

STUDY
SHORT VERSION

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Providing high-quality public services in Europe based on the values of Protocol 26 TFEU

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PROTOCOL (No 26) ON SERVICES OF GENERAL INTEREST

THE HIGH CONTRACTING PARTIES,
WISHING to emphasise the importance of services of general interest,
HAVE AGREED UPON the following interpretative provisions, which shall be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union:

Article 1

The shared values of the Union in respect of services of general economic interest within the meaning of Article 14 of the Treaty on the Functioning of the European Union include in particular:

- the essential role and the wide discretion of national, regional and local authorities in providing, commissioning and organising services of general economic interest as closely as possible to the needs of the users;
- the diversity between various services of general economic interest and the differences in the needs and preferences of users that may result from different geographical, social or cultural situations;
- **a high level of quality, safety and affordability, equal treatment and the promotion of universal access and of user rights.**

Article 2

The provisions of the Treaties do not affect in any way the competence of Member States to provide, commission and organise non-economic services of general interest.

Providing high-quality public services in Europe based on the values of Protocol 26 TFEU

In this paper, we present the core results of a study carried out for CESI (European Confederation of Independent Trade Unions), with the support of the European Commission, by Pierre Bauby and Mihaela M. Similie from the association RAP (Reconstruire l'action publique) on 'Providing high-quality public services based on the values of Protocol 26 TFEU'.

In European parlance, Services of General Interest (SGI) cover economic services (SGEI) and non-economic services (NESGI) – which the public authorities consider to be of general interest and subject to specific public-service related obligations.

Gradually, these services have begun to be recognised by European Union primary legislation (Treaty of Amsterdam in 1997, Charter of Fundamental Rights promulgated in 2000, Lisbon treaty in force since 1 December 2009) and the way these services are recognised is subject to frequent change.

The Lisbon Treaty creates a new legal basis for services of general economic interest (SGEI) with article 14 TFEU and for all SGI with Protocol 26, which is annexed to TEU and TFEU.

The European conception of SGEI is based on shared competence between the EU and the Member States according to the subsidiarity principle.

At the same time, primary European legislation, with Protocol 26, specifies the shared values of the Union and in particular six values which must be applied to all SGEI across the European Union: a high level of quality, safety and affordability, equal treatment and the promotion of universal access and of user rights.

The lack of legal security when it comes to these values is what led CESI, with the support of the European Commission, to task RAP with conducting a study on their origin, content and implementation, in order to better comprehend their meaning and usefulness for citizens and social movements.

Protocol 26 did not come about from one day to the next. It is the fruit of both a progressive process of Europeanisation on the part of committed public services in the middle of the 1980's and the demands of the Dutch government after the rejection of the treaty setting up a constitution for Europe in the referendum of 1 June 2005.

Allow us therefore to remind our readers first of all of the conditions under which the Protocol came into being, which will help to shed light on its content and meaning. We shall go on systematically to analyse each of the six values. Finally, we shall attempt to identify the usefulness that these six values might have for each of the citizens and inhabitants of the European Union as well as for trade union organisations and civil society movements, creating a sort of 'user's manual' for the Protocol. ◀

The origins of Protocol 26

Protocol 26 was inserted into the Lisbon treaty when the latter was being negotiated at the intergovernmental conference in the summer of 2007. It marks an essential step in the long process towards making public services more European.

The Europeanisation of services of general interest

During the 30 years which followed the treaty of Rome, signed in 1957, public services remained outside the process of Community integration, with each Member State staying in charge of the way they were defined, organised and funded.

The goal of the single market, defined by the Single European Act of 1986, led the European Institutions to set in motion a gradual process of Europeanisation with regard to 'services of general economic interest' (SGEI) first mentioned in the Treaty of Rome, and at the time, limited to the sectors of communication, transport and energy, i.e. infrastructure networks.

This Europeanisation aimed simultaneously to wipe out national borders in order to organise the free movement of people, goods, services and capital by building internal markets, as well as introduce a greater level of effectiveness in those fields which had often been sheltered from competition due to exclusive, local, regional and/or national rights. The European Union thus developed gradual liberalisation strategies for the sectors of services of general economic interest, based on the introduction of competition and market logic, but without defining in parallel the Community objectives and standards, which could have led to a common conception of the issue and European solidarity.

