



IMPROVING ACCESSIBILITY OF SERVICES OF GENERAL INTEREST - ORGANISATIONAL INNOVATIONS IN RURAL MOUNTAIN AREAS

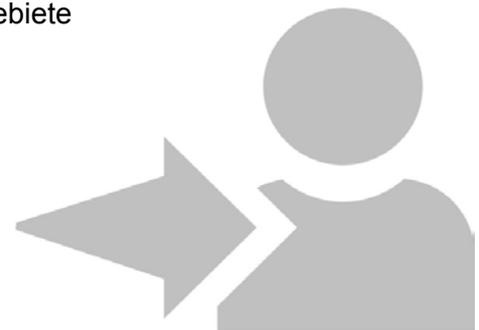
# Delivery of services of general interest (SGI) in Europe

## Analysis of the legal framework

A technical report of the Interreg IVB ACCESS project

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## 1. Overview on the actual legal framework in the EU

The legal framework has a huge influence on the provision of SGI. The legal framework can either hinder or encourage the provision of SGI.

When speaking about the legal framework, one has to consider, that services are regulated at different hierarchical levels. Postal and telecom services are e.g. regulated at EU-level and then adapted on national level. SGI in the health and education sector are mostly regulated at subnational (regional) level. Some services like primary schools or waste treatment can even be regulated at municipal level. This leads to questions of governance, which will be further developed later.

On European level, the discussion about SGI is rather recent. The EU published its green paper on SGI in 2003 (COM(2003)270). In 2004 followed a white paper on SGI (COM(2004)374). In 2007 was published a communication dedicated especially to social services (COM(2007)725). A new package on SGI was announced for 2011.

With the entering into force of the Lisbon Treaty on 1<sup>st</sup> December 2009 for the first time the protocol no 26 introduces the notion of services of general interest in primary EU law whereas the previous EU Treaty only referred to services of economic interest.

*THE HIGH CONTRACTING PARTIES,*

*WISHING to emphasise the importance of services of general interest,*

*HAVE AGREED UPON the following interpretative provisions, which shall be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union:*

### *Article 1*

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

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

### *Article 2*

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

This protocol provides a coherent framework that will guide EU action and services as a reference for all levels of governance. By clarifying the principles and setting out the common



values underpinning EU policies it gives visibility, transparency and clarity to the EU approach applicable to Services of General Interest.

Specifically highlighted should be the mentioning “ensuring equal treatment and the promotion of universal access” in article 1 of the protocol. This is further explained in the EC communication “A single market for 21<sup>st</sup> century Europe”:

*“Access to SGEI is recognised as a right in the EU Charter on Fundamental Rights (...) Where an EU sector specific rule is based on the concept of universal service, it should establish the right of everyone to access certain services considered as essential and impose obligations on service providers to offer defines services according to specific conditions, including territorial coverage and at an affordable price. Universal service provides for a minimum set of rights and obligations, which as a general rule can be further developed at national level. It is a dynamic concept, which needs to be updated regularly sector by sector. Promoting access throughout the territory of the Union is essential for the promotion of territorial cohesion in the EU, as mentioned above in the case of social services. Territories with a geographic or natural handicap such as (...) mountains (...), often face challenges in terms of access to services of general interest, due to the remoteness from major markets or the increased cost for connection. These specific needs must be taken into account.”*

The EU Commission abandoned its idea of developing a single universal definition for the content of services of general interest. Still, EU legislation on SGI does include a number of elements that are common to the different sectors. The EU Commission pleads for consideration of these notions as the foundation for the definition of a Community concept for SGI (White Paper, 2004). These are:

#### Universal service

This concept was introduced to ensure that certain services are made available at a specified level of 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. These requirements are in the general interest. It has been developed in particular for some of the network industries to ensure that in a liberalised market, every individual has access to the service at an affordable price and that service quality is maintained and, where necessary, improved (Green Paper, 2003).

