



European Economic and Social Committee

TEN/692

For better implementation of the Social Pillar, promoting essential services

OPINION

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(Own-initiative opinion)

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1. Conclusions and recommendations

Conclusions

- 1.1 Principle 20 of the European Pillar of Social Rights introduces the concept of "essential services" into the EU, something which does not exist as such in the Treaties but which provides that "*[e]veryone has the right to access essential services of good quality, including water, sanitation, energy, transport, financial services and digital communications. Support for access to such services shall be available for those in need*".
- 1.2 Given the examples of the services described as "essential" in principle 20, the EESC considers this to be a reference to services of general economic interest (SGEIs), which are already covered by EU law, in particular by Protocol 26 on services of general interest which is annexed to the Treaty on the Functioning of the European Union (TFEU). Although its interpretative provisions go further than a mere guarantee of *access to quality*, some of them – to widely varying degrees – are insufficiently regulated and implemented in the Member States.
- 1.3 The EESC therefore welcomes the fact that principle 20 of the European Pillar of Social Rights reaffirms the right to access essential services/SGEIs. These are a vital component of social justice and are underpinned by the principle of equal treatment of users, prohibiting any kind of discrimination or exclusion whatsoever, and by the principle of universal access to services of a high level of affordability and quality.

Recommendations

Right of access

- 1.4 In order to give effect to the stated principle that "everyone has the right to access essential services of good quality", it must be backed up by tangible measures in relation to sustainable development and social cohesion, while also ensuring that:
- a) the principle is guaranteed through legislative or regulatory provisions that define it and establish how it will be applied in each area;
 - b) it is specified what compensation people can claim if the principle is not respected;
 - c) legal redress, appeals or complaints are possible if the principle is breached.

Universal access

- 1.5 The EESC asks for the concept of universal access to SGEIs to be clarified, and for legislative measures to be introduced obliging Member States to establish universal access indicators for each SGEI (density of service access points, maximum distance to an access point, service regularity, etc.) with a view to preventing services that are of essential general interest for users (for example public transport, post offices, bank branches) – particularly in suburban, rural or low density areas – from being cut or under-maintained and, should this be the case, to ensuring that equivalent alternatives are found.

Universal service

- 1.6 As regards electricity, electronic communications, postal services and banking, the universal service from which they benefit is not synonymous with universality since it only guarantees limited access to basic services. This applies specifically to electronic communications, where the services included in the universal service have been largely overtaken by technological developments, are no longer suited to the modern communication tools available on the market, and only serve to widen the digital divide between remote areas and major urban centres.
- 1.7 The EESC therefore calls for the universal service to be adapted to guarantee the provision of state-of-the-art services and offer full geographical coverage for all network industries in general and for electronic communications more specifically.

Affordability

- 1.8 Given that affordable access is, increasingly, no longer guaranteed by means of a "reasonable" social tariff, but through social assistance which is exclusively reserved for the poorest people, and given that the poorest are not the only ones who have serious financial difficulty in accessing SGEIs, the EESC reiterates its call for affordability to be determined by identifying a basket of services considered essential. The financial contribution of a household for each of these services should be set as an acceptable proportion of the social wage/minimum income, above which prices are deemed to be inflated and require regulatory measures, or should confer an entitlement to public aid.

Quality of service

- 1.9 In the light of the poor service quality of different SGEIs in some Member States (delays or cancellations in public transport, poor or insufficient geographical coverage in electronic communications, etc.), the EESC asks the Member States to select indicators for SGEIs that focus on perceived satisfaction, covering for example speed, punctuality, reliability, comfort, availability, competence and helpfulness of service providers, as well as other aspects such as the environment, working conditions and consumer protection.
- 1.10 As regards the compensation provided for under European legislation in the event of insufficient quality (delays or cancellations of trains or aircraft, items that are lost or damaged in the post), the EESC is left with the unavoidable impression that some service providers prefer to pay (modest) compensation rather than invest in quality. It therefore asks for the current amounts of compensation to be reviewed and, as a general rule, for appropriate compensation to be introduced for all SGEIs in the event of a breach of public or universal service obligations.

