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## **European regulation of the market of services and national transposition**

Matei, Lucica and Matei, Ani

National School of Political Studies and Public Administration  
(NSPSPA)

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# EUROPEAN REGULATION OF THE MARKET OF SERVICES AND NATIONAL TRANSPOSITION

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## ABSTRACT

*The concepts and approaches of public marketing are moreover used and quantified in the national and European public systems. Adapted, with behaviours specific to the public system, the fundamental concepts of marketing represent a component of “the new culture of public service”.*

*The paper aims to present aspects concerning the use of the fundamental concepts of public marketing - service, market, placement -, in the European decision-making practice, respectively in the regulatory framework of the single market, in the framework of providing public goods and services in the European space. The paper emphasizes the impact of the application of infringement procedures during 1996-2010 on the market of services and satisfaction of citizens' needs.*

*The regulation of the single market, the practices and „rules” of organisation and functioning are favouring the achievement of the economic and social function of the services of general interest, supporting the functionality of the internal market.*

*The contribution of this paper consists in the analysis of the European regulations, of the content of procedures for sanctioning the EU Member States concerning the market and services from the prospect of the concepts of marketing, market, services, placement, satisfaction of public needs as well as of their interpretation.*

*The research methods are based on relevant bibliographical analyses, statistic evaluations, classifications and comparative analyses.*

## KEY WORDS

*public service, market, consumer, regulation, infringement procedure*

## Introduction

„In the public sector, marketing’s mantra is citizen value and satisfaction”  
Kotler & Lee (2007:11)

During the times of economic and financial crises or legitimacy of the public sector, the public administrations are concerned of their performance and thus they are reforming the public sector at the level of structures, operation and culture, developing a “culture of services”, more adaptable, responsive and citizen-oriented.

In the past three decades, we witness the use of economic tools in administrating the public sector, in production of public goods and services, in diversifying the providers, developing the competition in public sector activities, or in other words new institutional tools.

Terms such as “customers”, “market” or organizational behaviours such as “marketing oriented conception” or “societal marketing” represent proofs for re-thinking the public sector role in view of satisfying the public interest, the realist size of public needs, aimed at reducing the administrative burden and increasing the public service quality.

The basic concepts of marketing are more present in the vocabulary and practices of public authorities: needs, wishes, requirements; services, usefulness, cost and satisfaction, trade; markets; trading agents.

The marketing oriented conception (Narver and Slater, 1990; Kohli and Jaworski, 1990, 1993; Cervera, Molla, Sanchez, 2001) refers to “the organizational wide generation of market intelligence pertaining to current and future customer needs, ...” or „the organisational culture that effectively and efficiently creates the necessary behaviours for the creation of superior values for buyers (customers)”. Since the 1980s we also find that conception in the public enterprises, eager to acquire knowledge about the needs and wishes of the target markets and to provide a better satisfaction than the competitors. Discussing about public services, the enterprises are interested in the effects of long term services, thus recognising the necessity to use the societal marketing oriented conception and the pragmatism influence of two neo-institutionalism schools, based on „homo economicus” (rational choice institutionalism) and „homo sociologus” (sociological institutionalism) (Schedler, 2006).

We interpret the use of marketing in public services as the transfer from the private to the public sector, taking into consideration the similarities and differences between goods and services, between private and public services. The specific characteristics of services: intangibility, inseparability, variability and perishability (Kotler and Andreassen, 1991) determine new organisational behaviours of the provider related to the citizen, aiming to create value added.

Referring to the new definition of marketing, provided by the American Marketing Association “activity, set of institutions, and processes for creating, communicating, delivering, and exchanging offerings that have value for customers, clients, partners, and society at large” (Alves, Mainardes 2010:80-82; Bouzas-Lorenzo, 2010:113-115) as well as to the specificity of the activities in the public sector, we discover in the vocabulary of the rules for its organisation and operation, the fundamental concepts of marketing, the use of the marketing tools and even professionalisation of civil services in the field of public marketing.

## **Fundamental concepts: public service**

The society needs the public sector, the effects of its operation, the society representing the cause of organisation, re-organisation, innovation etc., or in other words the changes in the public sector, encompassing its effects.

When we say public sector we think at public administration, public services, citizens, elected officials, representatives of citizens, general interest, embedded as objective or outcome more or less obvious, better or worse, now or later by the governmental institutions in their own achievements with economic, social and environmental impact through public services.

In the theory of marketing, the service „is interpreted and it refers to anything that can be offered to a market by an organization or individual to satisfy a want or need” (Kotler & Lee, 2007:46).