Universal service is a dynamic concept adjusting to citizens’ evolving environment and needs. It is also a flexible concept adhering to the principle of subsidiarity for the Member States (Green Paper, 2003).

#### Continuity

A number of services of general interest are characterised by a continuity requirement, i.e. the provider of the service is obliged to ensure that the service is provided without interruption. Worth pointing out is that the requirement of ensuring a continuous service is not consistently addressed in sector-specific Community legislation. Indeed, depending on the sectors, Member States are sometimes free to decide whether this obligation exists or not (Green Paper, 2003).

#### Service Quality



The definition, monitoring and enforcement of quality requirements by public authorities are key elements in the regulation of SGI. In the sectors that have been liberalised, it is generally up to the Member States to define quality levels although in some cases quality standards are defined in Community legislation. These include, for instance, safety regulations, the correctness and transparency of billing, etc. The most developed regulation of quality at Community level can be found in the legislation on postal services and on electronic communications services (Green Paper, 2003).

#### Affordability

This concept was originally developed in the context of the regulation of telecommunications services and then extended to postal services. It requires SGEI to be offered at an affordable price in order to be accessible for everybody. This principle contributes to economic and social cohesion within the Member States (Green Paper, 2003).

#### User and Consumer Protection

These horizontal consumer protection rules apply to SGI as in other sectors of the economy. However, because of the particular economic and social importance of these services, specific measures have been adopted in sectoral Community legislation. Such specific measures are set out in a number of sectors including electronic communications, postal services, energy, transport and broadcasting. The EU Commission also stressed the need to address citizens' concerns that are of a wider nature (e.g. the environment), to consider the specific needs of certain categories of the population (e.g. handicapped people) and to ensure complete territorial coverage of essential services in remote areas.

#### Other Specific Obligations

Other sectoral obligations may complement the five above including safety and security, security of supply (sustainable long-term provision), network access and interconnectivity (meeting competition policy and internal market objectives) and media pluralism (to protect the freedom of expression) (Green Paper, 2003).

#### Financing

Many services of general interest cannot be viably provided on the basis of market mechanisms alone and specific arrangements are necessary in order to ensure the financial equilibrium of the provider. Currently, it is for the Member States to ensure the financing of services of general interest and to calculate the extra cost of the provision of such services. In some cases, the Community may contribute by way of co-financing to the funding of specific projects (Green Paper, 2003).

Depending on historical traditions and the specific characteristics of the services concerned, Member States apply different financing mechanisms including:

- Direct financial support through the State budget (subsidies, tax reductions, etc.);
- Special or exclusive rights (e.g. a legal monopoly);
- Contributions by market participants (e.g. through a universal service fund);
- Tariff averaging (e.g. a uniform country-wide tariff despite local differences);
- Solidarity-based financing (e.g. social security contributions) (Green Paper, 2003).



Whilst different forms of financing continue to co-exist, a clear trend has developed toward progressive withdrawal of exclusive rights and opening of markets to new entrants and other forms of financial support have developed such as the creation of specific funds financed by market participants or direct public funding through the budget (the latter being the least distorting form of funding). These forms of financing have made the cost of providing SGI and the underlying political choices more transparent (Green Paper, 2003).

The Member States are generally free to choose which system is most appropriate in their case provided that it does not unduly distort the functioning of the Single Market. State aid rules only prohibit overcompensation.

DG Competition of the EU Commission published the Community Framework for State Aid in the Form of Public Service Compensation in July 2005<sup>1</sup>. This document sets out the framework for identifying “genuine” SGEI, which Member States have a wide margin of discretion to do; it also stipulates that the Member States have to develop an instrument specifying the public service obligations and the methods of calculating compensation. The Community Framework addresses the issue of the amount of compensation and the notion of overcompensation. It further mentions that the Framework applies without prejudice to the more restrictive provisions of sectoral Community legislation and measures (DGCOMP/I1/D(2005)179).