Evaluation

- 1.11 In order to guarantee access to quality services, it is essential to develop a method for evaluating the performance of these services. To this end, the EESC calls on the decision-making bodies to clearly define as a first step the concepts, objectives and missions of all services of general interest (economic and non-economic).

- 1.12 The EESC therefore calls for an evaluation of services of general interest at national, regional or local level in the Member States; for this evaluation to be independent, pluralist and balanced; for it to cover economic, social and environmental aspects; and for it to be based on a set of criteria and conducted in consultation with all stakeholders, using a new harmonised evaluation methodology at EU level based on common indicators.

European semester

- 1.13 Key indicators on SGEIs are lacking in the Social Scoreboard of the European semester, which is supposed to help assess the situation with respect to the social rights proclaimed in the European Pillar. The EESC therefore calls for the essential services under principle 20 of the European Pillar of Social Rights to be made an integral part of the European semester's Social Scoreboard.

2. Introduction

- 2.1 Through the Gothenburg Declaration of 17 November 2017 on the European Pillar of Social Rights, the European Parliament, the Council and the Commission committed to fulfilling the promise, set out in the Treaties, of a highly competitive social market economy, aiming at full employment and social progress.
- 2.2 The 20 key principles of the European Pillar of Social Rights seek first of all to close gaps in the Treaties and in this way they help structure the European legal order, manage how fundamental rights are exercised and contribute to aligning the values that apply within national and European orders.
- 2.3 The European Pillar of Social Rights reaffirms some of the rights already set out in EU law and adds new principles that address the challenges arising from societal, technological and economic developments¹. This follows from the recognition of the fact that as things stand, social rights, or at least a portion of them, are – to varying degrees depending on the Member State – not sufficiently regulated and implemented.
- 2.4 As a Member State can be held liable for failure to comply with the general principles of EU law, "for them to be legally enforceable, the principles and rights first require dedicated measures or legislation to be adopted at the appropriate level"².

3. Essential services

- 3.1 Principle 20 of the European Pillar of Social Rights ("Access to essential services") states: "Everyone has the right to access essential services of good quality, including water, sanitation,

¹ See recital 14 of the preamble to the European Pillar of Social Rights.

² See recital 14 of the preamble to the European Pillar of Social Rights.

energy, transport, financial services and digital communications. Support for access to such services shall be available for those in need".

- 3.2 The concept of "essential services" does not exist in the Treaties, which only deal with public services (transport) and services of general interest (economic and non-economic). Principle 20 does not provide any definition of "essential services". It merely cites a few examples without providing an exhaustive list. The concept of "essential services" is, however, well established in the framework of the United Nations' Sustainable Development Goals, where it covers certain services that are also included in other key principles of the European Pillar of Social Rights.
- 3.3 The right to essential services is therefore not limited to those set out in principle 20, but also concerns other principles such as childcare and children's services, healthcare, inclusion of people with disabilities, long-term care, housing, and assistance for the homeless. Implementation of the right to access essential services of good quality will therefore need to be backed up by specific measures for both SGEIs and the areas mentioned above. In this connection, the EESC points out the responsibility and wide discretion Member States have in defining, arranging and financing services of general interest that meet citizens' needs.
- 3.4 In the absence of any definition, and given the examples of services listed under principle 20, it is clear that these are services of general economic interest, and subject to universal service or public service obligations covered by Article 36 of the European Charter of Fundamental Rights and Article 14 TFEU, as well as Protocol No 26 on SGIs.
- 3.5 Principle 20 of the European Pillar of Social Rights therefore simply reaffirms existing rights set out in the Treaty. It has to be acknowledged that the interpretative provisions of Protocol 26 on services of general interest go further than a mere guarantee of "access to quality" and provide for *"a high level of quality, safety and affordability, equal treatment and the promotion of universal access and of user rights"*. The EESC views SGEIs as vital components of a social justice system and is therefore pleased that principle 20 qualifies them as "essential services".
- 3.6 In order to give effect to the stated principle that "everyone has the right to access essential services of good quality", it must be backed up by tangible measures in relation to sustainable development and social cohesion, while also ensuring that:
 - a) the principle is guaranteed through legislative or regulatory provisions that define it and establish how it will be applied in each area;
 - b) it is specified what compensation people can claim if the principle is not respected;
 - c) legal redress, appeals or complaints are possible if the principle is breached.
- 3.7 Services of general economic interest, such as electricity, passenger transport by rail and by road, and electronic and postal communications, known as "network industries", have, since the end of the 1980s, been undergoing a specific, gradual process of Europeanisation and liberalisation with a view to establishing the single market.
- 3.8 However, it quickly became clear that these services cannot function according to common competition and market rules alone, and that specific rules are vital in order to ensure that all

