

Opinion of the European Economic and Social Committee on Public services principles for stability of democratic order

(exploratory opinion requested by the German presidency)

(2021/C 56/03)

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Request by the German Presidency of the Council Letter of 18.2.2020

Legal basis	Article 304 of the Treaty on the Functioning of the European Union
Bureau decision	17.3.2020
Section responsible	Employment, Social Affairs and Citizenship
Adopted in section	11.11.2020
Adopted at plenary	2.12.2020
Plenary session No	556
Outcome of vote (for/against/abstentions)	220/0/15

1. Summary

1.1. The German presidency of the Council of the EU has asked the EESC to give its opinion on the principles that must apply to EU Member States' public services in order to guarantee the core fundamental values of democracy and the rule of law, and on the conditions under which these principles act as automatic stabilisers of democracy and the rule of law in times of crisis.

1.2. For more than a decade, the EU has faced severe crises, including the fight against terrorism, the global financial debt and economic crises, the crisis in the Common European Asylum System, the environmental and climate crisis, as well as the COVID-19 pandemic. Effective public services play a crucial role in mastering crises, guaranteeing public safety and security of supply by providing access to their services based on the principle of equal access and guaranteed universality.

1.3. Based on a state of emergency, it was temporarily necessary to curtail fundamental rights in some of these exceptional crisis situations. To guarantee that such measures are justified and proportional, public services face the challenge of balancing interference in fundamental rights and enforcement of the rule of law and ensuring the legality of all administrative action.

1.4. With regard to threats to democracy and the rule of law throughout the world and also in the EU, public services have a protective function, in that they can refuse to obey illegitimate instructions and uphold European values and the rule of law. Respecting the basic principles of objectivity, integrity, transparency, respect for others and commitment to the European Union and its citizens, public services constitute pillars of democracy and a bulwark against populism.

1.5. To guarantee that public services in Europe act in all crisis situations as an automatic stabiliser, the European values enshrined in the EU Treaties, the Charter of Fundamental Rights of the EU, the European Convention for the Protection of Human Rights, Member States' guarantees of fundamental and human rights in national constitutions as well as 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 (TFEU) as set out in the Treaty on European Union (TEU), Protocol No 26 on services of general interests, have to set the tone for the conduct of administration on the European level and, in accordance with their constitutions, in all EU Member States.

1.6. The EESC underlines furthermore, that functioning public services at all levels throughout the EU require the necessary skills and human, technical, material and financial resources, as well as proper working conditions and sufficient remuneration, and social dialogue for public servants to carry out the tasks assigned to them and to function as an automatic stabiliser.

1.7. The Member States are solely responsible for their public services, which they organise according to their traditional principles and in accordance with their constitutional law. Without prejudice to this, the EESC advocates an effective European legal framework (including sanctions) that guarantees the full compliance of all Member States with democracy and the rule of law according to the 'Copenhagen Criteria', which are a necessary basis for good conduct by administrations in the EU and its Member States.

2. Questions, definitions and aims of the opinion

2.1. There is no single definition of 'public service' in the EU. For the purposes of this opinion, the EESC classifies as public services the various sovereign and administrative public services, including those of an industrial and commercial nature, which serve the general interest at national, regional and municipal level.

2.2. Public services ensure core democratic values including respect for fundamental and human rights, the constituent power of the people, the separation of powers, judicial independence, government accountability, pluralism of political parties and rights of expression and of opposition, the freedom of media, the prohibition of discrimination, minority rights, and the legality of the administration. For the EU, these fundamental values are enshrined as European values, in particular in Art 2 (TEU, and the Charter of Fundamental Rights).

2.3. The term 'automatic stabilisers' is taken from economic theory. By analogy with how these are defined, public service principles are seen as automatic stabilisers that protect the core values of democracy, in particular in times of crises.

2.4. The aim of this opinion is to identify criteria and frame European recommendations to make public services that are subject to national legislation operate as a stabilising element for democracy and the rule of law. This is about recognising the essential value of smoothly functioning public services in defending the core values of democracy and the rule of law in Europe.

2.5. Both natural and legal persons rely on smoothly functioning public services, which make an important contribution to a vibrant society, a productive economy and trust-based collaboration between the social partners. In this process, public services should treat people equally, without discrimination, guaranteeing unimpeded access for all citizens e.g. to quality education, social services, healthcare, housing, water and energy supply, and postal delivery, irrespective of sex, ethnic origin, religion, world view, disability, age or sexual preference.

