certain activities are not revealing only of common law competition or market rules, but of particular rules and norms, to aims and objectives that focus on ensuring access for every resident, the establishment of relations of economic, social and territorial cohesion, and the conception of remedies to market failures (long term)

**We have to study together diversity and unity**

## 2/ Three structuring trends in all EU Member States

### a/ Europeanisation

progressive passage from the traditional national framework of definition and organisation of SGIs to the Community level, whose effects can be found in all EU MS, but whose forms vary widely

### b/ Sectoral logics

we are not organising telecommunications, electricity, water, transport, education or health in the same way in the Single Market and on the basis of identical rules

### c/ National histories, traditions and institutions

mark and continue to score in depth the ways of organisation and regulation of SGIs in the Member States

**These three trends combine themselves**

## a/ The Europeanisation process

- The definition, organisation and regulation of SGIs were made in the context of the construction of each Nation State, in its long history, in relation with its tradition, its organisation, its institutions, and its culture.
- Single Act of 1986 gives mission to the European institutions to implement the free movement of services and the single market
- The European Union called gradually into question the national forms of organisation and regulation of “public services”, developing strategies for the creation of internal markets in network sectors, based on “liberalisation”, introduction of the competition and market logic.
- The European rules implemented progressively a controlled, organised and regulated liberalisation (universal services, public service obligations)

### a/ The Europeanisation process

- Art. 16 of the EC Treaty (1997)
- Article 36 EU Charter of Fundamental Rights, (2000),
- Article 14 and Protocol 26 on SGIs of the Lisbon Treaty (2009)
- The process of Europeanisation took three forms:
  - secondary law (directives or regulations)
  - implementation of the open method of coordination (in sectors not subject of the harmonisation process)
  - case law of the European Court of Justice (that fill voids of the secondary legislation)

### b/ Sectoral logics

- Each sector presents different techno-economic characteristics, situations and challenges to which we cannot apply the same rules in a uniform manner (see the table on differences between telecommunication, electricity and water)
- In the European countries and on Community level “public services” are based on sectoral laws and regulations



### **c/ Histories, traditions and national institutions**

- The national (and infra-national) traditions and cultures are explicitly recognized as key elements of European integration by the principle of subsidiarity, article 4 TEU
- The persistence of different even contrasted national attitudes on public ownership and competition
- More generally, each Member State continues to defend its national interests and its “national champions”, but at the same time it participates in the promotion of the Community interest



### **3/ Six approaches** (not “models”, hybridisation)

which can also be juxtaposed or coexist within the same countries or sectors and not all models are designed as complete and coherent models:

- a/ Model of public administration and national companies
- b/ “All public” (Central and Eastern Europe)
- c/ Local autonomy
- d/ Delegated management and externalisation
- e/ “New Public Management”
- f/ Regulatory agencies

## a/ Model of public administration and national companies

- Public administration as provider of “public services”
- Welfare State, nationalisations
- Even if the European institutions are “neutral” as to the property of companies,
- Status changes and trends to autonomy and/or privatisation
- This model tends to reduce

### b/ “All public”

- Central and East European countries (in 1990, the public sector exceeded 65% of GDP)
- Since 1990, reforms to market economy, European integration, decentralisation, liberalisations and privatisations
- The concept of “public service” revisit/ introduced into the legal vocabulary, assimilation of Community concepts but a substantial part of the *acquis communautaire* on SGIs not accessible because of the lack of a corresponding legal content

### c/ Local autonomy

- Different degrees of decentralisation and autonomy in the 27 EU MS and often shared competences between different levels of governance
- In several European countries there is a strong tradition of local organisation of the public services, linked to principles and institutions that recognise the “free administration of local communities”
- This is the case in federal states, in the countries of the Northern Europe, and more recently in the countries developing real decentralisation or regionalisation (including Central and East European countries)

### d/ Delegated management and externalisation

- Rapidly developed in France over the past half-century for the management of local “public services”, it spreads over the last twenty years in many countries
- Several forms: concession or lease, public procurement, institutionalised PPP
- The public authority (“organizing authority”) is supposed to define in a document (*Cahier des charges*) the objectives and missions and then to organise a call for proposals
- The manager of the service has a territorial and temporal monopoly. The public authority must monitor and control the activity of the operator

