Opinion of the European Economic and Social Committee on Policy guidelines for services of general interest and globalisation
(2009/C 100/06)

On 17 January 2008, the European Economic and Social Committee decided to draw up an own-initiative opinion, under Rule 29(2) of its Rules of Procedure, on

Policy guidelines for services of general interest and globalisation.

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 24 September 2008. The rapporteur was Mr Hernández BATALLER.

At its 448th plenary session, held on 21, 22 and 23 October 2008 (meeting of 23 October), the European Economic and Social Committee adopted the following opinion by 50 votes to 2, with 1 abstention.

1. Conclusions and recommendations

(A) The EESC calls on the other Community institutions to prepare a Community initiative for an in-depth debate on the need to establish policy guidelines for services of general interest and globalisation.

(B) The Committee urges the Commission, in its assessment reports on services of general interest (SGI), periodically to dedicate a chapter to globalisation and its potential effects on services of general interest.

(C) With regard to public procurement, and without prejudice to the need to innovate through the provision of information society services (1), developments should attempt to retain the basic features of these services and establish a framework enabling them to be set up properly (e.g. as regards telemedicine, professional ethics and data confidentiality).

(D) A boost should be given to the future establishment of global governance, which can be based on the balanced involvement of international organisations, the Member States and other interested parties.

(E) The ILO and the WHO, which work in the fields of labour and health respectively, should also be given observer status within the WTO, to enable them to play a role in world governance.

(F) A consultative forum tasked with setting out and revising the measures to be adopted for SGI could contribute to this governance and to following up compliance with the principles and values that underpin SGI.

(G) As to Global Public Asset Management, a debate should take place on key aspects for the future with a view to global governance of such assets. At the Community level, a European action programme should be established, setting out the arrangements for funding these assets.

This global governance should be concerned with managing these Global Public Assets, further building on the approach started by the Heiligendamm G8 summit on biodiversity and energy resources.

2. Introduction

2.1. Services of general interest undeniably play such a major role in the daily lives of Europe’s citizens that their contribution to social, economic and territorial cohesion and to the EU’s sustainable development forms an integral part of the European social model (2). They also complement and move beyond the internal market, forming a pre-requisite for the economic and social wellbeing of both individuals and businesses (3).

2.1.1. Globalisation has highlighted the phenomenon of economies and borders opening up, as the result of increased trade, the movement of capital, people and ideas, the distribution of information, knowledge and skills and a process of deregulation. This process, which is taking place in every part of the world and in every industry, is not new, but has certainly gained momentum in recent years.

(1) EESC opinion on ‘Promoting broad public access to the European digital library’, OJ C 162, 25.6.2008, p. 46, point 1.3.


2.1.2. Globalisation generates myriad opportunities, although it still represents one of the greatest challenges facing the European Union today. In order to fully exploit this phenomenon's potential for growth and ensure that its benefits are equitably distributed, the European Union is attempting to establish a model of sustainable development through multilateral governance, in order to reconcile economic growth, social cohesion and environmental protection.

2.2. Nevertheless, economic globalisation is shaping a new landscape in which the decisions taken by a number of international bodies, such as the WTO, take on considerable importance and could jeopardise the very survival of SGI as an identifying feature of this model.

2.3. Against this backdrop, there is a need to link the relevant international legal mechanisms, to ensure that the EU and its Member States guarantee the viability of SGI without resorting to strategies that hamper the implementation of the principles of international free trade or undermine the competitiveness of the European economy.

2.3.1. The EU institutions should also pay particular attention to the workings of the self-regulating bodies that attempt, at the global level, to set common implementation guidelines for public authorities in areas relating to SGI (see, for example, the International Telecommunication Union/ITU).

2.3.2. Article 36 of the EU Charter of Fundamental Rights (1) 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 treaties, in order to promote social and territorial cohesion, for the first time establishing a link between these services and fundamental rights (2).

2.3.3. The Lisbon Treaty significantly strengthens the European Union's role in the economic and trade spheres. This EU activity at international level is going from strength to strength, following the major boost it has received through the creation of the World Trade Organization in 1995.

