Opinion of the European Economic and Social Committee on the affordability of SGEIs: definition, measurement, challenges, European initiatives (own-initiative opinion)

(2014/C 177/04)

Rapporteur: Mr HENCKS

On 14 February 2013 the European Economic and Social Committee, acting under Rule 29(2) of its Rules of Procedure, decided to draw up an own-initiative opinion on the

Affordability of SGEIs: Definition, measurement, challenges, European initiatives

(own-initiative opinion).

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee’s work on the subject, adopted its opinion on 19 November 2013.

At its 495th plenary session, held on 21 and 22 January 2014 (meeting of 21 January), the European Economic and Social Committee adopted the following opinion by 135 votes to 19, with 12 abstentions:

1. Conclusions and recommendations

1.1 Many citizens in the European Union (EU) face, to different degrees depending on the Member State, severe economic difficulties in accessing essential services, among others in the fields of housing, energy, electronic communications, transport, water, health care and social services.

1.2 A high level of affordability in respect of services of general economic interest (SGEIs) is nevertheless one of the shared values, i.e. values embraced by all EU Member States, set out in Protocol No 26 on Services of General Interest (appended to the Treaties) which must be fully taken into account by the EU and the Member States, within their respective competences, when implementing all their relevant policies.

1.3 There is however no uniform, EU-level definition of or approach to the affordability or financial accessibility of SGEIs, just as there is no instrument with which to measure it: this should be seen in the light of the fact that the Member States enjoy wide discretion within their remit to set up SGEIs.

1.4 The EESC therefore proposes that the EU firstly clarify the concept of affordability of SGEIs for all and adapt it in line with the requirements of the Treaty of Lisbon (Protocol No 26), together with the United Nations Convention on the Rights of Persons with Disabilities, and secondly introduce legislative measures in secondary law, obliging the Member States to:

— define indicators to determine the affordability of a service, together with an independent SGEI performance evaluation mechanism, covering compliance with economic accessibility;

— establish a basket of basic services, the household effort rate of which is set as an acceptable proportion of disposable income. An expenditure ceiling for these services should provide an objective basis for quantifying the concept of affordability and determining the overall percentage of household expenditure above which constitutes excessive cost entitling people, where appropriate, to public assistance;

— define the concept of ‘vulnerable persons’ and ‘disadvantaged groups’ more precisely. In this regard, the European Commission should review the way it makes decisions when checking obvious errors in determining State aid.

1.5 In full respect of the responsibility and competence of the Member States, the inclusion of major SGI data in the European Semester is a condition for strengthening the social dimension of the EU and its market, especially in times of crisis.

2. Introduction

2.1 Services of General Interest (SGIs), whether economic (SGEIs) or non-economic, are based on the necessity of ensuring that all inhabitants of the countries concerned can access those services and fundamental rights. They are closely linked to the objective of economic, social and territorial cohesion pursued by the EU.
2.1.1 The Member States have wide discretion to define, organise and finance SGIs that meet users' needs, on the basis of and with reference to social and civic action. As for SGIs, they follow a commercial approach and subject to EU competition and single market rules, unless such rules prevent them from carrying out their particular missions. Non-economic services of general interest are by definition not bound by a market-based approach and are the exclusive competence of the Member States, on the basis of Article 2 of Protocol No 26.

2.1.2 The Union recognises and respects access to services of general economic interest (...) in accordance with the Treaties, as specified in the Charter of Fundamental Rights attached to the Treaty of Lisbon, which expressly refers to national laws and practices as the basis. The United Nations Convention on the Rights of Persons with Disabilities, ratified by the EU as a whole, establishes minimum standards to protect and safeguard a full range of civil, political, social and economic rights enjoyed by people with disabilities, and these include access to SGIs.

2.1.3 Many Member States associate this right of access with the requirement to provide a service under conditions economically acceptable to all and, for this purpose, apply individual and collective social assistance programmes, to different degrees.

In practice however, many citizens in the EU experience severe difficulty in accessing essential services, especially in the fields of housing, energy, electronic communications, transport, water, health care and social services.

2.2 Lack of access to SGIs may depend on a range of factors: it may depend on highly varied national historical backgrounds, with social models and services differing from one Member State to another. It may also be economic (the price of the service is unaffordable), geographical (the service is not provided in a given area), social (unequal treatment), physical (due to disability) or the fact of being inappropriate to needs and/or technical progress (mismatch/inadequate level of quality and/or safety).