The public services are delivered by public authorities and administrations, public or private enterprises, subject to the public control. At European level there is a wide diversity of public services and public enterprises, diversity originating from the legal, economic, socio-cultural and societal criteria, reflecting a certain convergence between the economic development and social stage. They represent a component of the national social model.

The public authorities provide administrative services (Matei, 2006), legal services, military – defence services, police, fire services, health, culture, which are non-market services, subject to the legal administrative regime, concerning the organisation, operation and activity, services distributed to the citizens by mechanisms beyond the market. They are situated in the non-market public sector (Matei, A., 2003:79).

The trading companies, situated in the market public sector provide industrial and commercial services, market-type services, such as: transport, energy, telecommunications, postal services, subject to the legal civil regime, concerning their organisation, operation and activity, provided by market-type mechanisms.

We witness very often terminological, semantic confusions between public services and services of public interest or between public services and services of general interest if we relate to the size of the European space.

In accordance with the Green Paper on Services of General Interest (2003), the term of „services of general interest (SGI)” is derived in Community practice from the term „services of general economic interest (SGEI)”;

SGI are a pillar of European citizenship, forming some of the rights enjoyed by European citizens and include services of both general economic and non-economic interest. SGEI covers both market and non-market services.

Ortega (2010:210) considers the differences between public service and universal service. The universal service has the scope of the care for the general interest as well as the public service, but this scope is defined through burdens on the provider very similar to those that can be found in any regulation of a specific area of economic activity based on an important public interest.

The organisation of these services varies according to cultural traditions, history and geographical conditions of every Member State and the characteristics of the activity concerned (COM (2003) 270 final:5)

At the same time, we should not make confusion between the terms „service of general interest”, „service of general economic interest” and „public services”, or between the terms „public services” and „public sector”. The term of „public sector” covers all public administrations together with all enterprises controlled by public authorities.

For the public sector activities, the legal and political bases ensure the pillar for organising and sizing the useful activities in view to satisfy a social need (Nusbaumer, 1984:4), to create a system of utilities (Bessom, Jackson, 1975:137), designed on the ground of a public interest, a general interest, defined on a social, demographic, territorial area. In other words, public services with activities embedded in laws and rules, activities developed on a double pillar: an economic and social pillar, whose effect represents the „common good” in the public sector or the „triple result” (Kotler & Lee, 2007:5).

Simplifying the argumentation concerning the relation society – public sector- public service, a cause-effect relation, we consider the conditionality on two levels of interpretation:

- (1) design and management of service at national level, revealing the essential role and broad discretionary competences of the national, regional and local authorities on providing, organising the services of general economic interest in view to comply in the best way with the users’ needs (Article 1., C306/158, 2007);
- (2) design and implementation of the EU rule on public service.

In Europe, the public services have developed either by public regulation or by direct service delivery.

The national administrative, political and legal systems govern the public services, holding different levels of state regulations.

Built on double economic and social logics, the public services (Picard, 1887, Yohitake, 1973) are displaying the twofold, economic and social behaviour, where the functional conditionalities „observe” the fundamental principles of public service: continuity, equality, accessibility, effectiveness, adaptability, transparency, participation (Matei, L., 2004:55).

### **The market in European regulations**

The evolution of the concept of market in the European treaties, from Common Market (Treaty of Rome) to Single Market and Internal Market has also imposed changes for the public services, thus changing the operator of the public service, from public to private operator, from an operator in a national area to an operator exceeding the borders of a European state, from monopoly to operational diversity and competition.

The Common Market, the Single Market, the Internal Market – the evolution of the name, reveals a double phenomenon, of deepening and enriching the European market as well as development around the four freedoms: free movement of goods, free movement of persons, free movement of services, free movement of capital.

For the European consumers, the single market should represent added value to provide various and high quality goods and services.

The market integration was done based on three approaches: liberalisation, approximation and mutual recognition.

The liberalisation implies the elimination of internal frontier control between states, encouraging the cross-border transactions, the trade and the investments.

The free movement is a juridical request that prohibits Member States to intervene in the cross-border trade through direct or indirect methods (the legal basis in the Treaty, or European Court of Justice (ECJ) rulings or EC regulations/ directives). This implies a right to enter national markets.

The approximation has implied adapting the national laws with the purpose of supporting the cross-border, meaning, in fact, sufficient approximation, starting from an agreement with regard to the law objectives.

The mutual recognition was introduced by the Cassis de Dijon Case Law of ECJ in 1979 that states that in certain specified conditions, the Member States should accept on their own markets products approved for trading in other Member States. Thus, the regulations of the importing country do not apply to intra-EC imports as long as the national regulation objectives are equivalent, even if the derogations of article 30 are called forth. This decision has undermined the regulation autonomy of Member States in which regards the intra-EC imports and has made useless a great part of the legislative convergence.