Diversity and unity of services of general interest in Europe

Each European state has built up and defined its 'public services' over its long history, guided by the traditions, institutions, culture, social movements and power balances which have helped to shape it.

This has given rise to a whole host of diversities in Europe when it comes to the terms and concepts used in each language, the competent national levels (national, regional, municipal), the marketable character or otherwise of each service, the modes of organisation (monopolies or competition), and the types of actors involved (public, mixed, private or associative).

However, at the very heart of these diversities, there is a deep-rooted unity: throughout Europe, the local, regional or national authorities have arrived at the conclusion that some activities cannot only be subject to market rules and to the common law of competition, but rather should also adhere to specific forms of definition, organisation, funding and regulation, in order to:

- guarantee the right of each inhabitant to access fundamental goods or services,
- build solidarity, vouchsafe the economic, social and territorial cohesion of each community,
- prepare for the future and take the long-term into account.

These general interest purposes and objectives are at the heart of the European social model and of the social market economy which characterises it.

A progressive process

Since that time, European debates and initiatives have sought to restore the balance between liberalisation and objectives of general interest. This gave rise to the concept of 'universal service' in the telecommunications and postal services, followed by electricity, guaranteeing some essential services to all citizens and residents; with the public service's obligations being set out in the fields of energy (electricity and gas) and transport, the case law of the Court of Justice of the European Union recognising that services of general economic interest can encompass other objectives, missions and forms of organisation and funding than solely the general laws of competition.

The Treaty of Amsterdam of June 1997 included a new article 16 which recognised SGEI as the components of 'common values', underscoring their role in promoting 'social and territorial cohesion', and asked the Union and the Member States to make sure they could 'accomplish their tasks'. The European Council of Nice held in December 2000 proclaimed the Charter of Fundamental Rights of the European Union, in which article 36 asks the European Union to recognise and respect access to services of general economic interest, as foreseen in national legislations and practices, in line with the Treaties, and place them amongst fundamental rights.

Starting in 1996, the European Commission began a process of cross-cutting reflection on all services of general interest, with two communications (1996 and 2000), a report (2001), a green paper (2003), a white paper (2004) and new communications (2007 and 2011), putting forward principles founding a Community conception.

The Lisbon Treaty, in force since 1 December 2009, included major innovations with regard to the previous situation, with article 14 of the TFEU, the legal status of the Charter of Fundamental Rights and a Protocol 26.

Article 14 of the Treaty on the Functioning of the European Union is explicitly the legal basis of secondary legislation, coming within the competence of co-decision between the Council and the Parliament; it twice refers to the powers and rights of the Member States and their communities (article 4 of the EU treaty); in its capacity as a 'general implementing provision', it must be applied to

all EU policies, including those dealing with the internal market and competition.

Article 14 TFEU

Without prejudice to Article 4 of the Treaty on European Union or to Articles 93, 106 and 107 of this Treaty, and given the place occupied by services of general economic interest in the shared values of the Union as well as their role in promoting social and territorial cohesion, the Union and the Member States, each within their respective powers and within the scope of application of the Treaties, shall take care that such services operate on the basis of principles and conditions, particularly economic and financial conditions, which enable them to fulfil their missions. The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall establish these principles and set these conditions without prejudice to the competence of Member States, in compliance with the Treaties, to provide, to commission and to fund such services.

The Lisbon treaty gives legal status to the Charter of Fundamental Rights.

The Protocol on services of general interest (n°26) is annexed to the Treaties on European Union and the Functioning of the European Union, with the same legal status as the latter treaties, since it is an ‘integral part’ of them.

From these developments, the fruits of the interventions of social actors in every Member State, as well as vis-a-vis the European institutions, alongside initiatives such as that of the government of the Netherlands (Cf below) a ‘European *acquis*’ came into being.

SGI: The European *acquis* with the Lisbon treaty

1. The Member States (national, regional and local authorities) have the general competence to define, ‘provide, commission and organise’ SGI, as well as funding SGEI.
2. The European institutions have the same competence for European services which prove necessary in order to achieve the EU’s objectives.
3. For non-economic services, the rules of the internal market and the rules of competition do not apply; they merely come under the sole general principles of the EU (transparency, non-discrimination, equal treatment, proportionality).
4. For services of general economic interest, the public authorities must clearly define their ‘special task’ (principle of transparency).
5. On this basis, they can define the means best adapted to effectively achieving the ‘special task’ (proportionality principle), including, should it prove necessary and

proportionate, aid and subsidies, exclusive or special rights.