2.3 Regarding SGIs, a high level of quality and safety and affordability, equal treatment and the promotion of universal access and of user rights are six of the fourteen shared values enshrined in Protocol No 26 on Services of General Interest annexed to the Treaty of Lisbon, the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU), which must be fully taken into account by the EU and the Member States, each within their respective competences and within the scope of the Treaties, when implementing all their policies concerning services of general economic interest within the meaning of Article 14 TFEU.

2.3.1 These fourteen values, classified into three groups, are so interdependent — both within and between these groups — that they cannot be ranked in importance.

2.3.2 For example, even if an SGEI is fully affordable it will not meet the requirements of Protocol No 26 if a high level of quality and safety is not assured or if it is not universally accessible to national citizens, or indeed if no distinction is made between different geographical, social or cultural situations within the country of if a national authority prohibits an SGEI in a case where, under national law or custom, a regional or local authority is entitled to establish such an SGEI, thus contravening their essential role and wide discretion.

2.4 The provisions of the above protocol are explicitly described as being 'interpretative' of the fourteen shared values of the EU concerning SGIs. The somewhat relative wording of some of these values, in particular that of a high level of quality, safety and affordability, and the promotion of universal access and of user rights, could raise numerous questions regarding the legal or binding status and the effects of these provisions. Whatever the interpretation, though, the answer to those questions, just like Protocol No 26(1), is clear and simple and corresponds to the interpreted article: in each case the relevant national, regional or local authority enjoys, as part of its competence to create SGIs, wide discretion in defining the various arrangements for each SGEI.
3. The concept of affordability in European legislation

3.1 There is no single, EU-level definition of or uniform approach to the affordability or economic accessibility of SGEIs, just as there is no instrument with which to measure it. Affordability often depends on the subjective perception of the user of what it costs and what it provides in terms of the individual's well-being.

3.2 In general terms, an affordable service is one which citizens 'can readily afford' (Green Paper on the Development of the Single Market for Postal Services (1)).

3.3 A service is entirely affordable if it is provided free of charge to citizens, as in the example of certain cities or regions that provide free urban public transport.

3.4 In order to illustrate the complexity, difficulties and divergences in the way affordability is implemented, the EESC will provide a number of examples of relevant interpretations applied in the housing, telecommunications, electricity and gas sectors. The EESC also emphasises that access to healthcare is being undermined in many Member States in cases where people's incomes are such that they choose not to seek care because they lack sufficient resources. The 2009 report on 'Solidarity in health: reducing health inequalities in the EU' points to a very close link between material want and the resulting health problems.

3.5 The requirement of an affordable price was introduced when legislation was passed on the liberalisation of the network industries, as a vital component of the universal service for telecommunications, electricity and postal services, and as being closely linked to the objective of social and territorial cohesion pursued by the EU.

3.6 The Community approach is based on two views of an affordable price: one with a universal dimension, the other restricted to groups that have low incomes, are disadvantaged or vulnerable, such as people with disabilities or specific social needs. The second is meaningless unless it seeks, in keeping with Protocol No 26, 'the promotion of universal access'.

3.7 It must however be noted that although affordability has become a shared value of the EU that must be upheld by the Member States, some prices such as those for energy, roaming services for telecommunications, transport or housing prices and rents remain excessive compared to the disposable income of a growing sector of the population. Moreover, the definitions of affordability given in various EU rules — set out in non-exhaustive fashion by the EESC below — vary widely and, most importantly, are still far from precise.

3.8 Housing

3.8.1 The household budget survey (EU-SILC), carried out in all the Member States, sets the maximum financial effort for housing at 40% of disposable household income. Above this threshold, housing costs are to be considered unaffordable.

3.8.2 Member States intervene in very differing ways and to highly differing degrees in the workings of their housing markets in order to ensure that every citizen is able to access decent and affordable housing, where appropriate by means of housing assistance. The vast majority of Member States have established social assistance or tax support to help out with what is the main item of essential household expenditure and subsidise parallel supply of what is known as 'social housing' to complement the spontaneous supply on the private market.

3.8.3 Social housing is one way in which the public authorities can respond to the housing needs that are not met by the market, with the aim of meeting all housing needs and securing universal access to decent housing at an affordable price or rent. Twenty-five million European households live in social housing.

3.8.4 Despite these provisions, access to decent housing is no longer affordable for many citizens in the EU. In 2011, 15% of Europe’s population lived in overcrowded or unfit accommodation, and housing costs absorbed an excessive proportion of the disposable income of 17% of households (2).

3.8.5 The Commission’s Decision of 20 December 2011 on the application of Article 106(2) TFEU to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest strictly limits the provision of subsidised social housing to clearly identified disadvantaged citizens or less-advantaged social groups, who owing to solvency constraints are unable to obtain housing at market conditions, raising questions about the values enshrined in Protocol No 26.