2.3.4. The Lisbon Treaty contains a number of provisions that apply to all of the EU's external activities under Chapter I of Title V of the Treaty on European Union (TEU). In turn, the regulations that form Community policy are currently set out in Title IX of the TEC, Part Three, Articles 131 to 134, which refer to the 'common commercial policy'. The treaty uses this expression to designate a set of institutional mechanisms for taking decisions in specific areas in order to achieve certain goals, thus enabling the Community to act as one on such matters (3).

2.3.5. The aims deemed in Article 131 TEC to be inherent to Community policy are to contribute to (a) the harmonious development of world trade, (b) the progressive abolition of restrictions on international trade and (c) the lowering of customs barriers.

2.3.6. Furthermore, account should be taken of the effects that the aims of the Community's different cross-sectoral policies, such as culture, public health (4), consumer protection and industry, could have on the shape of Community commercial policy. Industry, together with services, is perhaps the area most likely to have a considerable and problematic influence on the implementation of the common commercial policy.

2.3.7. The EESC has already pointed out that the reform of the Treaties breaks new ground on services of general interest by including in the provisions on the functioning of the Union a clause of general application on services of general economic interest (SGEI) (Article 14) which is to be applied to all EU policies, including on the internal market and competition, and a protocol appended to the two treaties on all services of general interest, including services of non-economic general interest (5).

2.4. In this field, the signing of the Lisbon Treaty opens up new horizons for European integration, with new provisions providing for the possibility of establishing a new supranational legal framework that is more appropriate to defining and regulating access to and operation of such services in all the EU Member States. Specifically, this would cover:

(4) EESC Opinion on 'Improving quality and productivity at work', OJ C 224, 30.8.2008, p. 87.
— the key role and broad discretionary power of national, regional and local authorities to provide, commission and organise SGEI so as to meet users' needs as effectively as possible,

— the diversity of SGEI and the disparity in users' needs and preferences that can arise from their different geographical, social and cultural situations,

— a high level of quality, security and economic accessibility, equal treatment and the promotion of universal access and users' rights.

2.4.1. Certain measures in relation to managing globalisation promoted by multilateral international bodies such as the WTO could consolidate this position, especially through its arbitration panels, which could play a particularly important role.

2.5. This supranational approach would make it easier to exert significant influence within the international community and thus to carry out the measures needed to eradicate the threats to our social model, which should convey the idea of a prosperous, democratic, green, competitive, solidarity-based and socially inclusive area for all of Europe's citizens (1).

2.6. A number of dimensions or levels can thus be identified in the current international context that require the EU to adopt a differentiated strategic approach. These include:

2.6.1. managing global public assets (air, water, forests, etc.); according to the vague declarations of solidarity, such as those set out in the Declaration on the Establishment of a New International Economic Order (UN General Assembly Resolution 3201 of 25.1.1974), the EU should promote the creation of a supranational framework that is consistent with any relevant international agreements and decisions that might be adopted;

2.6.1.1. Global public assets are goods or services that are crucial to individuals' wellbeing and to the balance between societies in the world's northern and southern hemispheres. The provision of these global public assets cannot be left solely to national authorities and the markets: international cooperation is needed to preserve and produce them.

2.6.2. maintaining and developing a number of services provided jointly in the general interest of the EU public, such as Galileo, and which require considerable public investment;

2.6.3. allocating powers between the EU and its Member States with regard to regulating access to certain universal electronic communication services, such as the Internet;

2.6.4. defining the tasks of subnational bodies (federal, regional and local) that currently maintain, manage and regulate the provision of social services, against the background of the future implementation of international agreements that open up trade in services in sectors where liberalisation has not yet taken place or where it is not an option;

2.6.5. and defining a differentiated legal and political strategy on the future situation of network-provided SGI, as well as other services;

2.6.6. Unfortunately, no process for dealing with SGI exists in the current international fora, to uphold and disseminate their principles and values.

2.6.7. Nevertheless, since January 2003, six international organisations (the World Bank, UNCTAD-the United Nations Conference on Trade and Development, the FAO, the IMF, the OECD and the UN) have had observer status in the WTO, in keeping with the principle of a nascent system of world governance – for future development – setting the rules of international law (multilateral agreements on the environment, international labour agreements, human rights and the economic and social spheres). Two organisations, however, – the ILO and the WHO – have not been given this status, which means that the issues of employment and health do not form part of this budding system of world governance – a shortcoming the European Union should strive to rectify.