This Community Framework follows from an EU Commission Report (COM(2002)636 final) mentioning three rulings that will become EU case law, one of which is especially notorious: the so-called Altmark Trans GmbH ruling. At the time of this report (2002), the EU Commission namely regretted the absence of a definition of SGEI and the extent of Member State freedom in relation to the scope of Community State aid rules, etc. Since then, the EU Commission has undertaken major clarification work.

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<sup>1</sup> Visit [http://ec.europa.eu/employment\\_social/social\\_protection/questionnaire\\_en.htm](http://ec.europa.eu/employment_social/social_protection/questionnaire_en.htm).



## 2. Sectoral analysis of the legal framework

Within ACCESS, the legal framework for telecom, post, public transport, health and daily needs has been analysed for Austria, France, Germany, Italy, Slovenia and Switzerland. The key findings per sector are given below.

### 2.1. Telecom services

In the EU, telecom services are fully liberalized. The universal services obligation concerns mainly the access to fixed phone installations. Austria has added a “functional internet-access” to the universal services without specifying what is meant with this. Switzerland has added broadband access to the universal services and specifies in an ordinance that this means min. 600 kB/s download capacity. Swisscom as the owner of the universal services concession must provide these services all over the country and to each household. The technology is not prescribed. This aspect is very important. Fibre optics provide a high bandwidth over long distances. But to equip every house with this (Fibre to the home - FTTH) is very costly. So other technologies like LTE (Long term evolution) or satellite communications might be more appropriate, especially in remote rural areas. All countries have foreseen the installation of a compensation fund in case the universal service provision would be in deficit. This fund would be fed by all service providers. Until now, not any country has put this into practise. The compensation fund will anyhow not be appropriate to finance the roll out of larger bandwidths.

The regulation authorities are independent from governments and from service providers. In some cases, they can make ex ante regulations. The role of regulation authorities in network infrastructures is very important. The owners of infrastructures need clear framework conditions. An unclear or erratic regulation will lead to uncertainties in investments and thus reduce considerably the willingness to invest in infrastructures. Regulation can thus hamper the rollout of infrastructures and the provision of services. This happened e.g. with the rollout of fibre optics in the USA. The regulation had to be changed after it was realized that it was too inhibitive for investments. In most cases, this affects rural areas, as urban areas are more attractive for the market.

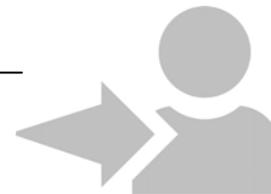


Table 1: synoptical overview on telecom services

Country	Universal services obligation	Financial mechanism	Unbundling / access to networks	Regulation authority	Legal basis
EU	<ul style="list-style-type: none"> <li>• Access to telecom-network,</li> <li>• Access to public phone indexes,</li> <li>• Access to public information service</li> <li>• Phone cells all over the territory</li> <li>• Access to emergency services</li> <li>• Services for disabled persons</li> </ul>	Compensation mechanism or fund	Full unbundling	The regulation authority must be independent. The EU does not allow “regulatory holidays”.	Directive 96/19/EC
Austria	<ul style="list-style-type: none"> <li>• As EU +</li> <li>• <b>Functional internet-access</b></li> </ul>	Compensation for uncovered costs financed by a tax to be paid by the other service providers	Full access to incumbent’s network but not to the broadband-network	Rundfunk und Telekom Regulierungs GmbH	Law on telecommunication 2003
France	<ul style="list-style-type: none"> <li>• As EU</li> </ul>	Compensation fund financed by all service providers	Full access including fast bitstream.		Codes des Postes et des Communications, revised in 2010
Germany	<ul style="list-style-type: none"> <li>• As EU</li> </ul>	Compensation for uncovered costs financed by a tax to be paid by the other service providers	Full access.	Bundesnetzagentur (for all services).	Law on telecommunication 2004
Italy	<ul style="list-style-type: none"> <li>• As EU</li> </ul>	Compensation for	Full unbundling		Directive 96/19/EC



		uncovered costs financed by a tax to be paid by the other service providers			
Slovenia	<ul style="list-style-type: none"> <li>As EU</li> </ul>	Compensation for uncovered costs financed by a tax to be paid by the other service providers			
Switzerland	<ul style="list-style-type: none"> <li>As EU +</li> <li><b>Broad-band access</b></li> </ul>	Compensation for uncovered costs financed by a tax to be paid by the other service providers	Full access to incumbent's network, unbundling of fast bitstream-access limited for 4 years	ComCom a independent authority. Only ex post regulation.	Law on telecommunication 1997