The internal market proves its usefulness only if the specific legislation produces the desired effects. The stakeholders of the market represent the national and European stakeholders, citizens and enterprises, identified in the actors of the mechanism for organisation and functioning of the market (Matei L., 2009, 71 - 81).

The White Paper on internal market (Wallace, Wallace and Pollack, 2005:95, COM (85) 314, 1985) sustains: „a minimal harmonisation based on establishing minimum market standards”, describing the market of services through four fundamental attributes: access to market, competition conditions, operation of the market, sectoral policy (Pellkmans and Winters, 1988:12). It is „an internal market characterised by the abolition, as between Member States, of obstacles to the free movement of goods, services and capital” (Art. 3(c)) Consolidated version of the Treaty Establishing the European Community).

In the vision of the European Commission (COM:2007), the Internal market will be in the 21st century a powerful, innovative, competitive market, valorising the potential of services and bringing benefits to consumers and suppliers.

### **Market of services for public demand**

Services are important for the good operation of the single market for the citizens' direct benefit, in view to strengthen the consumers' trust and demand. Today they represent 70% of the European Union economic activity and they ensure an employment rate of around 2/3 of total employment, 96% of new jobs in the EU, but only 20% of intra-EC trade. The single market of services provides to the citizens-consumers, services of better quality on competitive markets, being a mechanism which enables the role of public services. It is substantiated on the public demand, as expressed through Directive 2004/17, which regulates essential services for the European day to day life (water, energy, telecommunications and transport) and Directive 2004/18, referring to markets of other sectors of activity (Nihoul, 2010:75-105).

We emphasise the regulation for the market of services on two levels, the European level, i.e. internal market of services and the national level. The European Union and Member States represent guarantees for the regulatory framework, which allows the public services to perform their tasks and meet effectively the citizens' needs (Figure 1).