3. The legal acquis on services of general interest, which the EU should retain under the GATS-WTO Agreement

3.1. In the last ten years, the EU's institutions have made steady progress on drawing up a blueprint and a legal framework for SGI, but have failed to establish a comprehensive legal framework for this area (2).


3.2. Nevertheless, it is worth noting the coherent position of the European Economic and Social Committee which, in successive opinions (1), has maintained a consensual and steadfast position on the key legal aspects of services of general interest, with regard to (2):

— observing the principles of equality, universality, affordability, accessibility, reliability, continuity, quality and effectiveness, while guaranteeing users’ rights and achieving economic and social viability,

— taking account of the specific needs of certain groups of users such as disabled, dependent or disadvantaged persons, etc.

3.3. The EESC therefore agrees that it would be inappropriate to produce an exhaustive list of SGI; instead, the focus should be on their specific purpose, although SGEI typically have to try to achieve a series of trade-offs:

— between markets and the general interest,

— between economic, social and environmental objectives,

— between users (individual users, including disadvantaged groups, businesses, local authorities, etc.), not all of which have the same needs and interests,

— between Member State competences and Community integration (3).

3.3.1. In turn, the purpose of social services of general interest (4) is to address all social disadvantages resulting from: sickness, old age, inability to work, disability, lack of job security, poverty, social exclusion, substance addiction, family and housing problems, and problems linked to the integration of foreigners.

3.3.2. Without prejudice to national authorities’ freedom of choice, the EESC considers that these services of national, regional or local interest should, by way of information, include, but not be limited to, services relating to compulsory education, health and social protection, cultural, charitable, social or solidarity-based activities, audiovisual services, and water distribution and sanitation (5).

3.4. The EESC considers that what is important here is to focus on the specific purpose of SGI and on the requirements (public service obligations) imposed on them when carrying out their work and which should be clearly defined.

3.5. The Protocol on SGI appended to the Lisbon Treaty provides an interpretation of the concept of SGI that broadly reflects the EESC’s own position on the matter. This is the first time that EU primary law has covered this specific issue and, given its binding nature, it will result in a solid guideline for EU institutional action, both within the territory of its Member States and beyond.

3.6. Specifically, Article 2 of the protocol states that ‘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’.

3.6.1. Although the protocol implicitly distinguishes between economic and non-economic SGI, given the absence of any institutional act classifying such services, and in light of the provisions of the Declaration in relation to the delimitation of competences (appended to the Final Act of the 2007 IGC) and of the Protocol on the exercise of shared competence (appended to the TEU and the TFEU), the position of the Member States on this matter remains the most appropriate legal guideline.

It would therefore be extremely useful to monitor the European Commission’s evaluations of the Member States’ implementation of the Services Directive, given their future impact on how the EU negotiates and concludes agreements on opening up trade in the services that it regulates.


3.6.2. EU action in this area consequently remains dependent on two factors:

(a) when drawing up and adopting future acts of secondary legislation, account should be taken of Members States’ legal traditions concerning the concept, categories and modus operandi of SGI;

(b) international agreements, including those signed by organisations in which the EU and its Member States are represented, and common positions in any negotiating round or international conference, should be established on the basis of joint consultation between the Member States and the EU and should always reflect the key aspects contained in the Lisbon Treaty and in Member States’ legal systems regulating SGI.

4. The specific case of GATS/WTO

4.1. The World Trade Organization (WTO) is the international body responsible for the worldwide rules governing trade between countries and operates on the basis of a multilateral system. The pillars on which the WTO is founded are the agreements that have been negotiated and signed with the WTO by most of the countries involved in world trade (1).

4.2. The organisation’s main task is to ensure that trade flows are as fluid, predictable and free as possible. Almost all decisions are adopted by consensus amongst all member countries and are then ratified by their respective parliaments. Trade disputes are resolved through the WTO dispute settlement mechanism.

