

# INTRODUCTION

## European Socialists call for European Legal Framework for public services

Access to high-quality public services is a key political issue. Good schools and hospitals, clean water, safe and reliable transport and energy, for example, figure in most definitions of a good quality of life. Now the PES Group in the European Parliament is calling for action to safeguard and enhance public services throughout the European Union.

## The importance of public services

Public services are not only an essential element in the quality of life of individual citizens. They have a key role to play in the EU's flagship Lisbon strategy, which aims to build on the strengths of Europe's social and economic model to create the world's most dynamic, cohesive and sustainable economy. Good public services can help to overcome economic stagnation, social exclusion and isolation; strengthen social and territorial cohesion; and improve the functioning of Europe's internal market and its external competitiveness.

High-quality public services - open and transparent, with equal access for all - are therefore essential elements in the European model of society. Market forces alone cannot ensure the public services we need. That is why public authorities at every level are deeply involved in providing, regulating, organising or - to various degrees - financing or supporting such services. It is not the EU's job to interfere in the provision of such services - instead, we must insist that the EU should create a legal framework which allows public authorities at every level to do their job of safeguarding the public interest in provision of these services. And the EU has also a role to play in guaranteeing adequate standards across the European Union, making good public services a tangible expression of European citizenship.

## Different National Traditions

Throughout Europe, good public services are seen as an essential element in a civilised society. But national traditions - what is provided, how and by whom - vary greatly, creating misunderstandings and confusion about what exactly is meant by public services and a reluctance even to attempt to develop common European criteria and guidelines.

National, regional and local authorities are attached to their autonomy to define their policies for their citizens in their own way. But in practice they are often confronted with interference by the European Commission or by the European Court of Justice, which have judged their activities from the perspective of the EU's internal market rules - for example, deeming cross-subsidisation to be contrary to state aid rules; imposing onerous public procurement obligations; or treating some public service obligations as barriers to the European single market.

This experience has shown that we have neither effective safeguards for local autonomy, nor the legal certainty which public service providers, public authorities, private businesses and service users need. These are the central problems which a European framework directive must address.

## What are public services? Grappling with law and jargon

Different people mean different things by "public services". Some people think of public services as being those provided, or financed, by the public sector. For others, the key criterion is whether they are provided "in the public interest" ... and in this complicated debate, many other definitions have been offered.

In the PES Group's proposal for a legal framework, we talk about "**services of general interest**" (SGI's for short), because we are concerned about services where there is a wider public interest in their availability, quality and accessibility, regardless of whether they are publicly owned. And in line with Article 16 of the EU Treaty, we talk also about "**services of general economic interest**" (SGEI's) - which are those most likely to be affected by Europe's internal market rules.

The idea behind Article 16 is to single out those services which could significantly affect the operation of the single market, because they are economic in character, from non-economic services which do not. Non-economic services, including for example police and the administration of justice, are seen as matters wholly for national and sub-national government, on which the EU has no competence. Unfortunately, current EU law gives no clear guidance on how to distinguish between services of general economic interest, services of general interest and other services – which means that it is not clear, in individual cases, whether and to what extent EU rules on the single market apply.

The aim of an EU framework directive must be to clarify the situation, in order to **safeguard local autonomy, and the principle of subsidiarity**, by defining the relationship between - on one hand - single market rules and - on the other - the pursuit of public interest objectives in the provision of those services of general interest which do have a significant economic dimension and could affect the operation of the single market. Following Treaty usage, we shall call the latter Services of General Economic Interest.

### **Confusion and Uncertainty in Current Laws**

Although the proposed Constitutional Treaty, once ratified, would provide constitutional safeguards for services of general interest, detailed legislation - accumulated over many years - leaves great practical uncertainty, because the Treaty sets out only the most general principles governing public services<sup>1</sup>, whereas there is a detailed body of EU legislation interpreting and implementing its single market provisions.

It is not clear to what extent services of general interest or general economic interest are covered - for instance - by competition law, single market legislation, or rules designed to regulate subsidies or open up public procurement. The law evolves through the - often unpredictable - twists and turns of Commission or European Court judgements. And the liberalisation of various public services networks over the years - such as telecoms, posts, energy and rail - has been based each time on different rules, adding to the legal complexity and uncertainty.

Without a clear legal framework, the financing and management of public services in Europe depend on the unpredictable development of case law and judicial interpretation. The Commission's recent Green and White Papers on Services of General Interest, and the Communication on Social Services of General Interest<sup>2</sup>, have disappointed those who hoped for a new, surer legal base for public services: the Commission documents say nothing about the possible content of a European legal framework on public services.

### **Our Call for Action: a sure legal base for Europe's public services**

To safeguard services of general interest and put an end to legal uncertainty, Europe needs - without delay, and in parallel to current work on the broader Services Directive - a general EU legal framework for public services, complementary to existing sectoral and national provisions, and introduced on the basis of joint decision-making with the European Parliament.

The new legal framework must:

- clarify the division of responsibilities between the EU and Member States
- introduce criteria for a clear distinction between services of general "economic" and "non-economic" interest, to which different legal provisions apply
- enshrine the sovereignty of local authorities in the design and management of the public services for which they are responsible
- guarantee citizens' right to a local input, ensuring that their needs, claims and problems are examined promptly and directly, and protecting consumer and civil rights

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<sup>1</sup> Broadly, that the EU and Member States must ensure the conditions in which operators of so-called "services of general economic interest" (see next section) can fulfil the public service objectives assigned to them.