2.6. Public services have a key role in maintaining democratic order but cannot do so without political pluralism, the freedom of expression, democracy, rights for civil society and intermediary bodies such as trade unions. They are integral part of democracies. Together with other democratic actors, they guarantee social progress.

3. Times of crisis — a challenge for democracy and the rule of law

3.1. Democracy and crisis policy

3.1.1. Particularly in times of crisis, it is essential, for example, that assistance be ensured for all those made vulnerable at such times — both natural and legal persons — in accordance with clear standards guaranteeing equality in law, and that disadvantaged individuals and groups also be able to access support.

3.1.2. The possible curtailment of fundamental rights based on a state of emergency due to an exceptional crisis situation must be justified, temporary and proportional, and authorised in specific circumstances by a democratically elected parliament. While an independent judiciary provides protection against unjustified administrative acts, democracy cannot work in the long term unless citizens enjoy their rights in full. Legislators, governments and public services must not only act in accordance with fundamental rights, but also be their guarantors.

3.1.3. The duty of impartiality of public servants is one of the prerequisites of equal treatment for all users and the prevention of discrimination. It must be guaranteed in all Member States to protect public servants from populism.

3.2. *Terrorism and state counter-terrorism measures*

3.2.1. Since 9/11, if not earlier, a difficult balance has been struck between guaranteeing freedoms on the one hand and effective security on the other. This is a particular challenge also for public services, since there may be a conflict between the protection of fundamental freedoms and the rule of law on the one hand and new executive powers on the other.

3.2.2. It is precisely when it comes to effective enforcement of the state monopoly on the use of force that the balancing act between interference in fundamental rights and security manifests itself — not only in abstract terms, but in actual daily practice. This requires public services with properly trained staff and the necessary resources to conduct their operations while respecting the right to liberty. Safeguards must be in place to prevent any abuse of public authority and ensure the right of recourse against acts which exceed the remit of public service, be it through an act of legislation, or by individuals.

3.2.3. Public services ensure public order. In doing so, they must strike a balance between safety and the protection of fundamental rights, using the latitude afforded by the principle of the proper exercise of discretion.

3.2.4. Alongside civil society organisations and diverse and independent social services, public services are a crucial pillar in preventing extremist radicalisation, violence, and intolerance, in promoting democracy and social cohesion and defending European values. This applies, inter alia, to the state education system.

3.3. *The global financial and debt crisis*

3.3.1. Years of austerity measures following the global financial and debt crisis have affected public services, weakening the impact of their work.

3.3.2. Experience from that period showed that short-term debt reduction need not necessarily be achieved through the privatisation of services of general interest.

3.3.3. The continued and reliable provision of free access to high-quality services of general interest should be guaranteed at EU level; it is particularly at times of crisis that these services demonstrate, thanks to this continuity, their role as powerful social shock absorbers.

3.3.4. A smoothly functioning and efficient public service makes an important contribution to maintaining proper levels of government spending. Efficiency does not mean a 'reduced role for the state', because poor performance leads to higher overall social and economic costs.

3.3.5. Through effective enforcement of the rules, a public service with trained staff and adequate resources acts as a tool for preventing future crises. This is the case, for instance, where an administration successfully combats tax avoidance and evasion and so guarantees government revenue, or where there is effective supervision of the financial sector.

3.4. *The crisis in the Common European Asylum System*

3.4.1. Since 2015 Europe has seen a sharp rise in the number of refugees. Effective public services, in tandem with civil society commitment, is crucial when meeting this challenge. The EESC insists that the right of asylum and the related international law must be guaranteed in all EU Member States and that the Common European Asylum System must be completed.

3.4.2. Where the capacity of public services of one or more Member States is not enough to ensure refugees sufficient protection of fundamental and human rights, for example at entry points to the EU, a pan-European solution is needed. Public services everywhere in the EU must be placed in a position where they can uphold European values as they carry out their tasks.

3.4.3. If one Member State's public services are acting on behalf of all Member States, the resulting burden must be fairly shared. At the same time, the highest level of protection of fundamental and human rights and respect for European values must be guaranteed in these operations.

3.4.4. The digital interoperability of border control systems must comply with the rules on personal data protection. The EU must guarantee respect for the protection of personal data by all administrations in all Member States.