members of the public have affordable access to these services, which are considered to be essential and are recognised as common EU values.

- 3.9 The recognition of these services in primary law was brought up to date by the Treaty of Lisbon. Protocol No 26 TFEU specifies the EU's common values and in particular the six values that must apply to all SGEIs throughout the European Union: "a high level of quality, safety and affordability, equal treatment and the promotion of universal access and of user rights".
4. Evaluating the application of Protocol No 26
- 4.1 No overall assessment has been made of the positive effects (price reduction, diversification of supply) and negative effects (price increases, creation of oligopolies, market skimming, job insecurity, social dumping) of the policy of liberalising SGEIs. Some of the essential services included in the European Pillar of Social Rights make an effective contribution to economic and social progress and to social relations. For other services, the introduction of competition has led to higher tariffs and/or has weakened public service missions³.
- 4.2 Not only do the EU and the Member States have an increased obligation to ensure the proper functioning of SGEIs, which means developing a progressive approach to evaluating their performance, but it is also necessary for decision-making bodies to clearly define the concepts, objectives and missions. Until this is done, these performance evaluations will not be able to guarantee people the SGEIs they have a right to expect from both their national authorities and the European institutions.
- 4.3 At the beginning of the 2000s, the Commission started to draw up an annual cross-cutting evaluation of network industries' performance, based on the methodological note on the horizontal evaluation of SGEIs⁴. These reports were regularly presented and debated at the EESC during public hearings in which all points of view were heard. In 2007, the Commission once again co-organised a workshop at the EESC on a new evaluation methodology based on a study by an external consultant, but the idea of establishing an evaluation of these SGIs was then shelved and forgotten.
- 4.4 The EESC reiterates the demand set out in its own-initiative opinion on "An independent evaluation of services of general interest"⁵, in which it called for an evaluation of SGIs at national, regional or local level in the Member States; for this evaluation to be independent, pluralist and balanced; for it to cover economic, social and environmental aspects; and for it to be based on a set of criteria and conducted in consultation with all stakeholders, using a new harmonised evaluation methodology at EU level based on common indicators.

³ See the Eurobarometer surveys on services of general interest.

⁴ COM(2002) 331 final.

⁵ 267/2008.

5. **Right to access essential services**

- 5.1 The Charter of Fundamental Rights (Article 36) states that "the Union recognises and respects access to services of general economic interest as provided for in national laws and practices, in accordance with the Treaty establishing the European Community" and requires the EU to include them among the fundamental rights, "in order to promote the social and territorial cohesion of the Union".
- 5.2 Key principle 20 of the pillar therefore simply reaffirms the right of every individual to access quality SGIs as a component of the EU's common values. Like Protocol No 26, the pillar does not stipulate the conditions of access, the level of guarantee or any appeal procedures.
- 5.3 The EESC considers that the concept of guaranteed access for all is based on the principles of equal treatment, solidarity, universality, continuity, proximity to the user and affordability.

6. **Equal treatment**

- 6.1 With regard to SGIs, equal treatment is based on equal (universal) access, for users in comparable situations, to national and cross-border services, prohibiting discrimination or social exclusion of any kind whatsoever (nationality, gender, place of residence, disability, age, etc.).
- 6.2 However, equal treatment or the obligation not to discriminate do not prohibit the adoption of measures providing specific advantages for certain categories of users (older people, disabled people or people with reduced mobility, etc.).
- 6.3 For certain services, the right of universal access is intended to be guaranteed either by a universal service or by public service obligations imposed on service providers.