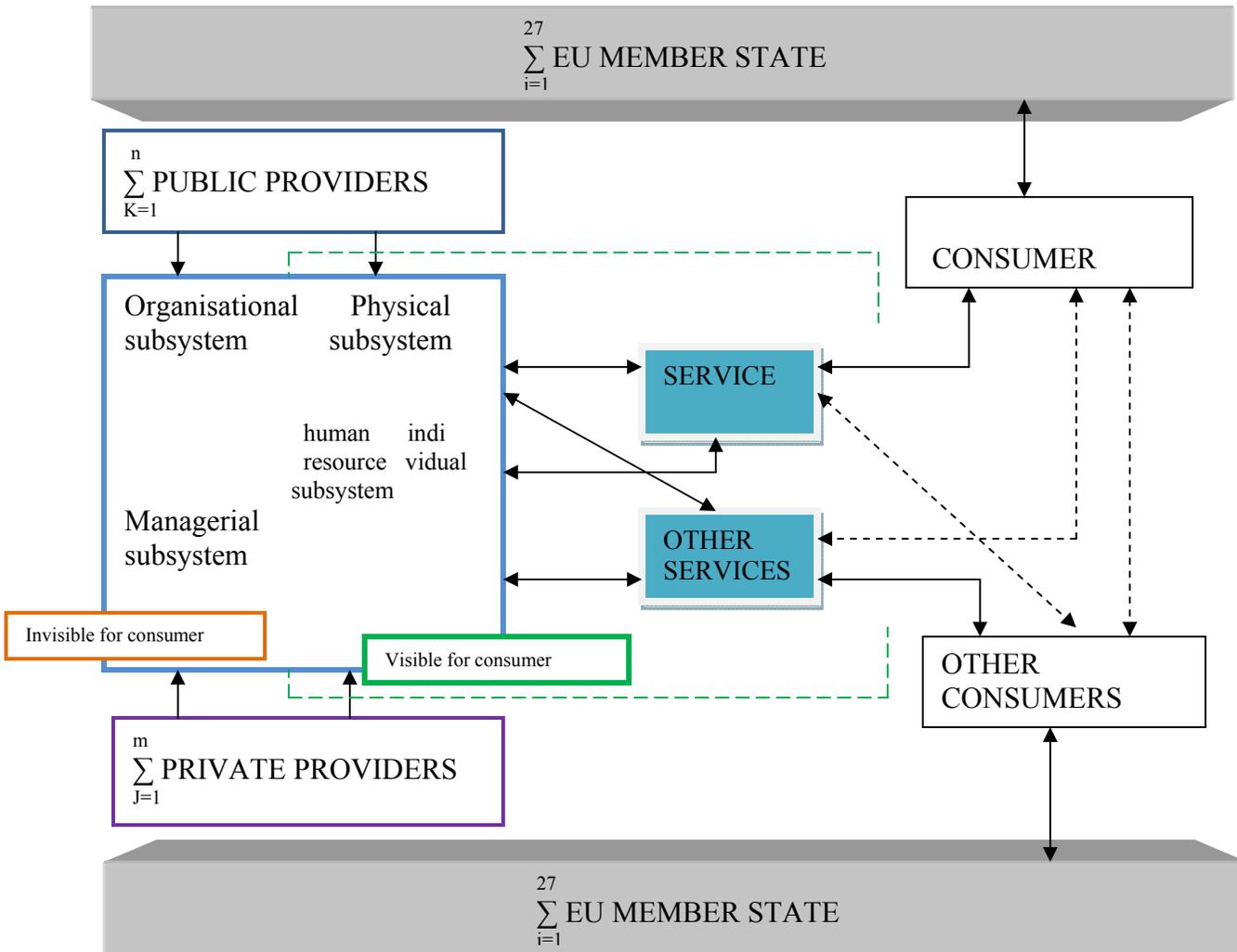


Figure 1. General presentation of the system for public service provision

Article 14 of TFEU and Protocol no. 26 annexed to the treaties, emphasise the public authorities' possibility to provide, organise the public services in view to meet the users' needs, stipulating the obligations of the public service accessible to all citizens.

The rules concerning the single market should be applied and observed appropriately in the European space, guaranteeing to the citizens, consumers and enterprises the efficient use of the regulatory framework specific to the single market.

The national and European authorities, the stakeholders on all EU governance levels are responsible to acquire knowledge, to understand and observe the rules about the single market. The implementation of European norms is different in every State Member.

The Internal market of services, regulated by the EC Treaty, guarantees the freedom of establishment, set out in Article 49 (ex. Article 43 TEC) of the Treaty and the freedom to provide cross-border services, set out in Article 56 (ex. Article 49 TEC), which represent two of the „fundamental freedoms” ensuring the functionality of the EU Internal Market.

Regulation in public service delivery as in any other field is important in order to ensure to the citizens and providers, the legal certainty for the relation: enterprise - service – citizen and a high protection level for consumers against all the risks involved by the quality of services.

Taking into consideration the diversity of Europe, different traditions, cultures, administrative systems, the legislation in the field of services should be stimulating, simple, flexible in view to support the increase of the openness degree of the internal market. The diversity of the services of general economic interest and the differences between the users’ needs and preferences, which could result from various geographical, social or cultural circumstances (segmentation of the market of services) support the development of a single market of integrated services, taking into consideration an optimum mixture between economic and regulatory instruments.

The application of principles of freedom of establishment and freedom to provide services emphasises the use of the third marketing tool, „place”, on the internal market of services.

The provider/economic operator delivers its activity in a stable and continuous way in one or several Member States (the principle of freedom of establishment) and/or according to the principle of freedom to provide services, the provider/economic operator of services may provide services on a determined period of time in other Member State than the state of origin.

The application of the European law and norms concerning the internal market by the EU Member States is supervised by the European Commission, guardian of the European treaties (Figure 2).

At national level, the transposition of the European regulations means that the Member States should harmonise the legislation, should amend it in order to remove the barriers concerning the freedom of establishment or freedom to provide services.

We mention the fact that there are public services of vital importance for the public interest, justified through imperative reasons by the general interest, such as public order, army, public safety or public health, for which there are imposed constraints which are proportional and are not subject to the European regulations.

Any breach of Community law is carefully examined, the Member States indicating how the Community law should be transposed into the domestic law.

A procedural dialogue takes place between the European Commission and the Member State within the relation for solving the breach of the European rules (model of sheet for dialogue, Annex 1). The Commission publishes more detailed information concerning the status of implementing the legislation and legal procedures aimed to guarantee the solving of the breaches of Community law. Around 95% of infringement cases are resolved before they reach the Court.

The European Court of Justice makes the final decision. Only the Court of Justice can rule definitively that a breach of the EU law has occurred.

The Directive 2006/123/EC concerning the services on the Single Market ensures the continuity for improving the European normative and legislative framework in the field of guaranteeing the fundamental freedoms for the service providers and beneficiaries, stipulated in the Treaty Establishing the European Community.