The EU is strongly pushing broadband. But this action is not done within the telecom-regulation but within the cohesion policy. With the Digital Agenda (COM(2010) 245) the EU wants to grant access to broadband to 100% of the population until 2013. Until 2020, all households should receive access to over 30 MB/s and for 50% of the households, more than 100 MB/s should be possible. The EU does not specify which technology should be used for this (technology neutral). Member states are requested to establish broadband strategies. Finances shall be provided by the cohesion policy.

The universal services in telecom (fixed phone lines) are well provided in all countries. The huge challenge for the future and especially for rural areas is the provision of broadband services. Data below are mostly taken from the European Commission's Europe's digital competitiveness report (SEC(201)627).

**Austria:** Fixed broadband penetration is increasing at a low rate, Austria still being below the EU average. This is partly offset by the relatively large take-up of mobile internet, especially on laptops. DSL coverage is at 94% of the total population. It is only at 83% in rural areas.

**France:** France Télécom has begun to provide FTTH in bigger cities. The coverage with DSL is 100% of the population. Wireless broadband connections are seen as an alternative to fibre optics in rural areas.

**Germany:** Deutsche Telecom is building FTTH- and VDSL- networks mainly in urban areas. The national broadband strategy aims at delivering a broadband-access (small broadband) to all households by end 2010 and an access of at least 50 MB/s to 75% of all households by 2014. In rural areas, mobile technologies shall help to bridge the gap. Regional projects can be supported with max. 200.000 Euros per project respective 150 Mio. Euros in total. The aim of equipping all households with broadband by end 2010 was not achieved. ([www.breitbandatlas.de](http://www.breitbandatlas.de)). DSL coverage was at 97% in 2009. 85% of those lines have a capacity over 2 MB/s.

**Italy:** DSL coverage is at 96% of total population. In rural areas, this drops to 84%. Broadband population penetration is lower than the EU average. In 2009, the upward trend in broadband penetration slowed down. Only 53 % of households have an internet connection, but 74 % of the connections are broadband. For enterprises, the situation is much better: penetration is 84%, above the EU average of 83%. In wireless broadband, Italy's performance is around the average for the EU. On the other hand, Italy has a well-established mobile market with encouraging developments in mobile broadband.

**Slovenia:** DSL coverage is at 93% of total population. In rural areas, this drops to 85%. Only a minority of broadband subscribers have speeds of at least 2 Mb/s.

**Switzerland:** 98% of all households are theoretically covered by ADSL-Standard (600 kb/s). The rollout of fibre optics is starting in urban areas. It will take up to 15 years to equip rural areas with fibre optics as well. Discussions are therefore ongoing at political level on how to speed up that process.



## 2.2. Postal services

The EU has completely opened the postal market as of January 1<sup>st</sup> 2011. Some countries, mainly in Eastern Europe, have been provided with a longer deadline until January 1<sup>st</sup> 2013 at latest. Some countries like Germany (in 2008) and the UK had completely opened their postal market some years before 2011. Others like Austria, France and Italy have opened their market in accordance with the EU-obligation. Those countries had to adapt their laws in 2010 or elaborate completely new laws. The Swiss Parliament has voted in winter 2010 against a complete opening of the market. The national provider Swiss Post maintains a monopole of letters until 50 grams.