7. **Universal service**

- 7.1 Universal service is justified in the context of liberalising certain SGEIs, where the market alone cannot offer full geographical coverage, affordable prices or an appropriate quality of service. It consists of a "set of general interest requirements ensuring that certain services are made available at a specified quality to all consumers and users throughout the territory of a Member State, independently of geographical location, and, in the light of specific national conditions, at an affordable price"⁶. Until now, universal service has only been defined at EU level in the electronic and postal communications sectors, the electricity sector and the banking services sector.
- 7.2 The definition of universal service therefore only concerns "certain services", i.e. those set out in an exhaustive list. Universal service is therefore not synonymous with universality, since it does not guarantee access to all the services on the market.

⁶ Green Paper on Services of General Interest of 21 May 2003.

- 7.3 This applies specifically to electronic communications⁷, where the services included under universal service have largely been overtaken by technological developments and no longer cater for the modern market communication tools available on the market.
- 7.4 Many Member States, regions and cities are significantly behind on high-speed electronic communications and/or total geographical mobile phone coverage (grey or white areas), which today are a key factor in improving living conditions, for example by facilitating access to healthcare, education and other public services. It follows that the current shortcomings of the "universal service in electronic communications" are only serving to exacerbate the digital divide.
- 7.5 According to the relevant directive here, "the concept of universal service should evolve to reflect advances in technology, market developments and changes in user demand"⁸. In order to do so, the Commission must, in accordance with the above-mentioned directive, review the scope of universal service every three years, in particular with a view to proposing amendments or changes to its definition to the European Parliament and the Council.
- 7.6 The EESC therefore recommends adapting the conditions for accessing electronic communications in line with technological developments, and in particular requiring full geographical coverage for mobile phones and broadband.

8. **Public service obligations**

- 8.1 For some SGEIs which do not benefit from universal service, the universal right of access is covered by public service obligations imposed on the providers of these services.
- 8.2 Public transport of passengers by road and rail, for example, is not provided as a universal service, but is subject to public service obligations, i.e. a "requirement defined or determined by a competent authority in order to ensure public passenger transport services in the general interest that an operator, if it were considering its own commercial interests, would not assume or would not assume to the same extent or under the same conditions without reward"⁹. It follows that public transport services, as they cater to users' needs, do not necessarily have to function according to market rules. However, in many Member States, rail and road passenger transport lines are either cut or under-maintained in rural or low density areas, for profitability reasons. The same goes for other services such as postal services (post office closures) and banking (branch closures).
- 8.3 The EESC therefore calls for the concept of universal access to SGEIs to be clarified, and for legislative measures to be introduced obliging Member States to establish universal access

⁷ Directive 2002/22/EC of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services.

⁸ Recital 1 of Directive 2002/22/EC of 7 March 2002.

⁹ Regulation (EC) No 1370/2007 of 23 October 2007.

indicators for each SGEI (density of service access points, maximum distance to an access point, service regularity, number of offices, etc.).

9. **Affordability**

- 9.1 In the best case scenario, the market can only offer a price determined on the basis of costs and thus may not guarantee access for all to an SGEI at an affordable price. One of the dangers of free competition is therefore the temptation for SGEI providers to supply only those customers perceived as being "solvent".
- 9.2 In order to counter this risk, Protocol No 26 requires Member States to ensure a high level of affordability for each SGEI.
- 9.3 Affordability is defined in terms of the "price of services relative to the income of low/average income consumers (reported for consumers with different income levels)"¹⁰.
- 9.4 The requirement of affordable service is therefore an important factor in tackling social exclusion, enabling everyone to access SGEIs, regardless of their income. However, principle 20 of the European Pillar of Social Rights appears to be more restrictive in that *support for access to such services shall (only) be available for those in need*.
- 9.5 The fact is that, increasingly, affordable access is no longer guaranteed by means of a "reasonable" social tariff, but through social assistance, which is exclusively reserved for the poorest people. However, the poorest are not the only ones who have serious financial difficulty accessing SGEIs.
- 9.6 When the objective of affordable access for all is not met, regulatory authorities may apply price regulation measures. Thus, the Commission and the European legislator have intervened by introducing a regulation to reduce and then abolish charges for mobile communications (roaming charges) within the EU, if the user is travelling in the EU, but not if the user calls someone in the EU from his or her home country. In its proposal for a Regulation on cross-border parcel delivery services, the Commission announced binding measures if the situation of inflated prices charged by cross-border parcel delivery companies did not improve before the end of 2018¹¹.
- 9.7 With regard to the assessment of affordability, for many years now, the EESC has been calling for the concept of affordable SGEIs to be clarified and for legislative measures to be introduced requiring Member States to introduce indicators to determine the affordability of these services.
- 9.8 The EESC reiterates its call for affordability to be determined by identifying a basket of essential services, with the financial contribution of a household for each of these services being set as an acceptable proportion of the social wage/minimum income, above which prices are