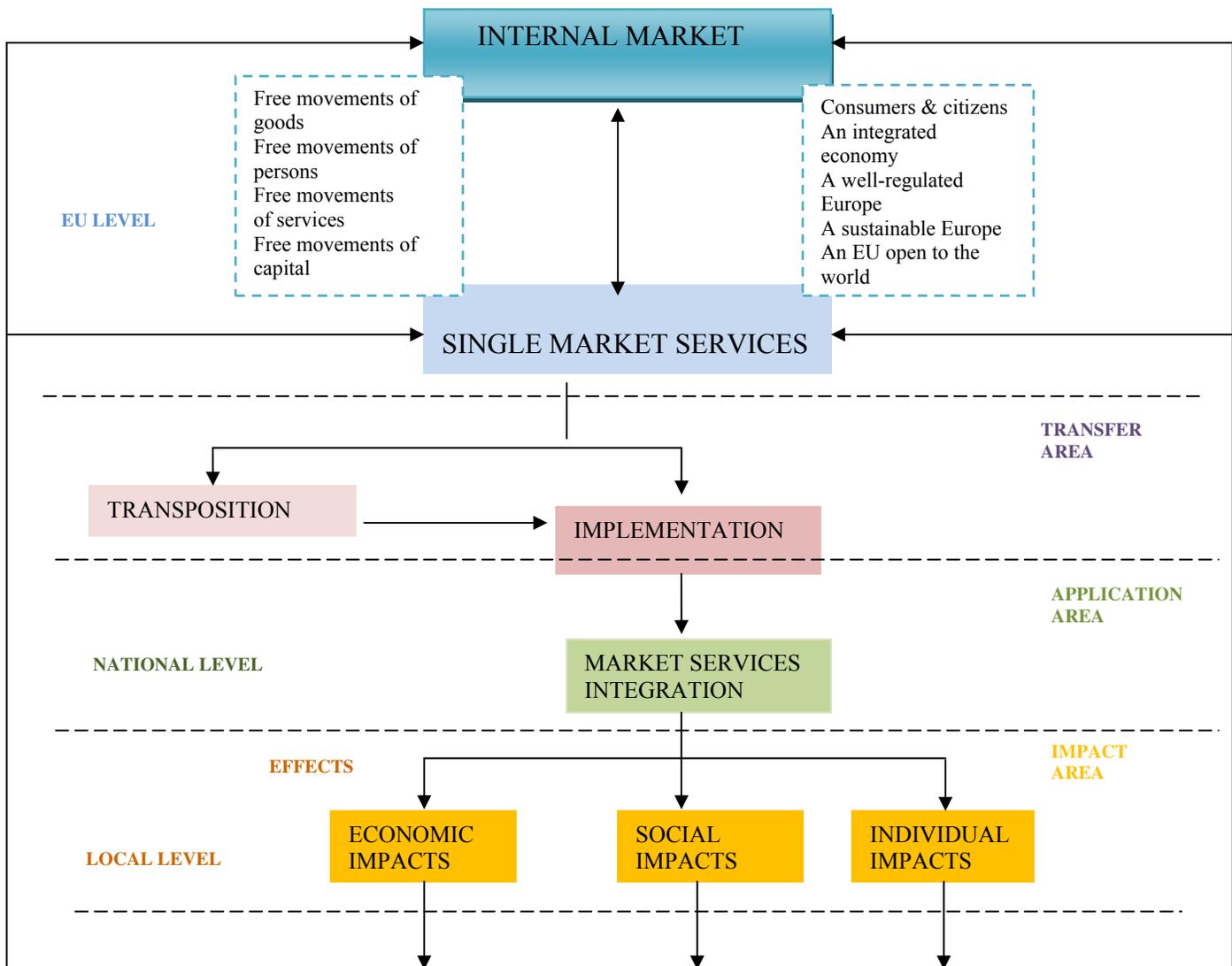


Figure 2. Transposition at national level

The main aim of the Service Directive is to remove the barriers in developing the services between the EU Member States, thus making easy the relation producer – consumer of services and using the cross-border services in the EU.

The Service Directive adopted in 2006 has represented an important stage in view of creating a single market for services, regulating activities which represent 40% of GDP and jobs at the European level.

The removal of cross-border barriers, especially by legal means in view of more efficient production for consumers, increasing degree for satisfying the consumers' needs, promoting a policy for consumers' protection, protecting consumers' welfare by rigorous enforcement of EU rules, have contributed to the openness of the single market to consumers.

## **The infringement procedure and market of public services**

Today, in its monthly package of infringement decisions, the European Commission is pursuing legal action against 27 Member States for failing to comply properly with their obligations under EU law (Table 1). These decisions cover many sectors. They aim at ensuring proper application of EU law for the benefit of citizens and businesses. The Commission has taken 225 decisions, including 10 complaints taking Member States before the European Union's Court of Justice. In this package no decisions related to failure to respect a previous Court ruling, with financial penalties, have been adopted (MEMO/11/45, 2011).