6. The Member States are free to choose the styles of management: internal, ‘in house’, delegated, etc.
7. These definitions must clearly establish the standards of ‘quality, security and affordability, equal treatment and the promotion of universal access and of user rights’.
8. The rules of competition and the rules of the internal market only apply if they do not stand in the way, legally or factually, formally or in effect, of their specific mission being achieved.
9. The Member States are free to choose the type of company property (principle of neutrality).
10. In all cases, misuse can occur due to ‘manifest error’, that the Commission can raise, under the control of the CJEU.

The Netherlands’s demands

Protocol 26 responds to one of the conditions imposed by the government of the Netherlands during negotiations on the Lisbon treaty following the rejection of the ‘draft treaty establishing a constitution for Europe’ in the referenda held in the Netherlands and in France. Several factors were highlighted by the Dutch government in order to assert the subsidiarity principle and the powers of the Member States, in particular in order to reinforce the control of the national parliaments. At the same time, the pressures that the European Commission was bringing to bear in order to ask the Netherlands to reform its social housing system so that it be reserved for the most destitute had led to the negative vote from the Dutch and the Dutch government wanted to put the brakes on things.

Whilst the Treaty was being negotiated, an Interpretative Declaration of all services of general interest was proposed, which, for the European Commission, made do with reminding the reader of the existing European rules. Finally, the insistence of the Dutch government led to Protocol 26 being annexed to both treaties (TEU and TFEU), which had the same legal status as the treaties themselves, and was thus a full component of European Union primary law. ◀

A high level...

The six values set out in Protocol 26 for services of general economic interest place the three first values (quality, safety, affordability) behind the objective of a 'high level'. We are thus not referring here to absolutes, which are clearly definable and measurable, identifying quantifiable indicators and allowing us to rank SGEI on a linear scale. Rather, the expression 'high level' evokes qualitative and progressive objectives. However, it does clearly define a goal.

... OF QUALITY

The first of the six values mentioned is that of quality. Here, there are no surprises. From the beginning of the process of Europeanisation of SGEI, improving quality has been at the heart of the approach, in parallel with achieving the 'internal market'.

Even if there is no general definition of quality, the various sources of Union law allow us to pick out the reliability and continuity of services, the existence of mechanisms of compensation in the event of the standard of services being poor, user and consumer protection and security, environmental protection, sustainable development, etc. Quality is thus often tied in with other values.

In European legislation, quality objectives vary and are precised for each sector, depending on the characteristics of that sector. Therefore, as far as the water sector is concerned, the series of European directives adopted since the 1970s aim for the implementation of quality standards. In the same vein, 2010 saw the adoption of a 'quality framework for social services of general interest' (SPC/2010/10/8).

Details regarding standards and/or contracts, such as contracts between the public authorities and the operators, contracts between the operators and the users, the statutes and the employees' contracts with the operator – set out the existing quality guarantees, their level and the means whereby they can be protected and respected, as well as mechanisms to adapt them.

Quality in the postal service

Chapter 6 of Directive 97/67/EC ('Quality of Service') lays down a series of obligations targeting the quality standards of a universal postal service which 'focus, in particular, on routing times and on the regularity and reliability of services', their publication and access to regulatory procedures concerning complaints and litigation.

One of the issues at stake when it comes to implementing quality is connected to its 'high level'. According to a ruling by the Court of Justice of the European Union regarding environmental protection, the Court ruled that when it came to 'high quality' the goal was not necessarily to aim

for the highest possible technical level, as the States could adopt more restrictive measures (C-284/95).

One should without a doubt define for each of the sectors of SGEI covered by European regulations specific quality indicators which are easily measurable and verifiable, which could be subject to progressive satisfaction-related objectives which could be periodically evaluated and adapted.

Protocol 26 and its content

Unlike the treaties which preceded the Lisbon treaty, Protocol 26 does not just concern services of general economic interest, but rather all SGI, whether they are called economic or non-economic.