3.9 Telecommunications

3.9.1 If the internal market and free competition have helped to drive down telecom per-unit tariffs, this reduction is also due — at least in part — to technological developments and the capping of mobile phone roaming charges by the EU institutions.

3.9.2 Telecoms legislation (3) deems affordability to be related to the ‘affordable price’ of telephone use ‘in the light of specific national conditions’ and to users’ ability to control their expenditure. In the European Commission’s Methodological Note for the horizontal evaluation of SGEIs (4) the planned indicator is based on ‘price of services relative to the income of low/average-income consumers (reported for consumers with different income levels’.

3.10 Electricity and gas

3.10.1 In the electricity and gas sectors, the Commission believes that subsidies or regulation aimed at lowering overall energy prices tend to reduce the incentive for energy-efficient behaviour, do not specifically target those most in need, and can distort competition (5).

3.10.2 The Member States are therefore asked to take measures to ensure adequate protection for vulnerable consumers (6). Direct consumer subsidies by public authorities are only allowed if the concept of energy poverty is clearly defined, and if vulnerable people are clearly identified at national level. Energy supply must be maintained for a certain period, even in the event of non-payment, for consumers experiencing financial difficulties.

3.10.3 It should be noted that the concept of energy poverty relates only to the electricity and gas sectors and does not cover other fuels used in particular for district heating.

3.10.4 EU energy policy seeks to reduce energy consumption with the support of energy efficiency measures or thermal insulation of homes in order to increase the economic accessibility of energy services. Improving energy performance however requires substantial investment, on which an economic return through reducing energy expenditure will only be achieved over the long term. The EESC has drawn up practical proposals on this question in its own-initiative opinion For coordinated European measures to prevent and combat energy poverty (CESE 2417/2013).

4. Measuring affordability

4.1 In 2004, as part of its evaluation of the performance of SGEIs provided by network industries, the Commission measured the affordability of the tariffs applied by these networks using an indicator based on the share of annual income a user must spend each year for a particular bundle of services.

4.2 The Eurobarometer survey of European citizens’ satisfaction with network industries gives only a subjective assessment of the affordability of these services and provides at best an indication of general trends.

4.3 There are no official EU criteria for calculating the economic accessibility of SGEIs, EU texts focus more on principles and harmonised rules for setting ‘cost-oriented’ or ‘more cost-oriented’ prices, or on the ‘recovery of costs’ (as required under the Water Framework Directive), while ensuring the supply of services to the population as a whole.

(2) Directive 2002/22/EC.
(4) COM(2012) 663 final Making the internal energy market work.
4.4 Cost-oriented tariffs, however, even without a profit margin for the provider, are not the same thing as economic accessibility and nor do they guarantee access for all to services at affordable prices.

4.5 According to the 2003 Green Paper on Services of General Interest, the Member States must define certain of the criteria to be applied in determining the affordability of a service. They must ensure that the criteria established uphold a series of consumer and user rights, such as accessibility to SGEIs for people with disabilities, while putting in place a price control mechanism and/or by distributing subsidies to the persons concerned. Such criteria could be linked for example to the price of a basket of basic services, to be defined by the Member States, the maximum price of which (the effort rate) is set as an acceptable proportion of the disposable income of the most vulnerable people.

5. Role of the European Union

5.1 According to the Green Paper on SGIs, ‘where there is effective competition, market mechanisms may ensure the provision of affordable services of an adequate quality, thus greatly reducing the need for regulatory intervention’.

5.2 However, in its Communication on A Quality Framework for Services of General Interest in Europe (COM(2011) 900 final) — in response to the new Treaty context — the European Commission points out that ‘this’ (i.e. the single quality framework) ‘will ensure that in the coming years the regulatory environment at EU level continues to reinforce the social dimension of the single market, to take better account of the specific nature of these services, and to meet the challenge of delivering them in a way which incorporates the values of quality, safety and affordability, equal treatment, universal access and users’ rights recognised in the Protocol’ (No 26).

5.3 The public service obligations stipulated by European legislation also include accessibility and affordability for all consumers, with specific provisions for vulnerable or disabled consumers.