Analysing the content of infringement procedures applied to the EU Member States on the internal market of services during 1996 – 2010, we appreciate:

1. The functionality of the four fundamental freedoms of movement of persons, goods, services and capital is reflected in a diversity of “support actions”, expressing the Member State’s responsibility in enforcing the European Union law in this field and harmonizing the national law. We consider that the finalization of the internal market in 1993, the application of the Directive 2006/123/EC on services and its transposition before the end of 2009 by the EU Member States represent moments for strengthening the Single market, removing the barriers between states for services development so that every citizen is consumer, provider and beneficiary “without frontiers” in the EU.
2. The Member States have a positive evolution concerning the transposition of the European rules on internal market in the national law, 21 states reducing the average period of transposition by 2 months; Spain, Italy and Slovakia register the best results. In 2010, the deficit of transposing the EU Directives on internal market into the domestic law amounts 0.9% . If we look at the Scoreboard of the markets of consumption for 2010, published by the European Commission, we remark an improvement of the efficiency for solving the disputes, as well as concerning the consumers’ trust in authorities and quality of regulations; the number of infringement proceedings is slightly decreasing, Denmark and Malta are registering progresses. For those countries, only three Directives have to be transposed (Scoreboard 21, 2010:17, IP/10/1166). Belgium records the highest number of procedures on breach of rules, being followed by Greece.
3. The analysis of the case law on breach of EU rules was based on eight major subjects: 1. Free movement of services; 2. Freedom of establishment; 3. Freedom to provide services; 4. Freedom to provide services and freedom to establishment; 5. Freedom of establishment and freedom to supply services; 6. Free movement of services and freedom of establishment; 7. Internal market; 8. Activities. It is worth to remark the natural segmentation of states, based on the evolution of EU enlargement: EU 15 during 1996-2003, EU 25 during 2004-2006 and EU 27 during 2007-2010 (Table 2).
4. The influence of trade with goods on the economic growth in the EU is dynamically related to that of services, fact also supported by the values of the contributions of intra – EC trade of services in GDP, 3.4% of GDP in 1995, 4.2% of GDP in 2000 (Roca Zamora, 2009, 16).
5. During 1995 – 2003 we remark the preoccupation for reducing the barriers on the market of services, covering various activities. The infringement procedure is for activities such as patent agents, hospital charges, medical laboratories, television services (France, Portugal, Ireland, Austria, Greece, Belgium), temporary employment agencies, construction workers, (Italy, Germany, Portugal, Belgium), banks (reasoned opinion sent to Italy concerning discriminatory practices when refunding tax credits), etc.

6. The improvement of the European regulatory framework on the internal market is reflected in the evolution of issues subject to sanctions during 1996-2003, which are distinctly inserted in the four types of freedoms (Figure 3), free movement of services; freedom of establishment; freedom to provide services; freedom to provide services and freedom to establishment, since 2004.  
At the same time, the preparatory activity of the Member States in view to transpose Directive 2006/123/CE on services on the internal market before the end of 2009 has reflected also in the decrease of the cases on the breach of the right to free movement of services and right to establishment.
7. Visible influence of the Member States' economic development level on the development of services on single market gains different significance in the stages of EU enlargement; especially in 2004, after the EU enlargement to Central and Eastern Europe (ten states), the trade with services has been developed, fact also supported by the increase of contribution to GDP from 4.6% in 2004 to 5% in 2007.
8. At the same time we emphasise a focus of the infringement procedures on the subjects generated by „free movement of services” (2007 representing the most active period), „freedom of establishment” and „freedom to provide services and freedom to establishment” (Figure 4 and Figure 5). It demonstrates the barriers on the market of cross-border services, in education, medical services, financial-banking, legal services, advertisement, television, sports and entertainment activities. The cross-border trade of services is not as dynamic as the trade of goods. As remarked, both the recent EU Member States (Bulgaria, Romania, Hungary, Cyprus, Estonia, Slovakia, Czech Republic, Poland) and the „old” ones (France, Italy, Denmark, Luxembourg, Belgium, The Netherlands) are facing similar problems concerning the removal of barriers in service provision.
9. Removing the technical obstacles has led to integral openness of market, improving the cross-border logistics, i.e. for postal market (adopting the third Directive 2008/6/EC for postal service has imposed the integral openness of the national postal markets to the EU Member States). Thus, an internal market has been created, the postal operators may open branches in other Member States, may send by its own network and the citizen/consumer has several options concerning the postal operator in other Member States concerning the intra- EC correspondence.