<sup>2</sup> COM (2003) 270, COM (2004) 374, COM (2006) 177.

- respect the need for specific sectoral legislation for some services, and establish a clear relationship with such legislation, and with the Services Directive currently before the Parliament
- guarantee respect for the principles of transparency; openness; solidarity; a high quality of service; universality; equality of access; partnership with civil society; workforce participation; and a role for the "third" sector
- clarify the principles governing the funding of public services.

The actual definition, formulation, organisation and funding of services of general interest, whether economic or non-economic, must remain a task for Member States and their regional and local authorities. Subject to meeting the key standards and criteria set out above, the PES Group envisage the widest variety of solutions for the provision of services at local level, responding to local needs.

### **Breaking the deadlock – a draft Framework Directive**

Despite repeated calls from the European Parliament, and from the Barcelona European Council of 2002, the Commission has failed to produce legislative proposals for services of general interest and general economic interest. They have repeatedly stalled, claiming that the subject is simply too complicated, that a Directive cannot address the many problems while taking account of the hugely differing national traditions in this area. The truth is that the present Commission is in thrall to a narrow, neo-liberal agenda: their difficulty with services of general interest is that they have no interest in legislation which sets limits to the sway of markets. Public services are not their priority.

It is time to call the Commission's bluff. To answer their claim "it can't be done", the PES Group has done it. Last September, the PES Group appointed a group of independent legal experts<sup>3</sup> to draft a European Framework Directive on public services. We also invited a wide range of organisations representing service providers, public authorities and service users to contribute to the group's work<sup>4</sup>. The expert group met three times, together with the participating organisations, and in February 2006 presented an outline framework directive, for debate, to a public seminar hosted by the PES Group. The Group, with the help of external legal expertise, then finalised the draft framework directive, which is now presented in this document.

Our draft aims to take account of the interests of all: of public authorities, public service providers, private business, and citizens. It is neutral as between large or small public sectors; between different sectors; between private or in- house provision of services; and between different national or local choices as to the type and quality of services offered. It provides simply a set of "rules of the game" within which national, regional and local authorities operate without undue interference from Brussels. At the same time it provides safeguards against misuse of these national and local competences for protectionist purposes.

### **Parliaments - Public Authorities - Service Providers - Citizens: let's build an unstoppable coalition for change**

The PES Group will be carrying forward on twin tracks the campaign for a clear European legal framework for public services:

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<sup>3</sup> The group included Professor Stéphane Rodrigues - Professor of University Paris I and lawyer at Lallemand&Legros, Jean-François Auby - legal adviser for local public services (France), Jens Lattmann - legal adviser for German Local Government Organisation (Germany), Per Klok - senior international adviser for Danish Confederation of Trade Unions (Denmark), Professor Giuseppe Pericu, jurist, Mayor of Genoa (Italy)

<sup>4</sup> European Commission, European Economic and Social Committee, Committee of the Regions, European Federation of Public Service Unions (EPSU), European Liaison Committee on Services of General Interest (CELSIG), Council of European Municipalities and Regions (CEMR), International Centre of Research and Information on the Public, Social and Cooperative Economy (CIRIEC), European Centre of Enterprises with Public Participation and of Enterprises of General Economic Interest (CEEP).

- Within the European Parliament, a PES Group Member, Bernhard RAPKAY, is rapporteur on the Parliament's report on public services, which the EP should adopt in July or September 2006. The Rapkay report will provide an opportunity to build support within the Parliament
- In parallel to the Rapkay report, the Group will use the attached draft legislative proposal as a basis for further increasing the pressure on the Commission and Council, and for mobilising a wider coalition of support among stakeholders.

The Commission has promised to give its response to the Rapkay report before the end of 2006: which gives us just a few short months to mount a strong campaign to ensure that their response will be to bring forward a satisfactory legislative proposal.

The objectives we have set out above - legal certainty, local autonomy, enhanced rights for citizens and users of public services - are widely shared, throughout Europe, by those who have a stake in good public services. In our contacts and discussions over the last year of intensive activity, we have been presented time and again with evidence of the urgent need for action to clarify the law. The publication of this draft directive is a first major step in building an unstoppable campaign for change, uniting users, providers, public authorities and elected representatives at all levels.

On 30 May the PES Group will present the draft directive to European Commission President José Manuel Barroso and to representatives of the Presidency of the European Council and will call on the Commission finally to do the work which the European Parliament and European Council have asked them to do, by formally presenting legislative proposals to the Parliament and Council. Our next task is to demonstrate the breadth of support that exists for such action. We will call on the Council to demonstrate its readiness to reach agreement on an effective European legal framework for public services.

The PES group is sending copies of this document to the organisations with which we have worked until now - and, in addition, to all other major stakeholders, to other political Groups in the European Parliament and to national Governments and Parliaments in the Member States. The PES Group sees the draft legislative proposal as the basis for a wider debate. We would value all comments and input. Over the next few months we shall initiate direct, bilateral contacts with national Parliamentarians and interested organisations, including the organisation in autumn 2006 of a round table for all those interested in building the momentum for a European legal framework for public services. We are ready to listen to comments from all quarters; to collaborate with others - if so desired - on production of a revised, broad-based common text; and to agree on how we can all work together to intensify the pressure on the European Commission to come forward finally with legislative proposals and on the Council of Ministers to work with the Parliament on a legal framework to meet our common aims.

We have all waited long enough. It's time for the Commission and Council to deliver.

**PES Group of the European Parliament**  
**Brussels,**  
**May 2006**