5.4 In the light of the above, the Commission will have first to secure closer coordination between its own departments and create a fully-fledged statistical tool by cross-referencing and compiling data (while scrupulously observing data confidentiality). It will then have to clarify the concept of the affordability of SGEIs for all and adapt this legislation to the requirements of the Treaty of Lisbon (Protocol No 26) and the United Nations Convention on the Rights of Persons with Disabilities, while at the same time proposing legislative measures introducing into secondary law an obligation for the Member States to:

— define indicators to determine the affordability of a service, together with an independent SGEI performance evaluation mechanism, covering compliance with economic accessibility;

— establish a basket of basic services, for which the maximum acceptable household effort is set as a proportion of standard disposable income. In determining the affordable price of a basket of services, different services should not be linked to disposable income on a sector-by-sector basis. All services judged essential (to be decided by the Member States in keeping with the principle of subsidiarity) should be considered together in order to set an overall percentage of household spending above which expenditure is excessive (as is done for housing). In that event, financing methods should be introduced in accordance with Article 14 TEU guaranteeing access for all to SGEIs;

— define the concept of ‘vulnerable persons’ and ‘disadvantaged groups’ more precisely. In this regard, the European Commission should review the way it makes decisions when checking obvious errors in determining State aid. Member States should be given the discretion to set conditions for access to affordable prices in a way that takes account of people's needs and national or local preferences, as well as the real needs of disadvantaged citizens or socially less advantaged groups, in accordance with the provisions of Protocol No 26 on services of general interest.

5.5 In full respect of the responsibility and competence of the Member States, the inclusion of major SGI data in the European Semester is a condition for strengthening the social dimension of the EU and its market especially in times of crisis.


The President
of the European Economic and Social Committee
Henri MALOSSE
The following amendments, which received at least a quarter of the votes cast, were rejected during the debate:

**Point 1.4**

The amendment to point 1.4 is linked to the amendment to point 5.4 and they were voted on together.

Amend as follows:

1.4 The EESC therefore proposes that the European Union firstly clarify the concept of affordability of SGEIs for all and adapt it in line with the requirements of the Treaty of Lisbon (Protocol No 26), together with the United Nations Convention on the Rights of Persons with Disabilities, and secondly introduce legislative measures in secondary law, obliging the Member States to:

— define indicators to determine the affordability of a service, together with an independent SGEI performance evaluation mechanism, covering compliance with economic accessibility;

— establish a basket of basic services, the household effort rate of which is set as an acceptable proportion of disposable income. An expenditure ceiling for these services should provide an objective basis for quantifying the concept of affordability and determining the overall percentage of household expenditure above which constitutes excessive cost entitling people, where appropriate, to public assistance;

— define the concept of ‘vulnerable persons’ and ‘disadvantaged groups’ more precisely, so that, in this regard, the European Commission should can, where necessary, review the way it makes decisions when checking obvious errors in determining State aid.

**Reason**

Point 1.4, first paragraph:

It is not up to the Parliament, Council or Commission to establish definitions for values arising from Article 14 and interpreted by Protocol 26 (see also amendment to point 3.9.2, and associated reason). The reference to the UN convention in question (on the rights of persons with disabilities) is reinserted in the amendment to point 5.4, third bullet point.

Point 1.4 — second bullet point:

Delete the second bullet point, because it is not up to the Commission or the Member States to establish a specific package of SGEIs. For the sake of clarity, it is worth reiterating the argument in full here: in European primary legislation, ‘public services’ does not mean the same thing as ‘SGEIs’. In the Treaty of Rome, SGEIs are referred to in Article 90(2) (now Article 106(2) of the Lisbon Treaty); Article 77 (now Article 93), on transport, refers to ‘the concept of a public service’. This concept is a political term for a particular form of transport policy, and thus has nothing to do with a specific, concrete service, which is an essential precondition for being designated as an SGEI; this can only be done by a Member State or one of its subordinate authorities, and only for that country, region or local authority. Moreover, the changes that the Lisbon Treaty made to EU legislation on SGEIs weakened rather than strengthened the EU’s influence in comparison with national competences (¹). Indeed, the Council’s and Parliament’s new regulatory powers under Article 14 relate only to ‘principles and conditions, particularly economic and financial conditions’ to enable SGEIs to operate — a competence that was already held largely by the European Commission as the guardian of the Treaties. The Council and Parliament thus quite explicitly have no authority over the 14 ‘shared values’, of which affordability is one. They are, and remain, an exclusively national competence. It is therefore clear that providing all of Europe’s inhabitants with an acceptable quality of life is not a question of national SGEIs, but of using sectoral legislation to bring all Member States up to the desired minimum level. This is the direction that the EESC’s opinions should take, so that the objective can definitely be achieved with the agreement of and, more importantly, action from the European Commission (which has already rejected three own-initiative opinions advocating the SGI path).