If a service is referred to as 'non-economic', article 2 clearly reminds us that the Treaties 'do not affect in any way the competence of Member States to provide, commission and organise' this service.

If a service is referred to as 'economic', which is the case in a growing number of fields, article 1 makes it compulsory for the Community institutions to respect, at the same time, 'the essential role and the wide discretion of national, regional and local authorities in providing, commissioning and organising' the service, the respect for 'diversity between various services and the differences..that may result (...) from different geographical, social or cultural situations', as well as the principles 'of quality, safety and affordability, equality of treatment and the promotion of universal access and of user rights.'

Consequently, and even if the Protocol is presented as 'interpretative provisions', its content goes beyond simple 'reminders': for the first time in primary legislation, it introduces, for one, the category of 'non-economic services of general interest' which are not subject to European competition law and internal market law; and for another, the 'wide discretion' on the part of public authorities, respect for the 'diversity between services', as well as the '6 values' which must be respected for all SGEI.

Thus, the Lisbon treaty makes clear headway when compared to previous treaties, in that it creates scope to clarify the Community framework governing the way we define, organise and run services of general interest, how we guarantee these services and how we can lend them a greater level of security for all actors concerned.

... OF SAFETY

In general, the concept of safety involves protecting oneself against dangers and risks; its content is thus very broad, which begs the question as to how one can define the safety of SGEI, their 'high level' of safety.

In the field of SGEI, safety covers various aspects: physical safety (for users and people playing a role in producing and

providing these services), including the safety and reliability of the networks and materials, of the system, the safety of provision and supply.

If the bulk of competences when it comes to defining the safety of SGEI remains with the Member States, the Union does intervene when global and crucial problems arise, such as, for example, the safety of nuclear power stations after Fukushima.

In certain sectors, cross-border safety issues are more obvious and explained the setting up of European safety agencies: in transport sub-sectors (the European Maritime Safety Agency, the European Aviation Safety Agency, the European Railway Agency) but also the European Food Safety Authority, the European Agency for Safety and Health at Work, the Executive Agency for Health and Consumers.

Safety in energy

Within the framework of Public Service Obligations (PSO), guaranteeing energy safety presupposes availability and a continued supply at reasonable prices; other tasks regarding investment and cooperation between the Member States in order to respond to energy-related needs. The Lisbon treaty stipulates that guaranteeing the safety of energy supply in the Union is one of the objectives of the Union's policy in the field of energy. (Article 194 TFEU)

Within the framework of the Green paper on SGI [COM(2003)270], the Commission reminded us of its 'new approach', 'a major impetus' aiming to 'increase the level of safety and adopt a more European approach in certain domains, in particular in the transport and energy sectors', so that several objectives can be pursued 'by Europe as a whole', when, for example, problems extend beyond national borders.

As for the need for regulatory intervention regarding the security of SGEI, the Commission takes the view that 'in some cases of services of general interest, public intervention may be necessary to improve the security of supply, in particular in order to address the risk of long-term underinvestment in infrastructure and to guarantee the availability of sufficient capacity' [COM(2003)270].

...AFFORDABILITY

Two approaches to the 'affordability' coexist in the European political approaches texts: one has a universal dimension, whilst the other is restricted to those populations who are on a low income, who are vulnerable or disadvantaged.

The demand for SGEI to be affordable was permanently underscored in the liberalisation policies for SGEI carried out after the Single European Act by the European Union,

as being closely linked to the goal of cohesion pursued by the Union in order to allow access to SGEI, irrespective of how much the beneficiaries earn or their place of residence, in order to prevent and fight against exclusion.

The affordability factor features in particular as a way of defining the concept of 'universal service' in telecommunications, the postal services, electricity, and, more generally, the public service's obligations.

Regulating prices in passenger rail transport

In the Member States, pricing obligations amount to one of the key public service obligations and also cover price reductions for certain categories of users. A recent study (CER, 2011) shows that 'the room for manoeuvre is limited insofar as rail companies cannot raise prices beyond a level established by the authorities.'