The Universal service covers letters until 2 kg and parcels until 20 kg in accordance to the EU-directive. Only Switzerland has added payment services to the universal services obligation. A dedicated Service provider can be obliged by law to deliver the universal service as is the case e.g. in France and Switzerland. In other countries like Germany and Austria the service can be put for tender if the providers do not assume the universal service. If the universal service is in deficit, the EU-directive foresees two options: Either subsidies by governments or a compensation fund. Most countries have foreseen a compensation fund, where all service providers would have to pay. But this scheme has not yet been put into practice.

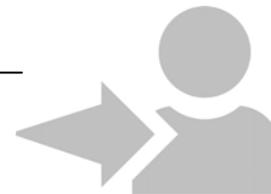
The prescriptions for postal offices are very different from country to country. Most countries allow the flexibility to combine postal services with other services like grocery shops or tourism offices. The service is then not run by personnel of the post but by specially trained private persons (e.g. shop owners).

The closure of postal offices is of deep concern for municipal authorities, as it affects the attractiveness and functionality of villages. Postal offices are often perceived as a symbol of SGI and are a point for social contact. But only in Austria and Switzerland the national laws foresee a special role for the municipalities in the restructuring process.

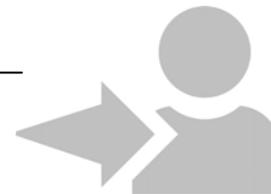


Table 2: synoptical overview on postal services

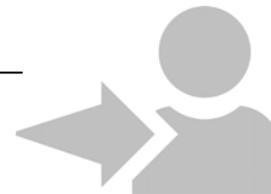
Country	Universal services obligation	Financial mechanism	Prescriptions for postal offices	Regulation authority	Influence of municipalities	Legal basis
EU	Letters until max. 2 kg and parcels until max. 20 kg.	Member states can chose between subsidies or a compensation fund.	No prescription.	Must be completely independent from ministries and from service providers.	No prescription.	Directive 2008/6/EC
Austria	Letters until 2 kg and parcels until 20 kg.	Compensation fund if universal service is deficitary.	Min, 1'650 postal offices all over the country. Accessible for 90% for the inhabitants of cities larger than 10'000 inhabitants within 2'000 m and in all other areas within 10'000 m. Letter boxes must be accessible within 1'000 m in urbanised areas.	Rundfunk und Telekom Regulierungs GmbH and Post-Control-Comission. Advisory board on postal offices composed of representatives from municipalities and cities.	In case of closure of postal offices, an agreed solution has to be found with the concerned municipalities.	Postal law 2010
France	Letters until 2 kg and parcels until 20 kg. To be delivered on every working day. La Poste has obligation to	Compensation fund if universal service is deficitary.	Network of access points (actually 17'000). Reachable for 95% of population within	Independent authority	None	Codes des Postes et des Communications, revised in 2010



	provide the service by law for 15 years.		10 km. Min. 1 access point per locality of 10'000 inhabitants.			
Germany	Letters until 2 kg and parcels until 20 kg. To be delivered at least once on every working day. Providers receive a license. Universal service can be opened for tenders if the service is not sufficiently provided.	Compensation fund if universal service is deficitary.	Min. 12'000 stationary offices (postal offices or agencies) all over the country. In rural areas min. 1 stationary office per 80 sqkm. Letter boxes in urbanised areas reachable in a distance of max. 1'000 m.	Bundesnetzagentur (for all services).	None	Postal law 1997
Italy	Letters until 2 kg and parcels until 20 kg.	Compensation fund if universal service is deficitary.	Postal offices accessible for 75 / 92,5 / 97,5% of the population within 3 / 5 / 6 km. Postal offices to be provided in min. 96% of all municipalities. They have to be open on at least 3 days and min. 18	No special agency. The ministry for communication is the regulation authority (contradiction to EU-law).	None.	Directive 2008/6/EC is applied directly.  Directive of 2003 on the application of the EU-directive



			hours.			
Slovenia	Letters until 2 kg and parcels until 20 kg. Delivery of mail at least 5 days a week.	Compensation fund if universal service is deficitary.	Obligation for postal offices all over the country.	Strong regulation authority. Can influence legislative process.		
Switzerland	Swiss Post is obliged by law to provide letters, parcels and newspapers on at least 5 working days per week as well as services for payments. Monopole for Swiss Post of letters until 50g.	Monopoly	Postal offices or agencies to be provided all over the country. Accessible for 90% of the population within 20 minutes by foot or public transport. Min. 1 letter box per municipality	PostCom. Ex post regulation.	Have to be contacted prior to closure of postal offices. Can call upon PostCom if they do not agree.	Postal law 2010 (to enter into force in 2011)