Correlating the data and information on the infringement package with the results of the Scoreboard of the markets of consumption (based on surveys of consumers and providers, statistic data on incomes), we find out the following:

- a) after three years (2007, 2008, 2009) recording the highest number of infringement procedures for „free movement of services” (52.45%) and „freedom of establishment” (64.28%), from the total number of procedures during the period under review, in 2010 their number has decreased, fact demonstrated also by the efforts of the Member States authorities concerning the applicability of the Service Directive.
- b) after 2009 it has been registered a decrease of the consumers' capacity to purchase services and goods (due to the financial crisis, medium incomes, price level); in 2010 we witness an increase, but significant differences were maintained between the EU Member States.

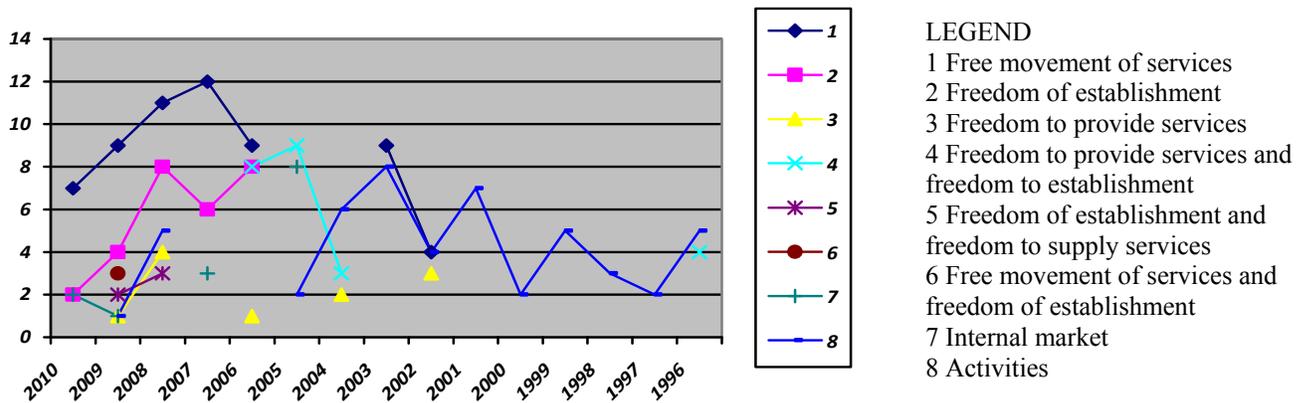


Figure 3. Evolution of infringement procedures concerning the specific activities

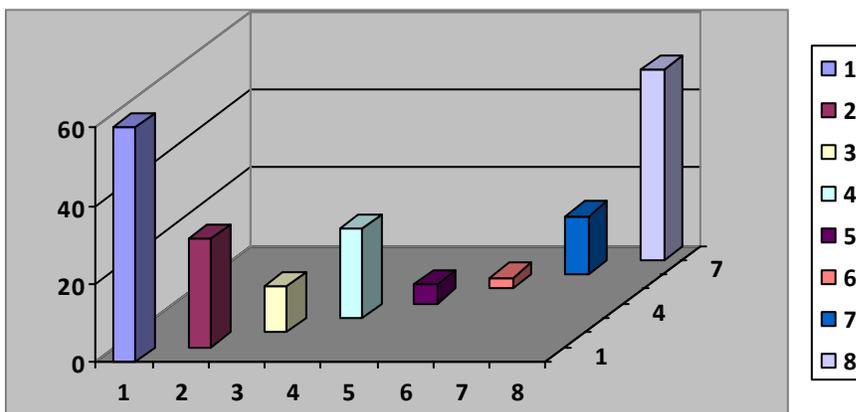


Figure 4. Representativeness of specific activities subject to infringement procedure