Affordability is not an absolute, it is relative to the economic and social conditions of each territory, which, as we all know, continue to vary wildly, even 20 years after the goal of the 'single market' and in spite of the initiatives underpinning cohesion policy. It is also relative to needs and technologies, and thus related to how they evolve over time. This is why, even if the unit cost of electronic communications has dropped sharply over the last 20 years, the population's 'budget communications' are not going down.

It therefore would appear necessary to better define what 'affordability' means in time and space, to define the tools with which it can be measured, to clarify how this 'common value' can be implemented in secondary legislation or national legislation and to determine what initiative(s) the EU might take in order to make sure this value is respected.

In more general terms, it falls to the competent authorities at national, regional and local level to finance services of general economic interest (article 14 TFEU); this involves the possibility of compensating the costs incurred in order to achieve the special tasks of general interest, whose 'affordability' and accessibility are the key components, whilst respecting the proportionality principle with regard to compensations compared to the objectives, but without this being considered as state aid. ◀

Serving all

Whilst the first three values target a 'high level' of..., and are thus relative, the fourth is an absolute, which could not countenance violations or exceptions, ('equal treatment') and the last two can be classed as objectives ('the promotion of...').

EQUAL TREATMENT

Equality is one of the constitutional principles of many Member States of the European Union. If, in some Member States, it was originally conceived as a guarantor to users of equality in access and in the supply of the service, banning, in principle, any form of discrimination, in the States which gave priority to the universality of service, the obligation regarding the universal supply of certain services can translate into the setting up of positive discrimination. This approach appears in the legal system of the other Member States, including via the transposition of Community law.

Equal treatment has been at the heart of the very process of European integration since it began. The Community, followed by the European Union, were founded based on the absence of any kind of discrimination amongst the Member States, and against any person, even forming a condition for States to work together towards achieving shared goals.

The Charter of Fundamental Rights of the EU was adopted in 2000, and has been binding since the entry into force of the Lisbon treaty on 1 December 2009. It contains a specific title (Title III) on equality, which establishes equality in the eyes of the law and bans any form of discrimination (Articles 20 and 21). It also contains specific rules regarding the rights of children and the elderly, the integration of people with disabilities, equality between men and women and linguistic diversity (Articles 22-26).

Since the end of the 1960s, the case law of the Court of Justice has integrated the reference to fundamental rights, including the general principle of equality. Today, non-discrimination and equality of treatment are recognised as general principles of the EU. However, equal treatment does not require identical treatment.

Equality of treatment for the CJEU (Aff. 15/95 ; 810/79 ; 283/83)

'The general principle of equality requires for comparable situations not to be treated in a different way and for different situations not to be treated in the same way unless a differentiation can be objectively justified.'

Therefore, promoting 'positive measures' ('positive discrimination') can be considered justified, as it allows for specific measures which aim to prevent or compensate disadvantages linked to race, gender, ethnic origin, religion

or convictions, a disability, age or sexual orientation to be maintained or adopted.

PROMOTING UNIVERSAL ACCESS

Community action aiming to guarantee universal access to SGI was set in motion in particular within the framework of the policy of liberalisation of certain sectors of SGEI, via the notion of the universal service, by the policy of cohesion and in the field of trans-European networks (for transport, energy and telecommunications), given the fact that 'the market alone cannot, for example, provide universal access or total geographical coverage.' [COM(2003)270].

The demand for universal access is part of a more general reference to the fundamental right to access to services of general economic interest recognised by article 36 of the EU's Charter of Fundamental Rights.

The view is frequently put forward that the *raison d'être* behind the Universal Service Obligations (USO) is to be a kind of 'social security net', guaranteeing 'the availability, affordability and accessibility' where market forces alone do not provide users with affordable access to basic services, in particular those living in remote regions, with modest incomes or in vulnerable situations [COM(2011)795].

Although a universal service has only, so far, been defined at European level in three sectors (telecom, post, electricity), debates have been held on extending universal service to other fields of telecommunication or other SGEI, such as banking services, for which the Commission has announced a legislative proposal (Single Market Act II) or high-speed internet access, which at the moment is left to the discretion of the Member States.