¹ As the texts came from the Dutch Government, reference should be made, with regard to their development and intent, primarily to the proceedings of the Dutch Parliament: Kamerstukken I, series 31384 (R1850) C, and Kamerstukken II, series 31384 (R1850) No 4, parliamentary term 2007-2008.
Point 1.4 — third bullet point:

There is no logical connection between the first and second sentences of the third bullet point. The proposed amendments provide that connection. The reference to the UN convention in question (on the rights of persons with disabilities) is reinserted in the amendment to point 5.4, third bullet point.

Point 5.4

Amend as follows:

5.4 In the light of the above, the Commission will have first to secure through closer coordination between its own departments, and create a fully-fledged statistical tool by cross-referencing and compiling data (while scrupulously observing data confidentiality). It will then have to clarify the concept of the affordability of SGEIs for all and adopt this legislation to the requirements of the Treaty of Lisbon (Protocol No 26) and the United Nations Convention on the Rights of Persons with Disabilities, while at the same time it could proposing legislative measures introducing into secondary law an obligation for the Member States to:

— define indicators to determine the affordability of a service, together with an independent SGEI performance evaluation mechanism, covering compliance with economic accessibility;

— establish a basket of basic services, for which the maximum acceptable household effort is set as a proportion of standard disposable income. In determining the affordable price of a basket of services, different services should not be linked to disposable income on a sector-by-sector basis. All services judged essential (to be decided by the Member States in keeping with the principle of subsidiarity) should be considered together in order to set an overall percentage of household spending above which expenditure is excessive (as is done for housing). In that event, financing methods should be introduced in accordance with Article 14 TEU guaranteeing access for all to SGEIs;

— define the concept of ‘vulnerable persons’ and ‘disadvantaged groups’ more precisely. so that in this regard, the European Commission should, if necessary, review the way it makes decisions when checking obvious errors in determining State aid. Member States should be given the discretion to set conditions for access to affordable prices in a way that takes account of people’s needs and national or local preferences, as well as the real needs of disadvantaged citizens or socially less advantaged groups, also in accordance with the provisions of Protocol No 26 on services of general interest the United Nations Convention on the Rights of Persons with Disabilities.

Reason

Point 5.4, first paragraph:

— The first sentence has the same objective but expresses it in a more elegant way. It is not for the EESC to express a view on the internal organisation of the European Commission.

— It is not for the Commission to define values from Article 14, as interpreted by Protocol 26 (see also amendment to point 3.9.2 and reason).

— The reference to the United Nations Convention is moved to the bullet points.
Point 5.4 — second bullet point:

This contradicts the third bullet point. It would be better to delete the second bullet point, as it is not for the Commission to oblige the Member States to establish a specific basket of SGEIs. For the sake of clarity the overall argument should be reiterated here: in European primary law ‘public services’ are not the same thing as SGEIs. SGEIs are already mentioned in Article 90(2) of the Treaty of Rome (now in the Treaty of Lisbon, Article 106(2)). Article 77 (now Article 93), on transport, deals with the concept of public services. This is a political name for a specific form of transport policy and therefore has nothing to do with the provision of a specific service, which is a precondition for being designated an SGEI, exclusively by a Member State or a delegated authority of the Member State, a designation which is valid only in the relevant country, region or local area. The changes to the rules on SGEIs introduced by the Treaty of Lisbon have weakened the European dimension of SGEIs rather than strengthened it, in favour of national competences (2). The new regulatory powers of the Council and the Parliament, based on Article 14, only concern the ‘principles and conditions, particularly economic and financial conditions, which enable (SGEIs) to fulfil their missions’, a power which previously resided mainly with the European Commission, the guardian of the Treaties. The Council and the Parliament thus have no powers with regard to the 14 ‘shared values’, of which affordability is one. The rules thus are, and remain, an exclusively national competence. In order to ensure that all Europeans can enjoy an acceptable quality of life, the path to take is thus clearly not that of national SGEIs but rather the route of sectoral legislation, requiring all Member States to achieve the desired minimum level. EESC opinions should focus on this and this approach will undoubtedly meet with approval and, more importantly, action by the European Commission, which has already rejected the previous three opinions arguing that the SGI route should be taken.

Point 5.4 — third bullet point:

— There is no logical link between the first and second sentences of the third bullet point. This is corrected by the proposed amendment.

— Protocol 26 contains no provisions on ‘disadvantaged citizens or socially less advantaged groups’. A call for compliance with a UN convention is never out of place, however.

Outcome of the vote:

For 110
Against 44
Abstentions 12

(2) As the texts originated from the Dutch government, their history and significance can best be elucidated by reference to the proceedings of the Dutch parliament. Upper and Lower Chamber documents, series 31 384 (R 1850) C, No. 4, 2007-2008.