# e/ “New Public Management”

- Reform process to increase efficiency of public action and to reduce the sphere of public sector, initiated in the late 1970s in the UK with privatisations, liberalisations and reforms
- Public authorities - a greater role of purchaser, organizer and controller rather than producer of “public services”
- Each country conducts its reform taking into account its national particularities and there is no unique framework/development of reforms inspired by the NPM
- The development of autonomous agencies managing services is one of the most significant trends
- Despite some developments (e.g. DK, SE, UK), in many EU MS there is no institutionalised/compulsory evaluation of SGIs
- SGIs evaluation is generally limited to some areas -  
Methods/criteria/indicators/implementation of SGIs evaluation vary depending on sectors and authority in charge

# f/ Regulatory Agencies

- In Europe, the first occurred in UK in the context of privatisations of 1980s
- In many countries the creation of regulatory agencies has been driven in the process of Europeanisation of SGEIs led by the implementation of the three types of separation (operator/regulator; public authority/regulatory functions; infrastructures/ services)
- Today, all EU countries have authorities for the supervision of the competition, which intervene in areas of SGIs
- Most of EU MS have specific regulatory authorities/agencies, often sectoral, for communications (often post and telecommunications), energy (electricity, gas, but sometimes also oil and heating), transport (especially rail), broadcasting, but also sometimes for water, financial services, insurance, health, education, etc.
- Frequently authorities in charge of consumer protection
- Regulatory agencies may differ in their functions and therefore in their nature
- Debates on European Regulatory Agencies



## 4/ Social dialogue

### General trend in employment – the erosion of the special status

- Differences still exist between public and private status
- Progressive trends of rapprochement between public employment status and the general employment system
- Right to collective bargaining gradually extended to groups of public employees
- But differences remain between the Member States as concerning the exigencies of the employment in SGIs
- Persistent sectoral features and trends

## 4/ Social dialogue

### National traditions

- 5 « models/regimes »
  - **North** : the « **organised corporatism** » of the Nordic states (Denmark, Finland and Sweden)
  - **Centre-west** : the « **social partnership** » - Austria, Germany, Belgium, Luxemburg, Netherlands and Slovenia
  - **South** : the « state centred » approach - France, Greece, Italy, Portugal, Spain
  - **West** : the « **liberal** » pluralism - Cyprus, Ireland, Malta and the United Kingdom
  - **Centre-east** : a « **mixed** » approach (polarised or state-centred regime) - Bulgaria, Czech Republic, Estonia, Latvia, Lithuania, Hungary, Poland, Romania and Slovakia

## 4/ Social dialogue

### Diversity and unity

- Social dialogue is more or less developed in the EU member states and distinct variations and similarities subsist across the industrial relations and social dialogue
- A general decline of the unionisation degree with gaps that remains very important – the rate of unionisation ranges from 5% to 90%
- In most SGI areas **both public and private employment regimes** apply
- Due to their particularities, SGIs contrast significantly with other economic sectors in their impact on social dialogue and industrial relations – **Public service obligations** may involve some particular norms of employment and, where appropriate, in the field of industrial relations and social dialogue
- The **role of the State** in the social dialogue varies considerably in Europe whilst public authorities have a key role, on the one hand, in the definition, organisation and regulation of services of general interest and, on the other hand, in the social dialogue and bargaining.
- **Differences** between representativeness and industrial relations in the **public sector**, in particular the state-controlled activities or enterprises and the **private sector** of SGIs

## 5/ Conclusion – Diversity and unity – 2

### A rather fragmented mapping of Public Services in Europe - "Unity in diversity"

- SGIs in the European Union are no uniform or even real convergent
- Co-exist elements and factors of unity (“shared values, integration) AND a range of elements revealing diversity
- Protocol No. 26 annexed to Lisbon Treaty: “the diversity between various services”, “the differences in the needs and preferences of users that may result from different geographical, social or cultural situations”
- The need to have specific elements, continuously monitoring and updated knowledge on the specific reality of each sector and country – Necessary for good governance

## Country sections' summary (12 pages/country):

### I/ Diversity and unity

- a) *National traditions and structures. Europeanisation of services of general interest*
- b) *Sectoral logics*

### II/ Approaches

- a) *The model of public administration and national public companies*
- b) *The « all public » (only for Central and Eastern and Europe)*
- c) *The local autonomy*
- d) *The delegated management*
- e) *The « New Public Management*
- f) *The Regulatory Agencies*

### III/ Social dialogue

## Sources of national law on SGIs

## **Downloadable Report**

## **Full report in english**

<http://www.ceep.eu/>

<http://www.actionpublique.eu/>

<http://www.europaong.org/>

## ***Parts I and II in French***

<http://www.actionpublique.eu/>

<http://www.europaong.org/>