The EESC (European Economic and Social Committee) and universal access

'Accordingly, the service could include access to a bank account and payment facilities, affordable loans, subject to state micro-credits or guarantees, decent housing, home care facilities, mobility, social services, specific measures for people with disabilities, etc., access to energy, secure access to digital services.' (EESC, 2011/C 48/14)

Yet promoting universal access is not restricted to defining what a 'universal service' is. This is why, by way of example, in the transport sector, it would not be possible to define a universal service for every mode of transport, but it is possible to guarantee, for each inhabitant and throughout European territory, access to one or several mode(s) of transport which guarantee a person's right to mobility.

In the BUPA ruling (T-289/03), universality features as one of the elements which serve to identify SGEI. The Community judge also adds certain defining features to this value and penalties in the event of its violation (access being re-

fused): 'the concept of universal service, within the meaning of Community law, does not mean that the service in question must respond to a need common to the whole population or be supplied throughout a territory (...) Accordingly, the fact that the obligations associated with the service of general economic interest in question have only a limited territorial or material application or that the services concerned are enjoyed by only a relatively limited group of users does not necessarily call in question the universal nature of a mission involving the provision of a service of general economic interest within the meaning of Community law.'

PROMOTING USER RIGHTS

Consumer protection became a Community policy with the Treaty of Maastricht in 1992 (Title XI) and is now a shared competence between the Union and the Member States (TFEU, Title XV, art. 169).

This innovation based itself on the recognition that achieving the internal market and implementing competition policy would not suffice to allow for development and well-being to be achieved and needed to be completed by specific initiatives guaranteeing a balance between market forces and citizens' rights in that they are also 'users' and 'consumers'.

The rights of air passengers

Regulation 261/2004 establishes common rights in terms of compensation and passenger assistance in the event of boarding being refused and flights being cancelled. It aims to guarantee assistance, reimbursement and compensation in the event of flights being disrupted. It sets down rights regarding compensation and assistance for air passengers when a flight has been cancelled or is delayed, when boarding has been refused due to overbooking or when a person's seat is downgraded by the airline which finds itself unable to seat the passenger in the class s/he has reserved.

'Promoting' user rights does not necessarily mean that those rights will be protected. In this field, competences are shared with the Member States and, in the absence of a specific Community regulation, it is, in principle, the Member States who define user and consumer rights, just as they will be able to act alongside Community actions.

Meeting needs

SGEI must incorporate all of the six values. Listing them in Protocol 26 does not amount to an 'à la carte menu' in which one might opt to emphasise one aspect over another, but rather gives an overall conception of what SGI are.

The essence of services of general interest is to provide answers to the needs of each inhabitant, as well as local, regional, national and European community.

Even if we have so far presented each of the values separately, meeting people's needs involves implementing all of these values and their interconnectedness. Considering at once 'quality, safety, affordability, equal treatment, universal access and user rights'. What would be the point of having a very high-quality service if the bulk of its users could not access it for financial or territorial reasons?

This values contain contradictory aspects – improving quality or security comes at a price -, which presupposes making choices and weighing things up, setting priorities and adapting things. ◀

Protocol 26: USER'S MANUAL

What use of Protocol 26 and its provisions can users of services of general interest make - the citizens, civil society organisations, trade union organisations, the local public authorities, etc.? We would like to close the presentation of this study with a 'user's manual'.

Regulation article 14 and Protocol

The first article of the Protocol makes a direct reference to article 14 TFEU: 'the shared values of the Union in respect of services of general economic interest within the meaning of article 14 of the Treaty on the Functioning of the European Union include in particular...'

An inseparable link is thus established between article 14 and Protocol 26. This involves any rules and regulations – sectoral or cross-cutting – taken in order to apply article 14 will have to make explicit reference to the content of the Protocol and in particular to state in secondary legislation each of the 6 values that it includes.

Stating (the six values) in cross-cutting and sectoral secondary legislation

In more general terms, every time the secondary legislation regarding any sector related to services of general economic interest (communications, postal services, electricity, gas, different modes of transport, etc.) is re-examined or added to as well as cross-cutting provisions (public markets concessions, state aid, etc.), the Protocol must be inserted in the basic clauses of the Union's primary legislation which is being 'transformed into secondary legislation'.

The rules currently in force were adopted before the Lisbon treaty and could not therefore refer to the content of Protocol 26. They are all subject to regular revision depending on the impact their implementation has in terms of economic, social, environmental, cultural impact, and so on. This ought to serve as an opportunity to enrich them with the six values of Protocol 26.