4.3. The General Agreement on Trade in Services is the first set of principles and rules agreed on multilaterally to govern the international trade in services. It sets out the range of services that WTO members are prepared to open up to external competition and specifies the degree of openness permitted for these markets, which include some SGEI, such as financial services, electronic communications, postal services, transport and energy, amongst others.

4.4. The EESC has already urged the other Community institutions (2) to ensure that the guiding principles for SGI inform the EU’s stance in trade negotiations, in particular at the WTO and in the General Agreement on Trade (GATS). The Committee considered it unacceptable for the European Union to give commitments in international trade negotiations to liberalise sectors or activities that have not been agreed beforehand in line with the Treaty rules specifically governing SGI. The Member States must retain the power to regulate services of general interest in order to achieve the social and development aims that the Union has set itself means that unregulated SGI must be excluded from the scope of such negotiations.

4.5. Article 1.3 (b) of the General Agreement on Trade in Services (GATS), excludes from its scope ‘services supplied in the exercise of governmental authority’ and letter c) of the same article considers these to be ‘any service (in any sector) supplied neither on a commercial basis nor in competition with other suppliers’.

4.5.1. Since the GATS does not refer to ‘services of general interest’ in the strict sense of the term, except within the meaning of Article XXVIII letter c) ii (3), it gives rise to considerable uncertainty when it comes to establishing an agreed definition and an appropriate international framework for regulating the operation of SGI within the WTO, which could result in some provisions of Community law being called into question.

4.5.2. Also, given the large number of governmental (or public) measures, to which the GATS would apply in line with Article 1.1 of this agreement (4), and the position of the appeal body, which is clearly in favour of applying the agreement to any measure that is not sufficiently justified and which distorts trade in services (5), the EU must adopt a unified and firm stance in the WTO, upholding the common principles and values that form part of the Community acquis.

4.5.3. The only exception to this rule is set out in Article 2 (a) and (b) to the Annex to the GATS on air transport services, which excludes ‘traffic rights, however granted, or services directly related to the exercise of traffic rights’ from the scope of the agreement and from its dispute settlement procedures.


(3) This provision, which is concerned with ‘definitions’, considers ‘measures by Members affecting trade in services’ to include ‘the access to and use of, in connection with the supply of a service, services which are required by those Members to be offered to the public generally’.

(4) Which states: ‘This Agreement applies to measures by Members affecting trade in services’.

4.6. This situation gives rise to various options on which the WTO will have to take a position, including the following:

4.6.1. It would in any event make sense to promote an agreement with the other contracting parties to define the concept of ‘a service supplied in the exercise of governmental authority’ contained in Article I:3 of the GATS. For this purpose, the provision set out in letter b) of that article, which broadly covers the liberalisation of any service in any sector of economic activity, does not prevent countries from adopting derogations that exclude the liberalisation of social services and services of general interest. Such derogations would not be in breach of the obligations imposed by the GATS to ensure that trade in services is not hindered.

4.6.2. The different perspectives from which the delivery of a service can be evaluated and, where appropriate, classified as an SGI for the purpose of applying the GATS, depending on whether the focus is on the service’s consumers or on the entity providing the service. SGI could be excluded from the scope of the GATS only on grounds of upholding the general interest, either at Community or Member State level, and in order to protect the service consumer, given that it is irrelevant here whether the service is provided by an entity that is public or private, national or foreign.

4.6.3. The need to bring the Community concept of public credit institutions and financial services in the public interest (e.g. retirement plans and public pensions) into line with the concept set out in Article 1 (b) 3rd sub-paragraph of the GATS Annex on financial services, which considers ‘other activities conducted by a public entity for the account or with the guarantee or using the financial resources of the Government’ to be ‘services supplied in the exercise of governmental authority’.

4.6.4. The finance G-20 (1) could act as a catalyst for the decisions to be taken by the specialist international organisations (such as the WHO, FAO, the World Bank, IMF, etc. ...) in the field of financial services and for safeguarding the principles and values that underpin services of general interest.

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The President
of the European Economic and Social Committee
Mario SEPI

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(1) The finance G20 gathers together, in addition to the G8 countries, 11 finance ministers and central bank governors, representing 85% of the world’s GDP, plus the European Union (in the form of the country holding the Council presidency and the President of the European Central Bank).