3.5. *The environmental and climate crisis*

3.5.1. Public services are important for achieving the sustainable development goals (SDGs) and implementing the Green Deal. Public services can act as catalysts for change through environmentally friendly initiatives and policies in public procurement and work practices.

3.5.2. Environmental transformation is also becoming a question of social justice. For the sharing of burdens to be acceptable, fair distribution and non-discriminatory enforcement of obligations are essential.

3.5.3. Public services can implement incentive schemes and offer new services, especially in the areas of mobility, energy supply and security. Sustainability and carbon neutrality are also fundamental principles that the EU should make sure all public services in Europe respect.

3.6. *The COVID-19 pandemic*

3.6.1. The tension between freedom and security, between rights and state of emergency, has again come to the fore in the COVID-19 crisis. The dangers and the curbs on fundamental rights affect everyone equally.

3.6.2. Public services and their staff are in the first line of defence against the virus. They have to ensure public health, risk prevention and security of supply in all circumstances.

3.6.3. The COVID-19 crisis shows the extent to which Member States and their citizens need responsive, efficient, properly funded and modern public services. An acute crisis can require quick decisions. These must be well-founded and subject to democratic oversight. Otherwise democracy may suffer. A lack of legitimacy saps readiness to comply with rules. To act quickly in a crisis, governments need a good degree of public trust and rely on the efficacy of public services. As the administrative branch of the executive power, public services themselves need trust in order to implement decisions effectively.

3.6.4. The pandemic has demonstrated the need for public services to have sufficient trained and capable staff, resources and reserves. Recognising the fundamental nature of public service missions justifies paying public servants properly and that minimum social standards are applied to them throughout Europe. Many EU countries have demographic problems that need to be taken on board so as to make sure that public services remain or become financially attractive in the 'competition for the best minds'.

3.6.5. The quality of public service principles and proper working conditions for civil servants, including good social dialogue and democratic climate, increase citizens' confidence in their governments.

3.6.6. In balancing their capacity to safeguard the right to life and the right to physical integrity, all EU countries have in recent times restricted other fundamental rights to a degree unheard of in democracies. These unprecedented measures must only be temporary and be regularly reviewed by elected parliaments.

3.6.7. Public services are dependent on clear government decisions and legal clarity and certainty. The principle of transparency and good administration that the EU applies to itself leads the EU to ensure that all public services in Europe respect these principles.

3.6.8. There are many public services dealing with the economic and social fallout of the crisis. Together, they show in tangible terms the critical value of effective management in times of crisis.

4. Public services as automatic stabilisers

4.1. For there to be an automatic stabiliser, there must be a functioning administration throughout the EU, at European, central, regional and local level, with the necessary skills and human, technical, material and financial resources to carry out the tasks assigned to it.

4.2. With the exception of the European level, the assignment of tasks to the different levels need not be uniformly regulated across the EU, but should accommodate the particular circumstances of the Member States in order to ensure effective administration.

4.3. The decision about which services are to be provided by the public sector and which by the private sector is one for the Member States themselves. In taking that decision, they should make sure that any failure of private or public service providers in times of crisis does not constitute a risk to public safety or security of supply.

4.4. If all public services consistently adhere to the principles of legality, proportionality and equal treatment and implement the right to good administration, they strengthen trust in the rule of law, democracy and resistance to populist promises.

4.5. Transparent public services make a key contribution to the fight against corruption and thus to the provision of reliable and cost-effective services. Trust is strengthened by adherence to the fundamental principles of public service in Europe, and its availability, competence and openness to independent oversight bodies.

4.6. With regard in particular to the question of respect for fundamental and human rights by governments and legislators at all levels, public services — if they live up to their principles — have a protective and redistributive function in that they can refuse to obey illegitimate instructions, thereby protecting democracy and the rule of law.

4.7. Public education must make a substantial contribution by teaching European values and fostering a democratic civic culture. Formal education is a key public service in own right, especially in preparing the citizens of tomorrow.

4.8. The current pandemic shows how an overburdened health system can lead to violations of human dignity and the importance of having adequate staff and care capacity.

4.9. Functioning welfare authorities that provide unimpeded access to social security services without discrimination bolster trust in the rule of law. Here, public service reveals itself to be an expression of social solidarity.