¹⁰ COM(2002) 331 final.

¹¹ Proposal for a Regulation COM(2016) 285 final.

deemed to be inflated and require regulatory measures, or should confer an entitlement for public aid.

10. **Quality essential services**

- 10.1 Protocol 26 calls on Member States to ensure a high level of quality of SGEIs, while the Pillar is limited to essential services "of good quality".
- 10.2 In any case, a quality service is one that leaves users satisfied. In order to achieve this, it will be necessary to identify users, their needs and expectations. However, expectations are often only expressed in hindsight, when a user complains about something that has gone wrong.
- 10.3 Quality standards are set at EU level for many SGIs, including postal services, electronic communications, water supply, waste collection, passenger transport and social services of general interest. These standards vary and are sometimes very low. For example, although the majority of Europeans have access to high-quality drinking water, in some Member States many citizens prefer to drink bottled water as the tap water is regarded as having an unpleasant taste. It is necessary to update existing standards regularly to boost consumer confidence and improve the quality of tap water, thereby producing a positive impact on the environment by reducing plastic waste.
- 10.4 Service quality is a key factor in any evaluation such as proposed by the EESC above. The Member States will therefore have to select indicators for SGEIs that focus on perceived satisfaction, covering for example speed, punctuality, reliability, comfort, availability, competence and helpfulness of service providers. Quality also covers aspects such as the environment, working conditions and consumer protection.
- 10.5 Service quality is directly linked to consumer rights. For some SGEIs (rail transport, postal services), European legislation provides for compensation in the event of insufficient quality (delays or cancellations of trains or aircraft, items lost or damaged in the post). Given the huge shortcomings of rail passenger transport in some Member States, the EESC has the unavoidable impression that some service providers prefer to pay (modest) compensation, rather than invest in quality. In addition, in many Member States compensation rights for delays are limited to main lines, while urban, suburban and regional rail passenger services are excluded from any compensation, in line with the derogations permitted under EU law¹².
- 10.6 The EESC calls for the compensation system to be applied in the event of a delay to any journey by rail, irrespective of the distance travelled, and for the right to compensation to be set per half-hour delay in the arrival time in relation to the official timetable or per 15 minutes of delay in the departure time.
- 10.7 With respect to consumer rights, the EESC calls, as a general rule, for compensation for any SGI in the event of failure to comply with a public service obligation.

12 Regulation (EC) No 1370/2007 of 23 October 2007.

11. **European semester Social Scoreboard**

- 11.1 The Social Scoreboard of the European semester is intended to identify the social challenges the Member States face in applying the principles of the European Pillar of Social Rights.
- 11.2 This preliminary analysis tool, combined with a more in-depth analysis at country level, is designed to assess the situation with respect to the social rights set out in the European Pillar based on the key indicators in the Social Scoreboard. However, the essential services under key principle 20 of the Pillar are missing from the Social Scoreboard's headline and secondary indicators included in the statistical annex of the country reports.
- 11.3 The EESC therefore calls for the essential services under principle 20 of the European Pillar of Social Rights to be made an integral part of the European semester's Social Scoreboard.

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The president of the European Economic and Social Committee