### 2.3. Public transport

The EU and its member states do not have any special legal framework SGI in public transports. In Switzerland, the federal law on railways indicates, that every municipality with at least 100 inhabitants must be served by public transport (bus, cableway or railway). This is one of the reasons, which has led to the very dense network of public transports in Switzerland.

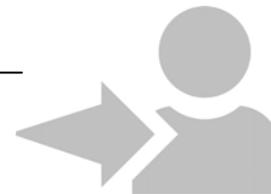
In most countries, public transport comes under the responsibility of regional and local authorities. They will put the respective lines for tender and then order (and pay) the services. This allows a certain element of market also in local and regional transports.

The regulatory separation between infrastructure and service provision can have impacts on the quality of public transports. The case of the UK is well known, where a complete separation has led to decaying infrastructures. The EU requests for independent regulation authorities, but this has not been applied in some countries



Table 3: synoptical overview on public transport

Country	Universal services obligation	Financial mechanism	Role of different actors	Regulation authority	Legal basis
EU	None	Public tendering or subsidies.	Financial but not obligatory organisational separation of infrastructure and services.	Independent regulation authority requested	Directive 2001/14EC
Austria	Federal government orders public transport on national level for several years. Länder and municipalities order and finance regional transports.	Principle of tendering and ordering. Strong position of Österreichische Bundesbahnen including Busses	Financial but not organisational separation of infrastructure and services.		Law on railways 1957
France	Delegated to regions	Delegated to regions. Programme contracts between regions and national government.	Regions are the main actors		
Germany	None at federal level. Delegated to Länder and municipalities.	Principle of tendering and ordering	Full separation of infrastructure and services. Full access to	Bundesnetzagentur	General law on railways 1993



			infrastructures.		
Italy	Delegated to regions. Some general criteria fixed on national level e.g. access to public administrations, schools reduction of emissions etc.	Programme contracts between regions and national government. Each region should establish a fund for financing the SGI.	National: public transports across borders and interregional.  Regional public transports fully delegated to regions and provinces. Regions elaborate programme contracts with national government and receive subsidies based on them for the operation and for investments.		Ordinance from 1997
Slovenia					
Switzerland	Each settlement with at least 100 inhabitants must be deserved by public transports. Cantons can fix a higher level.	Cantons and municipalities order regional transport. Compensation by federal government with Ø 50%.	Principle of tendering and ordering. Financial compensation by federal government, Cantons and municipalities.	No independent regulation authority. Federal ministry for transports assumes this task.	Law on railways 1957



#### 2.4. Health services

The provision health services is a normally a task of the regional and local level. In Germany e.g. Public services are provided by contract-doctors “Vertragsärzte”. They need a contract with an association of insurers to exercise. These associations are at Länder-level. Hospitals are planned and financed at subnational (regional) level. In most countries, the provision with doctors in rural areas is steeply declining. SGI in the health sector may actually still be OK, but are in danger. This even more problematic with respect to demographic change and the aging of population which leads to more demand on the health sector.

#### 2.5. Daily needs

The provision of services for daily needs like grocery shops, bakeries etc. is very seldom regulated. These services are left to the market to develop. The closure of shops in rural areas often leads to reactions by the inhabitants and by local authorities. Solutions are then sought for to reopen a shop. It is often forgotten, that consumers steer the rentability of shops by their own behaviour. If consumers buy their goods in a supermarket in the next bigger town, they contribute automatically to the decline of smaller shops in the villages. So solutions must also be sought in changing attitudes and behaviour.