The role of the CJEU

The Court of Justice of the European Union has the responsibility to guarantee that 'in the interpretation and application of the Treaties the law is observed'. It rules on the 'appeal formed by a Member State, an institution or natural or legal persons' as well as 'in preliminary rulings, at the request of national jurisdictions, on the interpretation of Union law or on the validity of acts adopted by the institutions'.

The Court began to invoke Protocol 26 in a legal dispute which was submitted to it with regard to the 'wide discretion'... Clearly, it will have to integrate all of the Protocol's content into its interpretations and applications of European Union primary legislation, in particular if the claimants refer to a specific aspect. Protocol 26 is an integral part of

primary legislation and the CJEU will integrate it into all of the references on which it forms its case law.

The Protocol as a legal means

The direct use by a claimant of a given provision in Protocol 26 in a legal dispute appears more controversial amongst the jurists we consulted.

First, it reflects the general problems of the Court which are based on the 'direct effect' of the primary legislation provision cited by the claimant. It seems appropriate to show that the principles cited are sufficiently clear, precise and unconditional, that they set down an obligation to do or not to do something, which, as we saw in our analysis of each of the 6 values, is subject to debate.

The fact remains that since primary legislation takes precedence over an act of secondary legislation, the provisions of Protocol 26 could be used as a legal means to obtain a Court ruling. This use of Protocol 26 as a legal means seems equally possible in each of the Member States, as long as it is a full component of the European Union's primary legislation, which is applicable everywhere.

The responsibility of the Member States

We must not restrict the 'user's manual' for Protocol 26 to a uniquely European dimension. Protocol 26 develops the content of article 14 TFEU, in which we have seen that it defines shared competence between the European Union and its Member States in the field of services of general economic interest.

The values made explicit by Protocol 26 need to be implemented not just at European level, but also in each of the Member States (the national, regional and local authorities). Is this always the case? For all sectors concerned? In every field? In order to allow SGEI to 'fulfil their missions', the Member States and each of the regional and local public authorities are responsible for implementing the values of Protocol 26, including when they delegate their management to other actors.

This scope should not be limited to economic services. Even if non-economic services are not covered by article 1 of the Protocol and the values it lays out, they should not, in any way, be excluded from the implementation of the values of the Protocol by national authorities. On the contrary, given that we are dealing with services which are intrinsically linked to social links and citizenship, they ought to exemplify quality, safety, affordability, equal treatment, universal access and user rights.

This is how in every Member State, in every local community, with the involvement of all social actors concerned, the application of values now recognised by European law are being played out. ◀

CESI

The European Confederation of Independent Trade Unions (CESI) defends the interests of millions of workers vis-a-vis the European Institutions and brings together more than 50 trade union organisations in 26 countries. Since 2005, CESI has been a recognised social partner and, in this capacity, is regularly consulted on issues pertaining to the social dialogue.

The Europe Academy is CESI's training centre. Through organising symposia which are subsidised by the European Commission, it provides its members with the possibility to find out more about topical issues in Europe and engage in debates with political decision-makers and international experts.

Topics addressed in previous seminars include: diversity within the public service in the European Union, lifelong learning, mobility of health workers within the EU, achieving an appropriate work/life balance, flexicurity, the European Social Model and demographic change.

www.cesi.org / info@cesi.org



RAP

Reconstruire l'action publique (RAP) is a French non-profit-making association, (law of 1901), whose goal is to contribute to reorganising and promoting public action at every level of human organisation (local, regional, national, European and global).

To this end, RAP carries out research and participates in training courses.

In particular, RAP conducted the first research on all Services of General Interest in Europe and in all of the Member States of the European Union (Mapping of the Services publics in the European Union and 27 Member States, 2010), participates in the COESIONET network on economic, social and territorial cohesion in Europe and is in charge of the Europe section of CGLU's global research programme on the governance of basic local public services (2012-2013).

www.actionpublique.eu / info@actionpublique.eu



Contact

CESI ACADÉMIE EUROPE

Avenue de la Joyeuse Entrée, 1-5
B-1040 Bruxelles
Belgique

T.: +32 2 282 18 74/61

F.: +32 2 282 18 71

www.cesi.org / academie_europe@cesi.org