5. Principles for public services in the European Union

5.1. The Member States are and will remain solely responsible for their respective public services, which they organise according to their traditional principles and in accordance with their constitutional law. Without prejudice to this, given the threats to democracy and the rule of law throughout the world, and unfortunately also in Europe, common European principles and guarantees are needed to ensure that the civil service and public services remain guarantors of democracy and the rule of law.

5.2. The EESC advocates an effective European legal framework that guarantees full compliance with the 'Copenhagen Criteria', which have been the criteria for accession to the EU since 1993 for all Member States. The framework should provide for the possibility of sanctions.

5.3. For all the public services of the EU and its Member States, European values enshrined in the EU Treaties, the Charter of Fundamental Rights, the European Convention for the Protection of Human Rights and Member States' guarantees of fundamental and human rights in national constitutions set the tone for the conduct of administration.

5.4. The shared values of the Union in respect of services of general economic interest within the meaning of Article 14 of the TFEU as set out in the TEU, Protocol No 26 on services of general interests provide the guidelines for the activation of public service principles across all Member States.

5.5. Public services in the EU Member States, for all their diversity, must obey three principles: neutrality, the application of law and order, and transparency. Shortcomings in the independence of the judiciary as well as constitutional amendments that undermine the aforementioned principles of public service and thus undermine the traditional principles of public services must lead to effective sanctions.

5.6. In accordance with the principle of neutrality, public services must guarantee access to their services based on the principle of equal access and guaranteed universality. The accessibility of these services must also be fully ensured for social groups for whom access is difficult, such as people with disabilities, minorities and those in rural areas.

5.7. Ensuring the legality of all administrative action is essential, and laws and instructions must not run counter to constitutional order or European values. These must also comply with the principles of proportionality, equal treatment and the proper exercise of discretion.

5.8. Public services put into effect the right to good administration and are transparent in their work ensuring public supervision of the executive. They ensure free access to administrative information and respond unreservedly to requests for information. Exceptions should be interpreted strictly.

5.9. Public services are bound by the UN Convention against Corruption and take all necessary measures to combat it. They also implement the recommendations of European Anti-Corruption Reports.

5.10. Public services are guided exclusively by a democratic civic principle. The role of an effective and structured civil society and political opposition is paramount to upholding this principle.

5.11. Staff working in public services must have the protection afforded by law and security in their terms of employment such that they can refuse to obey illegitimate service instructions and lodge complaints in an appropriate manner. This is part of the proper functioning of public services and constitutes a guarantee for democracy and for defending the general interest against corruption, fraud and abuse.

5.12. The EU directive on improved protection for whistleblowers applies to public service staff. As maintained in EESC opinion SOC/593 on Strengthening whistleblower protection at EU level ⁽¹⁾, the possibility of alerting the relevant internal or external authorities (which are not the media or the public) is a matter of choice for the staff member concerned..

5.13. Digitalisation notwithstanding, the possibility of contacting the administration in person must continue to be guaranteed in the future: this applies to all public services — local, regional and national — to ensure that an individual approach is taken to support for vulnerable people (the elderly, the poor, migrants, etc.) and that digitalisation is not an additional exclusion factor for this section of society.

5.14. Public services must keep pace with the current state of digitalisation without fundamental rights, including workers' rights, being weakened in the process. In terms of digital administration this applies particularly to data protection and the right to control one's own data.

5.15. Public services must have the necessary skills and human, technical, material and financial resources to carry out the tasks assigned to them. Adequate reserves are needed on all of these fronts in order to ensure they work properly, including in exceptional crisis situations.

5.16. The Member States alone are responsible for national public services, since these are crucial to a country's identity. However, they must be interoperable in the European multilevel governance system.

5.17. European cooperation and practical application of the principles governing public services in the EU must form part of the training for all staff performing public duties.

5.18. The number of exchange staff between the EU and its Member States, as well as between Member States, needs to be increased in order to better integrate administrative tiers in the EU multilevel system. Job rotation in public services should be possible within Member States without entailing disadvantages for those concerned.

⁽¹⁾ OJ C 62, 15.2.2019, p. 155.

5.19. European institutions providing in-service training should create courses on implementing the principles of public service and on ensuring the automatic stabilisation effect for public service staff at all levels.

5.20. All the public services involved in allocating European funds must respect and implement public service principles.

Brussels, 2 December 2020.

The President
of the European Economic and Social Committee
Christa SCHWENG