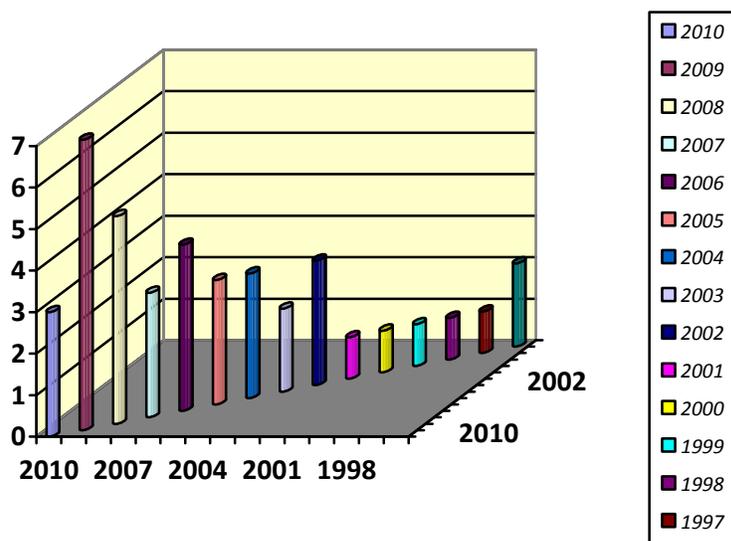


Figure 5. Dynamics of infringement procedures on specific activities

## Conclusions

If there is a word that we can find in the three concepts: „public service”, „service of general interest”, „service of general economic interest”, this is „service”, and as above shown there is heterogeneity in the interpretation of the concepts, a mosaic of approaches in spite of the homogeneity of the principles: equality, continuity, adaptability, quality, effectiveness, transparency, participation and in spite of the heterogeneity of interpretation of concepts.

The public services represent the result of a national or European public intervention, confirming the logics of the public service, ranging from the economic to the social size, validating the political, economic and social arguments on the role of public services in Europe.

Topics concerning public services on the European market remain up-to-date and open:

1. Why do we need European rule for public services?
2. Which is the European need for services/ target group?
3. Which is the European market for services?  
European demand and offer
4. Which is the condition of functionality for the services?
5. Which are the degrees of transversality and generality of the services?
6. Which are the influences of the national dimensions for defining the public service related to the European requirement?
7. Do we have the same habits in using the service?
8. Which are the boundaries of the national competences related to the European ones for the services?
9. How is operating a service on several geographic areas (two or more states)?
10. Which are the forms of the European support for the national or local level in service provision?
11. Which are the transaction costs?

The paper attempts to provide a series of direct or deductible answers to those questions. The Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions (COM(2010) 608 final) provides a more rigorous and applicable perspective, and for our study it is worth to mention the following:

- The public administrations will ensure public services corresponding to the citizens' needs, using an effective and user friendly “toolkit”, covering all pertinent issues (funding, public procurement, cooperation between public authorities), achieving comparisons at sectoral and transnational level.
- The citizens will have the opportunity to assess the evolution of the quality of services.
- Ensuring universal access to services, as the quality of public services has as corollary their accessibility and price.

- Assessing the citizens' needs in view to contribute to valorising the opportunity and possibility to extend the obligations of universal service to new areas (Art.14 TFEU).

We understand the European construction of the public services as the process of legal rule-making, adopting and implementing, rules with general character, applicable in the European area, functional, specific and adaptable rules.

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### **Annex 1 Sheet for the dialogue European Commission -Member State**

Freedom to provide services: Commission requests Greece to comply with EU rules in private education sector.

“The Commission considers that Greece’s current rules may lead to distortions in the Internal Market for private education services”

What is the aim of the EU rules in question?

How is Greece not respecting these rules?

How are EU citizens and/or businesses suffering as a result?

	BE	BG	CZ	DK	DE	EE	IE	EL	ES	FR	IT	CY	LU	HU	NL	AT	PL	PT	SK	FI	SE	UK	LV	LT	MT	RO
Free movement of services	*	*		*	*	*	*	*	*	*	*	*	*	*	*	*		*	*	*	*	*				
Freedom of establishment					*		*	*	*	*	*	*		*		*	*	*			*					
Freedom to provide services					*				*	*	*		*			*	*	*								*
Freedom to provide services and freedom to establishment	*				*			*	*	*	*		*		*	*		*		*	*					
Freedom of establishment and freedom to supply services		*	*					*			*		*	*				*								
Free movement of services and freedom of establishment				*	*			*		*					*	*				*					*	
Internal market	*		*		*	*	*	*		*	*	*			*	*	*	*		*	*				*	*
Activities	*		*	*	*		*	*	*	*	*		*		*	*		*								*

Table1. Representation of the EU Member States in applying the infringement procedures

	2010 EU27	2009	2008	2007	2006 EU25	2005	2004	2003 EU15	2002	2001	2000	1999	1998	1997	1996
1	7	9	11	12	9	-	-	9	4	-	-	-	-	-	-
2	2	4	8	6	8	-	-	-	-	-	-	-	-	-	-
3	-	1	4	-	1	-	2	-	3	-	-	-	-	-	-
4	-	-	-	-	8	9	3	-	-	-	-	-	-	-	4
5	-	2	3	-	-	-	-	-	-	-	-	-	-	-	-
6	-	3	-	-	-	-	-	-	-	-	-	-	-	-	-
7	2	1	-	3	-	8	-	-	-	-	-	-	-	-	-
8	-	1	5	-	-	2	6	8	4	7	2	5	3	2	5

Table 2.  
Evolution of infringement procedures on topics and groups of EU Member States